


**World Bank Governance Conditionality, Sovereignty of Borrowing States
and Effectiveness of Investment Loans: An Analysis of the Chad-IBRD
Loan Agreement**

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**Research Paper submitted in partial fulfilment of the requirements for the LLM Degree
in International Trade and Investment Law (Mode I), Faculty of Law,
The University of the Western Cape.**

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31st May 2007

KEY WORDS

Benchmarks

Conditionalities

Enhanced adjustment facilities

Governance

Governance Conditionality

Inspection Panel

International loan Agreement

Majoritarianism

Ownership

Prior conditions

Sectoral adjustment programs

Selectivity

Sovereignty

Structural adjustment facilities

Structural adjustment programs

Triggers

World Bank



ABSTRACT

Thirty years after it has achieved its independence, the Republic of Chad, which has faced a long political instability, decided to exploit its oil resources in order to achieve its development objectives. Owing to the difficulties encountered in mobilizing financial resources for the realization of the project, the Government obtained from the International Bank for Reconstruction and Development (IBRD) a loan US\$39.5 millions.

The loan Agreement, signed between the two parties on the 29th of March 2001 included a provision referring to the Petroleum Revenue Management Program (PRMP), described in Schedule 5 of the Agreement. This Petroleum Revenue Management Program imposed a number of obligations, related to the actions to be undertaken by the Chadian Government prior to the release of the funds by the Bank, and to the modalities to be followed in the course of the management of the oil revenues. These obligations are also known as governance conditionalities.

This thesis raises the issues of the legitimacy of the Bank's Governance conditionality, its impact on both the sovereignty of the borrower to freely determine the use of its resources and the effectiveness of the loan.

It argues that the definition of the Bank's governance agenda do not necessarily consider the preoccupations of the borrowers. This thesis also argues that the implementation of loan including a governance conditionality component does consider the borrower autonomy to amend the Bank's reforms policies so as to adapt them to its preoccupations and new changes. This situation, which is aggravated by the lack of an independent and strong monitoring and dispute settlement mechanism in the Bank's model, affects the effectiveness of the loan.

This thesis ends on recommendations aiming at enhancing the effectiveness of the Bank's lending programs while safeguarding the sovereignty of borrower. These are the adoption of principles applicable to the Bank's lending activities, the transformation of the inspection panel into an independent monitoring and dispute settlement mechanism and the adoption of a new mode of representation of borrowing countries within the World Bank's governance bodies.

DECLARATION

I declare that *World Bank Governance Conditionality, Sovereignty of Borrowing States and Effectiveness of Investment Loans: An Analysis of the Chad-IBRD Loan Agreement* is my own work, that it has not been submitted before for any degree or examination in any other University, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.



Jean Bertrand Azapmo

May 2007

Signed.....

ACKNOWLEDGEMENTS

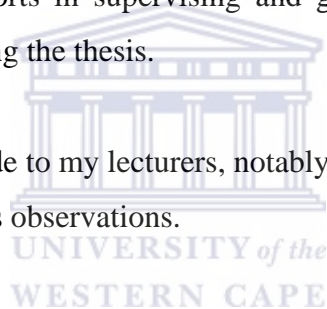
First and foremost, I would like to thank God for all He makes in my life.

Secondly, I would like to thank the World Bank which sponsors this LLM Program, for affording me a chance at my dreams through this scholarship.

I would also like express my gratitude to the Cameroonian Ministry of External Relations, my employer, for authorizing my participation in this program.

Specials thanks go Adv. Ms Riekie Wandrag my Supervisor, and Dr Jim Mathis my Co-Supervisor, for their tireless efforts in supervising and guiding me, from the time of the research proposal to accomplishing the thesis.

I would like to extend my gratitude to my lecturers, notably Ms Patricia Lenaghan for her support and Robert Wilson for his observations.



Thanks to Enga Kameni, Mbong Madgeline and Jimcall Pfumuroze for their comments.

To my classmates at the University of the Western Cape, you will always be remembered.

My sincere gratitude goes to my mother Louise Menatio for her support throughout my studies.

LIST OF ABBREVIATIONS AND ACRONYMS

| | |
|------------|--|
| Art: | Article |
| CAEMC: | Central African Economic and Monetary Community |
| Franc CFA: | Franc de la Communauté Financière Africaine |
| G24: | Informal Working Group within the World Bank constituted of 24 countries from the three regions of Africa, Latin America and the Caribbean, and Asia |
| GDP: | Gross Domestic Product |
| HDR: | Human Development Report |
| IAG: | International Advisory Group |
| IBRD | International Bank for Reconstruction and Development |
| ICP: | IDA Country's Performance |
| ICSID: | International Convention for the Settlement of Investment Dispute |
| IFIs: | International Financial Institutions |
| IMF: | International Monetary Fund |
| NEPAD | New Partnership for African Development |
| NGOs | Non Governmental Organizations |
| Parag | Paragraph |
| PRMP | Petroleum Revenue Management Program |
| Sec | Section |
| UN | United Nations |
| UNDP | United Nations Development Program |
| WTO | World Trade Organization |

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CHAPTER 1 GENERAL INTRODUCTION

1.1 BACKGROUND

The severe debt crisis which has faced most developing countries since the early 1980's has led a number of international financial institutions to review their strategies. New programs were launched including structural adjustment programs, sectoral adjustment programs, structural adjustment facilities and enhanced adjustment facilities.¹

Despite their originality, these programs did not lead to the expected results and were even counterproductive in some countries.² It therefore became urgent to develop new policies, also known as post Washington Consensus reforms.³

The World Bank⁴ came up with a new ingredient named governance conditionality.⁵ Defined by the Bank as the '*manner, in which authority is exercised in the management of a country's economic and social resources for development*',⁶ governance conditionality encompasses the capacity of governments to design, formulate and implement policies.

However, the new approach also appeared to be inappropriate as solution to the problem of the ineffectiveness of international assistance.⁷ One of the explanations of this failure was that the new programs severely undermined the autonomy and sovereignty of recipient

¹ These programs culminated at the time of the wide consensus amongst the Washington based-institutions (International Monetary Fund, the World Bank and the US Treasury Department) on a number of necessary policy reforms to be implemented by developing countries to overcome their difficulties: fiscal discipline, redirection of public expenditure priorities towards health, education and infrastructure, tax reform, unified/competitive exchange rate, secure property rights, deregulation, trade liberalization, privatization, promoting foreign direct investment and finance liberalization, from <www.en.wikipedia.org/wiki/Washington_Consensus> [accessed on 23 September 2006]

² Ahrens (2002) 27.

³ Clayton (1994) 36.

⁴ The use of the terms World Bank or the Bank throughout this paper refers to the International Bank for Reconstruction and Development (IBRD), one of the five institutions of the World Bank Group which granted an investment loan to Chad to finance the construction of its pipeline project.

⁵ The IMF has adopted a similar approach with what is known as structural conditionality.

⁶ The World Bank (1994) 58 quoted by Schlemmer-Schulte, S (2001) 697 and Santiso, C (2002) 4.

⁷ A study by a former Bank vice president (Willi Wapenhans) found that a high proportion of World Bank projects (37.5% in 1991) did not satisfy minimum economic targets, and were not meeting the Bank's own criteria. See World Bank (1992). Effectiveness implementation: Key to development impact (The Wapenhans Report). Washington, D.C; see also the Meltzer Report available at <http://www.house.gov/jec/imf/meltzer.htm> [accessed on March 27th 2007]

countries. It became clear that only reform programs fully owned by Borrowers are most likely to be effective.⁸ In other words, using order and command as a modality of regulating and promoting good governance was most likely to be inefficient and counterproductive.

1.2 STATEMENT OF THE PROBLEM

The research question which arises from the above dilemma is formulated as follow: How to balance the World Bank's governance agenda and the sovereignty of borrowing countries, so as to improve the effectiveness of the Bank's lending programs?

1.3 SIGNIFICANCE AND OBJECTIVES OF THE RESEARCH

1.3.1 SIGNIFICANCE

Two considerations are attached to this research:

First, although the World Bank is a development institution, it is driven in its lending operations by the need to overcome the moral hazard problem (coupled with that of risk) that exists in a relationship between an investor (the Principal) and the manager (Agent).⁹ Driven by the principal-agent model,¹⁰ the Bank is inclined to request specific commitments from borrowers so as to know exactly how the funds released will be utilized.

Secondly, Art III, sec. 5(b) of the World Bank's Articles of Agreement prevents it from political or other non-economic influences or consideration in its activities.¹¹ Therefore, the issue is whether the Bank can resort to governance as a conditionality of its lending programs

⁸ Chandler (2005) 22sqg, WOOD (2005) 9.

⁹ One of the fundamental features of this model is the asymmetry of information between the two actors, which creates an imbalance in the bargaining of power in the course of the negotiation process. See Richard (2004) from <www.bath.ac.uk/management/research/pdf/2004-08.pdf> [accessed on 27 October 2006].

¹⁰ This model provides a solution to overcome the moral hazard problem and suggests that the manager should get not only all the necessary information, but also to obtain express commitment from the investor, so as to be in a good position when it decides to grant a loan. In the case of World Bank lending operations, the incentives take the form of preconditions, Benchmarks or Triggers.

¹¹ Art III, sec. 5(b) of the Article of Agreements of the IBRD provides: '*The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations.*' See also art IV, sec 10; art. V, sec. 5(c) <siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf> [accessed on 23 September 2006]. See also Brucculeri (2004) 69.

without violating its own Articles of Agreement as well as some outstanding principles of international law.¹²

1.3.2 OBJECTIVES OF THE RESEARCH

The general objective of this paper is to come up with a model reconciling the Bank's concern about the effectiveness of its lending operations and the sovereignty of the borrower over its economic programs.

Specific objectives attached to this research include:

- To present the evolution and current trend of the World Bank's approach to governance conditionality, and its implementation in the case of the investment loan agreement between Chad and the International Bank for Reconstruction and Development (IBRD);¹³
- To examine the legal implications of governance conditionality on the sovereignty of the borrower and the hierarchy of international norms;
- To critically analyze the proposals made so far to reform the Bank's governance approach;
- To put forward some recommendations to Bank's governance agenda and the sovereignty of borrowers.

The objectives having been presented, the next point to develop is the definition of the main concepts and the scope of the study.¹⁴

¹² Attention will be paid to the principles of the sovereignty of State and that of the hierarchy among norms of international law.

¹³ Throughout this paper, this Agreement will be referred to as the Chad-IBRD loan Agreement.

¹⁴ One shall however admit that there is no unanimity about the definition and content of conditionality, nor that of governance Checkel (2000) from <www.arena.uio.no/publications/working-papers2000/papers/00_18.xml> [accessed on 17 March 2007].

1.4 DEFINITIONS AND SCOPE OF THE STUDY

1.4.1 DEFINITIONS

A International Loan Agreement

It is a contractual arrangement between a minimum of two actors of international relations, through which one party (Lender) undertakes to allow the use of money under the obligation for the other party (Borrower) to return it on specified terms at a future date.¹⁵

B Conditionalities

According to the World Bank, the term conditionalities refers to the policy reforms that a borrowing Government is required to undertake in exchange of specified amounts of assistance.¹⁶

C Governance

Despite the lack of unity over the definition of the concept governance,¹⁷ it is described by the Bank as the *manner in which authority is exercised in the management of a country's economic and social resources for development.*¹⁸

¹⁵ See Qureshi (1999) 195, Head (1996) 214. This conception of a loan is well established in the jurisprudence of the ICJ, *Certain Norwegian Loans*, Judgment of 6 July 1957. Summary from <www.icj-cij.org/icjwww/idocuments/issummaries/ifnsummary570706.htm> [accessed on 23 March 2007].

¹⁶ World Bank (2005) iii.

¹⁷ As Wood (2005) 4 rightly suggested, the concept of governance is relatively new in international development and its definition vary widely among development actors. For the World Bank Institute '*Governance is defined as the exercise of authority through formal and informal traditions and institutions for the common good, thus encompassing: (1) the process of selecting, monitoring, and replacing governments; (2) the capacity to formulate and implement sound policies and deliver public services, and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them*' Kaufman (2003) 5 available at http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/rethink_gov_stanford.pdf [accessed 27 September 2006]. For the UNDP (2006) 35, '*any definition of governance must relate government to the society as a whole, in terms of its quality and functions. Governance comprises the traditions, institutions and processes that determine how power is exercised, how citizens acquire a voice and how decisions are made on issues of public concern.*' The Institute on Governance (2006) 4 defines it as '*the process whereby societies or organizations make important decisions, determine whom they involve and how they render account*'.

¹⁸ The World Bank (1994) 58 quoted by Schlemmer-Schulte Opcit 697 and Santiso Opcit 4.

D Governance Conditionality

Chakravarthi Raghavan defines it as the practice developed in the earlier 1990s by International Financial Institutions and which consists in linking aid to political and economic policy reforms.¹⁹

E Sovereignty

As a *distinguishing feature of modern politics*,²⁰ sovereignty is the supremacy right that a State is recognized in International Law over its domestic and external affairs, without any foreign interference. This includes *inter allia* the right to determine its own policies and development course.²¹

1.4.2 SCOPE OF THE STUDY

This paper focuses mainly on the Chad-IBRD Investment Loan Agreement for the construction of the Chad pipeline project. It has been chosen because it is one of the most important projects funded by the World Bank in Sub-Saharan Africa over the last decade.²²

Governance conditionality in this research refers to the reforms included in the Petroleum Revenue Management Program, described in Schedule 5 of the Chad-IBRD Loan Agreement, and implemented over the period March 29, 2000, (date of the conclusion of the Loan Agreement) July 13, 2006 (date to which a new Memorandum of Understanding was signed between the two parties).

The next step is the presentation of the research methodology and the theoretical framework.

¹⁹ Chakravarthi Raghavan (1997) <http://www.sunsonline.org/trade/areas/finance/03240097.htm> [accessed on September 27th 2006]

²⁰ Jackson (1999) 1.

²¹ Tsai (2000) 1318; Athena (2000) 53.

²² Bank Information Centre, BIC discusses Chad oil Pipeline on NPR: Collapse of Bank's "model" project offers lessons and exposes risks to the poor. From www.bicusa.org/en/article/2668.aspx [accessed on 17 October 2006]. Nevertheless, reference to other countries has been necessary to understand and compare the World Bank approach. Cameroon was considered because of the existence of a similar investment loan agreement with the IBRD for the realization of the same pipeline project.

1.5 RESEARCH METHODOLOGY AND THEORETICAL FRAMEWORK

1.5.1 RESEARCH METHODOLOGY

Concerning the collection of data, this research was done by reviewing the literature, from which were derived social artifacts, especially structured data from reports, legal documents, books and journal articles.

Resort was also made to statistics derived from Reports from the World Bank, the UNDP and the Central African Economic and Monetary Community (CAEMC).²³ This paper also looks at the perceptions and views of stakeholders involved in the pipeline project, including Government's officials, NGOs and Monitoring Institutions.²⁴

With regard to the methodological tools of analyzing data, the historical approach was chosen in the first place, because history reveals the evolution and changes within Institutions, and provides a good understanding of past and current behaviors of different actors.

In the second place, the content analysis was used for the documents including the Chad-IBRD loan agreement, some key provisions of both the Bank's Articles of Agreement and the Agreement between the Bank and the United Nations.²⁵

Thirdly the correlation technique was used to appreciate the impact of the use of governance conditionality on the effectiveness of the Chad-IBRD loan agreement.²⁶ Thus, a set of criteria was constructed, based on both the UNDP Human Development Indicators and the Bank's governance indicators derived from the loan agreement.

²³ Preference was given to the Reports issued between 1999 and 2006.

²⁴ The reports of the Inspection Panel, the International Advisory Group, the Oil Control and Monitoring Group were of great importance. See Chapter 4 herein.

²⁵ The content analysis technique was combined with the comparative approach, in order to appreciate the differences in the Bank approach when dealing with different countries of different level of development. Preference was given to Cameroon mainly because of the reason mentioned in the delineation of the scope of the study.

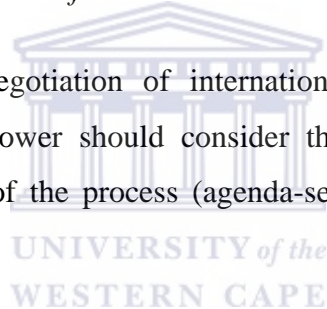
²⁶ Thus, a set of criteria was constructed, based on both the UNDP Human Development Indicators and the Bank's governance indicators derived from the loan agreement.

Finally for the recommendations, the decision tree model was purposely chosen for this is a predictive model aiming at mapping observations about an item to conclusions about the item's target value.²⁷ Henceforth the reform's proposals present a model which is most likely to reach the goal of development pursued by the World Bank, while leaving flexibilities to borrowers.

1.5.2 THEORETICAL FRAMEWORK

The main theory used to address the issues raised in this paper is the game theory.²⁸ This theory considers international negotiations as a game during which each player seeks to maximize its benefits while minimizing the adverse effect of the decisions. Henceforth, for the game to result in a win-win game rather than a zero sum game, it is suggested that international economic and financial negotiations be based on integrative strategies. These strategies include: *'efforts to discover the real nature of the issues, joint research of potential, trading of positions and no ruling out of concessions ab initio.'*²⁹

Applying this theory to the negotiation of international loan agreement leads to the conclusion that lender and borrower should consider the interests of each another, and associate them to all the stage of the process (agenda-setting, adoption of agreement and implementation).



It is therefore assumed that any negotiation of international loan agreement that excludes one of the borrower or during which one of the borrower does not fully participate, or plays little role in the definition and adoption of the reforms attached to the loan will be hardly implemented and therefore will be less effective.

1.6 HYPOTHESIS

Making use of the research methodology and relying on the theory underlined above, the hypothesis of this paper is stated as follow: The setting up process, the nature, and the assessment mechanism of the World Bank's governance conditionality should be reformed in order to balance the sovereignty of the borrower and the concern of the effectiveness of loans.

²⁷From <en.wikipedia.org/wiki/Decision_tree> [accessed on 27 October 2006].

²⁸ Bayne and Woolcock (2003) 33seqq.

²⁹ Ibid 39

In order to test this hypothesis, the following assumptions were made:

- The composition of the World Bank's governance structure and decision making process leading to the definition of the Bank's governance package is detrimental to borrowers;
- The implementation of a loan with a governance conditionality component undermines the borrower sovereignty to freely amend the programs.
- The existing assessment mechanism is fully controlled by the Bank and does not cover the case of dispute settlement.

1.7 CHAPTERS REVIEW.

Chapter 1 of this paper deals with the Introduction. The evolution and legitimacy of the Bank's governance conditionality are traced in Chapter 2. Chapter 3 starts with a historical and socio- economical background of Chad, and focuses mainly on governance conditionality as implemented in the Chad Project. Chapter 4 examines the relative effectiveness of the Chad Project; meanwhile Chapter 5 critically assesses the proposals made for the reform of the Bank's Governance Conditionality. The recommendations aiming at improving the Bank's governance structure, the assessment and dispute settlement mechanism as well as the content of Governance package, are dealt with in Chapter 6. The paper ends up with a conclusion.

CHAPTER 2 EVOLUTION OF THE WORLD BANK GOVERNANCE CONDITIONALITY

2.1 INTRODUCTION

This chapter presents the dynamic of the World Bank's governance conditionality and its operationalization. It goes further to discuss the legitimacy of such a new agenda.

2.2 THE RISE AND SPREAD OF GOVERNANCE CONDITIONALITY IN THE WORLD BANK'S LENDING OPERATIONS.

Although the use of conditionality in the World Bank's lending operations has been debated already since the Bretton Woods conference, its practice is recent, especially in investment loans.³⁰ In the early years of its functioning, the Bank acted like a commercial enterprise and did not favour conditionality in its loans.³¹ Its role was restricted by Art III, sec.1 (a) of its Article of Agreement to finance projects submitted by members.³²

Historically, the use of conditionality in lending operations is traced in the early 1980s after the economic crisis of the end of 1970s, with the introduction of structural adjustment loans and sectoral adjustment loans.³³ However, the new prescriptions did not meet the predictable outcomes, nor did they lead to substantial development in borrowing countries, as highlighted

³⁰ During this conference, the Great Britain delegation lead by Lord John Maynard Keynes favoured a liberal regime of access to the funds of the Bank, meanwhile the US delegation lead by Harry Dexter White shared the view that '*the Fund's resources were to be conserved for the purposes for which the Funds was established [...] in promoting what is considered to be appropriate financial policies*'. At the end, the term conditionality was not expressly included in the original Articles of Agreement. Darrow (2003) 46.

³¹ Development Committee (2006) Strengthening Bank Group engagement on governance and anticorruption <[siteresources.worldbank.org/DEVCOMMINT/Documentation/2104651/DC2006.0017\(E\)-Governance.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/2104651/DC2006.0017(E)-Governance.pdf)> [accessed on 27October 2006].

³² Art III, Sec4 (7) provides an exception to this provision: 'Loans made or guaranteed by the Bank shall, except in special circumstances, be for the purpose of specific projects of reconstruction or development'.

³³ See Shams (2004) 2; Bruculeri (2004) 71 and Shihata (1995) 54. These programs included emphasized the fiscal discipline, redirection of public expenditure priorities towards health, education and infrastructure, tax reform, unified/competitive exchange rate, secure property rights, deregulation, trade liberalization, privatization, promoting foreign direct investment and finance liberalization. Nevertheless, Dreher (2002) 8 suggested that '*in spite of the project nature of most of the Bank's lending operations prior to the 80s, lending was not unconditional. The Bank's conditions were very similar to that of the Fund and covered public sector budget deficits, credit to the private sector, currency devaluation and reduction.*'

by the 1989 World Bank Africa Sub-Sahara Report. This Report identified governance as the *basic issue in the development strategy of the countries that were performing poorly*.³⁴

Following the release of the Report, the Bank's Board of Executive Directors decided to pay closer attention to governance.³⁵ Since then, the concept of governance, which was considered as a taboo within the World Bank's circles, became the new recipes of its lending operations.³⁶

As conditionality of the Bank's loans, governance was applied for the first time in the case of Kenya in 1990,³⁷ and became over the decade a customary feature of most International Financial Institutions lending operations.³⁸ A Bank's study over the period 2000-2005 substantiates this trend: about 54% of conditions and 68% of benchmarks attached to loans were in public governance areas.³⁹ The rise and spread of governance conditionality having been discussed, the next section will deal with its operationalization.

2.3 THE WORLD BANK'S OPERATIONALIZATION OF GOVERNANCE CONDITIONALITY

The Bank Governance reforms' policies focus on the following sectors:⁴⁰

- Public sector expenditure, financial management and procurement,
- Administrative and civil service reform,
- Tax policy and administration,
- Decentralization,
- Rule of Law, legal institutions and judicial reform,
- Accountability and anti-corruption.

³⁴ Schlemmer-Schulte (2001) 694.

³⁵ Ibid, 695.

³⁶ Shams Opcit 2.

³⁷ Raghavan (1997) from <www.sunsonline.org/trade/areas/finance/03240097.htm> [accessed on 23 October 2006].

³⁸ Kappur and Weeb (2000) *Governance-related conditionalities of the International Financial Institutions*, New York and Geneva: UNCTAD. For the evolution of Governance Conditionality in the International Monetary Fund, see Nanda (2006) 276-279; Dreher (2002) 8.

³⁹ World Bank (2005) 1sqq.

⁴⁰ Ibidem, see also Shihata (1995)56 seq.

At this level, it should be observed that political accountability, which is another component of governance, is left aside by the World Bank who persistently argues that it falls outside its mandate.⁴¹ This approach is different from that adopted by the UNDP and the Institute on Governance⁴² which share the view that given the inextricable relationship between the principles of governance, ‘*it is not enough to meet only some of the principles; all of principles need to be present, to at least some degree, to ensure good governance.*’⁴³

Concerning the modalities of governance conditionality, they are not different from those of the traditional conditions applied by the World Bank.⁴⁴

Henceforth governance may be used as prior conditions: in this case conditions are viewed as policies and institutional actions that the borrower should accomplish before funding is made available.⁴⁵

Governance’s principles are also used as triggers and benchmarks. In the first case, the reforms are considered as prior actions for future operations.⁴⁶ In the second case, the reforms aim at describing the contents and results of the borrower’s program.

The distinction between triggers and benchmarks on one hand and prior conditions on the other hand is important.⁴⁷ Firstly, unlike prior conditions which are listed in the loan agreements, triggers and benchmarks are not mentioned. Secondly, failure to comply with prior conditions leads to non-release of funding, unless the Bank’s Executive Board approves

⁴¹ This approach, which is backed by the Bank’s official notably I. SHIHATA, is nevertheless criticized by Edgar, Marshall and Bassett (2006) 4.

⁴² Ibid 5. These two Institutions have adopted five principles (legitimacy and voice, direction, performance, accountability and fairness) divided into sub-principles (participation and consensus orientation, strategic vision, responsiveness, effectiveness and efficiency, accountability and transparency, equity and rule of law).

⁴³ Ibid 6.

⁴⁴ The analysis of this section is taken from World Bank (2005) 4seq.

⁴⁵ For a *single-tranche operation*, the conditions are usually met before the operation is presented to the board of Executive Directors for approval meanwhile in the case of a *multi-tranche operation* the borrowing country is required to comply with *tranche-release conditions* before any further disbursement is made

⁴⁶ Ibidem. In this case, the reforms might also serve as indicators of progress in the implementation of the overall program of the borrower

⁴⁷ This is also important for although governance conditionalities represent almost half of the World Bank overall conditionalities, just one-quarter of all governance conditionality was imposed as prior actions Wood Opcit 16; See also WOOD (2005), <www.debtireland.org/resources/index.htm>[accessed on 23 October 2006]. In the case of Chad, it was clearly demonstrated that ring the period 1995-2005 benchmark included in the loans agreement concluded with the Bank represented more than 40% of the conditions. See World Bank (2005) 58.

a waiver of the conditions; meanwhile compliance with triggers and benchmarks are not determinative for the disbursement of loans.⁴⁸

The next issue to be addressed the legitimacy of the Bank's governance agenda.

2.4 LEGITIMACY OF THE WORLD BANK'S GOVERNANCE AGENDA

The legitimacy of the World Bank's governance conditionality has been questioned, both by scholars and NGOs.⁴⁹ The issue is whether the World Bank can promote governance through conditionality without violating its own Articles of Agreement. Arguments for and against the World Bank's governance agenda will be presented, followed by a discussion.

2.4.1 ARGUMENTS AGAINST THE BANK'S GOVERNANCE AGENDA

In the first place, opponents of the World Bank's governance agenda argue that it is a violation of its mission creep as stipulated in its Articles of Agreement, whose Art IV, Sec.10 clearly states:

*'The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated.'*⁵⁰

Henceforth, a literal reading of this provision suggests that the Bank should restraint itself from attaching governance reforms to its lending programs because of its strong political

⁴⁸ Nevertheless as a World Bank survey suggested, borrowing countries continue to think that they have to comply with all the Benchmarks in a police matrix. World Bank (2005) 53.

⁴⁹ Some of these organizations include: ATTAC, A SEED, Bank Information Center, Bank Watch, Corporate Watch, Center for Rethinking the Bretton Woods Project, 50 Years in Enough Network, Third World Network, Focus on the Global South, Friends of the Earth and The Whirled Bank Group. Quoted by Wijngaarden (2006) 75 from <dare.uva.nl/document/32464 <http://dare.uva.nl/document/32464>> [accessed on 15 March 2007].

⁵⁰ This provision is coupled with that of art. III, s 5 (b) and art V, s 6 which state: *'The Bank shall make arrangements to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to considerations of economy and efficiency and without regard to political or other non-economic influences or considerations. The President, officers and staff of the Bank, in the charge of their offices, owe their duty entirely to the Bank and to no other authority. Each member of the Bank shall respect the international character of this duty and shall refrain from all attempts to influence any of them in the discharge of their duties.'*

component. This view is strengthened by the reluctance of the Bank during its early years of activities, to consider political issues.⁵¹

Secondly, it is argued that the Bank through its governance agenda creates new principles governing issues already regulated, and implicitly erects them into binding principle of Public International Law into a binding rule. In fact, Governance issues such as human rights, environment, public procurement and others are in most cases already covered by international legal instruments. Moreover, these existing legal instruments are found mostly in Declarations, Principles or Programs of action to be implemented by every State in respect of its own context and realities.⁵²

It is believed that by erecting governance as a conditionality of its lending operations, the World Bank acts implicitly as a Supra Normative Institution and thus establishes a new hierarchy of International norms.⁵³

Thirdly, it is argued that governance conditionality is an impediment to the borrower's sovereignty over natural resources, since borrowers are compelled to implement policies that might not necessarily meet their priorities.⁵⁴ This is contrary to Art 1 of the International Covenant on Economic, Socio and Cultural Rights which provides:

*'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'*⁵⁵

⁵¹ In effect, in the case of the Portuguese and South African loan in the 1960s, the President of the World Bank issued a statement on 29th March 1966 justifying the World Bank's non-compliance with the UN General Assembly Resolutions calling upon all the specialized agencies of the UN to take necessary steps to deny technical and economic assistance to the governments of South Africa and Portugal because of their respective apartheid and colonial policies. See Yilmaz Akyüz (2006) 16, Darrow (2003) 150 and Qureshi (1999) 211.

Supporters of this view conclude that the Bank should return to its initial mission and abandon the issue of Governance to other UN specialized agencies Shams (2004) 21 and Wadzyk (1999) 562 seq.

⁵² Eg. The United Nation Millennium Declaration and the NEPAD. From the point of view of the hierarchy of norms of International Law, such Declarations, and Programs of action are considered as soft law as oppose to hard law, see to this effect Patel quoted by Kellerman (2003) 84.

⁵³ Schlemmer-Schulte Opcit 714seq.

⁵⁴ Art 2 of the UN Charter, art 1 of the International Covenant on Economic, Socio and Cultural Rights, as well as the UN/GA Resolution 1803 of 1962.

⁵⁵ Waart (1992) 16.They are of the view that Promoting development is the rationale behind the existence of UN specialized Institutions which are therefore are bound by several decisions of the World Institution on the Right to Development and are under both legal and moral obligation to work for the achievement of that goal. See also Anghie (2005) 260.

2.4.2 ARGUMENTS FAVOURABLE TO THE WORLD BANK'S GOVERNANCE AGENDA.

To begin with the proponents of the Bank's governance agenda, led by Head and Shihata, argue that the concept of Development has evolved, leading the World Bank to adapt its activities to new variables and circumstances.⁵⁶

This position is substantiated by a teleological interpretation of the World Bank's Articles of Agreement.⁵⁷ In effect relying on Article 31 of the Vienna Convention on the Law of Treaties, the former General Counsel of the Bank, I. Shihata, in a Memorandum which was later adopted by the Executive Board of Director, suggested a broad interpretation of the World Bank's Articles of Agreement to enable the institution to serve the changing needs of its members.⁵⁸

The second argument in support of the Bank's governance agenda is based on the premises that the Bank is a provider of public international goods. As Ibrahim Shihata suggested '*the Bank transforms many ideals of the UN Declarations and covenants regarding economic, social and cultural human rights through its lending operations, into realities.*'⁵⁹ This explains the presence of a human right component in many projects funded by the Bank, even though a lot of controversies exist on this new agenda.⁶⁰

Thirdly, it has been argued that the World Bank, as any other lending institution, is concerned with the repayment of the fund disbursed and is thus forced to consider the financial and country risks of its borrowers.⁶¹ Such attitude cannot be considered as a hindrance the borrowers' sovereignty, as Head suggested, borrowers have three options: to

⁵⁶ Head (2004) 270 sqq and Shihata (1995) 54.

⁵⁷ The teleological interpretation was accepted as a mean of interpretation of international convention by the International Court of Justice in its Advising Opinion, 20 July 1962, certain expenses of the United Nations. <www.icj-cij.org/icjwww/idecisions/isummaries/iceunsummary620720.htm> [accessed on 20 March 2007].

⁵⁸ Legal Memorandum dated December 21, 1990 under the title *Issues of 'governance' in borrowing members: the extent of their relevance under the Bank's articles of agreement* See Shihata, I.FI (1995) 11 and 557 sqq. This interpretation has served the legal basis for the World Bank's involvement in many UN post conflict operations in country members such as the Democratic Republic of Congo and Iraq; see to this effect See Boon (2007) 513; Ciorciari (1998) 292 and Medenica (2004) 663.

⁵⁹ See Shihata (1995) 568 quoted by Schlemmer-Schulte, S Opcit, 693.

⁶⁰ Darrow (2003) 195 sqq.

⁶¹ Delaume (1967) 313sqq.

reject the World Bank's offer and look for other sources of funding, to decide to do without the project, or to accept the Bank's proposal.⁶²

Finally proponents of the Bank Governance Agenda conclude that globalization places the State in a position different from the one it was granted after the Westphalia Treaty, since there are more and more instances where State are forced by circumstances to share their sovereignty in order to survive or to be restored.⁶³ This is the case of countries that, because of their political situation, are placed at one moment of their history under the UN Administration in order to preserve their integrity, such as Cote d'Ivoire, Liberia, Kosovo and East Timor.⁶⁴

2.4.3 ASSESSING THE ARGUMENTS ON THE LEGITIMACY OF THE WORLD BANK'S GOVERNANCE AGENDA

In the first place, it should be acknowledged that the World Bank's Articles of Agreement on the prohibition against political considerations cannot be entirely insulated from the political realities affecting the lending operations, and that the circumstances that led to the creation of the Bretton Woods institutions have changed considerably.

Also, one should admit that in the era of globalization, sovereignty has become vulnerable and less absolute as in the glorious days of the Westphalia Treaty.⁶⁵

However, it is difficult to empower the World Bank with governance and other activities related to development, based on the argument of the teleological interpretation of its Articles of Agreement. This is because the same interpretation will be valid for other UN Specialized Agencies like the United Nations Development Program, which also have a long experience and are well equipped to deal with development in Third World countries.

In addition, even if one agrees on the teleological interpretation, it should however be considered that an extremely flexible approach might open the Pandora box to all types of interpretations. Finally, although borrowing countries freely chose to enter into loan

⁶² Head 2004: 280. Nevertheless, as the following section will show, that choice cannot be considered to be totally free

⁶³ For more details on the concept of share sovereignty see Krasner (2004) 85-120.

⁶⁴ Ibidem.

⁶⁵ See Jackson (1999) 4; Valaskakis (2001) 51 sqq.

agreement with the World Bank, attention should however be paid to the bargaining power between the two parties, as well as the context of the negotiation process, for all this ultimately influences the outcomes of the negotiations and the content of the loan.

2.5 CONCLUSION

In sum, conditionality has gradually become a common feature of the World Bank's lending programs. It now covers a wide range of areas including governance, environment and human rights.

Despite this evolution, it should be noted that there has not been a subsequent amendment of the World Bank's Articles of Agreements, so as to bring light and clarifications over these concepts which are more than controversial. As a result, not only the legitimacy of the new agendas is still questioned; but also the tension between the World Bank and its State members on one hand, as well as between the World Bank and NGOs on the other hand has increased and has become persistent. This is mainly due to the little role play by borrowing countries in the setting-up of the World Bank's governance principles as well as the flexibility left to them in the implementation phase of the loan.

The next point this paper shall now address is that of the World Bank's governance conditionality in the Chad pipeline investment project.

CHAPTER 3 THE WORLD BANK'S GOVERNANCE CONDITIONALITY IN THE CHAD –PIPELINE PROJECT

3.1 INTRODUCTION

This chapter provides an overview of the context prevailing in Chad at the time the project was intended. This in return helps to understand the World Bank's involvement, as well as the content of governance conditionality.⁶⁶ The analysis ends with the legal implications of governance conditionality on the autonomy of the borrower.

3.2 CONTEXT OF THE CHAD PIPELINE PROJECT: AN UNSTABLE AND LEAST DEVELOPED COUNTRY

Three points are examined under this heading: the unstable nature of the political climate of the country, its economy and the perspective of petroleum production.

Firstly the unstable political climate of the country. A few years after Chad achieved its independence on August 11 1960, instability became quasi-present all over the country, as result of military coups.⁶⁷ Apart from President Tombalbaye who led the country to its international sovereignty, all the other presidents have acceded to the power by overthrowing the ruling leader, thus leaving the country in permanent instability.⁶⁸ In addition, the country has faced a cumulative of more than 29 years of Civil War, many of which involved

⁶⁶ The Republic of Chad is a landlocked country in north-central Africa of 1.284 000 km², with a population of about 7 million inhabitants. The country shares borders with Niger, Libya, the Sudan, the Central African Republic, Cameroon, and Nigeria. Lake Chad, from which the country gets its name, lies on the western border with Niger and Nigeria.

⁶⁷ The Institutions in Chad did not become weak in Chad only after the country achieved its independence. During the colonial era already, the basic functions of governance were often neglected throughout the colonial period. Even in the Southern part of Chad, there were problems for officials in the French colonial service resisted assignments, so posts often went to novices or to out-of- favor officials. Still, major scandals occurred periodically, and many of the posts remained vacant. In 1928, As consequence, the people in the northern part of the country (Borkou-Ennedi-Tibesti) were left alone after a tacit agreement between the French military administrators and the inhabitants of the desert, as long as caravan trails remained relatively secure and minimal levels of law and order were met <web2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+td0017)> [accessed on 27 October 2006].

⁶⁸ President Tombalbaye was overthrown in 1975 by General Felix Maloum who was also overthrown in 1980 by his Defense Minister Hissen Habre. In 1990, Idriss Déby, a former Defense Minister and head of the Patriotic Salvation Movement took control of the capital and overthrown President Habre.

neighboring countries.⁶⁹ Consequently, Chad is considered as *soft State*, with a little capacity to undertake and implement long term reforms.⁷⁰

Secondly, with regard to economy, Chad is ranked 171 out of 177 in the 2006 UNDP Human Development Report.⁷¹ Human Development Indicators are very low in the country: e.g. Life expectancy at birth is 49 years, compared to the African regional average of 51; vaccination coverage rates for measles was 28 percent in 1996; vet primary enrollment rates (NPER) is still very low; the literacy rate is among the lowest in the world and access to safe water is limited to about one fourth of the population.⁷²

Henceforth, the perspective of becoming an oil producer was considered by all Chadian as a great opportunity. It was projected that the development and export of oil could significantly affect economic growth. It was also expected that additional resources would be used to raise living standards through investments in the social sectors, enhance private sector activity in the country and lead to the creation of employment.⁷³

3.3 WORLD BANK'S INVOLMENT IN THE CHAD PROJECT.

Four main reasons explain the Bank's involvement in the project.⁷⁴

Firstly, the World Bank through its involvement, provided investors with a guarantee they could not get from Chad, considered both as a political and economic risk. The World Bank thus acted as insurance that will mitigate the risk incurred by those investors.⁷⁵

⁶⁹ These include Libya, Central African Republic and Sudan. See Wright (1989) 132.

⁷⁰ Szirmai (2005) 259. The implication from an investment point of view is that the country is regarded as a high risk country According to the OECD classification released on January 26th 2007; Chad obtains 7 points, which is the highest score. From <www.oecd.org/dataoecd/47/29/3782900.pdf> [accessed on 27 October 2006]

⁷¹ UNDP (2006) 286, from <hdr.undp.org/hdr2006/pdfs/report/HDR_2006_Tables.pdf>, [accessed on 27 October 2006].

⁷² This situation is worsened both by the climate conditions because the desert coverts much of Chad's territory, and corruption. The Country is ranked 156 out of 163 in the Transparency International (2006) Corruption Perception Index. From <www.transparency.org/policy_research/surveys_indices/cpi/2006> [accessed on 27 December 2006].

⁷³ Data use for the analysis of this section are derived from <web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTCHADCAMPIPELINE/0,,contentMDK:20554432~menuPK:1328817~pagePK:64168445~piPK:64168309~theSitePK:843238,00.html> [accessed on 27 October 2006]; see also <www.ccsrp-tchad.org/site/pics/PETROLE.pdf> [accessed on 27 October 2006].

⁷⁴ See Calderesi (2006) *The trouble with Africa. Why Aid isn't working?* London: New Haven. The entire chapter 12 of the Book deals with the Chad Pipeline Project.

Secondly, the Chadian Government needed funds to afford its contribution to the consortium; henceforth, through the loan agreement, the Bank provided it with a sum of US\$ 39.5 million.⁷⁶

Thirdly, for oil companies involved in the project, the presence of the Bank was important to lower the criticisms of NGOs and civil society international organizations, which have been protesting against the project because of its important environmental consequences,⁷⁷ and most of all because of the Chadian Government's Human Rights performance.⁷⁸

Fourthly the World Bank regarded the project as an opportunity to implement reforms and policies that were part of the Chad Poverty Reduction Strategy Program. It was hoped that through the project, Chad might achieve what has been impossible over the past years: to reduce poverty and engage itself on the path of development.⁷⁹

3.4 GOVERNANCE CONDITIONALITY IN CHAD IBRD- LOAN AGREEMENT.

International loans are driven by two main principles: the principle of autonomy of the parties which are free to insert in their contract whatever clause they like provided they do not act against the law; and the principle of the applicable law.⁸⁰ Under this heading, are presented the content and the analysis of governance conditionality in the Chad-IBRD loan agreement.

⁷⁵ This was really important because while the project was under preparation, some companies abandoned the consortium: Chevron early in 1992, followed by Conoco in 1993, Shell and Elf in 1999.

⁷⁶ See Article II of the Chad-IBRD loan agreement.

⁷⁷ Darrow (2003) 217.

⁷⁸ Amnesty International (2005) 16 seq; *see also* Darrow (2003) 217.

⁷⁹ For more detail on see <www.ccsrp-tchad.org/site/pics/PETROLE.pdf> [accessed on 27 October 2006].

⁸⁰ Bradlow

<www.unitar.org/dfm/resource_center/document_series/Document9/Bradlow/4Lesson2.htm> [accessed on 20 February 2007] According to this principle, the parties to a loan agreement are recommended to insert in their agreement a clause specifying the law to be applied; domestic law or international law.

3.4.1 CONTENT OF GOVERNANCE CONDITIONALITY

In the World Bank lending operations, the loan agreement describes both the project objectives and the obligations of the parties.⁸¹

In the case of the Chad-IBRD investment loan agreement, the Bank's obligation was to provide Chad with a substantial sum of US\$39.5 millions.⁸²

In return, Chad undertook several obligations: to use the funds to *'finance part B and C of the Pipeline Project'*, to pay the fee, the charge and interest of the debt and the principal amount.⁸³

In addition, specific obligations related to the Project were included in the Loan Agreement. This paper is primarily concerned with the obligations included in the Petroleum Revenue Management Program (PRMP), because it is related to the Bank's governance conditionality.⁸⁴

The PRMP refers to the Petroleum Revenue Management Program of the Borrower, as described in Schedule 5 of the loan agreement.⁸⁵ Schedule 5 of the loan agreement imposes two set of obligations on Chad.

The first series of obligations is related to the modalities of allocation, distribution and investment of the petroleum revenues provided by Parag 4 of Schedule 5.⁸⁶ This includes the passing of a law and related texts so as to give effect to the modalities of allocation of the oil revenues provided in the PRMP,⁸⁷ the creation of new institutions, and the respect of all the procedure related to the use of funds.

⁸¹ World Bank, (2005) 11

⁸² See art. II, sec.2 (1) of the Chad-IBRD loan agreement.

⁸³ Art. 2 of the loan agreement. These are obligations of any borrower in any particular loan agreement.

⁸⁴ Other obligations that fall within this category include the environmental and social assessment commitments.

⁸⁵ Art1, Parag rr, of the loan agreement. The Program objective is to assist Chad in reducing poverty.

⁸⁶ According to the provision of this paragraph, 80 percent of Royalties and 85% of the Dividends shall be allocated to expenditures, acceptable to the Bank, 5 percent of Royalties to decentralized authorities in the petroleum producing region as a supplement to the allocation [...] to finance expenditures, acceptable to the Bank and 15 percent of royalties and dividends can be used to finance general recurrent expenditures for the non "Sovereign" sectors. For the funds deposited in the future generations' fund it is stated that they shall be invested, under prudential rules and investment arrangements satisfactory to the Bank.

⁸⁷ This law is also known as the 1999 law.

At this level, it should be noticed that Parag 8 of Schedule 5 goes beyond the material obligation and adds a temporal obligation on Chad. Henceforth, it was expected from the Government to issue by no later than December 31, 2001, all the necessary implementation decrees.

The last and probably the most ambiguous obligation comes from Parag 2 of Schedule 5 which prevents Chad from any legislation change concerning the 1999 law in the following terms:

*‘Law No. 0001/PR/99 dated January 11, 1999, governing the management of the petroleum revenues (the Petroleum Revenue Management Law) shall not be amended or waived so as to materially and adversely affect the implementation of the Program’.*⁸⁸

The second set of obligations is related to the accountability towards the Bank. Chad is required to publish the reports, audits, accounts and financial statements, following appropriate auditing principles acceptable to the Bank. Moreover, it is expected from the Government to make all the documents available to the Bank at its request.

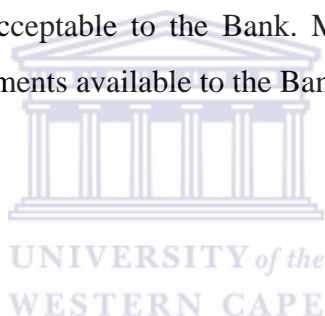


Table 1: Governance Conditionalities included in the Chad-IBRD Loan Agreement.

| Types of conditionalities: | Actions expected from Chad |
|--|--|
| Modalities of oil revenues’ allocation and use | Adoption of the 1999 Law |
| | Obligation not to amend the 1999 Law |
| | Adoption of all the implementation’s decrees |
| | Respect of share of funds allocated to different sectors |
| | Respects of rules governing the withdraw of funds |

⁸⁸ See Parag 2 of Schedule 5 of the Chad-IBRD loan agreement.

| | |
|---------------------------------|---|
| | Creation of domestic institutions of monitoring |
| Accountability towards the Bank | Publication of reports, audits, accounts and financial statements, following appropriate auditing principles acceptable to the World Bank |
| | Information of the Bank. |

Sources: Schedule 5 of the Chad-IBRD investment loan agreement reported in the annex of this paper.

3.4 .2 ANALYSIS OF THE CONTENT OF GOVERNANCE CONDITIONALITY IN THE CHAD-IBRD AGREEMENT

The content of governance conditionality as it appears in the Chad-IBRD loan agreement reveals an asymmetrical relationship between the Bank and Chad, which in return affects its sovereignty and the effectiveness of the project. This asymmetrical relationship is fully justified by the current imbalance within the Bank's governance structure.

A AN ASYMMETRICAL RELATIONSHIP BETWEEN THE BANK AND CHAD

As it is appeared from the preceding paragraph, it is required from Chad to meet not only the obligations which are vested on any borrower,⁸⁹ but also to implement in a satisfactory manner to the Bank, all the obligations described in the Petroleum Revenue Management Program. The numbers and the types of obligations imposed on such a country with a weak institutional capacity is questionable.⁹⁰

⁸⁹ To pay back the capital and the interest of the loan received on the agreed date.

⁹⁰ As the context of the Project has revealed in the first section of this chapter, Chad an unstable country with weak institutions.

This asymmetrical relation between the parties is aggravated by the lack of clarity and vagueness of some expressions which are ‘*ill defined*’.⁹¹ In effect, the question is what should be considered ‘*satisfactory and acceptable to the Bank*’?⁹²

Schedule 5 provides neither a clear definition, nor objective criteria to be used. This lack of clarity leaves the door opened to a unilateral and discretionary interpretation by the Bank of what is satisfactory and what is not.

It is believed that such situation undermines the contractual nature of a loan agreement and affects the autonomy of the borrower during the implementation phase of the project.⁹³ The next step is to look at the Bank’s governance structure, which provides an explanation to this asymmetrical relationship.

B IMPACT OF THE IMBALANCE OF THE BANK’S GOVERNANCE STRUCTURE IN THE DEFINITION ON CONDITIONALITIES APPLICABLE TO A LOAN.

The analysis will start by a brief overview of the World Bank’s governance structure and its impact on both the definition of the World Bank’s governance principles, as well as its content during the negotiation of a loan agreement.

Though all the power of the IBRD are vested in the Board of Governors,⁹⁴ most have been delegated in practice to the Board of Executive Directors,⁹⁵ responsible for the general conduct of the operations and the day-to-day running of the Bank.⁹⁶ This includes the adoption of decisions on loans, credits, grants as well as the policies followed by the Bank in its operations.

⁹¹ Kaufman quoted by Court, Hyden and Mease (2002) 3 from <www.odi.org.uk/wga_governance/Docs/WGS-discussionPaper2.pdf> [accessed on 14 March 2007].

⁹² This expression appears ten times throughout the PRMP. See also terms such as ‘materially and adversely affect the implementation of the Program.’

⁹³ Kapur and Webb (2000) 16, CIDSE (2006) 13. Surprisingly the Bank applies different standards when dealing with the dominant shareholders, see to this effect Darrow (2003) 207

⁹⁴ Art V, sec 2 (a) of the IBRD Articles of Agreement.

⁹⁵ This delegation of power is permitted under Art V, Sec 2 (b) of the IBRD Articles of Agreement.

⁹⁶ Art V, Sec 4 of the IBRD Articles of Agreement.

Unlike the Board of Governor which is a plenary organ and where each member state is represented by one Governor, there are only 24 Executive Directors: five appointed by the members having the largest number of shares, and 19 representing the other members.⁹⁷ Of the 19 remaining Executive Directors, only 2 represent all the Sub-Saharan African countries, and very little weight is attached to their vote (5.36% of the total of votes).⁹⁸

This inequitable representation and the weighting voting system, which confers unequal decision-making influence to different member countries, lead ineluctably to the domination of wealthier nations during the voting of decisions and ultimately affect the sovereignty of borrowing countries⁹⁹

In fact since the weight voting system applied within the Board of Executive Directors, the setting-up of the World Bank's governance principles by the Board is influenced by the economic philosophy of the most important members.¹⁰⁰ In effect, the application of the *majoritarianism rule*¹⁰¹ is profitable to the major shareholders.¹⁰² As a result, the Bank's policies are mainly driven by the neo-liberal philosophy of the important members and in most cases do not reflect the expectations and peculiarities of borrowing countries.¹⁰³

⁹⁷ The five Countries are: The United, Japan, Germany, France and the United Kingdom. Russia, Saudi Arabia and China are admitted to appoint each an Executive Director.

⁹⁸ Excluding South Africa and Ghana. See <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/BODEXT/EXTEDS13/0,,contentMDK:20183200~menuPK:396824~pagePK:64099144~piPK:64099061~theSitePK:396813.00.html>.

The same imbalance prevails in other World Bank Group's Institutions: 3.35% within the IFC, 8.70% within the IDA and 8.90% within the MIGA.

⁹⁹ Indeed the alleged assumption behind the use of the weighted system in most International Financial Institutions is the need to reflect the economical power of the highly contracting parties. However, as Athena (2001) 203 rightly pointed out, this does not constitute a sufficient justification for the breach of the sovereign equality among nation states.

¹⁰⁰ France 4.30%, Germany 4.49, Japan 7.86, UK 4.30, USA 16.38. <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/BODEXT/0,,contentMDK:20124831~menuPK:64020035~pagePK:64020054~piPK:64020408~theSitePK:278036.00.html>

¹⁰¹ Art V, Sec 4 (f) of the of the IBRD Articles of Agreement provides that 'a *quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.*' the same majority is required for the adoption of any decisions within the Executive Board of the Bank.

This situation, already detrimental to borrowing countries, is aggravated by the option left by Art.V, Sec.5 (a) which states: 'The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division.' Since in practice the President of the Bank has always been appointed by the USA, there is little doubt that in case of equal division, he will vote against the USA position.

¹⁰² Athena Opcit, 213; Anghie (2000) 268.

¹⁰³ Surprisingly, the reforms promoted by the World Bank in borrowing countries through conditionality are rarely followed by the major members themselves, as it can be seen in the case of liberalization in the agricultural sector. It has been found that while developed countries show a strong support for such policies

As Tsai correctly suggested, *'the disparities between the bargaining power held by the creditors and the debtor nations rendered the "negotiations" meaningless. As a result, any condition agreed to during "negotiations" [are] simply the product of economic coercion and cannot be characterized as voluntary.'*¹⁰⁴

Finally, the under- representation of borrower countries ultimately raises concern over the legitimacy of the Bank's reform policies attached to its lending operations, and needs to be addressed. In fact, it has been acknowledged by the Bank's Development Committee that *"the long-term viability of the institution depends on its perceived legitimacy."*¹⁰⁵

3.5 CONCLUSION

There is no doubt at all that the World Bank's involvement in the construction of the Chad pipeline was an absolute necessity. The Chadian government was ready to make any type of concession, provided it completes its project. Despite the asymmetry of obligations between the two parties and reflected in the loan agreement, Chad had no alternative than to take the Bank's offer. Described as unfair and illegal by Head,¹⁰⁶ this situation overburdens the borrower who is bound to undertake a considerable number of reforms.

This has led Krasner to conclude that the Chad-IBRD loan Agreement is a typical example where a country shares its sovereignty over the management of its natural resources.¹⁰⁷ As the following chapter will show, such a situation is most like to affect the relationship between the Bank and the borrower during the implementation phase of the loan and ultimately, the effectiveness of the loan.

within the World Bank's Board of Executive Directors, they themselves have been providing continuously their agricultural sector with diverse forms of subsidies. This situation is highlighted by the number of claims brought against them before the WTO Dispute Settlement Body. See Head (2004) 294.

¹⁰⁴ Tsai (2000) 1327. See also Darrow (2003) 58 seq.

¹⁰⁵ Development Committee (2007) 1. This position substantiates the point already made by Athena (2001) 42, that legitimacy is of great importance in the international arena, because States are most likely to comply with international arrangements they perceive as legitimate.

¹⁰⁶ Head (2004) 262. See also Wijngaarden Opcit 63, Anghie (2000) 262

¹⁰⁷ Krasner (2004)1094.

CHAPTER 4 RELATIVE EFFECTIVENESS OF GOVERNANCE CONDITIONALITY IN THE CHAD PIPELINE PROJECT

4.1. INTRODUCTION

Raustiala defines effectiveness as the measure of an observable change induced by a particular rule.¹⁰⁸ Thus, a rule is effective if it leads to certain measurable behaviors or outcomes. The issue at this level is whether the Bank's governance conditionality included in the Chad-IBRD loan agreement has led to the economic and social changes that were expected at the time the project was drafted.¹⁰⁹ This chapter deals with both the outcomes and shortcomings of the project.¹¹⁰

For this research, the following indicators will be used to capture the economic performance of Chad in terms of its macro-economic and the micro-economic performance, because of their availability:¹¹¹

- The Gross Domestic Product (GDP) and GDP index.¹¹²
- The GDP per capita¹¹³ and the GDP index;
- The Government spending in the area of health and education, considered as poverty priority sectors by the Petroleum Revenue Management Program.

¹⁰⁸ Raustiala (2000) 393.

¹⁰⁹ The implementation of governance conditionality should not however be considered as the unique explanatory variable of such an economic performance. Other variables such as the political climate, the flow of Official Development Assistance received and which do not fall in the scope of this research might have contributed significantly.

¹¹⁰ Two moments will be considered: 2003 before which is year Chad started producing oil and 2006 because of the availability of data.

¹¹¹ The macro-economic performance gives a picture of economic growth in the country during a given period meanwhile the micro-economic performance provides an overview of the social situation of consumers.

¹¹² It presents the final value of all the goods and services produced in a specific country.

¹¹³ These two indicators offer a measure of the economic power of consumer within a country.

4.2 OUTCOMES OF THE PROJECT

Two aspects are considered here: the economic and institutional outcomes.

Firstly, with regard to the macro-economic outcomes, statistics reveal that there has been a significant increase of both the GDP and the GDP per capita as highlighted in *Table 2*. The GDP has increased from CFA 1582.1 (just one year after the Country has started earning from its oil production) to CFA 3496.0 Billion in 2006.

Consecutively to this boost the GDP per capita has also doubled (from Francs CFA 132.512 to Francs CFA 293.232) during the same period. The statistics also show the importance of the share of oil revenue in GDP (it represents almost 50%) and in the general budget of the Government.¹¹⁴

Table 2: Overview of the evolution of selected Human Development Indicators in Chad between 2003 and 2006.

| Year | GDP (Francs CFA Billions) | GDP excluding petroleum revenue (Francs CFA) | Dvpt Index | Health expenditure, % of GDP | Education expenditure, % of GDP | Education index | GDP per capita (Francs CFA) | Inflation rate % | HDR Rank |
|------|---------------------------|--|------------|------------------------------|---------------------------------|-----------------|-----------------------------|------------------|----------|
| 2006 | 3496.0 | 1827.9 | 0.368 | 2.6 | 1.6 | 0.29 | 293232 | 8.0 | 171/177 |
| 2005 | 3104.6 | 1652.7 | 0.341 | 2.7 | NA | 0.30 | 199424 | 7.9 | 173/177 |
| 2004 | 1736.4 | 1416.2 | 0.371 | 2.0 | 2.0 | 0.42 | 157440 | -5.3 | 167/177 |
| 2003 | 1582.1 | 1355.3 | 0.376 | 2.5 | 2.0 | 0.41 | 132512 | -1.8 | 165/175 |

Sources: Data derived from UNDP and CAEMC¹¹⁵

Secondly, the implementation of the World Bank governance conditionality has resulted in the creation of a number of institutions including the Oil Control and Monitoring Group and the 5% Temporary Management Committee. These institutions were aimed at improving accountability and transparency in the management of public revenue, and enhancing the participation of the civil society in the management of resources of the country. In effect,

¹¹⁴ Gary and Reisch OpCit 71.

¹¹⁵ See to this effect: UNDP (2006) 286- 334, UNDP (2005) 218-304, UNDP (2004) 139- 205 and UNDP, (2003) 308-340; available at < <http://hdr.undp.org/reports/global/> > [accessed on 27 October 2006]; and <http://www.izf.net/izf/Documentation/Rapports/Rapport%20Surveillance%20Multilaterale%202006%20de%20Ia%20CEMAC.pdf>

their approbation is necessary for the government's expenditure to be funded by the oil revenue. In addition, they monitor all the projects funded out of the oil revenue.¹¹⁶

Despite these outcomes, the next section will show that the implementation of the World Bank governance conditionality has been proven to be relative in the case of the Chad-Pipeline Project.

4.3 LIMIT OF THE BANK'S GOVERNANCE APPROACH IN THE CHAD PROJECT

Three points are developed under this heading: the social and institutional shortcomings, the rigidity of the model itself and the lack of a proper dispute settlement mechanism.

4.3.1 SOCIAL AND INSTITUTIONAL SHORTCOMINGS OF THE PROJECT

Firstly, the World Bank newly founded approach has not brought a deep change in the Chadian society and the expected results are still awaited in many sectors. As Table 2 above clearly shows, not all the Human Development Indicators in Chad have been ameliorated. The education sector is the most conspicuous example, where there has been a decrease with regard to both the education index and the percentage of GDP allocated to it. Also, as the results of the study carried out by Gary and Reisch indicate that Chad itself has not benefited from its natural resources, as no refined products derived from Chad's oil are available in the country.¹¹⁷

Secondly, the increase noticed in the GDP per capita should not be considered in absolute terms; it should be taken simultaneously with the inflation rate in the country, which has increased from -1.8 in 2003 to 8.0 in 2006. This state of affairs does not constitute a surprise, because already in its early 2002 *Management and recommendation Report*, the Inspection

¹¹⁶ Art 13 and 14 of the 1999 Law.

¹¹⁷ Gary and Reisch Opcit 92. See also Merhi (2002) [available at <http://www.columbia.edu/itc/sipa/martin/chad-cam/Anthony.htm>] accessed on May 8th 2007]. It has been found that Chad's need for electricity generation and distribution, even in the capital, remains severe and is a key impediment to increased economic development

Panel of the Bank, raised many concerns with regard to the Poverty reduction aspect of the project.¹¹⁸

Thirdly the newly created Institutions have been proven to be less effective than expected.¹¹⁹ Thus, the 5% Temporary Management Committee is plagued by both an identity crisis and an operational problem (delay in the designation of members, delay in providing the Committees with necessary means of functioning), and lacks a real power and full autonomy from the central authorities.¹²⁰ Also, there have been instances where projects funded have not been fully monitored by the Oil Control and Monitoring Group as well as the 5% Temporary Management Committee¹²¹. The lack of real power of sanction by these various Committees has also been pointed out as one of their weaknesses.

4.3.2 THE RIGIDITY OF THE BANK'S MODEL AND TENSION WITH THE ECONOMIC SOVEREIGNTY OF CHAD.

It is appeared from the preceding Chapter that due to the imbalance within the Bank's Executive Board, the autonomy of the borrower was already undermined during the setting up of the governance standards and the determination of the content of governance conditionality to be included into the loan agreement. This paragraph examines the tension between the Bank and Chad during the implementation phase of the project.

¹¹⁸Report available at siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ManagementReport82102.pdf. [Accessed on 27 October 2006].

¹¹⁹ There has been instances were the Government couldn't comply with some of procedures and modalities required to use the available monies.

¹²⁰ As Gary and Reisch (2005) 64 correctly argued, '*While [different committee] can influence the budgeting process, reject ill-founded expenditures and investigate the execution of projects [...] the ability to ensure that oil revenues are used for poverty reduction depends on the willingness of the judiciary to prosecute cases of misuse, fraud or corruption.*

¹²¹ In it's 2004 General Report, the Oil Control and Monitoring Group indicated that out of the CFA F 82 810 741 000 billion, only CFA F 36 828 685 000 billion have been allocated to Priority poverty reduction sectors ; which is far less than the 80% provided by Art. 8 of the 1999 Law; the same situation occurred during the first term of the 2005 fiscal year where out of CFA F 144 386 736 000 billion, CFA F 97 110 567 000 was allocated to the Priority poverty reduction sectors. CCRSP, (2005), Rapport d'activité du premier trimestre 2005 sur la situation générale des Revenus Pétroliers alloués aux Secteurs Prioritaires au titre du budget de l'Etat pour l'exercice 2005 available at www.ccsrp-tchad.org/site/page.cfm?owner=C377F0F4-B3BD-6A66-8D10BE09FDF56CEB&template=department_default.cfm [accessed on 23 October 2006]. The 2004 Report is available at [Compte Spécial Revenus Pétroliers \(5617/1\) www.ccsrp-tchad.org/site/page.cfm?owner=C35E4D48-93BB-7ADF-6D3853466B6CF484&template=department_default.cfm](http://Compte Spécial Revenus Pétroliers (5617/1) www.ccsrp-tchad.org/site/page.cfm?owner=C35E4D48-93BB-7ADF-6D3853466B6CF484&template=department_default.cfm) [accessed on 23 October 2006].

First, the Bank's model of Governance Conditionality has been proven to be static rather than dynamic. Schedule 5 of the loan agreement prevents the Government from any amendment that may '*materially and adversely affect the implementation of the Program.*' In practice, this has led to a disproportionate allocation of GDP to the identified sectors. The public work sector for example received in 2004, almost six times what was allocated to the education sector.¹²²

Secondly the Bank's model undermines the domestic participation in the definition of the country's priorities. The National Assembly for example has seen its legislative powers being cut, since what the main preoccupation of the government is to come up with a program that comply with Bank's prescriptions, rather than to have one which is satisfactory to the parliamentarians and inconsistent with the Bank's policies.¹²³

This rigidity leaves some of the main problems unsolved. It has been found for example that the failure to include expenditures on the judiciary and energy needs into priority sector was illogical, given the importance of the two sectors on both the improvement of public administration, and economic development.

Ultimately at the end of the year 2005, the Chadian Government, pressed by a series of coup d'Etat and a new rebellion in the Northern part of the country, ignored the Bank's prohibition and brought a substantial amendment to the original 1999 revenue management law. It broadened the definition of priority sectors so as to include, among others priority sectors territorial administration and security.¹²⁴

¹²²Ibid, 70seqq. This Ministry received over 19 billion CFAF (\$37.25 million) in the 2004 budget, which is more than half of the total petroleum revenues available for priority sectors.

¹²³ It is suggested from study carried out by Gary and Reisch (2005) 70 Seq, that the budget is not discussed in practice by the parliamentarians, because any amendment that will materially modify the allocation provided by Schedule 5 is prohibited. This rigidity leaves some of the main problems unsolved. It has been found for example that the failure to include expenditures on the judiciary and energy needs into priority sector was illogical, given the importance of the two sectors on both the improvement of public administration, and economic development.

¹²⁴ Furthermore, the amended law allowed changes in the definition of priority sectors to be made by decree. Finally, the new legislation eliminated the Future Generations Fund, increased from 13.5 % to 30% the percentage of royalties and dividends to be allocated to non-priority sectors <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTREGINI/EXTCHADCAMP/PELINE/0,,contentMDK:20531903~menuPK:1104029~pagePK:64168445~piPK:64168309~theSitePK:843238,00.html> [acceded on the 27 September 2006].

4.3.3 LACK OF A NEUTRAL ASSESSMENT AND DISPUTE SETTLEMENT MECHANISMS

Following the 1992 Wapenhaus Report on the quality of the World Bank's loan portfolio, the Bank instituted a Panel Inspection.¹²⁵ Composed of three members, the Panel's main task is to carry out an administrative review of the World Bank funded project. The panel receives complains from any affected party in the territory of the Borrower or one of the Bank's Executive Director.¹²⁶

Indeed it should be acknowledged this move related to the assessment of the projects funded by the World Bank, so as to increase their effectiveness.¹²⁷ In the case of the Chad Project for example, in addition to the Inspection Panel, an International Advisory Group was also created.¹²⁸

Despite this evolution in the Bank's practice, Inspection Panel has raises many concerns:

First it is not perceived as an independent body, since it part of the administrative structure of the Bank and the members are nominated by the President of Bank before their appointment by the Board of Executive Directors.¹²⁹ Secondly, the mandate of the Panel is restricted to the administrative review of the projects; that is whether or not the Bank has complied with its procedural rules.¹³⁰ Thirdly the Panel inspection is viewed as an investigatory body with

¹²⁵ The Panel was created by Resolution 93-10/IBRD and 93-6/IDA of September 22nd 1993 of the IBRD's Board of Executive Directors. The text of the Resolution is available at <http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/ResolutionMarch2005.pdf> [accessed on the March 27th 2007].

¹²⁶ Two requirements should be fulfilled for a party to be considered as affected: the party should establish that it has an interest or is likely to be directly affected by a project funded by the Bank, and the damage should be the result of the alleged violation by the Bank of its own rules. See Shihata, I (1994) 54.

¹²⁷ Shihata, Ibid 1seq.

¹²⁸ See <http://www.gic-iag.org>; see also Krasner (2004) 1094.

¹²⁹ Nancy (2004) from <www.servicesforall.org/html/worldbank/judgeandjury.shtml> [accessed on 27 September 2006], Killick (2005) <web.worldbank.org/BSITE/EXTERNAL/PROJECTS/0.,contentMDK:20292755~pagePK:41367~piPK:51533~theSitePK:40941,00.html> [accessed on 27 October 2006].

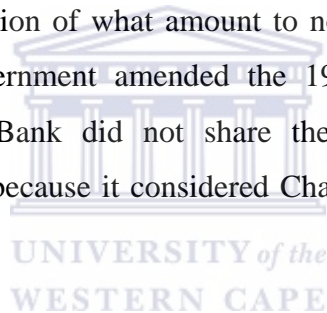
¹³⁰ Para 12 of the Resolution creating the Inspection Panel.

no power of decision. It can only address its findings and recommendations to the Board of Executive Directors who is not in any case bound.¹³¹

In the particular case of the Chad Pipeline, the Inspection Panel and the International Advisory Group are *outside-based Institutions*,¹³² which only visit the country during statutory missions.¹³³

Concerning the settlement of dispute between the World Bank and borrowing countries, the governance agenda set up by the World Bank lacks a neutral mechanism similar to the one provided by the International Centre for the Settlement of Investment Dispute (ICSID).¹³⁴ Instead, loan agreements between the Bank and borrowing countries contain a standard provision providing the World Bank with a set of unilateral remedies in case the loan agreement was not implemented in a manner satisfactory to the Bank.¹³⁵

Such a situation, gives a large margin of discretion to the Bank, and opens the door to controversies over the interpretation of what amount to non-compliance. In the case of the Chad pipeline project, the government amended the 1999 Law to adapt it to its new preoccupations.¹³⁶ The World Bank did not share the same view and suspended all disbursement of funds to Chad, because it considered Chad has breached Schedule 5 of the



¹³¹ Parag 23 of the Resolution creating the Inspection Panel. Thus it is not within the Panel's power to make recommendation on the adequacy or suitability of the Bank's existing policies or procedures. See Shihata, *Ibid*, 52seq; Carmody 2000: 1327-1334 and Roos (2001) 482.

¹³² The International Advisory Group is based in Canada see http://www.gic-iag.org/doc/IAG_Communique_January_2007.pdf; meanwhile the Inspection Panel of the Bank is based in Washington.

¹³³ These statutory missions most of the time hold once in a year and will last only few days. For example despite the fact that 2006 was marked by a deterioration then amelioration of the relation between Chad and the Bank, the IAG couldn't go beyond one statutory visit. See www.gic-iag.org/doc/IAG_Communique_January_2007.pdf [accessed on 23 October 2006]. Considering this situation, NGOs from the South argue that such monitoring should not be given greater considerations, CIDSE (2006) 11.

¹³⁴ This is an independent forum provided by the Bank, to settle all disputes arising between foreign investors and a host State.

¹³⁵ These remedies include: suspension of further installments and *tranches* of the loan and cancellation of the loan. See Art V of the Chad-IBRD loan agreement.

¹³⁶ As developed in the previous Section, the government broadened the scope of the law so as to include among priority sectors territorial administration and security. This is justified by the occurrence of a new rebellion in the northern region of the country following a series of attempted *coups d'Etat* in 2005, and the question of flow of refugees from the Darfour region.

loan agreement.¹³⁷ An independent dispute settlement mechanism would have certainly been in a good position to decide on the issue.

4.4 CONCLUSION

In sum, although the implementation of the World Bank's governance conditionality has led to observable increase of the country's GDP and GDP per capita, it remains that many changes are still awaited.¹³⁸ From an institutional point of view, the Oil Control and Monitoring Group as well as the 5% Temporary Management Committee have not been proven to be highly effective.

Moreover, the rigidity of the World Bank's governance conditionality approach and the lack of an independent assessment and dispute settlement mechanism have increased the tension between the Chadian government and the World Bank, leading to a 6 months suspension of all disbursement of monies to Chad.¹³⁹

As Krasner rightly pointed out, *'the lesson of the Chad-Cameroon pipeline is that creating potent shared sovereignty institutions in weak states in the contemporary environment will be difficult.'*¹⁴⁰ Furthermore, the Chad-pipeline project reveals the limits of the World Bank approach to governance and the necessity to reform the model.

¹³⁷ Press Releases No: 2006/227/AFR and No:2006/232/AFR available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20778928~pagePK:64257043~piPK:437376~theSitePK:4607.00.html> [accessed on 23 October 2006]

¹³⁸ See the decrease in the education index and the increase of the inflation rate as substantiated in this paper by the data of table 2.

¹³⁹ The disbursement of fund only resumed on July 13th following the signature of a Memorandum of Understanding between the tow parties.

¹⁴⁰ Krasner, Opcit, 1095.

CHAPTER 5 REFORM OF THE WORLD BANK APPROACH TO GOVERNANCE CONDITIONALITY.

5.1 INTRODUCTION

Three categories of proposals have been made in order to balance the Bank's approach to governance conditionality and the sovereignty of the borrowing countries. The first category is related to the Bank's Articles of Agreements, the second to its governance structure and the third to the modus operandi of governance conditionality.¹⁴¹

5.2 AMENDING THE BANK'S ARTICLES OF AGREEMENT

As discussed in Chapter 2 of this paper, the Bank's governance agenda remains controversial, because it is not expressly provided in the Articles of Agreement and most of all because it is contrary to Art IV of the Articles of Agreement which prevents the Bank from political activities and consideration in its lending operations.

In view of the steadily expansion of the Bank's mandate,¹⁴² it is believed that the teleological interpretation suggested by the former legal counsel I. Shihata is no more relevant, and that the Bank should clearly recognize the political nature of governance, and address it in close cooperation with other international organizations with a strong experience such as the UNDP.¹⁴³

Although such an amendment is necessary, because it legitimizes the Bank's governance agenda, it remains that expanding the World Bank's mandate raises the concern of the elasticity of the Bank's Articles of Agreements.¹⁴⁴ As Professor Michael Reisman rightly

¹⁴¹ This research does not examine the proposals aiming at ousting the Bank from the field of governance, because that will be naïve and unrealistic.

¹⁴² The Bank is now playing the role of secretariat for the consultative meetings of various donor consortia, which stipulated what political conditions would need to be met Doornbos (2003) 11 and 12. See also Boon (2007), 513 and Ciorciari (1998) 292.

¹⁴³ The main argument is that the UNDP is mainly concerned with development as a whole, and has a very long and strong experience in the field of governance.

¹⁴⁴ In fact such an amendment might open the door to an everlasting series of amendments due to the changing nature of the international system.

suggested, *there is a limit to institutional elasticity; that is the extent to which institutions created can still be used for other purposes.*¹⁴⁵

5.3 REFORMING THE WORLD BANK'S GOVERNANCE STRUCTURE

The reform of the Bank's governance structure is driven by the consideration that '*International Governmental Organizations' strength and ultimately their influence rest on the legitimacy of their decision-making processes.*'¹⁴⁶ Two proposals will be presented.

5.3.1 INCREASING THE REPRESENTATION OF DEVELOPING COUNTRIES WITHIN THE EXECUTIVE BOARD

As it has been developed in the earlier chapter, developing countries, especially from Sub-Saharan Africa, which for the large majority of the Bank's borrowers, are underrepresented in the Board of Executive Directors. Since this non-plenary organ is empowered with the tasks of adopting sound policies and principles that applied in the Bank's lending operations, it is suggested that the composition of the Board of Executive Directors be reformed so as to enhance the presence of borrowing countries within the Board, since they are the main interested parties to loan agreements.¹⁴⁷ Thus, the G24¹⁴⁸ has suggested both an adjustment of the quota formula to include both a higher weighting for GDP and an increase in basic votes (at least a tripling) of developing countries.¹⁴⁹

¹⁴⁵ Quoted by Shihata *Op cit*, 564.

¹⁴⁶ Athena (2000) 9.

¹⁴⁷ Darrow (2003) 231.

¹⁴⁸ The G24 was founded in 1971 "to concert the position of developing countries on monetary and development finance issues". It is constituted of 24 countries from the three regions of Africa, Latin America and the Caribbean, and Asia

¹⁴⁹ This proposal, which was reiterated during the 2006 annual Meeting of the G 24 in Singapore. Woods (2000) 8 suggested an alternative: another (non-voting) seat on the Board for large constituencies; an additional Alternate Executive-Director in the largest constituencies e.g. To deal with policy issues leaving the existing Alternate Director to deal with country issues. None of these proposals is supported by developed countries. They suggest a two approach formula (an ad hoc increase in quota votes for large emerging market countries (predominantly in Asia), with an eventual review of the quota formula). While a final consensus is still awaited between the country members, current system remains in force. For the G24 2006 Meeting, see the Communiqué final available at [http://siteresources.worldbank.org/DEVCOMMINT/Documentation/21055935/DC2006-0020\(E\)-G24.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/21055935/DC2006-0020(E)-G24.pdf) [accessed on March 27th 2007]. The proposal of developed countries is summarized in ODI (2005) 2 sqq.

Increasing developing countries' representation in the Board of Executive Directors will provide them with the opportunity of raising their concerns, preoccupations, and constraints during the discussion over the type of conditionalities to be attached to the loans to be granted to them.

Also, such an increase will increase their chances to influence the voting of the decisions, and enhance the legitimacy of the Bank's policies. They which will no longer be considered as imposed from the outside. Ultimately this will influence borrowing countries' compliance with the policies adopted; and as Franck Thomas correctly argued, "*Nations obey rules when there is a perception that they or the institutions from which they emanate have very high degree of legitimacy.*"¹⁵⁰

5.3.2 INSTITUTIONALIZING THE PARTICIPATION OF NON-STATE ACTORS IN THE MEETINGS OF THE EXECUTIVE BOARD

This proposal is related to the participation of stakeholders other than the borrower's Government, but which might be affected by the project funded and conditionalities attached to the loan, in the decision making process of the World Bank. The rationale behind the proposal is to provide private actors with the opportunity to participate in the discussion over the conditionalities to be included into a loan agreement that to which their Government is party to.¹⁵¹

Head suggested for example that the World Bank, and other International Financial Institutions, should provide mechanisms for soliciting and considering comments from the public during a reasonable period of time, before decisions are made on proposed financing operations or on proposed policy statements or changes.¹⁵²

¹⁵⁰ Quoted by Darrow Ibid, 41.

¹⁵¹ In addition, Wood (2005)19 suggested that parliaments should be engaged in debating conditions imposed through lending programmes, before programmes are finalized.

¹⁵² Head (2004) 306

This proposal raises some concerns including the criteria to be used in granting *locus standi* to NGOs, the stage at which they will be admitted to intervene and the remedies at their disposal; they will be discussed in the last section of this paper.

5.4 IMPROVING THE MODUS OPERANDI OF THE WORLD BANK.

Three proposals have been made with regard to the modus operandi of the Bank's governance conditionality, in order to streamline its use in the World Bank's lending operations.

5.4.1 FROM CONDITIONALITY TO SELECTIVITY

It has appeared from chapter 4 that the implementation of the World Bank's governance conditionality is the main source of tension between the Bank and borrowing countries, mostly because of its rigidity. The use of selectivity, which is supported by a large number of scholars,¹⁵³ has been suggested in replacement of conditionality. The principles of selectivity poses that the World Bank, instead of wasting its efforts on those countries that are reluctant to reform, should rather concentrate on countries which already have a good governance score, and should grant loans to these countries without any conditions attached to it.¹⁵⁴

With regard to how the countries will be graded and classified, it is argued that the Bank will resort to the ICP colloquially known as the IDA Country's Performance.¹⁵⁵ After an assessment of the need of a country member, the Bank will then determine the allocation of available funds.¹⁵⁶

The most outstanding merit of this proposal is the fact that it does constitute a step towards the abandon of conditionality in the Bank's lending operations. Apart from that, the proposal seems to raise more concerns than it addresses.

¹⁵³ Stiglitz (2002), Peet (2004), Wood (2005), Tsai *Opcit* 1329

¹⁵⁴ Tsai *Opcit* 1329.

¹⁵⁵ An ICP's country is obtained by calculating a weighted average of the policy scorecard (80%) and the Bank rating of the performance of the outstanding loans of that country. The weighted average is then multiplied by a governance related criteria in the scorecard.

¹⁵⁶ For a complete analysis of the World Bank's country Performance Assessment Index, see Wood *ibid*, 21-24.

The first is the objectivity and reliability of an assessment that will be done by the Bank itself. Doubts have been expressed on the capability of the Bank to act as jury and judge of his own case.¹⁵⁷

Secondly, the standards and criteria to be used by the Bank. In fact, the policy scorecard is made up of 16 criteria including environment and governance. Therefore question is to whether the Bank will resort to its own criteria, or it will base its assessment on Reports from Specialized International Organizations, given their strong experience in their field.¹⁵⁸

Thirdly, it has been argued that the use of selectivity will lead to a new form of conditionality colloquially known as ex post conditionality,¹⁵⁹ because the Bank will reward those countries that already implement its policies.¹⁶⁰ As a result, non-reforming countries, which are in most cases, those in need of funds, might be left by the wayside.¹⁶¹

5.4.2 STRENGTHENING OF THE BORROWER'S OWNERSHIP

One of the findings of the 1992 Wapenhaus Report, which assesses the quality of the World Bank's loan portfolio, is that the Bank was more often concerned about getting as many projects as possible, with less attention being given to the degree of ownership assumed by the borrowers.¹⁶²

¹⁵⁷ A report on the "uses and abuses of governance indicators" from the OECD finds that problems associated with the CPIA's construction or use include: "i) the likelihood of correlation of errors among the 37 sources from which the composite World Bank Institute indicators are constructed, which significantly limits the statistical legitimacy of using them to compare countries' scores; ii) their lack of comparability over time; iii) sample bias; and iv) insufficient transparency." See <<http://brettonwoodsproject.org/art.shtml?x=542375>> [accessed on 27 May 2007]; See also Nanda (2006) 271 and 272.

¹⁵⁸ This is the case of the UNDP and the UN High Commission for Human Rights. For the moment, the Bank continue to navigate alone in its assessment's exercise.

¹⁵⁹ Nanda (2006) 280.

¹⁶⁰ Also, relying on past performance to reward or sanction countries is not appropriate since past performance not constitute an effective indicator and guide to future performance. Hansen and Tarp quoted by Nanda, *Ibidem*.

¹⁶¹ Checkel (2000) from <www.arena.uio.no/publications/wp00_18.htm> [accessed on 27 October 2006].

¹⁶² Also known as the approval culture; see The World Bank. (1992). *Effectiveness implementation: Key to development impact (The Wapenhans Report)*. Washington, D.C.: The World Bank

Based on this finding, it has been suggested to pay more attention to ownership.¹⁶³ The concept of ownership aims at giving the borrower a great role in the definition of reforms, so as to reflect its priorities. There is no doubt that this proposal might disentangle the tension between the Bank and its borrowers, since ownership will ultimately restore the sovereignty of the borrower in determining what sort of policies and programs it should apply in pursuit of its development.¹⁶⁴

However, there is no consensus between borrowers and the Bank on what is ownership. As Wood correctly argued, *'for NGOs and Third World countries, ownership implies that there should be country-wide agreement of policy reforms. IFIs tend to take a more narrow approach: They define ownership in terms of whether or not the government agrees with and is willing to implement a proposed reform.'*¹⁶⁵

Furthermore, while International Financial Institutions persistently argue that ownership is compatible with conditionality, NGOs and borrowers share the view that the two are incompatible, and that any attempt to associate the two concepts will only lead to a new form of conditionality described as conditionality with imperfect ownership.¹⁶⁶

5.4.3 ADOPTING A STRONG MONITORING MECHANISM.

It has been shown in Chapter 4 of this paper that due to its administrative character, its mandate and the nature of its decisions, the Inspection Panel is not appropriate to address all the issues related to the monitoring of the Bank's funded projects. Henceforth, the idea of an independent and strong monitoring mechanism has resurfaced.¹⁶⁷ Cahn is of the view that there should be an independent institution located outside the Bank or a watchdog agency

¹⁶³ Santiso (2001) 19. See also the Paris Declaration on Aid Effectiveness, Ownership, Harmonization, alignment, Results and Mutual Accountability, 2005, Parag. 16 <www.oecd.org/dataoecd/11/41/34428351.pdf> [accessed on 24th March 2007].

¹⁶⁴ Nanda (2006) 280.

¹⁶⁵ Wood (2005) 9.

¹⁶⁶ Ibidem.

¹⁶⁷ In fact, already before the creation of the Inspection Panel, a coalition of NGOs led by the Natural Resources Defense Council and the Centre for Environmental Law suggested the creation of an Independent Appeal Commission made of 9 members with jurisdiction to investigate complaints from any member country or individual and NGOs in developing countries related to the Bank's policies, procedures, loans and credit agreements. Bradlow, D.D suggested the creation of an Ombudsman with a mandate to investigate and respond to conflicts relating to staffs implementation of the Bank's operating rules and procedures, as well as administrative practices. See I Shihata (1994) 24.

insulated from conflicts of interests inherent in the Bank's multiple role.¹⁶⁸ Head went further to suggest the creation of an International Tribunal for Multilateral Banks will have the power to supervise and oversee the implementation of the Bank funded projects, investigate on administrative matters and will have appellate jurisdiction over the governing Boards in matters of Charter's interpretations.¹⁶⁹

There is little doubt that these proposals will reduce likelihood of the tension between the Bank and Borrowers over the interpretation of the loans' provisions, since the new mechanism will act as a neutral institution. In the case of the Chad pipeline Project for example, the issue at the root of the suspension by the Bank of all disbursement of monies to Chad was whether or not the amendment by the Chadian Government of the modality of allocation of its oil revenue was likely to materially and adversely affect the implementation of the Program.¹⁷⁰

It is believed that the existence of a competent and independent institution will have been in a better position to address the issue.¹⁷¹ Nevertheless, it is not clear from Head's proposal how the tribunal will operate in practice.

5.5 ASSESSING THE EXISTING PROPOSALS

Starting with the reform of the World Bank's governance structure. There is no doubt that an increase of the participation of developing countries especially the main borrowers within the decision-making institutions is most likely to affect their with regard to the legitimacy of the decision making process.

However, this can only be possible if the increase affects the number and weight of borrowing countries' votes, as suggested by the G24. This reform seems to be hardly

¹⁶⁸ This is because there are many instances where the Bank acts as Development Agency, lending institution, debt collector and representative of developed countries interests. See Cahn (1993) 159.

¹⁶⁹ Head (2004) 311. According to him, Judges for the tribunal could be selected by the MDBs themselves- perhaps two nominated by each participating MDB and two by the President of the International Court of Justice.

¹⁷⁰ For the Chadian authorities the modifications were driven by the need take into consideration the changes and new preoccupation of the country. For the Bank the changes were likely to materially and adversely affect the implementation of the project. See Press Release No: 2006/227/AFR available at <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20771610~pagePK:34370~piPK:34424~theSitePK:4607,00.html>. [accessed on 23 October 2006]

¹⁷¹ As Bruculeri (2004) 79 correctly argued that, a strong and independent monitoring and dispute settlement mechanism will provide effective remedies when violations of the Banks mandate are found.

achievable, at least in the short and medium term, because instead of supporting the idea that the GDP should be the main criteria in allocating the votes in the Bank's Executive Board, the current dominant power share another view, which will only benefit emerging developing countries.¹⁷² Thus, it is believed that the reform will be rejected because of the lack of the qualified majority within the Bank's Executive Board.¹⁷³

Concerning the participation of private actors to the discussion over the conditionalities and policy reforms to be included in a loan agreement involving their country, there is no doubt that it might increase the level of ownership.¹⁷⁴ However, the question remains as to whether the Board will be bound by the requests, and whether there will be the possibility to appeal the decision of the Board. In addition the participation can only be possible if the discussions are held at the domestic level, given the financial constraints faced by many Southern NGOs.¹⁷⁵ Finally there is the impact of the participation of private actors on the efficacy of the decision making process within the Executive Board. In effect, the probability that the Executive Board be flooded with requests from a plethora of NGOs is very high and some government might be severely affected.

With regard to the proposal aiming at the creation of a strong and independent monitoring and dispute settlement body, it is not disputed that this will provide the Bank and Borrowers with neutral assessment and solutions to any problems arisen from the implementation of the Bank's policies, such as the interpretation of specific provisions of the loan agreement between the two parties as it was the case in the Chad pipeline project.

¹⁷² As developed earlier, they suggest a two approach formula (an ad hoc increase in quota votes for large emerging market countries (predominantly in Asia), with an eventual review of the quota formula). These countries do not depend any longer on the Bank's programs like African one; and consequently, are not affected by its effects. See ODI OpCit 2 sqq

¹⁷³ Art V, Sec 4 (f) of the of the IBRD Articles of Agreement provides that 'a *quorum for any meeting of the Executive Directors shall be a majority of the Directors, exercising not less than one-half of the total voting power.*' the same majority is required for the adoption of any decisions within the Executive Board of the Bank.

This situation, already detrimental to borrowing countries, is aggravated by the option left by Art.V, Sec.5 (a) which states: '*The President shall be Chairman of the Executive Directors, but shall have no vote except a deciding vote in case of an equal division.*' Since in practice the President of the Bank has always been appointed by the USA, there is little doubt that in case of equal division, he will vote against the USA position.

¹⁷⁴ Private actors will not only raise their concerns and preoccupations; but also, they will be aware of the challenges they will be exposed to during the implementation of the program.

¹⁷⁵ In fact there is a risk that this proposal might result in a new imbalance between imbalance between NGOs from the South and those from the North in the Bank's decision making bodies.

However given it is not clear whether IFIs will accept to surrender their autonomy to a third party Institution. In fact, the current competition among these International Financial Institution lead to the conclusion that they will rather opt for refined internal monitoring institutions.

5.6 CONCLUSION

It appears from the above description that the legitimacy of both the decision making process and its outcomes remain questioned and need to be reformed. It is believed that this will disentangle the tension between the Bank and borrowing countries, lead to a close cooperation between the two parties for the effectiveness of the loans granted. As Thomas Franck rightly posited, there is an inextricably relationship between the legitimacy of an international rule or standard and its effectiveness.¹⁷⁶

Although the problems are clearly identified, many divergences still exist between the stakeholders: there is no consensus between the current main shareholders and borrowing countries over the reform of the Executive Board; the Bank considers that it should be the one determining the meaning and content of ownership. Borrowing countries want to fully exercise their sovereign rights over their economics policies; and NGOs are struggling to become key actors of the whole process.

At the same time, there is more and more doubt over the relevance of the Bank. As the Meltzer Report clearly indicated, the World Bank, despite its activism, has not succeeded in reducing poverty all over developing countries.¹⁷⁷ The Bank is now facing the hard competition of alternative means of international financing mechanisms both at and multilateral level and at the bilateral level. More and more, African countries for example have the tendency to resort to China for bilateral loans, which have little strings attached to them.¹⁷⁸

¹⁷⁶ Quoted by Darrow, *Opcit*, 76.

¹⁷⁷ Meltzer (2000) 17

¹⁷⁸ Most Asian and Latin American countries which were the big borrower of the Bank during the years 1970s are no longer demanding countries.

All these preoccupations show render urgent a reform of the World Bank so as to redistribute decision making power along more democratic and equitable lines, having in mind the impact of decisions.¹⁷⁹



¹⁷⁹ Darrow Op cit 208.

6.1 INTRODUCTION

The ensuing discussion deals with three main recommendations, aiming at enhancing the effectiveness of international loans and grants while safeguarding borrowing countries' sovereignty. They are suited for short and medium term implementation and consist of: adoption of principles applicable to the World Bank's loans and grants, transformation of the Inspection Panel into an independent monitoring and dispute settlement mechanism and improving the participation of borrowing countries in the Executive Board on issues affecting them. The chapter ends with an analysis of the benefits and cost attached to the recommendations and a general conclusion.

6.2 ADOPTION OF PRINCIPLES APPLICABLE TO THE BANK'S LOAN AND GRANTS.

It has appeared throughout this research that there is no unanimity between the borrowers and the Bank upon the standards upon which the Bank's governance package should be modeled. Also, it has been evidenced that the current governance agenda was driven by the economic philosophy of major shareholders of the World Bank, resulting in programs and reforms perceived as illegitimate.

In order to reverse this situation and avoid any kind of subjectivity, this paper recommends the adoption of principles applicable to the World Bank's loans and grants. The idea is to come up with principles which will receive a wide support from all the Bank's members.

Head suggested that these principles should consist of Human Rights, Good governance, Environment and Labor principles already adopted (or which will be adopted) within existing Specialized International Organizations and individually ratified by a 2/3 majority of the Bank's members.¹⁸⁰ These principles will then automatically become part of the Bank's

¹⁸⁰ Head (2004) 312. In addition, every time an international principle will be developed within a Specialized International Organization and ratified individually by a 2/3 majority of the Bank' Members, that principle will automatically become applicable to the Bank's lending programs.

legislation. They will be applicable to all the World Bank's State Member, and all Multinational Company engaged in a project funded by the Bank.¹⁸¹

In practice any potential borrowing country seeking a grant or loan will provide the Bank with a Memorandum of Understanding, describing how it intends to translate the principles into a program of action during the realization of the project for which the loan or grant is requested.¹⁸²

Three main advantages are attached to this recommendation:

First, the Bank will not longer have to decide on additional obligations in terms of policies reforms to impose on potential borrowers. Rather it will limit itself to examine the Memorandum of Understanding and appreciate how the borrower intends to give effect to the applicable principles in the realization's process of the project to be funded. Thus the issue as legitimacy of the reforms attached to the Bank's lending operations will be addressed, since all the Bank's members will have participated in their elaboration.¹⁸³

Secondly, this recommendation will increase predictability in the use of governance and other principles. In effect any State approaching the Bank for a loan will always know in advance the principles that will apply to its case, since these principles will always consist of those which have been ratified by member States and in force prior to the loan's request.

Thirdly, from the standpoint of the general theory of law, it is believed that this recommendation will restore the unity of international law governing identical issues, because the principles applicable to the Bank's loans will not be different from those applied by the UNDP on governance issues, or those applied by the UNHCHR in relation to Human Rights. Moreover, this will favor the cooperation between International organizations, prevent any duplication of activities and foster the reform of the whole UN System.¹⁸⁴

¹⁸¹ Head (2004) 312. In addition, every time an international principle will be developed within a Specialized International Organization and ratified individually by a 2/3 majority of the Bank' Members, that principle will automatically become applicable to the Bank's lending programs.

¹⁸² The Memorandum of Understanding, which will be a covenant to the loan agreement, will also determine the sequencing of the chosen reforms and the indicators of progress so as to facilitate the assessment of the Project by the Monitoring Mechanism.

¹⁸³ This argument is also based on the fact that most UN Specialized Agencies apply the principle one State-one Vote.

¹⁸⁴ Darrow Opcit 280.

6.3 TRANSFORMING THE INSPECTION PANEL INTO AN INDEPENDENT MONITORING AND DISPUTE SETTLEMENT MECHANISM.

As noted in the earlier chapter, the mandate of the current Inspection Panel is very narrow and its autonomy restricted. Even the creation of the International Advisory Group in the present case study has been proven to be less effective than expected.¹⁸⁵

Since the proposals made so far have not attracted enough support,¹⁸⁶ this paper recommends the transformation of the existing Inspection Panel into an independent monitoring and dispute settlement mechanism. The members will be nominated by the board of governors on a regional basis;¹⁸⁷ and their decisions, like those of the International Court of Justice will be final. In addition to the investigatory activities,¹⁸⁸ the new Panel will address all disputes arisen between the Bank and its borrowers over the interpretation of any provision of loan agreements.

In order to increase the effectiveness of the monitoring process, it is suggested that the new Panel acts on the basis of Reports issued by both the local Bureau of the Bank and other Technical International and Regional Organizations, so as to come up with a position reflecting the reality of the field.¹⁸⁹

¹⁸⁵ The reason underlining this ineffectiveness are developed in Section 4.3.3 of Chapter 4 of this paper.

¹⁸⁶ These are mainly the creation of an Ombudsman or an International Tribunal for Multilateral Developments Banks.

¹⁸⁷ Each region will appoint one candidate, and the President will be designated by the nominated judges.

¹⁸⁸ These refer to the activities already carried out by the current Inspection Panel.

¹⁸⁹ The idea here is to take into consideration the technical nature of some of the issues. Henceforth, on economical issues, Reports issued by the national representation of the World Bank, will be given full consideration, meanwhile on issues such as governance, environment and human rights, the Panel will give consideration to Reports emanating for example from the local bureau of the United Nations Development Program National Bureau and Regional Organization, the NEPAD, the World Wild Fund

6.4 IMPROVING THE REPRESENTATION OF BORROWING COUNTRIES TO THE EXECUTIVE BOARD MEETING AFFECTING THEM.

This proposal stands as an alternative to the reform of the voting system within the Bank's Executive Board. In fact, it has been rightly alleged by Wood that any reform aiming at changing the weight vote system will be difficult to achieve.¹⁹⁰ The reason is that since such a change requires the approval of a 60% majority of the membership having a total of 85% of the voting power, countries such as the USA will be reluctant to vote for it.

This paper therefore recommends that borrowing countries entering into a loan agreement with the Bank, automatically participates to all the meeting and discussion of the Executive Board related to their request; on such an occasion, they will be granted an ad hoc vote during the adoption of the final decision.

Through this recommendation, borrowers will be granted the opportunity not only to raise their voice during the debate over the content of the loan agreement; but most of all, to oppose through their vote the adoption of any loan or grant that does not meet their expectations. It is believed that the improvement of their representation in the Executive Board will ultimately enhance the legitimacy of the Bank's programs.

6.6 POTENTIAL BENEFITS AND COST ATTACHED TO THE RECOMMENDATIONS

6.6.1 POTENTIAL BENEFITS

Starting with the principles applicable to the Bank's loans and grants. It is believed that the adoption of such principles will bring clarity and objectivity in the World Bank's lending programs; since any borrower will know in advance the standards that will apply to its situation if the funds were ultimately released. In addition, since these the principles are in those adopted within the framework of International Organizations that apply the rule of sovereign equality among their member States during their decision making process, it is

¹⁹⁰ Quoted by Darrow (2003) 226. The reason is that since such a change requires the approval of a 60% majority of the membership having a total of 85% of the voting power, countries such as the USA will be reluctant to vote for it.

believed that the principles applicable to the Bank's lending operations will almost reflect the consensus among the members of the international community.

Secondly, the recommendation related to the Memorandum of Understanding is most likely to safeguard the interests of both the borrower who is the initiator of the Document and the lender, since the Bank's Executive Directors will always have the opportunity to assess the Document. It will thus make sure that the proposed Memorandum of Understanding is not merely a catalog of good intentions, but most of all, that it contains clear indicators of progress and a detailed timing of the program.

With regard to transformation of the Inspection Panel into an independent monitoring and dispute settlement mechanism, it is assumed that the enlargement of its mandate to issues of interpretation of the provisions of loan's agreement and settlement of dispute between the Bank and the borrower will constitute a tool to disentangle the tension between the two parties. Finally it is believed that the cooperation between the Bank and other technical International and Regional Organization, which is provided by Art. 5 of the Agreement between the World Bank and the UN¹⁹¹ will mark an end to the competition among international organization and rationalize their actions.

6.6.2 PROSPECTIVE COSTS

The first and main impediment to these recommendations is related to the independence of the Bank. In fact, Art 1, sec 2 of the Agreement between the World Bank and the UN clearly states that:

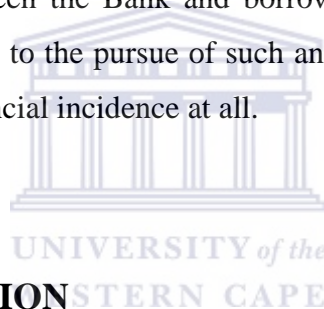
*'By reason of the nature of its international responsibilities, and the terms of its articles of agreements, the Bank is, and is required to function as, an independent International Organization.'*¹⁹²

¹⁹¹ This article provides for cooperation between the World Bank and others UN agencies in the following terms: 'The Bank recognizes that the United Nations and its organs may appropriately make recommendations with respect to the technical aspect of reconstruction or development plans, programs or project.

¹⁹² See Art 1, Para 2 of the Agreement between the IBRD and the UN adopted by Resolution 92 V of August 16, 1947 of the United Nations Economic and Social Council and approved by Resolution 124 II of November 15, 1947. From daccessdds.un.org/doc/RESOLUTION/GEN/NR0/038/31/IMG/NR003831.pdf?OpenElement [accessed on 12 February 2007].

The question is therefore whether the creation of an independent and monitoring and dispute settlement mechanism outside of the Bank current structure will not constitute a hindrance to its independence. This question is justified by the recommendation made in this paper that the newly created Panel bases its assessment on Reports issued by other International and regional Organizations. There is the fear that cases of conflict between one of these Organizations and the Bank on specific issues might arise, and this might put the Panel into a difficult position.

The second is impediment is the financial cost of the reform, especially with the transformation of the existing Inspection Panel. In fact this will require new personnel and the number of panelists will increase, since each geographical region will have one the right to appoint one candidate. Nevertheless, it is assumed that since this will be a transformation of an existing institution, the financial cost will not be an obstacle. In addition it is alleged that the objective of enhancing the effectiveness of the Bank's lending operations and improving the relationship between the Bank and borrowing countries should be preferred notwithstanding the cost attached to the pursue of such an objective, rather than a stationary situation which will have no financial incidence at all.



6.7 GENERAL CONCLUSION

The debate over the effectiveness of the World Bank lending operations will continue to passionate not only the borrowers and donors, but also the affected populations, scholars and the Bank's officials. The aim of this paper was to bring some light on some of the causes of such relative effectiveness, through the example of the Chad-IBRD loan agreement for the construction of the Chad-Cameroon pipeline.

The research has revealed that:

- The composition of the World Bank's governance structure and decision making process leading to the definition of the Bank's governance conditionality is detrimental to borrowers. As result, the Bank's governance reform programs are perceived by borrowers as illegitimate.

- The implementation of loan including a governance conditionality component leaves little room to the borrower sovereignty to freely amend the programs so as to adapt them to new changes, and ultimately, increases the tension between the Bank and the borrower. This is aggravated by the lack of an independent and strong monitoring and dispute settlement mechanism.

Owing to the practical difficulties attached to the existing reform's proposals, this paper suggests a new model, which might enhance the effectiveness of the Bank's lending programs while safeguarding the sovereignty of borrower. The model is built on four cornerstones: the principles applicable to all the Bank's lending activities, the Memorandum of Understanding, the new assessment and monitoring mechanism, and a new mode of representation of borrowing countries within the World Bank's governance bodies.

It should be underlined that these short and mid-term recommendations can not be considered without addressing the structural issues within the Bank, and upon which any policy implementation ultimately depends. Some of these issues include the deficit in accountability both internally (vertically) and externally (horizontally) and the lack of transparency.¹⁹³ The way these challenges will be address will certainly affect the behavior of member countries, because the Bank will be preaching good governance not only in words, but also in acts.

Also, given the multiplication frameworks through which Aid is now channeled, the cooperation between the International Financial Institutions participating in those initiatives has to be formalized.¹⁹⁴ At this level, the on going reform of the United Nations Economic and Social Council might be of great importance so as to empower it to coordinate the activities of all those Institutions. These issues are not within the ambit of this thesis but constitute an off short which is however connected.

¹⁹³ Darrow (2003) 222.

¹⁹⁴ See for example the new Aid for trade program developed within the framework of the World Trade Organization.

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ANNEX 1

SCHEDULE 5 of the Chad-IBRD loan Agreement

Petroleum Revenue Management Program

1. General Objective. The objective of the Petroleum Revenue Management Program (the Program) is to assist in reducing poverty in the territory of the Borrower. To that end, it contemplates the set aside of the petroleum revenues received by the Borrower under the Project and to target their use to priority poverty sectors in the context of the Borrower's overall sectoral programs and global government expenditure patterns, and in a manner consistent with sound macro-economic management. For the purposes of this Schedule, the term "Petroleum Revenues" shall consist of amounts (net of the amounts due by the Borrower to the Bank and EIB under this Agreement and the EIB Finance Contract, respectively) to be received by the Borrower under the Project as follows:

- (a) Royalties (the Royalties) due to the Borrower under the Upstream Convention;
- (b) Dividends (the Dividends) received by the Borrower as shareholder, respectively, of COTCO and TOTCO; and
- (c) Taxes (the Taxes) levied on TOTCO, CHEVRON CHAD, ESSO CHAD and PETRONAS CHAD income.

2. Petroleum Revenue Management Law. As part of the Program, the Borrower agrees that Law No. 0001/PR/99 dated January 11, 1999, governing the management of the petroleum revenues (the Petroleum Revenue Management Law) shall not be amended or waived so as to materially and adversely affect the implementation of the Program.

3. Flow of Funds. The Borrower shall cause the Petroleum Revenues to be paid by any entity which has payment obligations to the Borrower in relation to the Project (the Obligors) into the Escrow Accounts. The Borrower shall, subject to its obligations under Article II of this Agreement and its financial obligations under the EIB Finance Contract, cause the proceeds of the Escrow Accounts to be distributed as follows:

(a) 10 percent of the Royalties and Dividends shall promptly be deposited and invested in long-term investment instruments with a financial institution, satisfactory to the Bank (the Future Generations Fund);

(b) 90 percent of the Royalties and Dividends shall be deposited in special accounts in one or more private commercial banks in Chad, satisfactory to the Bank (the Special Petroleum Revenue Accounts), in the name of the Borrower's Treasury; and

(c) the Taxes shall be paid directly from the Escrow Accounts to the Borrower's Treasury.

4. Use of Funds

(a) Moneys deposited in the Future Generations Fund shall be invested, under prudential rules and investment arrangements satisfactory to the Bank, in long-term investment instruments. Upon their liquidation, the proceeds of such investments shall be used to benefit poverty reduction objectives. The Borrower shall adopt not later than December 31, 2001, such prudential rules and investment arrangements satisfactory to the Bank, as amended from time to time in substance satisfactory to the Bank.

(b) Moneys deposited in the Special Petroleum Revenue Accounts shall be allocated as follows:

(i) 80 percent of Royalties and 85% of the Dividends shall be allocated to expenditures, acceptable to the Bank, for the following priority poverty reduction sectors in support of the Borrower's objective of regional balance: health and social affairs, education, infrastructure, rural development (agriculture and livestock) and environment and water resources.

(ii) Expenditures to be financed with the Royalties and Dividends referred to in paragraph 4 (b) (i) above in these priority poverty reduction sectors shall be incremental to expenditures reflected in the Borrower's budget for fiscal year 2002 in respect of these sectors.

(iii) 5 percent of Royalties shall be allocated to decentralized authorities in the petroleum producing region (as defined below), as a supplement to the allocation referred to in paragraph 4 (b) (i) above, to finance expenditures, acceptable to the Bank, to reduce poverty.

For purposes of this paragraph, “petroleum producing region” means the area within the boundaries delineated in the map attached to this Schedule 5.

(iv) Up to and including December 31, 2007, 15 percent of Royalties and Dividends can be used to finance general recurrent expenditures for the non “Sovereign” sectors. After December 31, 2007, this portion shall be used to finance expenditures in priority poverty reduction sectors referred to in paragraph 4 (b) (i) above in accordance with the same terms and conditions applicable to expenditures under such paragraph (including those set out in paragraphs (5), (6) and (7) below).

(c) The Taxes shall be used to finance increased development expenditures generally.

5. Modalities

(a) The following modalities shall apply in respect of expenditures under paragraph 4 (b) (i) above:

(i) By not later than September 15 each year, the Borrower shall prepare a plan satisfactory to the Bank containing the detailed allocation of resources under paragraph 4 (b) (i) from the Special Petroleum Revenue Accounts to the priority poverty reduction sectors referred to in such paragraph; such annual expenditure program shall be reflected in the draft Borrower’s budget to be submitted annually for approval to the Borrower’s Parliament.

(ii) In accordance with Article 18 of the Petroleum Revenue Management Law, the independent “Collège de Contrôle et de Surveillance des Ressources Pétrolières” (CCSRP) shall authorize and verify the disbursements from the Special Petroleum Revenue Accounts.

(iii) Amounts under paragraph 4 (b) (i) above which cannot be used for the agreed objectives, or the use of which would jeopardize the Borrower’s macroeconomic stability, shall be held in the Special Petroleum Revenue Accounts, under arrangements to be agreed upon by the Bank, for their subsequent use in financing priority poverty reduction sectors referred to in paragraph 4 (b) (i) above.

(b) The Borrower shall develop, not later than January 31, 2003, record keeping, auditing and distribution mechanisms acceptable to the Bank regarding the distribution and application of funds pursuant to paragraph 4 (b) (iii), including by the decentralized authorities.

6. Public expenditure reviews The Borrower shall conduct with the Bank, under terms of reference acceptable to the Bank, annual public expenditure reviews (with a particular focus on the use of Petroleum Revenues).

7. Record-keeping, Reporting and Audits

(a) The Borrower shall require the financial institution referred to in paragraph 3 (a) above and the commercial banks referred to in paragraph 3 (b) above, to maintain records and accounts adequate to reflect, in accordance with sound accounting practices, the operations and financial condition of the Special Petroleum Revenue Accounts and the Future Generations Fund, respectively.

(b) The Borrower shall:

(i) require the financial institution and the commercial banks referred to in the preceding paragraph to have the records, accounts and financial statements (balance sheets, statements of income and expenses and related statements) for the Special Petroleum Revenue Accounts and the Future Generations Fund, respectively, for each fiscal year audited, in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank, under terms of reference satisfactory to the Bank;

(ii) furnish to the Bank as soon as available, but in any case not later than three (3) months after the end of each such year: (A) certified copies of the financial statements for such year as so audited; and (B) the report of such audits by said auditors of such scope and in such detail as the Bank shall have reasonably requested; and

(iii) furnish to the Bank such other information concerning said records, accounts and financial statements as well as the audits thereof, as the Bank shall from time to time reasonably request.

(c) The Borrower shall require such financial institution and commercial banks to issue, under terms of reference satisfactory to the Bank, quarterly reports regarding the management of the Future Generations Fund and the Special Petroleum Revenue Accounts, respectively, which the Borrower shall furnish to the Bank as soon as available.

(d) The Borrower shall furnish to the Bank as soon as available certified copies of any reports issued by “Commission Bancaire de l’Afrique Centrale” (COBAC) regarding the private commercial banks referred to in paragraph 3 (b) above.

(e) The Borrower shall require CCSRP to issue, under terms of reference satisfactory to the Bank, quarterly reports regarding its activities, which the Borrower shall furnish to the Bank as soon as available.

(f) The Borrower shall furnish to the Bank as soon as available certified copies of the audit report of the General Auditor’s Office regarding the execution of the Borrower’s annual budgets.

(g) The Borrower shall, in accordance with Article 22 of the Petroleum Revenue Management Law, publish the reports and audits referred to in paragraphs 7 (b) (i), 7 (c), 7 (e) and 7 (f) above.

8. The Borrower shall issue by not later than December 31, 2001, all the necessary implementation decrees, satisfactory to the Bank, relating to the Petroleum Revenue Management Law including the decree regarding CCSRP, referred to in Article 19 of the Petroleum Revenue Management Law.