

Patterns of accountability in the OECD

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Introduction¹

In the late 1990s the Organisation for Economic Co-operation and Development became widely known among NGOs and in the general public for its role in the failed negotiations for a *Multilateral Agreement on Investment* (MAI). The negotiations were heavily criticized, and some depicted the organization as a remote and secretive body, engaged in concocting ultra-liberal global policies on behalf of transnational capital in isolation from civil society and the general public.

There are several somewhat ironic aspects to this story. One is that the organization practically since its inception had included some civil society organizations in its work on a regular and systematic basis. Another is that the MAI process was a rather unique and atypical affair with little resemblance to the bulk of OECD's normal activities, and yet the affair triggered a process of internal reflection and review of practices, leading to a heightened attention to civil society involvement in major aspects of the organization's work (OECD 2006 A). And finally that as a consequence of this, merely six years later the organization that had been so heavily criticized came out as one of the best accountability performers among intergovernmental organizations in One World Trust's 2006 *Global Accountability Report* (Blagescu and Lloyd 2006 p 52). This had hardly been possible if it had started from scratch.

A discussion of the MAI is clearly indispensable when seeking answers to the research question posed for this study: "*In what ways and to what extent has engagement by civil society associations of global governance institutions furthered the accountability of those agencies to their constituents?*" Yet, because the affair was so atypical of the organization and its normal work, it is not enough. The OECD is a flexible organization that does a range of different governance activities with a variable organizational geometry; therefore the accountability question plays itself out in different ways in different policy areas. To explain this, a brief discussion the OECD and accountability is required first.

¹ I want to thank the officials in OECD, BIAC and TUAC interviewed for this study for providing me with much useful information and material. Thanks especially to Meggan Dissly of OECD's Public Affairs Division for arranging the interviews and providing much valuable information. Also special thanks to Ambassador Steffen Smidt for greatly facilitating my visit and taking time to talk to me. Of course I carry the responsibility for all interpretations, errors and misunderstandings.

The OECD² and Accountability

The organization covers most of the policy areas with which member-governments are concerned and it works with them in a variety of ways. It is widely known for its *statistical and analytical output*; an important and characteristic activity is the process of *mutual Surveillance and Peer Review* where member countries' policies are analyzed and discussed; comparative analyses are made to identify *best practices* leading to formulation of *guidelines* and *recommendations* to national governments and to mutual learning and sometimes further to a convergence of views and policy orientations (Sullivan 1997, Pagani 2002). *Formal agreements* of the MAI variety are rare but occasionally adopted by the organization. Much more common are recommendations and *standards*, for instance in the environmental area. The organization also undertakes *strategic, policy-oriented work* as when in the 1970s it helped develop the new policy orientation of tight monetary and fiscal policies combined with structural reform, and in its more recent work on strategies towards sustainable development (Ougaard 2004, OECD 2001 AB).

Institutionally these activities take place in a variety of formats. The OECD is an intergovernmental organization; its governing body is the *Council* where each member state is represented and decisions are taken by consensus. A distinct feature is the specialized *committees* where representatives from national administrations meet to discuss and review policy in particular policy areas. There are ca. 35 of these and in addition there is a large number of working groups and expert groups. In total there are about 250 committees and groups, and some 40.000 senior officials from national administrations come to Paris each year to participate in their work.

Alongside this system of council, committees, and working groups the permanent *secretariat* in Paris is important. It has a staff of ca 2300 (2004) international civil servants, organized in several directorates, each focusing on a policy area or specific task, such as economic affairs, statistics, the environment, development co-operation, education and public management. Each directorate serves one or more committees and working groups and the groups participate in discussions of the directorates' work. Furthermore the organization has since its creation involved some civil society organizations in its work, and finally, since 1990 the OECD has developed relationships with some 70 non-member countries, including significant emerging economies such as Brazil, Russia, and China as well as many least developed countries.

Thus, in any policy area the persons potentially involved are ministers and ambassadors in the council, bureaucrats and experts from member-countries and increasingly non-member countries too, meeting in the relevant committee or working group or just communicating with the OECD, OECD-bureaucrats in the respective directorate(s) and sub-unit(s) supporting the committee and working group, and civil society representatives. The ways these actors interact with each other, the roles played by Paris and national capitals, the interplay between council, committees, bureaucrats and experts – all of this can vary from case to case and obviously there is a

² For more on the OECD, see Ougaard 2004, Ougaard 2006, and Salzman and Terracino 2006.

large number of possible permutations.

These organizational features pose some problems when discussing OECD's accountability with the above research question in mind. The question of the *addressees* for accountability claims is not quite straightforward because both the organization in Paris and the national governments and bureaucracies participating in its work can be included. Neither is the question of the *constituents*, to whom the governance agency should be accountable, simple. Formally speaking, the constituents of the OECD are the member governments. Since member countries are democratic, one could also argue that the ultimate constituents are the citizens in these countries who might want to hold the OECD accountable for the consequences of its policy advice. It could also be the actors or groups who are targeted by the regulatory output, soft or hard, from the OECD network, and it could be the persons and entities whom regulatory output seeks to benefit.

It also matters how *civil society organization* (CSO) is defined. In the definition suggested for this project, they include business associations as long as they are non-profit entities. Not everybody will accept this definition, and I have reservations about it, but in the present context it is useful because it allows a nuanced treatment of accountability issues in relation to different constituencies that may have different and conflicting interests.

Due to these features, and because of the very broad scope of OECD's activities, a general assessment of OECD's accountability performance (such as the one provided by One World Trust) says little about the way it works in practise. What is called for is an examination of individual policy areas, and given the limits of this paper, it is only possible to include a selection of these. For the same reason it is not possible to cover all aspects of the research question with equal weight. I will focus on "*In what ways?*" and leave the other part – "*to what extent?*" i.e. how much is CSO engagement responsible for the observed developments - to a few observations along the way.

The cases chosen for closer examination all has to do with governance arrangements relating to business. They are: the MAI, taxation, anti-bribery, the guidelines for Multinational Enterprises, and environmental regulation. These cases cannot be said to be representative of all of the organization's work; on the contrary they probably represent areas where the organization is most open to civil society organizations. That, at least was the judgement of one OECD official familiar with the issues. Thus it is, for instance, possible that a study of OECD's work on New Public Management would lead to rather different and less sanguine conclusions.³ Still, the cases give a good illustration of different ways in which the accountability equation can be played out in an international governance institution.

³ Note also that due to financial and time constraints the only feasible strategy was to focus data collection on the OECD Secretariat and the two CSOs located in Paris (BIAC and TUAC). Thus I rely heavily but not exclusively on sources and interviews from these organizations.

In what follows I will present these cases one by one, give some institutional detail to explain the governance arrangements in each case, identify what I see as the key constituencies and addressees for accountability claims, address the broad accountability question of access and voice, and describe the accountability pattern specific to the case. Briefly, these specific patterns are the following:

- 1) The ‘mobilization-protest-change’ pattern, found in the MAI case
- 2) A pattern of increased access and voice to a broader range of CSOs found in all cases except taxation
- 4) An institutionalized complaint mechanism open to a broad set of constituents concerning the Guidelines for Multinational Enterprise
- 3) Institutionalized high accountability to a specific constituency – business – in OECD's work of the model tax convention
- 5) A ‘partners in implementation’ pattern found in the anti-bribery and environmental areas.

The MAI⁴ and its aftermath

Essentially the MAI affair was an attempt to negotiate a highly ambitious multilateral agreement on investment liberalization. It had to be ambitious because to be worthwhile it should lead to a significant improvement in the already liberal investment climate among OECD members. It also should have to potential to gradually expand its membership to non-OECD member countries. One reason the OECD was chosen as the venue for this endeavour was that it was considered difficult, to say the least, to get meaningful investment liberalization through the WTO process, while it should be possible to negotiate a far-reaching agreement in the OECD forum, due to the much higher degree of like-mindedness in liberalization matters among its membership.

This latter belief turned out to be wrong. Gradually it transpired that the remaining obstacles to full investment liberalization and introduction of national treatment for foreign investment were considered rather important in member countries. Therefore the eventual resulting agreement was likely to be filled with national exceptions and escape clauses. And in that event, there wouldn't be must improvement in it from a business perspective. Thus the perceived potential benefits of completing the process declined considerably as negotiations went forward. At the same time, in a parallel process, the political costs grew dramatically.

Formal negotiations had begun in September 1995 and in January 1997 the first draft agreement text had been produced. In February 1997 an NGO, *The Council of*

⁴ The following summary account is based on Henderson 1999 and Devereaux et.al. 2006. The latter is newer, more detailed, and based on more extensive research. But basically the two studies arrive at similar conclusions on the issues that are relevant for this paper. Salzman and Terracino 2006 also has a detailed discussion that differ on some issues but does not contradict the overall argument.

Canadians, obtained a version of the text and published it on the internet (Devereaux et.al. p 161), leading to a rapidly snowballing global anti-MAI movement. In the words of Devereaux and co-authors,

The proposed MAI sparked fury around the world, becoming in the words of a European MAI negotiator, “the focal point for fears about globalization.” Indeed, according to some observers, the MAI protests marked the beginning of the international anti-globalization movement. <.> The MAI negotiations were targeted by hundreds of grassroots environmental, consumer, and development organizations and condemned by critics ranging from labor union leaders to movie actresses, all voicing concern about the harmful impacts of global economic integration.” <.> More than 600 organizations in nearly 70 countries expressed disapproval of the talks (Devereaux et.al. p. 140).

Thus, with the prospects of a strongly liberalizing agreement receding, and the costs of continuing negotiations going up, the strategic calculations of key actors changed. Main sections of the business community lost interest in the MAI, the US government lost interest, and France lost interest and, as the first country, in effect withdrew from the process in October 1999, leading to the final demise of MAI in December of that year.

The central question in an analytical post-mortem of the MAI is the cause of death: Was the global mobilization of NGOs and civil society protests the decisive dragon-slayer, or was the chief culprit the inherent difficulties, disagreements and conflicts of interests among participating governments? Not surprisingly, the first explanation is popular in the NGO world, but both Henderson and Devereaux et.al. come out in favour of the second view. They do not deny the contribution of civil society protests to the result, but they see it more as yet another push to an already badly tilting wagon – and not the most decisive push.

Trying to settle this dispute is an exercise in counterfactual reasoning. In my assessment it is more probable than not that the MAI process would have broken down also in the absence of the global anti-MAI movement. The incompatibility between what was sought and what was possible in light of deeply entrenched pockets of investment protectionism, even in otherwise highly liberal political economies, was simply too overwhelming. At the same time, even from the outset there was not a very strong demand for the MAI in the business community (Devereaux et.al. pp151-153), and among the supporters of the MAI, as implied by Henderson’s account, there was some confusion about the basic rationale for the project (Henderson p 33-47).

In contrast, had the MAI had a perceived strategic importance for major sections of international business and support from major states comparable to for instance the successful TRIPS agreement concluded in the WTO context in 1994, it is not inconceivable that it could have gone through in spite of NGO protests.

If this assessment holds, the central analytical question in the post mortem becomes the cause of conception rather than the cause of death. With hindsight it seems clear

that the problems would have been fairly easy to foresee if more thorough preparations had been made. So why did major countries and a key international institution walk so ill-prepared into this debacle?

I would suggest the combination of two reasons, both more or less directly implied by the analyses by Henderson and Devereaux et.al. One is that after the completion of the Uruguay Round of trade talks that was considered a major policy success for economic liberalization and for US trade policy, a kind of liberalization euphoria caught sections of the US international economic policy-making establishment. Believing in a powerful historical momentum in favour of further liberalizations, they actively sought a new cause to promote. The other reason was that the permanent staff at OECD was concerned about the future of the organization and actively sought ways to heighten its relevance and visibility (Devereaux et.al. p 152). As one internal critique of the process said: “the bureaucracies were proposing an agreement that the private sector in most countries were not necessarily calling for. .. The whole initiative could be described as a solution in search of a problem” (Devereaux et.al. p 153).

So here is another irony: the MAI agreement was not really important for the protagonists of liberal globalization and it probably would have failed anyway, but it greatly stimulated the growth of a vigorous transnational NGO community that in multiple ways monitors and seeks to influence global governance arrangements.

This means that the MAI affair itself is not really a good case of global governance institutions being brought to accountability by CSOs. It was a unique event in a specific moment of history, where neo-liberalism was riding high and policy-makers got over-ambitious and careless, making the process an unusually easy target for protesters. But in a larger perspective the affair clearly was an important stimulator of the process that brought accountability much higher on the international agenda. In that sense, the CSO involvement in the MAI affair contributed to make this particular conjuncture into a turning point in the history of global governance, the magnitude of which it is too early to tell.

In the OECD itself, the MAI story clearly had consequences. From its inception, the organization had systematically involved CSOs in parts of its work through the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), the officially recognized representatives of business and labour through which a large number of business and labour organizations, national and international, can and do interact with the committees and secretariat. Other CSOs, for instance associations of agricultural producers and consumer organizations also have a long history of involvement in OECD's work.

But at the turn of the century an up-grading took place inspired by the MAI process and also by the 1999 Seattle WTO Ministerial meeting (OECD 2006A p3, see also OECD 2005). In 1999 and 2000, the Organization undertook a reassessment of its relations with civil society and concluded among other things that “openness to civil society is important in the light of the contributions civil society organizations (CSOs) can make to the OECD's work; openness can help to improve understanding by CSOs

and the public of the opportunities and challenges of global economic and social change” (ibid). The organization launched the *OECD Forum* as one venue for interacting with CSOs, it left it to the individual committees to select the NGOs with which to work, it introduced 'on-line public consultations' with civil society (OECD 2006 B), and it assigned the Public Affairs Division of the Secretariat the task of serving as an internal clearing house for information on civil society (OECD 2006A p 3).

In November 2006, an internal report on contacts with CSOs was finalized (OECD 2006 A + annexes). According to this, “consultations with CSOs are now a regular and systematic part of most OECD committees’ work. ... Indeed, it is essential to develop systematic relationships. These activities usually take place through informal modalities which each committee has adopted in light of the issues that it deals with and its working methods – consultations with committees, seminars, conferences and workshops.”

For this report the Public Affairs division produced an inventory of contacts between the OECD and civil society organizations (OECD 2006 C). This document lists more than a hundred different topics on which CSOs have been consulted at least once and in many cases on a regular basis. It names more than two hundred different NGOs that have been involved, and several times it refers more broadly to, for instance, a "Variety of civil society experts and organizations from OECD and non-OECD countries", or "Umbrella NGO organizations in all DAC member countries". The inventory thus shows that the OECD now has relations with a broad range of CSOs representing business, labour, consumers, and environmental and development concerns.

Guidelines for Multinational Enterprise

The *OECD Guidelines for Multinational Enterprise*, revised in 1998-2000, set forth a voluntary code of conduct that business is urged to follow and governments committed to support (OECD 2000, OECD 2001 A). The guidelines state that companies should "contribute to economic, social and environmental progress with a view to achieving sustainable development", and specify a range of concerns included in this, covering inter alia human rights, capacity building, and good corporate governance. An associated instrument, the *Decision of the Council on National Contact Points* from June 2000 is concerned with the implementation of the guidelines (OECD 2001 A).

Since the guidelines are directed towards private companies, business can be seen as an important constituent of this instrument, and the OECD network, the shaper of the guidelines as the prime addressee for accountability claims. On the other hand, the guidelines are meant to serve a range of social and environmental purposes that are not identical with the prime goals of business, and therefore it makes much sense to

consider the wider public, affected by business behaviour, to be the prime constituents. When seen in this perspective, the addressees for accountability claims are business and governments in their responsibility to meet, support, and promote the guidelines.

In the revision several changes were made to "reinforce the core elements - economic, social and environmental - of the sustainable development agenda" (OECD 2000 p 2, also OECD 1999). Among the additions were recommendations on the elimination of child labour and forced labour, encouragements to raise environmental standards, a recommendation on human rights, chapters on combating corruption and consumer protection, and words to "recognize and encourage progress in enhancing firms' social and environmental accountability" (ibid). Furthermore, the revision strengthened the implementation mechanism by "providing more guidance to the National Contact Points in fulfilling their role" by the adoption of a 'Procedural Guidance ' in 2000 (OECD 2001 A p 49).

It was also recognized that "ongoing support and involvement of the business community [...], labour [...] and other non-governmental organisations will also be crucial" (OECD 2000 p 3) in implementing the guidelines. Along this line there was, indeed, CSO involvement in the revision of the guidelines. According to an OECD paper from 1999, "discussions over the past year have been enhanced by the contributions of the social partners (BIAC, TUAC) and those of NGOs and other interested partners " (OECD 1999 p 3), and according to another OECD document, the guidelines were "developed in constructive dialogue with the business community, labour representatives and non-governmental organisations" (OECD 2000 p 2-3).

Furthermore, this involvement seems to have been the beginning of a more permanent involvement of a broader range of CSOs in OECD's investment related work. This is particularly evident in OECD's reaction to the creation in 2003 of the umbrella organization *OECD Watch*, itself an offspring of the anti-MAI mobilizations. The OECD Watch groups together NGOs from all over the world that share the "vision about the need for corporate accountability and sustainable investment" (OECD Watch 2007). It seeks to monitor and contribute to the work of OECD's Investment Committee, to test the effectiveness of the guidelines, to disseminate information to civil society groups, and to advise NGOs about filing complaints against companies (ibid). This work has been acknowledged by the OECD, where CIME [a forerunner to the Investment Committee] has named OECD Watch "a partner in implementing the guidelines" and has been open to input from the organisation in various matters (ibid). Currently (spring 2007) there seems to be talk within the OECD of giving OECD Watch a more formalized standing, resembling that held by BIAC and TUAC throughout the history of OECD (interviews). Thus an enhanced access and voice is clearly in evidence in the investment area.

When OECD Watch "advices NGOs on filing complaints against companies" it is making use of an accountability mechanism that is specific to the work on the Guidelines for MNEs, namely the system of National Contact Points. All adhering countries are to set up National Contact Points (OECD 2001 A p 44) and the new Procedural Guidance from 2000 stipulates, among other things, that NCPs are called

upon to “respond to enquiries about the Guidelines from (a) other National Contact Points, (b) the business community, employee organisations, other non-governmental organisations and the public; and (c) governments of non-adhering countries” (OECD 2001 A 46). Furthermore, “specific instances” can be brought for a NCP by business, employees, NGOs and the public. In plain language: governments, labour, NGOs and the general public can complain to the relevant NCP that an individual company fails to live up to the guidelines in a specific case.

When a “specific instance” is brought to a NCP, the NCP decides whether the issue is relevant to guidelines and merits further consideration. If this is the case, the NCP will “discuss it further with the parties involved and offer “good offices” in an effort to contribute informally to the resolution of issues.” As part of this it will, if agreed to by the parties concerned, “offer or facilitate access to, consensual and non-adversarial procedures, such as conciliation or mediation.” If the parties fail to reach agreement, the NCP will issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines.” In the words of the OECD commentary on the procedures, this “makes it clear that an NCP will issue a statement even when it feels that a specific recommendation is not called for” (OECD 2001 A p 52).

Finally NCPs are called upon to report to OECD's investment committee. This means that individual cases will be brought to the attention of this body. But significantly, “the non-binding nature of the Guidelines precludes the Committee from acting as a judicial or quasi/judicial body” and the committee “shall not reach conclusions on the conduct of individual enterprises” (OECD 2001 A p 53).

What this amounts to is a right for all concerned parties to obtain an authoritative statement from a national NCP whether a company violates the guidelines. It is a concrete, institutionalized accountability measure, *a formalized complaint mechanism*, the key point being that any constituency representative can take an initiative that the NCP is formally obliged to respond to. But it is hardly a strict one since there are no further sanctions involved.

Still, the system is being used and tested. The OECD's 2006 Annual Report on the Guidelines, while warning of possible double counting as well as underreporting (OECD 2001 E p 49), lists 101 “specific instances” to date (since the revision of the Guidelines). These involve 27 NCPs, TNC activity on all continents, and many principles of the guidelines but in particular labour and environment issues. The information in the annual report is too limited and unsystematic to allow a closer analysis but TUAC has made an analysis of its experiences with the NCPs up to September 2006 covering more than sixty cases, again with a proviso against underreporting. The analysis concludes that “the results so far point to both some positive development as well as lack of development in some cases. On the one hand, trade unions are increasingly becoming aware of the Guidelines as a tool to protect workers’ rights, cases are raised and significant changes relating to NCPs have been achieved. On the other hand, progress is slow and there are still problems with several NCPs” (TUAC 2006: 33).

From this analysis as well as several cases discussed in a later document (TUAC 2007) it is clear that the system is far from uniformly effective, several NCPs do not live very well up to the intentions and are responding slowly and reluctantly to 'specific instances'. Yet there are also successes and it is reasonable to conclude that a *potentially* strong accountability mechanism has been created by the strengthening of the NCP system. It relies solely on moral and persuasive force, but as evidenced by the rise of the CSR movement, this force can be of some strength and it would be wrong not to consider it a case of strengthened accountability.

Customer – Service Provider in Taxation

With the rise of trans-border economic activities questions of double taxation and tax evasion have become more pressing. The standard remedy to avoid these problems is a bilateral tax treaty between two states and a growing number of states need to develop such treaties with each other. This makes standardization desirable and the OECD has played an important role in this regard by developing the *Model Tax Convention*, which, as the name says, serves as a model for a large number of bilateral tax treaties, not only among OECD members themselves but also between them and non-member countries. It also has had influence on treaties between non-members.

The Convention is in almost constant development. Business practices change, transnational transactions within companies evolve and become more complex, and new business models emerge, thereby creating new taxation challenges and opportunities for companies and tax authorities alike. This calls for additions and revisions to the Model Convention, a task assigned OECD's Centre for Tax Policy and Administration (CTP).

In a narrow conception, then, the CTP is the addressee for accountability claims and transnational businesses is the central constituency. And viewed in this way, there is a high degree of accountability, facilitated by the relevant CSOs, namely BIAC – the Business and Industry Advisory Committee – and the International Chamber of Commerce.

Often issues are brought to the CTP by BIAC or by some of its member organizations through BIAC when the constituents find the Model Convention insufficient, and analytical work done to develop the Convention can even be partly funded by business. These CSOs are involved in shaping the convention and can initiate changes and developments. Indeed, the cooperation is so close that BIAC and ICC can be described as the CTP's "customers" (interview), and this close cooperative relationship between CTP and BIAC has evolved precisely to make CTP's work accountable to its major constituency. Accountability to a specific constituency is close to a defining feature of this particular body within the OECD.

If a broader view of the business world is taken, however, the picture needs modification. Small and medium sized enterprises (SMEs) are increasingly also involved in trans-border activities and are affected for instance by questions of

taxation of trans-border e-commerce, but the CTP has so far found it very difficult to reach this constituency through existing mechanisms (interview).

And one can take an even broader view of the constituency for OECD's work on tax issues. Arguable an equally if not more important constituency is made up of national tax administrations concerned with fair and effective taxation to fund public services, and thereby indirectly but importantly, all citizens concerned with public welfare issues.

Efforts have been initiated in the OECD to cater to such broader concerns. From 1996 its work on taxation has expanded to (among others) the issue of "harmful tax practices" where efforts have been made to reign in off-shore tax havens that thrive on the facilitation of tax evasion (OECD Centre for Tax Policy and Administration at www.oecd.org).

In this context, BIAC's close relationship to CTP probably has not been very helpful in securing accountability, simply because BIAC and its member organizations are not likely to protest loudly against such practises and hold the OECD accountable for a week agreement. There are other CSOs concerned with this issue, *Tax Justice Network* (see <http://www.taxjustice.net>) and Oxfam among them, but they are "in the background" and do not have a direct relationship with OECD in this context (interview). The 2006 inventory lists "BIAC, TUAC, ICC, UNICE and other lobbying groups" as being involved (OECD 2006C p 24-25) the latter presumably being business groups.

The involvement of the only non-business group mentioned, TUAC, seems to be rather weak with consultations only every other year, as opposed to BIAC's twice a year and with little impact on OECD's work in this area. Until recently, that is. In early 2007, TUAC began to show a stronger interest in tax issues (interviews), being concerned precisely with the negative impact economic globalization may have on states' ability to tax transnational corporations effectively, thereby putting public services at risk (interview). This may be the beginning of stronger CSO involvement in this aspect of OECD's work on taxation, but it seems safe to say that so far there has not been much CSO activity that could help enhance accountability to broader constituencies in this area.

Thus, the most distinct feature of the accountability equation in taxation is the 'customer-service provider' pattern between business and CTP concerning the Model Tax Convention.

Fighting Corruption

The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* - in short *the Anti-Bribery Convention* - entered into force in 1999 (OECD 2003) and is supported by several other instruments, such as for instance the *1998 Recommendation on Improving Ethical Conduct in the Public*

Service (OECD 2006 D).

The purpose of these instruments is self-explanatory, and the regime has arguably a very broad constituency, consisting of everybody except those that directly benefit from and practice corruption. It even can be argued that many companies that do engage in bribery only gain in the short term and would be better served in the long run by the abolition of bribery. Arguments to the contrary have been suggested, for instance the idea that corruption can be a useful lubricant in countries with excessive, cumbersome and inefficient regulations, or that bribery is ingrained in the culture and tradition of some countries and therefore should be accepted as the normal way of doing business there (OECD 2003). The latter argument in particular accounted for some initial resistance to international anti-bribery efforts (OECD 2003). But today such arguments are generally considered to be on the fringe, and I will not engage with this debate here, accepting in stead the basic premise of the Convention that corruption "raises serious moral and political concerns, undermines good governance and development, and distorts international competitive conditions" (OECD 2003 p 7-8). In consequence I assume that anti-corruption efforts have a large constituency, consisting of the majority of businesses and the general public in most countries, whether members of the OECD or not.

The convention itself is a binding instrument, requiring OECD members and non-members who have joined it to "implement a comprehensive set of legal, regulatory and policy measures to prevent, detect, prosecute and sanction bribery of foreign officials" (OECD 2006 D). For implementation the primary mechanism is a system of systematic monitoring and review of countries' performance, where, in *Phase 1*, it is ascertained whether the legal texts in the country meet the standards of the Convention, and in *Phase 2* "the structures put in place to enforce the laws and rules implementing the convention" are evaluated (OECD 2003 pp 11-12).

Thus, the addressees of accountability claims are twofold: On one hand the OECD and its Secretariat (are the Convention and its supporting instruments good enough? Is the monitoring process conducted rigorously and effectively?), and on the other hand the participating governments (are they effectively implementing the Convention?)

In creating and shaping the anti-bribery convention, there was extensive involvement of CSOs with BIAC, ICC, TUAC, and in particular Transparency International playing important roles. According to the OECD the CSOs' advocacy efforts "helped generate the needed political will to criminalise the bribery of foreign public officials through efficient multilateral action" (OECD 2003 p 10-11). CSOs also called attention to issues that in consequence were brought into the Convention and related instruments, for example the problem of solicitation of bribes (thus considering both the demand and supply side of bribery), and the problem of protecting "whistle-blowers" (OECD 2003, Interview).

Concerning implementation, the monitoring process was designed to be as transparent as possible, giving civil society good possibilities for access to information. And

perhaps more importantly, channels were created to allow civil society representatives to express their views in the process. Indeed, it is a matter of explicit policy for the OECD actively to seek civil society participation and contributions to the implementation process and the efforts of the organization and CSOs can be described as mutually reinforcing (Interview; OECD 2003). Thus civil society is invited to express its views in writing to the responsible OECD body; civil society's views on specific issues can be presented at consultation meetings (between country representatives and the monitoring team), and "civil society is formally invited to participate in the Phase 2 on-site visits" (OECD 2003 p 14).

These possibilities have been put to good use by CSOs. In particular the national chapters of TI in several cases played an important role in shaping national legislation, in contributing to the evaluation and monitoring activities, and in calling attention to lacunae and weaknesses in national implementation efforts (OECD 2003, p 14-15; interview). From 2001, BIAC, TUAC, ICC and TI have coordinated their participation in the country visits "helping to identify civil society experts from the country being reviewed who will express their views and respond to questions from the examiners" (ibid p 15). Through such mechanisms CSOs can complain to the OECD about lack of government activity in any particular area, and in turn the OECD can – in the diplomatic language ostensibly used - “recommend” to the government that it “raises awareness” on the issue at hand (Interview). There is no reason to doubt that this involvement is important, on the contrary, it must make quite a lot of difference, when national efforts are evaluated, whether local CSOs from different walks of life are seriously involved or not.

Overall, CSO participation has helped create strong accountability measures - transparency, access to information, voice in the peer review process - and continues to contribute to accountability in the implementation. As an addressee for accountability claims the OECD has close links to relevant CSOs and is open and responsive to their ideas and suggestions.

But an even more interesting observation is that there is a strong *partnership* between OECD and CSOs for keeping *national governments* accountable. In relation to these addressees, CSO involvement has helped create rather strong accountability mechanisms, and ongoing CSO involvement continues to play an important and possibly indispensable role in making governments answerable for their efforts. The relationship is one of *partnership in implementation*.

Finally, however, it should be noted that the existence of this partnership probably is much facilitated by the nature of the issue and the constituency. After all, after initial resistance had been overcome (see OECD 2003 for a summary), anti-bribery now is a cause that it is difficult to oppose in principle. Thus, in the underlying constellation of interests there is little conflict and controversy, business, labour and large segments of civil society all agree that corruption should be fought.

Environment

The OECD has since the 1970s played an important role in developing common responses to environmental challenges. This work is multifaceted, it relates to specialized and technical issues such as “good laboratory practices,” “waste prevention and recycling”, and “chemical safety and chemical accidents,” to regulatory issues such as “harmonization of regulatory oversight in biotechnology” (OECD 2007), and to broader long-term guidelines such as the 2006 Strategic Vision to “work towards ensuring global economic growth that is environmentally sustainable” (OECD 2001 F). These activities employ the whole range of institutional formats and instruments described previously – analytical work, agreements, decisions and recommendations, and mutual surveillance and peer review of countries’ performance.

The constituencies in this area are varied and have cross-cutting, partly overlapping and partly conflicting interests. Businesses, in particular manufacturing, extractive and transportation industries are a central constituency, being the source of many environmental problems, the target for regulation, and the entities ultimately required to avoid or remedy environmental problems and therefore being much concerned with cost and competition consequences. Labour is another central constituency, being particularly exposed to health hazards in the work-place as well as employment and wage consequences. In addition to these interests there is a very visible and active community of environmental NGOs whose relevance is unquestionable but whose status as a constituency or as representing constituencies sometimes is contested. My position is basically 1) that there is a general human interest in environmental sustainability that cuts across the business-labour or any other socio-economic or cultural dividing line and 2) that the common denominator of environmental NGOs is the effort, whether successful or not, to represent politically this shared human interest or aspects of it (for more on this point see Ougaard 2004).

Although implementation of these policies is the responsibility of member governments, the OECD network itself is a relevant addressee for accountability claims. It is of growing importance for business and governments alike that environmental and safety standards are internationally harmonized, wherefore the harmonization efforts taking place in the OECD network are significant. But, as in other cases, implementation responsibility resides in national governments who also must be considered as addressees.

CSOs have been involved in OECD's environmental work for many years with BIAC and TUAC having access to the work of the Environment Policy Committee. But more recently, the involvement of CSOs has broadened significantly. It is generally recognized in the Secretariat and the Committee that CSOs have a role to play (interview) and the engagement of environmental and other CSOs is seen as a matter of operational principle. This was expressed in the Environmental Policy Committee's “Strategic Vision” from January 2006 which among other things, pointed to the importance of “developing successful partnerships with others, including [...] OECD countries, non-member countries, stakeholders (including business, trade unions,

environmental NGOs) .." (OECD 2006 F p 7).

Another document states that

“The OECD recognises the valuable contribution that civil society can make to the public policy-making process, and attaches great importance to the Organisation's own consultation and dialogue with civil society representatives.” (2007 B).

On the nature of this involvement, the OECD reported that

“Stakeholder representatives participate in a range of activities under the OECD Environmental Policy Committee (EPOC), including various conferences, workshops, expert meetings, etc. They participate actively in some of the working parties and expert groups under EPOC in their expert capacity. Representatives of stakeholder groups have participated actively in selected meetings of EPOC in the past, including a High Level Session held in April 2000 and a special stakeholder conference at the start of the Environment Ministerial Meeting in May 2001. The Joint Working Party on Trade and Environment (JWPTE) also holds regular dialogues with civil society representatives” (OECD 2007).

The involvement of a broader range of CSOs has been facilitated by an important development in the NGO world, namely the creation of the umbrella organization *European Environmental Bureau* (EEB). This organization, headquartered in Brussels, has 143 member organizations from 31 countries, among them national chapters of environmental heavy-weights such as Friends of the Earth and Greenpeace (EEB 2007).

The EEB coordinates NGO interaction with the OECD in environmental matters (interview) and the relationship between the OECD and EEB has been developed to a point where it makes the Environmental Committee one of the OECD bodies most open to NGO engagement, possibly *the* most open. Significantly, EEB has in practice been elevated to a status comparable to the one previously only held by BIUAC and TUAC. Thus, according to OECD's description

“Business participation in EPOC activities is organised by the Business and Industry Advisory Committee to the OECD (BIAC), while trade union representation is organised by the Trade Union Advisory Committee to the OECD (TUAC). The participation of environmental NGOs is co-ordinated by the European Environmental Bureau (EEB), and includes representatives of such organisations as WWF, World Resources Institute, Greenpeace, and Friends of the Earth” (OECD 2007).

It is a telling development that EEB occasionally has been granted high level access, participating in parts of the 2004 Ministerial meeting and in a consultation at 'the margins' of the 2006 joint development and environment Ministerial (OECD 2006 C p. 42-43). EEB has become an institutionally recognized part of the OECD network with access and voice and participates actively in it.

In short, although formal decision-making power remains with the formal governmental part of the OECD network in the environmental area, the network has become a quite open one where different CSOs, including environmental NGOs has access to information and has venues for criticizing policy and advocating their positions and proposals. It should be noted, however, that according to one OECD official, generally “it is not new what they bring up” (interview), although at the same time, the contributions of expert knowledge from NGOs is generally acknowledged as valuable.

Aside from the issues of access and voice, a potentially important accountability mechanism is found in the *country review process* which the OECD considers important and seeks to strengthen (OECD 2001 F). By being accepted in the OECD network, this has enhanced the ability of environmental NGOs to hold national governments accountable for their sustainability performance. It is worth quoting at length an OECD official’s description of the system:

“An environmental Performance Review includes a review mission where a group of Secretariat and Government Experts go to the country concerned to interview people and collect information. During these reviews missions, meetings with civil society are conducted. In addition a 3-hour meeting to discuss the review is done with independent experts from Civil Society. The invitations to these meetings are made by the government and are made to a wide range of Civil Society Groups. The Review Team finds that these meetings are an indispensable source of information. The team also frequently uses NGO sites as an early warning on problems facing the country. The team then digs deeper into the statistics and research to determine if there really is a potential problem” (e-mail March 30, 2007).

This process concerns civil society organizations in the country under review. But given the constitution of EEB as an umbrella organization with members in all OECD member countries, it also implies a way in which to bring the concerns of the national NGOs into the centre of the OECD network. Thus the OECD works with environmental NGOs to hold national governments accountable, a pattern not far from the “partnership in implementation” pattern found in the anti-bribery area.

It seems that a precondition for this has been the creation of the coordinating umbrella group EEB. This coordinating role, one must surmise, will involve an element of selectivity because the agendas and priorities of environmental NGOs are not always mutually compatible – as was the case also for OECD Watch in the investment policy area. Thus “coordinating” is more than just collecting the views of a variety of NGOs and forwarding them to the OECD, it presumably also has an element of interest aggregation which is not politically neutral.

Finally, it should also be noted that in some of the specialized and technical areas mentioned early in this section, (chemical safety for instance), it is possible that we would find accountability equations similar to the “service provider – customer”

relationship described in the taxation area. Industry demands harmonization of standards and works closely with and in the OECD network which is highly accountable to the views of business.

Conclusions

This paper set out to examine ways in which the engagement of civil society organizations with the OECD had furthered the accountability of OECD-centred governance arrangements. Given the breadth and variety of OECD activities, this was done through an examination of selected policy areas which cannot claim to be representative, but provide a picture of different ways in which the 'accountability equation' between governance agency, constituencies, and addresses for accountability claims is configured.

The case studies suggested the following stylized modes of CSO-governance agency interaction, each posing the accountability question in a distinct way.

1) The mobilization-activism pattern, evident in the MAI affair, where widespread demonstrations, protests, petitions and so on, on behalf of a broad and heterogeneous set of constituencies, contributed to a change in policy, leading to enhanced openness to CSOs. This pattern, however, appeared in a specific historical situation and is not likely to be repeated often.

2) The enhanced voice and access pattern, evident in all cases except taxation. In this pattern, the governance agency has created or enhanced structured, more or less formalized, arenas and channels that provides information to CSOs and allow them to present information and advocate and criticize policies and their implementation. Such venues can be used, and are being used, by CSOs to hold the OECD network accountable to its constituencies. It takes the form for instance of regularized real-life consultations, in some cases at high levels in the network, open on-line consultations, and the open OECD Forum. The inclusion, more or less formalized, of the two umbrella organizations OECD Watch and the European Environmental Bureau in the OECD network are important examples of the broadening of the range of CSOs that has access and voice.

3) An institutionalized complaint mechanism represented by the National Contact Points created to further the implementation of the Guidelines for Multinational Enterprises. This is a 'hard' accountability measure in the sense that NCPs are obliged to respond to initiatives from any constituency. But it is weak in the sense that there are no formal sanctions involved, it relies solely on moral and persuasive force. The analyses by TUAC indicated that the system has worked in some cases, but far from always.

4) A pattern of very high accountability to a specific (business) constituency. This was found in OECD's work on the Model Tax Convention where business was described as

'the customer' and accountability to this specific constituency was close to being constitutive of the government agency in question, the role of the agency being close to a service provider.

5) Finally a “partners in implementation” relationship, found in the areas of environment and perhaps most clearly in anti-bribery. Here CSOs had a high degree of access and voice, but the most interesting feature was that the OECD and the CSOs worked together to hold national governments accountable for implementing the anti-bribery convention. Concerning environmental policies, the OECD actively sought and used input from CSOs in the country review process, thus also creating a pattern of cooperation between the OECD and CSOs in holding national governments accountable.

It should be noted that different patterns can be identified in other policy areas. In the area of development assistance, for instance, a set of wholly different accountability questions are posed by the fact that NGOs often serve as instruments of implementation, being the channel through which assistance flows to recipients. Here an important question may very well be how to hold CSOs accountable.

This serves to underscore one overall conclusion of this paper, namely that the accountability equation is configured in many different ways, even in the same governance agency. The short answer to the research question is that it depends on the policy area. The general picture painted here is one of increased OECD openness to a broader range of CSOs, and the development and strengthening of some specific accountability measures. But this observation pertains to selected issues, and probably to policy areas where the organization is most open.

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