

GLOBALIZING THE ENVIRONMENT[†]

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As the United States and the world prepare to move into the twenty-first century, the interdependence implicit in the increasingly popular term “globalization”¹ is ever more apparent. In a very real sense, one can now say both that the environment is global and that environmental policy is caught up in the process of globalization. The process of globalization has revealed deeply rooted linkages between environmental quality and other public policy agendas once thought to be distinct. These interrelationships were recently exposed in a highly visible manner when environmental objections contributed to the demise of President Clinton’s request to Congress to authorize “fast track” negotiating authority for trade agreements, rendering him the first President since the procedure was initiated in the mid-1970s from whom that power has been withheld. The recent flare-up over fast track was not an isolated juncture, but an example of a much more pervasive phenomenon. In the more mundane, day-to-day conditions under which environmental policy is normally crafted, implemented, and enforced, the interpenetration of environment and other public policy agendas is, if anything, even more evident.

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¹ The term *globalization*, while in wide use, appears to elude precise definition. While the term encompasses the concept of doing business in a global marketplace, in practice the word is often used to describe a much broader spectrum of social, cultural, political, and even economic trends. Perhaps because of the definitional difficulty, many elaborations of the term are phrased in descriptive terms. See, e.g., ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, ECONOMIC GLOBALISATION AND THE ENVIRONMENT 19 (1997) (“Globalisation can be thought of as a *process* in which economic markets, technologies, and communication patterns gradually exhibit more ‘global’ characteristics, and less ‘national’ or ‘local’ ones.”); C. FORD RUNGE, GLOBALIZATION AND SUSTAINABILITY: THE MACHINE IN THE GLOBAL GARDEN 2 (Center for Int’l Food and Agricultural Pol’y Working Paper No. WP97-4, 1997) (“‘Globalization’ nearly always describes international economic competition and its impact on ‘connectedness,’ specifically the increasing transboundary flow of goods, services, bads and disservices, including not only materiel, but information, environmental pollution, and people.”).

These connections often manifest themselves under a rubric of “environment and . . .” some other subject matter area. Thus, the collapse of fast track is readily identifiable as a component of a larger debate on environment and trade. Similarly, there are ongoing dialogues over the relationship between environment and development and environment and security. Each of these three subject matter couplings has acquired a fairly well-defined shape, along with a following of scholars, government officials, and advocates who specialize in these often difficult-to-penetrate, interdisciplinary inquiries.

One common attribute of the “environment and . . .” subject matter pairings is the splicing of two apparently divergent public policies, both of which are nonetheless intended to promote human welfare. On this level, it is pointless or even counterproductive to employ the kinds of good-versus-evil metaphors often associated with mission-oriented public policy agendas in areas such as the environment. After all, trade, development, and security also provide social benefits and often employ their own palette of symbolism.

While the “environment and . . .” formulation is perhaps helpful in identifying the essential “interconnectedness” between environment and other public policy agendas, that approach also has limitations. For one, this phraseology unfortunately tends to encourage a view of the phenomenon of globalization based on an array of horizontal, bipolar relationships. If environmental policy can be scrutinized in this mix-and-match fashion, there would appear to be no reason why other social welfare demands could not also be treated in this manner. So, for example, one might imagine juxtaposing trade and development, security and trade, or security and development—each of which, incidentally, has been attempted with some degree of analytical rigor. For another, these pairings facilitate an approach that attempts to reconcile conflicts or tradeoffs between apparently competing policy goals. There is a considerable risk that this focus on the “bilateral” overlap between previously established categories of public policy subject matter will obscure a better approach that synthesizes these disparate elements at a higher level of conceptual generality.

A different, but related theme concerns the question whether globalization is good or bad for the environment. Each of the “environment and . . .” modes of analysis tracks this motif, inquiring into the beneficial or harmful effects, for instance, of trade or of development on environmental quality. In this author’s view, such questions are, in a deeply fundamental sense, unanswerable. One can criticize as an

oxymoron George Will's invocation of the "exhilaratingly unknowable future"² catalyzed by the North American Free Trade Agreement (NAFTA), but there is little in the way of meaningful policy responses that would halt or even slow trends toward greater global interdependence. Thanks to such innovations as widespread access to the Internet and other modern communications technologies, globalization is proceeding apace, with or without fast track, continued development assistance provided by the U.S. Agency for International Development, or the expansion of NATO, to name only a few of the pertinent recent public policy junctures.

The terms and directions of such trends, however, do appear to be amenable to a certain degree of molding or shaping. The better interpretation of the fast track failure is not that the U.S. public has rejected the benefits of international trade, but that the electorate is dissatisfied with the rules governing that trade. While it is extraordinarily difficult or impossible to predict whether globalization as such is good or bad for the environment, the policy choices that guide the process can arguably be crafted so as to ameliorate adverse environmental impacts or to encourage beneficial ones. The terms being established today that govern relationships among such entities as governments, corporations, international organizations, and individuals in a globalized world are likely to have impacts, environmental and otherwise, indefinitely into the future.

I. ENVIRONMENT AND . . .

In addressing the implications of increased global interdependence, this article first selectively surveys three of the areas in which environment has been linked with other social policy issues: (1) development; (2) trade; and (3) security. Drawing on insights from each of these issue areas, this article then attempts to draw some admittedly tentative conclusions about how the fundamental structural dynamics of the globalization phenomenon might be channeled for the benefit of the environment.

A. *Development*

Although the necessary responses may be frustratingly complex, the interface between environmental and development policies is probably the easiest of the "environment and . . ." areas to grasp from a conceptual

² George F. Will, *Judicial Exhibitionism*, WASH. POST, July 8, 1993, at A17.

point of view. Anyone who has ever witnessed suburban sprawl firsthand knows intuitively that misguided or inadequate development policies can despoil the environment. Although technically speaking the environment-and-development dialectic applies to any country, concern about the nexus between the two areas has been greatest in the developing world. One substantive reason revolves around the desire to conserve fragile ecosystems such as tropical forests, wetlands, and grassland savannahs. In countries that are often heavily dependent on the resource base, poorly advised development strategies can have a devastating impact on the lives and livelihoods of the human population, particularly those at the margins of subsistence.

The role of donor-financed assistance has substantially heightened attention to the role of environmental quality in economic development. The United States provides development assistance to developing countries directly, on a bilateral basis, through the U.S. Agency for International Development. The United States is also a member of multilateral financial institutions which, in one manner or another, are engaged in related operations: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the International Finance Corporation (IFC)—collectively, the “World Bank group;” regional development banks, including the Inter-American Development Bank (IDB), the African Development Bank (AfDB), the Asian Development Bank (AsDB), and the European Bank for Reconstruction and Development (EBRD); the International Monetary Fund (IMF); and the United Nations Development Program (UNDP). These bilateral and multilateral institutions can significantly affect both development strategies and the environment. World Bank loans can finance massive interventions in the natural environment, such as large dams and irrigation systems, of a scale that would be difficult to imagine domestically. Significantly, the donor-financed nature of these interventions creates a situation in which donor country governments and the public in donor and recipient countries alike can influence development-related investments in recipient countries.³

³ For criticisms of the activities of international financial institutions from an environmental perspective, *see generally* PATRICIA ADAMS, *ODIOUS DEBTS: LOOSE LENDING, CORRUPTION, AND THE THIRD WORLD'S ENVIRONMENTAL LEGACY* (1991); ROBERT E. STEIN & BRIAN JOHNSON, *BANKING ON THE BIOSPHERE?* (1978); RAYMOND F. MIKESSELL & LARRY WILLIAMS, *INTERNATIONAL BANKS AND THE ENVIRONMENT: FROM GROWTH TO SUSTAINABILITY: AN UNFINISHED AGENDA* (1992); BRUCE RICH, *MORTGAGING THE EARTH: THE WORLD BANK, ENVIRONMENTAL IMPOVERISHMENT, AND THE CRISIS OF DEVELOPMENT* (1994); Pat Aufderheide & Bruce Rich, *Environmental Reform and the*

The most significant international policy-making event on the environment-and-development issue was the U. N. Conference on Environment and Development (UNCED), dubbed the “Earth Summit,” held in the summer of 1992 in Rio de Janeiro. This meeting firmly introduced the concept of “sustainable development” into the policy lexicon. Although there is no consensus definition of the term, the following has gained broad acceptance:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and
- the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.⁴

Multilateral Banks, 5 WORLD POL’Y J. 301 (1988); John Horberry, *The Accountability of Development Assistance Agencies: The Case of Environmental Policy*, 12 ECOLOGY L.Q. 817 (1985); Zygmunt J.B. Plater, *Damming the Third World: Multilateral Development Banks, Environmental Diseconomies, and International Reform Pressures on the Lending Process*, 17 DENV. J. INT’L L. & POL’Y 121 (1988), revised and reprinted as *Multilateral Development Banks, Environmental Diseconomies, and International Reform Pressures on the Lending Process: The Example of Third-World Dam-Building Projects* in 9 B.C. THIRD WORLD L.J. 169 (1989); Bruce M. Rich, *The Multilateral Development Banks, Environmental Policy, and the United States*, 12 ECOLOGY L.Q. 681 (1985); Bruce Rich, *The Emperor’s New Clothes: The World Bank and Environmental Reform*, 7 WORLD POL’Y J. 305 (1990); David A. Wirth, *The World Bank and the Environment*, ENV’T, Dec. 1986, at 33.

⁴ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43 (1987). Constituted by the UN General Assembly in 1983, the World Commission was composed of twenty-one eminent personages appointed in their personal capacities, was chaired by Gro Harlem Brundtland, Prime Minister of Norway, and was charged with “propos[ing] long-term environmental strategies for achieving sustainable development to the year 2000 and beyond,” *Process of [P]reparation of the Environmental Perspective to the Year 2000 and Beyond*, G.A. Res. 161 sec. 8(a), U.N. GAOR, 38th Sess., Supp. (No. 47), at 131, U.N. Doc. A/38/161 (1984). Despite the World Commission’s effort, there still appears to be no consensus definition for the term *sustainable development*. Cf. Rio Declaration on Environment and Development, June 13, 1992, Principle 4, U.N. Doc.

The term *sustainable development* has now been used in such a wide variety of contexts by so many different people with such divergent agendas that its core meaning has been seriously attenuated, indeed, if it ever was clear. In at least one interpretation, the concept implies tradeoffs between development imperatives on the one hand and environmental integrity on the other. This characterization is at least arguably consistent with the tone of the Rio meeting and the content of its official statements.⁵

While the World Bank was created and began operations soon after World War II with a development-oriented mission, a more recent policy trend has been to target donor-financed development assistance specifically for environmentally beneficial purposes. The best example is probably the Global Environment Facility (GEF), established to provide financial support for environmentally beneficial activities and, in particular, to serve as the interim financial institution under two major multilateral conventions adopted as part of the UNCED process, on climate change⁶ and biodiversity,⁷ respectively. The facility was established on a pilot basis in 1991⁸ and restructured and replenished in 1994 with \$2 billion.⁹ The GEF operates under the tripartite direction of the World Bank, the UNDP, and the United Nations Environment Program (UNEP). Notwithstanding its expressly stated mission of "provid[ing] grants and concessional funding to recipients for projects and programs that protect the global environment and promote sustainable economic

A/CONF.151/5/Rev. 1 (1992), 31 I.L.M. 874 (1992) ("In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."). This passage has been described as "the closest the Rio Declaration comes to a definition of 'sustainable development' Jeffrey D. Kovar, *A Short Guide to the Rio Declaration*, 4 COLO. J. INT'L ENVTL. L. & POL'Y 119, 127 (1993). However, this passage imposes less demanding constraints on development that is sustainable, both in terms of meeting the needs of current and future generations and in conserving environmental integrity, than the World Commission's definition.

⁵ See David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?*, 29 GA. L. REV. 599 (1995).

⁶ See United Nations Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (1992).

⁷ See Convention on Biological Diversity, May 22, 1992, 31 I.L.M. 818 (1992).

⁸ See World Bank: Documents Concerning the Establishment of the Global Environment Facility, Mar.-Oct., 1991, 30 I.L.M. 1735, annex C (1991).

⁹ See Instrument for the Establishment of the Restructured Global Environment Facility, 33 I.L.M. 1283 (1994). See generally Andrew Jordan, *Paying the Incremental Costs of Global Environmental Protection: The Evolving Role of GEF*, ENV'T, July-August 1994, at 12.

growth,”¹⁰ the GEF has nevertheless come under considerable environmental criticism because of its governance structure and project design.¹¹

B. *Trade*

Although the linkage between policies on environment and trade has been extensively examined, the deeper significance of the interface between these two social welfare goals has been elusive. Trade rules, such as those of the newly created World Trade Organization (WTO), the successor to the General Agreement on Tariffs and Trade (GATT) adopted in 1947, consist of primarily “negative” obligations in which states promise to refrain from taking actions, such as imposing certain tariffs, that could impede market access. Trade negotiations, whether multilateral, regional, or bilateral, usually take the form of reciprocal promises to reduce or eliminate barriers to market access that would be unlikely to be implemented unilaterally in the absence of such a bargained-for exchange; many recent trade agreements consequently have the character of generic solutions to specific trade problems, such as standards for imported food products. The efficacy of the trade regime can be accounted for to a large extent by the simplicity of its central free-market message: less governmental intervention almost by definition promotes liberalized trade. To a large extent, this gives the term “globalization” somewhat greater precision, as consisting, at least in part, of purposefully deregulated markets—perhaps the most readily comprehended component of the phenomenon of globalization.

By contrast, international obligations with respect to the environment, and many other social policy areas such as labor, anticipate and require the implementation of affirmative governmental actions intended to address particular problems. In a microcosm, this explains the recent clash between trade and environment. One regime is designed to facilitate the implementation of affirmative governmental measures, and the other is intended to ensure their absence. To a proponent of free trade,

¹⁰ *Introduction to the Global Environment Facility*, <<http://www.worldbank.org/html/geff/intro/geffintro.htm>>.

¹¹ See, e.g., IAN A. BOWLES & GLENN T. PRICKETT, *REFRAMING THE GREEN WINDOW: AN ANALYSIS OF THE GEF PILOT PHASE APPROACH TO BIODIVERSITY AND GLOBAL WARMING AND RECOMMENDATIONS FOR THE OPERATIONAL PHASE* (1994); 2 *THE GLOBAL ENVIRONMENT FACILITY: SHARING RESPONSIBILITY FOR THE BIOSPHERE* (David Reed ed., 1993); David Reed, *The Global Environment Facility and Non-Governmental Organizations*, 9 AM. U. J. INT’L L. & POL’Y 191 (1993).

environmental regulations are potential barriers to trade; to an environmentalist, the rules of the international trade regime may constrain governmental policy responses, such as prescriptive regulatory requirements, to address environmental and public health risks. As on the domestic level, the “cognitive dissonance,” if not outright conflict, between deregulation and the implementation of affirmative public policy goals is clearly evident.

The shape of the environment-and-trade dialogue has now settled into a number of well-defined problems. From the environmental side, concerns arise over the vulnerability of environmental regulations to trade-based challenges; the potential for triggering a “downward spiral” in the rigor of environmental regulation through multilaterally established, least-common-denominator harmonized standards responsive more to trade considerations than to public health or the environment; the appropriateness from an institutional point of view of organizations such as the WTO for consideration of environmental matters; and the possibility that even multilateral environmental agreements might face trade-based constraints. From the trade point of view, there are commensurate worries over the abuse of environmental measures for protectionist purposes; the deployment of unilateral trade-based actions to address international environmental challenges; and the consideration of trade measures in multilateral instruments or by multilateral bodies dealing with environmental hazards. While the ways in which some or all of these contentious issues are resolved may have significant impacts on public policy, the general approach has been one of delicate delineation of the appropriate sphere for each regime, implying a counterproductive kind of zero-sum set of tradeoffs between the two. Because it does not address terms of trade or affect the regime of trade-based rules, the so-called environmental “side agreement” to NAFTA¹² is of little utility in suggesting an appropriate model for international trade.

An alternative approach might avoid asking the question, either explicitly or implicitly, whether international trade is consistent with environmental protection or vice versa. Instead, one might consider the role of both international trade and environmental protection as embedded in the larger public policy goal of encouraging sustainable development. While, as discussed above, the content of the term may be vague, it is clear that the phrase is plainly intended as an overarching construct that

¹² North American Agreement on Environmental Cooperation, Sept. 8-14, 1993, U.S.-Can.-Mex., 32 I.L.M. 1480 (1993).

encompasses international trade and environmental protection,¹³ as well as other compartmentalized public policy goals such as development assistance and national security. From this point of view, one might well ask whether certain environmental protection measures are so inappropriately burdensome that they unreasonably interfere with the capacity of present generations to meet their own needs. This is one way of interpreting the non-tariff barrier problem discussed above. Similarly, one might identify the notion of “sustainable trade” as trade that facilitates the efforts of present generations to satisfy their needs while preserving the capacity of future generations to meet their own needs. Without further elaboration, the concept of “sustainable trade” thus defined is probably not capable of precise application as a legal test. It does, however, accommodate the relatively elementary notion that some types of trade can encourage sustainability, while other kinds of trade might undermine that goal.

C. Security

As the Cold War drew to a close, an area of research emerged linking environmental integrity and national security. Population pressures, resource degradation, the effects of global warming and stratospheric ozone depletion, nuclear safety concerns, competition over natural resources, and other environmental stresses, so the argument goes, can lead to armed conflict.¹⁴ At an intuitive level, it is reasonably obvious

¹³ For example, the WTO constitutional instrument refers to “optimal use of the world’s resources in accordance with the objective of sustainable development” Agreement Establishing the Multilateral Trade Organization, pmbl. para. 1, Dec. 15, 1993, 33 I.L.M. 13 (1994).

¹⁴ See generally NORMAN MYERS, *ULTIMATE SECURITY: THE ENVIRONMENTAL BASIS OF POLITICAL STABILITY* (1993); LESTER R. BROWN, *REDEFINING NATIONAL SECURITY* (Worldwatch Paper No. 14, 1977); Jessica Tuchman Mathews, *Redefining Security*, FOREIGN AFF., Spring 1989, at 162; Thomas F. Homer-Dixon, *On the Threshold: Environmental Changes as Causes of Acute Conflict*, INT’L SECURITY, Fall 1991, at 76, reprinted in CONFLICT AFTER THE COLD WAR: ARGUMENTS ON CAUSES OF WAR AND PEACE 425 (Richard Betts ed., 1994); Ted Robert Gurr, *On the Political Consequences of Scarcity and Economic Decline*, 29 INT’L STUDIES Q. 51 (1985); Arthur H. Westing, *An Expanded Concept of International Security*, in GLOBAL RESOURCES AND INTERNATIONAL CONFLICT: ENVIRONMENTAL FACTORS IN STRATEGIC POLICY AND ACTION 183 (Arthur H. Westing ed., 1986); Richard H. Ullman, *Redefining Security*, INT’L SECURITY, Summer 1983, at 129; Gareth Porter, *Environmental Security as a National Security Issue*, 94 CURRENT HISTORY 218, 220-21 (1995); Norman Myers, *Environment and Security*, FOREIGN POL’Y, Spring 1989, at 23. See also Sherri

that in some cases environmental stresses might somewhat exacerbate the risk of armed conflict. However, demands for greater rigor in demonstrating this cause-and-effect relationship have produced a lively, if occasionally strident, debate.¹⁵ But even if environmental deterioration contributes significantly to the risk of war, a proposition about which there is by no means a consensus, what does that mean in concrete, operational terms? Should the United States rank its foreign policy initiatives on the environment, or should international organizations choose among competing candidates for multilateral diplomacy based on the potential for armed conflict? Such a test might even produce a skewed set of priorities, especially in such geographic regions as North America where the likelihood of war is small. Or in the unusual situation in which competition over resources is plausibly related to armed attacks,¹⁶ does that of itself suggest that the underlying environmental risks are that much more pressing by comparison with competing public policy concerns? Maybe so, but these are still difficult questions that have not received satisfactory answers as a matter of principle.

Fortunately, there is little or no need as an analytical matter to establish definitively this cause-and-effect relationship before realizing the security benefits of international environmental diplomacy and multilateral cooperation in solving environmental problems. Antecedents addressing environment in a security context can be found at least fifteen years before

Wasserman Goodman, Deputy Under Secretary of Defense (Environmental Security), *The Environment and National Security*, Address at National Defense University (Aug. 8, 1996) ("it is clear that environmental degradation and scarcity and related conditions (such as increased population growth, urbanization, and migration, and the spread of infectious diseases) may contribute significantly to instability around the world."), reprinted in <http://www.denix.osd.mil/denix/Public/ES-Programs/Speeches/speech-22.html#tabe> (visited Jan 15, 1999); Warren Christopher, *American Diplomacy and the Global Environmental Challenges of the 21st Century*, Address at Stanford University (Apr. 9, 1996) ("The second element of our strategy—the regional element—is to confront pollution and the scarcity of resources in key areas where they dramatically increase tensions within and among nations."), reprinted in *id.* See generally <http://www.nato.int/ccms/pilot.html> (NATO CCMS pilot project bibliography) (visited Jan. 13, 1999).

¹⁵ See Marc A. Levy, *Is the Environment a National Security Issue?*, INT'L SECURITY, Fall 1995, at 35, 36 ("the indirect, political threat from environmental degradation . . . is . . . the weakest substantive threat to U.S. security . . ."); Daniel Deudney, *The Case Against Linking Environmental Degradation and National Security*, 19 MILLENNIUM: J. INT'L STUD. 461 (1990).

¹⁶ See generally Joyce Starr, *Water Wars*, FOREIGN POL'Y, Spring 1991, at 17; Peter H. Gleick, *Water and Conflict: Fresh Water Resources and International Security*, INT'L SECURITY, Summer 1993, at 79.

the end of the Cold War, most notably in the context of the Conference on Security and Cooperation in Europe (CSCE), popularly known as the "Helsinki process."¹⁷ Within the CSCE and its successor, the Organization for Security and Cooperation in Europe (OSCE), the environment has been a so-called "economic dimension" or "Basket II" topic, along with economics, science, and technology.¹⁸

While some of the recent literature has made stark assertions about the causes of armed conflict that are difficult to verify empirically, that debate has indeed been helpful in broadening the concept of security to encompass not just military defense capabilities, but social, economic, and political stability more generally. In this view, environmental integrity is one of a number of attributes that contribute to stability and hence long-term national security. Environmental degradation, by contrast, is a destabilizing factor that tends to undermine national, regional, and even global security. In effect, the concept of military security is replaced by stability, of which environmental integrity is one, but not the only,

¹⁷ See Conference on Security and Co-operation in Europe: Final Act ("Helsinki Final Act"), Aug. 1, 1975, 14 I.L.M. 1292 (1975).

¹⁸ The Conference on Security and Cooperation in Europe (CSCE) was established in the early 1970s to serve as a multilateral forum for dialogue and negotiation between Eastern and Western European states, including the United States, Canada, and the Soviet Union. The 1990 summit-level meeting in Paris, the first since the Helsinki meeting in 1975, formally recognized the end of the Cold War, identified the CSCE as a crucial institution in the subsequent historic developments in Europe, and commenced a greater institutionalization of the CSCE process. See Charter of Paris for a New Europe, Nov. 21, 1990, 30 I.L.M. 190 (1991). In recognition of the increasing institutional and structural development of the institution, its name was changed at the 1994 Budapest Summit to the Organization for Security and Cooperation in Europe (OSCE). See Budapest Summit Declaration: Towards a Genuine Partnership in a New Era, Dec. 6, 1994, 34 I.L.M. 764 (1995). Today the OSCE has fifty-five participating states, including the United States, Canada, all the countries of Europe, and all the former Soviet republics from Europe through Central Asia. See generally ALEXIS HERACLIDES, HELSINKI-II AND ITS AFTERMATH: THE MAKING OF THE CSCE INTO AN INTERNATIONAL ORGANIZATION (1993); VOJTECH MASTNY, THE HELSINKI PROCESS AND THE REINTEGRATION OF EUROPE 1986-1991: ANALYSIS AND DOCUMENTATION (1992); THE CSCE AND THE TURBULENT NEW EUROPE (Louis B. Sohn ed., 1993); THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE: ANALYSIS AND BASIC DOCUMENTS 1972-1993 (Arie Bloed ed., 2d ed. 1993); FROM HELSINKI TO VIENNA: BASIC DOCUMENTS OF THE HELSINKI PROCESS (Arie Bloed ed., 1990); FROM HELSINKI TO MADRID: CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE 1973-1983 (Adam Daniel Rotfeld ed., 1983); Jeffrey S. Palmer, *The New European Order: Restructuring the Security Regime Under the Conference on Security and Cooperation in Europe*, 5 TEMP. INT'L & COMP. L.Q. 51 (1991); Gregory F. Treverton, *Elements of a New European Security Order*, 45 J. INT'L AFF. 91 (1991).

indicator.¹⁹

This view is very much consistent with the mission of the OSCE, which fosters a comprehensive approach to security, including arms control, preventive diplomacy, confidence- and security-building measures, human rights, election monitoring, and economic security. The OSCE emphasizes conflict prevention and avoidance, peaceful settlement of disputes, and the creation of a cooperative system of security. Consequently, the OSCE's work in the "human dimension" has sounded such themes as respect for human rights, the rights of national minorities, election monitoring, the development of civil societies, and democracy- and institution-building, as well as the importance of the rule of law and peaceful settlement of disputes more generally.²⁰ This point of view, which would treat environmental diplomacy as a mechanism for reducing risks to stability and preventing armed conflict, is surely a preferable way of thinking about the environment-and-security nexus.

II. GLOBALIZATION AND THE ENVIRONMENT

Although perhaps tempting, an approach that seeks to demonstrate a cause-and-effect relationship between globalization and environmental effects, either beneficial or negative, is unlikely to serve as a helpful analytical tool. For one, the universe of possible directions in which civil society might develop, markets and economies might be opened to trade and foreign investment, and new technologies might be disseminated in the post-Cold War era is extraordinarily broad. It is consequently impossible to speak of "globalization" as a unitary phenomenon with a precisely defined outcome. Simplistic syllogisms such as the following have been proposed to deal with the phenomenon of globalization: Deregulated markets promote trade, trade generates wealth, and wealthier countries have more resources to deploy for realizing environmental protection and other public welfare goals. Mainstream economists are

¹⁹ The natural response is that equating security and stability so attenuates the former concept as to render it near meaningless. See Levy, *supra* note 15, at 43-44 ("It is possible to imagine such constructions of security, but they would take the discussion so far from the mainstream as to forswear any hope of linking environmental issues to the conventional security agenda.").

²⁰ See THE HUMAN DIMENSION OF THE HELSINKI PROCESS: THE VIENNA FOLLOW-UP MEETING AND ITS AFTERMATH (A. Bloed & P. van Dijk eds., 1991); WILLIAM KOREY, THE PROMISES WE KEEP: HUMAN RIGHTS, THE HELSINKI PROCESS, AND AMERICAN FOREIGN POLICY (1993); Thomas Buergenthal, *The CSCE Rights System*, 25 GEO. WASH. J. INT'L L. & ECON. 333 (1991).

increasingly realizing the limitations of such oversimplified models that, except as applied to certain simple cases such as environmentally harmful subsidies, are essentially articles of faith.²¹

Further, causal relationships between broad-gauge social policies and trends on the one hand and environmental effects on the other are exceedingly difficult or impossible to establish with any degree of rigor. As noted above, much of the environment-and-security dialectic revolves around precisely this question. Similarly, the suitability of an environmental impact statement (EIS) required by a major environmental statute²² was contested during the policy discussion over NAFTA. Serious questions were raised as to whether the EIS methodology, customarily employed to assess the likely environmental effects of specific infrastructure projects such as a dam or a highway, could be applied to trade rules that operate at a high level of policy generality.²³ The executive branch declined to prepare an EIS for the implementing legislation for NAFTA, instead substituting an environmental study of generic bilateral problems.²⁴ Likewise, the amenability of World Bank lending in the form of sector loans—which may support governmental activities in an entire sector like energy and which do not necessarily finance specific infrastructure projects—and policy-based adjustment lending—which targets macroeconomic variables like exchange rates, government deficits, and subsidies with the goal of fundamental economic reform—to analysis

²¹ See C. FORD RUNGE, WITH FRANÇOIS ORTALO-MAGNÉ AND PHILIP VANDE KAMP, *FREER TRADE, PROTECTED ENVIRONMENT: BALANCING TRADE LIBERALIZATION AND ENVIRONMENTAL INTERESTS* 95 (1994) (“trade rules alone are inadequate to the task [of raising environmental standards in developing countries]: environmental rules are also required”). Kenneth Arrow et al., *Economic Growth, Carrying Capacity, and the Environment*, 268 *SCI.* 520 (1995).

²² See National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370d (1994).

²³ See Will, *supra* note 2 (“What kind of mind believes it is possible to anticipate and quantify the ‘impact’ on the entire ‘human environment’ of an agreement establishing the world’s largest free trade zone, encompassing 360 million people and substantially enlarging trade with America’s third largest trading partner, Mexico?”).

²⁴ See THE NAFTA: REPORT ON ENVIRONMENTAL ISSUES (1993). The Clinton administration released the final version of this document to the public a scant four days before the House of Representatives voted on the NAFTA implementing legislation. In litigation asserting the need for an EIS, the executive branch did not argue that this document or its precursors met the statutory requirements. See *Public Citizen v. Office of the United States Trade Representative*, 822 F. Supp. 21, 27-29 (D.D.C. 1993), *rev’d*, 5 F.3d 549 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 1041 (1994) (enumerating potential adverse environmental effects in concluding that plaintiffs have standing to sue). *Public Citizen v. Office of the United States Trade Representative*, 970 F.2d 916 (D.C. Cir. 1992) (holding no EIS required to accompany negotiation of NAFTA).

from an environmental perspective has been the subject of considerable disagreement.²⁵

At the same time it is indisputable that the governments, private-sector business and industrial interests, and civil society generally are in a state of profound transition. Despite perhaps limited capacity to predict the environmental effects of global trends, it is difficult to deny that there may or will be environmental repercussions, for better or worse.

To be sure, there are some stories of at least partial success in overcoming collective action problems at the international level. In December, 1997 at Kyoto, Japan over 150 countries concluded an agreement on global warming.²⁶ The new pact calls for all participating countries to reduce greenhouse gas emissions that contribute to the warming of the earth. The prediction of global warming and its potential negative consequences is now widely accepted by the scientific community. However, there is no such consensus on how to reach the goal of greenhouse gas reduction among the countries of the world. The impediments to joint action are great, and this unanimity of purpose breaks down when it comes to deciding what percentage of greenhouse gases should be cut, which countries should do it, how they should do it and when these cuts should be made.

Developing states, like China or India, believe that those developed, wealthy countries that produce and have historically produced most of the greenhouse gases, such as the U.S., should take the first steps in controlling them. Some developing countries prefer to assume substantive obligations to reduce emissions only after they have reached the levels of economic development and living standards that the developed countries now enjoy. The U.S. and other developed states believe that it is unwise to grant the developing countries an emissions control "holiday" until some future date, because they will be major producers of greenhouse gases very soon. Just as concerns of equity expose deep-seated cleavages so, too, the all-pervasive nature of the problem—associated as it is with the very essence industrial society—strains the capacity of the international community to respond. The new

²⁵ Such activities have nonetheless been successfully analyzed in case studies. *See, e.g.*, WILFRIDO CRUZ & ROBERT REPETTO, *THE ENVIRONMENTAL EFFECTS OF STABILIZATION AND STRUCTURAL ADJUSTMENT PROGRAMS: THE PHILIPPINES CASE* (1992); *STRUCTURAL ADJUSTMENT AND THE ENVIRONMENT* (David Reed ed., 1992) (case studies of Côte d'Ivoire, Mexico, and Thailand).

²⁶ *See* Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22 (1998).

agreement, moreover, is unlikely to make more than a preliminary dent in the looming problem of greenhouse warming.

Under such circumstances, what meaningful observations can nonetheless be made? First, environmental policy requires a new awareness that environmental problems are embedded in a much larger global setting and cannot be treated in isolation. Even such metalevel connections as between environment on the one hand and development, trade, or security on the other have largely outlived their usefulness. Once liberating because of their inherent need for interdisciplinary analysis and communication between professional communities characterized by divergent policy cultures, even these relatively new categories have now become confining. In place of a bipolar, linear spectrum, environmental policy now requires treatment at a higher level of conceptual generality by reference to such overarching principles as sustainability.

With the end of the Cold War, the essential “interconnectedness” of such issues as environment, development, trade, and security is more readily apparent. This vision of a global order is not necessarily new. Rather, the bilateral arms race artificially obscured more fundamental dynamics in the international order. The Marshall Plan has long been understood as an express recognition of the tight causal relationship between security interests in the United States and political stability and social well-being in Western Europe. Less obviously, even at the end of World War II, open markets and liberalized trade facilitated political stability and regional and global security.²⁷ A more recent example is the linkage between human rights and security in context of the Helsinki process.

As suggested by each of these examples, the efficacy of addressing problems of environmental quality in a globalized world will very likely

²⁷ See, e.g., G. John Ikenberry, *The Myth of Post-Cold War Chaos*, FOREIGN AFF., May-June 1996, at 79, 80, 84:

Security and stability in the West were seen as intrinsically tied to an array of institutions—the United Nations and its agencies and the General Agreement on Tariffs and Trade (GATT) only some among many—that bound the democracies together, constrained conflict, and facilitated political community.

. . . .

The postwar liberal democratic order was designed to solve the internal problems of Western industrial capitalism. It was not intended to fight Soviet communism, nor was it simply a plan to get American business back on its feet after the war by opening up the world to trade and investment. It was a strategy to build Western solidarity through economic openness and joint political governance.

turn on the vigor of multilateral institutions. Unfortunately, at a time of consolidation of such institutions as the WTO on other social policy fronts, the trend in environmental management at the international level appears to be one of compartmentalization and fragmentation. The mission of only one international organization, the UN Environment Program (UNEP), is exclusively environmental. In the past few years, UNEP has been subject to serious criticism from a number of governments and other constituencies for a lack of focus and efficacy in its work.²⁸ Even under the best of circumstances, UNEP's mandate is limited. Numerous other international organizations established for a variety of other purposes consequently have also played significant roles on international environmental challenges: the International Maritime Organization (IMO), under whose auspices a number of marine pollution agreements have been negotiated; the Economic Commission for Europe (ECE), which has been the vehicle for negotiating a number of important agreements on traditional air pollution questions; the Organization for Economic Co-operation and Development (OECD), which in the past has been a principal forum for discussing transboundary pollution and is now working on the environment-and-trade nexus; and the UN Food and Agriculture Organization (FAO), which has played a major role in work on pesticides at the international level. The negotiation of the UN Climate Change convention adopted in 1992 was entrusted to another, new body, the Intergovernmental Negotiating Committee (INC). Several influential observers have made serious proposals advocating the creation of a new international organization with greater powers in the environmental field,²⁹ but so far those suggestions have not translated into policy action and the institutional impediments are significant.

What a multilateral institution does is as important as what it is. Although perhaps not particularly exciting as a concept, "multilateral coherence" among international institutions is essential to realizing environmental quality goals in a globalized world. In recent years, the World Bank and other multilateral and bilateral aid donors have increasingly emphasized environment as a component of development assistance, sometimes termed *green conditionality*. To that extent, the environment-and-development nexus has been at least partially

²⁸ See Leyla Boulton, *UN Environment Chief Under Pressure Not to Seek New Term*, FIN. TIMES, July 29, 1996, at 16.

²⁹ See RUNGE, *supra* note 21, at 100-108 (advocating new World Environmental Organization); DANIEL C. ESTY, *GREENING THE GATT: TRADE, ENVIRONMENT, AND THE FUTURE* (1994) (advocating new Global Environmental Organization).

internalized by such multilateral institutions as the World Bank. The actual policy impact, however, may be minimal. Although the Banks' (IBRD and IDA combined) annual lending to governments of approximately \$20 billion may appear to generate considerable policy leverage, rules governing trade flows among private parties are likely to be far more powerful agents of change in encouraging improvements in environmental quality than direct lending will ever be.

But while development assistance is increasingly tied to environmental performance, market access is not. Indeed, the WTO regime of trade rules may very well send conflicting messages. For example, a recipient country government may violate a loan covenant, a commitment analogous in legal effect to the breach of a treaty,³⁰ by allowing the manufacture of a product under conditions that degrade the environment. At the same time, the WTO regime of rules may compel an importing country, such as the United States, to provide market access for that product. Refusing market access, notwithstanding the violation of the World Bank loan covenant, could itself amount to a violation of U.S. international obligations under the WTO regime. Such a situation, quite appropriately described as "incoherent," creates a conflicting array of incentives in an area where a much higher degree of congruence in international policies is plainly necessary.

Concrete examples demonstrate a major lack of coordination among multilateral policies with respect to environment. A festering trade dispute between the United States and the European Union (EU) over hormone-treated beef, a dispute representative of the larger policy exchange over the relationship between environment and trade policy, is the subject of two recent reports of WTO dispute settlement panels and the WTO's Appellate Body.³¹ The EU prohibits the use of six growth hormones in the breeding of cattle, proscribes the sale of beef treated with those hormones, and bans the importation of such meat. The United States, where those hormones are permitted, has strongly objected to the

³⁰ See Lester Nurick, *Certain Aspects of the Law and Practice of the International Bank for Reconstruction and Development*, in *THE EFFECTIVENESS OF INTERNATIONAL DECISIONS* 100, 127-28 (1971) (statement by World Bank General Counsel).

³¹ See *EC Measures Concerning Meat and Meat Products (Hormones): Complaint by the United States*, W.T.O. Doc. No. WT/DS26/R/USA (Aug. 18, 1997), *available at* <<http://www.wto.org/wto/dispute/distab.htm>>; *EC Measures Concerning Meat and Meat Products (Hormones): Complaint by Canada*, W.T.O. Doc. No. WT/DS48/R/CAN (Aug. 18, 1997), *available at id*; *EC Measures Concerning Meat and Meat Products*, W.T.O. Doc. No. WT/DS26/AB/R & WT/DS48/AB/R, World Trade Organization Appellate Body, January 16, 1998, *available at id*.

ban as a nontariff barrier to trade unsupported by scientific evidence. A WTO agreement adopted in 1994,³² which was motivated in large measure by this dispute and which is designed to prevent the abuse of food-safety measures as nontariff barriers to trade, establishes new science-based disciplines for food-safety measures. The panels and the Appellate Body in the two beef hormone disputes found that the EU measures were inconsistent with this agreement. In reaching this conclusion, the panels and the Appellate Body expressly rejected the application of the "precautionary principle," codified at UNCED in a document adopted by more than one hundred heads of state or government, which asserts the need for policy action in cases of scientific uncertainty.³³

A similar development falls neatly within the environment-and-security paradigm. The Group of Seven (G-7) industrialized countries at their annual summit in Munich in 1992 established a Nuclear Safety Account (NSA), to be administered by the EBRD.³⁴ The NSA, a multilateral mechanism to which ECU 257.2 million has since been pledged, was intended to support operational safety and technical improvements to Soviet-designed nuclear power plants and the improvement of regulatory regimes in countries in which such reactors are located, as well as ensuring long-term safety by supplying funds to support the replacement or upgrading of existing plants. In November 1996, the Ukraine signed an agreement with the G-7 and the EU supporting a comprehensive program totaling more than \$2.3 billion in U.S. dollars for the closure by the year 2000 of the Chernobyl nuclear power plant, including support for power sector restructuring, an energy investment program, and nuclear safety and decommissioning.³⁵ As of this writing, however, the requisite amounts have yet to be pledged to the NSA.³⁶ The

³² See Agreement on the Application of Sanitary and Phytosanitary Measures, Dec. 15, 1993, GATT Doc. MTN/FA 11 A1A-4.

³³ See Munich Economic Summit Declaration, July 7, 1992, paras. 42-49 (statement of Group of Seven major industrialized nations in Munich), *reprinted in* 28 WEEKLY COMP. PRES. DOC. 1222 (1992).

³⁴ See *id.* See generally Wirth, *supra* note 5, at 634-37 (discussing treatment of precautionary approaches at UNCED).

³⁵ See Memorandum of Understanding Between the Governments of the G-7 Countries and the Commission of the European Communities and the Government of Ukraine on the Closure of the Chernobyl Nuclear Power Plant, November 1996 *available at* <<http://www-bcf.usc.edu/~meshkati/G7.html>>.

³⁶ See *EBRD/Chernobyl: Plea for More Money*, Europe Information Service, June 27, 1998, *available in* LEXIS, News Library, Curnws file (quoting acting President of EBRD as stating that unless more funds can be identified to finance repairs to Chernobyl sarcophagus, the consequences will be "too horrible to imagine"); Leyla Boulton and

modern-day analogy with the Marshall Plan is all too clear, and the failure of political will by comparison with the earlier effort by the United States to rebuild Western Europe after World War II is stark indeed.

More generally, there is a broad conceptual connection between the environment-as-security debate and the environment-and-development dialectic. While poorly-designed or ill-advised development projects financed by overseas sources, whether bilateral, multilateral, or private, can have destabilizing effects, under appropriate circumstances foreign assistance can also ameliorate the risk of conflict. Traditional security institutions, whether national, bilateral, or multilateral, are unlikely to be either well-positioned or effective for addressing the social welfare issues of poverty, population pressure, resource degradation, and inequitable income distribution that destabilize many national and regional settings, especially in the Third World. Moreover, foreign aid by its very nature is consensual,³⁷ an essential attribute not ordinarily found in traditional security debates involving external interventions, where the exogenous exercise of suasion or armed force are more frequent tools. Notwithstanding the element of consent required for foreign governments, external inputs in the form of development assistance have often been ineffective or counterproductive for lack of popular support. For this reason, a consensus is emerging, catalyzed by specific examples of environmental debacles financed by the World Bank and other international financial and development assistance institutions, concerning the need for democratization of the development process to assure both efficacy and accountability.³⁸ This new learning, a lesson from more than a decade of experience, would apply equally well to assuring the effectiveness from a security point of view of foreign assistance deployed for that purpose.

Just as power has ebbed from national governments to international institutions such as the World Bank and the WTO by virtue of the need for supranational cooperation on issues such as environment, development,

Simon Holberton, *West's Policies on Eastern Nuclear Plants 'Misguided,'* FIN. TIMES, Feb. 10, 1997, at 2 (quoting consultant as saying that "governments have not been prepared to invest the sums required to achieve their goals").

³⁷ See David A. Wirth, *The United States and the World Bank: Constructive Reformer or Fly in the Functional Ointment?*, 15 MICH J. INT'L L. 687, 700 (1994) (review of BARTRAM S. BROWN, *THE UNITED STATES AND THE POLITICIZATION OF THE WORLD BANK: ISSUES OF INTERNATIONAL LAW AND POLICY* (1992)).

³⁸ See *id.* See also David A. Wirth, *Partnership Advocacy in World Bank Environmental Reform*, in *THE STRUGGLE FOR ACCOUNTABILITY* 51 (Jonathan Fox & L. David Brown eds., 1998). See generally note 3 *supra*.

trade, and security, there has been a commensurate pressure for decentralization and democratization in the internal affairs of states. That these trends are related to environmental policy was apparent during the peaceful revolutions in Eastern Europe, in which environmental demands from the populace played a key role. In 1989, the CSCE sponsored a Meeting on the Protection of the Environment in Sofia, Bulgaria, the first convocation under the auspices of the Helsinki process exclusively devoted to environment. The Sofia meeting, which became a lightning rod for radical political upheavals in the host country, itself conspicuously reinforced the close nexus between environmental activism on the one hand and demands for democracy and political change on the other. In the words of a member of the only nongovernmental delegation present, the environmental activism surrounding the CSCE Sofia meeting, during which the Bulgarian government harassed and beat environmental demonstrators, was "plainly political" in its motivation.³⁹ The Romanian government blocked the adoption of the final document from this conference⁴⁰ expressly because of its language on the need for popular participation in establishing environmental policies.⁴¹ Some have asserted that the 1986 Chernobyl accident played a key role in the breakup of the former Soviet Union. Similar concepts of ensuring that power resides at the local level are familiar in the principle of "subsidiarity" in the EU.⁴²

Principles of subsidiarity, local control, and democratic accountability provide a counterweight to the globalizing trends of deregulated markets and expanding communications technologies. As with other currents in the globalizing world, the environmental impacts of this phenomenon are difficult to quantify. Nevertheless, as a general matter, broad-gauge popular demands for environmental quality can exert

³⁹ Author's personal communication with Liz Hopkins, IUCN/The World Conservation Union (Dec. 9, 1997). *See generally* ENVIRONMENTAL PROBLEMS IN EASTERN EUROPE (F.W. Carter & David Turnock eds., 1996).

⁴⁰ *See* Sofia Meeting on the Protection of the Environment: Recommendations, *reprinted in* 20 ENVTL. POL'Y & L. 107 (1990).

⁴¹ *See id.* at 85 (describing subsequent Romanian support for document).

⁴² *See* Treaty on European Union, Feb. 7, 1992, art. G, para. 5, 31 I.L.M. 247 (1992). The treaty adds new article 3b to Treaty of Rome, providing that:

[i]n areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

a powerful influence on the direction of public policy.⁴³ A general level of concern among the electorate is a desirable, and perhaps necessary, precondition for crafting effective governmental strategies with respect to the environment. But even though the revolutions in Eastern Europe provide empirical evidence that environmental activism can trigger political change, the proposition that democratic principles of accountability foster environmental quality is harder to establish.

It is now well-known that, while the Soviet government authored some of the strictest environmental standards in the world on paper, as a practical matter it also ravaged the environment in that country.⁴⁴ Part of the explanation of this phenomenon may lie in the lack of responsiveness of a centrally planned economy,⁴⁵ but the USSR was also a totalitarian political system. It is apparent that an unaccountable political system felt little or no need to inform the public as to the state of the environment, to consult with its citizenry, or to act in a manner consistent with the public's expectations. After the breakup of the Soviet Union, Russia was faced with discontinuities in social, political, and economic policies. Institutions such as the EBRD have stepped in to facilitate the opening of Russia, the Eastern European countries, and the former Soviet republics to foreign investment and international trade.

It is considerably less apparent that a commensurate expenditure of effort and resources is being devoted to institution-building to ensure a sense of equilibrium among potentially competing public policy goals, such as environment, foreign investment, development, and trade. While this disparity is painfully obvious in the country whose territorial extent is the greatest on the face of the planet, the same observation quite likely applies everywhere. The price of a "democracy gap" or a "democracy lag" may well turn out to be paid at least in part in terms of environmental quality, not just overseas, but here at home as well.

⁴³ See LYNTON K. CALDWELL ET AL., *CITIZENS AND THE ENVIRONMENT: CASE STUDIES IN POPULAR ACTION* (1976); UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, SCIENCE ADVISORY BOARD, *UNFINISHED BUSINESS: A COMPARATIVE ASSESSMENT OF ENVIRONMENTAL PROBLEMS* (1987); ZYGMUNT J. B. PLATER ET AL., *ENVIRONMENTAL LAW AND POLICY: NATURE, LAW, AND SOCIETY* 22-23 (1992); John H. Adams, *Responsible Militancy—The Anatomy of a Public Interest Law Firm*, 29 REC. ASS'N B. CITY N.Y. 631, 631-32 (1974).

⁴⁴ See MURRAY FESHBACH & ALBERT FRIENDLY, JR., *ECOCIDE IN THE U.S.S.R.* (1992); MURRAY FESHBACH, *ECOLOGICAL DISASTER: CLEANING UP THE HIDDEN LEGACY OF THE SOVIET REGIME* (1995).

⁴⁵ See, e.g., Ikenberry, *supra* note 27.