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***Viewpoint* – Reflections on the WCD as a Mechanism of Global Governance**

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ABSTRACT: The World Commission on Dams (WCD) has aroused debate as an innovation in global governance. I suggest that the WCD did, indeed, have many innovative features, but argue that processes such as the WCD are better suited to propagating norms than making rules at the global level. The norm setting and propagating role is critical because there are no other plausible mechanisms of debating the larger ideas that inform decision-making, in a way that credibly brings in voices of the poor and powerless. I develop this argument by looking at three aspects of the WCD: its characteristics as a global governance mechanism; how it sought to achieve legitimacy; and its role as an agent of regulative versus normative change.

KEYWORDS: Global governance, norms, multi-stakeholder process

INTRODUCTION

The World Commission on Dams was an intervention in the dams debate but also widely discussed as an innovation in global governance. It is important to recall the context within which the WCD emerged. In the late 1990s, there was much talk of the globalisation of decision-making, understood as an increasing share of decision-making occurring outside the boundaries of the state. Non-state actors of all stripes were growing in number and in their influence over global decision-making. Providing institutionalised mechanisms to bridge 'governance gaps' seemed both necessary and useful.

During the 1990s, the WCD was only one of a flurry of such mechanisms, often dubbed 'multi-stakeholder processes', (MSP)¹ particularly, but not only, in the environmental arena. Of these, the WCD may well have been the most reflexive, with its leadership intensely aware of broader discussions around global governance, and its place in these debates. One example of this awareness was the WCD's commissioning of an 'independent assessment' of its functioning to be carried out by research institutions from north and south.² As a member of the research team that conducted that assessment, I draw on that experience to reflect on what the WCD implies for these broader discussions on global governance. However, in order to do so, I also examine the ways in which the WCD has influenced the dams debate and broader development debates.

In brief, I argue that the WCD, and by extension perhaps other such MSPs, are perhaps less useful as problem-solving or rule-making entities, but are potentially potent, even unique, ways of injecting new ideas into global governance and thereby generating and propagating norms.³ Indeed, this is a critical role, because there are no other plausible mechanisms of debating the larger ideas that inform decision-making, and do so in a way that credibly brings in voices of the poor, powerless, and dispossessed. This distinction between rule-making and norm-generating was blurred during the life of the WCD and in the intervening years, resulting not only in inappropriate expectations, but also in a

¹ Other common labels were 'trisectoral networks' and 'global public policy networks'.

² The independent assessment was conducted by researchers from the World Resources Institute (US), Lokayan (India) and Lawyers Environmental Action Team (Tanzania). The report was published as Dubash et al., 2001.

³ This idea, on which this viewpoint is centred, is developed more fully in Dubash, 2009.

failure to realise the full potential of the WCD process as a norm-shaping mechanism. I develop this argument by looking at three aspects of the WCD: its characteristics as a global governance mechanism; how it sought to achieve legitimacy; and its role as an agent of regulative versus normative change.

GLOBAL GOVERNANCE HYBRID?

The WCD emerged from a swirl of often contradictory ideas and assumptions, with theory running aground against the reality and politics of the dams debate. Much of the theoretical thinking around MSPs in the late 1990s emphasised their role in solving entrenched problems by cultivating outcomes through which all sides gained through a process of dialogue. Given the history of the dams debate, however, many of the participants in the WCD were prepared for a more overtly political process, one in which it was likely as not that one side's gain was another side's loss. The design of the WCD, and the benchmark used by those evaluating it, were largely shaped by the former perception, while many participants took a more overtly political approach. Both views are important in trying to interpret the WCD.

MSPs, according to the ideas prevalent in the late 1990s, were about generating 'win-win' solutions to problems. MSPs were supposed to bridge a 'participation gap' (Reinicke and Deng, 2000), and do so by convening diverse views, integrating a range of subjective perspectives, and building constituencies for implementation (Hemmati, 2000).⁴ Early post-WCD assessments continued in this positive-sum vein, describing the WCD using the language of 'partnership' that allows 'mutuality' in interaction (Brinkerhoff, 2002).

In structuring the WCD, this language of problem-solving through dialogue was sought to be overlaid over a two-decade long history of protracted protest. The roots of the WCD lay in repeated civil society demands over the decade of the 1990s – at San Francisco, Manibeli and Curitiba – to establish an independent commission to review the experience with large dams. This demand was partially inspired by the experience with the World Bank's Inspection Panel, but also invoked the grand global commissions of the 1980s and the 1990s, such as the Brandt and Brundtland Commissions. These bodies were characterised by a certain detachment; Commissioners were people of eminence, largely drawn from political life or occasionally academia, who could be expected to dispassionately deliberate and deliver judgement.

However, the WCD neither fully conformed to the partnership imagery of MSPs, nor to the dispassionate detachment of global commissions. Instead, the Commission became a new – if time-bound and contained – institutional arena for working through the politics of dams. Early skirmishes over selection of Commissioners were telling – a second round of Commissioners was added explicitly to create balance among various perspectives in the dams debate, setting aside any pretensions of detachment. Early in the process, the Chair sought to get the conversation started by focusing on different perceptions of 'development effectiveness' rather than leaping into a direct discussion of either judging dams or developing policy prescriptions. This approach had the advantage of getting the conversation going, but also pushed it into more abstract, discursive terrain in order to gain agreement on principles.

Once the process got started, as Khagram (2005) has put it, the WCD was "as much a negotiating process" as a policy-making one, with each side trying to frame the discussion to its advantage. In our Assessment, we had laid out how every decision, including selection of Secretariat members, consultants, choice of research topics, and location of hearings, was subject to contest and scrutiny (Dubash et al., 2001). This is not to suggest that this approach should have been resisted somehow in favour of either a partnership or detachment model. Indeed, given the charged history, in my view this

⁴ The sources cited were published around the same time as the WCD, but the ideas and, in some cases, early drafts, were in circulation around the time of the WCD's inception.

contestation was inevitable. It is, however, to suggest that the WCD is best understood as a political arena, where the politics was increasingly reflected through discursive struggle.

Discursive politics, however, is not the same as problem-solving. Yet, both the formal mandate of the WCD – to develop "internationally acceptable criteria, guidelines and standards" – and the expectations of the process were expressed around problem-solving. The various stakeholders, too, continued to carry this expectation. Industry sought clear, implementable guidelines for dam construction, and civil society groups expected that governments and international agencies would expeditiously adopt and implement the outcome. Thus, the WCD carried within it a dissonance between the expectation of problem-solving with implicit overtones of win-win solutions, and the reality of political contest over how to frame the dams debate, the resolution of which lay in the more abstract discursive rather than policy realm.

As I suggest later in this comment, winning discursive battles can be enormously important in bringing about far-reaching shifts in norms, but only if the process is understood in this way. If the benchmarks applied are about concrete policy changes, it is much harder to both appreciate and build on normative shifts. For much of the period after the WCD, the focus on civil society, industry and government remained on the WCD's proposals for regulative or policy change. However, for both normative and regulative change, perceptions of the WCD's legitimacy are crucial.

CAN DEMOCRATIC PROCESS ENSURE LEGITIMACY?

The legitimacy of an MSP, as the Commission repeatedly stated, rested on the democratic nature of the process. Indeed, much academic and theoretical attention to the WCD as an innovation in global governance has focused on its promise of delivering legitimate global governance through democratic process.

In the course of the process, several participants made claims and counterclaims about its democratic integrity. Stakeholders expressed criticism on several themes: public hearings were insufficiently inclusive; language translation was inadequate; the final report was leaked to NGOs and so on. In response, the Commission pointed to its unprecedented efforts to be inclusive and transparent, such as the constitution of a Forum, organisation of multiple public hearings, and creation of a comprehensive website. The Secretariat also noted real constraints on time and budget.

So, was the WCD sufficiently democratic, in that it was built around processes that ensured inclusiveness, transparency and accountability? Several studies, including the Independent Assessment I was involved in, have sought to answer this question. The Independent Assessment concludes that "despite some flaws, the WCD process was essentially robust" (Dubash et al., 2001).⁵ Brinkerhoff (2002) is also largely approving, lauding the WCD for its focused yet flexible process, its structures that provided thorough opportunities for participation and representation, and the spirit of respect for participants it fostered. By contrast, Dingwerth (2005), using very similar evidence to the independent assessment and in some cases drawing on it directly, finds enough flaws in the process to call into question its legitimacy. Fujikura and Nakayama (2009) conclude that while the process around developing the WCD Knowledge Base was adequate, the process for developing the forward-looking WCD Guidelines was inadequate. Moreover, they argue that the WCD should have more closely involved the World Bank, a view that for many in the WCD process would certainly have been read as undermining its independence. Dingwerth concludes that more research is needed on what constitutes a sufficiently robust global democratic process.

However, looking at all these studies, and at the response to the WCD, I now feel that asking whether the WCD, or any similar process, was sufficiently democratic is a misleading, and largely unanswerable question (Dubash, 2009). No absolute set of benchmarks can account for all possible

⁵ This conclusion also led some to question the independence of the assessment. I can recall a World Bank staffer referring obliquely to the "so-called Independent Assessment".

contexts and issue-specific histories. For example, broad representation became a critical issue in the dams debate, but it might not be as central in other contexts. Neither can benchmarks obviate the need for judgement on trade-offs given finite time and resources. For example, how many regional consultations are enough? How many leaks does it take to undermine legitimacy? Even if we could agree on benchmarks, would there be agreement on assessing compliance with them?⁶

The debate that broke out after release of the report illustrates the point. Industry and some governments claimed that NGOs had unfairly influenced the process through unfair access. NGOs said they had simply put forward better arguments. The problem is that there is no objective way to distinguish discursive dominance (as NGOs suggest occurred) from procedural capture (as industry argued was the case). This does not mean, of course, that procedures are unimportant or that efforts at transparency and inclusiveness should be abandoned. But it does mean that democratic procedure, *by itself*, is unlikely to guarantee democratic legitimacy.

REGULATIVE CHANGE VERSUS NORMATIVE CHANGE

Concerns about democratic legitimacy are highly salient to understanding what sort of change MSPs are able to bring about. For Reinicke and Deng (2000) the involvement of non-state actors lends precisely the sort of legitimacy that global governance processes lack, by bridging a 'participation gap'. Civil society actors, for example, provide a mechanism to transmit the voices of the poor and powerless who are under-represented in national processes. Relying solely on elected representatives to speak at global forums, therefore, would reproduce the problems of national systems at the global scale. Others are less optimistic about the potential for non-state actors to play this corrective role. Ottaway (2001), for example, argues that the WCD and like processes are nothing but "corporatism gone global". She suggests that MSPs have no basis for authority, nor should they, since NGOs and corporations acting at the global scale are even more unaccountable and unrepresentative than the same actors operating in national contexts. Why, then, should they play any role in shaping policy or rules at the global scale?

One answer to Ottaway is to argue that even without formal authority the WCD had the ability to exercise a form of suasion in shaping decisions by dint of its broad representation and democratic process. But, if those who disagree with the outcome can call into question the process, and if these challenges cannot be empirically refuted for the above reasons, then Ottaway would appear to be at least partially correct: MSPs such as the WCD are unlikely to be able to generate sufficient moral authority to ensure full adoption of their recommendations for regulative change. If this is the case, then MSPs are particularly ill-equipped to be problem-solving mechanisms.

The evidence in the decade after the WCD would seem to bear out this perspective. The Dams and Development Project worked diligently to get governments to engage with the report, and many did so. However, having gone through the exercise of relating guidelines to national laws, no government explicitly re-made its laws in the WCD mould, although South Africa arguably came close. Similarly, international organisations such as the World Bank paid lip service to the WCD values but did not internalise key regulative recommendations. The outcome closest to direct regulative action was the adoption of the WCD as the benchmark for dams lending by some export credit agencies,⁷ the voluntary adoption of the same standards by HSBC Bank,⁸ and a European Union directive that any hydropower

⁶ Notably, all these objections are somewhat mitigated when it comes to procedures of institutions such as the development banks. In these cases, there is the opportunity to learn over time within a given context. There are also specific obligations and related powers against which procedural safeguards can be designed.

⁷ See www.adb.org/water/Topics/Dams/dams1025-10.asp (accessed 24 February 2010).

⁸ See HSBC, Freshwater Infrastructure Sector Guidelines, available at www.hsbc.com/1/PA_1_1_S5/content/assets/csr/freshwater_infrastructure_guideline.pdf (accessed 24 February 2010).

project seeking carbon credits must conform to WCD guidelines.⁹ These are not trivial changes in regulations. At the same time, the failure to win agreement by large dam-building developing countries to the WCD approach suggests real limits on the WCD's ability to drive regulative change.

However, and this is where Ottaway and other critics of civil society participation in global governance are too short-sighted, the WCD can also be viewed as an agent of normative change. And it is here, I believe, the real promise of the WCD in particular, and of MSPs in general lies. The WCD introduced several significant concepts, most important of which, perhaps, was the articulation of a 'rights and risks' perspective that embedded infrastructure decisions within a human rights framing. In order to implement this approach, the WCD recommended a procedurally dense decision-making approach, organised around disclosure, consultation, and dialogue.

There is some evidence that these ideas and principles have been influential. The WCD has been a significant discursive tool in global water debates to give meaning to notions of participation and toward defining what Conca calls "water democracy" (Conca, 2005). Bradlow (2001) suggests that the WCD contributed to an ongoing shift in development decision-making that blurs the line between political and technical approaches through a procedural approach. Consistent with this view, the WCD has also been read as an important contribution to winning acceptance for the idea of "free, prior and informed consent" for indigenous peoples, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples.¹⁰

The difference between these normative propositions and the WCD's regulative pronouncements is that there is no expectation that they will be adopted and implemented in a formal way. Instead, it is more likely that such norms will be socialised through engagement with the underlying ideas over time, in what Sikkink and Finnemore (1998) call a normative life cycle of emergence, propagation, and adoption.

If we understand the WCD as a generator and propagator of norms, the considerable potential of MSPs becomes apparent. In discussions of the WCD and in the literature on MSPs, this potential is too often underplayed, with a disproportionate focus given to regulative change. To develop and effectively propagate norms take precisely the sort of moral authority and credibility backed by broad deliberation that the WCD sought to develop and project. Conversely, it requires little formal authority; indeed formal authority may be counterproductive to creative re-imagining because authority is constrained by responsibility to deliver. Normative change lends itself to the 'two-stage arguing' that characterised the WCD – once during the process, and once in engagement with the broader community of stakeholders and nation states. Here it matters less whether there were questions about the democratic legitimacy of the process, since the ideas have to be put to another and broader deliberative test. Finally, there are few other competing mechanisms capable of generating and propagating norms at the global scale that can command this mix of representative and deliberative legitimacy.

Viewed through this lens, the champions of the WCD, notably those in civil society who fought hard to win the discursive battle, missed a trick in only campaigning for adoption of the WCD report in a regulative vein. These efforts did yield some fruit, notably through pressure on export credit agencies and financiers more generally. But it made little headway with governments, particularly in the global south.

By contrast, a broader campaign behind the promise of normative change – notably embedding infrastructural development in a human rights context – could well have had broader, and longer-term, if slower, results. For one, this approach would have levelled the playing field upward across all infrastructural sectors, thereby somewhat disarming the industry opposition to the WCD. While this

⁹ European Union, Directive 2004/101/EC of the European Parliament and of the Council, 27 October 2004, Article 11b, 6. Available at http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_338/l_33820041113en00180023.pdf (accessed 24 February 2010).

¹⁰ Personal Communication, Joji Carino, Tebtebba Foundation, Former Commissioner of the WCD, March 2, 2010. For the UN Declaration, see www.un.org/esa/socdev/unpfii/en/drip.html (accessed 24 February 2010).

approach would certainly not have been an easy sell among the large dam-building nations of the south, the potential pay-offs in terms of protecting the rights of the vulnerable, and enshrining key ideas such as the need for options assessments across the entire infrastructure sector, would certainly justify the effort.

Are such efforts at normative change only, however, the poor cousin of 'harder' regulative change that is ultimately backed by state sanction and therefore enforceable? Are norms a second-best option for the weak? I believe not, or at least, not necessarily. The dams or infrastructural context is shaped by a set of implicit and explicit understandings that constitute the infrastructural decision space, and secondarily a set of specific rules and regulations that shape the incentive frameworks for actors. There are, then, two routes to change: higher-level normative changes in how we understand infrastructure, and finer-level regulative changes in rules. Constitutive shifts, which change how different actors are socialised into thinking what is 'appropriate' in a particular context, could have a far greater impact than regulative change. If the 'rights and risks framework' takes hold, and infrastructure is successfully embedded within a human rights framing, that understanding would likely have far greater impact than changing regulations at the margin. The genius of the WCD was in forging a new way of looking at all of infrastructure, by embedding it within a human rights frame. This game-changing political vision remains out there, but has not been fully put to use.

CONCLUSION: THE WCD AND GLOBAL GOVERNANCE

The WCD effectively contravened any simplistic notion that fixing global governance was a matter of plugging governance gaps by convening the right people to problem-solve in a suitably democratic format. Convening the right people can help, establishing a democratic process is necessary, but the results may be less a quick fix, and more a complex set of ideas that then have to percolate through layers of national and sub-national governance through discussion by states and non-state actors.

I have suggested that in designing global multi-stakeholder discussions, it is important to keep in mind the distinction between rule-making and norm-shaping outputs. The WCD was established under a mandate which created expectations that it would be a developer of rules, but for at least three reasons, it was more suitable as a generator of norms. First, in order to keep together its warring parties in a deliberative format, internal discussions gravitated toward the abstract in order to gain agreement on principles and ideas. Second, since forging absolute democratic legitimacy through process is, I believe, impossible, and since MSPs have no formal authority, the WCD did not lend itself to rule-making that could be easily adopted by states. Third, the notion of two-stage policy debates, once within an MSP and second with the broader community of interests, is well suited to a normative life cycle, and less well suited to rule-making which often contains carefully balanced compromises that are disrupted by slight modification.

The broad lesson of the WCD for global governance, therefore, is to explicitly design MSPs as generators of norms and as sources of creative ideas in world politics. There are few such sources, particularly with any claim to moral authority or credibility that demand to be taken seriously. This was the promise of the WCD, and it is yet to be fully realised.

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