

**“The environmental parameter in the international financing for development”**

*(Work in progress)*

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*Abstract:* - This paper was developed in the context of the ongoing research project entitled “The environmental parameter in the international financing for development of less developed countries and transition economies”<sup>1</sup>. Our research focuses on the environmental policies and principles followed by some of the most crucial international financial organizations (the World Bank, IMF, OECD, African Development Bank, Asian Development Bank, Inter-american Development Bank and EBRD) in the financing for development. During the project a methodology was developed setting the criteria for exploring the integration of the environmental concerns in the financing policies of these international financial organizations. Our scope is to examine the level of integration of the concept of sustainable development in the project financing, the similarities and differences between the international financial organizations’ policies, their support and promotion of the principles of

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international environmental law and the possible development of new customary international law. In this paper we suggest a methodological approach for exploring these interactions after examining the international financial organizations' legitimacy to integrate the environmental concerns into their financing activities.

*Key-words:* - environmental governance, international financial organizations, evolution of international law, sustainable development, financing for development

## **1. Introduction**

The academic debate about the definition of development has led to the rise of the concept of sustainable development according to which there cannot be economic development without concurrent care for the environment. In addition, environmental management is considered to be a matter of the highest importance with impacts on international<sup>2</sup> and human security<sup>3</sup>. Most of all, any hope for the construction of a sustainable and secure world both for current and future generations seems to be dependent on the global effort for the achievement of sustainable development.

The concept of sustainable development has undoubtedly affected the evolution of international environmental law, although its legal status is still rather obscure. The debate about the nature and status of the concept of sustainable development and about whether it has developed to a customary rule of international law or it is a general principle of international law, even the whole questioning of having any legal force at all, cannot reduce its importance to the evolution of international environmental law. Sustainable development is considered a global goal<sup>4</sup>, the achievement of which has been highlighted in the international fora,

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<sup>2</sup> Political instability, a) *Handl Gunther*, Environmental Security and Global Change: The challenge to International Law, in International Environmental and Policy Series: Environmental Protection and International Law, edited by W.Lang - H.Neuhold - K.Zemanek, 1991, Graham & Trotman/Martinus Nijhoff, p.59-89, and b) *Barnett Jon*, Security and Climate Change, Global Environmental Change, Vol.13, 2003, pp.7-17

<sup>3</sup> *Page Edward*, Theorizing the link between environmental change and security, RECIEL 9 (1) 2000, pp.33-43

<sup>4</sup> Judging from the participation of a huge number of states in Rio and Johannesburg Conferences where sustainable development was reaffirmed to be a global goal

especially at the three major conferences on environment and development, at Stockholm, Rio and Johannesburg.

The traditional, state-oriented approach of international law, according to which there is no room for other actors apart from the state, has abated due to the rise of the civil society and its participation in the development of international environmental law (lobbying). The realization of the global or/and transboundary nature of environmental problems as well as the increasing interdependence of markets and economies have led to the rise of new non-state actors<sup>5</sup> in the development process. Due to this progress several major changes have taken place in the environmental governance setting aside the theories of state sovereignty and exclusive jurisdiction of the state at its territory<sup>6</sup>.

The environmental policy is nowadays exercised not only by the traditional form (state – national legislation – integration of international conventions in the national legislation), but also by the international economic organizations (IEOs) and the private sector through the sign of investment loans and financing agreements. According to the concept of sustainable development, environmental protection is better achieved through shared regulatory regimes and through the mainstreaming of environmental concerns in the development actions of the IEOs. The latter, the private sector and the NGOs constantly increase their impact on the evolution of international environmental law by supporting initiatives for international action, by lobbying during international conventions' negotiations and by implementing internal policies and practices – according to international standards, principles and conventions – in the international financing for development.

The exercise of environmental policy by the IEOs in the international financing for development raises serious issues concerning the nature of international environmental law, such as the compliance of the borrower country with environmental provisions and standards, the existence and effectiveness of enforcement mechanisms and most of all, the contribution or not of the IEOs in the

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<sup>5</sup> *Alkoby Asher*, Non-State Actors and International Law, *International Environmental Law*, 2003, pp.23-98

<sup>6</sup> *Hadjiconstantinou Constantinos*, Some thoughts on the Law of the Environment, *in* Tsaltas Grigoris, Katsibardis Constantinos, *Sustainability and Environment, The European and National Perspective*, I.Sideris (ed.), 2004, pp.95-100.

environmental protection both at country and global level, as well as in the promotion of sustainable development.

In this theoretical framework, our research aims to explore the legitimacy of the IEOs to exercise environmental policies through financing procedures for international development and then identify the tools and policies they use. Moreover, it wishes to explore if there is any congruity between the environmental policies of the IEOs. Finally, it tries to answer the question whether the IEOs have integrated the concept of sustainable development in their actions and if they promote its enforcement and compliance.

## **2. The introduction of sustainable development in the environmental protection-economic development debate.**

In the late 80s development was connected to the concept of sustainability. This approach to development was introduced with the Rio Declaration and since then it appears in several international documents<sup>7</sup>. The need for compromise between environmental concerns and development policies was highlighted in the Rio Conference, as the first negative impacts of the development projects on the environment were appearing.

The concept of sustainable development includes this compromise between environmental protection and economic growth<sup>8</sup> according to the Principle 4 of the Rio Declaration for the integration of environmental concerns in the development process. The principle of integration of environmental concerns in the development decision-making is one of the major principles among those connected to the concept of sustainable development and even a pre-condition of it<sup>9</sup>. Moreover, the principle of integration is very important to the justification of the integration of sustainable development in the IEOs' development goals and actions.

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<sup>7</sup> Such as the Vienna Declaration on Human Rights

<sup>8</sup> *Fuentes Ximena*, International Law-Making in the Field of Sustainable Development, The Unequal Competition between Development and the Environment, International Environmental Agreements: Politics, Law and Economics, Vol.2, 2002, pp.109-133

<sup>9</sup> *Dernbach C.John*, Achieving sustainable development: the centrality and multiple facets of integrated decisionmaking, Indiana Journal of Global Legal Studies, Vol.10, 2003, pp.247-285.

Sustainable development consists of three pillars, a) the environmental (conservation), b) the economic (growth) and c) the social (equality), as they have been described in international literature since the report of the Brundtland Commission. The broad acceptance of sustainable development as a global goal has been also highlighted a) in the Millennium Declaration<sup>10</sup>, where states reaffirm their support to the concept of sustainable development and especially to Agenda 21 and b) in the New Delhi Declaration of Principles of International Law Relating to Sustainable Development<sup>11</sup>. This acceptance of sustainable development as a global goal is based on the broad recognition of sustainable development in international and national legal documents.

Since the Brundtland Report the concept of sustainable development has evolved and nowadays the cooperation among states, IEOs and private sector is considered an important tool for the achievement of sustainable development. According to the New Delhi Declaration (Art.3.1) the IEOs have to cooperate and promote international cooperation, as well as to commit to the principle of good governance (Art.6).

### **3. International Economic Organizations and the environment**

The serious criticism about the IEOs' role in the development process of the less developed countries (LDCs) comes not only from those considering the IEOs another form of intervention in the internal affairs of the LDCs, but also from those generally approving their actions. In the past, the financing of development projects by the IEOs has caused serious problems in the LDCs, such as removals of whole communities without a proper plan of resettlement, catastrophe of forest lands and ecosystems etc.

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<sup>10</sup> A/res/55/2 United Nations Millennium Declaration, Resolution adopted by the General Assembly, 8/9/2000

<sup>11</sup> The New Delhi Declaration of Principles of International Law Relating to Sustainable Development, 70<sup>th</sup> Conference of the International Law Association, New Delhi, India, April 2002, Resolution 3/2002. See also *Schrijver N.J.*, The New Delhi Declaration of Principles of International Law relating to Sustainable Development (Commentary), in Marie-Claire Cordonier Segger and C.G. Weeramantry (eds), *Sustainable Justice, Reconciling Economic, Social and Environmental Law*, Martinus Nijhoff Publishers, Leiden/Boston, 2005, pp.549-560

This research does not aim to argue about the fairness of the struggle to development. It is a whole different matter, whether development is just serving the interests of the developed western countries. Our research wishes to examine the environmental parameter in the international financing for development and try a conclusion on the impacts of the IEOs' development activities on the environment.

Despite the universality of the environmental problems, the ecological concerns of developed and less developed countries do not always coincide and therefore, it is difficult to speak about common interests<sup>12</sup>. Less developed countries aim mainly at economic growth<sup>13</sup> while environmental concerns are left to the rich western countries. This discordance underlies the "soft" international governance in environmental matters<sup>14</sup> while the increasing amount of environmental conventions and agreements just make things more complicate leading to lack of coordination and overlaps.

However, the debate between North and South on the acceptance or not of the importance of environmental problems reduces neither their seriousness nor the urgent need to take appropriate measures. The IEOs (and hereafter, we mean the World Bank, IMF, OECD, African Development Bank, Asian Development Bank, Inter-American Development Bank and EBRD) have accepted the interdependence of environment and development and have developed policies, practices and procedures aiming at the protection of the environment in the international financing for development.

The question raised at this point is how the IEOs despite their initial economic and developmental purposes have come to take action for the protection of the environment and if they are legitimate to act in the first place.

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<sup>12</sup> However, there is the optimist opinion that sustainable development is a common concern for both developed and LDCs, *see* New Delhi Declaration

<sup>13</sup> "Grow now and clean up later", *Prizzia Ross*, The impact of development and privatization on environmental protection: an international perspective, *Environment, Development and Sustainability*, Vol.4, 2002, pp.315-331.

<sup>14</sup> It is said that if environmental problems were considered a threat to international peace and security, the UN Security Council could take action, since what may concern "a threat to international peace and security" remains in its discretionary power, *Zoller Elisabeth*, Institutional Aspects of International Governance, *Indiana Journal of Global Legal Studies*, Vol.3, 1995, pp.121-131

### 3.1. From Stockholm to Johannesburg

The Stockholm Declaration of 1972 invites states to ensure that international organizations will play a coordinated, efficient and dynamic role for the protection and improvement of the environment. Although there is not a more specific reference to the IEOs in the Stockholm Declaration, the IEOs started even before the 70s to acknowledge the interdependence between environment and development<sup>15</sup> and to propose solutions and new policies dealing with the environmental degradation.

In the Stockholm Declaration the economic, technological and environmental interdependence between North and South was recognized. In addition, it was stated that the development process of both the developed and less developed countries depends on the sustainable management of global natural resources. The Stockholm Conference was a great success considering the fact that some of the principles set there are nowadays considered international customary law by a lot of authors<sup>16</sup>. However, it failed to adopt binding documents and create *ius cogens*.

Twenty years later, in the Rio Conference, the significant role of the IEOs in the support of sustainable development was declared. Before that, in the Brundtland Report was stated that the IEOs should aim at the protection of the environment and the achievement of sustainable development and they should also be accountable for the ecologic and economic feasibility of their development projects<sup>17</sup>. These statements were reaffirmed by the UN General Assembly<sup>18</sup>, who invited the organs, the organizations and the programs of the UN<sup>19</sup>, including multilateral development

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<sup>15</sup> For instance the World Bank released a series of reports and staff guidelines, i.e. «The World Bank and the World Environment», The World Bank Group, September 1971

<sup>16</sup> Such as Principle 21 according to which states have the sovereign right to exploit their natural resources as well as the responsibility of ensuring that their actions shall provoke no harm to the environment of the neighbor countries and to the environment outside national jurisdiction.

<sup>17</sup> World Commission on Environment and Development, Our common future (The Brundtland Report), Oxford University Press, New York, 1987, p.312

<sup>18</sup> A/RES/42/187, 11 December 1987

<sup>19</sup> Art.8

and economic organizations<sup>20</sup> to commit themselves to the promotion of sustainable development.

The Article 4 of the Rio Declaration (principle of integration of environmental concerns in the development procedure) is very important to the examination of the IEOs' legitimacy to promote sustainable development. Although the Rio Declaration and Agenda 21 are non binding documents, they reflect the will of the greatest part of the international community and thus, they are documents of strong political commitment, a form of international consensus, which cannot be ignored by the IEOs.

Agenda 21 includes several specific provisions about the role of the IEOs in the support and promotion of sustainable development. In par.8.2 it is stated that the cooperation between states and international development organizations (World Bank, UNEP, UNDP) for the integration of environmental concerns in the development decision-making is necessary. The same way the role of the IEOs is considered to be very important<sup>21</sup> in promoting the compliance with the relevant regulation, as well as in introducing and implementing new market tools and mechanisms in national environmental policies<sup>22</sup>.

The Chapter 38 of Agenda 21 underlines the mandate to the IEOs to integrate the goal of sustainable development in their development policies. First of all, they shall support the actions and commitments of the national governments in the implementation of Agenda 21, and cooperate with the UN in the quest of economic resources<sup>23</sup>. The UN organs shall cooperate with the IEOs and multilateral development banks (especially the World Bank)<sup>24</sup>. The regional multilateral development banks and the regional IEOs are invited to incorporate the goal of sustainable development in their policies<sup>25</sup>. Finally, in Chapter 33, the multilateral development banks and funds are invited to contribute in the financing of Agenda's 21 goals.

The Rio documents and the concept of sustainable development constitute the legal base of the IEOs' action concerning the environment. Although, as already

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<sup>20</sup> Art. 9

<sup>21</sup> Agenda 21, 8.21

<sup>22</sup> Agenda 21, 8.35

<sup>23</sup> Agenda 21, 38.1, 38.6, 38.8

<sup>24</sup> Agenda 21, 38.23, 38.28

<sup>25</sup> Agenda 21, 38.29, 38.30, 38.31

mentioned, both the Rio Declaration and Agenda 21 are non binding documents from the point of international law, they express the will of the international community to take action for environmental protection and in addition, they define the concept of sustainable development and underline the necessity of international cooperation with the IEOs and the private sector.

The concept of sustainable development, even though it does not (yet) constitute – according to the sovereign legal theory – a legal principle of international law, it does constitute the legal base for the sign of lots of binding international agreements and conventions in the field of environmental law. The international community reaffirmed its commitment to the concept of sustainable development in the Johannesburg documents<sup>26</sup>, where the important role of the IEOs<sup>27</sup> and the private sector is repeated. Moreover, the four regional multilateral development banks<sup>28</sup> confirmed their commitment to the promotion of sustainable development<sup>29</sup>.

To sum up, the integration of the concept of sustainable development in the financing activities of the IEOs could be regarded as their answer to both the environmental challenges and the invitation by the international community for development which will satisfy the current needs without putting in danger the ability of future generations to satisfy their needs<sup>30</sup>. The IEOs, adopting the concept of sustainable development, act according to the international evolutions and the will of the international community, as new principles arise claiming their status in international law.

### **3.2. Expansion of the IEOs' mandate**

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<sup>26</sup> The Johannesburg Declaration on Sustainable Development, 4/9/2002, art.1

<sup>27</sup> Plan of Implementation of the World Summit on Sustainable Development, 2002, par. 151, 154. See also in 1997, Programme for the Further Implementation of Agenda 21, Adopted by the Special Session of the General Assembly, June 1997, A/RES/S-19/2, par.81, where multilateral development banks are invited to support investments in LDCs in a way which economic growth, social development and environmental protection are equally promoted.

<sup>28</sup> European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank, African Development Bank

<sup>29</sup> *Peeters Herwig*, Sustainable Development and the Role of the Financial World, Environment, Development and Sustainability, Vol.5, 2003, pp.197-230

<sup>30</sup> Brundtland Report

The IEOs are established according to the states' will, and if we accept that governance is about setting priorities and adopting policies, rules and other mechanisms for the achievement of these priorities, then the IEOs exercise governance, particularly in issues of common (between states) interest, such as the developmental and economic. In addition, states entrust the IEOs with the development of new policies and management of issues, which may have not been created or predicted at the time of the IEO's establishment.

Thus, the establishment of an IEO depends on the states' will, which seek after the achievement of certain goals. After the IEO's establishment agreement is put into effect, the IEO obtains firstly, legal personality independent from that of the state members and secondly, independent will to achieve its purposes. This means that the IEO as a subject of international law and within its legal mandate according to its establishment agreement is capable of using every mean in order to achieve its purposes, such as to design policies, to make agreements, to participate as a member in another international organization, to establish a new international organization<sup>31</sup>, to raise claims against member or non member states for breaking international law etc. At the same time, the legal personality of an IEO presumes its liability for illegal actions or for failing conventional obligations as well as its commitment to the general rules of international law. The IEO's function depends on the powers it has according to the establishment agreement, as they have afterwards been defined and implemented by the IEO and the member states.

The question raised at that point is whether the purposes described in the IEO's establishment agreement are exhaustive or the IEOs may expand them if new circumstances make it necessary. This is very important since all the IEOs examined here do not include in their articles of agreement specific reference to the promotion of sustainable development or the protection of the environment in general<sup>32</sup>.

In the international organizations theory the principle of implied powers is generally accepted<sup>33</sup>, according to which the aims and powers of an IO in its establishment agreement cannot be exhaustive. Thus, the IO is able to extend its

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<sup>31</sup> For instance UN and UNCTAD

<sup>32</sup> Except for the EBRD, of which the Articles of Agreement include the aim of promoting sustainable development, Art.2 par.1 (vii)

<sup>33</sup> *Shihata F.I.Ibrahim*, *The World Bank in a Changing World, Selected Essays*, Compiled and Edited by Franziska Tschofen and Antonio R.Parra, Martinus Nijhoff Publishers, 1991, p.62

powers in issues which, despite of not being included in the establishment agreement, are absolutely necessary for the achievement of its purposes. This principle is based on the strong theoretical view that the IOs as independent legal personalities shall promote the interests of the “community” and shall not just reflect states’ interests. On the contrary, IOs constitute, or at least are heading to be, new non-state actors in international governance, that shall help in the promotion of international cooperation.

The abovementioned IEOs<sup>34</sup> have started step-by-step to integrate the concept of sustainable development in their financing procedures. Regarding the IEOs’ exercise of governance this expansion of their functions in order to include the protection of the environment, even though it is not included in their establishment agreements, was absolutely necessary, since their development actions affected and continue to affect the natural environment. The issue of the transboundary impacts of the IEOs’ development projects made the adoption of environmental policies even more necessary.

The problem starts from the fact that the IEOs according to their establishment agreements shall not be influenced by political considerations when deciding to give loans to a less development country but base their decisions on economic considerations only<sup>35</sup>. In addition they shall not interfere in the political affairs of the

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<sup>34</sup> With more or less success. The IMF certainly falls short regarding the plan and implementation of environmental policies compared to these of the multilateral development banks and the OECD. Especially the multilateral development banks have come a long way until the integration of the environmental protection into their purposes. A few years after the Stockholm Conference a study was elaborated concerning the environmental performance of the multilateral development banks with disappointing results. At that time the banks had serious shortages in the design of development projects, especially regarding the procedures of environmental impact assessments, the setting of criteria for EIA and the lack of specialized scientific staff, see *Stein R., Johnson B., Banking on the biosphere? Environmental procedures and practices of nine multilateral development agencies*, Lexington Bks, 1979. The pressures imposed on them resulted in the adoption in 1980 of the Declaration on Environmental Policies and Procedures Relating to Economic Development by the World Bank, the regional banks, the EC Commission, the UNEP, the UNDP and the American States Organization. The Declaration aimed at the improvement of the environmental parameter in international financing for development.

<sup>35</sup> Articles III, Section 5(b) and IV Section 10 of the International Bank for Reconstruction and Development Articles of Agreement, Article III, Section 9 of the International Finance Corporation Articles of Agreement, Article V Section 6 of the International Development Association Articles of Agreement, Article IV, Section 3(b) of the International Monetary Fund Articles of Agreement, Article

borrower countries. Could environmental protection be a political consideration and interference in the political affairs of the borrower countries?

The whole issue of the IEOs' expansion of mandate is related to their definition as economic (which is how they are usually defined in their establishment agreements) or developmental organizations. If we accept the developmental character of the IEOs, the integration of environmental concerns and other non economic factors is absolutely necessary in order to achieve the broader goal of development. We cannot ignore the fact that the other principles related to the concept of sustainable development and preconditions to it, such as the rule of law, public participation in decision making, income distribution, government accountability, public's access to information, women's and indigenous peoples' participation in development could be considered as interference in political affairs, because at some point they reflect the western model of democratic governance. For instance, according to the abovementioned New Delhi Declaration the achievement of sustainable development requires the implementation of the international charter of human rights.

Taking into consideration non economic factors in project financing which, however, have economic impacts, is considered a matter of the organization's sound practice<sup>36</sup>. The expansion of the IEOs' mandate and the integration of sustainable

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38 of the African Development Bank Articles of Agreement, Article 36 of the Asian Development Bank Articles of Agreement. The prohibition of taking into account political considerations is based on the principles of equity between states and of not interference in their internal affairs, as declared in Article 2. par. 1 and 7 of the UN Charter. On the contrary, the EBRD according to its constitutional purposes shall facilitate the former communist countries to become from central planning economies liberal economies and apply democracy, pluralism, and market economy, Article 1 of the Agreement Establishing the European Bank for Reconstruction and Development

<sup>36</sup> *Handl Günther*, *Multilateral Development Banking, Environmental Principles and Concepts reflecting General International Law and Public Policy*, International Environmental Law and Policy Series, Asian Development Bank, Kluwer Law International, 2001, p.15-16. The author refers to the World Bank's and Asian Development Bank's practices, which take into account non economic factors and base their decisions on them. In addition, the author quotes Peter Sand (p.19-21) saying that multilateral development banks have international legal obligation (and not only ethical or political) to protect the environment, since they participate in multilateral regimes, such as the Montreal Fund and the Global Environment Facility. The World Bank as the implementing agency of the Montreal Fund cannot finance projects which could be opposite to the goals of the conventions that the Bank is officially committed to serve. The same way, the regional banks as implementing agencies of projects

development do not constitute interference in the political affairs of the borrower countries but an economic factor that affects the project. The due implementation and the feasibility of the project depend on the sound environmental management both during the design and implementation phase.

In conclusion, the expansion of the mandate and functions of the IEOs and the integration of sustainable development cannot constitute interference in the political affairs of the borrower countries. The definition of “political affairs” is affected by the evolution and development of international law, whether we talk about new principles or subsequent practice. What really matters is that the IEOs by expanding their functions and powers have de facto accepted the responsibility of their implementation.

#### **4. The methodological approach**

Most projects financed by the IEOs affect the environment in a lot of ways. Thus, the environment as the endangered good in every financing agreement needs special attention and protection. All the IEOs have more or less developed mechanisms to ensure environmental protection, which they mainstream in several phases of the financing. The congruity or not of these mechanisms, as well as the comparison of their effectiveness, need to be examined with a certain methodological approach.

The main questions regarding the environmental parameter in the IEOs’ financing of development are:

1. Which is the level of integration of sustainable development in the IEOs’ financing policies?
2. Which of the different IEOs’ policies are the most effective for the promotion of sustainable development and environmental protection?
3. Are there any similarities or differences between these policies?

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financed by the GEF are legally bound to harmonize their financing criteria to the binding principles of the Convention on Biological Diversity, the Framework Convention on Climate Change and the Montreal Protocol on Substances That Deplete the Ozone Layer, even if the borrower country is not a party to these conventions and will not make use of the funds by the GEF or the Montreal Protocol Fund.

5. Are the principles of international environmental law and the mandates of the three world conferences being promoted?

Several methodological tools have been elaborated, in order to examine the environmental performance and good governance of states and decide if they are eligible for financing. Among them<sup>37</sup> the World Bank Governance Indicators<sup>38</sup> and the Environmental Indicators of the OECD are the most important<sup>39</sup>. This research proposes the use of relevant criteria for the examination of the IEOs' environmental performance and integration of sustainable development in the financing procedure.

The criteria of the proposed methodological approach are to a great extent based on the World Bank's governance criteria and the OECD's environmental indicators, including new criteria elaborated during the research. The capacity indicators are modulated in order to be applicable to the IEOs. The proposed methodological approach has the obvious advantage of using generally accepted criteria, which are based on international standards and reflect a level of states' consensus.

The few evaluations of the IEOs, that have been elaborated, usually focus in their responsibility and accountability and not in their environmental performance. Of the most important are the report of the NGO "One World Trust"<sup>40</sup> and the report of the UK Government Department for International Development<sup>41</sup>. The latter focuses in the preconditions which make the achievement of the results possible. Both these

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<sup>37</sup> See also United Nations Division for Sustainable Development, *Indicators of Sustainable Development: Proposals for a Way Forward*, Discussion Paper Prepared under a Consulting Agreement on behalf of the UN Division for Sustainable Development by László Pintér, Peter Hardi and Peter Bartelmus, 2005

<sup>38</sup> [www.worldbank.org/wbi/governance/govdata/](http://www.worldbank.org/wbi/governance/govdata/)

<sup>39</sup> A) OECD Environmental Indicators, *Development, Measurement and Use*, Reference Paper, 2003, and B) OECD *Key Environmental Indicators*, OECD Environment Directorate, Paris, France, 2005

<sup>40</sup> Blagescu Monica and Lloyd Robert with Dombrowski Kathrin, Kadosh Ravit and Oatham Jeffrey, 2006 Global Accountability Report, [www.oneworldtrust.org](http://www.oneworldtrust.org)

<sup>41</sup> A) Scott Alison, *The "MEFF" Methodology: A Review of DFID's Multilateral Effectiveness Framework*, UK Government Department for International Development, March 16, 2005, B) Scott Alison, *DFID's Assessment of Multilateral Organizational Effectiveness: An overview of results*, UK Government Department for International Development, June 1, 2005, [www.dfid.gov.uk](http://www.dfid.gov.uk).

researches do not deal with the IEOs examined here and the ones examined are examined from a totally different view.

The purpose of our research is not data collecting and processing but a) to make useful conclusions -according to the suggested criteria and international bibliography- on the ways and the effectiveness of the IEOs' governance relating to environmental issues, b) to promote a fruitful debate about new methods of the IEOs' evaluation regarding the promotion of sustainable development and their compliance to the commitments they have undertaken. Thus, the suggested criteria shall be seen as indexes of the challenges relating to the integration of the environmental parameter in international financing of development. The level of harmonization between the IEOs' policies and practices can result in suggestions for a common approach in environmental issues by the IEOs and the design of a common plan of action.

The identification of the critical issues for the development of the methodological framework is a hard and risky task for the researcher. It demands, first of all, an investigation of different parameters, policies, tools and principles. Moreover, it is very important to examine for every IEO as many as possible parameters, in order to make safe conclusions on its environmental performance. Thus, all the questions are equally important to the research.

To ensure the homogeneity of the policies examined, it was necessary to ensure homogeneity of the organizations. Thus, the most important multilateral development banks were chosen along with the IMF (as one of the Bretton Woods system's organization). The OECD was chosen for being one of the most important organizations which exercises development policies and has a great experience with the private sector, especially multinational corporations.

The questions included in our methodological framework try to offer a detailed analysis on the integration of environmental concerns in international financing of development, on the way that the concept of sustainable development is supported during the finance of a project and the sign of loan agreements and in which phases of the project, on enforcement and compliance mechanisms, and on the organization's accountability and liability. Lastly, on the capacity of the organization in a number of parameters relating to environmental protection in development financing and on the way that this capacity is transformed into regulations, principles, policies and good practices which support and promote the sustainable development of the LDCs.

## **5. The analytical framework**

### **5.1. Technical capacity**

As a starting point we focus our research on the initial conditions of each international organization which consist its technical capacity to face the environmental challenge. By saying technical capacity we mean the infrastructure, and in specific, the staff, the administrations and offices that are available for environmental issues. Moreover, the economic data (the budget) that are referring to the financing of development in less developed countries and countries in transition. The geographical distribution of the IEO's activities is also under research at this stage.

This part of the research does not have to be exhaustive, as the relative data for the sectoral and thematic organization of the IEOs have already been commented to a large extent by a lot of authors.

### **5.2 Governance capacity**

Even with the best intentions from the part of the organization, the monitoring of the environmental – and not only – parameters it has developed is a very difficult task. The main obstacle is the control of corruption, which is a frequent phenomenon in the developing countries and leads to the waste of available funds, the jostle of international rules and standards, the avoidance of environmental controls and the delaying of the financed projects. Corruption often constitutes a greater problem than the lack of infrastructures, know-how and trained staff. The severity of the problem was identified at European level too, and it was one of the main points of criticism and debate with the countries in transition before the enlargement<sup>42</sup>.

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<sup>42</sup> *Anderson H.James, Gray W.Cheryl*, Anticorruption in Transition 3, Who is succeeding and why?, The World Bank, 2006. The researchers have noted a decrease on the levels of corruption in European and central Asian countries in the last three years, according to data collected by more than 20000 enterprises during the EBRD-World Bank Business Environment and Enterprise Performance Survey (BEEPS) initiative. Unfortunately, as far as the environment and environmental controls are concerned,

The elimination of corruption is an issue of high importance for the protection of the environment. It is self-explanatory that in an environment of corruption and bribery, it is difficult to flourish a legal and institutional framework of environmental controls and a merit and transparent system of environmental protection during the project finance.

Critical figures for the effectiveness or not of the governance procedures are for the current research the following:

1. Control of corruption. Rules, mechanisms and policies of the organization for the elimination of corruption in the borrower countries.
2. Effectiveness of its financing for development activities. Quality of the provided services and policies, capability of the organization to formulate suitable policies and rules. Challenging of bureaucracy. Decentralization of services. Credibility as far as its commitments for environmental protection are concerned.
3. Accountability. Stakeholders' participation (local communities, NGO, private sector, government authorities). Promotion of multilevel governance.
4. Mainstreaming of environmental concerns in the whole spectrum of development activities and policy-making for the protection of the environment.

### **5.3. Regulatory capacity**

The regulatory capacity constitutes the main level of analysis and can be distinguished in two separate categories, firstly in the general policies and regulations of the organization always relatively to the protection of the environment in the financing of development and secondly, in the specific policies and regulations it follows during the project finance and in every phase of it.

In particular, the subjects that we will address at this point are the following:

- A. General regulations and policies:

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not only there doesn't seem to be any improvement, but the researchers noted degradation.  
[www.worldbank/eca/governance](http://www.worldbank/eca/governance).

1. The multilateral environmental treaties and agreements, binding and non binding, that affect the formulation of the organization's policies and regulations.
2. The main policies, regulations and initiatives for the promotion of sustainable development. Partnerships with other international organizations and the private sector.
3. The mechanisms developed by the organization for the enforcement and compliance of the borrower countries to its conditions.

B.Management of the projects:

1. The organization's environmental strategy for project finance.
2. The phases of the project in which environmental issues are involved.
3. The mechanisms and policies for the integration of environmental issues in each project phase.
4. The mechanisms for project monitoring.
5. The enforcement and compliance mechanisms.

#### **5.4. Social capacity**

Equally important criterion for the study of the integration of the environmental parameter in the financing of development is the dissemination of the knowledge to the public and other stakeholders (NGOs, local communities, individuals), their participation in the development procedure, their access to information on the environmental issues and taking into consideration the local needs, particularities and priorities during the organization's financing activities.

The issues that arise here can be summarized in the following questions:

1. The level of the public's information (both inside and outside of the funded area) on the financing activities of the organization and in particular on the positive or negative implications that will arise for the environment.
2. The level of stakeholders' information on the rules and mechanisms available by the organization for the confrontation of complaints and reactions referring to its activities.
3. The prediction for the integration of the local knowledge and experience in the design of the organization's development activities.

4. The protection of local communities from undesirable results that will follow the implementation of a project.

## **5.5. Evaluation**

The evaluation as part of the methodology framework consists the strongest link between the different analysis levels. The evaluation concerns on one hand the horizontal comparison of the results of the analysis between the international economic organizations and on the other hand the vertical -inside each organization- comparison between the targets placed and the level of their implementation.

More analytically, the evaluation refers to the promotion by the organization or not of the international environmental conventions and international environmental law and on the contribution or not to the formulation of the national environmental law of the LDCs. Lastly, the evaluation is about the response of the organization to the demands of the three Global Conferences for Environment and Development and about the promotion of sustainable development.

## **6. Conclusions**

In this paper, we explored the IEOs' legitimacy to integrate the concept of sustainable development and the protection of the environment in their financing activities. We also suggested a methodological framework for the research of the environmental parameter in the IEOs' development activities. As already mentioned this paper is part of an ongoing research which wishes to examine the similarities and controversies in the IEOs' environmental policies and regulations. In addition, it wishes to explore the possibility of the IEOs' internal decisions and policies to formulate rules of international law or international practice which could be binding for member states. Of course these decisions, regulations and policies are binding for the IEO which develops them. Part of the theory denies any binding nature of these decisions and policies, while others support that they consist international law, since they are based on the establishment agreement of the IEO. Our project aims to identify the extent to which the IEOs' environmental policies and practices could constitute international practice or soft law or customary international law.

There is no doubt that the establishment of the IEOs itself shows in the most obvious way that the will of the states is the precondition for the establishment of any legal regime and that the development and evolution of international customary and conventional law depends mainly on that will. States develop, adopt and implement international legal rules and principles and allow the participation of non-state actors in the international law production. However, it cannot be ignored that the IEOs develop and promote new practices and policies in the environmental field through their financing activities in the LDCs and part of the theory supports that new rules of environmental law are being developed this way. It has also been said<sup>43</sup> that the IEOs affect the development of international environmental law through the integration of their environmental policies and practices into the state practices, which could become international customary law. Once again this approach confirms the sovereign theory that customary international law can be developed only through state practice.

However, it is worth saying that the IEOs do not just apply international environmental law. They offer a forum of debate and cooperation in the environmental field; they accept and disseminate information and facilitate information exchange; they often operate as monitoring mechanisms; and last but not least they have an important role to play in the development and evolution of international environmental law.

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<sup>43</sup> *Ouano Ely Anthony R.*, The role of Multilateral Financial Institutions in development of International Environmental Laws, *Asia Pacific Journal of Environmental Law*, Vol.7, Iss.1, 2002, pp.75-87.