

# Greening of global consumption in the light of protection of environment in the era of globalization: The second facet of environmental law

Dr. Mwirigi K. Charles\* & Shrish Singh\*\*

\*Post-Doctoral Fellow, Christ (Deemed to be) University, Hosur Road, Bengaluru. -560029

\*\* Scholar, Master of Law, Christ (Deemed to be) University, Hosur Road, Bengaluru. -560029

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**ABSTRACT:** *While our world faces numerous pressing challenges, environmental issues are high on the list of topics to be addressed, if they aren't solved, by social and natural scientists, engineers and others. Environmental issues are high on the list. Global warming, the anthropologies and mitigations of global warming have received much public attention in the past few years, not to a small extent. The goal here is how a global industrial complex that employs tens of millions of people and contributes one third of all greenhouse gasses to the atmosphere of our planet can be significantly and quickly changed. The emphasis here is on the continued importance of the nation-state in regulating the environment and in forcing radical environmental technological innovations necessary for greater global human sustainability. Gerard Ford has suggested that "pioneering countries," especially in the North, play an extremely important role in "developing and globally disseminating technological innovations in the environment. Environmental NGOs play a crucial role in the process of innovation and negotiation of such a comprehensive global environmental policy. Three key aspects are factored into the equation in the discussion on globalization and the environment, but three important innovations are being examined: advancement of intergovernmental environmental and social institutions, increased use of legal and regulatory instruments based on the market and the increase of the participation of global civil society. Emergent transformations are not unavoidable and are not sufficient to support sustainability. global environmental governance. Rather, the interests and actions of economic actors are constantly threatening and political, geographical and global inequality constrained as well. The stakeholders' on-going efforts to maintain the relevance of new forms of environmental leadership, maintain their momentum and enhance their efficiency.*

**Key Words:** *International Court of Justice, Agenda 21, Rio Declaration, Transnational Laws, Environmental Equity, Environmental Governance, Intergovernmental Organizations, Global Inequality.*

## INTRODUCTION

Global market integration has obviously made many economies rise faster than they would coherently have, potentially leading unintentionally to *extra benefits*<sup>1</sup> such as *increased longevity*,<sup>2</sup> *improved livelihoods*<sup>3</sup> and *increased access to foreign assistance*.<sup>4</sup> Also, while globalisation's hopes of encouraging productivity cohesion and eradicating poverty are steep,<sup>5</sup> globalisation can start producing disadvantages in many scenarios. In addition to creating unprecedented wealth, as **Joseph Stiglitz**<sup>6</sup> puts it, "**world markets have helped lead to unprecedented poverty**." Environmental protection at the national and international levels has undergone significant changes over the last two decades.<sup>7</sup> From the era of the **Stockholm conference** onwards,<sup>8</sup> *policies which are superficially cantered and influenced by international political and legal*

<sup>1</sup>J. Stiglitz, Globalization and its Discontents

<sup>2</sup>See, generally, M. Wolf, Why Globalization Works (2005); J. Bhagwati, In Défense Globalization (2007

<sup>3</sup>Stiglitz, op. cit., n.

<sup>4</sup>F. Snyder 'Governing Economic Globalization: Global Legal Pluralism and European Law' (1999) 5 European Law J. 334-74, at 335; B. De Sousa Santos, Toward a New Legal Common Sense: Law, Globalization, and Emancipation (2002

<sup>5</sup>J. Purdy, 'A World of Passions: How to Think About Globalization Now' (2004) 11 Indiana J. of Global Legal Studies 1^9,

<sup>6</sup>A.O. Krueger, 'Trading Phobias: Governments, NGOs and the Multilateral System', John Bonython Lecture, 10 October 2000, available at <[http://www.cis.org.au/events/jbl/anne\\_krueger.html](http://www.cis.org.au/events/jbl/anne_krueger.html)

<sup>7</sup>R.B. Reich, The Work of Nations: Preparing Ourselves for 21st Century Capitalism (1992) ch. 11.

<sup>8</sup>B. Lindsey, Against the Dead Hand: The Uncertain Struggle for Global Capitalism (2002) 275.

**developments suddenly shifted from national-g geared, inward-looking environment and development legislation.**<sup>9</sup> There is also growing recognition that, without healthy environments, healthy economies cannot exist in the long term to support them.<sup>10</sup> Internationally, the interdependence of economic structures also reflects the realization of the interdependence of global ecosystems.<sup>11</sup> Nationally, the process of globalization is pigeonholing legislative and policy approaches to environmental matters.<sup>12</sup> While it is recognized that globalization is a crucial factor in environmental protection and managing natural resources, in order to address global issues consistently on an international level, regionalization is also very important to address common issues in a harmonious and comprehensive manner.<sup>13</sup> The Asia-Pacific region, in which Australia is part-geographically, politically and artistically, increasingly-may provide examples of the need for regionalisation.<sup>14</sup> The international environmental agencies focus on ensuring that the momentum is maintained and that the high-sounding UNCED resolutions are translated into practical and financially achievable programmes.<sup>15</sup>

**The international community must take on with vigor the serious task of fulfilling the Rio commitments.**<sup>16</sup> **A central component of the implementation process can be seen in the role of environmental law. In order to preserve the scene for an examination of the role of international and national environmental law and associated institutions, it is necessary to briefly survey the Rio commitments, in particular as set it out in the Rio Declaration, Agenda 21 and the Forest Principles.**<sup>17</sup>

### AGENDA 21 AND GLOBALIZATION

Agenda 21 delineates a **global framework for colluding on environmental sustainability** and land management strategies and tactics.<sup>18</sup> Chapters 8, 38 and 39 explicitly show that the **globalization of environmental law** and policy is acknowledged and incentivized.<sup>19</sup> Chapter 8 attempts to address the integration of environmental and developmental issues into policy decision-attempting to make, planification and management, with the end goal of boosting or restructuring cognitive processes in order to fully integrate socio-economic and environmental major issues.<sup>20</sup> The overall goal is to support the integration of environmental and economic and rapid development policies through appropriate legal, regulatory and enforcement policies, tools and techniques and mechanisms at all levels of government, in light of country specific circumstances. For this kind of intent, Chapter 8 envisages the following objectives:<sup>21</sup>

<sup>9</sup>S. Strange, *The Retreat of the State: The Diffusion of Power in the World Economy* (1996) 4.

<sup>10</sup>See, for instance, L. Weiss, *The Myth of the Powerless State: Governing in the Global Era* (1998); J. McLean, 'Government to State: Globalization, Regulation, and Government as Legal Persons' (2003) \0Indiana]. of Global Legal Studies 173; Wolf, op. cit, n. 4, pp. 221-6.

<sup>11</sup>See, for instance, L. Weiss, *The Myth of the Powerless State: Governing in the Global Era* (1998); J. McLean, 'Government to State: Globalization, Regulation, and Government as Legal Persons' (2003) \0Indiana]. of Global Legal Studies 173; Wolf, op. cit, n. 4, pp. 221-6.

<sup>12</sup>J. Black, 'Critical Reflections on Regulation' (2002) 27 Aus. J. of Legal Philosophy 1, at 2.

<sup>13</sup>R.J. Holton *Globalization and the Nation-State* (1998) ch. 4, particularly pp. 81-3.

<sup>14</sup>J. Elias and R. Lee, 'Ecological Modernisation and Environmental Regulation: Corporate Compliance and Accountability' in *Global Governance and the Quest for Justice: Corporations and Corporate Governance*, ed. S. MacLeod

<sup>15</sup>B. De Sousa Santos, 'Globalizations' (2006) 23 *Theory, Culture & Society* 393-9, at 393; for an extended version of his thesis, and for more detailed discussion, see De Sousa Santos, op. cit. n. 7, especially pp. 87-98

<sup>16</sup>A. Amin, 'Regulating Economic Globalization' (2004) 29 *Trans, of the Institute of Brit. Geographers* 217-33, at 233

<sup>17</sup>S. Jasanoff and M.L. Martello 'Conclusion: Knowledge and Governance' in Jasanoff and Martello, op. cit., n. 29, pp. at p. 338.

<sup>18</sup>G.H. Von Wright 'The Crisis of Social Science and the Withering Away of the Nation State' (1997) 1 *Associations* 49-52.

<sup>19</sup>Turn of phrase taken from R. Robertson 'Glocalization: Time-Space Homogeneity-Heterogeneity' in *Global Modernities*, eds. M. Featherstone, S. and R. Robertson (1995) ch. 2, especially

<sup>20</sup>P. Gale and S.M. Cordray, 'Making Sense of Sustainability: Nine Answers to Should be Sustained?'" (1994) 59 *Rural Sociology*

<sup>21</sup> Bailey, B. and M. Lappe, editors. 2002. *Engineering the farm: ethical and social aspects of agricultural biotechnology*. Island Press, Washing- ton, D.C.

- To promulgate information on effective environmental and development legal and legislation innovations, including those of appropriate instruments and incentives for compliance, to encourage their broader use and adoption at national, provincial and local level.<sup>22</sup>
- To support all those countries that actually require it in their national initiatives, with careful attention to local social values and infrastructures, to modernize and augment the policy and legal governance framework for environmental sustainability.<sup>23</sup>
- Encouraging developing, implementing and evaluating national, state, provincial and local compliance programs and responding appropriately to failure to comply.<sup>24</sup>

The goal of the globalization of environmental sustainability is also engendered in chapter 38 of Agenda 21, which itself fixates on international institutional commitments.<sup>25</sup> The Chapter sets out as well, among many other things, a broad UNEP mandate and encourages the provision, if requested from governments, of technical, legal and institutional advice to enhance national legal instances and institutional advice to governments on request,<sup>26</sup> in order to establish and enhance national legal and institutional frameworks, particularly in cooperation with UNDP.<sup>27</sup>

The following sections of Chapter 8 reflect and further promote an approaches, policies and principles that are homogenized.<sup>28</sup> As developments in national environmental policies are examined, it is evident, for governments, ***Intergovernmental organizations (IGOs), and NGOs and the private sector, that Chapter 8 is beginning to form the basis of decision-making on environmental and development matters.***<sup>29</sup> This is demonstrated, for example, by developments at federal and national level in Australia as well as in the Pacific Island region, towards more common approaches to environmental strategies and, to a certain extent, in law-making.<sup>30</sup> International bodies, including UN organisations, provide financial and technical support for the promotion of environmental policy in many parts of the world. ***The principles of forestry***

<sup>22</sup>See, eg, Jim McNeill, Pieter Winsemius, Taiza Yakushiji, Beyond Interdependence: The Meshing of the World's Economy and the Earth's Ecology (1991).

<sup>23</sup>IUCN, World Conservation Strategy (1980), prepared in collaboration with the United Nations Environment Programme and the World Wildlife Fund (now known as the Worldwide Fund for Nature) and the United Nations Food and Agriculture Organisation. The IUCN prepared a successor to that strategy: IUCN et al, Caring for the Earth (1991). This has been used by the IUCN as a baseline document for the promotion of sustainable strategies through government and other bodies around the world.

<sup>24</sup>see Experts Group on Environmental Law, WCED, Environmental Protection and Sustainable Development: Legal Principles and Recommendations (1987).

<sup>25</sup>For a discussion of the changing meaning but continuing importance of sovereignty in international law and international relations, see Nico Schrijver, 'The Dynamics Of Sovereignty in a Changing World' in Konrad Ginther, Erik Denters and Paul de Waart (eds), Sustainable Development and Good Governance (1995) 80-9. In particular, he points out that Principle 2 as well as the other Principles of the Rio Declaration not only give rise to state rights, but to state responsibilities: 87.

<sup>26</sup>Peter Malanczuk, 'Sustainable Development: Some Critical Thoughts in the Light of the Rio Conference' in Ginther et al. above n 9, 30.

<sup>27</sup>For a discussion of the place of the rights of citizens and NGOs in the international law of sustainable development, see Philippe Sands and Jacob Werksman, 'Procedural Aspects of International Law in the Field of Sustainable Development: Citizen's Rights' in Ginther et al, above n 9, 178.

<sup>28</sup>See Ben Boer, 'Environmental Law and the South Pacific: Law of the Sea Issues' in James Crawford and Donald Rothwell (eds), The Law of the Sea in the Asian Pacific Region: Developments and Prospects (1995) 67-92; Ben Boer, 'Institutionalising Ecologically Sustainable Development: The Roles of National, State and Local Governments In Translating Grand Strategy Into Action' (1995) Willamette Law Review (forthcoming).

<sup>29</sup>The history of the development of the Forest Principles is traced in Hugo Schally, 'Forests: Toward an International Legal Regime?' (1993) 4 Yearbook of International Environmental Law 30.

<sup>30</sup>Inter-governmental Agreement on the Environment (1992) s 3.5.2: the Inter-governmental Agreement on the Environment is an instrument agreed to by the Commonwealth Government and all State and Territory Governments, as well as the Australian Local Government Association, with the intention, among other things, of facilitating a cooperative national approach to the environment. Western Australia withdrew from the Agreement in February 1994.

*and other instruments were agreed at UNCED.*<sup>31</sup> Their subtitle exemplifies the principles as a '**completely non-binding authoritative statement of values and principles for a global agreement on the management, conservation and sustainable development of all forest types.**' It would appear that there was no sufficient momentum or political will at UNCED to incorporate these principles into a global convention; they moreover remain at the level of principles alone.<sup>32</sup> The Principles demonstrate the very first global forest general consensus.<sup>33</sup> This pronouncement reflects the new challenge of actually reaching a tentative agreement. The Principles recite Principle 2 of the Rio Declaration and stress that the States '**have a sovereign and inherent right, in compliance with their development and socio-economic development needs and on the basis of public policies, in keeping with the prerequisites of sustainability and laws, to use, successfully manage and develop their tropical forests.**'<sup>34</sup> Even though global governance is vehemently articulated on environmental issues at the Earth Summit, the Commission recognizes that there is general lack of direction as to where to go next in lawful, philosophical and societal groundwork for attempting to achieve sustainable development.<sup>35</sup> The Commission's own recommendations on the conservation of the global environment accurately reflect that **lack of strategy.**<sup>36</sup> The direct and immediate specific recommendations in this regard are restricted to endorsing significant international support for Agenda 21 and the consolidation of the Global Environment Facility, the increased use of market support and resources to actively promote a carbon tax by the European Union.<sup>37</sup> Even this report missed an opportunity to interact directly both with environmental issues via its specific recommendations on strengthening and upholding international humanitarian law.<sup>38</sup> However, the report, especially the recommendation that an Economic Security Council should be set up in a manner similar to the Security Council but not with identical membership or independent of it, can be found the seeds for improving the global governance of the environment.<sup>39</sup> The tasks of this agency would include a continuous assessment of the global economy, the interaction between major policy areas and providing a strategic long-term policy framework to '**foster stable, balanced and sustainable development.**'<sup>40</sup> *It would seem sensitive that such a new institution should be established within the framework of the United Nations to more accurately reflect the Economic considerations still seem dominant in the Commission recommendations for reform, in conflict with its desire for sustainable development.*<sup>41</sup>

#### THE GLOBALISATION OF ENVIRONMENTAL LAW

In the 23 years since the Stockholm Conference on the **Human Environment of 1972**, environmental law has sprouted to **pre-eminence in both its national and international facets.**<sup>42</sup> There are far more than 900

<sup>31</sup>See generally Ben Boer, 'Institutionalising Ecologically Sustainable Development: The Roles of National, State And Local Governments In Translating Grand Strategy Into Action', above n 21.

<sup>32</sup>Draft National Strategy for the Conservation of Australia's Biological Diversity DEST 1; see also Convention on Biological Diversity, opened for signature 5 June 1992, 1993 ATS 32 (entered into force, 29 December 1993) art 2.

<sup>33</sup>Mazzoni, R., A. A. Cunningham, P. Daszak, A. Apolo, E. Perdomo, G. Speranza. 2003. Emerging pathogen of wild amphibians (*Ranacatesbeiana*) farmed for international trade. *Emerging Infectious Diseases* 9:995-998.

<sup>34</sup> Sharma, S. B. 2004. Plant industry biosecurity systems in Western Australia. Beijing International Symposium on Biological Invasions, Institute of Botany, Chinese Academy of Sciences, Beijing, 8-15 June, Abstract.

<sup>35</sup>See Ben Boer, 'The Culture of Sustainability and the Development of International Environmental Law' in *Sustainability- Principles to Practice* (forthcoming).

<sup>36</sup>Lee Kimball, 'Institutional Developments' (1993) 4 *Yearbook of International Environmental Law* 97,98.

<sup>37</sup>For proposals of the Commission in relation to strengthening and enforcement of international law (none of them bear directly on the area of environmental law), see *ibid* 333-4.

<sup>38</sup>See, eg, V Koester, 'From Stockholm to Bmndtland' (1990) 20 *Environmental Policy and Law* 14.

<sup>39</sup>Australia's Ambassador for the Environment has also pointed out the involvement of the non-government sector in international negotiations: see Penny Wensley, 'Global Trends: The Emergence of International Environmental Law' in Ben Boer, Robert Fowler and Neil Gunningham (eds), *Environmental Outlook: Law and Policy* (1994) 11; see also Sands and Werksman, above 12, 203, discussing the right of public interest NGOs to observe and intervene in intergovernmental processes.

<sup>40</sup>Regional seas programmes have been established in 13 regions of the world: see Maria Marotta, 'Regional Seas' (1993) 4 *Yearbook of International Environmental Law* 155.

<sup>41</sup>See 1991-1995 Action Plan for Managing the Environment of the South Pacific Region, SPREP (1993) for an account of SPREP's programmes.

international political intergovernmental and bilateral environmental and economic constitutional instruments. Strenuous exercise has been unfolding at national level, predominantly in industrialized nations and, more relatively recently, in several developing nations.<sup>43</sup> **Environmental law has been termed as a primary basis for accomplishment of sustainable development at both international and domestic levels in the past 5 years.**<sup>44</sup> Two fads are blossoming with particular regard to sustainable development and more expansively.<sup>45</sup> International environmental law seems to have a much bigger influence on the form of domestic environmental law and progressively comparable tenets and methods to domestic and international environmental law from jurisdiction to jurisdiction.<sup>46</sup>

The UN agencies, particularly UNEP, as well as bodies such as the international law Commission, play a distinguishable, integral role in homogenising international environmental law.<sup>47</sup> Agenda 21 mandates an enhanced and strengthened role for the UNEP, and affords for **the development of international environmental law** to be a highest priority area to be resolved by the UNEP.<sup>48</sup> It actually plays a unique role in the situational awareness of the functions of convention secretariats, taking into account the equitable distribution of wealth.<sup>49</sup> In viewpoint of the need for co-ordinate action in some of the convention areas such as the conservation of biodiversity and the sustainable use of its components, **Synergy between Conventions** also requires further concentration. Clear need for global coordinating instruments is being made available, such as the need for the 1973 Convention on International Trade in Endangered Species to operate in collaboration with, for instance, the 1979 Convention on Migratory Wild Animals.<sup>50</sup> The United Nations agencies and, in fact quite the opposite, UNEP and bodies such as the Commission on International

<sup>42</sup>The Pacific Way: Pacific Island Developing Countries' Report to the United Nations Conference on Environment & Development South Pacific Commission, SPREP (1992).

<sup>43</sup>See Elizabeth Harding, Federated States of Micronesia: Review of Environmental Law, SPREP (1992); Elizabeth Harding, Review of Environmental Law: Republic of the Marshall Islands, SPREP (1992); M Pulea, Kingdom of Tonga: Review of Environmental Law, SPREP (1992); Mere Pulea, Cook Islands: Review of Environmental Law, SPREP (1992); Ben Boer, Solomon Islands: Review of Environmental Law, SPREP (1992); Robert Thistlethwaite et al, The Kingdom of Tonga: Action Strategy for Managing the Environment, SPREP (1993); The Federated States of Micronesia, National Environmental Management Strategies, SPREP (1993); Solomon Islands: National Environmental Management Strategy, SPREP (1993); Cook Islands: National Environmental Management Strategies, SPREP (1993).

<sup>44</sup> Sudarshan, H. 2002. Foreword. In V Ramprasad. Hidden harvests: community based biodiversity conservation. Green Foundation, Bangalore

<sup>45</sup>See Summary Report, First Meeting on the Draft Treaty Banning Hazardous and Toxic Wastes Within the South Pacific, Suva, Fiji 7-8 March 1994 Forum Dc SPFS (94) 4. The aim is to have this Convention ready for adoption at the September 1995 meeting of the South Pacific Forum to be held in Port Moresby, Papua New Guinea; see Ben Boer and P Lawrence, Regional Report, 'Australia', (1994) 5 Yearbook of International Environmental Law (forthcoming).

<sup>46</sup>Gregory Rose, 'Australia's Environmental Initiatives in the Asia-Pacific Region' (paper presented at Australian Centre for Environmental Law Second Environmental Outlook Conference, March 1995, forthcoming).

<sup>47</sup>Secretariat of the Basel Convention, Compilation of the Provisions of National Legislation Related to the Control of Transboundary Movements of Hazardous Wastes and their Disposal and to the Environmentally Sound Management of Hazardous Wastes, UNEP, 1994 UNEP/BC/94/2; Basel Convention Series/SBC No 94/002 (1994).

<sup>48</sup>Although the role of UNEP is concentrated on here, the related activities of the United Nations Development Programme are also very significant, particularly in the support of capacity-building through UNDP's 'Capacity 21' programme which extends to some 22 developing countries. The programme focusses on environmental accounting, environmental impact assessment, data collection and analysis, information dissemination and training: see Kimball, above n 45, 99. 1995]

<sup>49</sup>The first Global Training Programme in Environmental Law took place at UNEP in Nairobi in December 1993. Regional training programmes have also been conducted, for example, in Beijing in late 1994.

<sup>50</sup>This Centre is intended to be established with the assistance of UNEP, the IUCN, the United Nations University, Pace University, New York, and the Australian Centre for Environmental Law.

Law play a distinguishable and influential role in the globalization of International Environmental law.<sup>51</sup> Agenda 21 continues to call on UNEP to augment and enhance its role and insures the future development of international environmental law as a priority area for the UNEP's emphasis. **It actually plays a unique role in orchestrating the processes of conference secretariats taking account of environmental sustainability.**<sup>52</sup> Synergies between the conventions are also required because even though cooperation in many of the areas affected by norms, such as biodiversity conservation and sustainable use of the components of the agreement, is necessary. Global tools for co-ordination with regional instruments are clearly required, such as the need for the Convention on Biological Diversity to operate in cooperation, for example, with the 1973 Convention on International Trade in Endangered Species and the 1979 Convention on Migratory Wild Fauna.<sup>53</sup>

### **RIO DECLARATION AND PRINCIPLES OF SUSTAINABLE DEVELOPMENT**

The main concepts or challenges derived from the Rio Declaration can be said to include: intergenerational and intragenerational equity, the precautionary principle or tactic, biological diversity conservation and upkeep of **organic integrity, and internalization of environmental costs.** The major challenge of the next few years is how these basic principles can be **fully implemented worldwide, regional, national and local.**<sup>54</sup>

The concept that the current generation of human beings carry the earth in optimism for current and future generations is supplanted by **INTERGENERATIONAL EQUITY.**<sup>55</sup> We have seen this principle absorbed in the Australian Intergovernmental Agreement on the Environment (IGAE) of 1992, which recognizes the concept by declaring that 'the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.'**INTRA-GENERATIONAL EQUITY** means that within one generation people enjoy equal rights, both at national and international level, for exploiting resources and enjoying a healthy, clean environment.<sup>56</sup> This implies at domestic level equal access in the national watercourse and the territorial sea to common natural resources, clean air and polluted water. At international level, this means that international air, water and marine resources are allocated fairly. Principle 15 of the Rio Declaration, as depicted above, affords a **PRECAUTIONARY** stance.<sup>57</sup> The definition of Rio Declaration is the same as the Australian Environment Intergovernmental Agreement, except that the latter omits the reference to the economic efficiency of the measures which have to be taken. The IGAE explores the definition that public and private decision should, in applying the principle, be guided by a thorough assessment in order to avoid serious or irreversible environmental damage, wherever possible, and an assessment of the risk-weighted effects of the various options.<sup>58</sup>

<sup>51</sup>International Court of Justice, 'Constitution of a Chamber of the Court for Environmental Matters', Communique No 93/20, 19 July 1993; see Philippe Sands, 'Reports from International Courts and Tribunals' (1993) 4 Yearbook of International Environmental Law 484; see 'International Court of Justice' (1993) 4 Yearbook of International Environmental Law 776-7.

<sup>52</sup>See Amedeo Postiglione, 'A More Efficient International Law on the Environment and Setting Up an International Court for the Environment within the United Nations' (1990) 20 Environmental Law 321.

<sup>53</sup>Commission on Environmental Law of IUCN, The World Conservation Union in Cooperation with International Council of Environment Law, Draft International Covenant on Environment and Development (1995).

<sup>54</sup>See A Timoshenko, 'Institutional Instruments for Conservation and Sustainable Use of Natural Resources' (paper presented at Global Training Programme on Environmental Law and Policy, Nairobi, 1995, forthcoming).

<sup>55</sup>For a discussion of the effect of international environmental law on Australian domestic law, see Donald R Rothwell and Ben Boer, 'From the Franklin to Berlin: The Internationalisation of Australian Environmental Law and Policy' (1995) 17 Sydney Law Review 234-69. Some elements of that discussion are drawn on in the present article.

<sup>56</sup>See A Timoshenko, 'Institutional Instruments for Conservation and Sustainable Use of Natural Resources' (paper presented at Global Training Programme on Environmental Law and Policy, Nairobi, 1995, forthcoming).

<sup>57</sup>Michel Foucault, "Governmentality," in G. Burchell, C. Gordon, and P. Miller, eds., The Foucault Effect (Chicago: University of Chicago Press, 1991).

<sup>58</sup>Wendy Larner and William Walters, eds., Global Governmentality: Governing International Spaces (London: Routledge

**SCOPE OF ENVIRONMENTAL LAW IN THE ERA OF GLOBALIZATION**

The creation, in 1993, of a new chamber of the International Court of Justice (ICJ) to deal with environmental issues is also an indication of the trend towards globalization of environmental law.<sup>59</sup> In recognition of developments in international environmental law in recent years and the need to be prepared to the greatest extent in respect of environmental matters before them, the communication announcing the new chamber was established.<sup>60</sup> Clearly, in their dispute resolution procedures, the more environmental conventions incorporate the recourse to ICJ, the more likely it will be that support from ICJ will be needed.<sup>61</sup> **However, the ICJ is rather limited in its ability to handle environmental issues effectively.** It is limited to hearing cases between countries and only States are generally capable of taking action. The competence of the tribunal is further limited by the parties' willingness to accede to its competence.<sup>62</sup> The question is in these circumstances if any other entity or agency could be created to extend the possibilities of international environmental law enforcement. This question is more relevant if the United Nations decides to place more responsibilities for the implementation and enforcement of international environmental legislation and policies on bodies such as the CSD and UNEP.<sup>63</sup>

Maybe then it's time to seriously consider the monitoring and enforcement of international environmental conventions.<sup>64</sup> Global adherence should not depend on the state's accession to the ICJ's jurisdiction, nor on international political embarrassment. An appropriate international enforcement system should be based on much the same type of action as at national level.<sup>65</sup> This includes the development of legal tests such as the need for due diligence and accurate meanings of sustainable development principles and concepts. However, it cannot be underestimated the difficulties of opening the competence of the ICJ to non-state parties. ***This can be insurmountable for the political and technical difficulties of extending the jurisdiction of the ICJ.*** This is soberingly recalled from experiences of groups trying to direct the European Court of Justice to bring proceedings for a judicial review of European Community and European Community Commission acts.<sup>66</sup> The establishment in the United Nations of an international environment court is an idea that the Justice Postiglione of the Supreme Court has developed in recent years and supported by a number of government organizations and individuals. The key argument is that the ICJ is not an appropriate environment hearing forum and that a tribunal is a specialist. This court would have a very general jurisdiction and not be limited to cases between Member States; action could be taken by NGOs and

<sup>59</sup>Nikolas Rose, *Powers of Freedom* (Cambridge: Cambridge University Press, 1999), p. 57

<sup>60</sup>David Held, A. McGrew, D. Goldblatt, and J. Perraton, eds., *Global Transformations: Politics, Economics, and Culture* (Stanford: Stanford University Press, 1999), p. 27

<sup>61</sup>Martin Shaw, *Historical Sociology and Global Transformation*, in Ronan Palan, ed., *Global Political Economy: Contemporary Theories* (London: New York: Routledge, 2000), p. 230.

<sup>62</sup>15. Barry Hindess, "Neo-Liberalism and the National Economy," in Mitchell Dean and Barry Hindess, eds., *Governing Australia: Studies of Contemporary Rationalities of Government* (Cambridge: Cambridge University Press, 1998), pp. 210-226. On the place of calculative techniques such as benchmarking in constituting globalizing economic spaces, see W. Larner and R. Le Heron, "The Spaces and Subjects of a Globalizing Economy: Towards a Situated Method," *Environment and Planning D: Society and Space* 20 (2002): 753-774.

<sup>63</sup>Didier Bigo, "When Iwo Become One: Internal and External Securitisations in Europe," in Morten Kelstrup and Michael C. Williams, eds., *International Relations Theory and the Politics of European Integration* (London: Routledge, 2000)

<sup>64</sup>Bob Jessop, "On the Spatio-Temporal Logics of Capital's Globalization and the Manifold Implications for State Power," Department of Sociology, Lancaster University, 2001, available at <http://comp.lancs.ac.uk/sociology/papers/jessop-spatio-temporal-logics.pdf>, accessed November 29, 2004.

<sup>65</sup>Conal Condren, "Political Theory and the Problem of Anachronism," in A. Vincent, ed., *Political Theory: Tradition and Diversity* (New York: Cambridge University Press, 1997); Stephen Hobden, "Historical Sociology: Back to the Future of International Relations?" in S. Hobden and J. Hobson, eds., *Historical Sociology of International Relations* (Cambridge: Cambridge University Press, 2002).

<sup>66</sup>Recent explorations of the camp as a figure for understanding the twentieth century illustrate the kind of counterdescription we have in mind. See Giorgio Agamben, "What Is a Camp?" in *Means Without End: Notes on Politics*, trans. V. Binetti and C. Casarino (Minneapolis: University of Minnesota Press, 2000); and Zygmunt Bauman, "A Century of Camps," in Peter Beilharz, ed., *The Bauman Reader* (Oxford: Blackwell, 2001).

other private sector organizations, as well as by persons concerned or affected by any kind of environmental degradation.<sup>67</sup>

At the same time, it can be described as both positive and negative and as a highly desirable destructive force. There is nothing universal about globalization in this regard. While in some contexts there may be advantages, in others there are inevitable losses.<sup>68</sup> For example, globalization is not only seen as a vehicle to promote and protect internationally diverse rights, values and resources, but is also responsible for the increased conflict, inequalities and resources. Globalization, for example, has been described as '*a phenomenon that economic actors in any part of the world are far more affected by events elsewhere.*' In contrast to industrial economies, where the role of people in a production-oriented model was to provide employment, globalization generated a new world economy in which, in the era of consumption, people first and foremost were consumers and their choices were collectivised under the domination of the market decline.<sup>69</sup> Consequently, globalization is not a unilateral phenomenon. It is rather manifested in a range of different (*often contradictory*) processes and experiences.<sup>70</sup> This '*hollow-out*' process is much more difficult to distinguish in western countries wherein transnational corporations are headquartered. Such nations will likely retain a substantial level of political legitimacy because even though multinational companies rely so heavily on resources.

*In these instances, Holton illustrates that governments have certain cards, especially if they are really able to attain a high degree of political stability, transport infrastructure and fiscal assistance.*<sup>71</sup>

### EVILS OF GLOBALIZATION

To the regret of its ardent supporter, globalisation, as well as destabilisation of the delicate balance of human enterprise with the environmental resource base, has been blame for much political and socio-economic injustice worldwide.<sup>72</sup> Thus, a recent analysis by opponents to globalization claims that transnational forces have led to greater poverty, less basic need fulfilment, widespread inequality between and within countries, greater corporate power concentration, reduced social services and a reduction in the use of labour versus global capital.<sup>73</sup> Others warn against the downward social and ecological spiral in globalisation, and against the common good, erosion of state sovereignty.<sup>74</sup> The "*social*" critique of globalisation, which promotes a *new/old ethos of people-centred globalisation*, also entered into the international political arena. In recent years the international conventions have grown, with a number of other important conventions in view, including the recent signature signing of the desertification agreement and maybe a forestry convention in the years ahead.<sup>75</sup> Even though these global issues are all addressed in suitable conventions, there remains still a major gap in ensuring the adequate implementation of the various

<sup>67</sup>Saskiabassen, Embedding the Global in the National, in D. A. Smith, D. J. Solinger, and S. Topik, eds., State and Sovereignty in the Global Economy (London: Routledge, 1999), p. 159

<sup>68</sup>Colin Hay and Ben Rosamond, "Globalization, European Integration, and the Discursive Construction of Economic Imperatives," paper presented to the International Studies Association 43rd annual convention, New Orleans, March 24-27, 2002; V. Schmidt, "Discourse and Legitimation of Economic and Social Policy Change in Europe," in S. Weber, ed., Globalization and the European Political Economy (New York: Columbia University Press, 2001).

<sup>69</sup>Bruno Latour, "Drawing Things Together," in M. Lynch and S. Woolgar, eds., Representations of Scientific Practice (Cambridge: MIT Press, 1990); Bruno Latour, "On Recalling ANT," in J. Law and J. Hassard, eds., Actor Network Theory and After (London: Blackwell, 1999); J. Law, "Transitivities," Environment and Planning D: Society and Space 18 (2000): 133-148.

<sup>70</sup>J. Law and K. Hetherington, "Materialities, Spatialities, Globalities," in J. Bryson, P. Daniels, N. Henry, and J. Pollard, eds., Knowledge, Space, Economy (Routledge: London, 2000).

<sup>71</sup>T. Sinclair, "Synchronic Global Governance and International Political Economy," in M. Hewson and T. Sinclair, eds., Approaches to Global Governance Theory (Albany: State University of New York Press, 1999); Schölte, note 35.

<sup>72</sup>M. Somers and G. Gibson, Reclaiming the Epistemological 'Other': Narrative and the Social Constitution of Identity," in Craig Calhoun, ed., Sodai Theory and the Politics of Identity (Oxford: Blackwell

<sup>73</sup>Matt Sparke, Hyphen-Nation-States: Critical Geographies of Displacement and Disjuncture (Minneapolis: University of Minnesota Press

<sup>74</sup>Scott Lash and John Urry, Economies of Signs and Spaces (London: Sage, 1994); Amin, note 12; John Urry, Sodology Beyond Sodies: Mobilities for the Twenty-first Century (London: Routledge, 2

<sup>75</sup>Wirzba, N., editor. 2003. The essential agrarian community: the future of culture, community, and the land. University Press of Kentucky, Lexington

principles of sustainable development.<sup>76</sup> This is why the WCED commissioned a report on the legal principles needed to guide sustainable development.<sup>77</sup> When reported in 1986, the Legal Experts Group recommended that the IUCN's Committee on Environmental Law, currently known as the International Covenant on the Environment and Development, develop an international instrument on sustainable development containing an extensive and overarching set of principles.<sup>78</sup> The task to develop this instrument is to address the problem. In order to provide the legal framework to further the integration of different aspects of environment and development, the draft Covenant seeks to become a framework tool.<sup>79</sup> The Rio Declaration, Program 21, UNCED Conventions, and the Statement of Forest Principles are inspired and further developed.<sup>80</sup>

## CONCLUSION

There are numerous and highly significant effects of globalization on the environment. There is no doubt that many others are unknown. The first question that arises in these circumstances is that globalization remains, as we see it now, a permanent state of play. The primary environmental side effects, including pathogens (plant, animal, and human), of globalization climate change, resource exhaustion (particularly cheap energy) and potential damage to agroecosystems are more than enough to make the economic system unstable and short-lived. Globalization will indeed likely have the same socioeconomic sequences. In my book *The arrogance of humanism* (1981), is argued that we have grossly exaggerated our ability to manage global systems, which depends entirely on our ability to understand the end results of our work and even to comprehend our mechanisms formed. And much of our purported direct control is science fiction; because of the theoretical constraints we disregard at our serious risk, it does not work. We live in a fantasy world in which the retesting of practical reality is something that we should really never and must not do before we wake up. One might argue that globalisation, also subject to catastrophic accidents, is a similar system, many of them environmental events which cannot be defined until they have taken place and perhaps not even then.

Nevertheless, in 1998 the British political economist John Grey found that globalization is unstable and short-lived with little focus on environmental factors. The result, he says, is that "the combination of a never-ending stream of new technologies, unrestricted markets and weak or fractured social institutions has weakened both sovereign states," ***There is nothing in the world market that will tap the social strains arising from a highly uneven economic development both within and between diverse societies of the world.***

***What will happen to people, biodiversity and ecosystems as globalization collapses?*** With regard to people, this question is not to be answered by the gift of prophecy. Where you are, and how you live, is what will happen. The collapse of globalization and its ensuing chaos is still relatively autonomous for many Third World citizens; an unknown number of these will survive. People with resources of self-sufficiency and a growing understanding of the nature of our social and environmental problems also exist in the developed world that can help them overcome the years of crisis. **The citizens of the United States and other nations must realize that both our climate and our society, as great as any war of the twentieth century, have been put at risk by our world economic system.** This understanding and the following actions must come not only from enlightened guidance but from raising awareness at the grassroots level. The planet can still be reclaimed from a self-destructive economic system that brings us together, and can **bridge the divide between Conservatives and Liberals.** Now, here's the crisis. It has become evident what we have to do. Only in a modified world view which rejects materialism even as it restores the sense of community obligation can globalization be scaled back to manageable proportions. ***Thus, it is not only in the United States but in other countries whose desires have become so thoroughly linked to ours in the global environment that we share we can achieve true home safety alone.***

<sup>76</sup>Andrew Barry, "The Anti-Political Economy," *Economy and Society* 31, no. 2 (2002): 268-284.

<sup>77</sup>J. Bryson, spreading the Message: Management Consultants and the Shaping of Economic Geographies in Space and Time," in J. Bryson, P. Daniels, N. Henry, and J. Pollard, eds., *Knowledge, Space, Economy* (London: Routledge, 2000)

<sup>78</sup>Mitchell Dean, Liberal Government and Authoritarianism, *Economy and Society* 31, no. 1 (2002): 37-61; Barry Hindess, "Divide and Govern," in Richard Ericson and Nico Stehr, eds., *Governing Modern Societies* (Toronto: University of Toronto Press, 2000)

<sup>79</sup>C. Chin and J. Mittelman, "Conceptualizing Resistance to Globalization," in Barry Gills, ed., *Globalization and the Politics of Resistance* (New York: Praeger, 2000), pp. 43-44.

<sup>80</sup>John Agnew, *Spatial Assemblages of Power: From Domination to Empowerment*, in D. Massey, J. Allen, and P. Sarre, eds., *Human Geography Today* (Cambridge, UK: Polity, 1999); M. Shapiro, note 37.