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Human Rights, Environmental Sustainability, Post-2015 Development, and the Future Climate Regime

A Rights-Based Approach to Climate Change Governance

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Abstract

This paper will consider the potential for the introduction of a rights-based approach to global environmental governance and its specific application to the future development of the climate change regime. It is based on over 10 years of research in the field of environmental rights and its relationship with global environmental governance. In particular it is based on the analysis and conclusions of the recently published book, Stephen J. Turner, 'A Global Environmental Right' (Routledge, 2014).

The paper will discuss the potential benefits of applying a rights-based approach to decision-making, founded on the premise that all actors, whether state or non-state, should ultimately bear a human rights based duty to protect the environment. By summarizing the research that has been carried out, it will explain how such a duty could apply directly to key global actors such as corporations, the WTO, banking institutions and of course states themselves.

The paper focuses on the practical application of such an approach by providing an analysis of the type of legal architecture that would be required to achieve such a system. It explains the legal requirements businesses would need to adhere to along with the international institutions that would be necessary to ensure that fairness could be achieved both for states and the commercial world.

The paper inevitably highlights the weaknesses of the traditional 'Westphalian' approach to the resolution of international environmental challenges but seeks to have a 'problem-solving' approach by putting forward a practical alternative.

1 Introduction

As increasing attention is being paid to global environmental governance and the modest impact of various international environmental law regimes including the international climate

change regime, greater attention is being given to the examination of alternative approaches. This paper seeks to demonstrate that there is a body legal systems, that this paper refers to as constituting the 'global legal architecture' which are not directly affected by international environmental law but which have a profound effect upon it. In doing so, it draws on those who have challenged the adequacy of the existing Westphalian approach to international law to resolve contemporary environmental challenges (Sands 1989, 398; Claire Cutler 2001, 133). It argues that the reform of the 'global legal architecture' lies at the heart of realizing an adequate response to the challenge of climate change.

For the purposes of this paper, the aspects of the global legal architecture that are highlighted are specific elements of corporate law, international trade law and state constitutional law. Increased attention to this global legal architecture coincides with a growing interest in analyzing and addressing the 'root causes' or 'drivers' of environmental degradation (Bodansky 2010, 10) and considering ways in which legal systems can drive economies to operate within overriding ecological constraints (Morrow 2012, 297). This paper seeks to demonstrate that some of the main 'root causes' of decision-making that leads to environmental degradation and increasing emissions of greenhouse gases (GHG), can be found in those specific elements of the aforementioned global legal architecture. It therefore argues that redesign of those elements of the global legal architecture using a rights-based approach that would create duties for all types of decision-makers, has the potential to lead to a form of environmental governance that could neutralize the negative environmental effects of business and trade including those that lead to anthropogenic climate change.

As such this paper consists of two main parts. Part I, provides a summary of specific elements of the global legal architecture that contain features which hinder the protection of the environment or cause environmental degradation and can be considered to constitute some of the main 'root causes' of environmental degradation. Part II, provides a summary of a draft treaty that would create a system of rights-based environmental governance reforming *inter alia* the manner in which the international community addressed the challenge of climate change.

The paper therefore addresses global environmental governance using what can be described as 'macro' legal analysis (Turner 2014, 5). By this what is meant is that it analyses the functioning of elements from different legal disciplines as they relate to each other on a global level rather than examining individual legal disciplines in isolation, which could be described as 'micro' legal analysis (Turner 2014, 5). By doing this it builds a picture of the functioning of the different systems operating together. This provides insights into common features across those systems and evidence of how they combine to create an overall framework of law, which is dysfunctional in the sense that it generates rather than eradicates environmental challenges including that of increasing GHG emissions.

PART I

2 Global Environmental Governance relating to Climate Change

When analyzing global environmental governance relating to any sector, it is naturally important to consider the applicable international environmental law. Whilst this is generally the first port of call in any examination or assessment, it is argued that it is not possible to properly assess the relevant international law, unless it is viewed in the context of the associated systems of law that govern national and international business, trade and commerce and also domestic constitutional law. This is because systems of law do not operate in legal vacuums but affect each other in dynamic ways.

It is argued that the international climate change regime provides a graphic example of a system of law, which is ineffective as a result of the global legal architecture upon which it is superimposed (Turner 2014, 101). It is also a good example of international environmental law, which does not attempt to directly reform the legal systems that can have a direct impact on the scale of the associated environmental degradation. It operates on the basis of attempting to treat the symptoms of climate change i.e. directly restricting the levels of emissions of GHGs that are emitted within state boundaries.

Therefore this paper summarizes a broader argument that the role of international law relating to climate change should be analyzed within the context of corporate law, trade law and the law of national constitutions, as it is within these legal systems that some of the main 'drivers' or 'root causes' of GHG emissions can be found (Turner 2014, 117). As such the subsequent sub-sections consider each of these legal systems in turn.

2.1 Corporate Law

Whilst states are the subjects of international law, it is corporations that are directly responsible for the production of a large proportion of anthropogenic GHGs. As corporations are not directly subject to international law, it is necessary to analyze the duties and responsibilities that corporate decision-makers have to the environment. Examining their early development provides insights into the reasons for the duties and responsibilities that they have.

Corporations in the contemporary sense developed in the United States in the late 18th century and in Europe the early 19th century (Gower 1979, 22; Henn and Alexander 1983, 25). They were designed as mediums for business that would attract investors; therefore specific legal features were included in their design. In addition to having separate legal personalities, they were designed so that their directors had to comply with strict duties to ensure that the corporation's funds were only used in ways that would benefit the corporation (Villiers 2010). These duties were backed up with severe penalties for those directors that failed to comply (Turner 2014, 43). These design features played a major part in the success of the corporation and as such its design was replicated in jurisdictions right the way around the world (Backer 2002, 1129; Andenas and Woolridge 2009, 301; Turner 2014, 41-44).

The duties that directors have to put the financial interests of the corporation first are significant as they mean that dealing with externalities, such as the protection of the environment including the reduction of GHGs, do not legally become the duty of a director of a corporation unless:

a) they are in the financial interests of the company; or
b) they are required by the law of the particular jurisdiction in which the corporation is operating.

Directors of corporations, as agents of their employers, are thus subject to hard law which can often require them to make decisions which are not in the best interests of the environment. This can be particularly problematical in terms of dealing with an issue such as climate change because regardless of whether corporate directors recognize the need to combat emissions of GHGs, their legal duties require them to make decisions that will benefit the corporation that they work for and not other interests.

There have been many responses by the international community over the last 40 years to the impacts that corporations have upon the environment and human rights. The most recent has been the work of Professor John Ruggie under the auspices of the United Nations (UN Human Rights Council 2011). Generally they include the development of voluntary 'codes of conduct' and 'guidelines' alongside, or as part of, the concept of 'corporate social responsibility'. Although they are all helpful to a degree, they contain two features which mean that they tend to fall short in terms of bringing about environmental sustainability in the operations of corporations. Firstly, they do not reframe the duties that directors have, meaning that ultimately directors still have a responsibility to put the financial interests of a corporation first. Secondly, they usually amount to soft law and as such do not create obligations, which override directors' duties. Therefore, it will often be incumbent upon a corporate director to follow the hard law of their directors' duties and avoid unnecessary overheads even if that means greater environmental degradation or an increase in the emissions of GHGs. As a result corporate law and its relationship with the environment continues to be the subject of research with a view to developing appropriate reform proposals (Sjåfell and Richardson 2014).

2.2 World Trade Organization Law

The design of the legal system of international trade under the auspices of the World Trade Organization (WTO) similarly contains characteristics, which can lead to poor outcomes for the environment. The relationship between the legal system under the WTO and the environment is complex. This is due to a range of factors, which can ultimately mean that international trade can have negative, positive or neutral impacts upon the environment (Kleeman and Abdulai 2013). Those factors include the types of goods that are traded, the methods that are used to produce goods and services, the forms of transport that are used in the trade of goods, the effect of trade on economic development, the effect of trade on the demand for natural resources, the effect of trade in lowering environmental standards to

attract investment and the development of pollution havens as a result of the lowering of environmental standards (Turner 2014, 51-52).

Whilst the relationship between trade and the environment is a complex one, the fact that international trade can cause degradation to the environment calls for analysis to identify the specific design characteristics within trading regimes that lead to poor environmental outcomes. The design characteristics within the WTO regime are owed in large part to their historical origins, which required the formation of a regime that would avoid trade protectionism and the isolation of states.

In earlier centuries attitudes to trade have been very different to those which currently exist (Irwin 1996, 18). For centuries the accepted wisdom lay in the 'mercantilist' approach to trade which led to high import tariffs and other mechanisms designed to protect native industries from the competition of cheaper imported goods. In 1776 Adam Smith's seminal work, 'An Inquiry into the Nature and Causes of the Wealth of Nations' (Smith 1776) advocated the benefits of avoiding protectionism and allowing what is now known as 'free trade'. This concept was further elaborated by David Ricardo in 'Principles of Political Economy and Taxation' 1817 (Ricardo 1817). Whilst the logic of 'free trade' had been established, governments were reticent to adopt it wholesale. The extreme protectionism that took place in Europe and the United States during the 1930's contributed to the economic depression and has been cited as one of the causes of the isolation of Germany and the development of political extremism, which in turn led to the outbreak of World War II (Kooper 2011, 216). Therefore following the war, President Roosevelt and other leaders were anxious to establish an international trading regime that would avoid a repetition of those policies (Zeiler 1999, 25). Therefore the design of the post-war international trade regime was based on that goal particular goal.

The regime that developed was the General Agreement on Tariffs and Trade 1947 (GATT). Its main design characteristics were a requirement that member states would not impose quantitive restrictions on goods, that import tariffs for specific goods had to be the same for all member states and also that member states would not discriminate between those goods that had been imported into their countries and those which were produced by their own industries (Lowenfeld 2008, 30). The GATT allowed significant flexibility for its members, which made it very popular and as a result membership grew steadily (Zeiler 1999, 196). In 1994 the WTO was established and by 2014 membership had grown to 160 states. The agreements adopted by the WTO largely replicated the principles that had been established by the GATT in 1947.

Therefore in terms of the environment and particularly climate change, the existing international trading regime contains certain design features. Firstly, it was designed to avoid protectionism and encourage free trade. Secondly, neither the GATT nor the Agreement Establishing the World Trade Organization include constraints to ensure that the trade that occurs under their auspices is such that it does not cause harm to the environment (Hufbauer, Charnovitz and Kim 2009, 65).

Whilst the GATT does contain specific provisions for the protection of the environment (found in Article XX), their application and use have very narrow application in the light of the scale of the environmental problems that the international community currently faces.

Esty describes this lack of an effective mechanism for the protection of the environment as follows:

> [f]undamentally, the GATT is asymmetrical; its rules only permit a decision that particular environmental standards 'excessively' intrude on trade prerogatives. The GATT provides no comparable process for declaring a nation's economic activities (and related trade) to be environmentally 'inadequate' – and therefore an unfair basis for trade. Thus, the GATT fails to satisfactorily accommodate environmental protection in defining the ground rules for trade (Esty 1994, 140).

Therefore, this reflects a crucial aspect of the global legal architecture, which has not been directly reformed by the WTO itself or through international environmental law and arguably represents one of the main 'root causes' of environmental degradation.

2.3 State Constitutional Law

It is widely accepted that state decision-making can have both positive and negative impacts on the environment owing to two particular factors. The first is the principle of permanent sovereignty over natural resources, which has been closely guarded by states. Sands *et al.* describes it as allowing states, 'within limits established by international law to conduct or authorize such activities as they choose within their territories, including activities that may have adverse effects on their own environment' (Sands and Peel *et al* 2012, 191). The second is the effect of a state's constitution, law and policies which relate to aspects of the environment. This sub-section will consider state constitutional law as it represents the highest order of law made within a state.

Historically, states have developed constitutions, whether written in a single document (the majority of states) or uncodified (a minority of states). These constitutions constrain and direct the behaviour or decision-making of governments whether that be in policy-making, law-making, administrative decision-making or judicial decision-making. According to Elkins, Ginsberg and Melton constitutions, "limit the behaviour of government. Constitutions generate a set of inviolable principles and more specific provisions to which future law and government activity more generally must conform." (2009, 38).

Whilst the development of constitutions can be traced back hundreds of years, the first constitutions written in a single document emerged in the late 18th century. The most influential of these has arguably been the constitution of the United States, as its format has been followed by many other constitutions (Law and Versteeg 2011, 1163). In recent decades, many states have included provisions within their constitutions for the protection of the environment. The significance of these provisions has been the subject of much literature

(Boyd 2012, Anton and Shelton 2011). However, for the purposes of this paper, comments relating to their effectiveness will be restricted to the following key points which summarize the impact of their development.

Firstly, constitutional environmental rights do not exist in isolation but alongside numerous other provisions that protect or seek to promote a wide variety of societal goals or values, which sometimes compete with the protection of the environment (Speth 2012, 4). For example constitutions specifically or implicitly protect or promote goals or values that require growth of the national economy for their realization. For example, those provisions may relate to the provision of housing, basic health requirements, educational needs and the most basic requirements such as the provision of potable water and sanitation (Turner 2014, 65).

Secondly, constitutional environmental rights vary in their nature and make up, in terms of what they protect and how they protect it. Naturally some provisions confer substantive environmental standards and others confer procedural rights. However, of the substantive rights, it is clear that many amount to policy statements rather than conferring 'justiciable' rights (Turner 2009, 83). Additionally the wording of substantive environmental rights is often vague, leaving much open to interpretation.

The end result of the aforementioned factors is that when substantive environmental provisions within constitutions are surveyed in action, a general pattern can be observed. This is that in litigation they tend to be effective in extreme cases at the local level where the health of humans has been or potentially could be severely affected (Turner 2009, 36). There are naturally exceptions to this, although they are far and few between (Turner 2014, 27). It can also be argued that in general terms they have a normative effect by establishing a guide from which specific expectations of a state become built into policies and legislative programmes. However, that normative effect can also occur within states that do not have environmental provisions within their national constitutions. Therefore, in terms of climate change and the human rights impacts of climate change, it must be noted that environmental provisions within constitutions do not necessarily constrain national governments to adopt policies that will limit the emissions of GHGs.

PART II

3. The case for a Rights-Based Approach to Global Environmental Governance

The aforementioned analysis requires a response to the aspects of the global legal architecture that drive economies towards environmental degradation. There are two main reasons why human rights can provide a foundation stone for the development of a renewed system of global environmental governance in this context. The first is that many aspects of environmental degradation do ultimately lead to impacts upon peoples' human rights. This has increasingly been recognized and will not be elaborated upon further within this paper

(Humphreys 2010; Anton and Shelton 2011, Turner 2014). The second is that human rights in action, lead to specific duties for the actors that are responsible within that particular sphere. For example, the human right to a fair hearing leads to a range of legal responsibilities for the variety of actors that deal with suspects and defendants, whether they are police officers, judges, lawyers, witnesses or medical staff. There is therefore a case for creating duties on the international level for all those actors that can potentially have a negative impact upon the environment. However, as has already been stressed, international law generally only applies directly to states and not to other actors such as corporations whose decision-making can have significant impacts upon the environment (Clapham 2013, 23; Knox 2008). As such there is a case for developing an approach that not only places a human rights based duty upon state decision-makers to protect the environment but also on non-state actors too. Allied to this would be the necessity to institute a system that could ensure that such duties were instituted fairly across all nations and all decision-makers.

3.1 The Design of a Rights-based Approach to Environmental Governance

This section will consider the key design features that have been included in the draft Global Environmental Right (draft GER), a draft treaty that represents the author's recent reform proposals and policy recommendations in this field (Turner 2014, 70). It indicates the responsibilities that such a right would create, how it would resolve the design features of the existing global legal architecture detailed in the previous sections, and it specifically comments on how such a system could respond more effectively to the challenge of climate change than the existing Westphalian approach under the United Nations Framework Convention on Climate Change (UNFCCC).

The main criteria that have been used to guide the design of this proposed system are as follows:

a) That the functioning of such a system would lead to 'environmental sustainability'. This means that the functioning of the system would lead to 'no net loss' (Salzman 2005, 908; Achterman and Mauger 2011, 306) to the environment.

b) That the functioning of such a system would lead to flows of public and private finance to projects for the protection of the environment, especially in developing countries.

c) That the functioning of such a system would be supported by adequate oversight by the international community to ensure that it would function effectively and fairly.

It must be noted that the drafting process drew from many well-established reform suggestions derived from other institutions, lawyers, economists and policy-makers.

3.2 Principle and Statement of Environmental Duties

The foundation of the system is the proposed principle that all decision-makers whether 'state' or 'non-state' should have a direct legal responsibility to protect the environment (Turner 2009, 1). This is included in Art. 1 of the draft GER (Turner 2014, 74). However, it provides that in those instances where degradation to the environment 'will' or 'may' occur justifiably, the decision-maker will be required to compensate that aspect of the environment concerned either through the purchase of 'offsets' or 'insurance' as appropriate.

The requirement applies to all aspects of degradation and potential degradation to the environment, which is consistent with the trend towards achieving 'environmental sustainability' through the application of the concept of 'no net loss' (Salzman 2005, 908; Achterman and Mauger 2011, 306) or what has been referred to as 'ecological impact neutrality' (McGillivray 2012, 417). In terms of its application to all actors rather then simply state actors, it represents a departure from the traditional Westphalian approach to international law. The sub-sections that follow, illustrate how these standards could potentially be effectively integrated as a reformed framework of global environmental governance.

3.3 Compensating the environment for harm caused

To meet the requirement of 'no net loss' or 'ecological impact neutrality' the draft GER requires that any environmental degradation is compensated for through the purchase of Direct Environmental Compensatory Offsets (DECO) (Arts. 4, 6, 7, 10 and 13). The use of offsets has already been adopted quite widely within different areas of environmental protection such as biodiversity, water, wetlands and climate change (Hahn and Richards 2013, 109). Whilst the concept is not without flaws owing to the question of 'equivalency' (Matthews and Endress 2008), it does provide a mechanism that enables economic development whilst requiring sustainability for the environment. Additionally, it internalizes the environmental costs by requiring those carrying out a project to fund the compensatory elements.

Therefore within the context of climate change, offsets would be a requirement of those actors whether 'state' or 'non-state' producing greenhouse gases. Whilst offsets are already used within the context of climate change governance, they are currently applied within the limited setting of emissions caps rather than for all emissions. It is argued that if the international community is to achieve the types of levels of greenhouse gas emissions that the Intergovernmental Panel on Climate Change (IPCC) suggests are required by 2050 and 2100, to prevent dangerous anthropogenic climate change, this type of system or one of similar effect would be required (IPCC 2014, 13).

Of crucial importance in developing an international system of comprehensive environmental protection, is the institution of business structures that firstly enable the offsets to be achieved

as an integral part of business and industry, but also whichsd facilitate the flows of finance (both public and private) to those regions of the world that require investment to maintain and rebuild natural capital that is either under threat or has been lost. The draft GER enables this through an international system of registered suppliers of DECOs (Arts. 4, 6, 7, 9, 10, 13, 15, 16). This would require each country to establish a system of registered suppliers of such DECOs to facilitate the flow of finance to projects that would qualify. The oversight of this system is detailed in subsequent sub-sections.

3.4 Insuring risks of harm to the Environment

In those instances where risks of harm to the environment are uncertain, it is argued that comprehensive systems of insurance are built into any new international system of governance. Currently many risks are inadequately insured (Turner 2014, 87). This creates the dual risk of un-redressed harm to the environment and severe damage to businesses in the event of major claims for compensation.

The draft GER incorporates a requirement for all activities in which there is uncertainty as to the risks to the environment, to be appropriately insured by registered suppliers of environmental insurance (Arts. 4, 5, 7, 11, 13, 15, 16). This would internalize risks and realize the polluter pays principle. There is also the potential for requiring the providers of environmental insurance to invest in projects for the restoration of the environment, the credits of which could be surrendered in the event of a claim involving degradation of that aspect of the environment.

3.5 Accounting for environmental harm and environmental risks

The draft GER includes provisions that place an obligation on all types of decision-makers (except individuals), whether they be ‘state’ or ‘non-state’ actors to provide annual environmental accounts (Arts. 4, 5, 7, 8, 13). Such accounts would be made up to a consistent standard and for corporations, would be provided at the same time and alongside their financial accounts (Turner 2014, 75-91). Limited environmental accounting is gradually being introduced within certain jurisdictions. For example in the United Kingdom all listed companies are now required to provide a carbon emissions statement within their financial accounts (UK Gmnt 2013). Naturally a cap and trade scheme also operates on a system of accountability for GHG emissions. Additionally there are now examples of sophisticated voluntary reporting structures that are being used by some corporations (Global Reporting Initiative 2013); therefore the first steps have been made. However, for a system in which all actors would be required to purchase offsets and environmental insurance, a more comprehensive system of accountability would be required.

3.6 International Corporation Registration Body

In response to the deficit that was discussed in the first section relating to the fact that existing international environmental law only applies directly to state actors, the draft GER provides for the establishment of a system of international registration and accountability for corporations that 'operate internationally' (Turner 2014, 87-89). A corporation would be deemed to 'operate internationally' if it traded internationally or was a parent or subsidiary of a company that operated in a jurisdiction other than that in which it was registered (Art. 3).

The international registration body would license corporations to 'operate internationally' (Art. 12(b)) and would provide standardized sanctions for corporations that failed to comply with international standards (Art. 12(c)). Such a body would ultimately have the authority to revoke the license of a corporation to 'operate internationally' in the event of non-compliance with environmental standards (Art. 12(d)).

3.7 World Environment Organization

Arguments for the establishment of a World Environment Organization (WEO) have surfaced on many occasions in recent decades (Goeteyn and Maes 2012, 230). The aspirations for such an organization in terms of its components and function have differed (Esty 1994b; Charnovitz 2005). The type of organization that the draft GER envisages is one that would have defined functions, which would respond directly to the earlier analysis, and which would provide an oversight function in relation to the rights based duties that the draft GER would create (Art. 13).

It is outside the scope of this paper to provide an in depth account of those functions, however a number of the most important ones are mentioned in brief. It would provide an international authority for environmental standard setting to agree the standards for DECOs and environmental insurance (Art. 13(a)). It would have a governance role by receiving and monitoring the reports of the registered suppliers of DECOs and environmental insurance (Art. 13(b). In terms of compliance, the WEO would have the role of receiving environmental accounts from state and non-state actors, inspecting them and advising the ICRB of the levels of compliance with the required standards (Art. 13(e)). It would also have roles in terms of dealing with disputes (Art. 13(e)) and agreeing transitional arrangements to ensure that the provisions of the draft GER were introduced fairly for all actors (Art. 13(c)).

3.8 World Trade Law

It is argued that the international trading regime under the WTO is dated, as it does not require that the trade in goods or services under its auspices is environmentally sustainable. The GATT and the WTO were designed with a trade liberalization agenda in mind, which did

not envisage the regime having a major role in the protection of the environment (Esty 1994a, 140). This has resulted in arguments that membership of trade agreements should be subject to the condition that specific environmental standards are complied with (Newell 2010, 152). Therefore, the draft GER requires that all parties work towards the incorporation of the standards included within the treaty, as membership requirements of the WTO and also the regional trade agreements (Art. 14). In this way trade law would be streamlined with the overall initiatives taken to bring about environmental sustainability.

3.9 Transitional Arrangements

A major challenge with any form of international law is the integration of equity in terms of its application to the actors who are, or become, subject to it. The draft GER includes an important provision in Art. 18 to allow for 'transitional arrangements'. This would require specific attention to ensure that any reforms were developed in a fair manner. This would inevitably require detailed analysis and negotiation; as such it is outside the scope of this paper.

4. Conclusion and Policy Recommendations

The approach posited in this paper demonstrates that simply superimposing international environmental law upon the existing global legal architecture is not an adequate approach to global environmental governance. It is particularly inadequate for dealing with the challenge of anthropogenic climate change. This is because there are features within the existing global legal architecture, which are predisposed towards environmental degradation and the emission of GHGs. As international environmental law does not directly address those features, the outcome is one of dysfunction in which different legal regimes provide differing and often incompatible objectives for different actors. This type of dysfunction is seen clearly in the results of the UNFCCC regime, which leaves states, hamstrung with unenviable and often impossible conflicts of interest.

This paper demonstrates that for global environmental governance to function effectively it must address the 'root causes' of environmental degradation and it has shown that some of those main 'root causes' can be found in the existing global legal architecture. It proposes systems that would apply to all actors and which would ensure that all business and trade could function in a manner that was environmentally sustainable.

It has also shown that human rights have a fundamental role to play as they create foundational legal duties for decision-makers. However, it has also shown that the traditional notion of human rights which only apply directly to state actors has to be comprehensively readdressed.

The main policy recommendation that this paper puts forward, is that further inter-disciplinary research should be carried out to build a clearer understanding of the potential of developing a global environmental governance regime that is consistent with the reform proposals discussed above.

References

Achterman, G. L. and R. Mauger. 2010. "The State and Regional Role in Developing Ecosystem Service Markets" *Duke Env. L. & Pol'y Forum* 20: 291-337.

Andenas, Mads and Frank Woolridge. 2009. *European Comparative Company Law.* Cambridge: Cambridge University Press.

Anton, D. K. and Dinah L. Shelton. 2011. *Environmental Protection and Human Rights.* Cambridge: Cambridge University Press.

Backer, Larry C. 2002. *Comparative Corporate Law – United States, European Union, China and Japan – Cases and Materials.* Durham: Carolina Academic Press.

Bodansky, D. 2010. *The Art and Craft of International Environmental Law.* Harvard MA: Harvard University Press.

Boyd, D. R. 2012. *The Environmental Rights Revolution – A Global Study of Constitutions, Human Rights, and the Environment.* Vancouver: UBC Press.

Charnovitz, S. 2005. "Towards a World Environment Organization: Reflections upon a vital debate." In *A World Environment Organization: Solution or Threat to Effective International Environmental Governance?* ed. F. Biermann and S. Bauer, Aldershot: Ashgate.

Claire Cutler, A. 2001. "Critical Reflections on the Westphalian assumptions of international law and organization: a crisis of legitimacy." *Review of International Studies* 27: 133-150.

Clapham, A. 2013 (2010). "Non-State Actors". In *Human Rights and Non-State Actors.* Ed. A. Clapham, Cheltenham: Edward Elgar.

Elkins, Z., Ginsberg, T. and Melton, J. 2009. *The Endurance of National Constitutions.* Cambridge: Cambridge University Press.

Esty, Daniel C. 1994a. *Greening the GATT – Trade, Environment, and the Future.* Washington D.C.: Institute for International Economics.

Esty, D. 1994b. "The Case for a Global Environmental Organization". In *Managing the World Economy: Fifty Years after Bretton Woods* (ed.) P. Kenen, Washington D.C.: Institute for International Economics.

Global Reporting Initiative (GRI). 2013. "G4 Sustainability Reporting Guidelines" GRI, July 26, 2014. https://www.globalreporting.org/resourcelibrary/GRIG4-Part1-Reporting-Principles-and-Standard-Disclosures.pdf

Goeteyn. N. and Maes. F. 2012. "The Quest for a World Environment Organization: Reflections on a failing debate as an input for future improvement." In *Environmental Governance and Sustainability.* eds. P. Martin, L. Zhiping, Q. Tianbao, A. D. Plessis, Y. L. Bouthilier and A. Williams, Cheltenham: IUCN Academy of Environmental Law Series – Edward Elgar.

Gower, L. 1979. *Principles of Modern Company Law.* London: Steven and Sons

Hahn, R. and K. Richards. 2013. "Understanding the Effectiveness of Environmental Offset Policies" *J. Regul. Econ.* 44: 103-119.

Henn, H. G. and J. R. Alexander1983. *Laws of Corporations.* St Paul MN: West Publishing Co.

Hufbauer, G. C.; S. Charnovitz, S. and J. Kim, 2009. *Global Warming and the World Trading System.* Washington D.C.: Pearson Institute for International Economics.

Humphrys, S. (ed). 2010. *Human Rights and Climate Change.* Cambridge: Cambridge University Press.

IPCC. 2014. "Summary for Policymakers". In *Climate Change 2014, Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.* eds. Edenhofer et al. Cambridge UK and New York USA: Cambridge University Press.

Irwin, D. A. 1996, *Against the Tide – An Intellectual History of Free Trade.* Princeton N.J.: Princeton University Press.

Kleeman, L. and A. Abdulai, 2013. "The Impact of Trade and Economic Growth on the Environment: Revisiting the Cross-Country Evidence" *J. Int'l. Dev't.* 25(2): 180-205.

Knox, J. 2008. "Horizontal Human Rights Law" *Am. J. Hum. Rts. L.* 102(1): 1-47.

Kooper, C. 2011. "New Perspectives on the 1931 banking crisis in Germany and Central Europe" *Business History* 53 (2): 216-229.

Law, D. S. and Versteeg, M. 2011. "The Evolution and Ideology of Global Constitutionalism" *Cal. L. Rev.* 99(5): 1163-257.

Lowenfeld, A. F. 2008. *International Economic Law.* Oxford: Oxford University Press.

Matthews, J. W. and A. G. Endress. 2008. "Performance Criteria, Compliance Success, and Vegetation development in Compensatory Wetlands. *Envtl. Management.* 41: 130-141.

McGillivray, D. 2012. "Compensating Biodiversity Loss: The EU Commission's Approach to Compensation under Article 6 of the Habitats Directive" *J. Envtl. L.* 24(3): 417-450.

Morrow, K. 2012. "Rio + 20, the Green Economy and Re-orienting Sustainable Development" *Envtl. L. Rev.* 14(4): 279-297.

Newell, P. 2012. "Climate Change, Human Rights and Corporate Accountability. In *Climate Change and Human Rights*. ed S. Humphreys, Cambridge: Cambridge University Press.

Ricardo, D. 1817 (Republished 2004). *Principles of Political Economy and Taxation.* New York: Dover Publications.

Salzman, J. 2005. "Creating Market for Ecosystem Services: Notes from the Field" *N.Y.U.L.* 80: 870-961.

Sands, P., J. Peel., A. Fabra., R. Mackenzie. 2012. *Principles of International Environmental Law.* Cambridge: Cambridge University Press.

Sands, P. 1989. "The Environment, Community and International Law" *Harv. Int'l L. J.* 30: 393-420.

Sjåfell, B. and B. Richardson 2014. *Company Law and Sustainability – Legal Barriers and Opportunities.* Cambridge: Cambridge University Press.

Smith, A. 1776 (reprinted 1993 – K. Sutherland ed.). *An Inquiry into the Nature and Causes of the Wealth of Nations.* Oxford: Oxford University Press.

Speth, J. G. 2012. *America the Possible – Manifesto for a New Economy.* New Haven: Yale University Press.

Turner, S. J. 2009. *A Substantive Environmental Right.* Leiden: Kluwer Law International.

Turner, S. J. 2014. *A Global Environmental Right.* London: Routledge.

Turner, S. J. 2014. Appendix - Draft Global Environmental Right. In *A Global Environmental Right.* Abingdon: Routledge. Accessed 2014 Aug. 13. from Lincoln University Repository: http://eprints.lincoln.ac.uk/13791/

UK Government. 2013. *Companies Act 2006 (Strategic and Directors' Reports) Regulations*.No.1970.

United Nations. 1992. *Declaration on Environment and Development.* UN Doc. A/Conf.151/5/Rev.1.

United Nations Human Rights Council. 2011. *Promotion and Protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.* UN Doc. A/HRC/17/31.

Villiers, Charlotte 2010. "Directors Duties and the Company's Internal Structures Under the UK Companies Act 2006: Obstacles for Sustainable Development." *Int'l Comp. Corp. L. J.* 8: 47-75.

Zeiler, T. W. 1999. *Free Trade Free World – The Advent of GATT.* North Carolina: The University of North Carolina Press.