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PERSPECTIVE: WHEN THE CONTROLLERS
ARE ALSO CONTROLLED

Elisa D'Alterio

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Integrity controls of public administrations from a global perspective: when the controllers are also controlled

Elisa D'Alterio

Tenured Assistant Professor of Administrative Law, Faculty of Law, University of Catania
(Italy)

elisa.dalterio@gmail.com; edalterio@lex.unict.it

Abstract

There exist multifarious measures and activities to control the “integrity” of public administrations, established by global organisms, and applied not only to national systems, but also even to global regimes themselves. Hence, the application of integrity measures may be controlled at both national and global levels. From this standpoint, global regimes play a “dual role” – as controllers but also as controlled: they oversee the compliance of national systems with global integrity rules; conversely, they are subject to diversified integrity controls. It raises some questions: how can the application of integrity measures be controlled at the national and global levels? Which are differences between integrity controls applied to national systems and those pertained to global regimes? Are integrity controls applied to global regimes softer than those affected national systems? How can integrity controls contribute to the development of global administrative law – GAL?

1. Introduction

At the global level, there exist many definitions of “the public sector integrity”.¹ The UN Committee of Experts on Public Administration, for instance, associates integrity with

¹ More generally, the common definition of integrity refers to «*the quality of being honest and morally upright*». Therefore, the origins of this expression are strictly connected with ethics, and they relate to the human behaviour. The word “integrity”, in fact, stems from the Latin *integer*, referable to the “wholeness” deriving from individual qualities. This meaning, for instance, characterized some Greek tragedies, to the point that «*for to the dramatists integrity was more than a fruitful theme for the plot of a play*» (P. Vellacott, *The Logic of Tragedy: Morals and Integrity in Aeschylus' Oresteia*, Duke University Press, 1984, 10).

«the honesty and the reliability of civil servants in the execution of their tasks».² OECD defines “integrity of the public sector” as «the application of values, principles and norms in the daily operations of public sector organisations».³ Finally, the WTO highlights that «one of the fundamental standards of conduct derives from the requirement of integrity. Integrity implies not only honesty, truthfulness and freedom from corrupting influences but also integrity as an international public official. Staff members must regulate their conduct with the interests of the WTO in view and avoid placing themselves in a position where their private interests would actually or potentially conflict with the interests of the WTO».⁴

According to these definitions, integrity refers to the “quality of the public action”, measured on the basis of fundamental rules and public values. Therefore, it can be considered the opposite of the so-called “maladministration”: the latter is «the complex phenomenon of dysfunctions including resistance to change, formalism, indifference to efficiency, hostility towards technology, overstaffing, nepotism, corruption».⁵

Due to the significant extent of such a notion, integrity is hardly referable to a precise legal definition, but it is associated with multifarious administrative measures. Some of these measures contribute to increase the quality of the public sector: for instance, transparency rules, risk management programs and codes of conduct for public officials aim to promote accountability, fairness and discipline; the others correspond to limits and

Furthermore, the notion was deeply investigated by philosophers in ethics, and even in relation to psychology and religion.

www.unpan.org/DPADM/CEPA/UNCommitteeofExpertsonPublicAdministration/tabid/1454/language/en-US/Default.aspx.

² The definition is drawn from OECD, *Government at Glance 2009*, 105.

³ It is drawn from “WTO Conditions of Service”. Just to mention some definitions drawn from international documents. UN Staff rules affirm that «the concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status». OECD staff regulations establish that «integrity in carrying out your work implies a duty to do your work to the best of your abilities. The duty to do your work to the best of your abilities also implies an obligation to share information with other officials that is necessary for the discharge of their duties».

⁴ S. Cassese, “Maladministration” e rimedi [Maladministration and remedies], in 5 *Il Foro italiano* 1 (1992). See also K. Clinton Wheare, *Maladministration and its remedies*, Stevens, 1973 e J.B. Monteiro, *Corruption: Control of Maladministration*, Manaktalas, 1966. In other words, «Maladministration’ refers to the making of an official decision in a manner which is contrary to law, arbitrary, unreasonable, without proper justification, lacking in procedural fairness, or made without due consideration of the merits of the matter, or made corruptly. In one respect at least, Maladministration may be no more than simple incompetence. The other aspects of Maladministration, however, shade into ‘Abuse of Office’ - misusing public office for private gain - which is the standard definition of corruption. In either case, Maladministration by a public official is thus inherently unethical», H. Whitton, *Implementing Effective Ethics Standards in Government and the Civil Service*, Transparency International, February 2001. See also D.W. Williams, *Maladministration: Remedies for Injustice: a Guide to the Powers and Practice of the British Ombudsmen and Similar Bodies*, Oyez Pub., 1976; N. Hawke, *Introduction to Administrative Law*, Cavendish Publishing, 1998, 261 et seq.

sanctions, such as restrictions (*i.e.* incompatibilities related to conflicts of interest), administrative responsibilities, disciplinary sanctions, etc. Overall, they are means to promote the innovation of the public sector,⁶ to prevent hypotheses of “maladministration”,⁷ and to contribute to a better performance of public administrations.⁸

All the above-mentioned aspects explain why – especially in the last fifteen years – many states have adopted measures on integrity of the public sector, by implementing *ad hoc* global rules and standards established by ultra-state organisms, such as *ad hoc* institutions (GRECO, Open Government Partnership, Global Integrity, etc.), and well-known global organizations (UN, OECD, WB, etc.). Most of global rules on integrity, in fact, are norms addressed to national governments with the aim of preventing and curbing the corruption and the illegality in the national systems.⁹

These global rules provide not only for integrity measures, but even for control systems aimed at verifying that such measures are applied at national level. States themselves can implement control systems; in addition, global regimes monitor states’ compliance with integrity measures, playing the role of “controllers”.

At the same time, integrity measures (transparency, code of conducts, conflicts of interest, etc.) may be applied also to global institutions in relation to specific functions, and in certain sectors with an economic relevance. Control mechanisms are provided for verifying that such measures are applied at the global level. In this sense, global regimes can be both “controllers”, and “controlled”.

⁶ See the “New Public Management”, the more specific programme of the “Reinventing Government”, the widespread of “Good Governance” principles, the more recent “Open-government” initiatives.

⁷ See the list of integrity measures reported by UN Office on Drugs and Crime, *International Compendium of Legal Instruments on Corruption*, 2005.

⁸ Further, ethical measures belong to the series of methods and tools for promoting “social innovation”: for instance, the application of risk management systems is considered a strategic issue to achieve relevant outcomes in the social innovation of the public sector (R. Murray, J. Caulier-Grice, G. Mulgan, *The Open Book of Social Innovation*, The Young Foundation, March 2010). Ethical measures are also “*good for business*”, since “*corruption and economic development are correlated*”, as underlined by J.H. Lee, *Business Integrity, Public Sector Integrity, Income, and National Competitiveness: A Cross-Country Level Analysis*, in 18 *Seoul Journal of Economics* 2, 125 et seq. (2005).

⁹ Numerous global norms call upon states to adopt different “integrity tools”: ethical codes; independent agencies; freedom of information acts; prevention of corruption measures; participatory governance models; customer satisfaction, and civic audit. Some international studies – as the WB Policy Research Working Paper, *Anti-Corruption Policies and Programs. A Framework for Evaluation*, written by J. Huther and A. Shah (December 2000) – even identify the “better integrity measures” for each national system on the basis of country’s quality of governance.

Hence, there exist control systems related to the application of integrity measures at both national and global levels. It raises some questions: firstly, what does it mean to control the integrity of the public sector? How is it possible? Who controls?

Secondly, how do global regimes control national systems? What are the integrity measures provided by global organisms and applied to national administrations? Which are control mechanisms related to the application of these measures? With which effects?

Thirdly, how do global regimes – which control national systems – even control themselves? Is it a type of “auto-control”? Which are the integrity measures applicable to global regimes? How can the application of integrity measures be controlled at the global level? Which are the consequences of these controls?

Finally, do integrity controls vary from national to global level? How can these differences be explained from global administrative law – GAL perspective? Why integrity controls are relevant in the light of GAL?

Such questions suggest how this paper is organized. The first group of questions is analysed in section 2, by clarifying the means of “integrity control” in the public sector. Section 3 investigates how the application of integrity measures is controlled at the national level, especially by considering the controls implemented by global regimes; in the same way, section 4 analyses integrity controls related to the application of integrity measures within global organisms. Hence, section 5 tries to answer to the last group of above-mentioned questions, in order to highlight the features of integrity controls at both national and global levels, by even identifying the main reasons of differences revealed by the analysis. Concluding remarks follow (section 6).

2. Controls of the public sector integrity

When the term “control” is used in relation to public administrations, it is necessary to specify the meaning chosen, with regard to the aims of the analysis. There exist, in fact, numerous types of control in the public sector (internal, external, strategic, managerial,

judicial, political, etc.), classified on the basis of the object controlled, the legal nature of the controller, the characteristics of the activity, etc.¹⁰

As regards the integrity of the public sector, the term “control” may mainly refer to the following three aspects:

- *i)* to verify and monitor the compliance of public administrations with integrity measures;
- *ii)* to measure and to assess the level of public administrations integrity;
- *iii)* to enforce the legal effects deriving from the failure of public administrations to comply with integrity measures.

The first meaning – *i) to verify and monitor the compliance of public administrations with integrity measures* – characterizes the main type of control mechanisms relating to the integrity of the public sector, at both national and global levels. Therefore, control mechanisms aim at verifying whether public administrations comply with global integrity rules, by taking into account a very large sample of measures pertaining to the prevention of an improper use of power¹¹ and, more generally, of illegality, but not to their repression (UN, OECD, IMF, IDA).¹² In particular, global integrity rules refer: to transparency of public administrations (OECD; Transparency International – TI; Global Integrity – GI; Open Government Partnership – OGP),¹³ by highlighting that «*transparency is a first line of*

¹⁰ In particular, R.N. Anthony, *Management and Control Systems. A Scheme of Analysis*, Harvard University Press, 1965. Note that the term “control” firstly means “to direct” (hence, directive control) and, secondly, it can mean also “to verify”, “to monitor”, and also “to assess”. *Compact Oxford English Dictionary*, Oxford University Press, 2003, 233.

¹¹ «*Improper use of power is a broad concept, one that embraces degeneration, decay and erosion of standards of conduct ...[escalating] into fraud and corruption*». Transparency International, *Source Book 2000*, 176. The definition is drawn from J. Maas, *The Netherlands: the Management of Ethics and Conduct in the Public Service*, OECD, 1995.

¹² A certain literature underlines this difference, by stressing that «*the threshold standards of ethics-based regulation differ from those of repressive regulation in at least two ways. First, the threshold standard of achievement (good governance) is higher than that of legality. Secondly, the threshold standard of exclusion (breach of a quality criterion, reproach, disciplinary action) is lower than that which pertains to criminal sanctions. In other words, it is more demanding to satisfy the performance standard of ethics than that of legality, and it is less demanding to sanction failure to do so than it is with failure to satisfy the legal standard*». A. Fatić, “*External*” and “*Internal*” Strategies to Control Corruption: The Role of Ethics in Fostering the Integrity of the Public Administration, available at <http://www.cbs-css.org/>.

¹³ *OECD Government at Glance 2011* focus on transparency in governance: proactive disclosure of information, conflict-of-interest disclosure by top decision makers, etc. Note that transparency, accountability,

defence against corruption»;¹⁴ to more general preventive policies against corruption (*UN Convention Against Corruption - UNCAC* – articles 1 and 5; WB),¹⁵ together with the principles of the rule of law, proper management of public affairs and public property, and accountability;¹⁶ to the conduct of public officials (UN, EU), by providing for specific codes.¹⁷

Control of the public sector integrity also includes *ii) to measure and to assess the level of public administrations integrity*: in fact, «*a critical element of any effective integrity system is corruption prevention and effective evaluative measures for such systems*». Hence, integrity systems are «*designed to prevent corruption before it occurs. [...]*».¹⁸ From this standpoint, integrity is a “measurable concept”.¹⁹ GI formulates more than 300 actionable indicators measuring transparency of the public procurement process, and disclosure requirements;²⁰ TI compiles the annual *Corruption Perception Index*; there even exist *World Bank Doing Business* indicators, the *Rule of Law Index* within the *World Justice Project*, and the Financial Action Task Force (FATF) indicators. Data collected in *Global Integrity Reports*, then, are used by different global organisms, such as the World

and rule of law are “co-dependent” principles, and contribute to the development of a “culture of integrity”: «*integrity, by requiring that public interest be paramount, provides the basis for transparency and accountability. Transparency without accountability becomes meaningless and makes a mockery of sound public administration. Accountability depends on transparency or having the necessary information. And transparency and accountability without integrity may not end up serving the public interest*». E. Armstrong, *Integrity, Transparency and Accountability in Public Administration*, UNPAN, 2005, 1-2. See also J. Werner, *Accountability, Transparency and Citizen Trust in Government*, United Nations, CEPA, 8th Session (2009). This presentation can be accessed on: <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan034108.pdf>.

¹⁴ Transparency International, *Safe Hands. Building Integrity and Transparency at FIFA*, 2011.

¹⁵ On the definition of corruption, we recall an ICSID tribunal’s sentence: «*Corruption is an international evil; it is contrary to good morals and to an international public policy common to the community of nations*» (*World Duty Free Company Limited v Republic of Kenya*, ICSID ARB/00/7, para. 148, quoting ICC 1110 (1963), para. 20).

¹⁶ See also the *United Nations Convention against Transnational Organized Crime* (2000), and the document *Corruption and Integrity Improvement Initiatives in Developing Countries*, United Nations publication, Sales No. E.98.III.B.18.

¹⁷ See the *UN Code of Conduct for Public Officials*, that associates integrity with the prevention of illegality, by stressing the importance of integrity standards of public officials.

¹⁸ OECD, *Public Sector Integrity. A Framework for Assessment*, 2005, 76-77.

¹⁹ C. Sampford, A. Shacklock, C. Connors, and F. Galtung (ed. by), *Measuring Corruption*, Law, Ethics and Governance Series, Ashgate, 2007.

²⁰ Global Integrity, *Global Integrity Report: 2011. Executive Summary*, 2011.

Bank's *International Development Association - IDA*²¹, and the *Millennium Challenge Corporation*.²²

An extended approach leads to locate under this label – “integrity control” – even the activities aimed at *iii) enforcing the legal effects deriving from the failure of public administrations to comply with integrity measures*. Just to mention a few examples. There exist national anti-corruption authorities with significant enforcement powers, according to global rules;²³ the UN Office on Drugs and Crime reviews UNCAC implementation, by establishing specific consequences in case of non compliance with integrity measures; *ad hoc* panels review compliance of Member States with WTO rules (including transparency measures applied to the public sector), from which may derive economic restrictions for Members; many IOs provide for sanctions, which can be inflicted in case of public officials' misconduct; etc.

Therefore, at the global level, controls of public sector integrity assume multifarious patterns with the common denominator to prevent and limit the maladministration, and to contribute to a better quality of public administrations. In this sense, integrity of the public sector is a global value, protected by global regimes, by establishing specific rules and the above-mentioned control mechanisms. In other terms, it may be defined a global issue, becoming a concern of global governance,²⁴ especially relevant from the GAL perspective.²⁵ According to the GAL studies, in fact, the integrity of the public sector may be defined a “GAL principle”, insofar as the administrative measures, related to the promotion of integrity and established by global regimes, not only «*penetrate [...] national legal systems by dictating principles and criteria that national administrations [and global*

²¹ Data are used in order to implement the *Country Policy and Institutional Assessment* (CPIA). See M.A. Prada Uribe, *Development Through Data? A Case Study on the World Bank's Performance Indicators and Their Impact on Development in the Global South*, paper discussed at the 8th Global Administrative Law Seminar “Indicators in Global Governance: Legal Dimensions”, Rome, June 14-15, 2012.

²² It, in turn, elaborates a *Control of Corruption Index*. On this point, see N. Dutta, *Qualitative and Quantitative Conditionality: Accountability in the EU Accession and MCC Processes*, paper discussed at the 8th Global Administrative Law Seminar “Indicators in Global Governance: Legal Dimensions”, Rome, June 14-15, 2012.

²³ See article 6 UNCAC and the institution of “The International Association of Anti-Corruption Authorities” (IAACA).

²⁴ See H. Wang and J.N. Rosenau, *Transparency International and Corruption as an Issue of Global Governance*, 7 *Global Governance* 25 (2001), which ask themselves: «*But how does an issue become a concern of global governance? We hope to shed light on this question by probing the emergence of corruption as a global issue*». It recalls the globalization of the due process of law principle. On this point, see S. Cassese, *A Global Due Process of Law?*, in *Values in Global Administrative Law*, ed. by G. Anthony, J.B. Auby, J. Morison e T. Zwart, Oregon, 2011, 17 et seq.

²⁵ For GAL literature see para. 5.1.

regimes] must respect», but even are enhanced by control mechanisms applied at national and global levels.²⁶ Following paragraphs will demonstrate this assumption.

3. Global controls and national administrations

Global regimes provide for legal instruments to control national administrations.²⁷ Generally, they establish auditing standards for the public sector implemented by national administrations. For instance, the International Organization of Supreme Audit Institutions – INTOSAI – which has 192 full Members and 5 associated Members²⁸ – has established *INTOSAI Auditing Standards*, based on two types of audit that a Government Auditor may perform.²⁹ The UN Office on Drugs and Crimes has compiled the “Anti Corruption Tool

²⁶ S. Cassese, *Global Standard for National Administrative Procedure*, in 68 *Law and Contemporary Problems*, 110 (2005). He adds «*The first is the rise of an international administrative law tied to global administrations rather than to the state. The second is the rise of global rules declared by treaties or international organizations, but addressed to states and private actors. These international norms penetrate domestic legal systems, thus having an effect on national administrative laws. These two developments are distinct, but related*».

²⁷ There exists a long list of global normative measures relating to integrity of national administrations: see UN Resolutions: “Action against corruption” – “International Code of Conduct for Public Officials” (Annex); “United Nations Declaration against Corruption and Bribery in International Commercial Transactions”; “United Nations Convention against Transnational Organized Crime”; “United Nations Convention against Corruption”; United Nations Development Programme -UNDP documents: *Corruption and Good Governance* (July 1998); *Corruption and Integrity Improvement Initiatives in Developing Countries* (June 1998); *Anti-Corruption Practitioners Network - ACPN* (2006); UN Global Compact; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Revised Recommendation of the Council of the OECD on Combating Bribery in International Business Transactions; WB Annual Integrity Report; “Good Governance: The IMF’s Role”; “Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) - Report on the Review of the Effectiveness of the Program”; WTO Transparency and due process of law rules; “Agreement Establishing the Group of States against Corruption”; Model Code of Conduct for Public Officials; GRECO Recommendations and Annual Reports; EU Conventions: “on the Fight against Corruption involving Officials of the European Communities or officials of Member States of the European Union”; “on the Protection of the European Communities’ Financial Interests”; EU Council Directive “on Prevention of the Use of the Financial System for the Purpose of Money Laundering and terrorist financing”; COM/2003/0317, “EU Global Policy against Corruption”, European Commission; Group actions: European Partners against Corruption (EPAC); African Union Convention on Preventing and Combating Corruption; Organization of American States Inter-American Convention against Corruption (OAS Convention). For a more complete analysis of global integrity measures, see E. D’Alterio, “*Global Integrity*”: *National Administrations versus Global Regimes*, in J.B. Auby, E. Breen, T. Perroud (eds by), *Corruption and Conflicts of Interest. A Comparative Law Approach*, Cheltenham, 2014, 198 ff., from which part of the present list has been drawn.

²⁸ «*The International Organisation of Supreme Audit Institutions (INTOSAI) operates as an umbrella organisation for the external government audit community. For more than 50 years it has provided an institutionalised framework for supreme audit institutions to promote development and transfer of knowledge, improve government auditing worldwide and enhance professional capacities, standing and influence of member SAIs in their respective countries*» (www.intosai.org). (July 2014)

²⁹ «*Regularity audit or Statutory audit, which is a Financial audit of the financial reporting or budget reporting of the audited entity. In a regularity audit, the audit report contains the auditor’s opinion. Performance audit refers to an examination of a program, function, operation or the management systems and procedures of a governmental or non-profit entity to assess whether the entity is achieving economy,*

Kit”, the “Handbook for Prosecutors and Investigators”, the “International legal Instruments on Corruption”, and the “UN-Guide for Anticorruption Policies”, providing for effective control strategies which may be implemented by Member States.

In other instances, global regimes directly control national governments in the application of integrity measures. G20 Leaders have established the “G20 Anti-Corruption Action Plans” and instituted international *ad hoc* working group in order to monitor the fulfilling of commitments by G20 Member States. EU has adopted the “Communication on Fighting Corruption in the EU”, «*establishing the “EU Anti-Corruption Report” to monitor and assess Member States’ efforts in this area with a view to stronger political engagement to address corruption effectively*»; in February 2014, the EU Commission compiled the “Anticorruption Handbook”, and approved the first EU Anti-Corruption Report.³⁰

In summary:

- global regimes can establish integrity rules and standards providing for controls which should be implemented by states;
- global regimes may directly control states’ compliance with global integrity measures.

To the ends of the present analysis, the following paragraph will take into account the second type of cases, by examining the different ways in which global regimes can control national administrations in the implementation of integrity measures.

3.1. Integrity controls applied to national administrations

Many global regimes adopt legal instruments and mechanisms to control integrity of national administrations. The following examples are classified according to the three aspects illustrated in para. 2.

efficiency and effectiveness in the employment of available resources. In a performance audit, the report should contain a statement of assurance on those items tested for compliance, as the auditor’s conclusion (as opposed to opinion)» (www.intosai.org).

³⁰ Report from the Commission to the Council and the European Parliament. *EU-Anticorruption Report*, Brussels, February 2014.

Firstly, global regimes control integrity of national administrations by monitoring states' compliance with integrity measures.

The most common control mechanism is based on reporting activity. Reports describe the state of play with the use of graphics, ranking, benchmarking, etc., relating to the compliance of national systems with integrity parameters. G20 working group reports, GRECO monitoring reports, OECD progress reports, GI annual reports, are some significant examples of the above-mentioned practice. Moreover, the Open Government Partnership (OGP) provides for an Independent Reporting Mechanism (IRM), which produces biannual independent progress reports for each country participating in OGP.³¹

Secondly, another, different version of integrity control corresponds to the measurement and assessment of the public sector integrity. Global regimes can measure and assess the level of public administrations integrity in different ways.

Integrity of public administration can be measured with the use of specific indicators. The measurement of integrity is useful to analyse the impact of this variable on other relevant dimensions: for instance, some studies demonstrate that business integrity and public sector integrity lead to economic efficiency, which in turn enhances national competitiveness.³² There exist indicators relating to transparency, corruption, financial disclosure, etc.: some instances are the TI "Global Corruption Barometer";³³ OECD integrity indicators;³⁴ WB indicators;³⁵ "Eurobarometer" surveys.³⁶ The use of indicators is intended not only to measure the current situation, but also to encourage enhanced compliance and adoption of global standards.³⁷ Precisely, they allow for both the

³¹ «The progress reports assess governments on the development and implementation of OGP action plans, progress in fulfilling open government principles, and make technical recommendations for improvements. These reports are intended to stimulate dialogue and promote accountability between member governments and citizens» (www.opengovpartnership.org).

³² On the measurement of integrity, see C. Sampford, A. Shacklock, C. Connors, and F. Galtung (ed. by), *Measuring Corruption*, just quoted in note 19.

³³ See <http://www.transparency.org/research/gcb/overview>.

³⁴ See *Integrity in Government: Towards Output and Outcome Measurement* (2009), which «explores strategies to further develop integrity measurement. It studies current national practices and asks whether these practices can be useful for developing international comparative measurement». Indicators are described even in *Government at a Glance*, that is a biennial publication of the OECD. It provides data describing key elements underlying government performance – including disclosures of private interests by decision makers, as well as whistle-blower procedures and protection.

³⁵ For instance, WB adopts disaggregated and actionable indicators in order to allocate IDA resources. For more details, see <http://www.worldbank.org/ida/>.

³⁶ It is available at http://ec.europa.eu/public_opinion/cf/index_en.cfm.

³⁷ R.B. Stewart, *Part I Courts, Institutions, and Access to Justice: Legitimacy and Accountability in Global Regulatory Governance: Global Administrative Law and Developing Countries*, in 1 *Jindal Global Law Review* 41, 54 (2009).

information collected and outcomes to be public. Hence, states' compliance with integrity measures can be monitored by the stakeholders, as well as by the public opinion.

As regards the control of stakeholders, it is interesting to note that there even exist control systems based on the civil society involvement. WB projects must be appropriately designed with a focus on upstream consultation and participation, enhanced oversight mechanisms, timely disclosure of project information and handling of complaints, and strengthened supervision. In addition, supervision must be aware of "red flags" identified by INT work, indicating possible corrupt behaviour at various stages of project implementation.³⁸

In order to assess the integrity of public administrations, global regimes adopt specific reviews. OECD compiles "Reviews of Public Sector Integrity", which are part of the series "OECD Public Governance Reviews", by providing «*strategic proposals for action for consideration by governments to enhance their integrity framework based on a comprehensive analysis of their structures, instruments and processes to promote a cleaner public sector. Particular attention is directed to evaluates the effectiveness of their integrity management systems and details alternative options to address different "at risk" areas*». ³⁹ Another significant control system corresponds to the review of the implementation of the UNCAC within the UN Office on Drugs and Crime,⁴⁰ which conducts assessments of specific countries in collaboration with the UN International Criminal Justice Research Institute (UNICRI).⁴¹ In addition, there exist states' self-assessments.⁴²

³⁸ For instance, the civil society involvement is considered crucial in order to mitigate fiduciary risk in Bank-financed operations. A greater disclosure and third party monitoring, in fact, are seen as important instruments for mitigating project risk—a view shared by both government and other stakeholders.

³⁹ See www.oecd.org/gov/ethics/publicsectorintegrityreviews.htm. For instance, some reviews are: *OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth* (2013) and *OECD Integrity Review of Tunisia: The Public Sector Framework* (2013); OECD Integrity Review of Brazil: Managing Risks for a Cleaner Public Service (2012); OECD Joint Learning Study: "Jordan: Implementing a Code of Conduct for the Public Sector" (2011); OECD Joint Learning Study: "Morocco: Enhancing Integrity in Public Procurement" (2011).

⁴⁰ The "Conference of the States Parties to the UNCAC" was established pursuant to article 63 of the Convention to improve the achievement of the objectives set forth in UNCAC, and to promote and review its implementation. To this end, "Terms of Reference of a Mechanism for the Reviewing of Implementation of the Convention" have been fixed and an "Implementation Review Group" has been established. For more details, see <http://www.unodc.org/unodc/en/corruption/index.html?ref=menuaside>.

⁴¹ See C. Sampford, A. Shacklock, C. Connors, and F. Galtung (ed. by), *Measuring Corruption*, supra note 19, 29. A similar system is the "Mechanism for Follow-up on Implementation of the Inter-American Convention Against Corruption - OAS (MESICIC)" (http://www.oas.org/juridico/english/mesicic_intro_en.htm).

⁴² From this perspective, the compliance of national systems with the UNCAC is under a "bilateral control system". States' self-assessments are also provided by GRECO system: in accordance with Rule

At the European level, EU Commission adopts anticorruption reviews, articulated in chapters describing corruption-related trends across the EU, focusing on a cross-cutting issue of particular relevance at EU level (*i.e.* public procurement), assessing each of the 28 Member States in relation to its own merits, and with due regard to the national context.⁴³

Lastly, at the global level, there exist some mechanisms aimed at enforcing the legal effects deriving from the failure of national administrations to comply with integrity measures.

In particular, some IOs provide for judicial or quasi-judicial review:⁴⁴ in the WTO, panels can be established in order to review states' compliance with WTO obligations, especially, with Article X of GATT, relating to transparency and due process of law,⁴⁵ but even with the WTO Agreement of Government Procurement – GPA.⁴⁶ Article XXII of GPA establishes that *«if any Party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the attainment of any objective of this Agreement is being impeded as the result of the failure of another Party or Parties to carry out its obligations under this Agreement, or the application by another Party or Parties of any measure, whether or not it conflicts with the provisions of this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter, make written representations or proposals to the other Party or Parties which it considers to be*

30.2 of GRECO's Rules of Procedure, states submit their "Situation Report", by indicating the measures taken to follow the recommendations in the "Joint First and Second Evaluation Round Report".

⁴³ *Report from the Commission to the Council and the European Parliament. EU-Anticorruption Report*, Brussels, February 2014, just quoted in note 30.

⁴⁴ For a general description of these bodies, C.P.R. Romano, *A Taxonomy of International Rule of Law Institutions*, in 2 *Journal of International Dispute Settlement* 1, 241-277 (2011).

⁴⁵ In WTO, since the creation of this organization in 1995 to 2012, there has been a minimum of twenty cases addressing article X of GATT. On this point, see P. Ala'i, *The WTO and the Anti-Corruption Movement*, in 6 *Loyola University Chicago International Law Review* 1, 259-278 (2008-2009).

⁴⁶ GPA, article XVII: *«Each Party shall encourage entities to indicate the terms and conditions, including any deviations from competitive tendering procedures or access to challenge procedures, under which tenders will be entertained from suppliers situated in countries not Parties to this Agreement but which, with a view to creating transparency in their own contract awards, nevertheless: (a) specify their contracts in accordance with Article VI (technical specifications); (b) publish the procurement notices referred to in Article IX, including, in the version of the notice referred to in paragraph 8 of Article IX (summary of the notice of intended procurement) which is published in an official language of the WTO, an indication of the terms and conditions under which tenders shall be entertained from suppliers situated in countries Parties to this Agreement; (c) are willing to ensure that their procurement regulations shall not normally change during a procurement and, in the event that such change proves unavoidable, to ensure the availability of a satisfactory means of redress. 2. Governments not Parties to the Agreement which comply with the conditions specified in paragraphs 1(a) through 1(c), shall be entitled if they so inform the Parties to participate in the Committee as observers».*

concerned» (para. 2). In these cases, «*the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, make recommendations or give rulings on the matter, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under this Agreement or consultations regarding remedies when withdrawal of measures found to be in contravention of the Agreement is not possible, provided that only Members of the WTO Party to this Agreement shall participate in decisions or actions taken by the DSB with respect to disputes under this Agreement*» (para. 3).⁴⁷

Another significant example is represented by the activity of *ad hoc* bodies. For instance, an “Integrity Vice Presidency” and a “Department of Institutional Integrity” (INT) operate within WB.⁴⁸ In particular, the latter investigates allegations of corruption in Bank-financed projects, when states or firms are not consistent with WB integrity standards.⁴⁹ The Department publicly sanctions corrupt national firms, and promotes follow up actions by government and internally.⁵⁰ The system is based on the collaboration between the Bank’s investigative team and the country’s own anticorruption institutions. It also provides for “anticorruption action plans”,⁵¹ “anticorruption teams”,⁵² and “governance advisers”.⁵³

⁴⁷ In WTO, there exists the possibility – limited to Member States – to lodge an appeal to the *Dispute Settlement Body-DSB* in case of the infringement of WTO standards by a Member State. Nevertheless, the effects deriving from the breach of DSB decisions by states are mild, and they may be solved through negotiation (see the article 22 of the *Dispute Settlement Understanding - DSU*). See J.H.H. Weiler, *The Rule of Lawyers and the Ethos of Diplomats, Reflections on the Internal and the External Legitimacy of WTO Dispute Settlement*, Harvard, Jean Monnet Working Paper No. 9/00, available at <http://www.jeanmonnetprogram.org/papers/00/000901.html>.

⁴⁸ In September 2010, the World Bank Integrity Vice Presidency appointed an Integrity Compliance Officer (ICO). It monitors integrity compliance by sanctioned companies (or codes of conduct for individuals), and it decides whether the compliance condition, and/or others established by the Sanctions Board or a WBG Evaluation and Suspension Officer as part of a debarment, have been satisfied (the effects are regulated by Sanctions Procedures Section 9.03 “Compliance with Conditions for Non-Debarment and Release from Debarment”).

⁴⁹ See Bank’s *Procurement Guidelines* or the *Consultants Guidelines*. Integrity parameters are also provided by the *Country Assessment Strategy – CAS*, which includes parameters drawn from: *Governance and Anticorruption Diagnostic Surveys, Doing Business, and Anticorruption in Transition*. WB adopts, then, specific *CAS progress Reports*.

⁵⁰ WB Integrity Vice-Presidency provides for a sanctions system (based on the debarment) directly applied to firms or individuals, that are found through an INT investigation to have engaged in fraudulent, corrupt, collusive practices. The decision whether a firm or individual has more likely than not engaged in a sanctionable practice and, if so, what sanction should be imposed, is determined by the Evaluation and Suspension Officers (EOs) and the Sanctions Board, on the basis of a Notice of Sanctions Proceedings (NoSP). Both the EOs and the Sanctions Board are independent of INT. Notwithstanding, this process does not directly apply to states.

⁵¹ For high-risk projects, staff members have to prepare “anticorruption action plans”, that synthesize the main corruption prevention aspects built into project design (such as transparency of information and processes, participation of project beneficiaries or civil society organizations, receiving and resolving complaints, investigating allegations of wrongdoing, and sanctioning those found guilty). The plans will be jointly developed with the national government and other partners where the project is co-financed; they are

Furthermore, relevant control functions are carried out within the WB Group by the International Finance Corporation (IFC), and by the Multilateral Investment Guarantee Agency (MIGA).

4. The integrity of ultra-state regimes

Who controls global regimes? Which are integrity measures applied to them? How can the application of these measures be controlled?

Generally, global regimes may be controlled by themselves (so called “auto-control”) or by, respectively, other global regimes, independent bodies, and states. Nevertheless, as regards states’ control, it has been noted that *«according to the popular Principal-Agent model, states delegate the authority to implement a legalized interstate agreement to an international bureaucracy. Anticipating that they will be tempted to manipulate their agent, states deliberately shield it from ad-hoc influence. Thus, the act of delegation reifies member states and the international organization as two unitary actors in a principal-agent relationship. Although states set up control mechanisms in order to keep their organization in check, this model does not envisage national influence from inside a bureaucracy. That would be considered an institutional pathology»*.⁵⁴ From this perspective, global regimes are not controlled in a very stringent and direct way by states.

As regards the implementation of integrity rules, several measures are applied within the global regimes. Similarly to integrity rules addressed to national systems, they affect different dimensions, relating to transparency, public participation, ethics, accountability,

publicly disclosed. Supervision of these projects will be expected to focus on implementation of the action plan.

⁵² The “anticorruption team” may be established at the country level, in order to oversee the design of projects in risky settings and, in particular, those with anticorruption action plans, and to support manage the portfolio. It may embrace governance advisers, operations managers, key sector coordinators or project team leaders, and fiduciary staff. Anticorruption teams can review a project’s design, risk rating, and anticorruption action plans. A team might also liaise directly with INT during corruption investigations.

⁵³ The “governance advisers” may provide integrated advice on governance in support of the broader country program, leading discussions with the government, local stakeholders, and the donor community; and also they may be used as focal points for the country team on governance issues.

⁵⁴ M. Kleine, *Trading Control: National Chieftoms within International Organizations*, in 59 *LSE Europe in Question’ Discussion Paper Series*, 2 (2013).

due process, etc., in the global procedures.⁵⁵ Nevertheless, the compliance of global regimes with integrity measures – differently from states – does not depend on specific obligations imposed by international agreements or commitments, but it depends on voluntary and internal decisions of global organisms themselves which, moreover, may provide for specific control mechanisms with heterogeneous characteristics. Even in these cases, it is possible to classify control mechanisms on the basis of the three aspects illustrated in para. 2.

4.1. Integrity controls applied to global administrations

The compliance of global regimes with integrity measures may be firstly controlled by states. Some international conventions, in fact, provide for specific mechanisms: the “Procedures for the Elaboration of Codex Alimentarius Standards and Related Texts”, for instance, impose participatory and transparency standards on the Commission, in order to guarantee Member States’ participation and control.⁵⁶ The “Operational Guidelines for the Implementation of the World Heritage Convention” provide for the participation of states in the procedure for the inclusion in the list of the World Heritage properties, in order to guarantee also transparency.⁵⁷

Secondly, the implementation of integrity measures by global regimes may be subject to measurement and assessments mechanisms, through external and independent audits.

⁵⁵ See UN Charter (articles 8, 97, 100, 101, 105); UN Staff Rules and Staff Regulations; Code of Ethics for United Nations Personnel; Convention on the Privileges and Immunities of the United Nations; UN Roadmap. A Staff Member’s Guide to Finding the Right Place; Financial Regulations and Rules; UN Procurement Manual; UN Standards of Conduct; UN Core Values; International Civil Service Commission Reports; Code of Conduct for OECD Officials; Code of Professional Ethics; OECD Staff Manual (para. 3); IMF Staff Ethics, Financial Disclosure, and Resolution of Staff Disputes; IMF Updates Standards for Staff Conduct; IMF General Administrative Order (GAO) No. 33 - Conduct of Staff Members; Code of Conduct for Members of the IMF Executive Board; Conditions of Service Applicable to the Staff of the WTO Secretariat (WT/L/282); Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes; Staff Regulations of Council of Europe; Staff Regulations of Council of Europe Development Bank; Staff Regulations of Officials of the European Communities; Code of Good Administrative Behaviour. Relations with the Public (European Commission); TI Corruption Perception Index; International Accounting Standards Committee Foundation (IASCF) agreement (art. 31); ICANN Bylaws (art. IV), Expected Standards of Behaviour; Accountability and Transparency Frameworks and Principles. Also this list is drawn from E. D’Alterio, “*Global Integrity: National Administrations versus Global Regimes*”, just quoted in note 27.

⁵⁶ For more details, see the *Procedural Manual for the Elaboration of the Codex Alimentarius Standards*, which is intended to help Member Governments participate effectively in the work of the joint FAO/WHO Food Standards Programme (<http://www.codexalimentarius.org/procedures-strategies/procedural-manual/en/>).

⁵⁷ It ensures a national control over the core activity of the UNESCO World Heritage Centre.

For instance, WB, UNDP, IMF are reviewed by the “Network on Development Evaluation” established within the OECD.⁵⁸ Further external audit systems are: the “Multilateral Organization Performance Assessment Network” (MOPAN), formed by seven donor countries,⁵⁹ that carry out regular assessments of multilateral organizations at country level; and the “British Department for International Development” (DFID) and its “Multilateral Effectiveness Framework” (MEF), which assess performance of multilateral aid organizations.⁶⁰

Audits may be also internal, such as portfolio reviews,⁶¹ fiscal accountability and⁶² hierarchical accountability controls,⁶³ peer reviews, all within WB. In 2004, UNDP created a special unit charged with the investigation of fraud and corruption, the “Investigation Section of the Office of Assessment and Performance Review” (OAPR), with the task to organize and perform internal audits.⁶⁴

Even global private regimes are subject to reviews: for instance, the “Address Supporting Organization” (ASO) is an independent entity – provided by the ICANN Bylaws and established between ICANN and the Number Resource Organization (NRO) –, which carries out an independent organizational review of ICANN activities, to which so called “affirmation of commitments reviews” and “accountability and transparency reviews”, carried out by *ad hoc* teams, add.⁶⁵ Even in the OGP, an “Independent Reporting

⁵⁸ See http://www.oecd.org/pages/0,3417,en_35038640_35321137_1_1_1_1_1,00.html.

⁵⁹ MOPAN was created in 2002 by Austria, Canada, Denmark, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.

⁶⁰ See <http://www.dfid.gov.uk/news/files/meff-faq.asp>.

⁶¹ As described in WB web site (www.worldbank.org), «*the Bank conducts regular risk reviews of the project pipeline and lending portfolio to identify where attention should be focused, especially during supervision. Projects deemed to be of highest risk will receive enhanced managerial oversight. Clusters of projects that share common features and risks—for example, projects incorporating block grants, cash transfers, compensation payments, or subnational components—will also receive further in-depth review. Finally, projects deemed risky need to receive a consistently higher supervision budget*».

⁶² On this point, see P. Dann, *Accountability in Development Aid Law: The World Bank, UNDP and Emerging Structures of Transnational Oversight*, paper presented at the 2nd Global Administrative Law Seminar in Viterbo, Italy in June 2006, and published in 44 *Archiv für Völkerrecht* 381 (2006).

⁶³ See P. Dann, *Accountability in Development Aid Law*, supra note 62.

⁶⁴ Article 3 of the Financial Regulations and Rules of UNDP.

⁶⁵ In ICANN, «*the Process and Systems Risk Committee of the ICANN Board is responsible for the assessment and oversight of policies implemented by ICANN designed to manage ICANN’s risk profile, including the establishment and implementation of standards, controls, limits and guidelines related to risk assessment and risk management, including but not limited to financial, legal and operational risks and other risks concerning ICANN’s reputation and ethical standards*» (<http://www.icann.org/en/groups/board/audit/charter>).

Mechanism” operates, and it is, in turn, overseen by an “Independent Expert Panel” (IEP).⁶⁶

Thirdly, when global regimes and, most of all, international civil servants are not compliant with integrity measures, specific mechanisms may be applied.

The WB has established a Vice-Presidency for Integrity and a Department of Institutional Integrity – INT (see also para. 3.1.), set up to deal with corruption.⁶⁷ Several investigations are conducted periodically and specific procedures and sanctions are provided, including referral to national authorities and disbarment from the organization.⁶⁸ Within WB, even other controllers operate: Ombudsman Office, Professional Ethics Office, Appeals Committee. The INT – which monitors firms, states and most of all individuals’ compliance with WB integrity standards – has also the mandate to investigate allegations of misconduct of the WB staff.⁶⁹ It is, in turn, reviewed by an independent panel of experts, with the goal of strengthening INT’s operations and effectiveness.⁷⁰ Also the Bank’s Board has an important role in the ensuring that WB’s strategies are consistent across countries, as well as that WB civil servants comply with due diligence and risk tolerance. Moreover,

⁶⁶ See <http://www.opengovpartnership.org/news/irm-concept-note-comment>.

⁶⁷ Some concerns on the anticorruption emphasis within WB are described by P. Ala’l, *The WTO and the Anti-Corruption Movement*, quoted in note 45.

⁶⁸ The results of the application of these measures are illustrated in the INT Annual Reports. In 2011, as described in the Annual Report (36-38), «INT received 74 new complaints, of which 35 underwent a preliminary inquiry. Of the remaining 39 complaints, 32 were filed for information because the allegations lacked specificity or supporting information and therefore could not be responsibly investigated absent the receipt of further information, and seven complaints were referred to other appropriate venues outside INT for intervention». Moreover, « during FY11 INT dealt with 36 cases carried over from FY10 for a total load of 71 cases, of which 58 were preliminary inquiries, seven Staff Rule 8.01 investigations, and six active vendor investigations. Of the seven Rule 8.01 investigations, one was brought to closure and submitted to the Vice President of Human Resources for disciplinary decision and the remaining six investigations are expected to be brought to closure during the first half of FY12. A total of 30 cases remain the subject of further preliminary inquiry into FY12 (of which 18 involve staff on operational matters, eight involve staff on corporate matters and four involve corporate vendors). [...] INT substantiated six cases involving six staff and two vendors and cleared 11 staff that was wrongly accused in 11 cases. In all, 35 cases were closed in FY11, 18 involving corporate matters (16 staff cases and two vendor cases) and 17 relating to operations. Of the 35 cases closed, 27 (or 75%) were cases carried over from FY10 (of which 12 involved corporate matters and 15 related to operations)».

⁶⁹ According to its “Terms of References” and to Section 1 a (3) and 3 of the “Sanctions Committee Procedures”, it has unrestricted access to Bank records, documents and properties, and it is institutionally separated from regular staff, it reports directly to the President. In 2011, as described in the Annual report – «INT received 460 new complaints (not including Advanced Fee Fraud complaints) of which 369 involved a Bank Group supported activity, thereby warranting further initial review. These complaints related to 367 projects in 97 countries. Last fiscal year, INT received 441 complaints. INT receives complaints—anonymous and named—from all over the world and from many sources. Of external cases opened in FY11, 36% of complaints received came from Bank Staff, 49% of complaints were from non-Bank sources, and 15% came from anonymous complainants».

⁷⁰ Also the UN Ethics Office is reviewed by the governing body (UN Assembly).

legal accountability is ensured by the WB Inspection Panel, a quasi-judiciary body⁷¹ with the task of scrutinizing whether the Bank's Board adheres to its operational policies and procedures – also including integrity standards - in the design, preparation and implementation of projects.⁷²

Even within UN, the failure of civil servants to comply with integrity rules may be sanctioned: for instance, the UNPD Investigation Section reports to the Office of Audit and Legal Support (LSO), which is responsible for issuing sanctions: in particular, LSO may start disciplinary proceedings or administrative actions against individuals, when the investigation substantiates the alleged wrongdoing.⁷³

The OECD “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” provides for sanctions (criminal penalties), criminal responsibilities, jurisdictional mechanisms, investigations and prosecutions, against public officials including «*official or agent of a public international organisation*».⁷⁴ These controls are implemented most of all by states, but it is even possible to constitute mutual assistance mechanisms (to this end, «*the Secretary-General of the OECD [...] shall serve as channel of communication for these matters*», art. 11); moreover, the systematic follow-up to monitor and promote the full implementation of the Convention shall be done by the “OECD Working Group on Bribery in International Business Transactions” (art. 12).⁷⁵

⁷¹ See also the IMF Administrative Tribunal, and the Council of Europe Administrative Tribunal. They are the judicial fora for the resolution of employment disputes arising between staff members and the Organizations.

⁷² The Panel is open not only to the complaints of states (through their representatives in the Bank), but also to the complaints of affected individuals.

⁷³ The Office of Audit and Investigation (OAI) «*provides UNDP with effective independent and objective internal oversight that is designed to improve the effectiveness and efficiency of UNDP's operations in achieving its development goals and objectives through the provision of internal audit and related advisory services, and investigation services*». In accordance with the UNDP *Legal Framework for Addressing Non-Compliance with UN Standards of Conduct*, the OAI is the main channel to receive allegations: «*anyone with information regarding fraud against UNDP programmes or involving UNDP staff is strongly encouraged to report this information through the Investigations Hotline. People reporting wrongdoing to the Investigations Hotline have the option to leave relevant contact information or to remain anonymous*» (like the whistleblower mechanism).

⁷⁴ See articles 3, 4 and 5.

⁷⁵ In particular, see Section VIII of the 1997 OECD Recommendation. Working group tasks are: «*i) receipt of notifications and other information submitted to it by the [participating] countries; ii) regular reviews of steps taken by [participating] countries to implement the Recommendation and to make proposals, as appropriate, to assist [participating] countries in its implementation; these reviews will be based on the following complementary systems: - a system of self evaluation, where [participating] countries' responses on the basis of a questionnaire will provide a basis for assessing the implementation of the Recommendation; - a system of mutual evaluation, where each [participating] country will be examined in*

Lastly, the failure of international civil servants to comply with integrity rules may be enforced even by the civil society. For instance, the EU Commission “Code of Good Administrative Behaviour” provides that *«members of the public may lodge complaints concerning a possible breach of the principles set out in this Code directly with the Secretariat-General of the European Commission, which will forward it to the relevant department»*.⁷⁶

5. Integrity controls at national and global levels: comparative results

The main differences between integrity controls applied to national administrations and those related to global regimes are at least two.

Firstly, national administrations are subject to integrity controls provided by global rules – generally set up by international agreements – and, in specific cases (described in para. 3.1.), directly implemented by global regimes in different ways. Conversely, global regimes are subject to integrity controls established by “homemade” codes, staff

turn by the Working Group on Bribery, on the basis of a report which will provide an objective assessment of the progress of the [participating] country in implementing the Recommendation. iii) examination of specific issues relating to bribery in international business transactions; [...] v) provision of regular information to the public on its work and activities and on implementation of the Recommendation» (www.oecd.org). In relation to “Public Advantages, including Public Procurement”, OECD recommends: «Member countries’ laws and regulations should permit authorities to suspend, to an appropriate degree, from competition for public contracts or other public advantages, including public procurement contracts and contracts funded by official development assistance, enterprises determined to have bribed foreign public officials in contravention of that Member’s national laws and, to the extent a Member applies procurement sanctions to enterprises that are determined to have bribed domestic public officials, such sanctions should be applied equally in case of bribery of foreign public officials;¹ In accordance with the 1996 Development Assistance Committee Recommendation on Anti-corruption Proposals for Bilateral Aid Procurement, Member countries should require anti-corruption provisions in bilateral aid-funded procurement, promote the proper implementation of anti-corruption provisions in international development institutions, and work closely with development partners to combat corruption in all development co-operation efforts;² Member countries should support the efforts of the OECD Public Governance Committee to implement the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement [C(2008)105], as well as work on transparency in public procurement in other international governmental organisations such as the United Nations, the World Trade Organisation (WTO), and the European Union, and are encouraged to adhere to relevant international standards such as the WTO Agreement on Government Procurement».

⁷⁶ It follows: *«The Director-General Effective control systems operate within even private global regimes; global networks designed with the objective to promote and control compliance with integrity rules in the national systems apply, in turn, independent audit mechanisms. The Director or Head of Department will reply to the complainant in writing, within two months. The complainant then has one month in which to apply to the Secretary-General of the Commission to review the outcome of the complaint. The Secretary-General will reply to the request for a review within one month».* Moreover, *«members of the public are also entitled to lodge complaints with the European Ombudsman in accordance with Article 195 of the Treaty establishing the European Community and the Statute of the European Ombudsman».*

regulations, and standards, and only seldom they are implemented by states: in this sense, national governments do not play a significant role in reviewing the compliance of global regimes with integrity measures.⁷⁷

Secondly, when global regimes control national administrations in the implementation of integrity measures – with the exception of certain cases⁷⁸ – operate in an isolated manner: each global regime provides for specific rules, enforcement mechanisms, and controls, without an effective interchange of data with other organizations, or systematic forms of cooperation. On the contrary, states can control global regimes only through the institution of networks and mutual assistance, by organizing international working group or committees.

Nevertheless, it is possible to identify even significant analogies characterizing integrity controls at national and global levels.

For instance, some integrity controls applied both to national and to global administrations appear more as promoting initiatives rather than effective reviews. The use of indicators is a clear-cut example: the breach of the TI indicators, or of the GI indicators, may determine negative effects only on the reputation of the states infringing standards; correspondingly, many internal audits and reviews implemented within global regimes culminate in mere reports, without stringent effects.

However, control mechanisms are usually enhanced by enforcement systems at both national and global levels.

As regards national systems, for instance, article 66 of the UNCAC provides that disputes concerning the application of the Convention shall be settled through negotiation among governments; the appeal to the International Court of Justice is an *ultima ratio*. Conversely, the infringement of WTO transparency standards or GPA rules can be directly appealed before the DSB; nevertheless, DSB recommendations are not followed by effective sanctions against national administrations, and they may be swapped with negotiation.⁷⁹ Only in extraordinary circumstances, the infringement of international treaties rules may determine the criminal liability of states, with the consequence of the

⁷⁷ There is the exception of the OECD “Convention on Combating Bribery of Foreign Public Officials in International Business Transactions”, which assigns relevant control activities to states. See para. 4.1.

⁷⁸ For instance, there exist forms of cooperation between WTO and OECD in aid sector, or between OECD and UNCTAD in relation to investments measures.

⁷⁹ See the above-mentioned article 22 of the WTO-DSU.

application of reparation or countermeasures.⁸⁰ The infringement of soft law integrity measures, provided by private organisms and by global networks (such as TI or GI), may merely affect states' reputation.

As regards global regimes, there exist enforcement mechanisms, but they are not quite stringent: for instance, states and citizens can lodge an appeal to the WB Inspection Panel in the case of the infringement of WB integrity standards by the Organization; nevertheless, the Panel merely adopts recommendations addressed to WB governing bodies; its sanctions against the Bank administration are mild, and they do not include compensation for illegally damaged parties. In general, global administrative tribunals and panels do not apply sanctions with practical effects, and they are not able to ensure the enforcement of integrity measures within global regimes.⁸¹

However, it is interesting to note that, when controls identify personal responsibilities for the infringement of certain integrity measures, global regimes provide for sanctions applicable to individuals (especially to public officials and to firms), at both national and global levels, as shown in the annual reports of some organizations.⁸² In these cases, the legal effects of non-compliance with integrity rules are quite incisive and stringent, by corresponding to disciplinary or administrative sanctions (and to criminal penalties in the most serious cases), directly imposed by global regimes.

5.1. Integrity controls from the GAL perspective

In the light of the aforesaid comparative results, integrity controls applied at national and global levels are quite "balanced". In other terms, analogies seem to prevail over differences. In summary, all the most important IOs apply integrity controls such as states, in the implementation of global rules; independent and internal measurements and assessments are performed within national administrations, but even within global regimes; control systems may embrace the involvement of the civil society, even when it

⁸⁰ On this point, see I. Brownlie, *System of the Law of Nations, State Responsibility*, I, Clarendon Press, 1983.

⁸¹ The same problem even affects global criminal courts: in this sense, J. Katz Cogan, *International Criminal Courts and Fair Trials: Difficulties and Prospects*, in *27 Yale Journal of International Law*, 111 (2002).

⁸² According to the "Overview of Internal Investigation Outcomes", carried out by the WB INT and described in its Annual Report 2011, from 2007 to 2011 the internal investigation cases closed with the imposition of a sanction were numerous, even if they have been decreased from 152 to 35 in recent years.

concerns a ultra-state administration; the enforcement of integrity controls is subject to limits characterizing similarly national and global administrations; at the same time, sanctions may apply to individuals not compliant with integrity measures at both national and global levels.

Although significant, general differences remain between national and global levels,⁸³ the present analysis shows that the development of integrity controls is – almost – at the same stage in national and global administrations; indeed, in some cases (such as in Italy),⁸⁴ the most significant integrity controls related to national administrations, even when they are provided by national rules and implemented by states, derive from global rules and recommendations transposed at the national level.

From this perspective, integrity controls are an excellent example of GAL development.⁸⁵ In this regard, significant GAL paradigms, indeed, occur:

- *i.* there are lots of global administrative rules providing for integrity measures and controls, directly imposed by global regulatory systems,⁸⁶
- *ii.* integrity controls are a perfect expression of «*the rules and procedures that help ensure the accountability of global administration, and it focuses in particular on administrative structures, on transparency, on participatory elements in the administrative procedure, on principles of reasoned decision-making, and on mechanisms of review*».⁸⁷

⁸³ For a general description of these limits and of the main features of global regimes, see S. Cassese, *The Global Polity. Global Dimensions of Democracy and the Rule of Law*, Global Law Press – Editorial Derecho Global, 2012.

⁸⁴ In relation to Italy, it is possible to note that law no. 190/2012 has transposed relevant integrity measures indicated by global regimes in the Italian order.

⁸⁵ Literature on GAL is very rich. Just to mention some works: B. Kingsbury, N. Krisch and R.B. Stewart, *The Emergence of Global Administrative Law*, in 68 *Law and Contemporary Problems*, 15 et seq. (2005); S. Cassese, *The Globalization of Law*, in 37 *New York University Journal of International Law and Politics*, 973 et seq. (2005); S. Chesterman, *Globalization Rules: Accountability, Power, and the Prospects for Global Administrative Law*, in 14 *Global Governance* 39 et seq. (2005); N. Krisch and B. Kingsbury, *Introduction: Global Governance and Global Administrative Law in the International Legal Order*, in 17 *European Journal of International Law*, 1 et seq. (2006); B. Kingsbury, *The Concept of 'Law' in Global Administrative Law*, in 20 *European Journal of International Law* 1, 23 et seq. (2009). From a general perspective, J.B. Auby, *La globalisation, Le droit et l'État*, Montchrestien, 2003, 13 et seq.

⁸⁶ K. Jayasuriya, *Globalization, Law, and the Transformation of Sovereignty: the Emergence of Global Regulatory Governance*, in *Indiana Journal of Global Legal Studies*, 439 (1999).

⁸⁷ It is the definition of GAL formulated by Stewart, Kingsbury, Krisch in *The Emergence of Global Administrative Law*, just quoted in note 85, 28.

- *iii.* integrity controls may be performed through joint and bilateral mechanisms: global regimes control states; states – by networking and mixed bodies – may control global regimes;⁸⁸
- *iv.* integrity controls affect public but even private entities at the national level (pertaining to public administrations, individuals, and firms like “state actors”), and at the global level (relating to IOs, NGOs, private regulatory regimes, corporations, etc.), without differentiating between the public and the private nature of subjects.⁸⁹

Moreover, several aspects contribute to the development of GAL in the integrity domain.

Generally, it has been noted that *«the globalization of economies, politics, and culture has broken down traditional barriers of governance. A growing number of issues that were formerly the exclusive responsibility and prerogative of national or regional governments are increasingly subject to global governance. For us, the global governance of an issue has two dimensions: high sensitivity to the issue on a global scale and, at least, rudimentary global norms that focus on the issue. Environment, human rights, poverty, population, and international financial flows are just a few examples that come to mind»*.⁹⁰ To these examples it is possible to add integrity controls of the public sector. At least three aspects have concurred to this result:

- *i.* the integrity of the public sector has become a widespread value, with an increasing sensitivity to the issue on a global scale, in relation to the characteristics of the current period: *«as in all periods of rapid economic development and political upheaval our era of globalization brings corruption and conflicts of interests into the spotlight»*;⁹¹ therefore, it is a trend strongly

⁸⁸ In relation to joint mechanisms in the global arena, C. Tietje, *Global Governance and Inter-Agency Co-operation in International Economic Law*, in *Journal of World Trade*, 501 et seq. (2002)

⁸⁹ H. Schepel, *The Constitution of Private Governance. Product Standards in the Regulation of Integrating Markets*, Hart Publishing, 2005.

⁹⁰ H. Wang and J.N. Rosenau, *Transparency International and Corruption as an Issue of Global Governance*, just quoted in note 24.

⁹¹ J.B. Auby, E. Breen, T. Perroud (eds by), *Corruption and Conflicts of interest. A comparative law approach*, just quoted in note 27, XXII.

based on economic reasons,⁹² that contributes to a broader development of the global integrity discipline;⁹³

- *ii.* moreover, due to the global dimension of such an interest, incapacity of the single states to manage the illegality in the public sector has emerged. Hence, the role of global organizations in promoting and regulating integrity measures and administrative controls has been becoming crucial: «*international organizations and international law have so far played a leading role both in characterizing the issues raised by the two phenomena [corruption and conflicts of interest], and in devising most of the tools which are ordinarily used in institutions and systems in order to reduce them*»;⁹⁴ moreover, «*it is [...] through global regulatory systems that domestic public powers are able to make their voice heard*»;⁹⁵
- *iii.* in addition, the multinational nature of firms, which conclude contracts with public administrations – and insofar as they can be defined “public actors” in the implementation of the outsourced activities –, requires the establishment of transnational administrative standards and measures, in order to control the integrity of tenders and other administrative procedures, by applying uniform types of monitoring.⁹⁶

In addition, the present analysis leads us to assert that global regimes give a particular attention to the integrity of the public sector, by contributing to the promotion of significant measures (institution of *ad hoc* authorities or bodies, whistle-blower mechanisms, codes of conduct, financial disclosures, etc.) at national level, but even

⁹² As underlined by the literature, «*audits serve the financial credibility of these institutions, which are, last but not least, dependent on the trust of donating member states or financial markets. If audits are hence indispensable, they are also toothless*». P. Dann, *Accountability in Development Aid Law*, supra note 62.

⁹³ In this sense, see T. Franck, *The Emerging Right to Democratic Governance*, in 86 *American Journal of International Law* 46, 91 (1992), which identifies a general process within which «*the international system is moving toward a clearly designated democratic [and transparent] entitlement*».

⁹⁴ J.B. Auby, E. Breen, T. Perroud (eds by), *Corruption and Conflicts of interest. A comparative law approach*, just quoted in note 27, XXII.

⁹⁵ S. Cassese, *Administrative Law Without the State? The Challenge of Global Regulation*, in 37 *NYU Journal of International Law and Politics* 4, 673 (2005).

⁹⁶ C.R. Yukins, *Integrating Integrity and Procurement: the United Nation Convention against Corruption and the Uncitral Model Procurement Law*, in *Public Contract Law Journal*, 2007.

within global organisms themselves, with the general, gradual effect to increase the accountability and the rule of law in the global context.⁹⁷

From the last point of view, might one conclude that the current development of integrity controls partly seems, indeed, to challenge the assumption whereby global regimes «operate in an essentially closed and opaque manner».⁹⁸ In particular, «the dramatic contrast between the elaborate development of GAL in member state administration, and its virtual absence» in global regimes is less glaring than that some studies highlight, at least with regard to the integrity principle. In this sense, «the contrast between the infancy of international organization and the maturity of the modern State»,⁹⁹ underlined by a large literature, appears more mitigated,¹⁰⁰ due to the increasingly relevant relationship between globalization and the spread of integrity measures.¹⁰¹

6. Concluding Remarks

This paper has sought to provide a survey of main features and questions in the developing of integrity controls at national and global levels. It is a very topical issue in

⁹⁷ In this sense, see S.R. Ackerman and P. Carrington (eds. by), *Anti-corruption Policy. Can International Actors Play a Constructive Role?*, Carolina Academic Press, 2013. For a more general analysis, J. Ferejohn, *Accountability in a Global Context*, IILJ Working Paper no. 2007/5.

⁹⁸ With regard to WTO, R.B. Stewart and M. Ratton Sanchez Badin note that «the more significant administrative norm-making functions carried out by these WTO bodies are eminently suitable and ripe for application of GAL procedures for transparency, participation, reason giving, and review, yet, in practice, such procedures are almost wholly absent. [...]». Furthermore, the Authors notes that «a number of respected commentators agree that the WTO should make compliance by such bodies with basic GAL-type norms of regulatory due process a condition for recognition of their standards, and that the DSB should exercise a form of judicial review over these procedures. While no WTO case has dealt directly with this issue»; «a likely reason that they may be reluctant to do so is that applying GAL norms to decisions by other global bodies would create reciprocal pressures on the WTO to follow them in its own decisional processes» (*The World Trade Organization: Multiple dimensions of Global Administrative Law*, in 9 *International Journal of Constitutional Law* 3-4, 556-586 (2011).

⁹⁹ C.W. Jenks, *The Proper Law of International Organizations*, Oceana, 1962, XI.

¹⁰⁰ Literature on the “rudimental status” of global regimes is broad. We only recall R.O. Keohane and J.S. Nye, *Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy*, Harvard University John F. Kennedy School of Government, Faculty Research Working Paper Series No. RWP01-004 (2001).

¹⁰¹ It is possible to analyse this relationship in comparison with that concerning the globalization and the development of democracy in certain contexts: see R.O. Keohane, S. Macedo and A. Moravcsvik, *Democracy Enhancing Multilateralism*, in 63 *International Organization*, 1–31 (2009); E. Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, in 102 *Am. J. Int'l L.* 241–273 (2008); Alfred C. Aman, Jr., *Globalization, Democracy and the Need for a New Administrative Law*, in 10 *Ind. J. Glob. Legal Stud.* 125 (2003); Armin von Bogdandy, *Demokratie, Globalisierung, Zukunft des Völkerrechts – eine Bestandsaufnahme*, in 63 *Zeitschrift für Ausländisches Öffentliches recht Und völkerrecht* 853 (2002).

relation to which relevant studies are growing,¹⁰² also due to the perilous mix of the global financial crisis and the increase of maladministration which characterize several national contexts in the current period.

The analysis has allowed us to recognize that integrity controls are widespread, quite stringent, and imposed by global regimes at national and global levels, by contributing to the development of GAL. Nevertheless, some open problems persist.

Firstly, a significant difference between controls applied to national systems and those pertaining to global regimes concerns the kind of protected interests. Global regimes control the integrity of national administrations with the aim to enhance general public interests and fundamental principles: rule of law, democracy, innovation of the public sector, etc. Integrity controls, in fact, are means of being accountable to the community of how public resources are used by national administrations. On the contrary, integrity controls applied to global regimes pursue most of all internal objectives: the preservation of the organization's credibility, and the proper achievement of the organization's objectives: as underlined in a WB document, «*reducing corruption in Bank-supervised projects is essential not only to the Bank's mission to reduce poverty, but also to its credibility in advising and supporting countries' governance and anticorruption efforts*».¹⁰³ From this perspective, reputational and practical reasons characterize the initiative of global organisms in controlling the application of integrity measures within themselves, without a direct consideration of the social and public interests.

Secondly, are there participatory guarantees in the administrative procedures related to integrity controls? In other terms, can states defend themselves from the effects of these controls? For instance, the adoption and use of GI indicators measuring transparency of the public procurement process, or of TI annual *Corruption Perception Index*, etc., may produce relevant effects, by affecting the imagine of indexed states and

¹⁰² Recent studies are S.R. Ackerman and P. Carrington (eds. by), *Anti-corruption Policy. Can International Actors Play a Constructive Role?*, just quoted in note 97 and S.R. Ackerman and T. Søreide, *International Handbook on the Economics of Corruption*, II, Edward Elgar, 2011.

¹⁰³ *Strengthening World Bank Group Engagement on Governance and Anticorruption*, March 21, 2007, 2.

influencing financial investments.¹⁰⁴ In these cases, there no exist codified participatory guarantees for states. They can just reply to the negative rating.¹⁰⁵

Thirdly, global regimes systematically monitor the compliance of national systems with global integrity rules; conversely, national systems only seldom can control global regimes in the implementation of integrity measures. In this sense, it appears as a “one-way system”. The compliance of global regimes with integrity measures, in fact, may be controlled with mechanisms not necessarily corresponding to those applied at national level and not involving states.¹⁰⁶ It might be explained with the fact that national governments participate in the governing bodies of these organizations and national informal spheres of influence in international organizations emerge. In particular, according to some studies, «*these spheres result from the implicit exchange of administrative control among governments. Drawing on distributional theories of Congress (Weingast and Marshall 1988), it is based on the assumption that the diversity of interests among states holds gains from the exchange of influence over different dimensions of an organization’s output. Because governments may renege on delivering their quid pro quo, states enforce these exchanges by granting one another agenda control over their preferred divisions within the international organization – a control that they can use to prevent activism and determine the content of the division’s policy. As a result, international organizations exhibit mutually tolerated informal spheres of national influence, or national chiefdoms*».¹⁰⁷ However, this assumption is not applicable to those global regimes without an intergovernmental membership.

Lastly, integrity audit systems, although are not usually enhanced by very effective enforcement mechanisms,¹⁰⁸ may produce effects both to national systems, and to global

¹⁰⁴ Similarly to what occurs with financial rating elaborated by international credit rating agencies. On this point, V.L. Papaikonomou, *Credit rating agencies and global financial crisis: Need for a paradigm shift in financial market regulation*, in 27 *Studies in Economics and Finance* 2, 161 – 174 (2010).

¹⁰⁵ See K. Davis, A. Fisher, B. Kingsbury, S. Engle Merry (eds. by), *Governance by Indicators. Global Power through Classification and Rankings*, Oxfrod University Press, 2012.

¹⁰⁶ The establishment of global regimes aims to guarantee, first of all, the external accountability of the national systems (as underlined by S. Battini, *L’impatto della globalizzazione sulla pubblica amministrazione e sul diritto amministrativo: quattro percorsi* [“The impact of the globalization on the public administration and on the administrative law: four paths], in 3 *Giornale di diritto amministrativo*, 341 (2006). From this perspective, to provide for the states’ control over the compliance of global regimes with global integrity rules could be controversial.

¹⁰⁷ M. Kleine, *Trading Control: National Chiefdoms within International Organizations*, just quoted in note 54.

¹⁰⁸ For more details on enforcement mechanisms in the global administrative space, see S. Cassese, E. D’Alterio, M. De Bellis, *The Enforcement of Transnational Private Regulation: A fictitious Oxymoron*, in

regimes. Nevertheless, some gaps emerge. For instance, audit committees usually do not perform coercive functions, and their acts are not all-inclusive, exclusive or prescriptive; there exist no external bodies with the power to apply financial penalties, reparations, countermeasures, etc., for the breach of global integrity standards; there are no “global integrity courts” with a universal jurisdiction. The infringement of integrity standards mainly determines reputational effects, excepted cases in which personal responsibilities are clearly recognized and sanctioned.

These unsolved problems are very relevant and could represent a further field research in the GAL studies, which could even enrich the developing literature on some related issues.¹⁰⁹

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