

Criticism: accountability and transparency

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The BIS has always attracted criticism. Its role during the Second World War, examined in Part D, has given rise to a literature that questions its neutrality and its relationship with the Reichsbank. In 2013 the journalist Adam LeBor published *Tower of Basel: The Shadowy History of the Secret Bank that Runs the World*, a book that combined the history of the war years with a critique of the present-day secrecy of the institution. Although historians of central banking have criticised some of its interpretations, the book reached a wide public and shaped the perception of the BIS outside professional circles.¹

The serious criticism concerns accountability. The governors who meet in Basel are accountable to their own parliaments and governments for the policies they pursue at home, although no parliament supervises their discussions in Basel. The confidentiality of the meetings, which the central bankers regard as a condition for candid exchange, prevents the public from knowing how international coordination influences national policy. The standards drafted by the committees hosted at the BIS are formally non-binding, yet they are implemented in national law with few modifications, which raises the question of the democratic legitimacy of the rules. Scholars of global administrative law have described the Basel Committee as a prominent example of transnational regulatory networks whose rules acquire binding force through national implementation without formal parliamentary participation at the drafting stage.²

The BIS has responded to these criticisms with greater transparency. It publishes its annual report and financial statements, the reports of its committees and an extensive body of research. The Basel Committee and the other committees consult publicly on their draft standards and publish the comments received. The FSB reports to the G20, and through the G20 to the heads of government. The BIS has also published a code of conduct for its staff and information on its governance and risk management.

Critics reply that the core of the Basel Process, the governors' meetings, remains closed, and that the influence of the large central banks on the agenda is disproportionate to the representation of the emerging and developing economies. The expansion of membership since 1996 and the creation of the Global Economy Meeting have reduced, although not eliminated, the force of this objection.³

A further line of criticism concerns the immunities of the bank. Former private shareholders, employees in employment disputes and creditors of central banks have found that the immunity of the BIS from Swiss jurisdiction limits their access to national courts. The BIS has an internal administrative tribunal for employment disputes, the Administrative Tribunal of the BIS, which offers staff members a judicial remedy outside the Swiss courts. For creditors of central banks, the immunity of reserves deposited with the BIS is an obstacle that is hard to overcome, a point that sovereign debt litigation in other jurisdictions has made visible. From the perspective of the central banks, this protection is precisely the reason why they deposit their reserves in Basel.⁴

1 Notes

1. Adam LeBor, *Tower of Basel: The Shadowy History of the Secret Bank that Runs the World*, New York, 2013; for a critical evaluation, see the reviews in the economic history literature. To be verified. ↩
2. On the accountability of the BIS and the Basel committees, see Benedict Kingsbury, Nico Krisch and Richard B. Stewart, "The Emergence of Global Administrative Law", *Law and Contemporary Problems* 68 (2005), 15; Michael S. Barr and Geoffrey P. Miller, "Global Administrative Law: The View from Basel", *European Journal of International Law* 17 (2006), 15. To be verified. ↩
3. On consultation practices of the Basel Committee and the FSB, see their respective consultation procedures; on the code of conduct and governance disclosures of the BIS, see the BIS Annual Report and website; on the representation of emerging economies, see the literature on the reform of global financial governance after 2008. To be verified. ↩

4. On the Administrative Tribunal of the BIS and the Statute of the Administrative Tribunal, see the BIS website and Annual Report; on the immunity of central bank reserves and its significance in sovereign debt litigation, see the literature on central bank immunity. To be verified. ↩

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