THE GLOBALISATION OF ENVIRONMENTAL LAW: THE ROLE OF THE UNITED NATIONS

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[This paper discusses the changes that have taken place in environmental regulation over the past twenty years, focussing on the moves towards recognition of the connection between environmental and developmental policies, and the interdependence of global ecosystems and economies. Recent developments in International Environmental Law are discussed, in particular the impact of the instruments generated through the UN Conference on Environment and Development. The new orthodoxy of sustainable development is then considered, with emphasis placed on the possibilities of implementation. The role of regional organisations is discussed, as well as the role of existing and future international institutions. The paper concludes with a discussion of the draft International Covenant on Environment and Development, and some practical implications of globalisation for relevant United Nations organisations.]

INTRODUCTION

In the past two decades environmental regulation has undergone major transformations at national and international levels. From the era of the Stockholm Conference onwards,[1] there has been a shift from nationally focussed, inward-looking environmental and developmental policies to policies which are outward-looking and which are influenced by international legal and policy developments. There is also an increasing recognition that healthy economies cannot exist in the long term without healthy environments to support them.[2] The interdependence of economic structures internationally is also reflected in the realisation of the interdependence of global ecosystems. Nationally, legislative and policy approaches to environmental matters are becoming increasingly homogenised through the process of globalisation.

This process of globalisation can be demonstrated by the development of global and regional institutions, by the increase in international legal and policy instruments and the influence of these instruments at national level, leading to increasing similarity in the approaches taken by nations in the development of environmental strategies and laws. This is especially evident in relation to the approaches and emerging principles associated with sustainable development. The acceptance of the concept of sustainable development around the world is indicative of the globalisation of environmental law and policy.

While it is recognised that globalisation is a vital element of environment protection and resource management, in the sense of approaching global

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1 Stockholm Conference on the Human Environment (1972).

2 See, eg, Jim McNeill, Pieter Winsemius, Taiza Yakushiji, *Beyond Interdependence: The Meshing of the World's Economy and the Earth's Ecology*(1991).

problems in a consistent fashion on an international basis, the process of regionalisation is also very important if common issues are to be addressed in a focussed and coherent fashion. It is particularly appropriate to encourage regionalisation among countries which are geographically close, which present similar environmental and infrastructure problems, and which share similar patterns of economic development and common cultural and political outlooks. Examples of the need for regionalisation can be drawn from the Asia-Pacific region of which Australia is geographically — and increasingly, politically and culturally — a part.[3]

This trend to globalisation in environmental matters is clearly being encouraged by United Nations' agencies, especially the United Nations Environment Programme (UNEP) and the United Nations Development Programme (UNDP), as well as by other international organisations such as the IUCN — The World Conservation Union and the International Institute for Environment and Development.

As this article is intended to look mainly at key issues in environment and development for the future, it takes as its chief springboard the United Nations Conference on Environment and Development (UNCED) and its immediate antecedents: the work of the World Commission on Environment and Development (WCED), the work of the IUCN, and the conventions and other instruments generated through the UNCED process. The developments and initiatives of the three years since UNCED are also briefly canvassed.

The Impact of the United Nations Conference on Environment and Development

Since the publication of the *World Conservation Strategy* in 1980,[4] many governments have instituted a process of national conservation strategies in order to address their problems of environmental degradation and resource depletion. In 1987, the WCED, in its report *Our Common Future*,[5] set out a programme for integrating environmental aspirations with economic concerns by governments and the private sector on international, national and local bases. In addition, the Legal Experts Group on Environmental Law, established by the WCED, developed a set of legal principles for an international agreement on environment and development matters.[6] The WCED also suggested that a

[3] See, eg, Gareth Evans and Bruce Grant, *Australia's Foreign Relations in the World of the 1990s* (2nd ed, 1995) xii.

[4] 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.

[5] WCED, *Our Common Future* (Australian ed, 1990).

[6] See ibid 392 for a summary of the legal principles; see Experts Group on Environmental Law, WCED, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* (1987).

global conference should take place. As a result of that suggestion, in 1989 the United Nations General Assembly resolved to hold the UNCED, which took place in Rio de Janeiro in 1992. Its mandate was 'to devise integrated strategies that would halt and reverse the negative impact of human behaviour on the physical environment and promote environmentally sustainable economic development in all countries.'[7]

UNCED was attended by approximately 20,000 people from 178 countries. The international instruments emanating from UNCED were:

- The Rio Declaration on Environment and Development ('the Rio Declaration');
- Agenda 21;
- The Convention on the Conservation of Biological Diversity;
- The Framework Convention on Climate Change; and
- The Statement of Forest Principles ('the Forest Principles').

Apart from the international instruments generated, the conference had a major effect on awareness of heads of government, on leaders of major international organisations, and on the non-government sector, including conservation and business interests. Government leaders committed their governments to a wide range of activities and programmes. While some of the speeches to the Conference may have been perceived, and *intended*, as mere rhetoric, non-government organisations (NGOs), political parties and individuals in many countries are holding their leaders and governments accountable for those commitments. Combined with the conventions and other instruments, the UNCED Conference thus represented a very significant step in increasing global awareness of the intricate and essential relationship of environment and development, and, slowly and tentatively, is leading to a major global paradigm shift in the way that environmental and economic concerns are viewed by both industrialised and developing countries. The focus of concern on the part of international environmental agencies is to ensure that the momentum is kept up, and that the high-sounding resolutions of UNCED are translated into practical and financially feasible programmes. The serious task of implementation of the Rio commitments must be taken on by the international community with vigour. The role of environmental law can be seen as a central component of the implementation process. In order to set the scene for an examination of the role of international and national environmental law and associated institutions, it is necessary to briefly canvass the Rio commitments, particularly as found in the Rio Declaration, Agenda 21 and the Forest Principles.

The Rio Declaration

The Rio Declaration on Environment and Development[8] contains 27 principles to guide activities in relation to the environment of nations and individuals.

[7] UNCED, *Earth Summit: Agenda 21: the United Nations Programme of Action from Rio* (1993) 3.
[8] Ibid 9-11.

It builds on the Stockholm Declaration of 1972, but introduces as a central tenet the concept of sustainable development as the basis for global, national and local action.

- The Rio Declaration reiterates Principle 21 of the Stockholm Declaration in recognising the sovereignty of states in relation to their right to exploit their own resources pursuant to their own environmental and developmental policies, but also recognises that states have a responsibility to ensure that activities within their jurisdiction do not cause damage to the environment of other states or of areas beyond national jurisdiction (Principle 2). The second limb of this principle can be regarded as a cautious limitation on that sovereignty.[9] As noted by Malanczuk, the words 'and developmental' were added to the original formulation of this concept in Principle 21 of the Stockholm Declaration to stress the sovereignty of developing countries with regard to their development policies, but as he points out, the addition may be of less significance in substance because resource use is in any case inherently developmental.[10]
- Principle 3 recognises the right to development, but that the right must be fulfilled so as equitably to meet developmental and environmental needs of present and future generations. In other words, it recognises the concepts of both intragenerational and intergenerational equity.
- It further recognises that in order to achieve sustainable development, environmental protection constitutes an integral part of the development process, and cannot be considered in isolation from it (Principle 4).
- The special needs of developing countries are recognised (Principle 6). The Declaration also recognises the common but differentiated responsibilities of all countries in environmental matters. In particular, it urges acknowledgment that developed countries bear a responsibility to developing countries in the international pursuit of sustainable development, in view of the pressures that developed countries place on the global environment and of the technological and financial resources they command (Principle 7). Many developed countries protested the wording of the last part of Principle 7 because of the lack of mention of any corresponding responsibility on the part of developing nations. For this reason, Principle 8 was drafted as a compromise; it urged that to achieve sustainable development, and a higher quality of life for all people, states should (note, not *shall*) reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.[11]

[9] 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.

[10] Peter Malanczuk, 'Sustainable Development: Some Critical Thoughts in the Light of the Rio Conference' in Ginther *et al*, above n 9, 30.

[11] Ibid 32.

- Access to information is also recognised as an important factor in facilitating and encouraging public awareness and participation; access to judicial and administrative proceedings, including remedy and redress are urged (Principle 10).[12]
- It promotes the enactment of effective environmental legislation. But the adoption of environmental standards should reflect the environmental and developmental context to which they apply, and standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries — in particular developing countries (Principle 11). The latter element reflects the sentiment of 'common but differentiated responsibilities' found in Principle 7.
- It adopts the precautionary *approach* (not precautionary *principle* as such), stating: 'In order to protect the environment the precautionary approach shall be widely applied according to their capabilities; where there are certain threats of serious or irreversible damage, lack of full scientific certainty is not a sufficient reason for postponing cost-effective measures to prevent environmental degradation' (Principle 15). With the words 'according to their capabilities', the developing countries are recognised as not necessarily having adequate technological resources or infrastructure to fully apply the precautionary approach.
- The important roles of women, youth, and indigenous and local communities, the private sector and NGOs in achieving sustainable development are all recognised (Principles 20, 21 and 22).
- It further emphasises the need for cooperation between states in the further development of international law in the field of sustainable development (Principle 27).

The Rio Declaration has been characterised by Malanczuk as a 'cumbersome compromise between North and South',[13] which avoids addressing the real North-South controversies.[14] He goes on to state:

> The balance of policy goals on the whole reflects the continuing dissent on the fundamental objectives of sustainable development and the means of their implementation. This tension also characterises Agenda 21 and the other documents adopted at Rio on a more specific level.[15]

Agenda 21

Agenda 21 is a programme of action for sustainable development, agreed to by all governments at the UNCED. It is intended as an 'environmental agenda' or a 'blueprint' to promote global action into the 21st century, 'by Governments,

[12] 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.

[13] Malunczuk, above n 10, 29.

[14] Ibid 37.

[15] Ibid 37-8.

United Nations organizations, development agencies, non-governmental organizations and independent-sector groups, in every area in which human activity impacts on the environment.'[16]

As stated in the introduction to *Earth Summit: Agenda 21*:

> Underlying the Earth Summit agreements is the idea that humanity has reached a turning point. We can continue with present policies which are deepening economic divisions within and between countries — which increase poverty, hunger, sickness and illiteracy and cause the continuing deterioration of the ecosystem on which life on Earth depends.
>
> Or we can change course. We can act to improve the living standards of those who are in need. We can better manage and protect the ecosystem and bring about a more prosperous future for us all. No nation can achieve this on its own. Together we can — in a global partnership for sustainable development.[17]

Clearly, the encouragement of this partnership is the role that the various agencies of the United Nations must play. The question will be whether they will be given an effective and expanded mandate to fulfil this role.

Agenda 21 and Globalisation

Agenda 21 details a comprehensive framework for the cooperative generation of strategies for sustainable development and environmental management at a global level. Chapters 8, 38 and 39 reveal an explicit recognition and promotion of the globalisation of environmental law and policy.

Chapter 8 deals with the integration of environmental and developmental issues in decision-making at policy, planning and management levels, with the overall objective of improving or restructuring the decision-making process in order that socio-economic and environmental issues are fully integrated.[18] It urges the adoption of a national strategy for sustainable development, to build on and harmonise sectoral economic, social and economic policies in each country.[19] The overall objective, 'in the light of country-specific conditions', is the promotion of the integration of environment and development policies through appropriate legal and regulatory policies, instruments and enforcement mechanisms at every level of government. To achieve this, the following objectives are proposed in Chapter 8:

(a) To disseminate information on effective legal and regulatory innovations in the field of environment and development, including appropriate instruments and compliance incentives, with a view to encouraging their wider use and adoption at the national, state, provincial and local levels;

(b) To support countries that request it in their national efforts to modernize and strengthen the policy and legal framework of governance for sustainable development, having due regard for local social values and infrastructures;

16 UNCED, above n 7, 3.

17 Ibid.

18 Ibid para 8.3.

19 Ibid para 8.7.

(c) To encourage the development and implementation of national, state, provincial and local programmes that assess and promote compliance and respond appropriately to non-compliance.[20]

This and subsequent sections of chapter 8 reflect and further promote a trend towards homogenisation of approaches, policies and principles. In examining developments in national environmental policy, it is clear that the provisions of chapter 8 are beginning to form the basis of decision-making on environment and development matters for governments, intergovernmental organisations (IGOs) and NGOs and the private sector. This is demonstrated, for example, in the developments in Australia, at both federal and state level, as well as in the Pacific Island region, towards more common approaches in environmental strategy-making and, to an extent, in legal machinery.[21] In many areas of the world, international institutions, including United Nations organisations, are providing financial and technical assistance to promote this process.[22]

In chapter 38 of Agenda 21, which focuses on international institutional arrangements, the goal of the globalisation of sustainable development is also manifest. Among other things, the chapter sets out a broad mandate for UNEP, and specifically encourages the provision of technical, legal and institutional advice to governments on request, in order to establish and enhance national legal and institutional frameworks, particularly in cooperation with UNDP.[23]

Chapter 39 focuses on international legal instruments and mechanisms. Its overall objectives are the evaluation of international environmental law, and the promotion of the integration of environment and development policies through effective international agreements or instruments, taking into account both universal principles as well as the particular and differentiated needs and concerns of all countries. The specific objectives of the chapter are to identify and address difficulties which prevent states from participating in or implementing international agreements, to set priorities for future law-making at global, regional or sub-regional levels, and to promote and support effective participation of all countries in the negotiation, implementation, review and governance of international agreements. In addition, it includes the objective of promoting — through the gradual development of universally and multilaterally negotiated agreements — international standards for environmental protection that take into account the different situations and capabilities of countries. Further objectives include: ensuring the full implementation of international instru-

20 Ibid para 8.16.

21 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).

22 For example, the efforts of IUCN — The World Conservation Union, to encourage the generation of national strategies: J Carew-Reid, R Prescott-Allen, S Bass and B Dalal-Clayton, *Strategies for National Sustainable Development: A Handbook for their Implementation* (1994) prepared by IUCN in collaboration with the International Institute of Environment and Development.

23 UNCED, above n 7, para 38.22(l).

ments; improving the effectiveness of institutions, mechanisms and procedures for the administration of agreements; and the identification and prevention of actual or potential conflicts between environmental and social/economic instruments to ensure that they are consistent.

Although the provisions of Agenda 21 are not legally binding in international law, the political commitments made at Rio and the momentum for the promotion of its programmes through the Commission on Sustainable Development (CSD) and by international IGOs and NGOs should help to ensure that its major programmes will continue to be carried into effect at the national level.

The Forest Principles

The Forest Principles[24] were agreed at UNCED, along with the other instruments. Their subtitle characterises the principles as a '[n]on-binding authoritative statement of principles for a global consensus on the management, conservation, and sustainable development of all types of forests.' It would appear that there was not sufficient momentum nor the political will at UNCED to move these principles into a global convention; they thus remain at the level of principles only.[25]

The Principles emphasise that they reflect the first global consensus on forests.[26] That statement in itself reflects the difficulty of coming to a basic agreement. The Principles recite the words of Principle 2 of the Rio Declaration,[27] and emphasise that states 'have the sovereign and inalienable right to utilise, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation'.[28]

The Principles are designed to encourage governments to promote and provide for community participation in development, implementation and planning of national forest policies, and urges that all aspects of environment protection and social and economic development relating to forests should be integrated. Consistent with the Rio Declaration, the Forest Principles state that the identity, culture and rights of indigenous peoples and their communities, as well as other communities and forest dwellers, should be recognised. The full participation of women in all aspects of forest management and development is also promoted.[29] They further provide that specific financial resources and technical cooperation should be made available to developing countries to support national policies and programmes aimed at forest management, conservation and sustainable development.[30]

24 Ibid 291.

25 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.

26 UNCED, above n 7, Preamble para (d), 291.

27 Ibid para 1(a).

28 Ibid para 2(a).

29 Ibid paras 2(d), 3(c), 5(a)-(b).

30 Ibid para 8(c).

In the next few years, particularly with the work of the Commission on Sustainable Development[31] and the review of Agenda 21, a forestry convention may become a reality. Such a convention would place greater pressure upon governments to ensure that their forests are managed in a sustainable manner.

CONCEPTS AND PRINCIPLES OF SUSTAINABLE DEVELOPMENT

This section briefly examines the main concepts and principles emerging in relation to the implementation of sustainable development, particularly in the form that they have been generated in Australia as a result of our involvement and interaction with the UNCED process and the CSD.

Sustainable development involves the integration of environmental concerns and aspirations for development at all levels of decision-making. In its *Handbook on Strategies for National Sustainable Development*, the IUCN states that

> sustainable development (or sustainable living or sustainable well-being) entails improving and maintaining the well-being of people and ecosystems.
>
> Human well-being exists if all members of society are able to define and meet their needs and have a large range of choices and opportunities to meet their potential.
>
> Ecosystem well-being means ecosystems maintain their quality and diversity and thus their potential to adapt to change and provide a wide range of options for the future.[32]

The main principles or approaches, derived from the Rio Declaration and developed through subsequent analysis and discussion,[33] can be said to include: inter- and intragenerational equity, the precautionary principle or approach, the conservation of biological diversity and the maintenance of biological integrity, and the internalisation of environmental costs. The challenge of the coming years is how to make these principles operational at global, regional, national and local level.

Intergenerational equity embraces the idea that the present human generation holds the earth's resources in trust for future generations. We have seen this principle absorbed into the Australian Intergovernmental Agreement on the Environment (IGAE) of 1992, which recognises the concept by declaring that 'the present generation should ensure that health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.'[34]

[31] The Commission on Sustainable Development listed the question of forests as part of its workplan for 1995-6: see Irene Freudenschuss-Reichl, 'Commission on Sustainable Development' (1993) 4 *Yearbook of International Environmental Law* 496, 497.

[32] Carew-Reid *et al*, above n 22, 14.

[33] See eg, Ronnie Harding, Michael Young and Elizabeth Fisher, *Sustainability — Principles to Practice: Interpretation of the Principles for the Fenner Conference on the Environment* (1994).

[34] Intergovernmental Agreement on the Environment (1992) s 3.5.2: the Intergovernmental 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.

Intragenerational equity means that people within a single generation have equal rights to benefit both from the exploitation of resources and from the enjoyment of a clean and healthy environment at a national and international level.[35] At a national level, this implies equal access to common natural resources, clean air, and unpolluted water in national watercourses and the territorial sea. At an international level, this implies equitable allocation of international air, water, and marine resources.

Harding *et al* refer to intragenerational equity as 'equity between the earth's inhabitants at any one time.' Essentially it implies that all people, and, depending on one's viewpoint, all other living creatures, are entitled to basic needs, including a healthy environment, adequate food and shelter, and cultural and spiritual fulfilment.[36]

The *precautionary approach* is found in Principle 15 of the Rio Declaration, set out above. The Rio Declaration definition is identical to that found in the Australian Intergovernmental Agreement on the Environment,[37] except that the latter omits the reference to the cost-effectiveness of measures to be taken. The IGAE elaborates on the definition, stating that in the application of the principle, public and private decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and an assessment of the risk-weighted consequences of various options.

The *conservation of biological diversity* is seen as a key element of sustainable development. It is generally linked with the sustainable use of biological resources. As stated in the *Draft National Strategy for the Conservation of Australia's Biological Diversity:*

> Biological diversity refers to the variety of all life forms — the different plants, animals and micro-organisms, the genes they contain and the ecosystems of which they form a part.[38]

Agenda 21 emphasises the importance of the conservation of biodiversity in chapter 15:

> Despite mounting efforts over the past 20 years, the loss of the world's biological diversity, mainly from habitat destruction, over-harvesting, pollution and the inappropriate introduction of foreign plants and animals, has continued. Biological resources constitute a capital asset with great potential for yielding sustainable benefits.[39]

The fifth concept can be identified *as the internalisation of environmental costs*. It is derived from Principle 16 of the Rio Declaration, where it is linked with the use of economic instruments. As Principle 16 of the Rio Declaration

35 Harding *et al*, above n 33, 21-9.

36 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.

37 Intergovernmental Agreement on the Environment, above n 34, s 3.5.1.

38 *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.

39 UNCED, above n 7, para 15.3.

recognises, the concept includes the approach that the polluter should 'in principle' bear the cost of pollution. This is, however, qualified — and perhaps made nugatory — by the words 'with due regard to the public interest and without distorting international trade and investment'.

Internalisation of environmental costs has been interpreted as meaning 'the creation of economic environments so that social and private views of economic efficiency coincide. It is concerned with structures, reporting mechanisms and tools to achieve this end.'[40] In essence, the concept requires that all burdens placed on the environment by a particular activity be taken into account in the decision-making process. It also means that previously unquantified costs (eg, loss of 'free' or 'public' goods such as clean air or clean water) should be quantified as far as possible, and included in economic calculations about the financial viability of a particular proposed or ongoing activity.

A Culture of Sustainability?

These principles or concepts associated with sustainable development, if adequately implemented, may ultimately realise a paradigm shift from a world in which the development of natural resources takes place without sufficient regard to environmental consequences, to one where a culture of sustainability extends to our global institutions, our national political organisations, our educational, religious and cultural institutions, private development interests, communities and individuals.[41] To be effective, sustainability must become part of the culture of global institutions: the United Nations and all of its agencies; the financial institutions, such as the World Bank, the Asian Development Bank, the African Development Bank, the International Monetary Fund, and the World Trade Organisation; and all private sector international and national industry bodies. In Australia's region, organisations such as the Association of South East Asian Nations, the Asian Pacific Economic Cooperation Forum and the South Pacific Forum should also assume this culture.

From the point of view of formal responses, it is possible to say that at the international level, our environmental institutions have already started to demonstrate such a cultural paradigm shift. Perhaps the most significant institutional response post-Rio is the establishment of the CSD.

The Commission on Sustainable Development

The idea of setting up the Commission on Sustainable Development (CSD) was canvassed at UNCED.[42] It was subsequently established by resolution of the United Nations General Assembly in December 1992.[43]

[40] Harding *et al*, above n 33, 47.

[41] See Ben Boer, 'The Culture of Sustainability and the Development of International Environmental Law' in *Sustainability — Principles to Practice* (forthcoming).

[42] UNCED, above n 7, ch 38.

[43] GA Res 191, 47 UN GAOR (93rd plen mtg), UN Doc A/47/49 (1992).

It is hoped that the CSD will allow for continued international debate on sustainable development. It is the body to which countries will report on their progress with respect to environmental management generally, and the implementation of Agenda 21 specifically. It is to make recommendations to the United Nations General Assembly and the UN agencies. Its resolutions are not intended to be legally binding.

The Commission is formed by representatives of 53 countries, intended to represent an equitable geographic distribution. There are 13 representatives from African states, 11 from Asian states, 10 from Latin American and Caribean states, six from Eastern European states and 13 from Western European and other states. The terms of office of the various members will be varied progressively to ensure the broadest representation of countries over a period of years.[44] The functions of the CSD are very broad. They are chiefly to monitor progress in the implementation of Agenda 21 and activities related to the integration of environmental and developmental goals through the United Nations system. To carry out its functions, the Commission is supported by several high-level committees to coordinate this system-wide follow-up to UNCED.[45]

At its first meeting in June 1993, the Commission decided that over the next five years particular emphasis will be placed on various aspects of Agenda 21, including (in order) health, human settlements and fresh water, toxic chemicals and hazardous waste, land, desertification, forests and biodiversity, atmosphere, oceans, and all kinds of seas. In 1997 the Commission intends to conduct an overall review and appraisal of Agenda 21 and its implementation.[46] The Commission appears to be intended to function as a global watch-dog in relation to the implementation of Agenda 21 and the achievement of sustainable development. However, while its functions are very broad, it has no real teeth to ensure that its goals are carried out.

The Commission on Global Governance

The Commission on Global Governance had its origins in meetings in 1989 of members of former United Nations commissions such the Commission on Environment and Development, the Commission on International Development and the Commission on Disarmament and Security. This lead to the preparation in 1991 of a document entitled 'Common Responsibility in the 1990s: the Stockholm Initiative on Global Security and Governance'. The Secretary-General of the United Nations gave the imprimatur to the establishment of the Commission on Global Governance in 1992. Composed of 28 members and

44 Establishment of the Commission on Sustainable Development, ECOSOC Decision 1993/207.

45 Lee Kimball, 'Institutional Developments' (1993) 4 *Yearbook of International Environmental Law* 97, 98.

46 Ibid 100.

chaired by Ingvar Carlsson and Shridath Ramphal, the Commission reported in November 1994.[47] The Commission notes in its introductory pages:

> The development of global governance is part of the evolution of human efforts to organise life on the planet, and that process will always be going on. Our work is no more than a transit stop on that journey. We do not presume to offer a blueprint for all time. But we are convinced that it is time for the world to move on from the designs evolved over the centuries and given new form in the establishment of the United Nations nearly fifty years ago. We are in a time that demands freshness and innovation in global governance.[48]

The report is at pains to distinguish the concept of global governance from global government:

> No misunderstanding should arise from the similarity of the terms. We are not proposing movement towards world government, for were we to travel in that direction, we could find ourselves in an even less democratic world than we have — one more accommodating to power, more hospitable to hegemonic ambition, and more reinforcing of the roles of states and governments than the rights of people.[49]

In the realm of environmental governance, the Commission emphasises the need for globalisation, stating that:

> The links among poverty, population, consumption, and environment and the systemic nature of their interactions have become clearer. So has the need for integrated, global approaches to their management and world-wide embrace of the discipline of sustainable development counselled by the World Commission on Environment and Development and endorsed at the June 1992 Earth Summit. The call is for fundamental changes in the traditional pattern of development in all countries.[50]

The Commission recognises that despite the strong rhetoric for global governance in relation to environmental issues found at the Earth Summit, in terms of the legal, intellectual and institutional groundwork for the achievement of sustainable development there is an overall lack of direction about where to go next.[51] This lack of direction is in fact reflected in the Commission's own recommendations for protecting the global environment. The direct recommendations in this field are limited to encouraging strong international support for Agenda 21 and the enlargement of the Global Environment Facility, increased use of market instruments and support of the European Union's promotion of a carbon tax.[52] An opportunity to address environmental issues directly through

47 *Our Global Neighbourhood: The Report of the Commission on Global Governance* (1995).
48 Ibid xvi.
49 Ibid.
50 Ibid 11.
51 Ibid 216.
52 Ibid 224, 343-4.

its recommendations on the strengthening and enforcement of international law was missed in this report.[53]

Nevertheless, the seeds for better global governance of the environment can be found in the report, particularly in its recommendation to establish an Economic Security Council, structured in a similar way to the Security Council, but not with identical membership, and independent of it.[54] Its tasks would include the continuous assessment of the overall state of the world economy and the interaction between major policy areas, and the provision of a long-term strategic policy framework 'to promote stable, balanced, and sustainable development.'[55] It would seem sensible if such a new body were to be established within the United Nations framework for it to reflect more closely the ideals and principles of sustainable development, by the recognition of the need for integration of economic aspirations with environmental concerns. In the Commission's recommendations for reform, economic considerations seem still to be dominant, at odds with the desire for the achievement of sustainable development that it professes to support.

THE GLOBALISATION OF ENVIRONMENTAL LAW

Environmental law, in both its international and national guises, has risen to prominence in the 23 years since the Stockholm Conference on the Human Environment in 1972. There are now over 900 multilateral and bilateral international legal instruments relating to the environment.[56] At a national level, there has been intense activity, first in industrialised countries, and more recently in many developing countries as well. Over the past five years environmental law has been seen, at both international and national levels, as a primary vehicle for the achievement of sustainable development. In relation to sustainable development, as well as more broadly, two trends stand out. They are that international environmental law is having an increasingly direct influence on the shape of national environmental law, and that the principles and approaches of national environmental law are becoming increasingly similar from one jurisdiction to another.

In the globalisation of international environmental law, United Nations agencies, and in particular UNEP, as well as bodies such as the International Law Commission, are playing a distinct and important role. Agenda 21 calls for an enhanced and strengthened role for UNEP and provides that a priority area on which UNEP is required to concentrate is in the further development of international environmental law. It has a particular role in relation coordinating the functions of secretariats of conventions, taking into account the efficient use of

53 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.

54 Ibid 342.

55 Ibid.

56 See, eg, V Koester, 'From Stockholm to Brundtland' (1990) 20 *Environmental Policy and Law* 14.

resources.[57] Synergy between conventions is also a matter that needs further concentration given the need for coordinated action in many of the fields covered by conventions, such as conservation of biodiversity and the sustainable use of its components. There are clear needs for global instruments to coordinate with regional instruments, such as the need for the Biodiversity Convention to operate in collaboration with, for example, the Convention on the International Trade in Endangered Species of 1973, and the Convention on Migratory Wild Animals of 1979.

An obvious question in this context, to which there is no obvious answer, is what effect this legal and policy homogenisation may have on the social structures of developing countries, particularly those whose cultures are fragile and subject to both the best and the worst aspects of industrialisation and the influence of Western values. The tension between the need for universalism of approach and the need to take into account the differentiated needs and concerns of all countries will continue to be an issue at meetings of the CSD and meetings of the parties to environmental conventions, particularly those, such as the Biodiversity Convention and the Climate Change Convention, whose provisions reflect this tension.

In a recent address to the United Nations Congress on Public International Law in New York, Professor Edith Brown Weiss spoke of the recent trends in international environmental law.[58] She noted that NGOs and industry associations are playing an increasingly important role in the negotiation, implementation, monitoring and enforcement of international environmental agreements. This observation is backed up by the Report on Global Governance, which recognises that NGOs have helped over the years to set public policy agendas[59] and that they have the capacity not only to provide leadership but to launch the negotiating process and carry it to a point of maturity faster than intergovernmental processes can. NGOs, particularly since Rio, are becoming more widely accepted on government delegations, as well as having a seat at the table in their own right, for the negotiation of international conventions and their protocols, and at the meetings of the parties.[60]

'Treaty-congestion' was also identified by Brown Weiss as a problem; as more international agreements are made, a severe strain can be put on physical and organisational capacity of individual states to deal with treaties to which they become signatories, particularly in developing countries and countries whose economies are in transition.

57 UNCED, above n 7, paras 38.21, 38.22(h).

58 Edith Brown Weiss, 'New Directions in International Environmental Law' (paper presented at United Nations Congress on Public International Law, New York, 1995).

59 *Our Global Neighbourhood*, above n 47, 254.

60 Ibid 217. 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 n 12, 203, discussing the right of public interest NGOs to observe and intervene in intergovernmental processes.

Brown Weiss also pointed to the emerging interaction between 'international inter-governmental environmental law and transnational environmental law developed primarily by the private sector and non-governmental institutions.'[61] Increasingly industrial associations, multinational companies and coalitions of business and private interests are the driving force behind the development of common transnational standards and environmentally sound business practices.

THE GROWTH IN REGIONAL MECHANISMS

In the past few years there has also been a steady growth in the number of regional conventions that have been concluded. This reflects in part a realisation that it is not only more efficient but culturally more appropriate to address a number of environmental problems on a regional basis.

The general trend to regionalisation is given qualified support by the Commission on Global Governance, which states that global institutions such as the United Nations should offer increasing participation to regional bodies to create an incentive for them to strengthen their own internal cohesion and also to commit them to global frameworks:

> The UN must therefore prepare itself for a time when regionalism becomes more ascendant world-wide, and even help the process along. It is committed to doing so; the Secretary-General has called repeatedly for a strengthening of regionalism in global governance, in development no less than in peace and security.[62]

In the environmental sphere, it appears that international organisations are increasingly using regional and sub-regional approaches 'for capacity-building, information synthesis, and harmonised regional policies as biogeographical frameworks for development.'[63]

South Pacific Regional Environment Programme

Examples of regionalisation of environmental law and policy are well illustrated by the South Pacific Regional Environment Programme (SPREP). SPREP is part of UNEP's Regional Seas Programme.[64] It facilitates programmes to address sustainable development, marine and terrestrial pollution, biodiversity conservation and environmental education in the Pacific Island region,[65] and coordinates the implementation of several regional conventions. It was responsible for coordinating the regional response to UNCED for some 15 Pacific

[61] Brown Weiss, above n 58.

[62] *Our Global Neighbourhood*, above n 47, 289.

[63] Kimball, above n 45, 99.

[64] 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.

[65] See *1991-1995 Action Plan for Managing the Environment of the South Pacific Region*, SPREP (1993) for an account of SPREP's programmes.

Island countries,[66] and in the past four years, in collaboration with the Asian Development Bank, the World Conservation Union and UNEP, has been involved in the generation of a dozen National Environmental Management Strategies. Most of these strategies included, as an integral element, the review of the national legislation of each of the countries in order to ascertain their needs for environmental legal mechanisms.[67] UNEP played a role in a significant environmental law workshop associated with these strategies.[68] The conclusion of an agreement to establish SPREP as a separate entity from the South Pacific Commission underlines the strengthening of the regionalisation process in the South Pacific.[69] The conduct of the Conference of Small Island Developing States in Barbados, in which SPREP played an important role, is a further illustration of the strength of the regionalisation trend.[70]

Regional Extensions of Global Conventions

Regionalisation has also occurred as a result of the perceived need to negotiate regional conventions as an extension of global conventions. An example is the South Pacific Hazardous Wastes Convention ('Waigani Convention') negotiated for the South Pacific, which is based on the Basel Convention.[71] Australia took an active part in the negotiations which were conducted under the auspices of the South Pacific Forum in Suva, Fiji, in March and November 1994.[72]

A second example is the 1994 Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, in which UNEP has played a central role. The Agreement is directed, in part, at ensuring that the terms of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are adequately carried out in African countries.

66 *The Pacific Way: Pacific Island Developing Countries' Report to the United Nations Conference on Environment & Development South Pacific Commission*, SPREP (1992).

67 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).

68 This regional workshop took place in Apia in November 1992: see Ben Boer (ed), *Strengthening Environmental Legislation in the Pacific Region: Workshop Proceedings*, SPREP (1993).

69 Agreement Establishing the South Pacific Regional Environmental Programme (1993).

70 For further examples of regionalisation, see Kimball, above n 45, 99.

71 Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel) UNEP/WG 190/4; (1989) 28 ILM 657.

72 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).

Southern Hemisphere Cooperation

An emerging trend in regionalisation of environmental policy is the development of Southern hemisphere cooperation between Southern hemisphere temperate countries, including a number of South American countries, South Africa and Australia. The group is presently called the Valdivia Group of Temperate Southern Hemisphere Countries on the Environment. This initiative has arisen from the realisation that, for too long, environmental and other international issues have been driven from the Northern hemisphere, with a Eurocentric bias, and with less attention paid to issues relevant to the Southern hemisphere. This, in turn, resulted in less commitment by many Southern hemisphere countries in relation to the implementation of treaties. The initiative was launched by Australia in late 1994 to canvass the prospects for cooperative approaches to environmental problems. A coordinating committee is being formed, and working groups are to be established to address particular issues. Areas to be covered include biodiversity, climate change, ozone, temperate forests and desertification. The initiative offers an opportunity to collaborate on environmental matters among countries which have many environmental conditions in common. All are relatively large, urbanised and interested in extending mutual relationships.[73] The Group is likely to call on various organs of the United Nations, especially UNEP and UNDP, for the conduct of meetings and training programmes as well as for technical assistance.

THE GROWTH IN NATIONAL LEGAL MECHANISMS

The connection between international environmental law and policy and developments at a national level is becoming significantly closer. In the past two decades, many developed countries have greatly increased the number of statutes enacted to address environmental matters. This growth can be seen, in part, as a reflection of the number of international conventions being negotiated multilaterally and bilaterally. In the last five years, there also has been an increasing trend for developing countries and countries whose economies are in transition to introduce environmental legislation. This growth in the number of conventions and the consequential increase in environmental statutes on the same subjects is not surprising, given that conventions almost invariably place obligations on signatory countries to take steps, legal and otherwise, to implement their provisions.

As a result of the increasing awareness of environmental problems at a national level, more national environmental law will be written, with similar approaches taken to similar problems. Greater similarity will also be encouraged by the fact that the law of developed countries is very often used as precedential material for the drafting of legislation in developing countries.

[73] 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).

Furthermore, homogenisation of legislative approaches is encouraged by the publication of model legislation being developed by secretariats of international environmental conventions. For example, the Basel Convention Secretariat has published a comprehensive set of model national provisions on the movement of hazardous wastes.[74]

Finally, with more training programmes being conducted for lawyers and others by UNEP (see below), UNDP and IUCN, common legislative approaches are often promoted.

ROLE OF THE UNITED NATIONS ENVIRONMENT PROGRAMME IN THE GLOBALISATION OF ENVIRONMENTAL LAW

Chapter 8 of Agenda 21 is very explicit about the need for the introduction of programmes in environmental law, and the involvement of tertiary institutions in this training:

> Competent international and academic institutions could, within agreed frameworks, cooperate to provide, especially for trainees from developing countries, postgraduate programmes and in-service training facilities in environment and development law. Such training should address both the effective application and the progressive improvement of applicable laws, the related skills of negotiating, drafting and mediation, and the training of trainers. Intergovernmental and non-governmental organisations already active in this field could cooperate with related university programmes to harmonize curriculum planning and to offer an optimal range of options to interested Governments and potential sponsors.[75]

UNEP has responded to this call in several ways: firstly, by the introduction of global and regional training programmes in environmental law, and secondly, by its involvement in the establishment of environmental law programmes in tertiary institutions.[76]

The Environmental Law and Institutions Programme Activity Centre of UNEP (ELI/PAC), based in Nairobi, has an increasing emphasis on the integration of international law and national law. This is well illustrated by its assistance to developing countries in drafting national laws to implement international conventions. It is also illustrated by the various training programmes that it has conducted in recent years. For example, in March and April 1995, the second global training programme in Environmental Law and Policy took place

[74] 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).

[75] UNCED, above n 7, para 8.20; see paras 8.13 -8.26.

[76] 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.

in Nairobi.[77] The programme was organised by ELI/PAC in collaboration with the UN Commission on Human Settlements (Habitat) and the UN Institute for Training and Research (UNITAR). As an indication of the need for programmes of this kind, there were some 240 applications, mainly from government agencies, from around 130 countries for the 30 places on this three week programme. ELI/PAC saw it as important to ensure that approximately half of the participants had no specific legal background.

Examining the programme itself is quite instructive. It concentrated on the explanation of environmental conventions, in particular those administered by UNEP, along with several others. The focus was not just on the convention texts themselves, but on the implications of the conventions for signatory countries. The programme was devised to allow for the maximum possible time to be devoted to hands-on work by participants in preparing drafting instructions and setting out the elements of national legislation to conform with these conventions. The workshop was participant-driven to an extent, with questionnaires distributed to ensure that, as far as possible, areas of law and specific points were addressed. The programme also encouraged participants to think seriously about how they could spread the knowledge they had gained, as well as the material they had collected, to colleagues and the wider community in their countries.

In addition to its global and regional programmes, ELI/PAC has recently become involved in further initiatives to ensure that environmental law programmes are established in this region. For example, it has recently supported preparation of a Masters programme in environmental law in the Faculty of Law in the University of Colombo, Sri Lanka. This task has involved: close collaboration on curriculum development particularly tuned in to the needs of a developing country; a training programme for environmental law teachers; the generation of teaching materials; and the building up of the Faculty's environmental law collection. ELI/PAC is also involved in the initiative to establish a regional Environmental Law Centre at the University of Singapore's Faculty of Law.[78]

Environment Chamber of the International Court of Justice

A further indication of the trend to globalisation of environmental law is the establishment of a new Chamber of the International Court of Justice (ICJ) in 1993 to deal with environmental matters. According to the communiqué announcing the new chamber, it was established in recognition of the developments in international environmental law in the past few years as well as the

[77] 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.

[78] 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.

need to be prepared to the fullest possible extent for environmental cases that came before it.[79] Clearly, the more environmental conventions include recourse to the ICJ in their dispute settlement procedures, the more likely it is that the ICJ's assistance will be required. The ICJ is, however, rather limited in its capacity to deal effectively with environmental matters. It is restricted to hearing cases between states and, generally, only states are able to bring actions. Further, the jurisdiction of the court is limited by the willingness of the parties to a dispute to accede to its jurisdiction. In these circumstances, the question is whether any other body or bodies might be established to broaden the opportunities for enforcement of international environmental law. This question may assume greater importance if the United Nations decides to give bodies such as the CSD and UNEP greater responsibilities for implementation and enforcement of international environmental law and policy.

AN INTERNATIONAL COURT FOR THE ENVIRONMENT?

Perhaps, then, it is time to give serious thought to the way international environmental conventions are monitored and enforced. Global compliance should not need to depend on ensuring that a state accedes to the jurisdiction of the ICJ, nor on international political embarrassment. An adequate system of international enforcement would need to rely on much the same type of action as that available at a national level. This includes the development of legal tests, such as the requirement for due diligence, and precise meanings of the principles and concepts behind sustainable development. However, the difficulties of opening the jurisdiction of the ICJ to non-state parties should not be underestimated. The political and technical problems of expanding the ICJ's jurisdiction in this way may well be insurmountable. The experience of groups attempting to bring actions for judicial review of acts of the European Community Council and the European Community Commission directly to the European Court of Justice is a sobering reminder of this.[80]

The establishment of an international court of the environment within the United Nations system is an idea developed over the past few years by Justice Postiglione of the Italian Supreme Court, and endorsed by a range of government organisations and individuals.[81] The basic argument is that the ICJ is not an appropriate forum for the hearing of environmental matters, and that a specialist court is required. That court would have a very broad jurisdiction, and would not be limited to cases between states; actions would be able to be

[79] 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.

[80] See Sands and Werksman, above n 12, 200-2.

[81] 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.

brought by NGOs and other private sector organisations, as well as by individuals concerned about or harmed by environmental degradation of any kind.[82]

THE INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT

Recent years have seen the growth of international conventions, with several more major conventions in prospect, such as the Desertification Convention,[83] recently opened for signature, and, in the next few years, perhaps a forestry convention. But even when these global issues are all addressed in appropriate conventions, a major gap still seems to remain in ensuring that the various principles of sustainability that are being developed have some guarantee of being adequately implemented. It was for this reason that the WCED commissioned a report on the legal principles that would be needed to guide sustainable development. When it reported in 1986, the Legal Experts Group recommended the drafting of an international instrument on sustainable development containing a comprehensive and overarching set of principles.[84] The task of developing this instrument was taken up by the IUCN Commission on Environmental Law, and it is presently known as the International Covenant on Environment and Development.[85]

The Draft Covenant seeks to be an umbrella instrument, to provide the legal framework to support the further integration of the various aspects of environment and development. It draws inspiration from and further develops the ideas of the Rio Declaration, Agenda 21, the UNCED conventions and the Statement of Forest Principles. One of the members of the IUCN Environmental Law Commission has described the Covenant as presenting,

> for the first time in the history of international environmental law-making, the results of a spirited attempt to produce a multilateral treaty, seeking to address all aspects of sustainable development in a single instrument. This is an appreciable departure from the traditional approach to international environmental law-making, which has taken place in a piece-meal and sectoral way (eg marine environment, pollution, biodiversity and so on) ....
>
> [T]he draft covenant is the only instrument that contains all the core provisions of all the sectoral conventions in a single document. The result is a mosaic of treaty obligations to encourage states and other actors (including individuals) to pursue the goal of sustainable development.[86]

[82] See Alfred Rest, 'Need for an International Court for the Environment? — Underdeveloped Legal Protection for the Individual in Transnational Litigation' (1994) 24 *Environmental Policy and Law* 173.

[83] Convention on Combating Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (1994) 33 ILM 1328.

[84] Experts Group on Environmental Law, WCED, above n 6.

[85] 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).

[86] A Adede, Address to Workshop on the International Covenant on Environment and Development, 19th Session of the IUCN General Assembly, Buenos Aires (1994) (unpublished, on file, Australian Centre for Environmental Law, Sydney).

The objective of the draft Covenant is to 'achieve environmental conservation and sustainable development by establishing integrated rights and obligations' (Article 1).

The Covenant establishes nine fundamental principles which it recommends for guiding the conduct of states in their implementation of the obligations in the Covenant. Articles 2-10 incorporate the following:

1. The Covenant promotes respect for all forms of life;
2. The global environment is a common concern for humanity;
3. Peace, development, environmental protection and respect for human rights are interdependent;
4. Intergenerational equity;
5. Prevention of harm is better than remedy or compensation;
6. The precautionary approach;
7. The right to development entails meeting human needs in a sustainable and equitable manner;
8. Eradication of poverty is an indispensable requirement for sustainable development, and requires global cooperation;
9. Unsustainable patterns of production and consumption must be eliminated and appropriate demographic policies are to be promoted.

The Covenant also incorporates a range of general obligations which relate to the responsibilities of states and individuals. There was a good deal of debate in the negotiations about the ability of an international convention to bind individuals. While this is legally problematic, the resolution was to place obligations on the states to ensure that laws and policies are enacted so that individual behaviour can be regulated. In this sense, it is not very different to any domestic pollution or other environmental management legislation. What is unusual, if not unique, is the actual mention of the responsibilities of individuals in an international environmental instrument (see Articles 11 and 12).

The following concepts are also recognised under the Covenant's general obligations:

- the integration of environment and development;
- the transfer or transformation of environmental harm; and
- prevention of and responses to emergencies (Articles 13-5).

The Covenant also recognises obligations in relation to stratospheric ozone, the global climate, soil, water and natural ecosystems, with a specific article on biodiversity (Articles 16-21). Cultural and natural heritage of outstanding significance are also covered (Article 22).

The Covenant then includes obligations relating to specific processes and activities, including pollution, waste, and alien or modified organisms (Articles 23-6) as well as obligations relating to global issues. The latter includes demographic policies to achieve sustainable development, particularly including the carrying capacity of environments to support populations. Particular Articles are also included on consumption patterns, eradication of poverty, trade and environment, and information on the impact of economic activities of foreign

origin, as well as responsibilities relating to military and hostile activities (Articles 27-32). Transboundary issues are also covered.

The Covenant includes a range of detailed Articles relating to implementation and cooperation through: national action plans; physical planning; environmental impact assessments; environmental standards; monitoring and scientific and technical cooperation; transfer of environmentally sound technologies; information sharing; education, training and public awareness; and financial aspects (Articles 35-46). Questions of responsibility and liability as well as compliance are also covered in some detail (Articles 47-63).

From this brief summary, it can be seen that if the Covenant becomes a treaty it will cast very significant obligations on all signatories, making development an international requirement rather than a series of well-intentioned aspirations.[87] There will, no doubt, be a good deal more negotiation within the United Nations before the final instrument emerges. However, beyond the precise obligations of the Covenant, the actual implementation of sustainable development will still be largely dependent upon the political will and effort of national and local governments and the initiatives of the non-government sector, communities and individuals.

The final draft of the Covenant was presented to the United Nations Public International Law Congress in New York in March 1995. After further negotiation and drafting, it is expected to acquire the status of a treaty and be open for signature in the next year or two.

CONCLUSION

The process of globalisation of environmental law and policy seems set to continue apace for the immediate future. The role of United Nations agencies in managing this process is a crucial one. The dangers of homogenisation of environmental legal mechanisms need constantly to be borne in mind, to ensure that consistency of approach does not bring with it a wholesale swamping of cultural values and social structures through the influence, in particular, of Western values and economic structures.

The expectations, great or otherwise, of the international community in relation to the role of the United Nations in the field of environmental law and policy might be summarised as follows:

- The roles of UNEP and UNDP need to be rationalised and made consistent. It makes little sense for each body to promote sustainable development from what have been different starting points — one from the point of view of the right to global environment protection, the other from the point of view of the right to development. The lesson of sustainable development is that, both conceptually and practically, environmental concerns and economic aspirations need to be integrated. This must mean that at least the work pro-

[87] For a comprehensive overview of these obligations, see the *Commentary on the Covenant* presented to the United Nations in March 1995.

grammes of these two bodies should be made consistent at country if not regional level, even if there is no agreement about institutional integration. In any case, the Charters of these two bodies need to be re-examined in order to address the need for integration.

- It also seems sensible for the CSD to collaborate more closely with UNEP as well as UNDP. The roles and functions of each of these bodies seem to overlap to an extent, but the expertise developed through one body can clearly be of practical use and benefit in the work of the others.
- There is a need to think more clearly about the processes of implementation and enforcement of environmental conventions. Secretariats of the conventions which have similar subject areas should be encouraged to work closely with each other.[88] There is also a need to explore the possibilities of new institutions for implementation and enforcement, and whether such a body or bodies should arise from the present institutions or whether there should be a new organisation. The Economic Security Council, suggested by the Commission on Global Governance, is one such vehicle, but its proposed role should be expanded to reflect more truly the concept of sustainable development through integration of economic and environmental concerns.
- There is also a need to think about alternative ways of encouraging implementation of and compliance with environmental conventions, including the expansion of the mandate of the Global Environment Facility and ensuring that adequate funds are provided for it.
- The obligations proposed in the Draft International Covenant on Environment and Development of 1995 are likely to engender an intense debate about the direction of international environmental law, and in particular will underline the vigour with which the globalisation of environmental regulation is being pursued.
- The establishment or strengthening of regional bodies for implementation for both regional and global environmental conventions needs to be considered.
- Finally, there is a need to re-emphasise the integral relationship between international and national environmental law, and to remember that, particularly in this field, international law is virtually useless unless it is adequately and consistently implemented at a national level.[89] The task of integration and further development of international and national environmental law is quintessentially a task for UNEP and other UN agencies, working closely in association with other relevant bodies and institutions working in this area.[90]

88 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).

89 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.

90 In particular, the Environmental Law Centre, the Environmental Law Commission of IUCN and the World Conservation Union.