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**Mitigating North-South participation inequalities in global
environmental governance: potential NGO contributions**

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Submitted in fulfilment of the requirements for the degree of Doctor
of Philosophy (Ph.D.) in Law

April 2011

Keele University, U.K.

Abstract

For several historical and political reasons, the decision-making processes and institutional structures of environmental governance has been greatly impacted by the North-South dimension, which creates enormous challenges for Southern states when they try to present their concerns to global forums. These challenges have many dimensions, such as political, economic, social, and legal. This thesis recognises the “poverty of influence” that has become endemic as a result of the lack of resources, expertise, research facilities, technology and other practical deficiencies that exist in the negotiating procedures and which have hampered the South’s participation in global environmental governance. Such participatory inequalities between North and South have seriously hampered the application of equity, fairness and justice – principles that are considered to be vital ingredients in any balanced governing system.

This thesis proposes the utilisation of the diverse capacity of transnational NGO networks to enable the Southern voice to be effectively heard in global decision-making processes, and it questions the traditional legal structures that currently allow for NGO involvement by determining the need for wider opportunities to be considered, thereby enabling them to express their concerns. The thesis includes a Case Study that examines from a North-South perspective the different capacities of NGOs to influence global forests negotiations. Consequently, it is hoped that the thesis will contribute towards a greater understanding of the benefits that might accrue from the utilisation of transnational networks to voice hitherto unheard global forest issues.

This thesis, which is timely, in that 2011 was the International Year of Forests, argues that transnational NGO networks could help mitigate the inequalities suffered by the South caused by the historic North-South divide. However, it also stresses the importance attached to transnational NGO networks incorporating measurable values of legitimacy and accountability when they represent the South at global governance forums.

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Abbreviations

AOSIS	Alliance of Small Island States
BRICS	Brazil, India, China and South Africa
CAN	Climate Action Network
CBD	Convention on Biological Diversity
CCD	Convention to Combat Desertification
CEPF	Critical Ecosystem Partnership Fund
CICC	Coalition for an International Criminal Court
ECOSOC	Economic and Social Council
FAO	Food and Agriculture Organization
FOE	Friends of the Earth
FOIE	Friends of the Earth International
G77	Group of 77
GATT	General Agreement on Tariffs and Trade
GEF	Global Environment Facility
HDI	The Human Development Index
ICJ	International Court of Justice
IDA	International Development Agency
IIED	International Institute for the Environment and Development
ILO	International Labour Organization
IMF	International Monetary Fund
IPCC	Intergovernmental Panel on Climate Change
ITTA	International Tropical Timber Agreement
ITTO	International Tropical Timber Organisation
IUCN	International Union for Conservation of Nature
MEAs	Multilateral Environmental Agreements
MEAs	Multilateral environmental agreements
NAM	Non-Aligned Movement
NGOs	Non-governmental organisations
NIEO	New International Economic Order
OAS	Organization of American States
OECD	Organisation for Economic Co-operation and Development
OPEC	Organization of Petroleum Exporting Countries
POP	Persistent Organic Pollutants
RAN	Rainforest Action Network
REDD	Reducing Emissions from Deforestation and Forest Degradation in Developing Countries
STAP	The Science and Technological Advisory Panel
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on Human Environment
UNCSD	United Nations Conference on Sustainable Development

UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNSCCUR	UN Scientific Conference on the conservation and Utilization of Resources
WB	World Bank
WHO	World Health Organization
WRI	World Resources Institute
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization
WWF	World Wide Fund for Nature

Acknowledgements

First and foremost, I owe a profound gratitude for my parents, Saman and Prema Lankathilake, and my sister, Menaka, for their unconditional love and constant blessings, which have never left me since the day I was born. I am grateful to my brother-in-law, Sankalpa, and nephew, Navina, for taking care of everything at home in our absence. Particular gratitude is owed to my mother-in-law, Prema and her family for their encouragement and blessings.

If there is anybody else except me who was equally committed to me finishing my doctoral studies it is my husband, Saamantha; he took the entire burden off my shoulders and took great care of me in every other way. Watching my daughter, Thedara, growing up and blossoming each day during all these years was the secret ingredient that always provided the energy, strength and hope in my life.

I am indebted to Doctor Zoe Pearson, my principle supervisor, for the scholarship and enthusiasm that enriched my research immensely throughout these years. I sincerely admire her encouragement and correct guidance along the tedious path of my doctoral research. I also thank Professor Tim Doyle, my second supervisor, for his critical, yet constructive comments and support.

I am happy to express my heartiest gratitude to two wonderful academics who inspired me throughout my academic career by setting perfect examples as teachers, as researchers and, above all, as nice human beings for me to look up to – Mr. N. Selvakkumaran, the Dean of the Faculty of Law, University of Colombo, and Professor Doctor Ellen Hey, Erasmus

School of Law, Erasmus University of Rotterdam, I thank them for their endless guidance, support and encouragement.

Also, my thanks for the financial support extended by the National Centre for Advanced Studies in Humanities and Social Sciences in Sri Lanka, which has been highly appreciated.

Finally, I thank all the teachers in my schools and universities, to whom I owe great respect and gratitude for the inspiration they gave me to fulfil my passion for education, which will always remain with me.

Dedication

For my precious Thedara. You are the breath that keeps me alive through the difficult journey of life.

For my soul mate, Saamantha. You are the sun that generously lights up the moon and proudly smiles when others admire the moon-light.

Introduction

On 7th March 2011, the Chairman of the Group of 77 (G77) published a statement at the Second Preparatory Committee meeting prior to the United Nations Conference on Sustainable Development (UNCSD) in 2012¹ in which he expressed the hope of finding common ground for progress. Paragraph 9 states:

In order for the benefits of applying "green economy" as a concept to outweigh the risks, it should be firmly rooted under the paradigm of sustainable development, respecting the policy space of each country to define their own paths towards sustainability in their economy and society, in accordance with their own circumstances and priorities. Social inclusion and decent jobs, trade related concerns, transition costs and impacts and avoiding "green protectionism" should be seriously considered and addressed so as to ensure a meaningful outcome at the 2012 UNCSD for developing countries and be able to generate a common vision to guide our future²

Paragraph 11 states further:

The discussions on new and emerging challenges should focus on preventing new crises, achieving sustainable development, eradicating poverty and addressing inequalities. It should also be based on the principles enshrined in paragraphs 2 and 7 of the Rio Declaration on Environment and Development, including the sovereign right of countries to exploit their

¹ Statement on Behalf of the Group of 77 and China by H.E. Ambassador Jorge Arguello, Permanent representative of Argentina to the United Nations, Chairman of the Group of 77, at the second preparatory committee meeting of the UN Conference on Sustainable Development (New York, 7 March 2011). The document is available on <http://www.g77.org/statement/getstatement.php?id=110307g> (last accessed on 15.03.2011)

² Ibid.

own resources pursuant to their own environmental and developmental policies and that States have common but differentiated responsibilities [...]³

The above quotations reflect the premise that underlines this thesis, which is that Southern concerns have been consistently marginalised in international environmental decision making processes⁴ as a result of the South's material weakness and inability to exert significant influence in the Northern dominated global system. As a consequence of a long historical process, several political, economic, military, social and cultural differences have emerged between North and South,⁵ creating a 'North-South dimension', to global environmental governance. North represents the industrialised developed countries and the South represents developing third world countries. The thesis argues that differences between the two groups play a crucial role in global governance, where the global decision-making is happening. The South is critical of the imposition of Northern priorities over immediate concerns of the South that happens as a result of several reasons including the dominance of western science and research, handicap negotiating skills, lack of expertise, resources and technology.⁶ From the perspective of the South, many environmental negotiations led by the North are unfair and inequitable.

Mitigating these diverse views by finding common ground between them in global environmental governance has become a great challenge. This thesis will argue that, to meet the different environmental priorities of North and South, the structural and normative approaches adopted for global environmental decision making should be founded on principles of equity, fairness and justice. Equity needs to be derived, not only

³ Ibid.

⁴ Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp:7-29 at p.9

⁵ The definition of the North and the South for the purpose of this thesis will be analysed in pp:15-18 in Chapter 1 of this thesis

⁶ Anand R. (2004), *International Environmental Justice: A North-South dimension*, Ashgate Publishing Ltd., p.2

from the equal distribution of resources, but also from the North accepting sufficient representation and according equal weight to the South at global decision-making forums in such ways that are fairly reflected in their outcomes.

Forty years on from Stockholm⁷, the North-South dimension in global environmental governance has not significantly changed, despite the various efforts that have been attempted by the Southern countries. The South has not yet succeeded in establishing equal, fair and justice grounds with the North in global environmental decision-making forums. Evidence for this assertion is the contrast between the G77 statement about the 2012-UNCSD noted above and the developing countries' position, as explained in the 1971 Founex Report on Environment and Development, which recognised the difference between the Northern and Southern points of view:

In advanced countries, it is appropriate to view development as a cause of environmental problems. Badly planned and unregulated development can have a similar result in developing countries as well. But, for the greater part, developing countries must view the relationship between development and environment in a different perspective. In their context, development becomes essentially a cure for their major environmental problems.⁸

The group of Southern intellectuals who contributed to the creation of the Founex Report point to the contradictory positions adopted by the North and the South in terms of their environmental priorities. Put simply, regarding environment and development, the North believed that development was a cause of global environmental threats and the South argued that development was a means of addressing Southern environmental problems. It is telling that, therefore, that, forty years after the Founex Report, G77 reiterated similar

⁷ United Nations Conference on the Human Environment was the first UN Conference on environmental issues. It was held in Stockholm, Sweden in 5-16th June 1972

⁸<http://www.stakeholderforum.org/fileadmin/files/Earth%20Summit%202012new/Publications%20and%20Reports/founex%20report%201972.pdf> (last accessed on 15.03.2011)

Southern concerns in regard to environmental governance.⁹ Although this system has developed many other positive aspects of environmental governance, this thesis will argue that it has largely failed to address the North-South dimension.

The South has yet to make a powerful enough impact on decision-making processes in inter-states forums for several political, economic and social reasons. Consequently, this thesis will argue that the Southern states need to “borrow power” from other sources in order to present their case more proficiently.¹⁰ Such external sources of power, therefore, should be capable of voicing the South’s burning issues, such as capacity building, an equal availability of resources, technology, expertise, knowledge and research, together with other practical solutions to problems relating to its equitable participation in global negotiations. This thesis will explore the contribution NGOs might make towards mitigating the deficits in North-South participation in international law-making processes and governance, and highlight their potential for voicing Southern concerns more effectively at the international level. To reinforce this argument, the thesis will emphasise the effective use of transnational NGO networks in order to bring Southern environmental concerns to the global decision-making tables; it will also stress the importance of ensuring the legitimacy and accountability of NGOs that support the Southern case.

This thesis is concerned firstly with the historical division of North and South, with particular regard to the many aspects of global environmental governance by which the South has for so long been marginalised. Secondly, it explores the ways that transnational

⁹ Statement on Behalf of the Group of 77 and China by H.E. Ambassador Jorge Arguello, Permanent representative of Argentina to the United Nations, Chairman of the Group of 77, at the second preparatory committee meeting of the UN Conference on Sustainable Development (New York, 7 March 2011). The document is available on <http://www.g77.org/statement/getstatement.php?id=110307g> (last accessed on 15.03.2011)

¹⁰ Betzold C. (2010), *‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997* online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

NGO networks can be utilised to voice Southern environmental concerns. In order to analyse these two elements, Chapter 1 illustrates the global political dimensions of North-South differences, which have been shaped by a sequence of historical events originating during the colonial period and extending up to the present. Chapter 2 focuses on environmental governance by examining the creation and operations of the different environmental institutions and instruments. This chapter also illustrates the failure of inter-state governance processes to do justice to Southern environmental concerns and it will advocate a multidimensional approach for governance. Chapter 3 analyses NGOs as a phenomenon that has rapidly changed the traditional understanding of the international law-making and governance process. However, it also highlights certain limitations on the participation of NGOs in the creation and structure of international law, and it stresses the need to enhance the opportunities for their continued participation. Chapter 4 presents a case study on global forest negotiations, illustrating the arguments presented in the first three chapters with reference to ongoing international law-making processes with regard to forests. The first part of Chapter 4 analyses the relevance of the North-South dimension in global forest negotiations, and the second part examines the participation of NGOs in those negotiations, with a particular emphasis on the special strengths they bring to the table in order to represent Southern forest concerns. Chapter 5 then argues that a transnational network structure would provide an effective framework within which to utilise the diverse capacities of NGOs in voicing Southern environmental concerns. The thesis, however, strongly emphasises the importance of ensuring legitimacy and accountability in the way they voice those concerns.

The findings of this thesis are based primarily on a critical analysis of the literature, and the methodology embraces an interdisciplinary approach to international law and international relations in order to establish a broader and more contemporary application of

traditional international legal formats. The thesis presents several arguments that are based on analysis of United Nations (UN), other international institutions' and NGOs' documents and publications. The analysis of inter-state governance processes and structures is based on primary documents, which includes UN General Assembly resolutions, conventions, declarations, governing council regulations, published on the subject of internal decision-making procedures and policies. In order to review the capacity of NGOs to represent the Southern cause, this thesis will utilise secondary sources produced by, and on, these organisations. Also, an extensive selection of up-to-date online sources, published on various intergovernmental organisations and transnational NGO websites, have been integral to this research.

By adopting these methodologies, this thesis argues that transnational NGO networks would strengthen Southern environmental voices in global environmental forums. The overall of this exercise, therefore, is to further the founding principles of equity, fairness and justice.

1. Global Governance in Worlds Apart

“[...] a dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom.”¹¹

E.de Vattel

Introduction

The complex nature of the global governance system often acts in contradiction to the idea expressed in the above statement – all states are equal. Several instances illustrate the doubts expressed by developing countries regarding the equality of all states in global governance. For example, why, in 1965, did developing countries stress the importance of the “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty”¹² and, in 1970, of the “Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations”?¹³ These initiatives, which had been intended to ensure the principles of sovereign equality and non-

¹¹ Cassese A. quotes E de Vattel (1758) in Cassese A. (1986), *International Law in a Divided World*, Oxford University Press, p.130, also quoted in Anand R.P. (1986), *Sovereign Equality of States in International Law*, Collected Courses/Recueil des Cours, Volume 197, p.53, Anand R.P., (2003) Family of Civilised States and Japan: A Story of Humiliation, Assimilation, Defiance and Confrontation, *Journal of the History of International Law*, Volume 5, Number 1, pp:1-76 at p.1-2

¹²G.A. Res. 2131(XX), U.N. GAOR 20th Sess. Supp. No.14 at 11, U.N. Doc. A/6014 (December 21, 1965)

¹³G.A.Res. 2625(XXV), U.N. GAOR 25th Sess., U.N. Doc. A/8028 (October 24, 1970) Anghie A. (2005), *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law Series, Number 37, Anghie A. and Chimni B.S. (2003), Third World Approaches to International Law and Individual Responsibility in Internal Conflicts, *Chinese Journal of International Law*, Volume 2, Number 1, pp.77- 103 at p. 82

intervention, had been taken because of the excessive influence that had been exercised by developed countries over developing countries during the colonial past.¹⁴

Even today, Southern leaders make statements from time to time in order to remind the world that every state should be treated equally, regardless of its political, military or economic power. For example, at the 65th meeting of the United Nations General Assembly (UNGA) on 23rd of September 2010, the president of Sri Lanka emphasised the importance of the United Nations' (UN) commitment to safeguard equality of all countries of the world:

“[The fact that the] UN is now in its sixty-fifth year serves to underline the durability of this organization. It is an important mechanism in ensuring co-operation between states and a forum for discussions between sovereign nations. We must never under-estimate the importance of this organization based as it is on the principle of equal treatment for countries big and small”¹⁵.

This statement shows the desire of developing countries to ensure equal and fair treatment by global forums. Consequently, even today there is a need to reiterate the principle of equal treatment for all sovereign nations from time to time to show the value of maintaining sovereign equality. Apart from obvious geographical, political, economic, cultural and social differences, states are diverse in many ways that have created power politics that have ultimately resulted in the creation of various divisions in global

¹⁴Anghie A. and Chimni B.S. (2003), Third World Approaches to International Law and Individual Responsibility in Internal Conflicts, *Chinese Journal of International Law*, Volume 2, Number 1, pp.77- 103 at p. 82

¹⁵ <http://www.unmultimedia.org/tv/webcast/2010/09/sri-lanka-general-debate-65th-session.html>, <http://www.un.org/en/ga/65/meetings/generaldebate/View/SpeechView/tabid/85/smId/411/ArticleID/91/refTab/224/t/Sri-Lanka/Default.aspx> (last accessed on 23.03.2011)

governance. The key intention of this chapter is to explore the North-South differences in global governance.

Global decision-making forums often deal with the unequal positions between the developed industrialised countries (which will be called, for the purposes of this thesis, the North) and the developing countries (which will be called the South). However, when the institutional and structural basis of the contemporary international legal and political system was established in the 1940s, the creators of the present system did not consider North-South complexities to be a key consideration. Consequently, the South was not significantly represented in the establishment of post-World War Two governance structures.¹⁶ A number of factors caused this omission: (i) many Southern states were still under European colonial control, therefore they could not participate as sovereign nations; (ii) those Southern countries that had gained their independence were newcomers on the global scene and were still under the political and legal influence of their former colonial powers; (iii) the Southern countries' decision-making experiences was minimal; and (iv) the North was planning significant post-war economic and political reconstruction, hence, the priorities of its leaders had been to influence global governance structures and institutions to the greatest possible extent in their own favour.¹⁷ For all these reasons the current governing structures did not reflect Southern aspirations at the initial developmental stage. Since then, even though the South has made several attempts to voice its concerns, both individually and collectively, at the decision-making forums, a number of concerns are yet to be resolved.

¹⁶Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, pp: 34-35

¹⁷Anghie A. (1999), Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law, *Harvard International Law Journal*, Volume 40, Number 1, pp: 1-71.

This chapter outlines the political, historical and international legal background against which the North-South debate about international law and global governance has been framed. The broad aim of this chapter will be to analyse the effects on the North-South dimension of the international system of governance of a chain of global landmark events.¹⁸ It will start with the colonisation of Africa, Asia and South America, known today as the 'Third World' or the 'Global South', which has played a major role in dividing the world into 'haves' and 'have nots'.¹⁹ The colonisation process established a wide political, economic, military and social gap between developing and developed worlds. The era following World War Two, which saw the escalation of the decolonisation process, marked an important turning point in the international system in every aspect and inspired critical debate about the North-South dimension.²⁰ The central theme of this chapter, therefore, will be the many institutional changes in international law, global politics and economy that took place during this period, since they are still dominant in contemporary political discourse.

The chapter will then move on to analyse the collaborative efforts of the South in its attempts to address economic and political differences between the North and South. It explores how, during the first decade after the establishment of global institutions, the Southern countries raised their collective voice to express concern about the economic and political perspectives of governance to a global audience through UNGA. It will then describe the formation of the Non-Aligned Movement (NAM) and Group of 77 (G77),

¹⁸ Charles A. J. (1983), *The North-South Dialogue A Brief History*, Frances Pinter (Publishes), London., Adams N.A. (1993), *Worlds Apart: The North South divide and the International System*, Zed Books Ltd., London., Lambe J. (edited) (1967), *Rich World and Poor World*, Arrow Books Ltd., London

¹⁹ Cassese A. (1986), *International Law in a Divided World*, Oxford University Press. Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press., Fieldhouse D.K. (1999), *The West and the Third World: Trade, Colonialism, Dependence and Development*, Blackwell Publishers Ltd., UK.

²⁰ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 50

which represents this collective voice, and how they signalled that they were not simply “a raggedy bunch of poorer countries, but a collective of countries that consider themselves to have been disempowered, marginalized and disenfranchised by the international system”.²¹

The chapter will also show how a different phase in the North-South debate was entered by these collective groups challenging the established economic structures, beginning with the New International Economic Order (NIEO) and the United Nations Conference on Trade and Development (UNCTAD), which was to change the face of global governance.

In summary, therefore, this Chapter will present a historical analysis of the North-South Dimension in the context of global governance and how the South challenged the formation and operation of the global governance system where it failed to adopt its founding principles of equity, fairness and justice.

Global Governance: Not Global Government

Until the beginning of the new global governance discourse in the mid 1990s, the governance literature focused only on governance systems within national and international organizations, mainly within the UN. With the changes introduced following the globalisation process the international discourse on governance began to take a new phase of developments. During the early 1990s international relations literature challenged the traditional discourse on global governance, which had only focussed on national and international ‘formal’ governing systems, by widening the discussion into other spheres,

²¹ Najam A. (2005), Developing Countries and Global Environmental Governance: from contestation to participation to engagement, *International Environmental Agreements*, Volume 5, Number 3, pp. 303-321 at p.305

such as international business corporations, NGOs and individuals; consequently, the whole debate on global governance took a new path.²²

To understand what “governance” means requires a broader analysis of the international governing system, which involves a variety of activities, such as policy-making, goal-framing, directives, regulatory ideas, and a variety of state and non-state actors.²³ Rosenau views governance as “systems of rule at all levels of human activity – from family to the international organization”.²⁴ Many scholars recognise global governance in terms of the government system that operates within a state, while some believe it is a further extension of governments in the global context.²⁵ Others, however, argue that global governance is not controlled by any form of state-centric authority, rather it is a decentralised system that involves an array of actors who engage in a multilateral process.²⁶

In 1995 the Commission of Global Governance defined “governance” as:

[...] the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action may be taken. It includes formal [...] as well

²² Rosenau J.N. (1990), *Turbulence in World Politics: A Theory of Change and Continuity*, New York: Harvester Wheatsheaf

²³ Duffy R. (2005), Global Environmental Governance and the Challenge of Shadow States: The Impact of Illicit Sapphire Mining in Madagascar, *Development and Change*, Volume 36, Number 5, pp: 825-843 at pp: 826-829

²⁴ Rosenau J. N. (1992), *Governance without Government: Order and change in world politics*. Cambridge University Press, Cambridge and New York

²⁵ Duffy R. (2005), Global Environmental Governance and the Challenge of Shadow States: The Impact of Illicit Sapphire Mining in Madagascar, *Development and Change*, Volume 36, Number 5, pp: 825-843 at p. 827

²⁶ Karns M.P. and Mingst K.A. (2004), *International Organizations: the politics and process of global governance*, Lynne Rienner Publishers, p. 4, Finkelstein L.S.,(1995). What is Global Governance? *Global Governance*, Volume 1, Number 3, pp: 367-372, Duffy R. (2005), Global Environmental Governance and the Challenge of Shadow States: The impact of illicit sapphire mining in Madagascar, *Development and Change*, Volume 36, Number 5, pp: 825-843 at p. 827, Diehl p. (edited) (2001), *The Politics of Global Governance: International Organizations in a Changing World*, Lynne Rienner

as informal arrangements that people and institutions have agreed to or perceive to be in their interest.²⁷

It is clear that global governance engages with both state-centric (national) and multilateral (multilateral) governance systems. For the purpose of understanding “global governance”, therefore, the following section will consider the special features of both systems.

The functions of national governments, which consist of various levels of authority, such as monarchies, elected governments, administrations and government servants, are carried out by specifically assigned authorities. In global governance, however, decision-making processes are primarily shared among states and international organizations, together with NGOs, business corporations and individuals, which have more recently entered the arena. Consequently, governance is not only carried out by hierarchically formal actors, but by a variety of other, less hierarchical, actors. Rosenau argues that “in an ever more interdependent world it seems [to be a] mistake to adhere to a narrow definition in which only formal institutions at the national and international levels are considered relevant to the governance.”²⁸

In order to address the governing issues, many national systems operate under written documents, which specify the rules of governance; for instance, articles in constitutions direct law and order within a specific territory called the ‘state’²⁹, hence governments, officials and the public are all guided by the state’s governing principles. As Antonio

²⁷ Karns and Mingst refer Commission on Global Governance in Karns M.P. and Mingst K.A. (2004), *International Organizations: the politics and process of global governance*, Lynne Rienner Publishers, p. 4

²⁸ Rosenau J.N. (1995), Governance in the Twenty-first Century, *Global Governance*, Volume 1, Issue 1, pp.13-43 at p.13

²⁹ In some countries the constitution is unwritten. For example: the United Kingdom. The system of governing in this instance is greatly shaped according to the traditional customs and precedent.

Cassese declares, ‘Principles are the pinnacle of the legal system and are intended to serve as basic guidelines for [the] life of the whole community; besides imposing general duties and obligations, they also set the policy lines and the basic goals of state agencies.’³⁰ Directed by such documents, the power hierarchy of the national governing system is clear and visible. By contrast, in the global governance system, the position is vastly complex and unclear, because the global system does not revolve around a central authority of power³¹, it is based on the collaboration and cooperation mainly of states and many other parties who seek to address issues at the global level.³² Finkelstein, in support of this idea, states that ‘global governance is governing, without sovereign authority [and] relationships that transcend national frontiers.’³³

However, an overview of global governance clearly emphasises that modern governance is a set of ideas, policies and programmes that aim to govern a multilateral global society. A contemporary definition, which is in line with the arguments of this thesis, is established by Duffy:

[...] global governance is defined as a set of neoliberal ideas that have been translated into similarly neoliberal programmes and policies. These policies aim to govern people, resources and activities through complex networks of actors, rather than through a single source of power and authority, such as [the] state.³⁴

³⁰ Cassese A. (1986), *International Law in a Divided World*, Oxford University Press, p.126

³¹ Rosenau J.N. (1995), Governance in the Twenty-first Century, *Global Governance*, Volume 1, Issue 1, pp.13-43

³² Gordenker L. and Weiss T.G. (1996), Pluralizing Global Governance: Analytical Approaches and Dimensions, NGOs, *The UN, & Global Governance*, edited by Weiss T.G. and Leon Gordenker L., Lynne Rienner Publishers, p.14

³³ Finkelstein L.S., (1995), *What is Global Governance?* *Global Governance*, Volume 1, Number 3, pp: 367-372

³⁴ , Duffy R. (2005), Global Environmental Governance and the Challenge of Shadow States: The impact of illicit sapphire mining in Madagascar, *Development and Change*, Volume 36, Number 5, pp: 825-843 at p. 827

The definition of global governance, therefore, involves a discussion about modern approaches of multi-dimensional governance mechanisms. It is increasingly moving away from sole state-centred approaches of governance. Next, this chapter will argue that the policies and programmes of global governance need to be applied equitably, fairly and justly in order to mitigate the differences in governance between North and South.³⁵ It will then explore a series of world events that have made vital contributions to the debate, a careful consideration of which will result in a better analysis of the present global institutions and their approaches towards North-South dimension. The following section will examine the use of the terms “North” and “South” and it will establish the stand of this thesis in regard to the North-South dimension.

What is the North and what is the South?

The World is divided into various groupings based on political, economic, social and geographic factors that scholars describe by using various different terms, which sometimes lead to ambiguities. Also, because many of these terms are not strictly definable, they often overlap. For example the meanings of terms such as ‘East’ and ‘West’ depend on their context. In political science, ‘East’ and ‘West’ could mean communism and capitalism – i.e. ‘left’ and ‘right’ – in cultural studies they could mean something entirely different – i.e. ‘Asian’ and ‘European’ – however, in certain countries, ‘eastern’ and ‘western’ cultural perspectives can overlap with the political science understanding of ‘communism’ and ‘capitalism’.

³⁵ Equity, fairness and justice principles in relation to the North-South dimension will be analysed later in this Chapter before the conclusion.

During the cold war period the world was divided into three groups – the ‘First World’, the ‘Second World’ and the ‘Third World’ – a terminology that was used to describe, respectively, ‘developed’ (or ‘capitalist’) countries, ‘communist’ countries and ‘developing’ countries. After the collapse of the Soviet Union, which signalled the end of the so called ‘Second World,’ two major groupings remained – the ‘Third World’ and the ‘First World’ – however, since then, the ‘North’ and the ‘South’ have become the popular terminology in the political sense.³⁶

Again, these terms can be conceived in different ways since they are more often used to indicate the geographical positioning of countries. However, many scholars argue that using the term ‘South’, in its geographical sense, is problematic,³⁷ since some countries, such as Australia and New Zealand, which are in the south geographically, are not ‘developing’ countries. However, even though it is correct to say that most countries situated in the geographical south fall into the political category of the ‘South’, the term does mean more than simply its geographical definition. Anand, for instance, identifies the South as not just a geographical indication of Africa, Asia and Latin America, but as a ‘common experiences of people in these countries as a result of historically determined social and economic conditions resulting from their colonial and imperial past.’³⁸

The terms ‘North’ and ‘South’ are, therefore, commonly used by academics, politicians and administrators to indicate rich, developed countries and poor, developing countries

³⁶ Marian Miller refers French economist and demographer Alfred Suavy as being the first to use the term Third World to describe developing countries in an article published in 1952 in Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press (Buckingham), p.47

³⁷ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.1 Calvert P. and Calvert S. (1999), *The South, The North and the Environment*, Pinter: A Cassell Imprint, P.5-9, Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press, p.19

³⁸ Anand R. (2004), *International Environmental Justice: A North-South dimension*, Ashgate Publishing Ltd., P.1

respectively. The Human Development Index (HDI) of the United Nations Development Programme (UNDP), estimated countries on socio-economic and political levels of development. In 2010 the countries were divided by the HDI into four main groups: (i) very high human development; (ii) high human development; (iii) medium human development; and (iv) low human development.³⁹ According to the political understanding of the terms described above, group (i) applies to the North and groups (ii), (iii) and (iv) to the South.

In general, in comparison to the North, the South lacks economic growth; however, not only is it pushed to the periphery as a result of economic instability, it also suffers from other obstacles, such as a lack of effective representation in global decision-making. Even though few countries such as China, India and Brazil have been able to make a considerable effect in the international economic system, in general the developing states are still behind the progressive developmental standards at the global level. Referring to the report of the South Commission in 1990, Najam states that the term ‘South’, used in a political context, emphasised not only economic poverty but also a ‘poverty of influence’.

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This thesis recognizes the identity of the North and the South in a broader political, social, cultural and economic context. By its use of the terms ‘North’ and ‘South’, this thesis accepts Najam’s definition below, which offers a more nuanced and thoughtful cross-section of the South:

³⁹ UN Human Development Report 2007/2008 <http://hdr.undp.org/en/statistics> (last visited on 04.04.2011)

⁴⁰ Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp: 303-321 at p.305

The self-definition of the South has always been a definition of exclusion: these are countries that believe that they have been ‘bypassed’ and view themselves as existing ‘on the periphery.’ Viewed as such, the South is not simply a raggedy bunch of poorer countries, it is a collective of countries that consider themselves to have been disempowered, marginalized and disenfranchised by the international system. In the context of our defining framework, then, ‘Southness’ stems not just from a sense that the international system is ineffective in responding to Southern concerns, it grows out of the belief that the system is less than legitimate in terms of its commitments to Southern interests.⁴¹

This broad definition of ‘South’ and ‘North’ will be used throughout this thesis. The North, as a consequence of its long-standing political influence in the world, has more political power and resources to influence global governance than the South has. The North-South dimension, as this chapter will show, has been fashioned by a series of historical, political and economic factors. However, Najam’s broad definition includes a sense of equality, justice and fairness – concepts that underlie this thesis – together with an understanding of such issues as recognition, capacity, distribution and participation in the international system. It is by way of this broad perspective that the North-South dimension in the context of global governance will be analysed.

The North-South Dimension

The elements of the North-South dimension have been developed over a significant period of time as part of the development of the international system. This chapter is mainly concerned with two stages of the historical evolution – (a) the beginning stage, which started with the colonization, by several European countries, of certain states situated south

⁴¹ Ibid.

of the equator; and (b) the stage that followed the Second World War, which signalled the end of colonization and the establishment of global institutions. The chapter will not explore the evaluation of the North-South dimension as it extends to more contemporary issues, or, especially, environmental issues, since these themes will be dealt with in the following chapter. Here, the main focus will be on how the North-South dimension has been differently determined, historically, socially, politically, culturally and economically, within the countries of the South, and how those factors continue to influence their participation in global governance. This account, therefore, begins in these countries' colonial pasts.⁴²

Creating the North and the South dimensions in the context of Colonialism

Signs of the division between the imperial North and colonized South became apparent with the European expansion during the fifteenth century. During this 'Age of Empires', many critical events took place within the colonial territories that ultimately divided the world into the two divisions, recognised now in the international system as the 'North' and the 'South'.⁴³ As Marian Miller states, "the South has been shaped by colonialism and imperialism" experiences which have left the South with distinctively different socio-economic characteristics from the North.⁴⁴

⁴² Anand R. (2004), *International Environmental Justice: A North-South dimension*, Ashgate Publishing Ltd., p.1, Miller M. (1995), *The Third World in Global Environmental Politics*, Buckingham: Open University Press, P.19

⁴³ Anghie A. (2005), *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law Series, Number 37, Anghie A. (1999), Finding the Peripheries: Sovereignty and Colonialism in Nineteenth – Century International Law, *Harvard International Law Journal*, Volume 40, No. 1, pp:1-71

⁴⁴ Miller M. (1995), *The Third World in Global Environmental Politics*, Buckingham: Open University Press, P.19

Europeans took control of the other parts of the world in three different ways: (i) the occupation of vacant territory where no other state claimed authority, otherwise known as the *terra nullius* doctrine, which established the legitimate right to occupy a land through ‘discovery’⁴⁵; (ii) occupation by way of treaty between the colonial state and the local leaders⁴⁶, by which method many Asian and African states were brought under the European authority⁴⁷; and (iii) by war. Casper however, refers to Twiss’s reduction of these categories to two – ‘primitive’ acquisitions, via discovery and settlement, and ‘derivative’ acquisitions, via treaty or war.⁴⁸

Colonization is recognized as a major factor that has had a significant impact upon the partitioning the world into the ‘powerful’ and the ‘powerless’.⁴⁹ Clive Ponting, quoting Letwein, the first German Governor, illustrates the nature of power dominance created in the context of colonialism: “Colonization is always inhumane. It must ultimately amount to an encroachment on the rights of the original inhabitants in favour of the intruders.”⁵⁰ He states further that the outcomes of colonialism were invisible, but that they heavily influenced every aspect of the international system:

⁴⁵ Casper S. (2008), ‘Our Passion for Legality’: international law and imperialism in late nineteenth- century Britain, *Review of International Studies*, Volume 34, pp:403-423 at p.409

⁴⁶ In Ceylon (as it was known then. Today known as Sri Lanka after became a republic in 1972) the British government took over the power under the historical Kandyan Agreement between the local officers and the British government representatives in 02nd March 1815. This agreement was valid in its full terms until 04th February 1948; the day Sri Lanka became independent.

⁴⁷ More treaties as such are mentioned in Cassese A. (1986), *International Law in a Divided World*, Oxford University Press. at p. 43., Anghie refers to Treaty of Nanking, Treaty of Peace, Freinshi and Commerce Between her majesty the queen of Greta Britain and Ireland and the Empire of China August 29, 1842. in Anghie A. (1999), *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth – Century International Law*, *Harvard International Law Journal*, Volume. 40, Number 1, pp:1-71 at p. 41

⁴⁸ Casper S. (2008), ‘Our Passion for Legality’: international law and imperialism in late nineteenth- century Britain, *Review of International Studies*, Volume 34, pp:403-423 at pp.408-415 refers to Travers Twiss,

⁴⁹ Miller M. (1995), *The Third World in Global Environmental Politics*, Buckingham: Open University Press, P.19

⁵⁰ Ponting C. (1991), *A Green History of the World: The Environment and the Collapse of Great Civilizations*, Penguin Books Ltd., p.138

‘The Europeans also brought with them an innate sense of superiority, tinged with a strong degree of racism. Although some Europeans initiated some steps towards improving the life of the natives through medical and educational programmes, many undermined the local culture by forcing them to adopt European ways.’⁵¹

Throughout the colonisation process attempts were made to carve the western thoughts and civilization patterns into the so-called uncivilized peoples in the colonies. Anghie states that by 1914 virtually all the states in Asia, Africa and the Pacific became colonies under the authority of western nations, and that ultimately “these major European nations forced all these non-European peoples into a system of law that was fundamentally European and derived from European thoughts and experience”.⁵² Anghie suggests that international law became a key tool for European colonial powers by way of, treaty, recognition, colonization, and special treaty – called a ‘protectorate agreement’.⁵³

Another consequence of the colonial process that influenced the North-South dimension was an imbalance in political and social development. The historical process of taking political and economic control over a large part of the world’s natural and human resources enabled the colonizing nations to firmly establish their positions in the international system. Thus the colonized Third World was forced to pay the price for First World achievements by continued poverty, lack of resources, lack of technology, lack of knowledge and, lack of recognition, and, most importantly, lack of power to influence the international system. It is within this broad context that the North-South dimension should be recognized today. During the colonial era six major factors can be recognised that have led to the North-South dimension.

⁵¹ Ibid.

⁵² Anghie A. (1999), Finding the Peripheries: Sovereignty and Colonialism in Nineteenth – Century International Law, *Harvard International Law Journal*, Volume 40, No. 1, pp:1-71, p.2.

⁵³ Ibid, p.36

Economic Empowerment

Before European expansion through colonisation, although different countries encountered similar problems in agriculture and trade, interactions between them was minimal due to the lack transportation and technology. With the development of industries and maritime technology, European states began to explore new world beyond their territories. The first concern of colonial nations, therefore, was strongly related to economic empowerment and the exploitation of their colonies' natural resources, where their immediate goal was to enrich their individual economies. Then, as these countries became more powerful, they created new patterns of development, from agricultural to the industrial, which led to the colonies becoming the main source of supply of raw materials and crops for the European market.⁵⁴

The European Industrial Revolution

The European industrial revolution of the 17th and 18th centuries impacted powerfully on decision-making patterns in the colonies. As Anand states, the needs and demands of the colonial powers were largely responsible for the creation of their empires in Asia and Africa, leading to the critical situation whereby decision-making powers regarding economy and trade were denied to the local populace.⁵⁵ Thereafter factories and plantation were developed, completely changing the way colonised countries had survived prior to their surrender; thus, most colonial economies were transformed into European-dependent systems.⁵⁶

⁵⁴ Ponting C. (1991), *A Green History of the World: The Environment and the Collapse of Great Civilizations*, Penguin Books Ltd.

⁵⁵ Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p.18

⁵⁶ Ibid, p.25

Changes in Agricultural Practices

A particular example of how changes in agricultural practices affected a colonial country is Sri Lanka. When the British took power in 1796, the economy had been based on subsistence agriculture, which meant that the main source of agriculture was rice and grain. However, under the British, the main focus of Sri Lankan agriculture changed from consumption to commercial production and trade, when coffee, tea and other commercial cultivation was introduced. Ultimately this rapidly cost Sri Lankan land, human resources and life styles, changes that have continued to this day, in that the export of tea is a key earner of foreign income.⁵⁷

Such wholesale transformations of agricultural sectors in the colonies created a dependency culture that continues to the present day, since, even after independence, developing countries have found it difficult to move ahead with their own agricultural systems, because such a large amount of their foreign income is based on supplying the European market. Consequently, the commercial agricultural system was developed at the expense of the South's subsistence system. In this context, therefore, the agricultural patterns that emerged from the colonization process are further factors in the current North-South dimension of the international system.⁵⁸

Trade and Commerce

One of the key incentives for colonization was for colonial countries to enter other territories for trading and commercial purposes, a major part of which was managed by private companies, such as the British and Dutch East India Companies, which were vested

⁵⁷ Mazumdar, S. (1981), Sri Lanka: Problems of an Export Economy in the Post Colonial Period, South Asian Bulletin, Volume 1, Number 2, p.59, <http://www.lankalibrary.com/geo/British/history4.htm> (last accessed 14.04.2011)

⁵⁸ Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p.18

with a great deal of power. As Anghie explains, “Company charters granted them not merely the right to trade in particular areas, but also the right to make peace and war with natives and the power to coin money.”⁵⁹ The operation of international trade within these territories, being beyond local control, meant that the general population of the colonies suffered from the absence of their own political and legal authority. The consequences of becoming a colony, therefore, meant that native laws were no longer valid regarding trade and control of their own natural resources.

The introduction of European based administrative and legal systems

Another manifestation of the North-South divide was the introduction of European based administrative systems in colonised states.⁶⁰ It is important to note that, up to the point of colonisation, some states already had civilised systems of governance, but as a result of colonisation, these native systems did not develop further.⁶¹ Also, by familiarising the locals to a European system of governance the rulers’ task was made easier, since they could rule in a system familiar to them.⁶² The impact of this transference of powers is still visible in most former colonies.⁶³ In some instances, though, formal government was

⁵⁹ Anghie A. (1999), Finding the Peripheries: Sovereignty and Colonialism in Nineteenth – Century International Law, *Harvard International Law Journal*, Volume 40, No. 1, pp:1-71, p.36

⁶⁰ Leitan Tressie G.R. (1996), Development of Sri Lanka’s Administrative System-The Colonial Impact, *Sri Lanka Journal of International Law*, Volume 8, p.107, Vijaya Samaraweera (1973), “The development of the Administrative System” in *History of Ceylon*, Volume III (University of Ceylon,)

⁶¹ Cassese A. (1986), *International Law in a Divided World*, Oxford University Press., p. 39 referred UN document A/C.6/SR.1036. This refers to the question made by the Sri Lankan (then Ceylon) representative at the UN discussion on the issue of succession of States in respect of treaties in 1968. Cassese quotes the question as follows: “The term ‘new’ could not properly be applied in the case of an ancient State which was subjugated and exploited for three or four centuries and then gained political independence in the twentieth century. In his delegation’s view, the so-called ‘new’ State should rather be termed the ‘original’ State. His delegation was concerned that the principles finally states should have a sound historical and economic basis. Not only the pre-independence phase of a country’s past but also the period of independence prior to colonial rule might perhaps be relevant in determining the principles applicable in respect of State succession. ”

⁶² Liston Y. (1999-2000), The Transformation of Buddhism During British Colonialism, *Journal of Law. & Religion*, Volume 14, Number 1,p.189-210

⁶³ Leitan Tressie G.R. (1996), Development of Sri Lanka’s Administrative System-The Colonial Impact, *Sri Lanka Journal of International Law*, Volume 8, p.107, the author concludes the article suggesting that the impact of colonial system is still reflecting in Sri Lankan political and administrative system. For instance in Sri Lanka the British rulers introduced Ceylon Civil Service during the colonial era and later independent

totally alien, and these countries did not become states until after colonization.⁶⁴ In such cases, rules were centralised to form administrative structures that were bound by European based legal formalities.⁶⁵

In general, the introduction of western style administrations, foreign to the native societies, completely changed the existing structures of governance, resulting in the implantation of Northern power structures in the political systems of their Southern colonies.

Religious and Cultural incursions

The impact of the colonial powers on colonies was not only confined to structures of governance. Religious and cultural changes played major roles in transforming the lives of the people living in the colonies. This process, which took place parallel to the introduction of a Christian/European education system, ultimately led to the growth of confusingly different cultural and religious identities within the various native communities. The whole structural and procedural changes within the administrative and education system established a Euro-based social and political structure within the colonial parts of the world.

As can be seen from the above, the whole structure of governance in the South has been designed according to European political and legal principles that have gradually changed the native governance system of those countries most affected by colonial regimes. Anghie observes this transformation thus:

Ceylon abolished it and established Ceylon Administrative Service, now known as Sri Lanka Administrative Service. Even though the Sri Lankan administrative service is now known by a different title most of the functions are still being done according to the European administrative theories and functions introduced by the British rulers in some decades ago.

⁶⁴ Lange M.K. (2004), British Colonial Legacies and Political Development, *World Development Issue*, Volume 6, pp.905-922 at p. 910

⁶⁵ Ibid.

[the] sovereignty doctrine is understood as a stable and comprehensive set of ideas that was formulated in Europe and that extended inexorably and imperiously with empire into darkest Africa, the inscrutable Orient, and the far reaches of the Pacific, acquiring the control over these territories and peoples and transforming them into European possession.⁶⁶

The colonial era in world history highlights the power division between the developed and the developing world. The North-South debate is framed on the basis of the various differences created during the colonial times. The argument in this chapter, therefore, is that colonialism forged the world community into two main groups – colonial and colonising countries – which developed into the South and the North.⁶⁷

The next stage in the evolution of the North-South dimension was the emergence of newly independent nations as a result of the decolonisation process following the end of Second World War in 1945 and the establishment of new global institutions – two events that were to have a most important impact on the North-South dimension. The section below explores how the global institutions reflected the North-South dimension, and argues that the South remained at the periphery of global decision-making as a result of being denied active participation in their formation and operations. In support of this claim, it also highlights how the South gathered collectively as G77 and Non-Aligned Movement (NAM) to question the existing governing provisions in order to focus on ensuring the principles of equity, fairness and justice in the process of global governance.

⁶⁶ Anghie A. (1999), Finding the Peripheries: Sovereignty and Colonialism in Nineteenth – Century International Law, *Harvard International Law Journal*, Volume 40, No. 1, pp:1-71 at p. 6

⁶⁷ Anghie A. (2005), *Imperialism, Sovereignty and the Making of International Law*, Cambridge Studies in International and Comparative Law Series, Number 37

The Establishment of the New Global Institutions

There are two main categories of new global institutions: the first category includes the International Bank for Reconstruction and Development (the World Bank)⁶⁸, which was created to tackle post-war reconstruction and development through productive investment; and the International Monetary Fund (IMF), created to promote a stable and open international monetary system.⁶⁹ The second category, the UN, ran parallel with the first, was established as a separate political institution designed to prevent another World War, establish fundamental human rights, maintain international law and promote social progress.⁷⁰ These primary institutions provide a comprehensive background against which to discuss the North-South dimension.

Creation of the global financial institutions in the context of the North-South dimension

The financial institutions, which were created under the Bretton Woods Agreement in 1944 mainly for the purpose of maintaining a stable world economic and financial system,⁷¹ required each institution to be responsible for different tasks. However, as Anghie states, “although united in achieving these general goals, the two institutions (the IMF and the World Bank) were constituted to perform distinctive but complementary functions.”⁷² As

⁶⁸ Articles of Agreement for the International Bank for Reconstruction and Development, Dec.27, 1945,60 Stat.1440 T.I.A.S No.1502, 2 U.N.T.S 134,
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last accessed on 11.10.2010)

⁶⁹ Articles of Agreement for International Monetary Fund, Dec.27, 1945,60 Stat.1401,
<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last accessed on 11.10.2010)

⁷⁰ Preamble of the Charter of the United Nations, T.I.A.S No.1501, 2 U.N.T.S 39

⁷¹ <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,pagePK:50004410~piPK:36602~theSitePK:29708,00.html> (last accessed on 11.10.2010), Anghie A. (2004), *International Financial Institutions in The Politics of International Law* edited by Chris Reus-Smit, Cambridge University Press, p. 219

⁷² *Ibid.*

Anghie further notes: “[T]he international financial institutions exercise enormous power over the working of international financial system as reflected in the fact [that] half of the world’s population and two-thirds of its governments are bound by the policies they describe.”⁷³ The formation and operation of global financial institutions are, therefore, important in terms of the significant role they play in the context of the North-South dimension.

The Bretton Woods global financial institutions have controlled the financial policies of developing countries over many decades. They have also been influential in other areas of policy-making in the South since the 1970s,⁷⁴ from the lowest level of government to the highest, such as in the areas of protecting the rights of children, women, the environment and indigenous people.⁷⁵ Consequently, under the World Bank poverty alleviation and reconstruction policy, Southern countries have had to open up their internal policy making forums for advice and guidance, and also to accept “conditionalities”, considered by the Bank to be essential in order to achieve the developmental tasks.⁷⁶

The Northern countries, on the other hand, approach the Bretton Woods institutions in a different manner; ever since their establishment, they have strived to gain authority over them and, by default, over the global financial markets. As a consequence, therefore,

⁷³ Ibid. p. 217

⁷⁴ Duffy R. (2006), NGOs and Governance States: The Impact of Transnational Environmental Management Networks in Madagascar, *Environmental Politics*, Volume 15, Number 5, pp: 731-749

⁷⁵ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.96

⁷⁶World Bank (1996) Staff Appraisal Report: India. Eco-development Project. Report No. 14914-IN, August 3, Rozaleen Duffy discusses the impact made by global financial institutions on developing countries through various conditionalities agreed under credit agreements. Duffy R. (2006), NGOs and Governance States: The Impact of Transnational Environmental Management Networks in Madagascar, *Environmental Politics*, Volume 15, Number 5, pp: 731-749, Randeria S. (2003), Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India, *Current Sociology*, Volume 51, Number 3-4, pp: 307-330

governance of these institutions has always been held by the North's representatives.⁷⁷ For example, throughout its history, the President of the World Bank has been a US citizen, and both the Managing Director and the First Deputy Managing Director of the IMF have been European; also, the developed countries make the largest contributions to funds.⁷⁸ On both these grounds, therefore, the North dominates the principal decision-making bodies of these crucial institutions, thereby exemplifying the contrasting positions of North and South.

The original objectives of the World Bank shed light on the North-South dimension.⁷⁹ In its Charter, and in the Agreement that set up the IMF, development was not the creators' primary concern. Article 1 of the IMF Agreement explains its objectives in six sub-articles, none of which is about poverty eradication or development assistance.⁸⁰ Rather, the language focused on monetary cooperation, international trade stability and economic policy; whereas, Article 1 of the World Bank Charter describes its purposes as the "reconstruction and development of territories destroyed by the war and less developed countries".⁸¹ The scope of the World Bank, therefore, does not include the principles of promoting equitable development status for the South. As Rajagopal stated in 2003, "[T]he World Bank Articles of Agreement [...] do not refer to poverty, equity, or the environment

⁷⁷ Traditionally, the president of the World Bank is appointed by the United States. One could argue that the fact that US is the largest shareholder of the World Bank fund legitimises this tradition. The Managing Director of the International Monetary Fund is appointed by its European governors. Perez D. *The Process for Selecting and Appointing the Managing Director and First Deputy Managing Director of the IMF*, Background Paper of the International Evaluation Office of the IMF, BP/07/01, p.5. Available online: <http://www.ieo-imf.org/pub/background/pdf/BP071.pdf> (last accessed on 14.04.2011)

⁷⁸ Peretz, D. (2008), *The Process for Selecting and Appointing the Managing Director and First Deputy Managing Director of the IMF*, Independent Evaluation Office of the IMF, BP/07/01 Available online: <http://www.ieo-imf.org/pub/background/pdf/BP071.pdf> (last accessed on 14.04.2011)

⁷⁹ Blanco S. and Carrasco E. (1999), The Functions of the IMF and the World Bank, *Transnational Law and Contemporary Problems*, Volume 9, pp: 67-92 at p.72-73.

⁸⁰ <http://www.imf.org/external/pubs/ft/aa/aa01.htm> (last accessed on 14.10.2010)

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<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0..contentMDK:20049563~pagePK:43912~menuPK:58863~piPK:36602,00.html#11> (last accessed on 14.10.2010)

[...]”.⁸² Some developing countries, including Mexico, proposed to add the language of development into the World Bank Charter; however, the majority of countries did not accept it.⁸³

A few years after the establishment of the Bretton Woods institutions, the global political atmosphere changed dramatically as a result of the conflict between capitalism and communism. What became known as the “Cold War Era” had a considerable impact on the underlying principles of the World Bank. During the 1950s, Rajagopal states, “the World Bank moved from its ‘reconstruction’ phase to its ‘development’ phase” with the establishment, on the initiative of the US, of the International Development Agency (IDA) in 1961 to provide development funds to less developed countries.⁸⁴ This constituted a change of focus in the financial institutions to include development issues.⁸⁵ The operations of the IDA during the Cold War, therefore, accentuated the power of the Northern countries to make decisions regarding the distribution of World Bank funds. Furthermore, the US, through its ownership of the largest share of World Bank and IMF funds, actually used this as a Cold War strategy to make several loans to “friendly

⁸² Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.96

⁸³ Although developing countries failed in influencing the development concerns into the World Bank’s Charter, they succeeded in entering equitable consideration to projects alike. Article III, Section 1(a) of the Charter states, the Bank’s facilities would be used with “equitable consideration to project for development and projects for reconstruction alike.” Blanco S. and Carrasco E. (1999), *The Functions of the IMF and the World Bank, Transnational Law and Contemporary Problems*, Volume 9, pp: 67-92 at p.72-73.

⁸⁴ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 100-111 Rajagopal, taking a different approach to the conventional view of the Bretton Woods institutions, further explores the financial institutions as, “The Cold War reinforced this historically crucial link between security and development, and had a major impact on the evolution and expansion of BWIs, especially the World Bank. Looked at this way, these international institutions are neither simply benevolent vehicles for ‘development (what ever it means), nor ineluctably exploitative mechanisms of global capitalism, but, rather, a terrain on which multiple ideological and other forces intersected, thus producing the expansion and reproduction of these very institutions”

⁸⁵ Lewis J., Webb R. and Kapur D. (edi.) (1997), *The World Bank: Its First Half Century*, Washington DC: The Brookings Institution, Chapters 4 and 17

regimes”.⁸⁶ For instance, Lewis et al explain that several Latin American states were awarded loans after the Cuban revolution; hence the World Bank granted more funds to the countries that enjoyed close security links with the US than to those favouring communist states.⁸⁷ As a consequence of these changes, the South, because it was at the receiving end of the funding process, found itself in a vulnerable position under the powerful US-led North, and it was beyond its control to affect the decision-making of the IDA, or any other World Bank project.

The Bretton Woods institutions operate with a weighted voting system whereby the number of votes a member has is decided by the level of its contributions and, ever since they were established, the US has supplied one-third of their finances.⁸⁸ It is not surprising, therefore, that, because the US, together with the other developed countries, own the majority of shares, they receive the greatest number of votes.⁸⁹ Consequently, because these major institutions use the economic status of their members as their primary operational bases, the North-South division has mainly been created as a result of the differences in economic power of the Bretton Woods member states.

The World Bank and the IMF, therefore, demonstrate perfectly the North-South dimension in the global financial and economic system, where the differences in power to impact on their governance is wide ranging, including such issues as the composition of the executive

⁸⁶ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 111

⁸⁷ Lewis J. et al (edi.) (1997), *The World Bank: Its First Half Century*, Washington DC: The Brookings Institution, p. 162

⁸⁸ Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, art. XII, § 5, 60 Stat. 1401, 1418-19, Gianaris referees Senate Report No. 459, 79th Congress 1st Session (1945) at 13-15 in Gianaris W.N. (1990/1991), Weighted Voting in the International Monetary Fund and the World Bank, *Fordham International Law Journal*, Volume 14, pp:910- 945 at p. 916

⁸⁹ At the starting of the Bretton Woods the US had thirty three percent of votes in IMF and thirty five percent of votes in the World Bank. United Kingdom had sixteen percent of votes in IMF and fifteen percent of votes in the World Bank.

board, producing agendas, operating policies, governing procedures by way of a weighted voting system, and creating rules and regulations relating to project funding in developing countries. By contrast, the UN itself provides a somewhat different political approach to the North-South dimension, where the South has used the UNGA as a stage to present its concerns to the global community.

The creation of the United Nations in the context of the North-South Dimension

The United Nations, which was established by Charter in 1945, has been a central focus for international relations. It also provides a forum to debate a wide variety of political issues, from basic human rights to nuclear movements and global security.⁹⁰ Therefore an analysis of its role in relation to the North-South dimension brings into the discussion crucial political, international relations and legal concerns.

Although, at present, developing countries use the UN as the main forum to voice their concerns, at the outset of the institution the South's presence was insignificant, since the contribution to its establishment made by developing countries was minimal. This was for a number of reasons. Firstly, at the same time as the new global institutions were emerging, they were over-occupied with the rebuilding of their nations after centuries of colonization. Therefore, their new governments had a huge number of internal issues to resolve, and consequently, they paid little attention to political issues beyond their boundaries. Secondly, they were treated by the developed nations as inexperienced newly-civilised

⁹⁰ The UN is considered as the mostly utilised forum by developing countries. Payslian points out that the South "viewed the UN as a mechanism to counter the political and economic power possessed by the industrial countries and their giant multinational corporations (MNCs) and to address grievances concerning underdevelopment and the global misdistribution of political and economic resources." In Payslian S.(1996), *The United Nations and the Developing Countries in the 1990s*, *University of Detroit Mercy Law Review*, Volume 73, Number 3, pp: 525-549 at p. 525

members of the international community. Finally, due to their lack of experience in international politics, their presence was of lesser significance than the more powerful Northern countries.⁹¹

There were only 13 African and Asian members among the original UN members in 1945. Gradually, though, after the mid 1950s, newly independent nations rapidly swelled the numbers. The following figures show the difference between membership in 1945 and 1991.

Geographical Distribution of UN Membership:⁹²

	1945	1991
Western Europe	8 (16%)	20 (12%)
Eastern Europe	6 (12%)	13 (8%)
Americas	22 (43%)	35 (21%)
Africa	4 (8%)	51 (31%)
Asia	9 (17%)	38 (23%)
Australia & Pacific	2 (4%)	9 (5%)

According to the latest reports on the regional basis of UN membership as of 2010 is stated below.⁹³

⁹¹ Anand R. (2004), *International Environmental Justice: a north-south dimension*, Ashgate Publishing Ltd., pp: 5 -9

⁹² Source: Peter R. Baehr & Leon Gordenker, *The United Nations in the 1990s* 44 (St. Martin's Press 1991) cited by Simon Payslian in Payslian S.(1996), *The United Nations and the Developing Countries in the 1990s*, *University of Detroit Mercy Law Review*, Volume 73, Number 3, pp: 525-549 at p. 525

⁹³ http://www.un.int/wcm/webdav/site/gmun/shared/documents/GA_regionalgrps_Web.pdf (last accessed on 04.04.2011)

Africa	53(28%)
Asia	53(28%)
Eastern Europe	23(12%)
Latin America and Caribbean	33(17%)
Western Europe	28(15%)

The increase of the Southern states in the UN is clearly explained by these figures. In 1945 the Southern participation was extremely low within the UN in comparison to African, Asian and South American membership in 2010. After becoming UN members the former colonial countries showed great desire to increase their political influence in the global institutions. This tendency is clearly reflected in the framework of the UN, mainly within the General Assembly, where several development programmes assisted the South to rebuild their states, as Adams describes:

Thus the United Nations soon began to shift, in the economic fields, from its original preoccupation with the problems of economic stability and full employment to those of the development of the less developed countries, and by the middle of the 1950s the latter problems had already become the main focus of attention.⁹⁴

During the period after the Second World War, the South built up their collective strength as one group to overcome global political and economic inequalities. The New International Economic debate, the Group of 77 (G77) and UNCTAD (explained below) are forums that operate within the UN.⁹⁵

⁹⁴ Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd. London, p.54

⁹⁵ Payslian S.(1996), The United Nations and the Developing Countries in the 1990s, *University of Detroit Mercy Law Review*, Volume 73, Number 3, pp: 525-549 at p. 527

The United Nations Conference on Trade and Development (UNCTAD)

UNCTAD was established in 1964 in order to narrow the development gap between North and South. It was a permanent intergovernmental body of the UN that deals with trade, economic and development issues. UNCTAD, whose functions are carried out by a permanent body – the Trade and Development Agency – is a perfect example to use in order to discuss the role of the UN in the North-South dimension, because it provides a stage for the collective South to discuss their national and global concerns. Established as a permanent agency of the General Assembly under the Resolution of 1955 (XIX) it consisted of four groups of states: Group A – Africa, Asia and Yugoslavia; Group B – all developed countries; Group C – Latin American countries; and Group D – the socialist countries of Eastern Europe.⁹⁶ As at 2010, its membership consisted of 193 member states.⁹⁷

UNCTAD's aims

UNCTAD's primary aim was to bring greater justice and equality to the international economic and trade relations. Ever since achieving independence, developing countries have struggled with the economic and trade system, which was mainly dominated by the developed world. In his analysis of the nature of the existing economic process Anand states, "[T]he fundamental problems remain the same: inequality in the terms of trade; stabilization of forces and markets for primary commodities; access to the markets of the

⁹⁶ 100 member states in group A, 31 member states in group B, 33 member states in group C, 24 member states in group D. with the 5 state members those not included any list of the UNCTAD, there are 193 members in UNTAD today. There were 123 member states were presented at the first meeting of the UNCTAD in 1964, GA Resolution 1955 (XIX) of 30 December 1964.

⁹⁷ Appeared as the membership of the UNTAD and the Trade and Development Board by 20th March 2008 in TD/B/Info.21, <http://www.unctad.org/Templates/Page.asp?intItemID=1929&lang=1> (last accessed on 10.10.2010)

developed countries; and a generalized system of preference.”⁹⁸ Likewise, in the international economic system, developing countries were unevenly positioned in comparison to the developed world, since their structures were affected by the colonial legacy. Their ultimate economic objectives, therefore, were to follow Northern market policies.

New International Economic Order (NIEO)

In a revolutionary attempt by the South to implement more favourable grounds in international economic and trade system, a battle ensued between Northern economic powers and Southern voting powers. In order to win the battle, the developing countries chose UNGA as the forum to plead their demands, since the one country-one vote system was in their favour. As a consequence of that crucial fact, the UN has a special position in the North-South debate, and it was in this institution that the South placed its trust in order to promote new norms⁹⁹. In this way, the developing countries took the global development debate into a new direction with the New International Economic Order (NIEO).

At the sixth special session of UNGA on 1st May 1974, the developing countries, with the greater confidence they had gained from winning stronger voting powers, adopted two resolutions for the further enhancement of equity, justice and fairness in the international

⁹⁸ Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p.110. In p. 111 Anand further mentions what developing countries requested was “to take steps to index the prices of the products exported by developing countries to tie them to the prices of the manufactured and capital goods they must import. In other words, they as for some correlation between the prices of raw materials and those of manufactured goods.” for further readings: Weston B.H. (1981) , *The Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth*, *American Journal of International Law*, Volume 74, p. 437, Sombre E. De. (1998), *Sovereignty over Natural Resources: Balancing Rights and Duties*, *The American Political Science Review*, Volume 92, p.984

⁹⁹ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.82

economic and trade system.¹⁰⁰ The first – GA Resolution 3201-2(S-VI): ‘Declaration on the Establishment of the New International Economic Order’ stated that “the present economic order is in direct conflict with current developments in international political and economic relations.”¹⁰¹ The second – GA Resolution 3202 (S-VI): ‘Programme of Action on the Establishment of New International Economic Order’, made a practical reality of the declaration that “economic co-operation and understanding among all states, particularly between developed and developing countries, [should be] based on the principle of dignity and sovereign equality.”¹⁰²

The NIEO was an important landmark in the history of the North-South dimension because it challenged the western exploitative economic structures that had operated during the postcolonial period.¹⁰³ However, different writers interpret NIEO from different perspectives. For some writers it is a failure.¹⁰⁴ Diehl interprets it as a “loose collection of often vaguely defined ideas and proposals on how international economics might be altered to mere third world needs”¹⁰⁵, while Rajagopal suggests it as a “moment of radical change to international law”.¹⁰⁶ Some writers, such as Sauvant and Hasenpflug, believe that NIEO

¹⁰⁰ As this was the first UNGA devoted to development Rajagopal identifies the Sixth Special Session as “marked the radical moment in the emerging NIEO engagement” Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.79

¹⁰¹ UN General Assembly Resolution 3201(S-VI): Declaration on the Establishment of New International Economic Order,.. Anand R.P (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p.112

¹⁰² United Nations General Assembly Resolution 3202 (S-VI): Programme of Action on the Establishment of New International Economic Order, R.P. Anand, *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p.112

¹⁰³ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press

¹⁰⁴ Diehl P.F. (2001), *The politics of Global Governance: International Organizations in Independent World*, Diehl P.F. (edi.), 2nd Edition, Lynne Rienner Publishers (London), p. 259-260, Diehl interprets NIEO as a “loose collection of often vaguely defined ideas and proposals on how the international economic might be altered to mere third world needs.”

¹⁰⁵ Ibid.

¹⁰⁶ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.73

was supported by the socialist wing, “at least rhetorically”¹⁰⁷, while others explains it as an effort by the developing world to produce an alternative to the “US capitalism and Soviet command model”.¹⁰⁸

Considering the negative political environment following Second World War and the decolonisation process, the NIEO stands out as a model developed by the newly inspired independent nations with the intention of creating a more equitable, just and fair system of global economics. Although it was not a total success, it was an achievement as the first collective effort by the South to inform the world about their dissatisfaction with the existing economic structures. As Najam notes:

Indeed, the call from the South in the 1970s for a ‘New International Economic Order’ was not just a desire to make the international system more ‘effective’ it was very explicitly a call to make it more legitimate by redressing what they considered the imbalance ‘voice’ in the international system.¹⁰⁹

The South’s plea for a more legitimate economic order reflected the need to ensure principles of equality, fairness and justice. There will be an analysis of the successes and failures of the NIEO later.

¹⁰⁷ Sauvart K. P. and Hasenpflug H. (1977), *The New International Economic Order: Confrontation between North and South*, Westview Press(Colorado), p.63

¹⁰⁸ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.73

¹⁰⁹ Najam A. (2005), Developing Countries and Global environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp. 303 – 321 at 305

Background of the creation of NIEO

During the post Second World War period, a clear division was beginning to be visible between the rich, industrial world and the poor, developing world. Ever since achieving independence, the once colonized nations had been struggling for a more equitable global economic system, since they had realised that mere political independence would not make them equals until they had established stable economic grounds. The economic systems of the colonised states, which had been designed for the purposes of their colonial governments, remained intact when they were returned to local control. However, at that time many of them were suffering numerous political catastrophes, since the prevalence of acute poverty, chronic unemployment and endemic under-nourishment, prevented them from reaching any kind of development.¹¹⁰

The newly independent states comprehended that it was not possible to achieve economic development unless they demand a change in the system, consequently they sought international support to narrow the North-South economic gap. This meant that they had to build a new relationship with the North, not on the grounds of colonialism but on more justifiable, equitable and globally accepted grounds.¹¹¹ Rajagopal expresses this as “[...] the relationship between the West and the Third World would be governed not by colonialism, but by a new discipline called development which replaced the colonizer-colonized relationship with the developed-underdeveloped one”¹¹², a situation he further described as

¹¹⁰ Sauvant K. P. and Hasenpflug H. (1977), *The New International Economic Order: Confrontation between North and South*, Westview Press(Colorado), p.3

¹¹¹ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.25, Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers, p. 103-128

¹¹² Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.25

a “humanitarian urge to uplift the newly independent states”. This process, however, was largely dependent on Northern scientific and technological power.¹¹³

Subsequently, when the South included its own developmental concerns in global forums by flocking together through Group 77 and UNCTAD in order to alter the existing economic system, the political debate took a new turn.¹¹⁴ As Sauvnt observed in 1977, before the Third World (the South) started to bring the issue of economic development to the global agenda, it was considered to be ‘low politics’ and that the dialogue on economic development was an issue ‘left to the economics, financial, and planning ministries’, which was a reaction based on the different points of views of the developed and developing countries.¹¹⁵ However, at the time, the developed countries were more enthusiastic about other issues than economic development on the grounds that it was no longer a primary concern for the developed world, from the Southern standpoint, economic development and poverty alleviation happened to be the most important issues.¹¹⁶

Rajagopal indicates three sources of impetus that inspired the demand for NIEO: “...the lessening of western aid; the disappointment with political independence in the Third World; and the success of OPEC as a primary commodity cartel”.¹¹⁷ He understood NIEO to be attempt a radical challenge to international law because this was the first time, after

¹¹³ Ibid.

¹¹⁴ The Group of 77 remains as the main body of developing country group within the UN system. The name reflects the number of the original members, which has grown up to 130 members by today. For further reading on G77: Kasa S. Gullberg A. and Heggelund G. (2008) , The Group of 77 in the International Climate Negotiations: Recent Developments and Future Directions, *International Environmental Agreements*, Volume 8, 113-127 Kasa et al states, that G77 is not a policymaking body, rather it coordinates the developing country view point to influence the international negotiations. A detailed account on G77 will be on p.35 of this chapter.

¹¹⁵ Sauvnt K. P. and Hasenpflug H. (1977), *The New International Economic Order: Confrontation between North and South*, Westview Press(Colorado)

¹¹⁶ Anand R.P. (1987), *Confrontation or Cooperation? International Law and The Developing countries*, Martinus Nijhoff Publishers

¹¹⁷ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.77

centuries of colonial oppression, that developing countries confronted Northern domination of the international system.¹¹⁸ In the meantime, tension was building between North and South as a result of the conflicts of interest regarding international trade, economic and financial matters. As Dias explains, “the previous experience of both sides in relation to colonialism had impacted upon this tension”, and, referring to the developed states, he continues: “These few countries appropriated to themselves the material resources of the rest of the world in an aggressive pursuit of their policy of imperialism, capitalism, and neo-colonialism”.¹¹⁹ As a consequence, therefore, the developing countries demanded structural changes in the global economic system.

UNGA Resolution 1803 (XVIII) on ‘Permanent sovereignty over natural resources’, which was accepted at the fourteenth session on December 1962, signalled the beginning of the NIEO discussions, whereby the South, given the post-war/post-colonial atmosphere, expressed its preference for international economic and trade policies that would allow national regulation over its natural resources; the ultimate aim being to reduce Northern interference to a minimum.¹²⁰ To this end, on many occasions during the 1960s, the South stressed the necessity of independence in choosing its own development streams. In the General Assembly, and in General Agreement on Tariffs and Trade (GATT) talks, their representatives “appealed to the economic rights and duties of states, and held that every government had a right to choose an economic development plan compatible with its cultural context, and that all the nations should support such plans”.¹²¹ In the midst of the

¹¹⁸ Ibid, p.73

¹¹⁹ Dias N. (1996) , NIEO Revisited, *Sri Lanka Journal of International Law*, Volume 8, p.38

¹²⁰ UNGA Res. 1803 (XVIII) of 14 December 1962, <http://www2.ohchr.org/english/law/resources.htm> (last accessed on 11.10.2010), Pollan T.(2006), *Legal Framework: for the Admission of FDI*, Eleven International Publishing, pp. 148-149 Pollan examines the UNGA Resolutions 3201 and 3202 along with 1803 provide the basis for the debate on New International Economic Order.

¹²¹ Craig M. N. (2001), What the Third World Wants: An Interpretation of the development and Meaning of the New International Economic Order Ideology in *The Politics of Global Governance: International Organizations in an Independent World* edited by Diehl P., Lynne Rienner Publishers: London, P. 265

NIEO debate, however, oil prices increased, creating a crisis in the global economic and trade system and this was a significant event in the North-South dimension and the South's demand for new global economic policies.

The Oil Crisis in the context of NIEO

Other significant turning points were emerging during the late 1960s, such as the conflict of interests between the oil producing developing countries and the developed countries where the multinational oil corporations were based. The industrial and economic foundation of the world is hugely dependent on oil, which makes it one of the most important commodities in world trade, therefore it is significant that, during this period the industry was totally dominated by seven major companies, which had the power to produce, transport, refine and market it worldwide.¹²² Some scholars point out that these multinational companies were more powerful than some of the oil producing developing countries in terms of their political, expertise and financial capacities.¹²³ Although the oil trade was dominated by these Northern companies, oil has always been a precious natural resource that is mostly owned by developing countries.¹²⁴ Consequently, the oil crisis of the late 1960s and early 1970s provides a suitable backdrop against which the North-South dimension can be viewed.

¹²² All these companies were based in the North. Five American and two British companies were among these seven major companies, which were known as seven sisters. Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd. London, p.111

¹²³ Adams N.A. quotes Sampson A., in *The Seven Sisters*, Bantam Books, New York, 1975, p.7, "Their (these multinational companies) supranational expertise was beyond the ability of national governments. Their incomes were greater than those of most countries where they operated, their fleets of tankers had more tonnage than any navy, they owned and administered whole cities in the desert." in Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd. London, p.111

¹²⁴ "In 1960s 70% of world export of crude petroleum originated in the underdeveloped world." Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd. London, p.110

In 1973, frustration with the dominant oil companies pushed the Southern oil-producing states to organize collectively as the Organization of Petroleum Exporting Countries (OPEC), which has contributed to the North-South in two major ways. Firstly, it set an example to the non-oil producing Southern countries by asserting authority over its own resources. Secondly, by achieving power over the production and trading of oil, it showed that a collection of countries with similar interests could become the main decision-making body in spite of the powerful Northern bloc. Thirdly, OPEC has become a role model for other developing countries that are major exporters of raw materials.¹²⁵

Although the South was also a victim of the oil crisis, it was not equally well equipped to face the situation as were some of the developed countries; nevertheless, it appreciated the political message behind the whole campaign.¹²⁶ On the other hand, though, OPEC was a sign to the North of the risk of being almost entirely dependent on imported raw materials, since, by this time, oil was their largest imported commodity.¹²⁷ Adams states that, since production costs had been very low in the oil producing, developing countries, and since the developed consuming countries had the decision-making power over oil, they had been treating it as it were a 'free good'¹²⁸ a powerful position that was soon challenged by OPEC. Consequently, this revolution in the world oil market caused a shock to world trade and Northern economies and OPEC further inspired the South with its demand for a 'New International Economic Order'.

¹²⁵ Ibid, 114

¹²⁶ Ibid, pp:114-115

¹²⁷ Ibid.

¹²⁸ Ibid.

The Southern Spirit in NIEO

The South used UNGA as the forum to take the NIEO agenda further into the documents. Two resolutions were adopted in 1974 by the Sixth Special Session of the United Nations General Assembly – the “ Declaration on the Establishment of a New International Economic Order” and the “Programme of Action on the Establishment of a New International Economic Order”.¹²⁹ The objectives outlined in these documents were elaborated later in “Charter of Economic Rights and Duties of States” and further strengthened in the resolution on “Development and International Economic Co-operation” adopted by the UN Seventh Special Session in 1975.¹³⁰ The NIEO demands can broadly be classified into the following three categories: firstly, general rules and principles for guiding international economic relations, secondly, suggestions for creating new international institutions or making changes in the current institutions, and finally, specific demands for special actions at the national level favourable to developing countries.¹³¹ Looking from a different angle, Kreinin and Finger point to four major objectives of NIEO: firstly, increasing less developed countries’ control over their economic destinies, secondly, accelerating the less developed countries’ growth rates, thirdly, tripling the share of global industrial production conducted in the less development countries by the year

¹²⁹UN, For further reading on the Declaration; Ellis Mark E. (1985) , The New International Economic Order and General Assembly Resolution: The Debate over the Legal Effects of General Assembly resolutions revisited, *California Western International Journal*, Volume 15, p. 651

¹³⁰ Sauvant K. P. and Hasenpflug H. (1977), *The New International Economic Order: Confrontation between North and South*, Westview Press (Colorado), pp.3-4

¹³¹ Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd. London, p.123

2000, and finally, narrowing the gap in *per capita* income between the developed and developing countries.¹³²

All the above demands show the dissatisfaction of the South with the prevailing economic relations dominated by the North. Murphy describes this as “the difference between the power to influence economic decisions in the centre and in the periphery of the world economy”.¹³³ According to Prebisch people in the centre, i.e. the North are more influential to most global economic decisions than are the people at the periphery, i.e. the South. In this sense, he says, NIEO was an intensive attempt to obtain the power to influence global economic decisions from the periphery.¹³⁴

The “Charter of Economic Rights and Duties of States” in 1975 reflects the burning desire of the South to create a more equitable ground in economic and trade relationship.¹³⁵ Murphy stresses that, under the Charter, members agreed that “the equal rights and duties of states made it incumbent upon all states to aid the economic development of every other state along the path chosen by its government”.¹³⁶ Chapter 1 of the Charter, under the fundamentals of international economic relations, stated the South’s view that economic relations should be based on equality, justice and fairness; other principles, such as peace,

¹³² Gamble J.K. and Frankowska M. (1986), International Law’s Response to the New International Economic Order: An Overview, *Boston College International Comparative Law Review*, Volume 9, Issue 2, pp.257-291 at p.259. Kreinin M. and Finger M. (1976), A Critical Survey of the New International Economic Order, *Journal of World Trade Law*, Volume 10, Issue 6, p. 493

¹³³ Murphy C.N. (2001), What the Third World Wants: an Interpretation of the Development and Meaning of the New International Economic Order Ideology in *The politics of Global Governance: International Organizations in Independent World* edited by Diehl P.F., 2nd Edition, Lynne Rienner Publishers (London), p.267

¹³⁴ Prebisch R. (1950), *The Economic Development of Latin America and Its Principle Problems*, Lake Success: United States.

¹³⁵ UNGA Res. A/Res/3281(XXIX) of 12 December 1974. For further reading on the Charter; Meagher Robert F. (1979), *An International Redistribution of Wealth and Power- A Study of the Charter of Economic Rights and Duties of States*, Elmsford,NY: Pergamon.

¹³⁶ Murphy C.N. (2001), What the Third World Wants: an Interpretation of the Development and Meaning of the New International Economic Order Ideology in *The politics of Global Governance: International Organizations in Independent World* edited by Diehl P.F., 2nd Edition, Lynne Rienner Publishers (London), p.269

self-determination, non-intervention, and human rights, were also integrated as fundamental.¹³⁷ Such inclusions demonstrated clearly that the South was not content with the existing economic system, that it was fearful of being dominated once again and it wanted to enjoy and protect its rights of absolute sovereignty.

In a broader sense, NIEO reflected radical ideas, since the major theme running through the whole process was a demand by the South for change in the North-South dimension by twisting the political architecture of international economic structures. In 1974, the Sixth Special Session of UNGA adopted two seminal resolutions devoted to NIEO – the “Declaration on the Establishment of a New International Economic Order”¹³⁸ and the “Programme of Action on the Establishment of a NIEO”.¹³⁹ In 1984 Robert Mortimer observed that the Sixth Special Session represented a clash between the voting power of the new Third World majority and US economic power.¹⁴⁰ In UNGA the South has the majority of members, therefore, the one-state-one-vote voting system favours the South, whereas the US led North holds the larger share of UN funds, consequently, the decision making process exacerbates the differences found in the North-South dimension.

The NIEO debate, therefore, marked a very significant shift in North-South discourse. As was indicated at the beginning of the NIEO discussion, some scholars were of the opinion that NIEO was a failure. For instance, Thomas Franck, in declaring that the NIEO agenda was far from the reality, by arguing that there was no genuine consensus to it from all

¹³⁷ UNGA Res. A/Res/3281(XXIX) of 12 December 1974, 29th Sess., Supp. No. 31 at p.50

¹³⁸ UNGA Res. 3201, Sixth Spec. sess. GAOR, Suppl.1, UN Doc. A./559

¹³⁹ UNGA Res. A/Res/S-6/3201, Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.79

¹⁴⁰ Mortimer (1984) is quoted in Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p.79

parties and that it lacked the basic requirement to be accepted in international law.¹⁴¹ Rohlik was of the view that its goals were hard to achieve when he stated that “The true goal is [that] economic development [should be] in a state of tight *interdependence*, requiring close cooperation and ‘friendly relations’ on a global scale, which [is] hardly imaginable in the current world”.¹⁴²

Although the NIEO threw up various practical difficulties, it nevertheless heralded an important era in the North-South dimension. If the creation of OPEC and UNCTAD are taken into account as being a part of the same process, it can be regarded as a progressive attempt by the South to influence the international system. Some authors argue that, although NIEO failed to make amendments in the international trade policies. As Roddick states:

Although unsuccessful in changing the terms of trade, it generated two radically new institutional departures: the creation of the ‘Group of 77 and China’ as a united negotiating front covering all southern countries, and the establishment of UNCTAD, the UN Conference on Trade and Development, seen in northern and initially, southern eyes as a rival to the northern dominated General Agreement on Trade and Tariffs.¹⁴³

Roddick sees this contribution as a challenge to the Northern efforts in re-establishment international trade and financial policies. Consequently, the NIEO debate contributed to the global governance discourse, not only in terms of its original purpose, whereby the South did not completely achieved its goals of establishing its position in economics and

¹⁴¹ Frank T. M. (1986), Lessons of the Failure of the NIEO, *International Law and Development* (Proceedings of the Canadian Council on International Law), p. 82

¹⁴² Rohlik J. (1983-1984), *Public Law Forum*, Volume 3, p.178

¹⁴³ Roddick J. (1997), Earth Summit North and South: Building a safe house in the winds of change, *Global Environmental Change*, Volume 7, Number 2, pp: 147- 165 at p. 149

trade, but it created the necessary atmosphere and momentum for presenting a united front for global governance in the future. In this respect, two organizations have contributed throughout the process – the Non-aligned Movement (NAM) and the G77 – which will be analysed in terms of the capacity of the South to exert itself on the North-South dimension.

NAM and G77: “Common Third World United Front”¹⁴⁴

In the current international system the North-South dimension influences decision-making in many areas, such as trade, security, environment and human rights. At present, the South realises the importance of presenting Southern concerns collectively, rather than individually, primarily because it is considered to be the only way to combat its marginalisation by the North in the decision-making forums.¹⁴⁵ To this end, the South is often represented collectively at the global level either by G77 or NAM, which some scholars recognize to be key advocates on global matters.¹⁴⁶ Because it is important to analyse the role of G77 and NAM in a global governance context, this chapter will now present a general overview of the international law and global governance aspects of the North-South dimension.

¹⁴⁴ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 86

¹⁴⁵ UN GA A/58/683, Annex I to the letter dated 15 January 2004 from the Permanent Representative of Morocco to the United Nations addressed to the Secretary-General, Article 3 of the Marrakech Declaration on South-South Cooperation states “ [...] No single country, even the most advanced among developing countries, has much hope of reaching individually expected growth and development and influencing outcomes of international agenda. But, collectively, our countries can play a more effective role in achieving development objectives and in shaping international relations.” [http://www.g77.org/doc/docs/Marrakech%20Final%20Docs%20\(E\).pdf](http://www.g77.org/doc/docs/Marrakech%20Final%20Docs%20(E).pdf) (last accessed on 12.09.2010)

¹⁴⁶ Kasa S., Gullberg A. and Heggelund G. (2008), The Group of 77 in the International climate negotiations: recent Developments and Future Directions, *International Environmental Agreements* Volume 8, p. 115, Najam A. (2005), Developing Countries and Global environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp. 303 – 321 at p. 306, Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp:1-29at p.10

There were two main reasons for the formation of a common Southern world united front. Firstly, the political and military pressure coming from Northern countries and their collective fronts, and, secondly, the financial and economic pressures coming from global financial institutions.¹⁴⁷ Hence, NAM was established as a third force alongside the “East and West” fronts during the Cold War period, while the key idea behind G77 was to achieve equality and justice in global economic forums.

NAM originated in 1961 at the first non-aligned summit in Belgrade, however, its influence has declined in comparison to its original standing for two major reasons: firstly, the end of the Cold War meant that its principle mandate had to be changed; and, secondly, the heterogeneity of its membership has made the organization highly complicated.¹⁴⁸ For instance, internal conflicts arising with the Iran/Iraq War, where, because both states were members, it was impossible for them to maintain the organisation’s agenda¹⁴⁹ However, Williams states that although the political influence of NAM has decreased to a certain extent it still contributes to the dialogue on issues such as sovereign equality and independence, decolonization, anti-racism, economic and development policies.¹⁵⁰

The landmark event for the origin of G77 was UNCTAD in 1964, where the North refused to support for the South’s request for a new international trade organization. The title ‘G77’ represents the number of states subscribed to the “Declaration of Developing Countries” issued at the end of UNCTAD. Even though membership has now increased to

¹⁴⁷ Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp:1-29 at p.8

¹⁴⁸ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 86, Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp:1-29 at p.11

¹⁴⁹ Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp:1-29 at p.11

¹⁵⁰ Ibid.

131, the name was retained for both symbolic and practical reasons – practical, because to alter the name with every change in numbers cannot be done.¹⁵¹ However, since China joined the group, it is now known as G77 and China.¹⁵²

Because G77's mandate had been based on achieving economic and developmental equality to all developing states, from the outset, because the North was not treating the South as equals, it demanded changes in international economic structures.¹⁵³ Therefore, the original member states issued a joint declaration (Article 10 of the Joint Declaration):

The United Nations Conference on Trade and Development marks the beginning of a new era in the evolution of international co-operation in the field of trade and development. Such co-operation must serve as a decisive instrument for ending the division of the world into areas of affluence and intolerable poverty. This task is the outstanding challenge of our times. The injustice and neglect of centuries need to be redressed. The developing countries are united in their resolve to continue to quest for such redress and look to the entire international community for understanding and support in this endeavour.¹⁵⁴

The above Article describes the North-South issues that provided the motivation for the demands for equality and justice in international trade and development. It also states that the South will act collectively in order to overcome the economic barriers in the global system that divides the world.

¹⁵¹ Williams M. (1997), The Group of 77 and Global Environmental Politics, *Global Environmental Change*, Volume 07, Number 3, pp,295-298

¹⁵² <http://www.g77.org/doc/Joint%20Declaration.html> (last accessed on 11.10.2010)

¹⁵³ Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, , pp:1-29 at p.13

¹⁵⁴ Article 10 of the Joint Declaration of the seventy-seven developing countries made at the conclusion of the United Nation's Conference on Trade and Development at Geneva in 15 June 1964, <http://www.g77.org/doc/Joint%20Declaration.html> (last accessed on 06.10.2010)

During its first decade, the G77 put the IMF, the World Bank and the General Agreement of Trade and Tariff (GATT) – the key global financial and trade institutions – under pressure to amend their financial and trade policies to address global poverty issues. This pressure resulted in some of its claims being successfully addressed. One such instance being the IMF and the World Bank’s adoption of its Development Committee in 1974 while another, in 1965, was when GATT adopted its Part IV of the GATT, which allowed the South to depart from the rule of reciprocity.¹⁵⁵

After the first few years of its establishment, NAM had to gradually adjust its original theme of standing as a third front to the East and West bipolarity during the Cold war. At the fifth NAM meeting in Colombo in August, 1976 in its political declaration it declared that there was an integral connection between politics and economics, and that it would adopt a new approach by engaging globally in both economic and political matters. However, it stated that, although it would attend to economic issues, the importance of the political concerns that it had always stood for should never be underestimated.¹⁵⁶ Thus NAM was transformed into a multi-issue organisation; however, since end of the cold war, its significance as a decisive political actor has been diminished. Later, it amended its mandate to include the economic concerns of the South, although it has not been re-established in as dominant a place in global governance as the G77, which, since its formation as the representative of most of the South’s economic and political concerns, has

¹⁵⁵ Therien J.P. (1999), Beyond the North-South Divide: The Two Tales of world Poverty, *Third World Quarterly*, Volume 20, Number 4, pp.723-742 at p. 727-728

¹⁵⁶ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 88

come to be known as the “central economic bargaining arm of the Third World coalition”.¹⁵⁷

There are challenges to the unity of these groups, however, that need to be addressed, and one such is the South’s growing diversity, since both institutions represent a wide variety of social, cultural and religious interests across Asia, Africa and Latin America and this is very difficult when agreeing a common stand on any matter.¹⁵⁸ Consequently, maintaining a united front is an important task in terms of the both groups’ sustainability. Another challenge is the differentiation between their members, since diversity among the countries of the South in terms of their economic stability is increasingly getting wider; for instance, there are three distinct groupings: the least developed countries, the developing countries and the emerging world powers. The emerging world powers, together with OPEC countries, known as BRICS (Brazil, India, China and South Africa), of course, have much higher levels of political influence and economic growth than the other Southern members, and this sometimes creates inter-group power politics when it comes to prioritising Southern concerns at a global level.

These political, economic and geographical challenges have created differences between members on many occasions; for instance, the groups were fractured on a geographical basis in negotiations on desertification when the African countries emphasised that they should have priority within the UN Convention to Combat Desertification over the non-

¹⁵⁷ Williams M. (1997), The Group of 77 and Environmental Politics, *Global Environmental Change*, Volume 7, Number 3, pp: 295-298 at p.295. Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume: 14, No:1, pp:1-29 at p.13

¹⁵⁸ Rajagopal B. (2003), *International Law from Below: development, social movements, and Third World resistance*, Cambridge University Press, p. 87

African members, who held different opinions.¹⁵⁹ Also, in Climate Change negotiations, the position of the South often splits between oil-producing OPEC countries and the members of the “Alliance of Small Island States” (AOSIS).¹⁶⁰ Of course, AOSIS members are at high risk of sea-level rise, while the OPEC members are concerned about the threat to their economies of climate change policies. In order to represent the South at global level, therefore, the collective sub-groups must overcome their differences. Optimistically, Najam expresses that “[...]these differences [are] neither deep nor lasting. Indeed, they have been exceptions to an otherwise remarkable sense of collectivity. This is a weak unit, but a resilient collectivity”.¹⁶¹

The sequence of historical events, discussed above, proves that throughout the global political history the South has experienced many unfair circumstances as a result of the North-South division. The common point of debate, however, centres on the absence of equity and justice in the formation and operation of the major global institutions. The final section of this chapter, therefore, will analyse the principles of equity, fairness and justice in relation to the various governance issues addressed in the preceding sections of this chapter. It will emphasise that, in order to ensure these principles in global governance processes and procedures, it is vital to attempt to mitigate North-South inequalities.

¹⁵⁹ Corell. E. (1999), *The Negotiable Desert: Expert Knowledge in the Negotiations of the Convention to Combat Desertification*, Linköping Studies in Arts and Sciences No 191(Ph.D. Dissertation), Linköping University, Linköping, Sweden., Agrawal A., Narain S., Sharma A. (edi.)(1999), *Green Politics: Global Environmental Negotiations 1*, Centre for Science and Environment, New Delhi

¹⁶⁰ Miller M. (1995), *The Third World Environmental Politics*, Boulder: Lynne Rienner

¹⁶¹ Najam A. (2005), *Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement*, *International Environmental Agreements* Volume 5, pp: 303-321 at p.306

The importance of maintaining equity, fairness and justice in mitigating North-South inequalities in governance

This chapter has raised the argument about whether the global governance system guarantees both developed and developing states equal enjoyment based on principles of equity, fairness and justice. Its central argument has been that the global governance system cannot be considered to be a complete system of governance until it creates adequate mechanisms to ensure those principles in its decision making processes and procedures. Writing about the completeness of a legal system, Vaughan Lowe states, “[Only] when the elements of a legal system can be combined to build up a normative structure adequate for the needs of the society to which it applies, we may think of the legal system as being complete”.¹⁶² Any governance system would not be complete unless its subjects can enjoy both equal participation in decision-making *and* the fruits that the system generates.

Such an argument raises a critical question about the present global governance system, which is whether it has truly been able to provide adequate mechanisms and normative structures in order to safeguard the fundamental ideologies of equity, fairness and justice in practice. This thesis does not consider that an equal vote-casting system equates to equal participation, since equal representation in the decision making process, as well as the outcome of a particular decision, should reflect every party’s interest in the subject in question.

¹⁶² Lowe V. (2000), *The Politics of Law-Making: At the Method and Character of Norm Creation Changing?* in *The Role of Law in International Politics*, Edited by Byers M, Oxford University Press, pp: 207-225 at p.208

In this respect the interlinked concepts of justice, fairness and equity contribute to enrich the argument of inequality of North and South parties at global decision making forums.

Justice, fairness and equity concepts are integral to any normative and procedural aspects of environmental decision making forum. Anand further emphasises the linkage between these three concepts in terms of environmental decision making process at the global level:

I contend that procedural aspects of international policy-making are closely related to justice issues. How decisions are made and what voting procedures and decision-making structures are adopted to formulate international environmental policies are questions that are crucial to a “just, fair and equitable” treaty, policy or law at the international level.¹⁶³

The concept of justice involves discussion of two main areas: procedural justice and distributive justice. Distributive justice is about addressing the inequitable social, economic and political burdens faced by certain groups of people, which often result from the different levels of their development.¹⁶⁴ For example, in the climate change debate, the level of social, economic and political burden to comply with the international obligations is largely dependent on each party’s development capacity.¹⁶⁵ The degree to which different states experience the effects of climate change or are able to carry out their obligations, depends on their level of development. Procedural justice is about addressing inequitable participation in the decision-making process as a result of different levels of development of different parties. For example, among some of the procedural injustices in the climate debate are the inability to conduct scientific research up to the level that of a developed country, and the inability to send the climate experts to the negotiation table due

¹⁶³ Ibid

¹⁶⁴ Anand R. (2004), *International Environmental Justice: A North-South dimension*, Ashgate Publishing Ltd., p.10

¹⁶⁵ Timmons J.R. and Bradley P. C. (2007), *A climate Injustice: global inequality, North-South politics and climate policy*, Massachusetts Institute of Technology

to lack of resources. Such procedural injustices prevent Southern states from participating as effectively as their Northern counterparts in the climate debate.

The concept of fairness involves considering on what grounds the rules of governance are formulated. Referring to Franck, Anand explains fairness is judged by two criteria. Firstly, fairness is decided by how rules distribute costs and benefits among its participants, and secondly, the process by which the rules are made and applied.¹⁶⁶

Concepts of equity are closely linked to the concepts of justice and fairness. Equitable decision making processes lead to laws and policies which distribute costs and benefits evenly among everybody affected by the decision making. In the climate debate, the effects of the climate change are not evenly distributed among each state of the world. The ability to face the challenges created by climate change is also different according to the economic and political strength of each state.¹⁶⁷

As has been explained in the discussions about the North-South dimension in this chapter, principles of equity, fairness and justice should be considered in the wider context of equal recognition, capacities, distribution and participation of both North and South.¹⁶⁸ If the final outcome of either a convention, a declaration or of any other regulation, does not represent the interests of every party concerned, then the whole system of governance will be destabilised.

¹⁶⁶ Anand R. (2004), *International Environmental Justice: A North-South dimension*, Ashgate Publishing Ltd., p.8

¹⁶⁷ Timmons J.R. and Bradley P. C. (2007), *A climate Injustice: global inequality, North-South politics and climate policy*, Massachusetts Institute of Technology

¹⁶⁸ This issue is discussed further in Chapter 2, p.85.

The heart of the argument of this thesis, therefore, is that the global governance agenda and global decision making process should represent the concerns of both North and South equally. The North-South debate regarding environmental negotiations provides many instances where decision-making powers have not been enjoyed equally by the world community. For instance, in the climate change debate, the South criticises the priority-setting that has given less importance to the South's concerns than to the North's.¹⁶⁹ The inequalities in science and research between the South and the North are a prime reason for the North's dominance of the priorities agenda in climate change negotiations, and this has created unfairness at the highest level of climate negotiations.¹⁷⁰ As a consequence of these failures – and others described earlier in this chapter – to meet the primary principles of global governance, the South has voiced the need for “new orders” to be incorporated into global governance structures.¹⁷¹

The fundamental ideologies of equality, justice and fairness should be interwoven in any system of governance that determines equal treatment to all its subjects; these concepts have been developed in line with the justice theory of Rawls, whose “A Theory of Justice” equates justice with fairness, which, he argues, should be the social contract at the base of a well-ordered society.¹⁷² Rawls's ideas on distributional justice also depend on a fair

¹⁶⁹ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd.

¹⁷⁰ Ruchi Anand recognises this less important position of the South at the climate governance as “the handicapped negotiation position of the South” at Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p. 44

¹⁷¹ Murphy discusses about “New Order ideology” inspired as a result from ‘consciousness raising,’ and the recognition of real problems of international economic order. Murphy C.N.(2001), What the Third World Wants: An Interpretation of the Development and Meaning of the New International Economic Order Ideology in *The Politics of Global Governance: International Organizations in an Interdependent World* edited by Diehl P.F., Lynne Rienner Publishers, pp: 261-275

¹⁷² Rawls J. (1971), *Theory of Justice*, The Belknap press of Harvard University Press., Martens T.(2005), International or Global Justice? Evaluating Cosmopolitan Approach in *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions* edited by Follesdal A. and Pogge T., p.89

allocation of resources among diverse members of the society.¹⁷³ Many scholars later argued that defining justice solely on distributional principles is only a normative approach to the concept, therefore, they have focused on addressing the process by identifying individual and social recognition as being key elements for attaining justice, since recognition, capabilities, distribution and participation are important points in any discussion about justice.¹⁷⁴

Anand places justice issues into two categories: procedural justice and distributive justice. Procedural justice, which is the process adopted by the decision-making authority, assures the right to self-determination, equal participation, representation, respect and justice for all people regardless of their social, economic and political status.¹⁷⁵ As Ebbesson explains, “the procedural element of justice is evident in the ways the global agreements are negotiated and debated”, he further states that in order to achieve procedural justice it is necessary that all states can participate equally in the decision making process of international agreements.¹⁷⁶ Distributive justice, on the other hand, looks at the outcome of the decisions made, which includes all matters relating to inequitable distribution.¹⁷⁷ In terms of environmental harm, distributive justice means the distribution of costs and measures for avoiding predicted harm.¹⁷⁸ A good example of this was the interpretation of justice by both North and South during the several environmental negotiations leading to the “Montreal Protocol on Substances that Deplete the Ozone Layer” (Montreal Protocol),

¹⁷³ Kelly E. (edited) (2001), *Justice as Fairness: A Restatement/John Rawls*, pp:39-44

¹⁷⁴ Schlosberg D. (2007), *Defining Environmental Justice*, Oxford University Press, p.3., Young I.M. (1990), *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, p.16 for further reading: Fraser N. (1997), *Justice Interrupts: Critical Reflections on the “Post socialist Conditions”*, New York Routledge.

¹⁷⁵ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd

¹⁷⁶ Ebbesson J. (2009), Dimensions of Justice in Environmental Law in *Environmental law and justice in context*, edited by Ebbesson J. and Okowa P., Cambridge University Press, pp: 1-36 at p.23

¹⁷⁷ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.10

¹⁷⁸ Ebbesson J. (2009), Dimensions of Justice in Environmental Law in *Environmental law and justice in context*, edited by Ebbesson J. and Okowa P., Cambridge University Press, pp: 1-36 at p.23

which acknowledged differentiated states' obligations to combat the depletion of ozone layer based on the principles of justice.¹⁷⁹

The concept of equality and justice in relation to rich and poor countries has failed to promote equality because it fails to narrow the gap between North and South,¹⁸⁰ because, as Shelton states, the injustices of the past have proved disadvantageous to the South, especially in the area of trade.¹⁸¹ In the 1960s and '70s the concerns for equality and justice in global trading governance, Shelton goes on to say, "led newly independent and economically disadvantaged states to join in efforts to construct a 'New International Economic Order', which would reconstruct international economic arrangements to achieve equitable distributions of global wealth."¹⁸² She further explains that Article 29 of the "Charter of the Economic Rights and Duties of States", adopted by UNGA in 1974, states that the "seabed and its resources" are the common heritage of mankind, consequently provisions ought to be established to ensure that the natural global resources be equally shared by all states, with particular attention being given to the specific needs of developing countries.

The differences between the developing and the developed world are critical features in the debate about global governance. The assumption that 'all states are equal' becomes

¹⁷⁹ Mickelson K. (2009), Competing Narratives of Justice in North-South environmental relations: the case of ozone layer depletion in *Law in Environmental law and justice in context*, edited by Ebbesson J. and Okowa P., Cambridge University Press, pp:297-315 at pp:311-315

¹⁸⁰ Shelton D. (2009), Describing the elephant: international justice and environmental law in *Environmental law and justice in context*, edited by Ebbesson J. and Okowa P., Cambridge University Press, pp:55-75 at p.61

¹⁸¹ Ibid.

¹⁸² Shelton D. (2009), Describing the Elephant: international justice and environmental law in *Environmental law and justice in context*, edited by Ebbesson J. and Okowa P., Cambridge University Press, pp:55-75 at p.61. Shelton further explains that Article 29 of the Charter of the Economic Rights and Duties of States, adopted by the UNGA in 1974 states the seabed and its resources are common heritage of mankind. According to Shelton these provisions are established to emphasize that the natural global resources should be equally shared by all states and particular attentions should be given to the specific need of developing countries.

dubious in light of the political and economic power gaps between North and South. For example, as Cassese points out, Article 27.3 of the UN Charter grants veto powers only to the permanent members of the Security Council, even though Article 2.1 proclaims sovereign equality for all members'.¹⁸³ Such power in the Security Council, therefore, explains the power politics currently underlying the global governance system that has created a major imbalance between North and South. Some authors argue that, given that only five states among nearly two hundred hold veto power in the Security Council the assertion that 'all states are equal' is clearly untrue.¹⁸⁴ Antonio Cassese's view is that 'the sovereign equality of all members of the United Nations, as a general guideline, is weakened by the veto power that has been specifically laid-down as a legal exception'.¹⁸⁵

North-South debate explains many instances that these fundamental ideologies are not equally enjoyed by the world community. In the climate change debate the South criticises the priority setting of the Northern agenda that gives less importance to Southern immediate concerns over Northern climate concerns.¹⁸⁶ Inequality of the adequacy of science and research base between the South and the North is a main reason for this dominant authority in priority setting in climate change negotiations.¹⁸⁷ This situation has created unfair position for the South at the highest level of climate negotiations.¹⁸⁸ Unless the governing process and procedures follow equality, justice and fairness principles the international system remains imbalanced and incomplete.

¹⁸³ Cassese A. (1986), *International Law in a Divided World*, Oxford University Press, p.129

¹⁸⁴ Ibid.

¹⁸⁵ Ibid.

¹⁸⁶ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd.

¹⁸⁷ Ibid., p. 44

¹⁸⁸ Ruchi Anand recognises this less important position of the South at the climate governance as "the handicapped negotiation position of the South" at Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p. 44

Conclusion

The North-South dimension has played a key role in global decision-making processes and procedures during every period of the creation of the international governance system. A series of historical events have contributed to the North-South dimension that have affected how decisions have been made, on what principles they have been taken, how votes are recorded and who sits on the highest decision-making bodies. Southern countries have resisted, and continue to resist, the global solutions presented with Northern agendas. The primary Southern demand is the genuine equality of states in political, economic, and social decision-making, which would ensure their right to be involved in global decision-making forums as equal partners to the North, thereby achieving the universal principles of equality, justice and fairness. As Najam states, “[...] ‘Southness’ stems not just from a sense that the international system is ineffective in responding to Southern concerns, it grows out of the belief that the system is less than legitimate in terms of its commitment to Southern interests”.¹⁸⁹

In conclusion, I quote Agarwal and Narain: “How can we visualize any kind of global management in a world so divided between the rich and the poor, the powerful and the powerless, which does not have a basic element of justice and equity?”¹⁹⁰ The argument of this thesis is that this absence creates so many divisions between North and South that it has ultimately led to a serious imbalance in the system of global governance. This chapter has discussed the origination of the concept of the North-South dimension in context of global governance and how this has played a crucial role in the political, economic and

¹⁸⁹ Najam A. (2005), *Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement*, *International Environmental Agreements*, Volume 5, pp. 303-321 at p.305

¹⁹⁰ Agarwal A. and Narain S. (1998), *The Atmospheric Rights of All People on the Earth*, Delhi: Centre for Science and Environment, p. 1

social areas of the international system. It has explored how this concept takes on different shapes, depending on changes to the overall global atmosphere at different times but notes however, that the actual problems that have been created as a result appear never to change. This thesis will show that, although they have been built into the structure of the global institutions, the principles of equality, justice and fairness, by their very absence have been very closely connected with divisions in the North-South dimension throughout the evolution of this divided system of world governance.

This chapter has described a number of instances where the South has attempted to change the inequalities and injustices in economic and trading policies of global governance. However, the South no longer limits its voice merely to economic demands. The next chapter will discuss a different aspect of the North-South dimension – global environmental issues – which have transformed the dimension from a purely economic debate into the much wider territory of sustainable development and environmental protection. In this context, the South has taken the North-South dimension into a wider perspective. The chapter will, therefore, explore the various dimensions of global governance and whether, and how far, the environmental governing mechanisms have been successful in terms of narrowing the North-South divide.

2. Environmental Governance in Worlds Apart

*“The world needs a new vision that can galvanize people everywhere to achieve higher levels of co-operation in areas of common concern and shared destiny.”*¹⁹¹

Chapter One, Our Global Neighbourhood

Introduction

Given the rapid proliferation of global environmental laws, institutions and instruments, it is instructive to consider whether these initiatives better incorporate the Southern perspective/principles of equity that are so important to the North-South dimension. As it was argued in Chapter 1, much of the foundational international law and political practice fails to recognise the Southern perspective. In a global environmental governance context, there have been a few success stories, such as global negotiations on ozone depletion, which impressively compromised both Northern and Southern positions. However, many other global environmental negotiations have highlighted the conflict of interests between North and South. This has hampered the development of effective global environmental regimes, the ongoing disputes regarding climate change and forests negotiations being good examples.

¹⁹¹ Chapter one of the Report of the Commission on Global Governance published by Oxford University Press in 1995. <http://www.gdrc.org/u-gov/global-neighbourhood/index.htm> (last accessed on 03.11.2010)

This chapter is underpinned by the argument, developed in the last chapter, that the lack of adequate decision making frameworks based on the historical, political and economic differences between North and South undermines many governance efforts involving environmental issues. The North-South dimension explains the reasons for glaring disparities in global environmental governance. The primary end-goals of Southern agendas, which are based on economic growth, poverty reduction, and industrial transformation¹⁹², tend to focus more on immediate environmental necessities, such as safe drinking water, population growth and desertification.¹⁹³ By contrast, the North has passed the stage where policy making is guided primarily by such developmental considerations. Consequently, the developed countries tend to engage over wider global issues, as Bodansky explains:

In part, economic development may help explain the growth of environmental awareness. As societies grow richer, they can afford to focus not just on the provision of basic human necessities, such as food and housing, but also “luxury goods,” such as a cleaner environment.¹⁹⁴

This regional conflict in terms of environmental priorities is often debated at international negotiations, and is a contemporary illustration of the North-South dimension. This chapter argues that very often Southern environmental concerns are marginalised in global decision making fora by the environmental priorities that have been set by the North.

¹⁹² Timmons R.T. and Parks B.C. (2007), *A Climate of Injustice: Global Inequality, North-South Politics, and Climate Policy*, MIT, p.51

¹⁹³ Young O.R. (1996), The Effectiveness of International Governance Systems in *Global Environmental Change and International Governance* edited by Young O.R. *et al*, University Press of New England, p.6

¹⁹⁴ Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, P. 19

The first section of this chapter examines the historical evolution of global environmental governance, and why it has become an issue for international concern by discussing contemporary environmental problems. It will emphasise the importance of understanding the concept of the interdependence of humans and the environment in order to determine priorities in global decision making processes. This will be followed by an examination of the 'transboundary' nature of global environmental problems, which demand a system of governance that stretches beyond national boundaries in order to bridge North-South divisions.

The chapter then explores the three general principles of international law that determine the construction of environmental governance. This analysis will understand how international environmental law and policy structures support the application of the equity, fairness and justice principles in decision making forums. To this end, principles of state sovereignty, the right to development, and common, but differentiated, responsibilities, will be considered regarding the evaluation of existing environmental governance mechanisms and institutions in the context of the North-South dimension.

This chapter finally offers an in-depth analysis of two environmental institutions that have become established in the global environmental governance field. Emphasis will be placed on understanding what options they need to take into account when looking at issues from a Southern environmental perspective. The two institutions – the Global Environment Facility (GEF) and the United Nations Environment Programme (UNEP) – will be examined in order to discover the ways by which traditional governing systems continue to place more emphasis on those environmental priorities that are put forward by the North. These institutions have been selected because they are primarily based within the UN and

the World Bank – the two principal global governance organisations. This chapter, therefore, examines these institutions’ structures, decision-making processes, procedures and voting methods.

In its conclusion, this chapter argues that the existing architecture of global environmental decision making must be improved if it wishes to achieve a more effective global governance system that equally reflects the needs of both North and South. This chapter will conclude that global environmental institutions and mechanisms need to be enriched by the application of the three abiding principles of international law – equity, fairness and justice – so that the concerns of both North and South are represented equally at the decision making table.

The Evolution of Global Environmental Governance

Only a few decades ago international environmental problems were not widely debated, neither had they acquired a global focus. According to some scholars the notion of global environmental governance would have been a strange idea at the beginning of the last century.¹⁹⁵ In 1945 when the UN was established, its Charter did not even mention environmental protection¹⁹⁶, let alone establish a specialised agency for environmental protection. Indeed, no major policy maker considered environmental matters to be a potentially critical problem until pollution and depletion started to become visible in many parts of the world. Using the earth’s scarce resources for human developmental ends together with the over-use of industrial processes has disrupted the harmony of the world’s

¹⁹⁵ Roch P. and Perrez F.X. (2005), International Environmental Governance: The Strive Towards a Comprehensive, Coherent, Effective and Efficient International Environmental Regime, *Colorado Journal of International Environmental Law and Policy*, Volume 16, Number 1, p.1-2

¹⁹⁶ Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, P. 26

natural cycle. In 1962, the ever popular Rachel Carson, writing against the misuse of chemical pesticides in *'Silent Spring'*, opened the eyes and minds of the global community by her warning about the environmental threats to 'mother nature'¹⁹⁷, by identifying environmental pollution as "[the] reckless and irresponsible poisoning of the world that man shares with all other creatures ..."¹⁹⁸ Similar landmarks in environmental literature are Stewart Udall's *'Quiet Crisis'* (1963), Jean Dorst's *'Before Nature Dies'* (1965) and Rolf Edberg's *'On the Shred of a Cloud'* (1966)¹⁹⁹, all of which warned about deteriorating environmental conditions and their harmful effects on humankind.

By the beginning of the 1960s, social movements had become actively involved in environmental concerns and the protection of the environment became a major concern in developed countries²⁰⁰ since, particularly in the US and Europe, people were beginning to experience the dreadful consequences of 'un-bridled industrialization'. Bodansky characterises the "general upsurge of interest in the environment" during the 1960s as "environmental revolution".²⁰¹ He argues that the environmental movement took such issues beyond mere conservation policies to a much broader plane that included other relevant areas, such as economic growth, pollution, and technology and population.²⁰²

¹⁹⁷ Carson R.(1962), *Silent Spring*, Houghton Mifflin Company

¹⁹⁸ Carson R. (1962), *Silent Spring*, Houghton Mifflin Company, p.ix, Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press, Buckingham, p.6.,Caldwell L.K.(1990) *International Environmental Policy: Emergence and Dimensions*, 2nd ed., Durham: Duke University Press, p.29

¹⁹⁹ Caldwell L.K.(1996) *International Environmental Policy: From Twentieth to the Twenty-First Century*, 3rd ed., Durham: Duke University Press, p.36

²⁰⁰ Ivanova M. (2007), Looking Forward by Looking Back: Learning from UNEP's History, in *Global Environmental Governance: Perspectives on the Current Debate* edited by Swart L and Perry E., New York: Centre for UN Reform Education, p.27-28

²⁰¹ Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, P.

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²⁰² Ibid.

Ivanova argues that these social movements were able to pressure the global political agenda with environmental concerns.²⁰³

By the early 1970s the global community was beginning to realise the problematic consequences of intensive industrialisation. In 1972 Ward and Dubos presented a report at a conference about the care and maintenance of the planet, which described the global environmental problem as a conflict between man's natural inheritance and man-made creations.²⁰⁴ In it they wrote:

Man inhabits two worlds. One is the natural world of plants and animals, of soils and airs and waters which preceded him by billions of years and of which he is a part. The other is the world of social institutions and artefacts he builds for himself, using his science and his dreams to fashion an environment obedient to human purpose and direction [...] His condition is to live aspiringly, and uncertainly where the 'biosphere' of living things and the 'technosphere' of his inventions interact.²⁰⁵

Following their report, in 1972, the United Nations Conference on Human Environment (UNCHE) was held in Stockholm with the theme of 'the human environment'. This Conference had several important outcomes, such as the establishment of the United Nations Environment Programme (UNEP) and the United National Declaration on Human Environment (Stockholm Declaration). The UNCHE is recognised as having been the first global attempt to gather all state parties together to achieve better environmental standards

²⁰³ Ivanova M. (2007), Looking Forward by Looking Back: Learning from UNEP's History, in *Global Environmental Governance: Perspectives on the Current Debate* edited by Swart L and Perry E., New York: Centre for UN Reform Education, p.27

²⁰⁴ 'Only One Earth: The Care and Maintenance of Small Planet' is an unofficial report commissioned by Maurice F. Strong, the Secretary-General of the United Nations Conference on the Human Environment, prepared with the assistance of a 152-member Committee of Corresponding Consultants in 58 countries. Ward B. and Dubos R. (1972)., *Only One Earth; The Care and Maintenance of a Small Planet*, Andre Deutsch Ltd, p.12

²⁰⁵ Ibid.

in the world.²⁰⁶ Thereafter, environmental concerns became a centre of international attention, reaching their prime in 1992 with the United Nations Conference on Environment and Development (UNCED) in Rio, which emphasised the importance of sustainable development. Post-Rio marked a significant period in the global environmental debate where many initiatives were pursued. This included a number of Multilateral Environmental Agreements (MEAs) being adopted, numbers of environmental NGOs increased, world-wide multilateral environmental projects were initiated and global policy makers considered environmental issues very seriously.²⁰⁷ Ten years after, the next UN environmental conference, the United Nations Conference on Sustainable Development (UNCSD) - the World Summit on Sustainable Development – took place in Johannesburg in 2002. UNCSD further stressed the importance of implementing sustainable development goals agreed at UNCED in 1992.

In today's context some of the major environmental problems, such as climate change, biodiversity and ozone depletion, are considered as serious as global security.²⁰⁸ The current global environmental governance system, which involves various processes, procedures, institutions and international treaties, determines how decisions are taken in the light of managing resources and interests, how conflicts are resolved and how the different actors arrive at agreement.

²⁰⁶ Daniel Bodansky notes that there are two other international environmental conferences before Stockholm Conference. They are 1949 Conference on the Conservation and Utilization of Resources and 1968 Biosphere Conference. Yet, he emphasises that Stockholm Conference had high political significance more than the previous conferences. Its outcomes made a long last impact on the global environmental governance. Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, p. 28

²⁰⁷ Ibid, pp: 34-35

²⁰⁸ Burleson E. (2008), A Climate of Extremes: Transboundary Conflict Resolution, *Vermont Law Review*, Volume 32, p.477

The world's states are so diverse, but the environmental problems they carry are even more so. As Chapter 1 outlined, the world is divided into North and South according to economic, political and social criteria. The South is rich in natural resources and biodiversity, whereas the North wields the most financial, military and political power. In addition, Northern dominance in scientific and expertise in environmental research contributes heavily to regional inequalities in global environmental governance.²⁰⁹ For example, in climate negotiations the lack of Southern participation is highlighted not only in the process but also in the composition of the expertise groups. Consequently, there is an enormous disparity in North-South participation in the Intergovernmental Panel on Climate Change (IPCC) whose working groups are almost completely composed of American and European scientists.²¹⁰ These knowledge and technological barriers prevent Southern participation in these global efforts²¹¹, as Gordon explains, because although the science is often viewed as an impartial element, nothing prevents scientists from being influenced by their cultural background.²¹² Therefore, even if sub-consciously, scientists may be led to conclusions that place more emphasis on climate change issues of North America and Europe, due to their cultural views and biases.²¹³ In effect, during the early phase of the

²⁰⁹ Timmons R.T. and Parks B.C. (2007), *A Climate of Injustice: Global Inequality, North-South Politics, and Climate Policy*, MIT, pp: 15-17, Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p. 44, Karlsson S. (2002), The North-South Knowledge Divide: consequences for Global Environmental Governance, Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies

²¹⁰ Gordon R. refers Schneider et al. (edited).(2002), *A Southern Perspective on Curbing Global Climate Change, in Climate Change Policy: A Survey*, p.375 in Gordon R. (2007), Climate Change and the Poorest Nations: Further Reflections on Global Inequality, *University of Colorado Law Review*, Volume 78, pp:1559-1624

²¹¹ Karlsson S. (2002), The North-South Knowledge Divide: consequences for Global Environmental Governance, Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies, Gordon R. (2007), Climate Change and the Poorest Nations: Further Reflections on Global Inequality, *University of Colorado Law Review*, Volume 78, pp:1559-1624 at p.1600, Biermann F., Big Science, Small Impacts- In the South? The Influence of Global Environmental Assessments on Expert Communities in India, *Global Environmental Change*, Volume 11, Issue 4, pp: 297-309

²¹² Gordon R. (2007), Climate Change and the Poorest Nations: Further Reflections on Global Inequality, *University of Colorado Law Review*, Volume 78, pp:1559-1624, p.1600

²¹³ Ibid.

climate change discussions, the whole debate about climate change was dominated by the North, despite the South being far more vulnerable to climate change. One of the many critics, Anand, states that “[the] dominance of western science and research, [the] imposition of the western agenda and priority setting according to the Northern concerns [is the] unfair conditionality attached to aid and technology transfers”.²¹⁴ Consequently, decisions made regarding the world’s natural resources display the uneven power relations between the environmentally-rich South and the politically and economically-rich North. This chapter, therefore, demonstrates that the global environmental governance framework needs to maintain a balance in this most contentious area.

The above sketch of the historical evolution of environmental governance provides the context for understanding the existing environmental laws and political frameworks. The next section analyses how the North-South political global debate has shifted from the economic paradigm that had previously been the dominant focus, to issues concerning the environment.

From Brandt to Brundtland²¹⁵: Shifting the Paradigm of the North-South Dimension

Many decades of individual and collective attempts to determine an international economic order by establishing equality for the South, led, in the late 1980s and early 1990s, to a

²¹⁴ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd. p.43-45

²¹⁵ Brandt Report highlights the importance of mobilizing additional funds for development of developing countries’ economic and trade standards. Brundtland Report emphasises the importance of integrating long terms environmental considerations into the developments strategies- sustainable development. The phrase “The road from Brandt to Brundtland” is used in Dieter K. (1995), *Sustainable Development: Linking Global Environmental Change to Technology Cooperation in, Environmental Policies in the third World: A Comparative Analysis* edited by Dwivedi O.P. and Vajpaeyi D. K., Mansell publishing Ltd., p.2

series of highly influential developmental studies – the Brandt Commission Reports – which emphasised the importance of improving the economic and trading standards of the South.²¹⁶ Soon afterwards, however, due to numerous predictions of environmental threats being made by scientists and environmentalists, those responsible for global governance began to face up to the world’s environmental challenges by creating a different form of agenda.²¹⁷ Since then, environmental concerns have constituted an important part of the global governance discourse, which inevitably influenced the North-South paradigm. Until this shift occurred, Southern countries had primarily mobilized the necessary funds from developed countries in order to facilitate equal participation in international trade and other related areas.

Then, in 1987, with the publication of ‘Our Common Future’²¹⁸, the World Commission on Environment and Development, otherwise known as the Brundtland Commission²¹⁹, a different focus was introduced to the international development debate. This led to the transformation of the North-South paradigm from a purely developmental concern, to a

²¹⁶ The Brandt Commission, *North-South: A Programme for Survival*, London: Pan Books, 1980, Brandt Commission, *Common Crisis North-South: Cooperation for World Recovery*, London: Pan Books, 1983, cited by Dieter K. (1995), Sustainable Development: Linking Global Environmental Change to Technology Cooperation in, *Environmental Policies in the third World: A Comparative Analysis* edited by Dwivedi O.P. and Vajpaeyi D. K., Mansell publishing Ltd., p.1

²¹⁷ Establishing the climate change problem and global warming, in 1988, a NASA scientist James Hansen discovered the cause and effect relationship between the rising global temperatures and human emissions. Developing his findings, Intergovernmental Panel on Climate Change, a group of experts on climate change published a study report in 1990. Testimony of Michaels P. before the Committee on Small Business, United States House of Representatives, Kyoto Protocol: “A useless Appendage to an Irrelevant Treaty ” in July 29th 1998. <http://www.cato.org/testimony/ct-pm072998.html> (last accessed on 03.11.2010) In May 1985, a British research group published an alarming report that proved the losses in the ozone layer over Antarctica, which was a strong indication for environmental catastrophe on ozone depletion which causes threat to global warming and human health. (NASA 1986,15) Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd.

²¹⁸ The Report of the World Commission on Environment and Development on 8th of June 1987, http://www.regjeringen.no/upload/SMK/Vedlegg/Taler%20og%20artikler%20av%20tidligere%20statsministre/Gro%20Harlem%20Brundtland/1987/Presentation_of_Our_Common_Future_to_UNEP.pdf (last accessed on 03.11.2010)

²¹⁹ The World Commission on Environment and Development was established by the General Assembly Resolution: A/Res/38/161 on Process of Preparation of the Environmental Perspective to the Year 2000 and Beyond. <http://www.un-documents.net/a38r161> (last accessed on 03.11.2010)

sustainable developmental concern; thus progress was made towards a more equitable, fair and just model of North-South governance.²²⁰ As Agenda 21 specifically mentions:

[to a] governance that is transparent and democratic in nature, including the terms of decision-making and operations, by guaranteeing a balanced and equitable representation of the interests of developing countries and giving due weight to the funding efforts of donor countries.²²¹

The North–South dimension of the environmental debate has highlighted several issues relating to the “equitable representation of the interests of developing countries”. For instance, as mentioned in Chapter 1, because post-colonial and post-war institutional approaches have created a North-South divide, global governance mechanisms have tended to favour the Northern view-point, consequently the decision making process penalises the South.

In addition to the North-South dimension, the global environmental regime is complex for several other reasons. The nature of today’s environmental problems require a highly complex system of governance capable of satisfying both biocentric and anthropocentric concerns, while, at the same time, addressing transboundary environmental issues that have a global focus. This is discussed in the next section.

²²⁰ Williams M. (1997), The Group of 77 and Global Environmental Politics, *Global Environmental Change*, Volume 7, Number 3, pp. 295-298

²²¹ Para.33.14, (A)(iii), Agenda 21, http://www.un.org/esa/dsd/agenda21/res_agenda21_33.shtml (last accessed on 08.11.2010)

Understanding the Nature of Global Environmental Problems

The transboundary nature of environmental issues has increasingly brought local environmental issues to the attention of global decision-makers. Once local and national environmental concerns become international concerns, the debate is inevitably influenced by the North–Southern dimension. In facing ‘burning’ issues, such as poverty eradication and economic development, Southern states stress the importance of utilising its natural resources in order to strive for improvements in economic development that will bring prosperity to the region. The North, though, will argue to the contrary, by stating that the South’s focus should be to aim for better regulations and laws in order to protect the environment. The North also argues that the focus of the South should be to preserve their region’s natural resources for the benefit of future generations, i.e. inter-generational equity, whereas the South stresses the equitable sharing of natural resources among the present generation, i.e. inter-generational equity.

The following section examines how the arguments of Northern and Southern states in decision making forums are based either on prioritizing human development or environmental and nature protection.

Anthropocentrism and Biocentrism

Environmental problems can be seen from either an anthropocentric or a biocentric point of view.²²² Anthropocentrism focuses on the human aspects of problems while

²²² Spash C.L. and Simpson I.A. (1993) Protecting Sites of Special Scientific Interest, *Journal of Environmental Management*, Volume 39, pp.213-227, Gillespie A. (1997), *International Environmental Law, Policy and Ethics*, Oxford University

biocentrism focuses purely on their environmental aspects.²²³ Biocentrism is about protection and preservation of flora and fauna for the purpose of maintaining biological diversity and ecosystems²²⁴, which means that humans are just one species amongst many, which makes them no more important than any other.²²⁵ Therefore the process and procedures relating to environmental governance have to balance environmental concerns on the one hand against human concerns on the other. Many international instruments recognising the importance of maintain a balance between anthropocentrism focuses and biocentrism. Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes a human right for everyone to enjoy the highest level of physical and mental health and for them to benefit from improvements in environmental hygiene in order for them to realise the right²²⁶, while Principle 11 of the Stockholm Declaration, 1972, acknowledges the necessity to develop a system of environmental law and policy that does not devalue human developmental concerns of the South:

[...] the environmental policies of all states should enhance [and] not adversely affect the present and future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by states and international organizations with a view to reaching agreement on meeting the

²²³ Birnie P., Boyle A. (2002), *International Law and Environment*, 2nd edition, Oxford University press, pp.5-6, 257

²²⁴ Guha R. (1994), Forestry Debate and Draft Forest Act: Who Wins, Who Looses? *Economic and Political Weekly*, Volume 29, Number 34, p. 2192

²²⁵ Rai J. et al (2009), *Universalism and Ethical Values for the Environment*, Ethics of Energy Technologies in Asia and Pacific Project, UNESCO, P. 10, http://www.unescobkk.org/fileadmin/user_upload/shs/Energyethics/EETAPWG1rpt.pdf (last accessed on 17.02.2011)

²²⁶ Birnie P., Boyle A. (2002), *International Law and Environment*, 2nd edition, Oxford University press, p.257, General Assembly resolution 2200(XXI) of 16th December 1966. The document can be found: <http://www.un-documents.net/icescr.htm> (last accessed on 16.11.2010)

possible national and international economic consequences resulting from the application of environmental measures.²²⁷

Principle 11 states that the South often struggles with international environmental policies because human and development-centred economic policies are sometimes limited and restricted by nature-centred environmental policies.²²⁸

Flores and Clark, in their descriptive analysis of how anthropocentrism and biocentrism affect environmental governance, state that they can both be central to the biodiversity conservation debate.²²⁹ They further note that in terms of specifying criteria for allocation of resources, anthropocentrists believe that decisions should be made to maximise the value of total net benefits to humans, while biocentrists believe that decisions should be made in a context whereby all organisms, including humans, have equal standing. Consequently, Flores and Clark conclude that anthropocentrism stands for human social processes of the present while biocentrism stands for present and future process.²³⁰

In the light of the above debate, there are differing concerns that characterise environmental problems – anthropocentrism and biocentrism – and that these are sometimes also reflected in the North-South dimension. The seriousness of the effects of

²²⁷ Principle 11 of the Stockholm Declaration 1972 The document can be found: <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1503> (last accessed on 29.11.2010)

²²⁸ Miller explains this situations drawing examples from Montreal negotiations on Ozone protection where Southern countries bargain some of the regulations and demand additional financial and technical resources from the North as a result of their industrial development process was affected by the Ozone protection criteria. Miller, M. (1995), *The Third World in Global Environmental Politics*, Open University Press, Buckingham

²²⁹ Flores A. and Clark T.W. (2001), Finding Common Ground in Biological Conservation: Beyond Anthropocentric Vs. Biocentric Controversy, in *Species and Ecosystem Conservation: An Interdisciplinary Approach in Yale School of Forestry and Environmental Studies Bulletin Series* edited by Clark T.W. *et al* ,, Number 105, p. 241

²³⁰ *Ibid*, p. 243

environmental problems on both human beings and the environment varies greatly depending on the political, economic and social situation of the country in question.²³¹ For example, northern countries are better equipped with resources, political power and social structure to face both human and physical effects of the climate change problems than Southern countries, which are vulnerable mainly in two areas – they are the smallest contributors to the climate change problem and they are the least able to absorb its adverse effect.²³² One study concludes that the “developing countries are twice [as] vulnerable to the adverse effects of climate change than industrialized countries, and island states are three times more vulnerable”.²³³ Looking at the limitations of the South from a broader perspective than climate change, some authors stated that developing countries are vulnerable because their options for less carbon-intensive development are limited. Such limitations may compel the South to pay more attention to the effects of climate change on their human might focus development goals rather than on the potential environmental harm that it can cause. Consequently, Southern participation in countering the possible effects of climate change focuses on anthropocentric values, whereas the North, in emphasising the potential for environmental devastation could be seen to often adopt a biocentric approach.

²³¹ Anand R. (2004), *International Environmental Justice: A North-south Dimension*, Ashgate Publishing Ltd. In the analysis of three international environmental regimes, namely climate change, hazardous wastes, ozone regime, Anand illustrates the impact of North-South dimension in decision making process and procedures. Developed countries and developing countries face environmental challenges differently depending on different power potentials.

²³² Timmons J.R. and Bradley P. C. (2007), *A climate Injustice: global inequality, North-South politics and climate policy*, Massachusetts Institute of Technology, Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p Ruth-1590 African nations have contributed very little to the global warming, with emissions of less than 8 percent of the world’s GHGs. Gordon R. (2007), Climate Change and the Poorest Nations: Further Reflections on Global Inequality, *University of Colorado Law Review*, Volume 78, pp:1559-1624 at p.1600

²³³ Agarwal A., Narain S., and Sharma A. (eds.), 1999, *Green Politics* New Delhi: Centre for Science and Environment, p. 16

The anthropocentric versus biocentric debate focuses on certain environment and human issues in the South that require greater attention in global decision making forums. The South includes most of the environmentally rich and bio-diverse tropical countries²³⁴ with extensive tropical forests and other vitally important environment features, whilst they carry the majority of the world's population.²³⁵ Therefore any environmental problems that may cause negative effects to both the environment and human beings will affect the South extensively. Also, some developing countries cannot even fulfil their populations' basic needs, consequently they place more weight on the human effects than on the effects of nature. A situation epitomised in a speech at the United Nations Conference on Human Environment (UNCHE) in 1972 by the then Prime Minister of India, Indira Gandhi, when she famously stated, "poverty is the biggest environmental threat to developing countries".²³⁶ She further said:

[...] we do not want to impoverish [the] environment any further, [but] we cannot forget the grim poverty of large numbers of people. When they themselves feel deprived how can we urge the preservation of animals? How can we speak to those who live [...] in slums about keeping our oceans, rivers and the air clean when their own lives are contaminated at the source? Environment cannot be improved in conditions of poverty [...].²³⁷

²³⁴ Most of the tropical countries in Asia, Africa and Latin America are in the South. Brazil, India, Indonesia, Sri Lanka, and many countries in Africa are considered as the richest areas in biodiversity. http://www.biodiversityhotspots.org/xp/Hotspots/hotspots_by_region/Pages/default.aspx (last accessed on 29.11.2010)

²³⁵ The World Population Prospects: The 2008 Revision Population Database, United Nations Population Division. <http://esa.un.org/unpp/index.asp?panel=5> (last accessed on 29.11.2010)

²³⁶ Indira Gandhi questioned at the UNCHE, "are not poverty and needs the greatest polluters" Quoted by Anand R.P.(1980), Development and Environment: The Case of the Developing Countries, *Indian Journal of International Law*, Volume 20, Number 1 at p. 10, Quoted by Ivanova M. (2007), Looking Forward by Looking Back: Learning from UNEP's History, in *Global Environmental Governance: Perspectives on the Current Debate* edited by Swart L and Perry E., New York: Centre for UN Reform Education, p. 34

²³⁷ Anand R.P. (1980), Development and Environment: The Case of the Developing Countries, *Indian Journal of International Law*, Volume 20, Number 1, p. 10

Poverty itself contributes to global environmental degradation by excessive growth of population, use of underdeveloped technology in development, clearing of rainforest and many other non-environmentally-friendly life styles.²³⁸ In order to carry through its development strategies, the South depends largely on the natural environment. Lacking alternative means to alleviate poverty the developmental needs of people in the South push them towards devastating environmental usage.²³⁹

Recognising the interdependence of human beings and nature has been considered to be a move forward in environmental governance, particularly since the UN global conference on the human environment in 1972. Literal interpretation of the main themes showed that the global governance system has been shifting of the themes of global environmental governance from environmental protection-centred human development to human development with a focus on environmental protection. UNCHE, therefore, had been inspired by a desire to protect the human environment. However, in 1992, at the second global environmental conference –UNCED²⁴⁰ – the title had changed to ‘the conference on environment and development’. Then, by 2002, the concept of sustainable development was further developed at the third global environmental conference – UNCSD²⁴¹ – held in Johannesburg. Although the different titles and themes of these global conferences highlighted the developmental approach to environmental negotiations, as this chapter will

²³⁸ Adams N.A. (1993), *Worlds Apart: The North-South Divide and the International System*, Zed Books Ltd., London, p.203-204, Nassau explains the conflict of interest of developing and developed countries on environmental matters referring to land-clearing and other forms of commercial exploitation of their tropical forests. Northern approach towards the clearing of rain forest is banning or boycotting of trade in tropical timber and its products in developed countries. Nassau states, “... this being the act of self sacrifice that these poor countries should make in order to save the wider environment ‘for the common good of mankind’, while the rich countries continue their extravagant burning of fossil fuels and continue to overload the environment with their excessive consumption habits.”

²³⁹ Ulrich B. (2006), *Bridging the North/South Divide in International Environmental Law*, *ZaoRV*, Max/Planck Institute, Volume 66, pp:259-296

²⁴⁰ UNCED is similarly known as Rio Summit and Earth Summit.

²⁴¹ UNCSD is similarly known as World Summit on Sustainable development.

establish, it is highly debatable whether the actual governance system considers Southern environmental priorities to be equal to their Northern counterparts.

Most of the environmental problems emanating from the South, such as unclean drinking water, land degradation, population growth, urbanization and energy deficiencies, are related to the human development process. The North, sometimes, places more weight on environmental protection, such as biodiversity, climate change and ozone depletion. Roberts and Parks explain it thus:

[...] for more than thirty years the environmental issues of most concern to developing countries have been brushed aside and replaced with First World issues. However, global common issues, such as ozone depletion, habitat loss, and climate change are much less pressing to more poor nations than providing safe drinking water, slowing soil erosion, treating sewage, slowing the spread of deserts, and reducing lung-and eye-burning air pollution.²⁴²

However, this discussion will illustrate that in the global environmental decision making forums, the human centred Southern approach to environmental issues could be seen sometimes to drop to the bottom of the global environmental priority list in favour of the Northern environment protection approach. This emphasis on environmental and human centred priorities add a new dimension to global environmental governance, which requires legitimate process and procedures in order to address environment-human interaction in the context of the North-South debate. Birnie once stated, "The developing states characterized the environmental crises as a long-term developmental one, and the

²⁴² Timmons R.J. and Bradley P.C. (2007), *A climate Injustice: global inequality, North-South politics and climate policy*, Massachusetts Institute of Technology, p. 6

(industrialized) states saw it as a more immediate technical problem."²⁴³ Therefore to a certain extent both anthropocentric and biocentric views represent yet another aspect of the North-South dimension that leads to environmental governance being biased towards the North.

After coming to an understanding regarding how the North-South dimension impacts on the priorities of global environmental governance, the next section will introduce the other important element in current environmental matters – the transnational problem. This analysis concerns territorial sovereignty over environmental issues and how aware global governance is of local and national priorities in terms of a particular Southern environmental issue once it has become a global problem.

Environmental Problems Demand Global Focus

Currently, environmental problem solving at both local and national level may not provide the complete solution because the impact of a problem often has a much wider impact; it is inevitable, therefore, that the problem will attract global attention. Explaining the evolution of an environmental problem from a local or national issue to a global issue, Leonard Good states:

In [the] 1950's and 1960's the focus in Canada was on things like solid waste management, [...] algae growth in the great lakes... the problems were almost exclusively national in their origin and in their solution. But things began to change [...] in the 1970s we began to focus as well as on continental environmental problems [...] the joint management of pollution of

²⁴³ Birnie P. (1993), *The UN and the Environment, in United Nations, Divided World*, Adam Roberts & Benedict Kingsbury eds., 2nd edition. p.367.

the Great Lakes [...] as well as on the continental emission of SO₂ from power plants which were generating acid rains [...] In 1970 we and others began to focus on a truly important global environmental problems for the first time ... the role of CFC's in the destruction of the earth's protective ozone layer [...] climate change [...] concerns about global losses in bio diversity [...]²⁴⁴

Good illustrates the complexities of environmental problems as they progress to becoming global threats. Environmental pollution and other environmental concerns have gradually moved beyond national jurisdictions with the development of technology, industrialisation and human population growth. Recognition of environmental problems as a global challenge was acknowledged in an unofficial report, 'Only One Earth', commissioned by the Secretary-General of the UNCHE in 1972, which stated: "...nations have no choice but to follow the course of common policy and coordinated action. In three vital, related areas this is now the undeniable case [...] global atmosphere, the global oceans, and the global weather system".²⁴⁵ In order to resolve such matters, therefore, there should be an effective global process of decision-making.

Following on from Good's illustration this section identifies three different ways by which environmental issues become global issues.²⁴⁶ In some cases, as in the 1972 report, environmental issues become global because of their impact on the earth. The first category of global environmental damage is atmospheric pollution leading to ozone layer damage. Most global environmental issues involve the pollution of extra-territorial regions,

²⁴⁴ Leonard Good, CEO and Chairman of the GEF addressing the GLOBE international Assembly, Milan, Italy, December 10 2003. Further information at

<http://www.gefweb.org/participants/Secretariat/secretariat.html> (last accessed on 13.02.2011)

²⁴⁵ Ward B and Dubos R. (1972)., *Only One Earth, The Care and Maintenance of a Small Planet*, Andre Deutsch Ltd, p.294-295

²⁴⁶ Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, pp. 11-13

such as the high seas, the atmosphere, outer space and the ozone layer. The second category of environmental damage that mainly happens within state boundaries, but can have substantial global effects, is, for example, the deforestation of Southern tropical forests impact on biodiversity and climate change. The third category of environmental damage concerns transboundary resources, such as migratory birds, transnational rivers and border lakes²⁴⁷, whereby any act by a state that causes harm beyond its territorial boundary implies state responsibility for what happens.²⁴⁸

Bodansky identifies the following three dimensions on how an environmental effect within a territory can become a matter of international concern: physical, economic, and psychological.²⁴⁹ Physical spill-over is about the transboundary, or global, environmental pollution caused as a result of a leakage, contamination or dumping of harmful substances across a state boundary. Economic spill-over is about a local environmental issue that becomes global because of its impact on other states. For example, Bodansky cites the threat to the African elephant resulting from the demand for ivory by consumers in East Asia, and to the deforestation of tropical forests in Southeast Asia to supply timber for export.²⁵⁰ Psychological spill-over explains how people add value to environmental concerns that may not specifically have economic or physical spill-overs upon other states. Bodansky refers to how the conservation of the panda becomes an international issue because it inspires a psychological response, i.e. “people in other countries value the panda and desire its continued existence.”²⁵¹ All three dimensions of transboundary

²⁴⁷ Ibid.

²⁴⁸ Trail Smelter Case (US, Canada), April 1938 and March 1941.

http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf (last accessed on 04.11.2010)

²⁴⁹ Bodansky D. (2010), *The Art and Craft of International Environmental Law*, Harvard University Press, p.13

²⁵⁰ Ibid, p.12

²⁵¹ Ibid.

environmental concerns attest to the close interconnection of environmental resources, people and policies.

Today, almost every environmental issue at national and local level has some sort of global relevancy. These issues do not necessarily have to originate as global concerns, as is mentioned in the “Only One Earth” report. However, almost all environmental issues are treated as being of global concern, since they all are interconnected with one unit – the earth. Consequently, the most important decisions with regard to the environment are being taken mostly by international environmental institutions.²⁵² As Sands states, “the challenge for international environmental law in the world of sovereign states is to reconcile the fundamental independence of each state with the inherent and fundamental interdependence of the environment”.²⁵³ The argument here is even if an environmental problem attracts global attention it does not necessarily mean that it should lose its local perspective. Southern states are disadvantaged with regard to having their local and national perspectives taken into account in a global context, hence, there is a risk of decision makers failing to grasp the local and national perspective of a certain environmental issue once it becomes a global concern.

The challenge, therefore, is to address an environmental problem at a global level after having properly recognised it at a local level. However, sometimes a global focus on an environmental concern turns attention away from problems integral to local developmental and social issues, an example being the conservation of a forest on which local people are

²⁵² Birnie P. and Boyle A. (2002), *International Law and Environment*, 2nd edition, Oxford University press, p.258

²⁵³ Sands P. (1999), Environmental Protection in the Twenty-first Century: Sustainable Development and International Law, in *The Global Environment: Institutions, Law and Policy* edited by Norman J. V. and Regina S. A., p.119

dependent²⁵⁴, where such protection can sometimes destroy entire livelihoods.²⁵⁵ Consequently, environmental policy making in many Southern states become subject to external influences as a result of their projects receiving global attention.

Duffy cites the “biological corridor projects” to show how a global approach to local environmental issues sometimes distracts from local human development interests. In biological corridor projects, which aim to prevent the reduction of wildlife and biodiversity by human activities in protected areas, powerful global institutions define and frame national environmental policies that may restrict forest usage by local populations as well as dictating development priorities.²⁵⁶ In many such cases, projects in the South are funded by global institutions that have been set up to project conditionalities,²⁵⁷ which are guided by international biocentric environmental regulations. Randeria discusses one such instance whereby World Bank financed infrastructure and biodiversity projects in India resulted in the loss of environment and livelihoods of local populations,²⁵⁸ which highlights the dangers of setting project norms based on international environmental standards rather than setting national and local environmental norms.²⁵⁹ Often, therefore, global environmental policies are defined by the North biocentrically, whereas most Southern states favour anthropocentric policies.

Due to their lack of resources and expertise, Southern states often fail to influence national environmental decision-making where issues have become global concerns, resulting in the

²⁵⁴ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands.

²⁵⁵ Duffy R. (2006), Non-Governmental Organizations and Governance State: The Impact of Transnational Environmental Management Networks in Madagascar, *Environmental politics*, Volume 15, Issue 5, p. 731.

²⁵⁶ Ibid, pp:738-740

²⁵⁷ Ibid.

²⁵⁸ Randeria S.(2003), Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India, *Current Sociology*, Volume 51, Number 3-4, pp:307-330

²⁵⁹ Ibid.

South having to deal with both the positive and the negative outcomes, including the consequences of any significant global impact on their decision-making powers regarding their own natural resources.

The debate about solutions to environmental problems further demonstrates the different priorities of North and South regarding decision-making, which is the North's biocentricity and the South's anthropocentricity. The discussion has also highlighted another important issue – the transboundary environmental problem. All these issues reflect that, unless Southern priorities are given equal, fair and just consideration, global environmental governance will not succeed.

In order to narrow the gap between North and South it is imperative to establish the already available legal options called 'general principles of international law'. The following section, therefore, will explore the mechanisms that should ensure that the principles of equity, fairness and justice are actually applied in global environmental governance.

General Principles of International Law that specify the concepts of equity, fairness and justice in terms of the North-South dimension

As the previous section explains, the international environmental governance system should provide proper governing structures to balance both anthropocentric and biocentric approaches, since both are required to allow for equitable, fair and just decision-making. To this end, international environmental law has developed several general governance

principles, some of which have been incorporated into international instruments, while others have been created by customary international law.

This chapter will elaborate on the following three general principles:²⁶⁰ state, the right to development and common, but differentiated, responsibilities. Before analysing each of these principles, it is important to pay attention to the various opinions of scholars on their applicability, since they express great concern as to whether they are really capable of challenging the established international legal framework, which is primarily Northern based.²⁶¹ For instance, Anand argues that the general principles of international law have been created to determine equity, fairness and justice fail to fulfil their purpose because in global negotiations “[they] would be guided by principles of power politics with the industrialized North manipulating the international legal framework to forward their agenda in the name of justice”.²⁶² Robert and Parks, who looked at the climate change negotiations from a justice and equality point of view, mentioned three issues, which they call ‘triple inequality’ that has led to injustice in climate change negotiations.²⁶³ They are unequal distribution of impacts, unequal responsibility for climate change and unequal costs for mitigation and adaptation

Gupta places Northern countries’ perspective on climate change demands on two levels: the lowest is “problems with the organizational setting within which the rules and processes are adopted and projects selected,” and the highest is “problems with the ideological basis within which the organizations operate and influence the rules, norms,

²⁶⁰ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd, p.123

²⁶¹ Ibid,125-127

²⁶² Ibid, p.126

²⁶³ Timmons J.R.t, and. Bradley P.C. (2007), *A climate of Injustice: Global Inequality, North-South Politics, and Climate Policy*, Cambridge, MA: MIT Press, p.7

processes and projects”.²⁶⁴ The principles of “equity, justice and fairness”, therefore, are, in reality, illusory in the context of North and South.

The following analysis of the three general principles listed at the beginning of this section will give some insight into the next section, which will examine the international environmental institutions in terms of how they apply equity, fairness and justice in the North-South dimension.

State Sovereignty

Traditionally, international law ensures the right of all states to the political determination over their own environments,²⁶⁵ which implies paramountcy of the concept of non-intervention of one state in the internal affairs of another. State sovereignty regarding natural resources dates back to the 19th century, when absolute territorial sovereignty was expressed in an opinion made by Judson Harmon, the Attorney General of the United States (The Harmon Doctrine of 1895)²⁶⁶:

The fundamental principle of international law is the absolute sovereignty of every nation as against all others, within its own territory ... all exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other source.²⁶⁷

²⁶⁴ Gupta J. (1997), *The Climate Change Convention and developing Countries: From conflict to consensus?*, Luwer Academic Publicaters, p.44

²⁶⁵ Nollkaemper A. (2009), Sovereignty and Environmental Justice in *International Law in Environmental Law and Justice in Context* edited by Ebbesson J. and Okowa P., Cambridge University Press, 253-270 at pp. 253-254, Sahovi M. and Bishop W. (1968), The Authority of the State in *Manual of Public International Law* edited by Sorensen M., Macmillan Publishers, p.313

²⁶⁶ Mccaffee S.C. (1996), The Harmon Doctrine One Hundred Years Later: Buried not Praised, *Natural Resources Journal*, Volume 36, p. 549

²⁶⁷ Wapner P. (1998), Reorienting State Sovereignty: Rights and Responsibilities in the Environmental Age, in *The Greening of Sovereignty in World Politics* edited by Litfin T.K., Massachusetts: MIT , p.277

The emphasis here is placed on the supremacy of the state to take decisions with regard to its natural resources within the territorial boundaries where it belongs.²⁶⁸ The decision, which had been given on a dispute over the use of the Rio Grande between Mexico and the US, was based on whether international law could interfere with the actions of an upstream state that unfavourably altered the characteristics of the watercourse in the downstream state. According to the Harmon doctrine, no other authority beyond the national boundaries can interfere with the state's decision over its natural resources. Therefore the Mexican complaint was dismissed on grounds of the absolute territorial sovereignty concept.²⁶⁹

However, in 1941, the Trail Smelter Arbitration²⁷⁰ reshaped the idea of sole supremacy over the use of natural resources within territorial boundaries and developed the notion that sovereign states carry a responsibility for use of natural resources. An arbitration panel stated that no state could carry out any kind of usage of natural resources within its territorial boundary in a way that would cause environmental harm to other states beyond the territorial boundaries. Consequently, Canada had to compensate the USA for damages caused by a Canadian owned smelter company and Canada had to make an assurance that no further damages would be caused to the USA by its further operations. The Trail Smelter decision, which placed a responsibility on one state not to harm any other state, has become a part of the state sovereignty concept. Therefore, no country can claim state sovereignty to the extent that its actions cause environmental threats to other states. Consequently, international law limits the infinite interpretation of the absolute state sovereignty concept established by Harmon.

²⁶⁸ United States Vs. Texas, 162 U.S., 16 S. Ct. 725, 40 L.Ed. 867 (1896), McCaffrey S.C. (1996), The Harmon Doctrine One Hundred Years Later: Buried, Not Praised, *Natural Resources Journal*, Volume 36.

²⁶⁹ McCaffrey S.C. (1996), The Harmon Doctrine One Hundred Years Later: Buried not Praised, *Natural Resources Journal*, Volume 36, p. 549

²⁷⁰ Trail Smelter Case (US, Canada), April 1938 and March 1941.

http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf (last accessed on 04.11.2010)

However, this does not imply that the right of a state to utilize its natural resources within its territorial boundaries is completely restricted. Any state is entitled to take decisions about its natural resources as long as they do not put other states in danger. The Stockholm Declaration, which was the first global environmental declaration, identified the state as the key actor regarding environmental concerns. Principle 21 states:

Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions ...²⁷¹

It states further that:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.²⁷²

Principle 21 of the Stockholm Declaration was incorporated into Principle 2 of the 1992 Rio Declaration, which says that states have the sovereign right to exploit their own resources according to their own environmental and developmental policies. It further says

²⁷¹ Chapter 7 of the Proclams of the Declaration of the United Nations Conference on Human Environment, The document can be found: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> (last accessed on 29.11.2010)

²⁷² Principle 21 of Declaration of the United Nations Conference on Human Environment, The document can be found: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> (last accessed on 29.11.2010)

that they also have a responsibility to ensure that no harm is caused to the environment of other states, or areas beyond their natural jurisdiction.²⁷³

The South emphasises the state sovereignty principle regarding its natural resources in the event of a clash between national interests and international environmental policies.²⁷⁴ In many instances, international environmental standards that have been established with a biocentric focus often clash with the anthropocentric focus of the South. The international criteria limit a state's ability to exercise absolute sovereign authority over its natural resources. The "permanent sovereignty and non-intervention over natural resources" principle was accepted in two UN declarations in 1965. The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty²⁷⁵, and The Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance With the Charter of the United Nations.²⁷⁶ Both Declarations emphasise equality among states based on state sovereignty, and that one state cannot exploit another state's natural resources within its own territorial boundaries.²⁷⁷ Therefore the state sovereignty principle has been used mainly by Southern states to claim their sovereign rights with regard to the environment.

In 1992 at UNCED the state sovereignty concept was used to express the Southern stand at global negotiations. During the debate on whether the global forest convention should be a

²⁷³ Principle 2 of the Declaration on Environment and Development, The document can be found: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163> (last accessed on 29.11.2010)

²⁷⁴ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.123

²⁷⁵ G.A. Res. 2131(XX), U.N. GAOR 20th Sess. Supp. No.14 at 11, U.N. Doc. A/6014 (December 21, 1965)

²⁷⁶ G.A.Res. 2625 (XXV), U.N. GAOR 25th Sess., U.N. Doc. A/8028 (October 24, 1970) Anghie A. and Chimni B.S. (2003), *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, *Chinese Journal of International Law*, Oxford University press, pp.77- 103 at p. 82

²⁷⁷ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.123

legally binding, or a non-legally binding document, the G77, in stressing the state sovereignty concept over the forests, expressed its strict opposition to a legally binding forest convention on the ground that it would threaten national sovereignty over their natural resources.²⁷⁸ The South wants to prevent any legal jurisdiction that would establish an authority beyond their states' own territorial jurisdiction to determine national policies on forests.²⁷⁹ The sovereignty principle, therefore, was used by the South to establish equity and fairness during the forest debate. Consequently, the South's claim over natural resources is inextricably linked to its right to development, which will be analysed next.

The right to development

Another general principle of international law that determines equity, justice and fairness in the context of North-South dimension in global environmental governance is the right to development. During the post-colonial era the main theme of the South's demand was the rebuilding of their nations through economic development. Because Southern states recognize environmental protection as a factor that impedes economic development, the top priority for Southern states, which they have voiced in many environmentally related instances, is the right to develop. Article 1 of the Declaration on the Right to Development,

²⁷⁸ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.154, similar analysis can be found in Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefiedls Publishers, Inc., p.102-104

²⁷⁹ This thesis discusses the use of state sovereignty concept by G77 at UNCED forest negotiations in Chapter 4 on forest negotiations. G.A.Res. 2625 (XXV), U.N. GAOR 25th Sess., U.N. Doc. A/8028 (October 24, 1970) Anghie A. and Chimni B.S. (2003), *Third World Approaches to International Law and Individual Responsibility in Internal Conflicts*, *Chinese Journal of International Law*, Oxford University press, pp.77-103 at p. 82, Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.123, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.154, similar analysis can be found in Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefiedls Publishers, Inc., p.102-104

adopted by the General Assembly in December 1986²⁸⁰, therefore, recognized it as an inalienable human right.²⁸¹ Also, Article 5 declared that states should take the necessary steps to eliminate all sorts of discrimination including “[...] colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity [...]”²⁸²

The right to development was again highlighted in the 1992 Rio Declaration in Principle 2, by which states have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies. Furthermore, Article 5 of the Johannesburg Declaration in 2002 emphasise the importance of collective effort in achieving three pillars of sustainable development – economic development, social development and environmental protection.²⁸³ Anand states that: “The right to development is a manifestation of the desire of developing countries to achieve a more equitable international economic order through economic independence”.²⁸⁴

The “right to development” debate clearly reflects North-South dimensions²⁸⁵, since they both recognise it as a right, based on what definition of “development” each adheres to. For the South “[the] right to development means [the] right to expand their economies rapidly, irrespective of environmental and social cost.”²⁸⁶ For the North, though, it is not merely a right, it is considered only as a “goal” or a “claim”.²⁸⁷

²⁸⁰ Declaration on the Right to Development, A/Res/41/128 of 4 December 1986, <http://www.un.org/documents/ga/res/41/a41r128.htm> (last accessed on 29.11.2010)

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Principle 5, Johannesburg Declaration on sustainable Development, A/CONF.199/20, <http://www.un-documents.net/jburgdec.htm> (last accessed on 05.11.2010)

²⁸⁴ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd., p.123

²⁸⁵ Rajagopal B. (2003), *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge University Press, p. 220

²⁸⁶ Ibid.

²⁸⁷ Ibid.

However, this right clearly gives wider impetus for the South in claiming environmental benefits for its states' economic development.

Common but differentiated responsibilities

This principle explains that environmental issues and consequences are common to every state in the world; however, the responsibility for creating environmental problems is viewed differently. For instance, the responsibility for taking the necessary steps to overcome and prevent further damage to the environment is different on the basis of each state's contribution to past and present pollution. The Brundtland Report of 1987 acknowledged the importance of intra-generational equity, which incorporates the common, but differentiated, responsibilities principle²⁸⁸: “Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation.”²⁸⁹

The “common but differentiated responsibilities principle” entails two important aspects of environmental governance. Firstly, the North should take the lead in implementing international environmental standards and policies for the reason that they are the main contributors of the global environmental crisis.²⁹⁰ The basis for this principle is that many Multilateral Environmental Agreements (MEAs) incorporate provisions to assign more commitments to the North in terms of implementation of certain environmental policies. The second paragraph of the Preamble of the United Nations Framework Convention on Climate Change (UNFCCC) acknowledges the differentiated responsibility of the North

²⁸⁸ Hey E. (2003) , “Sustainable Development, Normative Development and the Legitimacy of Decision – Making,” *Netherlands Yearbook of International Law*, Vol. XXXIV, pp. 3-54, at p.9

²⁸⁹ *Our Common Future*, Oxford University Press, 1987, p.43

²⁹⁰ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 216

and the South in creating global climate change issues.²⁹¹ As paragraph 2 of UNFCCC states:

“[...] the largest share of historical and current global emissions of greenhouse gases has originated in developed countries [...] per capita emissions in developing countries are still relatively low [...]”²⁹²

It is clear that the countries least responsible for the climate change problem have the least capacity to face the problem.²⁹³ Also, Northern countries are in a better position to facing up to the climate change problem than are poorer Southern countries, which means that the positions of each party are clearly different.²⁹⁴ Article 5 of the Montreal Protocol on Substances that Deplete the Ozone Layer (the Montreal Protocol) provided another instance that acknowledges common, but differentiated, responsibilities, when it assigned different responsibilities to the North and to the South regarding the time periods allowed for them to reduce the emission of certain gases.²⁹⁵

The second important aspect of this principle of environmental governance is the obligation to take necessary steps to provide new and additional financial and technical

²⁹¹ Paragraph 2 of the Preamble of the United Nations Framework Convention on Climate Change, FCCC/Informal/84, GE.05-6222 (E) 200705, 1992, The document can be found: <http://unfccc.int/resource/docs/convkp/conveng.pdf> (last accessed on 17.11.2010)

²⁹² Ibid.

²⁹³ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd. p.28-29

²⁹⁴ Ibid, Anand presents a graph of differentiated responsibilities, capacity and vulnerability by referring Fermann 1997, 33. *Responsibility* of share of current energy-related CO₂ emissions in industrialized countries is 72% and in developing countries it is 28%, the share of cumulative energy-related CO₂ emissions in industrialised countries and developing countries are 86% and 14% respectively. The *capacity* factor in industrialised countries, the share of Gross World Product, as the sum of all states Gross Domestic Products is 83.5% in industrialized countries and 16.5% in developing countries. *Vulnerability* to the problem has estimated as Impact on ecosystem and it is low moderate in industrialized counties and high in developing countries.

²⁹⁵ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 224

resources to the South in order for its states to realise their development goals without causing further damage to the environment.²⁹⁶ Many MEAs have adopted provisions regarding the North's commitment to transfer additional resources to the South to ensure it has the necessary support to maintain environmentally friendly development.²⁹⁷

As the previous sections shows, the general principles of international law are applied to environmental instruments to ensure that the South receives equity, fairness and justice in the implementation of environmental standards in their territories. International environmental conventions and their provisions also specify the South's need for additional support from the North. In spite of these legal safeguards, however, the North-South disparity and the application of equity, fairness and justice have not yet been fully addressed in terms of Southern states' participation in the decision-making process. This chapter, therefore, argues that the continuing differentiation between North and South poses many concerns for global environmental decision-makers.

This thesis suggests that the main reason for Southern environmental concerns not being heard is that they have not been effectively represented at the global level because of an imbalance in participation, insufficient representation in decision-making process and procedures, the ineffective implementation of global environmental standards, and the lack of local scientific knowledge and research.²⁹⁸ It seems clear that what is required is more

²⁹⁶ Ibid, p. 216

²⁹⁷ Article 10 A of the Montreal Protocol on Substances that Deplete the Ozone Layer provides an obligation to developed countries to transfer financial and technical resources to developing countries to enable developing countries to meet the environmental standards required by the Protocol. Article 4 (7) of the United Nations Framework Convention on Climate Change and Article 20(4) of the Biodiversity Convention entrust the North with the responsibility to transfer necessary financial and other means to the South enabling them to achieve the international environmental standards and policies.

²⁹⁸ Karlsson S. (2002), *The North-South Knowledge Divide: consequences for Global Environmental Governance*, *Global Environmental Governance in Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies

equitable governance procedures and a better distribution of resources, which could be achieved by educating local scientists and creating research centres. Such innovations could be a progressive way to broaden Southern participation in the development of an equitable global environmental agenda.²⁹⁹

Maria Ivonova identifies three closely connected core concerns that are either the causes or the consequences of the same environmental problem: the ecological effects of industrialization, the ecological effects of poverty and the political tension between developed and developing countries.³⁰⁰ The ecological effects of industrialisation were mainly experienced in the North where rapid development took place during the industrial revolution. The ecological effects of poverty are mainly seen in the South, hence many Southern leaders claim that “poverty is the cause of all environmental pollution” – a slogan heard from time to time at global negotiations. The political tension between North and South is of prime concern to the global environmental decision-makers; it is also the underlying theme of this thesis. Therefore, it is important to establish at what levels the environmental governance system has failed to recognize, and address, the key factors that have resulted in the North-South polarization of environmental policy making.

This chapter continues with an analysis of the contradictions that have confounded environmental governance; it will also describe actual practice based on the provisions

²⁹⁹ Avegerinopoulou D.T. (2002), A Roadmap to the Era of Global Environmental Wisdom: A Review of Global Environmental Governance: Options and Opportunities, *Georgetown International Environmental Law Review*, Volume 15, p. 887, Karlsson S. (2002), The North-South Knowledge Divide: consequences for Global Environmental Governance, Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies

³⁰⁰ Ivanova M. (2007), Designing the United Nations Environment Programme: A Story of Compromise and Confrontation, *International Environmental Agreements*, Volume 7, pp:337-361

made in UN environmental instruments. In the following section, therefore, two key international environmental institutions will be examined.

The Institutional Approach

This section will contain an analysis of the operations of the environmental institutions in the context of the North-South divide by exploring how the governing mechanisms deal with the complexities described in earlier sections. The analysis will be based on two of the most important institutions responsible for managing global environmental issue – the UNEP and GEF, which, operating under the UN and the World Bank respectively, play important roles in the interaction between North and South³⁰¹.

UNEP is generally regarded as a forum that leans towards the South, since, as Najam points out, its headquarters are situated in Nairobi, Kenya, which gives it legitimacy from a Southern perspective.³⁰² However, the positioning of GEF within the mandate of the World Bank means that it focuses more on efficiency than legitimacy.³⁰³ Because of the weighted voting system³⁰⁴ the North has more control over the global financial institutions, consequently, the GEF's mandate is mostly directed towards Northern priorities. However, as Andersen and Hey point out, since 1994 following its restructuring, a double majority voting system was introduced into the GEF council, thereby increasing Southern representation and resulting in more balanced participation for both developed and

³⁰¹ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 212

³⁰² Najam A.(2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp: 303-321 at p. 316

³⁰³ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 213

³⁰⁴ Weighted voting system is the number of votes is distributed not on the basis of one country-one vote but on the proportion of the financial contributions to the Bank fund. The developed countries with more quotas possess more votes than the developing countries with less quotas in the fund.

developing countries.³⁰⁵ The study of UNEP and GEF in terms of global environmental governance certainly sheds light on the ramifications of the North-South dimension. The following sections, therefore, will present a critical assessment of the composition and decision making processes of UNEP and GEF as well as on their governance structures.

UNEP and Its Role in Global Environmental Governance

The emergence of a new environmental organization

In the aftermath of UNCHE in 1972, several suggestions have been put forward regarding new environmental governing architecture due to increased concerns about the environmental risks to both human life and the natural world. Some of these suggestions had already been operating under several UN specialised agencies, such as the World Health Organization (WHO), the United Nations Educational, Scientific, and the Cultural Organization (UNESCO), the International Labour Organization (ILO) and the Food and Agriculture Organization (FAO)³⁰⁶ who, between them, had organized the ‘UN Scientific Conference on the conservation and Utilization of Resources (UNSCCUR)’, the first major international conference on the environment, held in the US in 1949.³⁰⁷ However, the array of different mandates and agendas on environmental issues has taken place within many different organizations, whose actions often resulted in overlapping or duplicated decisions, which ultimately created inefficient governance.³⁰⁸

³⁰⁵ Ibid.

³⁰⁶ Desai B. H. (2006), UNEP: A Global Environmental Authority?, *Environmental Policy and Law*, Volume 36, Number 3-4, p.139

³⁰⁷ Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press, Buckingham, p.5

³⁰⁸ Ivanova M. (2007), Looking Forward by Looking Back: Learning from UNEP's History, in *Global Environmental Governance: Perspectives on the Current Debate*, edited by Lydia Swart and Estelle Perry, New York: Centre for UN Reform Education, , p.32

In 1971, after the US National Academy of Sciences had recognized the necessity for establishing a system of governance that had much more of an environmental focus, the Committee for International Environmental Programmes was convened, which recommended:

“[A] new approach that goes beyond mere correction or adaptation of existing structures. It involves the creation of new, interrelated institutions designed to assure support from those societal resources – political, scientific, financial – whose cooperation is essential for effective management of global environmental problems.”³⁰⁹

Developing further the idea of a global environmental institution, the states at the UNCHE conference recognized an urgent need for an international environmental institution by emphasising that the implementation of such an institution should be within the framework of the UN.³¹⁰

The UNGA resolution adopted at the UNCHE conference stressed “an urgent need for intensified action, at national and international level to limit, and where possible, to eliminate the impairment of the human environment.”³¹¹ The UNCHE conference further affirmed that, even though the states would implement environmental protection policies and standards at the local and national levels, many of the responsibilities rely on

³⁰⁹ Ivanova M. (2007), [Looking Forward by Looking Back: Learning from UNEP's History, in Global Environmental Governance: Perspectives on the Current Debate](#), edited by Lydia Swart and Estelle Perry, New York: Centre for UN Reform Education, p.32

³¹⁰ As the report records UNEP was established to meet the ‘urgent need for a permanent institutional arrangement within the United Nations system for the protection and improvement of the environment’ UNGA Resolution 2997 on Institutional and Financial Arrangements for International Environmental Cooperation; see GA/RES/2997 (XXVII) of 15 December 1972 in United Nations General Assembly Official Records, 27th Session, Supp. No.30, 1972, p. 43. Also see Yearbook of the United Nations, vol. 26, 1972, pp. 331–333; ILM, vol. 12, 1973, pp. 433–438.

³¹¹ GA/RES/2997 (XXVII) of 15 December 1972.

international cooperation since most of the environmental problems were global. In addition opinions expressed at the conference were very much along the lines that environmental problems in developing countries are caused by under-development, while those in developed countries are caused mainly as a result of excessive industrialisation and developmental processes.

Following the UNCHE Conference, a General Assembly Resolution was adopted establishing UNEP³¹², which ever since has acted as the hub for UN global environmental negotiations.³¹³ Indeed, former Secretary-General Kofi Anan recognized UNEP as the “environment conscience of the United Nations”.³¹⁴ However, some authors believe that the establishment of UNEP was designed to bypass the idea that the global environmental institution needs to be mandated by the industrially developed nations.³¹⁵ Those who supported an environmental institution mandated by industrial countries mentioned that they have the capacity to ensure the effective functioning of environmental institution.³¹⁶ As Andersen and Hey point out, there are two main themes in the implementation and development of international environmental policy and law: (a) legitimacy, and (b) effectiveness. Legitimacy deals with the level of accountability of the decision-making

³¹² UNGARes.2997 (XXVII) (1972)

³¹³ Birnie P. and Boyle A. (2002), *International Law and Environment*, 2nd edition, Oxford University press, p. 38, Birnie P. and Boyle A. note that UNCHE was a co-operative action by the international community towards adoption of commitment to protect the global environment. Establishment of UNEP at the UNCHE is a good example to prove that a co-operative action by the international community to making commitments in environmental protection.

³¹⁴ Annan K.A. (1997), ‘An Indispensable Contribution’, *Our Planet*, Volume 9, Number 1, p. 4.

³¹⁵ Desai B. H. (2006), *UNEP: A Global Environmental Authority?*, *Environmental Policy and Law*, Volume 36, Number 3-4, p.138, Desai refers Keenan at this point to emphasise the facts in favour of establishing an environmental institution run by the developed countries: “George F. Keenan disfavoured the UN forum because it works on the basis of ‘universal, or near-universal, governmental consensus’ and favoured the initiative being taken by a small group of advanced nations. He put forward rationale for the setting up of an institution called the International Environmental Agency by a small group of leading industrial and maritime countries.”, Ivanova M. (2007), *Looking Forward by Looking Back: Learning from UNEP’s History in Global Environmental Governance: Perspectives on the Current Debate* edited by Lydia Swart and Estelle Perry, New York: Centre for UN Reform Education, p.34

³¹⁶ Desai B. H. (2006), *UNEP: A Global Environmental Authority?*, *Environmental Policy and Law*, Volume 36, Number 3-4, p.138

process and procedures, which are subject to the rule of law.³¹⁷ Effectiveness deals mainly with the ability of the institution to solve the relevant problems.³¹⁸ Those who argued for effectiveness stressed the need for additional powers to be accorded to the North in the decision-making process, due to its superior resources, technology and expertise and that it was its responsibility to establish a stable mechanism. Therefore, the South looked forward to a mandated UN institution, because it already wielded a significant amount of influence over it, hence it welcomed the Nairobi Declaration on the Role and Mandate of UNEP (1997), which stated that, as the principle UN environment body, it will play the leading role in the authority that sets the global agenda. The Nairobi Conference (1998) stated:

It is they [*the North*] whose economies produce, in the main, the problem of pollution. It is they, again, who have the means to correct it. It is they, finally, who have the scientific and other resources to analyse the problem and to identify the most promising lines of solution. The devastation of the environment is primarily, though not exclusively, a function of advanced industrial and urban society. The correction of it is primarily a problem for the advanced nations.³¹⁹

As it was mentioned in Chapter 1, the South understands the strength of the UN General Assembly with respect to the number of votes it controls, consequently it very much appreciated the implementation of UNEP, whose role in coordinating global environmental negotiations is regarded as today's leading authority.³²⁰

³¹⁷ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 212

³¹⁸ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 211

³¹⁹ Keenan G. F. (1970) , 'To Prevent a World Wasteland: A Proposal', *Foreign Affairs*, Volume 48, Number 3, pp. 401-413 at p.410

³²⁰ Article 1 and 2 of the Nairobi Declaration on the Role and Mandate of UNEP, U.N. Environment Programme, 19th Sess., U.N.Doc.UNEP/GC19/1/1997(1997),, adopted in U.N. GAOR 52nd Sess., Annex, Supp. No. 25, U.N. Doc. A/52.25 (1998), <http://www.unep.org/Documents/Default.asp?DocumentID=287> (Last accessed on 11.11.2010)

The Governing Structure of UNEP

UNEP, which consists of a Governing Council – its main organ – an Environment Secretariat and an Environment Fund, comprises of representatives from fifty-eight states. There are 58 seats on the Governing Council and members are elected by the UNGA for a period of three years³²¹ on a geographical basis as follows³²²: Africa – 16, Asia – 13, Latin America – 10, Eastern Europe – 6, and Western Europe, North America and Other States – 13. It is obvious, therefore, that developing countries enjoy a broader mandate in the Governing Council than developed countries. Nevertheless, as Agarwal *et al* argue, an everlasting South-North debate continues to run³²³ in that Southern stress the importance of issues relating to sustainable development, while their Northern counterparts believe that environmental protection deserves a higher priority.³²⁴

The different positions of the North and the South within the General Council, whose powers and functions are very broad, could strongly influence UNEP's direction, since it reviews and approves the annual budget, directs funding, provides general policy guidance for the promotion and coordination of environmental programmes.³²⁵ It also has multiple responsibilities in international environmental negotiations, such as reviewing the world

³²¹ Article 1 of the Chapter 1 of G.A. Resolution 2997(XXVII), Institutional and Financial arrangements for international environmental cooperation. Further information on http://www.unep.org/pdf/UN_GA_2997.pdf (Last accessed on 11.11.2010)

³²² Members of the Governing Council of the United Nations Environmental Programme for the period of 2008-2011 <http://www.unep.org/gc/Secretariat/GCmember2008-2011-geo.pdf> (Last accessed on 11.11.2010), http://www.unep.org/pdf/UN_GA_2997.pdf (Last accessed on 11.11.2010)

³²³ Agarwal A., Narain S., Sharma A. (eds.) (1999), *Green Politics: Global Environmental Negotiations 1*, Centre for Science and Environment, New Delhi.

³²⁴ See earlier section regarding anthropocentrism biocentrism debate, Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp:303-321 at p. 317

³²⁵ G.A. Resolution 2997(XXVII), Institutional and Financial arrangements for international environmental cooperation. Further information on http://www.unep.org/pdf/UN_GA_2997.pdf (Last accessed on 11.11.2010)

environmental situation to ensure that environmental problems receive adequate attention, reviewing the effects of national and international environmental policies on developing countries, and promoting and supporting the acquisition and exchange of environmental knowledge and information.³²⁶

UNEP in the context of the North - South Dimension

Ever since the establishment of UNEP the developing countries have used it as a source of authority to voice their interests against the political power of the developed nations, who had been able to exhibit their ‘numerical strength’ and ‘the consolidation of their political interests’ at the first session of the Governing Council.³²⁷ The Report on the First Session of the UNEP Governing Council in June, 1973, pointed out the differences in the environmental concerns of North and South³²⁸ when it was emphasised that the “environmental problems of developing countries were often not the side-effects of excessive industrialization, but the direct consequence of underdevelopment.”³²⁹ They further recognised development as being one of the primary means for improving the environment and they reiterated that the North was responsible for causing the global environmental catastrophe.

³²⁶ G.A. Res. 2997, U.N. GAOR, 27th Sess., Supp. No. 30, at 43, U.N. Doc. A/8370 (1972)

³²⁷ Caldwell L. K. (1990), *International Environmental Policy-Emergence and Dimensions*, second edition, Duke University Press, p.72

³²⁸ Report of the Governing Council on the Work of its First Session, 12-22 June 1973, General Assembly, Official Record – Twenty-eighth Session, Supplement Number 25 (A/9025), http://www.unep.org/resources/gov/prev_docs/73_06_GC1_report_%20K7309025.pdf (last accessed on 12.11.2010)

³²⁹ Paragraph 39 of the Chapter 1 of the Report of the Governing Council on the Work of its First Session, 12-22 June 1973, General Assembly, Official Record – Twenty-eighth Session, Supplement Number 25 (A/9025), http://www.unep.org/resources/gov/prev_docs/73_06_GC1_report_%20K7309025.pdf (last accessed on 12.11.2010)

Consequently, at the first session of the Governing Council, it was emphasised that “since the developing countries were not primarily responsible for the pollution of the world environment, the burden of the needed protective measures should not fall upon them”.³³⁰

The importance of ensuring a balance between economic growth and environmental protection was also stressed and that it should be achieved by a combination of high economic growth and low environmental risk. Throughout that first UNEP session the developing countries of the South were not just criticising the North’s environmental policies, they were advocating a more constructive balance for international environmental decision-making that would take Southern concerns into consideration.

Decisions made by the Governing Council at its first sessions favoured many issues put forward by the South, such as in education, training, assistance and information.³³¹ Also, as was emphasised in Chapter One, matters relating to environmental research, awareness and support, the training of experts and the upgrading and development of effective mechanisms in collecting, dissemination and analysing information, that had been of great concern to those involved in the earlier discussions about the North-South dimension were promoted in favour of the South.³³²

³³⁰ Paragraph 39 of the Chapter 1 of the Report of the Governing Council on the Work of its First Session, 12-22 June 1973, General Assembly, Official Record – Twenty-eighth Session, Supplement Number 25 (A/9025), http://www.unep.org/resources/gov/prev_docs/73_06_GC1_report_%20K7309025.pdf (last accessed on 12.11.2010)

³³¹ Article 3.C. of the Action Plan for the Human Environment: Programme Development and Priorities, Decisions of the Governing Council of the UNEP at its first sessions. <http://www.unep.org/infoterra/infoterra2000/Pass2.pdf> (last accessed on 12.11.2010)

³³² Article I-VI of 3.C. of the Action Plan for the Human Environment: Programme Development and Priorities, Decisions of the Governing Council of the UNEP at its first sessions. <http://www.unep.org/infoterra/infoterra2000/Pass2.pdf> (last accessed on 12.11.2010), Karlsson S. (2002), *The North-South Knowledge Divide: consequences for Global Environmental Governance in Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies

As has been mentioned earlier, the location of UNEP headquarters in Nairobi is strategically important in many ways for resolving the North-South issue³³³, since it is the first – and only – UN headquarters to locate in a developing country, consequently it symbolises the solidarity of the southern states.³³⁴ Andersen and Hey point out “[...] the fact that UNEP’s headquarters were located in Nairobi strongly contributed [to] it being perceived as a more legitimate institution on the part of the developing states.”³³⁵ Also, Najam notes:

In retrospect it has been argued that the decision to house UNEP in Kenya has not only allowed developing countries to exert influence on this organization but, in fact, it has also helped move developing countries from their contestation towards greater participation in the global environmental agenda.³³⁶

The second major effect of the headquarters being located in a developing country is that it helps to enhance the participation of other developing countries. From a practical point of view, affordability of participation for environmental negotiations in many industrial capitals incurs extra burdens on many Southern states. UNEP in Kenya, therefore, offers advantages to countries that can now afford to send delegates to international environmental negotiations.³³⁷

³³³ Najam A. (2003), The Case Against a New International Environmental Organization, *Global Governance*, Volume 9, pp: 367-384 at pp: 374-475

³³⁴ Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp:303-321 at p. 309

³³⁵ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 215

³³⁶ Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp:303-321 at p. 309

³³⁷ Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 215

The third effect is that it offers a chance to influence the governance mechanisms with issues that are significant to the South. It offers better connection for the local issues with the decision making authorities. Miller explains that UNEP has been a forum for Third World countries to develop mutual understanding of each other's environmental problems.³³⁸

However, location of the UNEP headquarters has not always been recognized as an effective place to carry out the functions for which it was established³³⁹ in that, as Caldwell observes, it loses out on some opportunities as a result of its isolation from the other major international institutions, most of which are located either in the US or Europe:³⁴⁰

The location of the secretariat in Nairobi has complicated both UNEP's coordination with other UN bodies and its contact with governments, the scientific community, the environment movement, and the information media. More important, the Third World's tactical victory on priorities for UNEP threatened to jeopardize financial and political support from the developed countries [...]³⁴¹

From a practical point of view, Miller observes that this isolation has made it difficult to recruit qualified staff.³⁴² Mee, however, points out that locating its headquarters in Nairobi has been a step forward for the South, although she expresses her concern over travel and

³³⁸ Miller, M. (1995), *The Third World in Global Environmental Politics*, Open University Press, Buckingham, p.34, Miller states, "UNEP provides more of an opportunity for the Third World countries to assert themselves [...] It provides a forum in which Third World countries can examine mutual problems and has also been useful with issues that require a North-South dialogue."

³³⁹ Mee L. D. (2005), *The Role of UNEP and UNDP in Multilateral Environmental Agreements, International Environmental Agreements*, Volume 5, pp: 227-263 at p.232, Caldwell L. K. (1990), *International Environmental Policy-Emergence and Dimensions*, second edition, Duke University Press, pp.69-70

³⁴⁰ Caldwell L. K. (1990), *International Environmental Policy-Emergence and Dimensions*, second edition, Duke University Press, pp.69-70

³⁴¹ Ibid.

³⁴² Miller, M. (1995), *The Third World in Global Environmental Politics*, Open University Press, Buckingham, p.34

communication costs for some countries to send delegates to Kenya for annual Council meetings.³⁴³ Her argument on high travelling cost is the same put forward about attending environmental negotiations in such places as Geneva, Vienna, Montreal, Helsinki, Copenhagen and Washington, therefore this cannot be considered to be an issue associated with its location in Nairobi³⁴⁴; it is more a general concern that many Southern states face in attending international negotiations.

On a positive note, according to Article 47 of the UNGA Resolution, each member of the UNEP Governing Council has one vote³⁴⁵, a situation that is accepted by the South since it acknowledges the equality of participants and it also gives the South a majority. The South's numerical strength, therefore, is significant when the Executive Director is appointed, because the UNEP executive director, who is also the head of the Environment Secretariat, is elected by the UNGA.³⁴⁶ This strengthens the South's voice when UNEP's governance agenda is being formatted, thereby contributing further to the North-South debate on environmental concerns.

As has been mentioned earlier in this Chapter, since its first session in 1973, UNEP has been providing additional resources for the South in promoting environmental research, expertise and technology, nevertheless, Southern states are still struggling to voice their concerns and achieve equity, fairness and justice. The role of UNEP, therefore, in making the space for equitable grounds for Southern participation is yet to be improved and there

³⁴³ Mee L. D. (2005), *The Role of UNEP and UNDP in Multilateral Environmental Agreements, International Environmental Agreements*, Volume 5, pp: 227-263 at p.232

³⁴⁴ Biermann F. (2002), *Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South? International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p. 300-301, Najam A. (2003), *The Case Against a New International Environmental Organization, Global Governance*, Volume 9, 367-384

³⁴⁵ G.A. Resolution 2997(XXVII)

³⁴⁶ Para.2, Chapter II of the UN General Assembly Resolution 2997(XXVII),

have been many criticisms levelled at the failure of its own mandate and governance. For instance, Elliot states that UNEP has not been able to overcome a general lack of political and financial support.³⁴⁷

Thus UNEP has been criticised for its ineffectiveness as a focal institution in global environmental governance.³⁴⁸ These criticisms fall into the following three major categories³⁴⁹: location, mandate and resources. Location has been discussed above.³⁵⁰ Its mandate, which is not broad enough to address the threats to the global environment³⁵¹, provides it with less authority than that enjoyed by other UN specialised agencies³⁵², therefore it is prevented from adopting treaties or regulations independently.³⁵³ In her analysis of the failure of UNEP to coordinate the world's environmental policies, Ivanova explains that "[it] has not been able to establish the autonomy necessary to become a strong anchor institution for the global environment."³⁵⁴ Also, some critics argue that it has not succeeded in its area of concern – the environment – in the same way that stable

³⁴⁷ Elliot, L. (2005), *The United Nations' Record on Environmental Governance*, in *A World Environment Organization. Solution or Threat for Effective International Environmental Governance?* edited by Biermann F. and Bauer S Ashgate, Aldershot, pp.27-56 at p.33,

³⁴⁸ Roch P. and Perrez F. X. (2005), *International Environmental Governance: The Strive Towards a Comprehensive, Coherent, Effective and Efficient International Environmental Regime*, *Colombia Journal of International Environmental Law & Policy*, Volume16, pp. 15-17

³⁴⁹ Najam A. (2003), *The Case Against a New International Environmental Organization*, *Global Governance*, Volume 9 pp: 367-384 Biermann F. (2002), *Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South?* *International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p. 300-301, Najam A. (2003), *The Case Against a New International Environmental Organization*, *Global Governance*, Volume 9, 367-384

³⁵⁰ The location of the UNEP is discussed in pp:105-107 of Chapter 2

³⁵¹ Shawkat A. (2006), *The United Nations' Approach to Trade, The Environment and Sustainable Development*. *ILSA Journal of International and Comparative Law*, Volume 12, p.607,

³⁵² Biermann F. (2002), *Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South?* *International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p.298

³⁵³ Ivanova M. (2007), *Moving Forward by Looking Back: Learning from UNEP's History in Global Environmental Governance: Perspectives on the Current Debate* edited by Swart Lydia and Perry Estelle, New York: Centre for UN Reform Education, pp: 26-47 at p. 38, Biermann F. (2002), *Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South?* *International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p.298

³⁵⁴ Ivanova M. (2007), *Moving Forward by Looking Back: Learning from UNEP's History in Global Environmental Governance: Perspectives on the Current Debate* edited by Swart Lydia and Perry Estelle, New York: Centre for UN Reform Education, pp: 26-47 at p. 38

institutions, such as the World Trade Organization, the World Bank and the International Monetary Fund, have done in the areas of economics and trade.³⁵⁵ Consequently, there has been a number of proposals for a more efficient environmental organization that would ensure a “sizable mandate, significant resources and [a] sufficient [degree of] autonomy.”³⁵⁶

Originally it had two main sources of financial resources: the UN regular budget allocation; and unrestricted voluntary contributions to the Environment Fund.³⁵⁷ However, contributions have been delayed or even absent on many occasions, consequently its funding has been a constant problem.³⁵⁸ Being less interested in the institution than developing countries, developed countries have never been inclined to maintain a progressive budget, consequently, it has always suffered from one that is “modest and declining”.³⁵⁹ Thus, addressing its financial crisis has become an urgent task for member states.³⁶⁰ Mee identifies three reasons for the failure in building up the Environment Fund:³⁶¹ internal delays of complicated treasury procedures of some countries; the absence of political momentum to keep all the states regularly committed on their contributions;

³⁵⁵ Biermann F. (2002), Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South? *International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p.297-298

³⁵⁶ Ibid, p. 298

³⁵⁷ Mee L.D. (2005), The Role of UNEP and UNDP in Multilateral Environmental Agreements, *International Environmental Agreements*, Volume 5, pp: 227-263 at p.234, Ivanova M. (2007), Moving Forward by Looking Back: Learning from UNEP’s History in *Global Environmental Governance: Perspectives on the Current Debate* edited by Swart Lydia and Perry Estelle, New York: Centre for UN Reform Education, pp: 26-47 at p. 38-39

³⁵⁸ Najam A. (2003), The Case Against a New International Environmental Organization, *Global Governance*, Volume 9, pp: 367-384, Ivanova M. (2007), Moving Forward by Looking Back: Learning from UNEP’s History in *Global Environmental Governance: Perspectives on the Current Debate* edited by Swart Lydia and Perry Estelle, New York: Centre for UN Reform Education, pp: 26-47 at p. 42

³⁵⁹ Mee L.D. (2005), The Role of UNEP and UNDP in Multilateral Environmental Agreements, *International Environmental Agreements*, Volume 5, pp: 227-263 at p.234

³⁶⁰ Shawkat A. (2006), The United Nations’ Approach to Trade, The Environment and Sustainable Development, *ILSA Journal of International and Comparative Law*, Volume 12, p.616

³⁶¹ Mee L.D. (2005), The Role of UNEP and UNDP in Multilateral Environmental Agreements, *International Environmental Agreements*, Volume 5, pp: 227-263 at p.234 - 235

and protests regarding its management and functioning.³⁶² Najam, in recognizing the lack of resource and budgetary supplements as the main reason for its inefficiencies in implementing and maintaining its agenda,³⁶³ states: “[T]here is no need to change [its] mandate. There is, however, an urgent need to provide it with the resources, staff, and authority it needs to fulfil its mandate”.³⁶⁴

Consequent to the above, however, upgrading UNEP by increasing its autonomy and resources has been cited as an argument against the creation of a world environment organization.³⁶⁵ The debate over whether or not a new global environmental institution is justified is important regarding what justice would be done in terms of the North-South dimension, since it is questionable whether a new institution would be granted a wide enough mandate to meet Southern environmental concerns. However, several scholars have suggested the creation of a world environment organization.³⁶⁶ From a Southern perspective, such a creation would provide a single central location, which would restrict the number of negotiations taking place in different locations, thereby reducing travel and expertise costs for many Southern countries.³⁶⁷ Currently, different conventions require national environment reports in different formats, which are difficult and costly for the countries of the South to produce, whereas, under a world environment organization, these would be regulated by way of a unitary reporting system. A further advantage, Biermann

³⁶²Ibid.

³⁶³ Najam A. (2003), The Case Against a New International Environmental Organization, *Global Governance*, Volume 9, pp: 367-384

³⁶⁴Ibid, p. 377

³⁶⁵ Mee L.D. (2005), The Role of UNEP and UNDP in Multilateral Environmental Agreements, *International Environmental Agreements*, Volume 5, pp: 227-263

³⁶⁶ Charnovitz S. (2002), A World Environment Organization, *Columbia Journal of Environmental Law*, Volume 27, Number 2, pp: 321-357, Esty D.C. and Ivanova M. (2001), *Making Environmental Efforts Work: The Case for a Global Environmental Organization*, New Haven: Yale Centre for Environmental Law and Policy.

³⁶⁷ Biermann F. (2002), Strengthening Green global Governance in a Disparate World Society: Would a World Environmental Organisation Benefit the South? *International Environmental Agreements: Politics, Law and Economics*, Volume 2, pp: 297-315 at p. 301

suggests, would be that a world environment organization would facilitate the establishment of “environmental embassies” to help the South in terms of expertise and technical support, which would also strengthen its voice at decision-making forums.³⁶⁸

Those who argue for a world environmental organization believe it would have a broader mandate to enable it to regulate financial resources and coordination between South and North. In emphasizing the importance of a world environmental organization to bridge North-South dimension in environmental governance, Biermann stresses:

A world environmental organization would not solve all problems neither [for] industrialized countries nor for developing countries. But it would be an important institutional step in humankind’s efforts to both equitably and effectively managing planet Earth.³⁶⁹

Najam, however, disagrees; he supports upgrading UNEP by it being provided with sufficient resources to operate its mandate effectively:

If coordination is the real deadlock to better environmental performance, then why should one believe that a new organization could achieve it better than UNEP? [...] Why should one assume that rich nations that have been so stingy in meeting their global fiscal responsibilities in the past – in environmental as well as other areas – will suddenly turn generous for a new organization?³⁷⁰

UNEP’s role in global environmental governance is significant in relation to the North-South dimension. The South has used UNEP as a forum to address its own environmental

³⁶⁸ Ibid.

³⁶⁹ Ibid.

³⁷⁰ Najam A. (2003), The Case Against a New International Environmental Organization, *Global Governance*, Volume 9, pp: 367-384

concerns by using its strength as the majority participant; however, there are many issues still to be resolved with regard to the financial strength of the institution that ultimately affect Southern environmental issues. In contrast, a global environment facility would exercise relatively higher financial powers, which would be specified by the World Bank.

GEF in the Context of the North-South Dimension

The call for a Global Environment Fund

In 1972, the Stockholm Declaration had expressed the need for a global financial mechanism in order to assist developing countries in their effort to incorporate international environmental standards in their development planning.³⁷¹ Principle 24 of the Stockholm Declaration refers to the importance of the cooperation of all states regardless of their political capacity³⁷²:

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres; in such a way that due account is taken of the sovereignty and interests of all States.³⁷³

Principle 24 further expressed the need for cooperation between countries from North and South in order to face the world's environmental challenges. The language of the Principle was carefully chosen in order to take into account Southern concerns and to attract those

³⁷¹ Principles from 8 to 12 of the Stockholm Declaration, adopted at the United Nations Conference on Human Nature held in Stockholm in 1972. This is considered as the first attempt of the international community to communicate the concern for the protection of the global environment. Further information on <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>

³⁷² The Stockholm Declaration, adopted at the United Nations Conference on Human Nature held in Stockholm in 1972, Principle 24.

³⁷³ Ibid.

countries of the region that were less interested in the conference by assuring them that their sovereignty over the natural resources would not be violated. The post-Stockholm era saw the development of international environmental law and policy alongside a growing number of initiatives that created a need for a global environmental fund, which became a key issue, even at other international conferences. For example, in 1989, at the summit of the non-aligned countries, the Prime Minister of India proposed a UN Planet Protection Fund³⁷⁴ and the World Resources Institute proposed a global environmental fund that would provide assistance to projects in the poorest countries.³⁷⁵

Then, in 1987, the Brundtland Report called for the establishment of a global fund dedicated to environmental projects to assist the developing countries to maintain the environmental standards in the development process, primarily in order to prevent the same environmental damage that had been caused by developed states during their development.³⁷⁶ The report also recommended the establishment of an international fund under the aegis of the UN and multilateral development banks.³⁷⁷

The North-South Dimension in the Pilot Phase of GEF

Following the Brundtland Report, at the annual meeting of the Board of Governors of the World Bank in 1989, the French Prime Minister emphasised the need for establishing a global environmental fund, simultaneously pledging his commitment to its success by contributing 900 million French Francs. The Board of Governors approved this proposal

³⁷⁴ Chazournes L. B. (1999), *The Global Environmental Facility Galaxy: On Linkages among Institutions*, *Max Plank Year Book of United Nations Law*, Volume 3, pp.243-285, p.246.

³⁷⁵ Ibid.

³⁷⁶ The Report, published by the World Commission on Environment and Development, *Our Common Future*, Oxford University Press, 1987. The Brundtland commission was established by the United Nations and it consisted of members from both developing and developed countries. Gro Harm Brundtland, Prime Minister of Norway, was the chairperson of the Commission.

³⁷⁷ Ibid.

and in 1991 adopted Resolution 91-5, which established the GEF.³⁷⁸ The initial plan was to implement a pilot phase for a period of three years to help developing states protect the international environment and to promote sustainable development. According to Jacob Werksman, two considerations were attached to the pilot phase: to bring together donor and recipients interests in funding environmental projects; and to bring together international institutions – the World Bank, UNEP, UNDP – which reached an agreement regarding their respective responsibilities³⁷⁹. These were the World Bank as trustee and administrator, UNEP as the scientific and technical advice provider, and UNDP which would assist with technical issues. The Science and Technological Advisory Panel (STAP) was also established as an advisory body.³⁸⁰ However, in spite of the involvement of the other agencies, the World Bank was the dominant force throughout the implementation process.

Resolution 91-5 required the World Bank to administer the GEF within its own legal framework, therefore, since the GEF had no international legal personality, the Bank's dominant role became even more apparent³⁸¹, which meant that legally binding decisions required the approval of the Bank's directors. The participant states, therefore, had very little discretion over its important decisions. As Werksman explains, the meetings were chaired by the head of the Bank's environmental department, and reports were issued, on an emergency basis, by consensus of the status involved³⁸². At a decision-making level, neither participant states nor any other implementing agencies possessed formal powers. In

³⁷⁸ Werksman J. (1995), *Consolidating Governance of the Global Commons: Insights from the Global Environmental Facility*, *Yearbook of International Environmental Law*, Volume 6, pp.27-63, at p.48.

³⁷⁹ See Annex c of Resolution No.91-5, ILM 30 (1991).

³⁸⁰ After the restructure of the GEF the STAP is recognized in the Para 24 of the GEF instrument.

³⁸¹ Werksman J. (1995), *Consolidating Governance of the Global Commons: Insights from the Global Environmental Facility*, *Yearbook of International Environmental Law*, Volume 6, pp.27-63

³⁸² *Ibid.*

effect, therefore, it was the donor countries – i.e. the developed countries – who exercised control, since they held majority voting powers in the World Bank.³⁸³

Four focal areas operated under the fund during the three years pilot phase of GEF: climate change; biodiversity; international waters; and ozone depletion. In this period, 115 projects in 63 countries were approved at an estimated value of 730 million US\$.³⁸⁴ Of these, more than three-quarters of the funds were dedicated to projects with objectives to reduce the effects of green-house gas and to promote biodiversity.³⁸⁵ An analysis of the process of the pilot phase reveals the powerful role played by the northern donor countries who prioritised projects according to their perceived urgency, often leaving the question as to whether they were really country-oriented³⁸⁶, which meant that some projects in the South were not what the recipient state needed to implement. The GEF's funding decisions, therefore, were largely influenced by Northern environmental priorities without taking into account those of the state concerned. This analysis raises the question as to what extent was the decision-making equitable, fair and just – principles that had been considered central to GEF's governance. Thus the North-South dimension played an immense role throughout the pilot phase

The GEF pilot phase operated under the Bretton Woods system implemented by the World Bank, by which the number of votes allotted to members equates to its financial contribution to the institution, resulting in the countries with the greatest financial resources holding the most votes, consequently, the US was granted the greatest share of

³⁸³ According to the weighted voting system operated in the World Bank the countries contributing more to the fund have more votes in the World Bank. Consequently majority of votes owns by developed countries.

³⁸⁴ Climate Change problem was the central focus of many developing countries and it had the highest amount of GEF funds during the pilot phase. <http://www.gefweb.org> (last accessed on 15.02.2011)

³⁸⁵ Chazournes L. B. (1999), *The Global Environmental Facility Galaxy: On Linkages among Institutions*, *Max Plank Year Book of United Nations Law*, Volume 3, pp.243-285 at p. 250.

³⁸⁶ See Annex D to the GEF instrument, principle 6.

votes amounting to 16% of the total contributions to the World Bank.³⁸⁷ Thus, many issues were decided in favour of the North, while the South were denied any meaningful political and financial influence.

During the last year of the pilot phase, and twenty years after UNCHE in 1972, the world was preparing for the Earth Summit – the international environmental conference. Following UNCED (1992), various multilateral environmental agreements (MEAs), which contained general principles and institutional structures aimed at achieving sustainable development, provided the foundation for the solution of particular environmental problems.³⁸⁸ Each MEA had established a financial mechanism to assist developing countries to fulfil their obligations³⁸⁹, and it had been two of these – the United Nations Framework Convention on Climate Change³⁹⁰ and the United Nations Framework Convention on Biological Diversity³⁹¹, which had been adopted at the 1992 Rio Conference, had demonstrated the need for a global environmental fund.

³⁸⁷

<http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/BODEXT/0,,contentMDK:21429866~menuPK:64020035~pagePK:64020054~piPK:64020408~theSitePK:278036,00.html> (last accessed on 24.11.2010)

³⁸⁸ E.g. United Nations Framework Convention on Climate Change, United Nations Framework Convention on Biological Diversity, Normally Multilateral environmental agreements are consisted of principles covering all the areas of that particular environmental regime. E.g. Convention on Biological Diversity article 4 -jurisdictional scope, Article 12 - training and research, Article 13 - public education and awareness, Article 22 - Relationship with other international conventions, Article 27 - settlement of disputes, Article 34--ratification, Acceptance or approval. Hey E. (2003) , “Sustainable Development, Normative Development and the Legitimacy of Decision – Making,” *Netherlands Yearbook of International Law*, Vol. XXXIV, pp. 3-54, at p. 21. “The basic elements of a regime founded by an MEA generally consist of the original treaty, one or more protocols as well as a number of institutions whose task is to further develop the regime and to promote its implementation.”

³⁸⁹ Hey E. (2003), “Sustainable Development, Normative Development and the Legitimacy of Decision – Making,” *Netherlands Yearbook of International Law*, Vol. XXXIV, pp. 3-54, Hey draws GEF as the most significant example of such multilateral funds. GEF, as a financial mechanism has been operating projects in several framework conventions such as the United Nations Framework Convention on Climate Change and United Nations Convention on Biological Diversity.

³⁹⁰ FCCC/INFORMAL/84 GE.05-62220(E) 200705

³⁹¹ <http://www.cbd.int/doc/legal/cbd-en.pdf> (last accessed on 16.11.2011)

The developed countries, therefore, had proposed to accept the GEF as the financial mechanism for these two conventions, whereas the developing countries expressed their concerns. Consequently, the institutional structure and decision-making basis of the GEF had not taken the South-North dimension within MEAs into consideration. This resulted in the developing countries rejecting the developed states' proposal to accept the GEF as the main financial mechanism for both Conventions.³⁹² The Southern countries, however, were more concerned about poverty alleviation and economic development. In the meantime, discussions were taking place about the restructuring of the GEF.

North-South Issues in the GEF Restructuring Process

Southern countries, which had begun to query the existing agendas of international environmental politics, participated very actively in the restructuring process, representing their concerns more vociferously than they had during the pilot phase. In spite of this, influencing the restructuring process proved to be a difficult task. The South came up with the suggestion of establishing a new green fund³⁹³, with G77 advocating a separate fund, to operate under the auspices of the UN, which would operate free from Northern dominance. The developed countries, however, continued to emphasise the importance of a restructured GEF to implement projects under the MEAs as an alternative to a new one³⁹⁴ in which they, the donors, would have limited involvement. In May 1991, at a participants' meeting, the chairman of GEF, Mr. Wilfred Thalwitz, responding to the concerns about its future structure, gave an assurance that "the governance was a matter of fine tuning"; he

³⁹² Chazournes L. B. (1999), *The Global Environmental Facility Galaxy: On Linkages among Institutions*, *Max Plank Year Book of United Nations Law*, Volume 3, pp.243-285 at p. 250

³⁹³ Charounes L. B. (2003), *The Global Environmental facility as a Pioneer Institution*, Working paper 19, GEF, p. 8,

³⁹⁴ Chazournes L. B. (1999), *The Global Environmental Facility Galaxy: On Linkages among Institutions*, *Max Plank Year Book of United Nations Law*, Volume 3, pp.243-285

further stated that change was unavoidable and he predicted that it would be needed before the end of the pilot phase.³⁹⁵

At the end of a long struggle, developing countries had to accept the proposal to restructure the GEF, although they did try to make it more balanced. As has been explained previously, at the time the pilot phase was created they had no opportunity to participate actively, however, one of their proposals in an attempt to make their national priorities eligible, they made a proposal to expand the funding possibilities beyond the four focal areas.³⁹⁶ However, the GEF was focusing more on the four focal areas with an emphasis on promoting bio-diversity and climate change. Sjoberd quotes the GEF chairman (1991-2002), Mohammad El Ashry, on this aspect³⁹⁷:

The GEF could function as the unitary funding mechanism for global environmental conventions that are currently being negotiated. In that regard it is the desire of the participants to signal to the climate and biodiversity negotiations that, in its new form, the GEF will be ready to serve as the financing mechanism for the global conventions if the negotiators so desire.³⁹⁸

After two years of long negotiations the developing countries finally accepted the restructured GEF as the main financial mechanism for biodiversity and climate changing conventions. A number of writers saw the negotiations between North and South regarding the restructure as complex. Werksman says:

³⁹⁵ Sjoberg H. (1999), *Restructuring Global Environmental facility*, Working Paper13, GEF, p.15.

³⁹⁶ Climate Change problem was the central focus of many developed countries and it had the highest amount of GEF funds during the pilot phase. <http://www.gefweb.org> (last accessed on 07.10.2010)

³⁹⁷ Sjoberg H. (1999), *Restructuring Global Environmental facility*, Working Paper13, GEF, P.18.

³⁹⁸ Article 4 of the GEF instrument states the fund programmes and projects shall be country driven and based on national priorities.

As a result of a difficult and curious compromise, the developing countries' delegations to both the biodiversity and climate change negotiation accepted the GEF as the financing entity for their Conventions.³⁹⁹

And Boisson stated,

Developing countries accepted the GEF as the financing entity for the Framework Convention on Climate Change and the Convention on Biological Diversity but only on an interim basis and on condition that it is restructured in accordance with criteria contained in both conventions.⁴⁰⁰

Both these statements demonstrate the developing countries' lack of enthusiasm to accept the GEF as the financial mechanism for the Conventions and the close relationship between the World Bank and the North caused the South to lose faith. It is important, therefore, to examine the different organs of the restructured GEF to see what developments have been made in respect of the legitimacy of its decision-making.

The Organisational Structure of the Restructured GEF

Instead of concluding an interstate treaty, the parties had successfully completed the negotiations and supported the adoption of the instrument.⁴⁰¹ In March 1994, therefore, at a meeting in Geneva, 73 states agreed to the adoption of the restructured GEF. This had been done quite differently from the traditional pattern of establishing international institutions,

³⁹⁹ Werksman J. (1995), *Consolidating Governance of the Global Commons: Insights from the Global Environmental Facility*, *Yearbook of International Environmental Law*, Volume 6, p.p.27-63, p.52.

⁴⁰⁰ Charounes L. B. (2003), *The Global Environmental facility as a Pioneer Institution*, Working paper 19, GEF, p.9.

⁴⁰¹ ILM 33(1994), 1283.

which means that the GEF, in its current form, was established on a special legal basis. After its adoption the three implementing agencies, the World Bank, UNEP and UNDP, adopted separate instruments, either as a resolution or as a decision, according to their institutional rules and regulations.⁴⁰² This approach of joint action of the World Bank and the UN was different from the pilot phase of GEF where the Bank had played the dominant role.⁴⁰³

After being criticised for the lack of legitimacy of its operation at the pilot phase, the carefully worded preamble of the GEF instrument shows more concern about justice, fairness and equality in its functions, thus: “to ensure governance that is transparent and democratic in nature, to promote universality in its participation”.⁴⁰⁴ To judge whether these concepts are promoted in the actual functioning of the GEF, this discussion will now focus on two main areas – equality of voting, and fairness and equality in processes and procedures.

Part III of the GEF Instrument provides for its Governance and Structure, together with a Scientific and Technical Advisory Panel, established under Para 24. The GEF provides funds to meet incremental cost⁴⁰⁵ required by projects relating to the focal areas.⁴⁰⁶ It is worth looking into these entities in order to understand how decision-making takes place in

⁴⁰² Charounes L. B. (2003), *The Global Environmental facility as a Pioneer Institution*, Working paper 19, GEF, p.10.

⁴⁰³ Pilot Phase GEF was based on the World Bank resolution 91-5 of 1991

⁴⁰⁴ http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Instrument_March08.pdf (last accessed on 24.11.2010)

⁴⁰⁵ Incremental cost is the cost that a country makes in order to implement international environmental standards in addition to national environmental policies. In order to access to GEF funds the receiving country should make a project proposal. In that proposal a calculation of the incremental cost should be included. “...The brief must provide a budget for the life of the proposed project. It must also address the issue of Incremental Costs - at least in terms of methodology, approach to the calculations, and the best preliminary calculations available...” More information is on <http://www.gefweb.org>. (last accessed on 24.09.2010)

⁴⁰⁶ Article 2 of the GEF Instrument.

http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Instrument_March08.pdf (last accessed on 24.11.2010)

the GEF in such a way that will ultimately deliver the principles of equity, fairness and justice in relation to the North-South dimension.

Functionally, the GEF Assembly resembles UNGA. It comprises all its member states, which, at the second Assembly meeting held in Beijing in 2002, totalled 173 (today, there are 182 members).⁴⁰⁷ Each participant appoints one representative and one alternative, to the Assembly, which meets every four years with the first meeting taking place in New Delhi in 1998. Under Para 14 of the GEF instrument the Assembly reviews the policies and functions of the GEF, and, under paragraph 34, any amendment to the Instrument should be approved by the Assembly upon the recommendation of the Council. However, such a decision becomes effective only after adoption by the implementing agencies and the trustee.⁴⁰⁸ This provision demonstrates that the Assembly has a limited mandate over important modifications to the GEF governance, which means that the World Bank and the implementing agencies are vested with considerable authority on matters of GEF governance. Also, of the three implementing agencies, the World Bank has additional powers to UNEP and UNDP since it is also the Trustee. This dominance further affects the North-South dimension because of the minimum influence the South has in World Bank decision-making, this chapter argues that this disparity greatly affects the equality of participation between North and South.

Recognizing the different environmental priorities of North and South has been a problem with regard to equality of participating states. The pilot phase of the GEF was widely criticised for its North-favoured approach in those project based on Northern priorities,

⁴⁰⁷ <http://www.thegef.org/gef/whatisgef> (last accessed on 24.11.2010)

⁴⁰⁸ Instrument for the Restructured Global Environmental Facility, 2008. The Instrument can be accessed on http://www.thegef.org/gef/sites/thegef.org/files/publication/GEF_Instrument_March08.pdf . (Last accessed on 26.10.2010)

such as climate change and biodiversity, and for the very little attention that was paid to the considerations and recommendations of the receiving Southern states.

At the first Assembly of the restructured GEF, one of its main goals was to ensure that all the projects were based on national priorities of the state where the project would be implemented.⁴⁰⁹ At its second meeting in 2002 the same commitments were agreed upon by the Assembly for the next four years. Two new focal areas were introduced to the GEF agenda i.e. Persistent Organic Pollutants (POP) and combat of desertification and land degradation.⁴¹⁰ The participants pledged to assist in the implementation of the commitments assured by the 2002 World Summit in Johannesburg (the United Nations Conference on Sustainable Development). The GEF made a commitment to help developing states to integrate sustainable development into their development plans and greater opportunities for local community NGO involvement were discussed⁴¹¹ as was 'country driven' project implementation, which was a central focus of the plans.⁴¹² These initiatives of GEF showed considerable bias towards Southern desires for environmental governance. This greater recognition of Southern aspirations was emphasised when, at the 2002 Assembly meeting, the importance of building up strong relationship and networks within the global scientific community was emphasised, together with the priority that was accorded to the use of scientists and institutions from the host countries.⁴¹³ These

⁴⁰⁹ Sjoberg H. (1999), *Restructuring the Global Environment Facility*, GEF Working Paper 13, p.12

⁴¹⁰ There had been suggestions to expand the focal areas of the GEF since the beginning of the current GEF. In one of his articles, "The GEF and its Future", Mohamed T. El-Ashry in *Network '92* published by The Centre For Our Common Future, Number 8, July 1991 wrote his views on this matter. "Several countries-developing and developed-have called for the GEF funds to deal with national environmental problems such as lack of clean water or regional blights such as desertification ... The best response, however, is probably to provide assistance through existing bilateral and multilateral development programmes."

⁴¹¹ <http://www.thegef.org/gef/meetingdocs/360/38> (last accessed on 17.02.2011)

⁴¹² Ibid.

⁴¹³ http://www.thegef.org/gef/gef_Documents_Publications (last accessed on 17.02.2011)

comments, together with the greater numerical strength of the South at the Assembly, demonstrate a better understanding between the South and the newly restructured GEF.⁴¹⁴

The Council, which is the primary decision-making authority and is responsible for developing, adopting and evaluating policies, programmes and financial decisions⁴¹⁵, was established by Para 15 of the GEF Instrument. It meets twice a year and consists of 32 members – sixteen from developing countries, fourteen from developed countries and two from countries whose economies are in transition⁴¹⁶. With regard to this composition, L.B. Charounes states: “[It] is designed to reflect two preoccupations, one relating to representation of all participation in a balance and equitable way, the other taking into account the financing efforts made by contributors.”⁴¹⁷ The system reflects both the UN and the Bretton Woods systems, however the most crucial financial decisions are based on the Bretton Woods system⁴¹⁸, which favours economic criteria, whereas the UN system values political criteria, such as universality and accountability.⁴¹⁹ This means that when such matters are debated the North tends to focus on efficiencies in the system, while the South focuses on the democratic legitimacy of the processes. Helen Sojerg describes the situation thus:

[...] it is clear that both the UN and [the] Bretton Woods systems institutionalize a bias toward one set of values, while being criticized for neglecting others. The UN, struggling with a dire financial situation, is under fire for being both ineffective and inefficient. And the legitimacy of the Bretton Woods system has suffered as the World Bank has been

⁴¹⁴ Karlsson S. (2002), The North-South Knowledge Divide: consequences for Global Environmental Governance, Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty, D. C. and Ivanova M., New Haven CT: Yale School of Forestry & Environmental Studies

⁴¹⁵ Para. 20 of the GEF Instrument.

⁴¹⁶ <http://www.gefweb.org/interior.aspx?id=254> (last accessed on 26.09.2010)

⁴¹⁷ Charounes L.B. (2005), The Global Environmental Facility (GEF): A Unique and Crucial Institutions, *Review of European Community and International Environmental Law*, Volume 14 , Number 3, p.196

⁴¹⁸ Para. 8 of the GEF Instrument.

⁴¹⁹ Sjoberg, H. (1999), *Restructuring Global Environmental facility*, Working Paper13, GEF, p. 54.

charged with, inter alia, insufficient transparency and undemocratic decision-making procedures, excessive reliance on neoclassical economic theories, and inadequate sensitivity toward political, social, and environmental concerns.⁴²⁰

This describes the complicated decision-making procedures of the GEF governance system that ultimately lead to conflicts of governance between legitimacy and efficiency.

Voting procedure tries to strike a balance between the two positions.⁴²¹ All the decisions in the council are taken by consensus and where a consensus is not found, matters are referred for formal voting where decisions are arrived at by double-majority – i.e. a 60% majority of the total number of participants and a 60% majority of the total number of contributors. This differs from both the World Bank voting system, whereby the number of votes depends on the amount of contribution to the institution, and from the UN, where voting is based on the one-country-one-vote system. The voting system adopted by the GEF appears to be a more equitable process in comparison to the weighted system that operated in the pilot phase of the GEF.⁴²²

Operational functions of an institution are largely responsible for the transparency of decision making and implementation. Paragraph 21 of the GEF Instrument created the Secretariat for this purpose in that it formulates and coordinates projects; it is also responsible for the effective implementation of the decisions taken by the Assembly. The Secretariat partly operates as an independent organ and partly under the supervision of the World Bank, which appoints its Chief Executive Officer. Although the GEF Council has the authority to appoint him and remove him and gives a fair amount of opportunity to the

⁴²⁰ Ibid.

⁴²¹ Para. 25 of the GEF Instrument.

⁴²² Andersen S. and Hey E. (2005), The Effectiveness and Legitimacy of International Environmental Institutions, *International Environmental Agreements*, Volume 5, pp: 211-226 at p. 221

South to decide on this vital matter, the appointment and function of the CEO greatly reflect the policies and principles of the World Bank. Also, about forty people are on the Secretariat staff, all of whom are employed by the World Bank. Consequently, the Northern states exercise a greater influence over administrative issues and operations relating to the Secretariat.

According to Matz, those environmental initiatives funded by the World Bank through GEF potentially have three effects on the global environment: firstly environmental harms, created as a result of development process; secondly, environmental friendly outcomes, created as a result of incorporation of environmental priorities into development projects; and thirdly active implementation of environmental standards as a primary project goal.⁴²³ All these effects reflect the environmental protection-centred policy making of the World Bank financial mechanisms, which raises doubts about whether Southern environmental concerns are given the necessary attention by the GEF, particularly under the Bretton Woods system. As Matz further explains:

Yet the institution has been and still is contested in the context of North-South discussions on development. The main underlying issue in this context is the potential right to development for non-industrialized countries that may be constrained or even jeopardised by the influence or domination of the industrialized North's financial power in financial institutions. From this perspective it is apparent that legitimacy of decision-making process must, in particular, be concerned with a balancing of interests, e.g. reflected in specific voting procedures or accountability process.⁴²⁴

⁴²³ Matz N. (2005), Financial Institutions Between Effectiveness and Legitimacy – A legal Analysis of the World Bank, Global Environment facility and Prototype Carbon Fund, *International Environmental Agreements*, Volume 5, pp: 265-302, at P.273-274

⁴²⁴ Ibid.

During GEF restructuring, the South made great efforts to make it independent, however, despite their efforts, the World Bank's influence and authority over its governance and operational systems has been maintained. There are two reasons for this – firstly, of the three implementing agencies, only the World Bank has the legal capacity to carry out GEF functions; and, secondly, the donors' trust is heavily reliant on World Bank involvement.⁴²⁵ This means that the World Bank, and the North in general, still maintains authority and domination in GEF governance, which raises questions regarding equity, fairness and justice in the context of the North-South dimension.

Conclusion

This chapter has argued that the international environmental law and governance process is affected immensely by the North–South dimension in every aspect of its institutional and functional performance. The failure to embrace principles of equity, fairness and justice in its decision-making process is resulting in further damage to the environment as well as to the development strategies of the South. As discussed in the first part of this chapter, the nature of the world's environmental problems has created a different set of priorities, duties and responsibilities for both South and North. International law presents several general principles, such as state consent, common but differentiated principles, and rights to development, to help bridge the different environmental approaches between the Southern 'usage' and the Northern 'conservationist' approaches. The South has applied, and is continuing to exercise, these general principles of international environmental law; however, due to its lack of financial resources and technological facilities, and its minimal

⁴²⁵ Werksman J. (1995), Consolidating Governance of the Global Commons: Insights from the Global Environmental Facility, *Yearbook of International Environmental Law*, Volume 6, p.p.27-63

expertise and scientific base, it is still marginalized in the critical arena of global environmental governance.

This thesis argues that any equitable and effective participatory process should embrace a system of governance that provides the necessary framework and facilities for every member to enjoy full and equal decision-making powers. The two environmental institutions that have been discussed in this chapter – UNEP and the GEF – illustrate those areas of environmental governance that still require improvement. In order to establish the equitable and effective participation of the South, such as by devising a different voting system, adjusting its legal authority and curtailing the North's domination over decision-making and its political and financial authority over administrative functions, all of which is needed in order for the GEF to attain equitable, fair and just governance in the context of the North-South dimension.

The next chapter will explore the North-South dimension in terms of global environmental governance in relation to one of the more highly recently debated issues – the possibility of enhancing a multidimensional framework of governance where non-governmental organizations (NGOs) are able to voice Southern environmental concerns alongside the member states.

3. NGOs in Global Politics: A Legal Analysis

“[...] either the rigidity of international law cannot be much longer maintained or a new form of law applicable to the conduct of non-governmental groups in international society will be necessary to bridge the gulf.”⁴²⁶

Bailey S.H.

Introduction

The previous chapters examined some of the intergovernmental efforts aimed at addressing environmental issues in the context of the North-South dimension. Because of the many historical, political and economic considerations, referred to in Chapter 1 and 2, developing countries have inherited a less influential role in global decision-making forums. Not only are the decision-making processes and procedures affected by these North-South differences, but overall governance structures are also affected. Despite the various interstate experiments in the aftermath of the establishment of the United Nations and other international organisations, as yet Southern environmental concerns have not been voiced effectively at a global level through the interstate institutional governance mechanisms that were discussed in Chapter 1 and 2.

⁴²⁶ Charnovitz refers Bailey S.H. (1932), *The Framework of International Society*, p. 81 in Charnovitz S. (2006), *Nongovernmental Organizations and International Law*, *American Journal of International Law*, Volume 100, p. 360

In this chapter, I analyse multidimensional approaches to environmental governance that have been brought about as a result of globalization and a recognition of environmental problems as being transnational issues. The rationale for the entrance of non-traditional actors into global environmental governance is the demand created for these actors to voice their concerns regarding the lack of intergovernmental success in order to open up the territorial boundaries to search for a global solution, in which state and non-state, parties are encouraged to collaborate. Currently, global governance centres on a series of political actions that involve horizontal and vertical relationships among an array of state and non-state.⁴²⁷ Not only hierarchical political authorities interact in global political context but also several third party actors such as NGOs, multinational corporations, religious groups and individuals involve in international decision-making. Guruswamy argues “[...] corporations and NGOs are changing the geo-political and socio-economic boundaries of national and international governance”.⁴²⁸ Consequently, this inter-state participation reflects the complex nature of making, and implementing, law at a global level by creating transnational decision-making forums to establish efficient mechanisms for the handling of multidimensional systems of governance.

Such a multidimensional framework of governance includes states, intergovernmental organisations, non-governmental organisations (NGOs), private entities and other parties of civil society.⁴²⁹ The main focus of this chapter, therefore, will be on the contribution of

⁴²⁷ Rosenau J. N. (1995), Governance in the Twenty First Century, *Global Governance*, Volume 1, Issue 1, p.13

⁴²⁸ Guruswamy L.D. (2002), Cartography of Governance: An Introduction, *Colorado Journal of International Environmental Law and Policy*, Volume 13, pp.7-14 at p.8

⁴²⁹ I do not intend to define civil society in detail here. For the purpose of this chapter I use the word ‘civil society’ as a broader category which represents several single categories such as NGOs, business community, experts and academics. For more in depth analysis on civil society read Rooy A.V. (2004), *The Global Legitimacy Game: Civil Society, Globalization, and Protest*, Palgrave Macmillan, Coleman W.D. and Wayland S. (2006), The Origins of Global Civil Society and Non territorial Governance: Some Empirical Reflections, *Global Governance*, Volume 12, pp.241-261, Cullen H. and Marrow K. (2001), International Society in International Law : The Growth of NGO participation, *Non-state actors and International Law*,

NGOs to environmental governance and how their engagement reflects the wider opportunities for parties other than states in the global decision-making arena. The chapter will present an overview of the evolution of NGOs and will examine their broader roles in the international system together with their legal and institutional limitations. It will analyse the power shift in decision-making processes from exclusively interstate structures to multidimensional frameworks of governance. The chapter further aims to provide a critical analysis of international law based on the role of NGOs in global governance, together with what challenges they pose to framework traditional state-centric framework.

In particular, this chapter will offer a vital and comprehensive understanding of the nature of NGO participation in global environmental governance by exploring their use as ‘loudspeakers’ in order to represent the Southern voice wherever states fail to do so. As stated in previous chapters, interstate decision making forums very often have not, because of historical, political and financial differences, been able to represent developing countries’ positions effectively since, in practice, all states are not equal.⁴³⁰ Consequently, the interests of all states cannot be represented to the same degree nor can states have an equal impact in global forums due to a lack of resources and expertise, together with scientific, technological and many other factors that hamper Southern participation.

Volume 1, pp:7-39, Anderson K. (2000), The Ottawa Convention Banning Landmines, The Role of International Non-Governmental Organisations and the Idea of Civil Society, *European Journal of International Law* Volume 11, p.91 Fine R. and Rai S. (eds.) (1997), *Civil Society: Democratic Perspectives*, London: Frank Cass., Lipschutz R. D. (1992), Reconstructing World Politics: The Emergence of Global Civil Society, Millennium: *Journal of International Studies*, Volume 21, Number 03, p.390, Shaw M. (1994), Civil Society and Global Politics: Beyond a Social Movements Approach, Millenium, *Journal of International Studies* Volume 23, Number 03, p. 655

⁴³⁰ The United Nations Organisation is based on principles of equality of all the states. Chapter 1, Article 2(1) states “The Organization is based on the principle of the sovereign equality of all its Members” But, under the discussion on North-South dimension all states are not equal in practice. Discussed in detail in Chapter 1 and Chapter 2 of this thesis.

However, many transnational NGOs are rich in resources; they have much expertise based on scientific research and they are often entirely dedicated to work on specific issues. Unlike most Southern states, therefore, these NGOs have wider prospectuses that allow them to be more effective in global forums. The aim of this thesis, therefore, is to show that NGOs are more likely to be better positioned to articulate Southern interests. This chapter will develop this argument further in Chapter 5 by examining the gradual enhancement of NGOs' contributions to international decision-making, especially in environmental forums, where they might improve developing countries' prospects by allowing their voices to be more effectively heard.

This chapter, therefore, outlines the background for the role of NGOs within the larger context of global environmental governance. The first section will define NGOs and their legal personality within the global governance system and the second will analyse the legal and institutional structures for NGO participation within the existing international political framework. In this context, the chapter will examine key UN Charter provisions on the consultative status of NGOs as well as environmental related institutional approach towards NGO participation. This chapter will also explore the existing governance framework of NGOs by arguing that the prevailing provisions need to be enhanced to advocate the preference of NGOs in environmental negotiations. The chapter will then develop the ultimate aim of this thesis, which is to explore the opportunities for transnational NGO collaboration in order to voice Southern environmental concerns more effectively.

Why NGOs?

In developing an analysis of NGOs that argues for their utility in voicing Southern environmental concerns, it is important to consider two issues: firstly, whether NGO involvement will only apply when state representation fails or rather in a general context at a global level, and, secondly, to what degree are NGOs competent to address those concerns. To analyse these issues I shall draw on Charnovitz's work. He argues that there are two essential factors for NGO involvement:

The needs of governments, or more descriptively, of particular government agencies or officials, and the capability of NGOs. These factors might also be viewed as political demand and supply.⁴³¹

These factors guide this chapter primarily in two directions. Firstly, as the thesis has established in Chapters 1 and 2, Southern states need assistance to put across their concerns at global levels because these states often struggle to do this themselves. Secondly, the capability of NGOs to voice Southern concerns is decisive in multidimensional governance efforts. During the early period of NGO involvement in the international arena their significance was highlighted either when the states were absent, or when there was a lack of state capacity to represent and negotiate their concerns. Charnovitz, in identifying a historical pattern to NGO involvement in global governance, observes that the presence of NGOs rises when the governments are weaker, or absent, and falls when governments re-establish their strength.⁴³² This 'cyclical pattern' of NGO

⁴³¹ Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183 at p. 269

⁴³² *Ibid*, p.190

involvement and relationships with states has now changed to a less dependent relationship, whereby NGOs act independently from states.

It is often argued that states and NGOs act more like ‘partners’, even though technically they are still disparate actors in global governance.⁴³³ For example, in the Critical Ecosystem Partnership Fund (CEPF), NGOs work in partnership with governments in conservation efforts at the global level.⁴³⁴ This Fund, which was established in 2000 as a collaboration of Conservation International, the Global Environment Facility, the Government of Japan, The MacArthur Foundation and the World Bank,⁴³⁵ provides funding and technical assistance to non-governmental organisations and the private sector for programmes to conserve bio diversity hotspots in the world, mainly in Asia, Africa and Latin America. The Fund has already implemented eighteen hotspot strategies in fifty two countries world-wide. As with CEPF, such NGOs work in partnership with the host government, in different ways to the state/NGO relationship under the traditional interpretation of international principles.

Willets points out that the Second United Nations Conference on Human Settlements (Habitat II) in 1996 was a landmark event in the recognition of the value of NGOs as partners in international decision-making.⁴³⁶ At this conference NGOs were allowed to sit down with governments in the inter-sessional drafting groups during the preparatory process and they were even allowed to present amendments to the documents and to

⁴³³ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp.191-212 at pp.206-208

⁴³⁴ http://www.cepf.net/xp/cepf/about_cepf/index.xml (last visited on 11.01.2009), Bradley M. Bernau (2006), Help for Hotspot: NGO Participation in the Preservation of Worldwide Biodiversity, *Indiana Journal of Global Legal Studies*, Volume 13, p. 617 at pp: 627-628

⁴³⁵ http://www.cepf.net/ImageCache/cepf/content/pdfs/cepf_2e2002_2eannualreport_2eonline_2epdf/v1/cepf_2002_annualreport_online.pdf (last visited on 11.01.2009)

⁴³⁶ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp.191-212 at pp: 195-196

defend their suggestions. Consequently, NGOs are now able to contribute more closely than ever before to the global governance discourse in many different ways.

The above discussion demonstrates how complex the present engagement of NGOs in global governance is. It is therefore important to understand what the existing legal framework provides for their participation within international law. This chapter will examine the strict interpretation of international law with regard to non-state actors. It will identify those NGOs that do not possess sufficient flexibility in their structures to allow for effective participation in governance, and it will demonstrate the need for alternative governance approaches in order to encourage wider participation in global affairs. First of all, though, it is important to offer a definition of NGOs and to consider their evolutionary role in order to understand how they have become increasingly influential in international decision-making.

Defining NGOs

There is no generally accepted one formal definition of an NGO.⁴³⁷ Although many international instruments and soft law documents include the term, none of them actually offer a definition, and no consensus has been reached among scholars as to what the term means. Nevertheless, the term NGO is commonly used in every sphere of the international system. As Bakker and Vierucci explain, “[E]ven in the absence of an agreed normative definition, both experts and the public at large constantly use the term, confident that

⁴³⁷ Willetts P, *What is a Non-Governmental Organization?*, UNESCO Encyclopaedia of Life Support Systems, Section 1, Institutional and Infrastructure Resource Issues, Article 1.44.3.7. Non-Governmental Organisations. <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM#Part1> (last accessed on 03.09.2010)

others know what they are talking about.”⁴³⁸ Consequently, an understanding of the term ‘NGO’ is often reached, according to the context, which leads to many ambiguities.⁴³⁹

Not only is the concept of ‘NGO’ complex, but, because it isn’t defined, what is included in the category is never mentioned. Therefore, in most instances, it is interpreted differently in different contexts.⁴⁴⁰ As Willetts notes, “there is no generally accepted definition of an NGO and the term carries different connotations in different circumstances”,⁴⁴¹ consequently, NGOs are often defined on an ‘ad hoc’ basis. NGO implies a negative, because it says something that it is not, i.e. ‘not governmental’, not what it actually is. NGOs denote two ideas: firstly, they are ‘organisations’, secondly, they are ‘not governments’. The meaning of NGO, therefore, is left open in that its compass is not explicitly, or deliberately, demarcated. In order to understand what it means, it is necessary to relate it to something else, i.e. to ‘government’. Therefore NGOs can principally be known as those organisations that do not fall into the category of government. However, the idea of ‘organisations that are not governmental’ is very broad indeed, a “normative loophole”⁴⁴² that opens up various interpretation of the term, some of which will be analysed below.

⁴³⁸ Bakker C. and Vierucci L. (2008), Introduction: a normative or pragmatic definition of NGOs? in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P and Vierucci, Edward Elgar Publishing Ltd., p.12

⁴³⁹ Bakker C. and Vierucci L. (2008), Introduction: a normative or pragmatic definition of NGOs? In *NGOs in International Law: Efficiency in Flexibility?* Edited by Dupuy P and Vierucci, Edward Elgar Publishing Ltd., pp.12-15

⁴⁴⁰ Charnovitz refers Kerstin M. (2002), Mission Impossible? Defining Non-governmental Organizations, *International Voluntary & Nonprofit Organization*, Volume.13, p. 271, at p. 277. Martens explains that in some languages “non-government” is translated as “against the government” or “antigovernment.”, Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, volume 100, p. 348 at p.251

⁴⁴¹ Willetts P., *What is a Non-Governmental Organization?* UNESCO Encyclopaedia of Life Support Systems, Section 1, Institutional and Infrastructure Resource Issues, Article 1.44.3.7. Non-Governmental Organizations. <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM#Part1> (last accessed on 02.09.2010)

⁴⁴² Bakker C. and Vierucci L. (2008), Introduction: a normative or pragmatic definition of NGOs? in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P and Vierucci, Edward Elgar Publishing Ltd., p.12

Firstly, it is important to discuss what international legal provisions exist to define NGOs. Although the term is included in vast numbers of international instruments, only a few provide some sort of definition. During the time of the League of Nations NGOs were referred to as 'international organisations' along with other private institutional bodies.⁴⁴³ In 1945, when the United Nations Charter was drafted, the common category of 'international organisations' was divided into two categories, under two separate provisions, on the basis of the type of their relationship with the Economic and Social Council (ECOSOC).⁴⁴⁴ Specialised agencies established by intergovernmental agreements were introduced under Article 70 and non-governmental organisations were introduced under Article 71. As Willetts explains, the terminology of NGO was introduced as an initiative to clarify the ECOSOC's relationship with private parties outside of the intergovernmental framework. He observes,

“To clarify matters, new terminology was introduced to cover ECOSOC's relationship with two types of international organizations. Under Article 70, "specialized agencies, established by intergovernmental agreement" could "participate without a vote in its deliberations", while under Article 71 "non-governmental organizations" could have "suitable arrangements for consultation". Thus, "specialized agencies" and "NGOs" became technical UN jargon. Unlike much UN jargon, the term, NGO, passed into popular usage, particularly from the early 1970s onwards.⁴⁴⁵

⁴⁴³ Willetts P., *What is a Non-Governmental Organization?* UNESCO Encyclopaedia of Life Support Systems, Section 1, Institutional and Infrastructure Resource Issues, Article 1.44.3.7. Non-Governmental Organizations. <http://www.staff.city.ac.uk/p.willetts/CS-NTWKS/NGO-ART.HTM#Part1> (last accessed on 02.09.2010)

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

Article 71 of the UN Charter uses the term ‘NGOs’ without providing its definition.⁴⁴⁶ At the time of the creation of the Charter’s provision for NGOs, the position of their involvement in governance was not as complex as it is at present. Perhaps the drafters of the Article 71 did not anticipate that the term ‘NGO’ would eventually become more broadly used in governance. However, subsequently, the following definition was introduced in 1950: “[a]ny international organization which is not created by intergovernmental agreement.”⁴⁴⁷ Such a definition fit the context whereby most international negotiations of the day took place within state-centred frameworks. As NGO participation in governance increased, particularly with the series of United Nations conferences and other international events that took place at the beginning of 1970s, the term ‘NGO’ became more frequently used.⁴⁴⁸

As a consequence of globalisation and the transnationalisation of many human rights and environmental issues, the role of NGOs became more prominent, so that, by the time the second United Nations Environmental Conference took place in 1992 in Rio, their activities had diversified considerably. For instance, roles included lobbying, advocacy and many other areas, their formal participation in global governance being recognised when they were classed in Agenda 21 as ‘major groups’. While these developments were taking place within global forums, a formal definition of ‘NGOs’ appeared in UN Resolution 1996/31 of ECOSOC, which, significantly, allowed national NGOs consultative status.⁴⁴⁹

The recognition in Agenda 21 of NGOs as ‘major groups’ was reinforced by their being

⁴⁴⁶ Later in 1959, Para 8 of the Review of Consultative Arrangements with Non-Governmental Organizations, 27 February 1959 define NGOs as “... any international organization which is not created by intergovernmental agreement.”

⁴⁴⁷ E/RES/288(X), Review of consultative arrangements with non-governmental organizations, 27th February 1959, para 8

⁴⁴⁸ One of the principle events was the United Nations Conference on Human Environment in 1972 that attracts the interest of many international NGOs.

⁴⁴⁹ <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm> (last accessed on 22.01.2011)

accorded consultation status to ECOSOC in order to involve more grassroots organisations, which broadened the opportunities for both local and national NGOs to voice their environmental concerns in global forums. The existing legal definition of NGOs in UN Resolution 1996/31 is:

Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.⁴⁵⁰

Even though Resolution 1996/31 of ECOSOC provides a clarification of the internal structure of NGOs, the Resolution itself was mainly concerned with their formation; in this respect it failed to explain either their functions, geographical locations or the nature of their participation.⁴⁵¹ The definition, therefore, was based on whether a particular organisation was, or was not, established either by a governmental entity, or an intergovernmental agreement. Consequently, therefore, the Resolution noted that no feature, other than “non-governmental”, would be included in the formal legal definition of NGOs.

⁴⁵⁰E/RES/1996/31, Consultative relationship between the United Nations and non-governmental organizations, 25 July 1996, para 12

⁴⁵¹ NGOs involve in wide range of functions such as service providing, lobbying, advocacy and their geographical location is varied from grass roots, local, national, regional and international and transnational.

Regional attempts have been made to provide detailed definitions of NGOs.⁴⁵² Article 1 of the European Convention of the Legal Personality of International Non-Governmental Organizations (1st January, 1991) states that:

This Convention shall apply to associations, foundations and other private institutions (hereinafter referred to as "NGOs") which satisfy the following conditions:

- a. have a non-profit-making aim of international utility;
- b. have been established by an instrument governed by the internal law of a Party;
- c. carry on their activities with effect in at least two States; and
- d. have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party.⁴⁵³

As may be seen from the above, the European Convention gave a detailed account of the formation and functions of NGOs. It included associations, foundations and other private institutions that have a non-profit making aim of international utility. It also ensured that an NGO should be established under the national law of the European Union member country and that it should carry on its activities transnationally. Another regional legal definition of an NGO may be found in the Guidelines for Participation by Civil Society Organizations in OAS activities established by the Organization of American States (OAS) in 1999,⁴⁵⁴ whereby a ‘civil society organisation’ is defined as “any national or international institution, organization or entity made up of natural or judicial persons of a private nature”⁴⁵⁵.

⁴⁵² Bakker C. and Vierucci L. (2008), Introduction: a normative or pragmatic definition of NGOs? in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P and Vierucci L., Edward Elgar Publishing Ltd., p.14

⁴⁵³ Council of Europe, European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, ETS No. 124, entered into force on 1 January 1991

⁴⁵⁴ CP/Res. 759 (1217/99), Guidelines for Participation by Civil Society Organisations in OAS Activities, 15 December 1999.

⁴⁵⁵ Ibid.

Apart from legal provisions in international instruments, it is important to analyse the academic approach to the definition of NGO. Different writers describe them by emphasizing their different elements; for example, some highlight their characteristics while others emphasize their functions. Vedder, for instance, identifies three basic characteristics of NGOs. Firstly, they must be non-profit making, secondly, they must consist, at least partially, of voluntary citizens' groups, and thirdly, they must be dependent, at least in part, on donations from private citizens or voluntary activities.⁴⁵⁶ Charnovitz, however, in looking at the functional dimension of NGOs within international law, states that they should 'contribute to the development, interpretation, judicial application and enforcement of international law'.⁴⁵⁷ Lung-Chu Chen takes a broader perspective by noting that NGOs' functional activities should involve "intelligence, promoting, prescribing, invoking, applying, terminating, and appraising".⁴⁵⁸

In addition to their characteristics and functions, scholars emphasise the transnational character of NGOs in their definitions, as this is a significant feature of their discourse. Charnovitz states, "[...] NGOs [...] are groups of persons or of societies, freely created by private initiative, that pursue an interest in matters that cross or transcend national borders and are not profit seeking".⁴⁵⁹ Vedder provides another definition from the transnational perspective: "An NGO is generally defined as an essentially non-profit, voluntary citizens' group which is organized at a local, national, or international level, and is locally,

⁴⁵⁶ Vedder A. (2007), Questioning the Legitimacy of Non-Governmental Organizations in *NGO Involvement in International Governance and Policy : Sources of Legitimacy* edited by Vedder A. Martinus Nijhoff Publishers, Leiden.Boston, pp: 1-16 at P.3

⁴⁵⁷ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348 at P.352

⁴⁵⁸ Charnovitz refers Lung-Chu Chen, An Introduction to Contemporary International Law (2000), 2nd edition, Chapter 4, in Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348 at P.352

⁴⁵⁹ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 350

nationally, or internationally active.”⁴⁶⁰ Judging by these definitions, therefore, the transnational nature of an NGO’s activities ensures its inherent ability to act beyond territorial boundaries.

However, in all the above definitions, there is a vagueness and ambiguity when an attempt is made to develop a precise definition that satisfies the requirements of international legal instruments as well as for scholarly debate. The limitations of the legal involvement of NGOs, as set out in the traditional international legal interpretation laid down in Article 71 of the UN Charter, and ECOSOC Res 1996/31, poses many challenges to the creation of a firm definition of NGOs that reflects its true nature. It is important to mention that the laws, rules and regulations of global negotiations, as laid down by the States, must be abided by, even though NGOs do not have powers to be involved in their formulation.

The following section will explore this contradictory nature of the traditional state-centred governance system and, in this context, the NGOs need to develop a strategy that would allow them to influence the decision making fora.

Beginning of multidimensional governance structures in the international system: NGO participation in the Westphalian governance system

NGOs are recognised as some of the most active players in the international system of global governance, and some scholars argue that they are already established as key

⁴⁶⁰ Vedder A. (2007), Questioning the Legitimacy of Non-Governmental Organizations in , *NGO Involvement in International Governance and Policy : Sources of Legitimacy* edited by Vedder A., Martinus Nijhoff Publishers, Leiden.Boston, pp: 1-16 at P.2

actors.⁴⁶¹ Others, however, believe that states should be the key actors as an unshakable principle.⁴⁶² However, it is recognised that the idea of the state being the supreme actor is increasingly in doubt because of changes to the world system, due to globalisation, together with the development of information technology.⁴⁶³ As Dhanapala explains, “in an age of total war, of instant global communications and fast, cheap travel, the nation-state appeared to many observers as a quaint, even dangerous anachronism”.⁴⁶⁴ In the light of these changes, many would argue that it is necessary to make adjustments to the state-centric system, rooted as it is in traditional international law discourse. In her analysis of the contradictions between the demands of the 21st century global society and traditional state-centric theories, Pearson states:

Globalization and global civil society discourses present challenges to underlying assumptions of the homogeneity of international law created by traditional state-centric theories by moving beyond debates about the centrality of the state in the international order, to exploring ways to encompass and utilise the diversity of actors and sites of interaction in international governance.⁴⁶⁵

As has been mentioned above, since the early 1980s NGOs have increasingly influenced international decision-making process and procedures⁴⁶⁶ and their changing nature is has

⁴⁶¹ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at he UN, *Global Governance*, Volume 6, pp: 191-212 at p.191

⁴⁶² Clark A. M. (1995), Non-Governmental Organizations and their Influence on International society, *Journal of International Affairs*, Volume 48, Number 2, Slaughter A.M. (1997), *The Real New World Order, Foreign Affairs*, September/October.

⁴⁶³ Mathews J. T. (1997), Power Shift, *Foreign Affairs*, Volume 76, Number 1, p.50 at pp. 51- 52

⁴⁶⁴ Dhanapala J. (2002), Globalization and the Nation-State, *Colorado Journal of International Environmental Law and Policy*, Volume 13, pp: 29- 39 at 34

⁴⁶⁵ Pearson Z. (2004), Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance, *Australian Year Book of International Law*, Volume 23, pp:73-103 at p. 77

⁴⁶⁶ Collinwood V. (2006), Non-governmental organisations, power and legitimacy in international society, *Review of International Studies*, Volume 32, pp. 439-454 at 440, For further understanding of NGO influence in international environmental negotiations: Corell E. and Betsill M. (2001), *A Comparative Look at NGO*

been noticeable in many aspects of their global engagements, such as the significant rise in their numbers.⁴⁶⁷ Within the past ten years, those engaged in consultation with ECOSOC have almost doubled. Whereas, in 1999, there had been a total of 1,701 in consultation with the UN, of which 111 were of general status, 918 had special status and 672 were on the roster, as of September 2010, 3,336 were listed of which 137 were of general status, 2211 had special status and 988 were on the roster.⁴⁶⁸ Another significant change is noticeable in the nature of NGO's international activities – compared with a few decades ago, their roles are more diverse and they are gradually influencing the centre of international decision making processes in many areas.⁴⁶⁹ For example the importance of their influence in sustainable development was recognised in Chapter 27 of Agenda 21 that states,

Non-governmental organizations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. Formal and informal organizations, as well as grass-roots movements, should be recognized as partners in the implementation of Agenda 21. The nature of the independent role played by non-governmental organizations within a society calls for real participation;

Influence in International Environmental Negotiations: Desertification and Climate Change, *Global Environmental Politics*, Volume 1, Issue 4, pp: 86-107

⁴⁶⁷ Collinwood V. (2006), Non-governmental organisations, power and legitimacy in international society, *Review of International Studies*, Volume 32, pp. 439-454, Pearson Z. (2004), Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance, *Australian Year Book of International Law*, Volume 23, pp:73-103

⁴⁶⁸ <http://www.un.org/esa/coordination/ngo/> [last visited on 21.04.2011] A detailed analysis on different consultative status is in later in this chapter, Willets Peter (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191 at p. 208

⁴⁶⁹ Reinisch A. and Irgel C. (2001), The Participation of the non-governmental organizations (NGOs) in the WTO dispute settlement system, *Non-State Actors and International Law*, Volume 1, pp: 127-151, Nelson P. (2000), Whose Civil Society? Whose Governance? Decisionmaking and Practice in the New Agenda of the Inter-American Development Bank and the World Bank, *Global Governance*, Volume 6, pp: 405-431, Bradley M. Bernau (2006), Help for Hotspot: NGO Participation in the Preservation of Worldwide Biodiversity, *Indiana Journal of Global Legal Studies*, Volume 13, p. 617

therefore, independence is a major attribute of non-governmental organizations and is the precondition of real participation.⁴⁷⁰

Likewise, NGOs are involved in international negotiations by proposing new international conventions, participating and negotiating the drafting of new treaties and, sometimes, they even represent governments as members of official delegations.⁴⁷¹ Consequently, they maintain close and extensive relationships with state actors and international organisations. They also appear in a variety of forms in order to emphasise different issues, and to contribute in many aspects of international negotiations.⁴⁷² The following are some of the forms in which NGOs appear: transnational, government-organised, business and industry, donor-organized, operational, advocacy, transnational movements, and social movements.⁴⁷³ This wider NGO participation emphasises the multidimensional nature of global governance, and their increasing presence as non-state actors in international negotiations means that the dividing line between state and non-state participation has become increasingly blurred,⁴⁷⁴ especially now that they have established their position in such fora as UN conferences and institutions as well as in other arenas where they have become essential political partners.⁴⁷⁵ Some, though, dispute the legality of NGOs presence in the traditional state-centred system of governance. However, in countering this objection, Willetts argues that NGOs and states can be effective “social partners” and that,

⁴⁷⁰ Article 1, Chapter 27, Agenda 21. <http://www.un.org/esa/sustdev/documents/agenda21/index.htm> (Last visited on 10.01.2010)

⁴⁷¹ Small islands nations were represented at climate change negotiations by NGOs. Karsten N. (1999), Legal Consequences of globalization: The Status of Non-Governmental Organizations Under International Law, *Indiana Journal of Global Legal Studies*, Volume 6, p. 579 at pp: 591-596, Weiss E. B. (1993), International Environmental Law: Contemporary Issues and the Emergence of a New World Order, *The Georgetown Law Journal*, Volume 81, p. 675

⁴⁷² Karns M.P., Mingst K.A. (2004), *International Organizations : The political Processes of Global Governance*, Lynne Rienner Publishers, p. 18

⁴⁷³ Ibid.

⁴⁷⁴ Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at he UN, *Global Governance*, Volume 6, p.191 at pp.205-208,

⁴⁷⁵ A description on NGO involvement within UN institutions is discussed later in this chapter.

by so being, states and NGOs may be seen as social partners, implying that “[such] partners are equal in the sense that each has legal personality, but not in the sense that they have the same rights and obligations.”⁴⁷⁶

There have always been mixed feelings about NGO involvement in matters of state governance. Many states object to the increasing presence of NGOs in international decision-making bodies.⁴⁷⁷ In commenting on the different opinions expressed at the UN General Assembly on NGO participation, Willets identifies two distinct reasons for this: firstly, states that feel they are under attack from NGOs over their human rights records and other issues do not welcome the presence of NGOs in decision making fora. Secondly, those states that were happy with NGO involvement in environmental, economic, and social questions did not wish them to take part also in debates on arms control and international conflicts.⁴⁷⁸ It is clear, therefore, that states are selective in opening up access to NGOs. The Background Paper for the Cardoso Report in 2003, states that:

[the well-handled involvement of NGOs] enhances the quality of decision-making, increases ownership of the decisions, improves accountability and transparency of the process and enriches outcomes through a variety of views and experiences. But-handled badly-it can confuse choices, hamper the intergovernmental search for common ground, and erode the privacy needed for sensitive discussions, over-crowd agendas and present distractions at important meetings.⁴⁷⁹

⁴⁷⁶ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at he UN, *Global Governance*, Volume 6, p.191 at p. 206

⁴⁷⁷ State’s rejection of NGOs as formal participants in governance is clearly reflected in policy making process with the UN General Assembly. States expressed their displeasure over awarding a permanent official status for NGOs in the General Assembly in 1996 when this matter was brought before the GA.

⁴⁷⁸ Willets P. (2000), From “Consultative Arrangements” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp.191-212 at.p.198

⁴⁷⁹ Ripinsky and Bossche refer UN System and Civil Society: An Inventory and Analysis of Practices, Background Paper for the Secretary-General’s Panel of Eminent Persons on United Nations Relations with Civil Society (May 2003) Introduction, <<http://www.un.org/refprm/pdfs/hlp9.htm>> in Ripinsky S. and

A global governance system will benefit from the expertise, networking capacities, and awareness raising capabilities of NGOs. However, writings on NGO participation in decision-making processes also reflect mixed opinions. Generally, scholars observe two competing schools: the ‘accommodationists’ and the ‘restrictionists’.⁴⁸⁰ Ripinsky and Van den Bossche subdivide accommodationists into two categories: radicals and moderates.⁴⁸¹ Radical accommodationists favour equal status of NGOs with states in terms of participation, representation and even voting rights in decision-making bodies. Moderate accommodationists, who support full integration of NGOs in international decision-making panels, believe that opening up more access to participation, oral statements and a formal legal framework would provide them with more opportunities to enhance the global decision-making system. Opposing the accommodationists are the restrictionists, who do not believe in NGO participation in international decision-making alongside states and who argue for constraints to be placed on them.⁴⁸²

Both the above viewpoints are logical. The ‘accommodationist’ argument is based on the nature of the multilateral function of global politics in that states can no longer act in a manner that takes little regard of other actors who have proved that they are capable of influencing crucial decision-making. Whereas the ‘restrictionist’ argument is based on the sovereignty of the state, in that they represent the people within a sovereign boundary,

Bossche P. V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p.13

⁴⁸⁰ Hartwick J.A. (2003), Non-Governmental Organizations at the United Nations-Sponsored World Conferences; A Framework for Participation Reform, *Loyola of Los Angeles Intl & Comparative Law Review*, Volume 26 , p. 217at 243-250

⁴⁸¹ Ripinsky S. and Bossche P. V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p.16

⁴⁸² Hartwick J.A. (2003), Non-Governmental Organizations at the United Nations-Sponsored World Conferences; A Framework for Participation Reform, *Loyola of Los Angeles Intl & Comparative Law Review* Volume 26 , p. 217at 243-250, Ripinsky S. and Bossche P. V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law

since they have been democratically elected. By contrast, NGOs are not democratically elected.

This chapter, however, will avoid these extreme opinions. The level of NGO participation should neither be extremely restricted nor should it be equal to a state's participation. Instead, it will explore the possibilities of enhancing NGO participation within a legitimate framework. Such a proposition raises many heavily debated practicability, accountability and risk issues.⁴⁸³ However, as Dhanapala declares, "... [al]though they [NGOs] are not elected by [any]one, and lack legal authority themselves to govern, they play a crucial role in helping the state to identify new goals."⁴⁸⁴ Therefore this thesis stress that the traditional criteria that frames the legality of NGOs needs to be re-examined. However, as Dhanapala correctly states, even though NGOs' presence in global governance is contested at various levels, their influence is continuing to make considerable impact on the decision making processes.

In order to voice Southern environmental concerns, NGOs, at both national and local levels, must be able to participate in global negotiations, since their contributions are significant in order to deliver Southern environmental agendas at international decision making fora. However, as has been suggested above, NGO participation is often questioned for not having a legal personality, therefore, in order for this discussion to be expanded, it is important to understand their conduct in the international legal arena, because it has been difficult to restrict them to rigid international boundaries. Hence the

⁴⁸³ Legitimacy of NGOs will be analysed in detailed in chapter 5 in which the thesis explores the transnational NGO networks and examines the constraints upon them.

⁴⁸⁴ Dhanapala J. (2002), Globalization and the Nation-State, *Colorado Journal of International Environmental Law and Policy*, Volume 13, p. 29- 39 at 37

legal context, in which they presently only have limited access to decision-making fora, will be discussed in the next section.

“Legal personality” or “NGO personality”?

Soon after the end of World War II, the United Nations and its many institutions, special agencies and programmes dedicated to different areas of the international system, was established resulting in radical changes in the international system and the emergence of numerous intergovernmental agencies of global governance, such as in trade and finance, health and education, human rights and environment.⁴⁸⁵ In parallel with these events, non-state actors, such as NGOs, business groupings, corporations and other parties, became involved in various international engagements alongside the member states.⁴⁸⁶

Academics, writing about NGOs, have proposed numerous methods by which the roles of NGOs might be enlarged across many areas of international law and politics.⁴⁸⁷ Recently

⁴⁸⁵ For an in depth research analysis on the role of NGOs during the period after the World War II: Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183-286 at pp: 249-257, Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191

⁴⁸⁶ For example for some of the earlier engagement of NGOs in global governance: International Committee of Red Cross (ICRC) is the first NGO to be recognised to enforce international law in 1863. International Union of Conservation of Nature(IUCN) contribution in the development of environmental law. For detail analysis on the early stage of NGO involvement in governance: Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183 at pp:253-257, Weiss E. B. (1993), International Environmental Law: Contemporary Issues and the Emergence of a New World Order, *The Georgetown Law Journal*, Volume 81, p. 675, Karsten N. (1999), Legal Consequences of globalization: The Status of Non-Governmental Organizations Under International Law, *Indiana Journal of Global Legal Studies*, Volume 6, p. 579, Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191, Pearson Z. (2004), Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance, *Australian Year Book of International Law*, Volume 23, pp:73-103, p.73, Mathews J. T. (1997), Power Shift, *Foreign Affairs*, Volume 76, Number 1, p.50, Cullen H. and Marrow K. (2001), International Society in International Law : The Growth of NGO participation, *Non-state actors and International Law*, Volume 1, pp:7-39

⁴⁸⁷ Welling J.J (2007)., Non Governmental Organizations, Prevention, and Intervention in Internal Conflict: Through the Lens of Darfur, *Indiana Journal of Global Legal Studies*, Volume 17, p.147, True-Frost Cora C. (2007), The Security Council and Norm Consumption, *New York University Journal of International Law and Politics*, Volume 40, p.115, Bossche P.V. (2008), NGO Involvement in the WTO: A comparative Perspective, *Journal of International Economic Law*, Volume 11, p. 717, Knight Andy W. (2002), *The*

scholars seek NGO coordination in some areas that traditionally limited entirely as interstate affairs such as humanitarian intervention and state security. Welling argues that present interstate collective action has failed to effectively address humanitarian crisis by traditional multilateral inter-state action. Welling suggests that international law in addressing humanitarian issues should involve coordinated action between states and NGOs.⁴⁸⁸ True-Frost shows NGO participation in the Security Council as one way of ensuring transparency of the Security Council.⁴⁸⁹ In 2004 the Council first permitted NGOs to address the Security Council regular session and in 2005 and 2006 the civil societies were invited to address at 'open debates' on women, peace and security. World Trade Organization appears to be another important issue area that many scholars analyse the role of NGO in international law.⁴⁹⁰

Meanwhile the NGOs have established positions mainly in areas such as environment, development and human rights, and they have gradually spread their influence into areas such as security, trade and finance.⁴⁹¹ With an equally steady increase in their numbers, the

Future of the UN Security Council: Questions of legitimacy and representation in multilateral governance, in Enhancing Global Governance: Towards a New Diplomacy? edited by Cooper Andrew F. et al, The United Nations University Press, pp.19-37, Reinisch A. and Irgel C. (2001), The Participation of the non-governmental organizations(NGOs) in the WTO dispute settlement system, *Non-State Actors and International Law*, Volume 1, pp: 127-151, Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348, Charnovitz S. (1996), Participation of Nongovernmental Organizations in the World Trade Organization, *University of Pennsylvania Journal of International Economic Law*, Volume 17, at pp:331-357, Esty D.C. (1998), Non-governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion, *Journal of International Economic Law*, Volume 1, pp: 123-147, Besides these issue areas NGO involvement in international environmental issues and human rights issues have been widely discussed in many occasions. Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183-286, Sands P. J. (1989), The Environment, Community and International Law, *Harvard International Law Journal*, Volume 30, p. 393

⁴⁸⁸ Welling J.J. (2007), Non Governmental Organizations, Prevention, and Intervention in Internal Conflict: Through the Lens of Darfur, *Indiana Journal of Global Legal Studies*, Volume 17, p.147

⁴⁸⁹ True-Frost Cora C. (2007), The Security Council and Norm Consumption, *New York University Journal of International Law and Politics*, Volume 40, p.115

⁴⁹⁰ Bossche P.V. (2008), NGO Involvement in the WTO: A comparative Perspective, *Journal of International Economic Law*, Volume 11, p. 717

⁴⁹¹ Willets P. (2000), From "Consultative Arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp: 191-212 at p.191

dimensions of their involvement have widened into global governance, therefore the question of their validity in the international law arena has been brought forward.⁴⁹²

Within the current international system, states are considered to be the key actors by way of their legal personality in the area of international law, and global political and financial institutions, international conventions and other legal entities all agree with this position. Therefore, international law accepts that ‘legal personality’ awards certain rights and duties of law, and it also determines the standing before the court.⁴⁹³ According to traditional international law interpretation, states are the only subjects of international law that can negotiate international agreements, possess the rights to vote and adopt declarations or conventions. Furthermore, many legal provisions can be found in various international documents that only include states as legal subjects in international law, for instance, under Article 34.1 of the Statute of the International Court of Justice (ICJ. Statute) it is stated that “only states may be parties in cases before the Court”.⁴⁹⁴ The ICJ Statute drafters strictly limit the standing before the Court to states. Also, Article 6 of the Vienna Convention on the Law of the Treaties, notes that “only states can conclude treaties”.⁴⁹⁵ This suggests that international legal foundations favour state over non-state actors because governments are democratically elected to represent them and their citizens, and NGOs are not. Therefore NGOs are considered not to have international legal personality, which is a negative point for NGOs in their attempts to make an impact on the state-centric global system, especially in their participation in global governance. Consequently, they may not act in their fullest

⁴⁹² Legal personality of NGOs in the national system is different to international approach. NGOs operating under any national system are normally registered under the national law. Therefore national NGOs are recognized as legal person in front of a national court. They are entitled for rights and immunities provided by the particular laws and regulations.

⁴⁹³ “*Reparation for Injuries suffered in the service of the United Nations*”, I.C.J. Reports, 1949, p, 174, Article 38 of the ICJ statute

⁴⁹⁴ http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0#CHAPTER_I (last accessed on 09.09.2010)

⁴⁹⁵ http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (last accessed on 09.09.2010)

capacity, which suggests that the traditional international law interpretation of the legal personality of non-state actors could be a subject for change.

At this point it is necessary to note that, on one occasion the legal personality of actors, other than states, was acknowledged. In 1949, the International Court of Justice (ICJ) in an advisory opinion in “*Reparation for Injuries suffered in the service of the United Nations*”⁴⁹⁶ held the United Nations as a subject of international law. However the court was very careful in its interpretation when analysing the difference between the state and an international organisation by saying:

Accordingly, the Court has come to the conclusion that the Organization is an international person. That is not the same thing as saying that it is a State, which it certainly is not, or that its legal personality and rights and duties are the same as those of a State. Still less is it the same thing as saying that it is 'a super-State', whatever that expression may mean. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims.⁴⁹⁷

The above ICJ decision reiterates the states’ domination in the discussion of the legal personality in an international legal framework, even though it recognises the UN as an international ‘person’. Similarly, in customary international law, the contribution of states plays a significant role in establishing customary international legal principles. States also hold sole authority in establishing customary international law by sustaining long term

⁴⁹⁶ “*Reparation for Injuries suffered in the service of the United Nations*” , I.C.J. Reports, 1949, The case report can be found at <http://www.icj-cij.org/docket/files/4/1835.pdf> (last accessed on 21.04.2011),p.174

⁴⁹⁷ “*Reparation for Injuries suffered in the service of the United Nations*” , I.C.J. Reports, 1949: The case report can be found at <http://www.icj-cij.org/docket/files/4/1835.pdf> (last accessed on 21.04.2011)

applicability of a certain practice.⁴⁹⁸ However, in this instance, the court looked at the issue of legal personality not from the perspective of states as sole subjects, but from the requirement of a contemporary global context. In rationalising its decision, the ICJ, in “*Reparation for Injuries suffered in the service of the United Nations*”, held that:

The subjects of law in any legal system are not necessarily identical in their nature or in the extent of their rights, and their nature depends upon the needs of the community. Throughout its history, the development of international law has been influenced by the requirements of international life, and the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane by certain entities which are not States.⁴⁹⁹

This opinion indicates the international law is influenced by the requirement of international life. Such an argument recognises the necessity to change the perception of international subjects under traditional international law and, therefore, should seek the possibilities for recognising NGOs as crucial actors in international law. Willetts points out, in favour of this position, that the changes in “UN resolutions and UN practice “[...] are so extensive that the international NGOs recognised by ECOSOC may be considered to have acquired a legal personality”.⁵⁰⁰ Nevertheless, NGO practice in global governance shows that strict legal interpretation on states as sole subjects of international law has not been able to prevent them from contributing to international systems. Rebasti explains that “[the] lack of formal provisions concerning NGOs’ participation in the activity of a

⁴⁹⁸ Pearson Z. (2004), *Non-Governmental Organisations and International Law: Mapping New Mechanisms for Governance*, Australian Year Book of International Law, Volume 23, pp:73-103 at p.75

⁴⁹⁹ “*Reparation for Injuries suffered in the service of the United Nations*”, I.C.J. Reports, 1949, p; 174

⁵⁰⁰ Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191 at p.206

specific organ has not prevented NGOs from having informal relations with it” .⁵⁰¹ This is proved by the argument that, even though NGO consultative relationship is strictly limited to ECOSOC, informal collaboration with other major UN bodies has often been successful. Formalities are often challenged by the comprehensive and strategic participation by NGOs at global negotiations and Willetts argues that NGO rights have become established, even in customary law, by pointing out the way in which they gain access to intergovernmental negotiations, despite the objections and barriers they face.⁵⁰²

There have been several regional attempts to recognise that NGOs have legal personality.⁵⁰³ As noted above, ‘The European Convention on the Recognition of Legal Personality of International Non-Governmental Organizations’ is a regional convention that provides general recognition for NGOs.⁵⁰⁴ By this Convention, signatory States agree to recognise the organisations that shall satisfy the requirements specified under the Convention as international NGOs having legal status within their borders.⁵⁰⁵ This provision directly ensures the legal personality of international NGOs, which incorporates their capacity to enrich the decision-making of the European Union and its member states. Under European law, therefore, the formal acceptance of NGOs as legal subjects is protected.⁵⁰⁶

⁵⁰¹ Rebasti E. (2008), Beyond consultative status: which legal framework for enhanced interaction between NGOs and intergovernmental organizations? in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P. and Vierucci L., Edward Elgar Publishing Ltd., p.27

⁵⁰² Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp: 191-212 at p. 205

⁵⁰³ Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183 at 188-189

⁵⁰⁴ European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Strasbourg, 24.IV.1986, <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/traiverd%5C140.pdf> , (last accessed on 21.04.2011), Bakker C. and Vierucci L.(2008), Introduction: a normative or pragmatic definition of NGOs? in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P. and Vierucci L., Edward Elgar Publishing Ltd., p.14

⁵⁰⁵ Article 1 of the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations, Strasbourg, 24.IV.1986 available at <http://reflex.raadvst-consetat.be/reflex/pdf/Mbbs/traiverd%5C140.pdf> (last accessed on 21.04.2011)

⁵⁰⁶ Ibid.

It is clear that there is no agreement in the literature and practice as to what extent the legal capacity of NGOs is valid. According to international law theories, legal personality is based on a state-centred framework of governance, which consists of governments and international organisations together with their member states.⁵⁰⁷ However, in practice, it is obvious that NGO participation enlightens global negotiations with their productive contributions. As the ICJ correctly held in *Reparation case*, “[T]hroughout its history, the development of international law has been influenced by the requirements of international life.” Therefore the international legal boundaries on NGO participation need to look beyond the formalities into the requirements of international life. Establishing a significant presence in various regional instruments, NGOs have been gradually moving towards the centre of the international system. The regional provisions on legal personality of NGOs certainly encourage international law to apply more flexible and timely approaches in the international interpretation of this topic.

Existing legal and institutional frameworks for NGO participation

According to Charnovitz, the first opportunity for NGO participation was marked within the Convention on the International Institute of Agriculture in 1905.⁵⁰⁸ Article 9f of the Convention states that: “[...] wishes [were] expressed by international or other agricultural congresses [that] agricultural societies, academics, [and] learned bodies [...] are utilized for intergovernmental decision-making processes”. This provision emphasises the importance of “non-state” involvement for the enhancement of international agricultural

⁵⁰⁷ Shaw M. (2001), *International Law*, 5th Edition, Cambridge University Press.

⁵⁰⁸ Convention on the International Institute of Agriculture signed in 7th of June 1905: The document available at *The American Journal of International Law*, Volume 2, Number 4, 1908, p. 358

policies, even in the early years of the twentieth century. Then, in 1919, the League of Nations Covenant provided access for NGO participation in interstate decision-making processes, with Article 25 of the Covenant declaring that the member states "...agree to encourage and promote the establishment and co-operation of duly authorised voluntary national Red Cross Organizations".⁵⁰⁹ Although this provision does not provide access to the NGO community in general, it could be considered as a progressive step in the evolution of the role of NGOs in the international system.

The necessity for NGO contributions in the UN was mentioned in the very first General Assembly Resolution in 1946.⁵¹⁰ International, regional and national non-governmental organisations were requested to "collaborate for purposes of consultation with the ECOSOC." The use of the words in the Resolution '...as soon as possible adopts suitable arrangements...' implies the greater necessity of NGO participation even at the time of formation.⁵¹¹ In the event, two international NGOs and one regional NGO were specifically mentioned in the General Assembly Resolution, since they were the initiators behind the acceptance of this provision.⁵¹²

Understanding the issues surrounding this aspect of legality of NGO participation will support my main argument in this thesis, which is to propose that NGOs be allowed to voice Southern environmental concerns at global decision-making tables. Therefore I will

⁵⁰⁹ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348 at P.357

⁵¹⁰ Lindblom A (2005), *Non-Governmental Organizations in International Law*, Cambridge University Press, p. 375, Resolutions adopted by the General Assembly at its First Meeting.
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/032/55/IMG/NR003255.pdf?OpenElement> last visited on 20.04.2009

⁵¹¹ Resolutions adopted by the General Assembly at its First Meeting.
<http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/032/55/IMG/NR003255.pdf?OpenElement>

⁵¹² Interntional Co-Operative Alliance, World Federation of Trade Unions and American Federation of Labour. Lindblom A. (2005), *Non-Governmental Organizations in International Law*, Cambridge Unitercity Press, p. 375

discuss the current international legal provisions in depth to find out where the boundary lines are for NGO participation in the international legal system. For this purpose, I will first pay attention to the UN Charter provisions and the nature of the consultative status within the organisation.

The existing legal framework

The following are the four main ways that NGOs maintain formal cooperation with the UN within the existing legal format:⁵¹³ those that obtain consultative status with ECOSOC, those that are accredited to particular UN conferences, those that establish relations with particular UN programmes or specialised agencies, and those that become associated with the UN Department of Public Information.⁵¹⁴ Although NGOs are not treated as formal subjects within international law, these four methods offer considerable opportunities for participation.

Among many progressive developments in NGO participation in the international legal system, the most commonly discussed and most influential, internationally agreed, provision is contained in Article 71, Chapter X of the UN Charter, which states:

[T]he Economic and Social Council may make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate,

⁵¹³ Ripinsky S. and Bossche P. V.(2007), *NGO Involvement in International Organizations : A Legal Analysis*, *British Institute of International and Comparative Law*, p. 19

⁵¹⁴ *Ibid.*

with national organizations after consultation with the Member of the United Nations concerned.⁵¹⁵

Some of the leading US citizen groups, such as the American Association of University Women, the American Federation of Labour-Congress of Industrial Organization, and the National Association for the Advancement of Coloured People, made an impact on the wording of the Charter.⁵¹⁶ As a consequence, their efforts, which provided expert advisory support to the committee and raised public awareness, were significant in the drafting process.⁵¹⁷ As a consequence, Article 71 was intended to ensure that their voices would be recognized and reflected in the international law provision in the UN Charter, which provides access for their participation.⁵¹⁸

The formation of Article 71 highlighted two very important factors concerning NGO accessibility to the UN.⁵¹⁹ Firstly, the international community's desire to make use of the potential of NGOs when states lack certain resources, such as expertise, finance, technical assistance, networking facilities and any other resource which states are often not able to provide. Secondly, the international community's wish not to allow full access to NGOs in the international decision-making processes to avoid their being granted equal status with

⁵¹⁵ UN Charter, Chapter 10, Economic and Social Council, Article 71. <http://www.un-documents.net/ch-10.htm> (Last visited on 09.02.2010)

⁵¹⁶ Waak P. (1995), Shaping a Sustainable Planet: The Role of Nongovernmental Organizations, *Colorado Journal of International Environmental Law and Policy*, vol.06, p. 345 at pp. 348-349

⁵¹⁷ Referring to John Humphrey, the first UN Director of the Human Rights Division, Charnovitz shows the greater impact of NGOs with regard to the human rights provisions in the United Nations Charter. Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, volume 18, p.183 at p. 252, Humphrey John P. *Human Rights and the United Nations: A Great Adventure*, New York: Transnational Publishers, 1984 Waak P. (1995), Shaping a Sustainable Planet: The Role of Nongovernmental Organizations, *Colorado Journal of International Environmental Law and Policy*, Volume 06, p. 345 at p.348,

⁵¹⁸ Willets P. (2000), From "Consultative Arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191, Charnovitz S. (1997), Two Centuries of Participation: NGOs and International Governance, *Michigan Journal of International Law*, Volume 18, p.183 at pp: 250-252

⁵¹⁹ Economic and Social Council, Article 71. <http://www.un-documents.net/ch-10.htm> (Last visited on 09.02.2009)

state or international organisations. Article 71 also carefully selected the words ‘consultative status’ to signify NGO’s level of access regarding decision-making, consequently, the Article only guarantees ‘consultative’ and not ‘participatory’ status.⁵²⁰ As Willets observes: “The term *consultative status* was purposely chosen to indicate a secondary role – being able to give advice but not being part of the decision-making process”.⁵²¹

Later, however, several amendments were made in order to increase NGO’s influence within the consultative status framework, the three most important ones were: ECOSOC Resolution 1296 (XLIV) of May, 1968⁵²², Resolution 1993/80 of July, 1993⁵²³ and Resolution 1996/31 of July, 1996.⁵²⁴ In Part I of Resolution 1296, eleven principles were laid down that allowed NGOs to be heard, at a consultative level, in global governance within a structured format designed to accord with ECOSOC policies.⁵²⁵ However, the provision in 1968 was not very descriptive, since it narrowed down to NGOs with international standing only:

The organization shall be of representative character and of recognized international standing; it shall represent a substantial proportion, and express the views of major sections of the population or of the organized persons within the particular field of its competence,

⁵²⁰ Later in this chapter I refer to some instances where NGOs have gone beyond the consultation status to participation status. Read for more information on this aspect : Willets Peter (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, volume 6, p.191

⁵²¹ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.191

⁵²² E.S.C. Res. 1296, UN ESCOR, 44th Sess. Supp. No.1, E/Res./1296(1968)

⁵²³ E.S.C. Res. 1993/80, UN ESCOR, 46th Sess., UN Doc. E/1993/80 (1993)

⁵²⁴ E.S.C. Res. 1996/31, UN ESCOR, 46th Sess., UN Doc. E/1993/80 (1993)

⁵²⁵ ECOSOC Resolution 1296 (XIV) in 1968

covering, where possible, a substantial number of countries in different regions of the world.⁵²⁶

The specification that an NGO should be of ‘recognized international standing’ was never going to favour national or local NGOs in the South. Under the 1968 resolution, therefore, national NGOs were not allowed to be used for consultative status; consequently, Southern NGOs were limited to their own national boundaries and the only opportunity they had to represent their views was through the international NGO to which they belonged.⁵²⁷ During this period, grassroots NGOs largely trusted that “[...] established NGOs were unrepresentative of grassroots popular opinion.”⁵²⁸ However, this emphasis on ‘international’ in NGOs in the late 1960s gradually changed, so that, by the late 1990s, the UN and many other intergovernmental organisations, were beginning to work more closely with national and regional NGOs.

Later, as a result of the enormous impact made at UNCED in 1992, the NGOs worldwide showed they were capable of greater levels of cooperation, together with states, in international decision-making, consequently, the international community granted them higher status; thus, both states and international organisations, became the beneficiaries of the greater accessibility that had been opened up for NGOs.

Resolution 1996/31, which increased the capacity of the Council for ‘consultation *with* NGOs’ to ‘consultative status *for* NGOs’, led some commentators to believe that the NGO-UN relationship was formalised and framed into a proper structure. It offered an

⁵²⁶ <http://www.un-documents.net/1296.htm> (last visited on 05.04.2010)

⁵²⁷ Para 9 of the Part I, ECOSOC resolution 1296 (XLIV) in 1968

⁵²⁸ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp: 191-212 at p.194

opportunity to apply for expanded consultative status by international, regional, sub-regional and national non-governmental organisations,⁵²⁹ a development that contrasted with the 1968 resolution whereby only international NGOs were considered to be suitable consultative organizations.⁵³⁰ The introduction of the Resolution 1996/31 states:

[...]Recalling Article 71 of the Charter of the United Nations

... Confirming the need to take into account the full diversity of the non-governmental organizations at the national, regional and international levels ... Acknowledging the breadth of non-governmental organizations' expertise and the capacity of non-governmental organizations to support the work of the United Nations ... Taking into account the changes in the non-governmental sector, including the emergence of a large number of national and regional organizations ... Calling upon the governing bodies of the relevant organizations, bodies and specialized agencies of the United Nations system to examine the principles and practices relating to their consultations with non-governmental organizations and to take action, as appropriate, to promote coherence in the light of the provisions of the present resolution [...]⁵³¹

This provision provided a wider prospectus for national and local NGOs in comparison to the previous provision, which recognised only international NGOs for consultative status. Charnovitz observes three significant changes which resulted from the 1968 Resolution provisions being amended by the 1996/31 resolution.⁵³² Firstly, the 1950 rule required the NGOs to be of “recognized standing” and “representing [a] substantial portion of

⁵²⁹ ECOSOC Resolution 1996/31

⁵³⁰ Para 4, Para 7, Para 9 of the Part I, ECOSOC resolution 1296 (XIV) in 1968

⁵³¹ <http://www.un.org/documents/ecosoc/res/1996/eres1996-31.htm> (last visited on 05.04.2010)

⁵³² Charnovitz S. (2006), *Nongovernmental Organizations and International Law*, *American Journal of International Law*, Volume 100, p. 348 at p. 358, Charnovitz refers to ECOSOC Rule 1950, which implemented Article 71 of the UN Charter. This was supersede later in 1968 by 1296 (XLIV) resolution.

organized persons within the particular field in which it operates”.⁵³³ However, the prevailing provision in 1996/31 dispenses with this two-part requirement, since an “organization shall be of recognized standing within the particular field of its competence or of a representative character”.⁵³⁴ Secondly, the preference of international NGOs in 1950 has been now changed to national, regional and sub-regional.⁵³⁵ Third, the 1996/31 resolution adopted a new requirement as NGOs with consultative status should “have a democratically adopted constitution”⁵³⁶, “possess appropriate mechanisms of accountability to its members” and “shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes”⁵³⁷ Charnovitz observes that this introduction of the language of accountability almost certainly happened as a consequence of debates regarding legitimacy in the contemporary political and legal discourse.

Furthermore, the 1996/31 Resolution encouraged NGOs from developing countries, and countries with economies in transition, to establish closer relations with the UN.⁵³⁸ Under its provisions, NGOs from developing countries were encouraged to ‘participate’ in international conferences convened by the UN, and Paragraph 7 states that greater ‘involvement’ of NGOs from countries with economies in transition should be encouraged. The Provisions in the 1996/31 Resolution were deliberately formed to attract NGOs from all over the world and it was emphasized in Para. 70 that the Secretary-General should make an effort to promote the aims and objectives of its resolution to every corner of the

⁵³³ Para.5 of the Review of consultative Arrangement with Non-governmental Organizations, ECOSOC resolution 288(X) in Feb. 27 1950, Similar provision in 1968 is Para 4of the Part I, ECOSOC resolution 1296 (XLIV) in 1968

⁵³⁴ Para 9 of the ECOSOC 1996/31 resolution

⁵³⁵ ECOSOC resolution 288(X) in Feb. 27 1950, Para 8,9 of Para 4,7,9 ECOSOC resolution 1296 (XLIV) in 1968, Para 4,5,8 of the 1996/31 resolution

⁵³⁶ Para 10 of the ECOSOC 1996/31 resolution

⁵³⁷ Para 12 of the ECOSOC 1996/31 resolution

⁵³⁸ Para 5, Para 6, Para 7 of the Part I of the ECOSOC 1996/31 resolution

world.⁵³⁹ Therefore Southern NGOs now have much wider opportunities to become involved in the global negotiations in the existing international law context than prevailed in the previous period.

This chapter will now explore the three categories of consultative status, which will inform the discussion regarding what type of relationships NGOs can build up within the UN, and what implications they will have on international decision-making.

Consultative Status

Consultative relationships can now be established between the UN and international, regional, sub-regional and national non-governmental organisations.⁵⁴⁰ In the case of national organisations, consultation with concerned member states is required and any NGO that applies for consultative status should attest that it has been officially registered with the appropriate authority for at least two years from the date of receipt of the application by the Secretariat.⁵⁴¹ The 1996/31 Resolution also demonstrates its commitment to ensure that all NGOs awarded consultative status by ECOSOC should adhere to democratic, transparent accountable process within their institutional existence:

The organization shall have a representative structure and possess appropriate mechanisms of accountability to its members, who shall exercise effective control over its policies and actions through the exercise of voting rights or other appropriate democratic and transparent decision-making processes.⁵⁴²

⁵³⁹ Para 70, Part XI of the ECOSOC 1996/31 resolution

⁵⁴⁰ Para 4 and 5 of the 1996/31 resolution

⁵⁴¹ Para 61 (h), Part IX of the of the 1996/31 resolution

⁵⁴² Para 12, Part I of the of the 1996/31 resolution

Under the existing legal framework of the 1996/31 ECOSOC Resolution, NGOs are divided into three categories of consultative status: general consultative, special consultative, and roster.⁵⁴³ To understand what rights and limitations are expressed in each category, a brief description of each status appears in the next section, because they will explain the limitations and privileges of each NGO when it participates in the global decision-making process,⁵⁴⁴ thereby informing the discussion regarding NGOs representing the South at global forums, which is the key theme of this thesis.

General consultative status

The establishment of general consultative status enhanced the ability of NGOs to influence UN agendas⁵⁴⁵ and it is organisations which have been accorded general consultative status that are mainly concerned with ECOSOC and its subsidiary bodies. Therefore, these NGOs are required to demonstrate that they have substantive and sustained contributions to make by representing their concerns and in furthering UN objectives in international, economic and social cooperation.⁵⁴⁶ Paragraph 22 emphasizes that their representation should consist of major segments of society in many countries in different regions of the world.⁵⁴⁷ As at

⁵⁴³ Para 22,23,24 and 27, Part IV of the 1996/31 resolution

⁵⁴⁴ Lindblom A.(2005), *Non-Governmental Organizations in International Law*, Cambridge University Press, pp.374-382, Ripinsky Sergey and Bossche P. V.(2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, pp.24-28, Karns M.P., Mingst K.A., *International Organizations : The political Processes of Global Governance*, Lynne Rienner Publishers, 2004, pp:211-248, Willetts P. (1995), *Consultative Status for NGOs at the United Nations*, Willetts P. (ed.)(1995), *The Conscience of the World : The Influence of the Non-Governmental Organizations in the UN System*, C. Hurst & Co Publishers Ltd, pp.31-63, Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348

⁵⁴⁵ Para 22,23,24 of the 1996/31 ECOSOC resolution., Ripinsky S. and Bossche P. V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p. 25

⁵⁴⁶ Para 22 of the 1996/31 ECOSOC resolution

⁵⁴⁷ Ibid.

1st September 2009, 138 NGOs were in general consultative status,⁵⁴⁸ some of the older of which, being members of the International Chamber of Commerce, were granted consultative status in 1946, and, in the case of the International Alliance of Women, in 1947. Other NGOs obtained general consultative status fairly recently, for example, the Academic Council on the United Nations System qualified in 1996, the International Council of Environmental Law in 2000, the International Trade Union Confederation in 2007 and the China NGO Network for International Exchanges in 2008.⁵⁴⁹

NGOs with general consultative status enjoy a comprehensive list of rights and privileges,⁵⁵⁰ since, unlike the other two categories, they enjoy broader acceptance within the ECOSOC decision-making process.⁵⁵¹ For instance, NGOs with any consultative status are informed of the provisional agenda of the ECOSOC, but only those with general consultative status can make proposals to its Council Committee.⁵⁵² Whenever the substance of an agenda item that is proposed by an NGO with general consultative status is discussed, it is entitled to present an oral introductory statement to the Council.⁵⁵³ If further clarification is needed the President of the Council may invite the NGO, in the course of the discussion of the item, to provide additional statements.⁵⁵⁴ Authorized representatives of organisations with general consultative status may also sit as observers

⁵⁴⁸ E/2009/INF/4, List of non governmental organizations in consultative status with the Economic and Social Council as of 1 September 2009. <http://esango.un.org/paperless/content/E2009INF4.pdf> (last visited on 13.09.2010)

⁵⁴⁹ Ibid.

⁵⁵⁰ Part IV of the 1996/31 ECOSOC resolution., Ripinsky Sergey and Bossche P.V. (2007), *Regulatory Legitimacy of the role of NGOs in Global Governance: Legal Status and Accreditation in NGO Involvement in International Governance and Policy: Sources of Legitimacy*, Vedder A. (ed.), Martinus Nijhoff Publishers, pp. 135-172 at p.139-140

⁵⁵¹ Para 27, 28, 29, 30, 32, and 32 of the 1996/31 ECOSOC resolution.

⁵⁵² Para 27 and 28 of the ECOSOC resolution 1996/31, Referring NGO section of the Department of Economic and Social Affairs, 17 January 2006, Ripinsky & Bossche state that right to propose items for the provisional agenda has almost never made use by the NGOs in practice. Ripinsky S. and Bossche P.V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p. 26

⁵⁵³ Para 32 (b) of the 1996/31 ECOSOC resolution

⁵⁵⁴ Para 32 (b) of the 1996/31 ECOSOC resolution

at public meetings of the Council and its subsidiary bodies as well as at public meetings of the commissions and other subsidiary organs of the Council.⁵⁵⁵ Furthermore, NGOs with general consultative status can submit written statements, which are required to be on the subject area of their special competence and should not exceed of 2000 words, for circulation to the Members of the Council.⁵⁵⁶

Analyzing the comprehensive set of rights and principles guiding the NGOs with general consultative status, in both the 1968 and 1996 resolutions, it is clear that they are still not entitled to be actual members of the decision-making processes of ECOSOC and they only have access for consultation. Willetts notes that the difference between consultative participation and being a member of the Council is the inability of the NGO to cast a vote. Also, some of the rights given to NGOs with general consultative status, such as the right to propose items for the provisional agenda, have almost never been used in practice.⁵⁵⁷

Special Consultative Status

Special consultative status will be given to organisations with special competence in areas that only cover a few of the activities that come under the ECOSOC.⁵⁵⁸ In relation to the NGOs with general consultative status, these organisations cover a more limited scope of subject area within ECOSOC. By the time of the introduction of this provision in 1968, the expectation on NGOs with special consultative status was affected by the decolonization process. Resolution 1296 (XLIV) emphasised some significant areas of international politics that occurred during the era immediately following the decolonization

⁵⁵⁵ Para 29 and 35 of the 1996/31 ECOSOC resolution

⁵⁵⁶ Para 30 and 31 of the 1996/31 ECOSOC resolution

⁵⁵⁷ Ripinsky S. and Bossche P. V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p. 25

⁵⁵⁸ Para 23 of the 1996/31 ECOSOC resolution

period, when NGOs with special consultative status were encouraged to promote areas such as human rights, fundamental freedom and timely issues, such as combating colonialism, apartheid and racial discrimination.⁵⁵⁹

As of 1st September 2009, 2,166 non-governmental organisations were in special consultative status;⁵⁶⁰ some of these are: the Women and Modern World Centre, granted consultative status in 2008, the Afro-Asian Peoples' Solidarity Organization, granted status in 1973, AIDS Action, granted status in 2007, the Asian Indigenous and Tribal Peoples Network, granted status in 2002, and the Association for the Protection of the Environment, granted consultative status in 1999.⁵⁶¹

The privileges enjoyed by NGOs with special consultative status are receipt of provisional agendas of the Council and the provisional agenda of sessions of commissions and other subsidiary organs of the Council, are communicated to NGOs with special consultative status⁵⁶², the right to sit as observers at public meetings of the commissions and other subsidiary organs as well as at public meetings of the Council and its subsidiary bodies⁵⁶³ and the right to submit written statements, with a maximum limit of 500 words, to be circulated among the Council members.

⁵⁵⁹ Para 17, Part III of the resolution 1296 (XLIV) in 1968 states, Organizations accorded consultative status in category II because of their interest in the field of human rights should have a general international concern with this matter, not restricted to the interests of a particular group of persons, a single nationality of the situation in a single State or restricted group States. Special consideration shall be given to the applications of organizations in this field whose aims place stress on combating colonialism, apartheid, racial intolerance and other gross violations of human rights and fundamental freedoms.

⁵⁶⁰ E/2009/INF/4, List of non governmental organizations in consultative status with the Economic and Social Council as of 18 September 2008. <http://esango.un.org/paperless/content/E2009INF4.pdf> (last visited on 13.09.2010)

⁵⁶¹ E/2009/INF/4, List of non governmental organizations in consultative status with the Economic and Social Council as of 18 September 2008. <http://esango.un.org/paperless/content/E2009INF4.pdf> (last visited on 13.09.2010)

⁵⁶² Para 27, 33 of the 1996/31 ECOSOC resolution

⁵⁶³ Para 29, 35 of the 1996/31 ECOSOC resolution

However, NGOs in special consultative status are not allowed to make oral statements at the meetings of the Council or propose items for the agenda of the Council, unlike NGOs with general consultative status.⁵⁶⁴

Roster Status

Paragraph 19 of Resolution 1296 (XLIV) 1968, and Paragraph 24 of Resolution 1996/31, 1996 provided similar provisions for the status of roster. Roster status is awarded to NGOs that do not qualify under general or special consultative status, but may still be able to contribute to the work of the Council, or its subsidiary bodies, or other UN bodies, within their competence.⁵⁶⁵ NGOs in consultative status with a specialized agency or a United Nations body can also be included in the roster.⁵⁶⁶

An NGO can be listed in the ECOSOC Roster in three ways: firstly, on the recommendation of the Committee on Non-Governmental Organizations, secondly, by action of the Secretary-General and thirdly, by virtue of their consultative status with specialized agencies or other UN bodies⁵⁶⁷.

As of 1st September 2009, 983 NGOs are listed under the category of Roster.⁵⁶⁸ Among these are Friends of the Earth, granted roster status in 1972, the Sierra Club, granted status

⁵⁶⁴ Under Para 28 and 34 of the 1996/31 ECOSOC resolution, the right to propose items of interest to the agenda of the Council is only granted to NGOs with the general consultation status.

⁵⁶⁵ Para 24 of the 1996/31 ECOSOC resolution

⁵⁶⁶ Para 24 of the 1996/31 ECOSOC resolution

⁵⁶⁷ E/2009/INF/4, List of non governmental organizations in consultative status with the Economic and Social Council as of 1 September 2009. <http://esango.un.org/paperless/content/E2009INF4.pdf> (last visited on 13.09.2010)

⁵⁶⁸ E/2009/INF/4, List of non governmental organizations in consultative status with the Economic and Social Council as of 1 September 2009. <http://esango.un.org/paperless/content/E2009INF4.pdf> (last visited on 13.09.2010)

in 1973, the United Nations Association of the USA, granted status in 1996, and the Youth Enhancement Organization, granted status in 2005.

The privileges enjoyed by NGOs listed in the Roster are: the provisional agenda of the Council and its subsidiary organs will be communicated to them⁵⁶⁹, the provisional agenda of sessions of commissions and other subsidiary organs of the Council will be communicated to them⁵⁷⁰, they may have representatives present at public meetings of the Council and its subsidiary bodies if the discussed matters are within their field of competence⁵⁷¹, they may submit written statements to the Council, however, only on invitation by the Secretary-General, in consultation with the President of the Council, or the Council or its Committee on Non-Governmental Organizations⁵⁷² and they may submit written statements to a subsidiary organ, however, only on the invitation of the Secretary-General or the subsidiary organ itself.⁵⁷³

NGOs on the roster do not have the privilege of making proposals for the provisional agenda of the Council or its subsidiary organs. It can be seen, therefore, that the NGOs with Roster category enjoy fewer rights compared to those with either general or special consultative status.

The UN framework on consultative status of NGOs, which provides the primary basis for NGO participation in UN negotiations, has also has been guidance for many other international and regional provisions in different international documents on NGO participation. With the introduction of supplements to Article 71 of the Charter by various

⁵⁶⁹ Para 27 of the 1996/31 ECOSOC resolution

⁵⁷⁰ Para 33 of the 1996/31 ECOSOC resolution

⁵⁷¹ Para 29 of the 1996/31 ECOSOC resolution

⁵⁷² Para 31(f) of the 1996/31 ECOSOC resolution

⁵⁷³ Para 37(f) of the 1996/31 ECOSOC resolution

Resolution provisions, the participation space within the legal framework for NGOs gradually expanded and this was visible in most of the conferences taking place during and after the 1990s. The regular presence and valuable contributions of NGO in these conferences demonstrate the necessity for broader participation in global governance to the extent where a standard procedure for accreditation for conferences was introduced. This development increased the possibilities for the participation of NGOs in all UN conferences without them having to follow the same ECOSOC procedures. Willetts observes this phenomenon thus: “[F]or the first time, it goes beyond ECOSOC’s own mandate and provides for all conferences convened by any organ of the UN”.⁵⁷⁴

More than sixty years of applying Article 71 of the UN Charter, NGO participation gradually developed to the point where it now influences and guides many other institutions to recognise the importance of participation in global decision making.

Other institutional and instrumental frameworks

Although Article 71 is broadly considered to be the provider for NGOs of formal access to international decision-making fora, there are a number of other doors that provide access for participation. Among these are environmental related institutions together with other issue-concerned organisations, although I do not wish to pursue these in much detail, since this thesis is based on environmental related instruments and their provisions only. Nevertheless, since they, too, contribute to the development of international law in this respect, a brief mention is important; amongst them are the World Trade Organization

⁵⁷⁴ Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.196

(WTO), the World Health Organization (WHO), the World Bank and the United Nations Conference on Trade and Development (UNCTAD).⁵⁷⁵

The legal basis of the WTO is the WTO Agreement, which was established by the Marrakesh Agreement in 1995, is based on Article V: 2 of the Agreement, whereby the General Council is allowed to take appropriate measures for consultation and cooperation with NGOs.⁵⁷⁶ Article V of the Agreement, which covers “Relations with Other Parties”, has two sub articles: V:1 covers “effective cooperation with other intergovernmental organisations that have responsibilities related to those of the WTO” and V:2 covers “consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO”. Use of the words in sub articles emphasise the weight given to NGOs by stating: “... consultation and cooperation with NGOs ...”

The 1946 Constitution of the World Health Organization incorporates the legal foundation for NGO involvement within the WHO,⁵⁷⁷ Article 71 of which states that WHO “makes suitable arrangements for consultation and cooperation with international NGOs, and with the national NGOs with the consent of the concerned government.”⁵⁷⁸ Similarly, as will be discussed in the following section many intergovernmental institutions have now been opened up for NGO involvement in their governance processes, with some of the efforts to achieve this going back to an early period of contemporary international governance.

⁵⁷⁵ Ripinsky S. and Bossche P. V. (2007), *NGO Involvement in International Organizations: A Legal Analysis*, British Institute of International and Comparative Law.

⁵⁷⁶ The V:2 provision was further expanded on 18 July 1996 when the General Council further clarified the framework for relations with NGOs by adopting a set of guidelines (WT/L/162) which "recognizes the role NGOs can play to increase the awareness of the public in respect of WTO activities". http://www.wto.org/english/docs_e/legal_e/04-wto.pdf (last visited on 07.04.2010)

⁵⁷⁷ WHO constitution was adopted by the International Health Conference in July, 1946 and entered into force in April, 1948. http://www.who.int/governance/eb/who_constitution_en.pdf (last visited on 10.04.2010)

⁵⁷⁸ Article 71, Chapter XVI “Relations with Other Organizations” of the WTO Constitution in 1946. http://www.who.int/governance/eb/who_constitution_en.pdf (last visited on 10.04.2010)

Therefore the NGO contribution to global governance has been developed in parallel with many other intergovernmental initiatives. The next section, which will explore environmental related institutional provisions, which is the main focus in this discussion, will consider the provisions related to institutions and instruments that work on international environmental issues, since such decision-making institutions have often welcomed the innovative practices of the NGO community.

United Nations Environment Programme (UNEP) – NGO Co-operation

The role of NGOs in the UN focuses mainly on areas such as human rights, human development and environment. The importance of UNEP-NGO collaboration is referred to in the UNEP Governing Council decision adopted to enhance the civil society engagement in the work of the UNEP,⁵⁷⁹ which states:

[Decides] To request the Executive Director to further develop, and review and revise as necessary the strategy for engaging civil society in the programme of activities of the United Nations Environment Programme, in consultation with Governments and civil society. The strategy should provide clear direction to the secretariat to ensure that all programmes take into account opportunities for multi-stakeholder participation in design, implementation, monitoring of activities, and dissemination of outputs; [...]⁵⁸⁰

⁵⁷⁹ The mandate of the United Nations Environment Programme deriving from Section IV of the Paragraph 5 of the General Assembly resolution 2997 (XXVII) of 15 December 1972 and further elaborated by Chapter 28 of the Agenda 21 and rearticulated by the 1997 Nairobi Declaration, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=287&ArticleID=1728&I=en> (last visited on 27.04.2010)

⁵⁸⁰ Section 2, Chapter I of the Decision adopted by the United Nation Environment Programme Governing Council at its special session/global ministerial environment forum on 15th February 2002, Governing Council Decision SSVII.5 of 15th February 2002 on enhancing civil society engagement in the work of the United Nations Environment Programme.

[Agrees] to make efforts to meaningfully consider the views of representatives of major groups and non-governmental organizations, including the private sector, giving them clear channels for providing Governments with their views, within the established rules and modalities of the United Nations system; [...]⁵⁸¹

In 1972, the UNEP constitutive instrument, UN General Assembly Resolution 2997 (XXVII) invited:

[...] other intergovernmental and those non-governmental organizations that have an interest in the field of environment to lend their full support and collaboration to the United Nations with a view to achieving the largest possible degree of co-operation and co-ordination [...]⁵⁸²

Van den Bossche, in a broader analysis of this provision, states that it constitutes an implicit legal basis for UNEP-NGO engagement, although it does not provide sufficient legal base to establish a strong argument in comparison with the much wider legal foundation established by the ECOSOC provisions regarding NGO consultative status.⁵⁸³ The UNEP provision does not directly establish specific arrangements nor does it provide a structured framework for the function and the nature of NGO participation. However, ever since the GA. Res. 2997 (XXVII) was adopted, many NGOs worldwide have collaborated with the UNEP, which has created several alternative paths for them to participate within its institutional capacity. Consequently, NGOs participate in policy making processes as well as in implementing UNEP programmes some of which are detailed below.⁵⁸⁴

⁵⁸¹ Ibid, Chapter II

⁵⁸² Para 5, Part IV of the GA. Res. 2997 (XXVII) in 15th December 1972

⁵⁸³ Bossche P.V. (2007) Regulatory Legitimacy of the role of NGOs in Global Governance : Legal Status and Accreditation, in *NGO Involvement in International Governance and Policy : Sources of Legitimacy* edited by Vedder A., Martinus Nijhoff Publishers, Leiden.Boston, pp: 135-172 at P. 144

⁵⁸⁴ Ibid.

The UNEP document in 2004, 'Natural Allies: UNEP and Civil Society', regarding the implementation of its programme of work, addresses many areas,⁵⁸⁵ such as early warning assessment, policy development, the implementation of environment policy and law, communications, public information, and engaging business and industry in partnerships.⁵⁸⁶ All these areas of concern benefit from the greater expertise and networking capacity of NGOs, therefore, their participation in the implementation of UNEP's programme of work is vital in every aspect.⁵⁸⁷ However, Ripinsky and Van den Bossche noted the lack of legal framework for such participation⁵⁸⁸ by pointing out that on one occasion UNEP referred directly to the ECOSOC rules for NGO participation in its programme. Nevertheless, they conclude that NGOs have been involved to a great extent in UNEP achieving its goals.⁵⁸⁹

Van den Bossche identifies two main forms of NGO involvement in UNEP policy development:⁵⁹⁰ firstly, participating in Governing Council⁵⁹¹ and Global Ministerial Environmental Forum;⁵⁹² secondly, participating in the Global Civil Society Forum. Rule 69 of the Rules and Procedures of the Governing Council, which, in Rule 69 under the

⁵⁸⁵ Ripinsky and Bossche refer to UNEP document, 'Modalities for Accredited International Non-Governmental Organizations to UNEP to Submit Written Inputs into the Unedited Working Documents of the UNEP's GC/GMEF and to Submit Written Statements to the GC/GMEF of UNEP.' in Ripinsky Sergey and Bossche P.V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p.121

⁵⁸⁶ Natural Allies: UNEP and Civil Society(2004), UNEP Secretariat, Chapter 3, p.25-26 http://www.unep.org/PDF/Natural_Allies_en/Natural_Allies_english_full.pdf (last visited 29.04.2010)

⁵⁸⁷ Ibid.

⁵⁸⁸ Ripinsky S. and Bossche P.V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p.121

⁵⁸⁹ http://www.unep.org/PDF/Natural_Allies_en/Natural_Allies_english_full.pdf last visited on 29.04.2009

⁵⁹⁰ Bossche P.V. (2007) Regulatory Legitimacy of the role of NGOs in Global Governance : Legal Status and Accreditation, in *NGO Involvement in International Governance and Policy : Sources of Legitimacy* edited by Vedder A., Martinus Nijhoff Publishers, Leiden.Boston, pp: 135-172 at P. 144

⁵⁹¹ The Governing Council is the supreme organ of UNEP. It is composed of 58 Member States based on geographical representation, elected by the General Assembly. The Governing Council reports to the GA through ECOSOC. Para.1 of the United Nations General Assembly Resolution 2997 (XXVII) 'Institutional and Financial Arrangements for International Environmental Co-operation'

⁵⁹² Global Ministerial Environment Forum was formed in 1999. It gathers annually to important policy issues in the field of environment. Para 6 of the Resolution of the United Nations General assembly 53/242, 'Report of the Secretary General on Environmental and human settlements' A/RES/53/242/ in 10 Aug. 1999

section on Observers of International Non-Governmental Organizations, sets up wider access to accredited NGOs in its decision-making processes by stating that “representatives of international non-governmental organisations may sit as observers at public meeting of the Governing Council and other subsidiary organs”.⁵⁹³ Under the same provision, NGOs can “make oral statements within the subject of their interest, upon the invitation of the Chairman and approval of the Governing Council or the concerned subsidiary organ”⁵⁹⁴ and a written statement may also be provided by an accredited NGO to be circulated to the members of the Council and other subsidiary organs only if the said document is related to the agenda item of the Governing Council or other subsidiary organ.⁵⁹⁵

I believe that broader involvement of NGOs in UNEP should be encouraged in order to make their more local, national and international initiatives within the UNEP heard which is important in terms of their ability to bring forward Southern concerns more vociferously at the negotiating tables. The majority of Members from the South, together with the position of its headquarters in Nairobi, emphasises the Southern character of UNEP, even though these characteristics on their own don’t conclusively promote, or protect, Southern environmental concerns. Consequently, UNEP has often been recognised as a common stage on which to lay down developing countries positions in the context of global governance, which means that UNEP has become a fine example of an institution that is updating its NGO participation rules according to the changing nature of international politics.

⁵⁹³ Rule 69(1) of the Rules and Procedures of the Governing Council of the UNEP in 1988 http://www.unep.org/download_file.multilingual.asp?FileID=11 (last visited 24.04.2010)

⁵⁹⁴ Ibid.

⁵⁹⁵ Rule 69(2) of the Rules and Procedures of the Governing Council of the UNEP in 1988 http://www.unep.org/download_file.multilingual.asp?FileID=11 (last visited 24.04.2010)

The acceptance of NGOs as principal partners in environmental decision-making was further enhanced by the introduction of Agenda 21, a programme of action for the 21st century. The following section will analyse NGO participation in environmental instruments in this context.

Agenda 21

Another landmark provision that has broadened NGO participation in the international system is Chapter 23 of Agenda 21.⁵⁹⁶ The preamble to the section “Strengthening the Role of Major Groups” introduces NGOs as one of the key players in promoting sustainable development. The aim of the cooperation between decision-making bodies and other groups is described as an agenda set up for “moving towards real social partnership in support of common efforts for sustainable development”⁵⁹⁷ thus Paragraph 23.2 recognises the importance of broad public participation in decision-making for achieving sustainable development goals. The significance of NGOs participating in the decision-making process, as well as providing access to the information related to their areas of work, is also emphasised.⁵⁹⁸

In its approach to NGO participation, Agenda 21 shows a progressive way of incorporating NGO capacity in the global governance process and Chapter 27 builds a prominent basis by recognizing NGOs as social partners, which, according to Willetts, implies equal status

⁵⁹⁶ UN Doc. A/CONF.151/26 (Vol..I-III), 12 August 1992, Agenda 21, Annex II of the Report of the United Nations Conference on Environment and Development, pars. 23.3,38.44

⁵⁹⁷ UN Doc. A/CONF.151/26 (Vol..I-III), 12 August 1992, Agenda 21, Para 23.4

⁵⁹⁸ UN Doc. A/CONF.151/26 (Vol..I-III), 12 August 1992, Agenda 21, Para 23.2.

<http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter23.htm> (last visited on 13.09.2010)

between NGOs and States.⁵⁹⁹ In the Agenda, NGO partnership arrangements vary between international, national and local government organisations and partnership arrangements with other NGOs.⁶⁰⁰ Therefore all levels of governing bodies are encouraged to cooperate with NGOs in order to achieve sustainable development goals. This particular provision emphasises the necessary adjustment that is required because it upgrades NGO involvement in global governance from mere participation to partnerships. To further strengthen the partnership possibilities, Agenda 21 states that the UN and its governments, in consultation with NGOs, should take necessary actions “to review procedures and mechanisms for the involvement of these organizations at all levels from policy-making and decision-making to implementation”.⁶⁰¹ However, the fullest cooperation of NGO participation throughout the decision-making process is vital in order to utilize their highest capacity as environmental decision-making authority. It is important to mention that this commitment to establish partnership arrangements with NGOs and other institutions for the achievement of sustainable development is highlighted throughout Chapter 27 of Agenda 21.

The reason for this progressive approach is primarily based on the argument that the resolution of environmental issues requires a global approach involving multidimensional governance frameworks and that sustainable development goals will not be attained unless governance structures cross the boundaries of strict international legal interpretation.

Agenda 21, therefore, offers the prospect of future development for international

⁵⁹⁹ Willets P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p.206

⁶⁰⁰ Para 27.4 of the Agenda 21 emphasises the importance of fullest cooperation and communication between international organizations, national and local governments and non governmental organization in order to meet the targets of Agenda 21. UN Doc. A/CONF.151/26 (Vol..I-III), 12 August 1992, Agenda 21, Para 23.2. <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter23.htm> (last accessed on 13.09.2010)

⁶⁰¹ Para 27.6 of the Agenda 21. UN Doc. A/CONF.151/26 (Vol..I-III), 12 August 1992, Agenda 21, Para 23.2. <http://www.un.org/esa/sustdev/documents/agenda21/english/agenda21chapter23.htm> (last accessed on 13.09.2010)

governance structures by including NGOs as social. As Willetts points out, Agenda 21 gives a clear sense of political commitments to providing access for all groups.⁶⁰²

The instrumental and institutional provisions in the environment field have inspired many efforts to widen NGO involvement in global governance, to which end the legal provisions covering environmental law and politics have reiterated the need for greater NGO involvement regarding the development of international environmental governance on the grounds that such involvement enriches the process with information, expertise, networking and resources. However, some authors call NGOs ‘intellectual competitors’ to governments in policy making forums,⁶⁰³ the key legal argument against NGO participation being the absence of a ‘legal personality’, which means that, even though NGOs have proved their negotiating capacity in terms of research, technology and expertise, they are still not accepted as equal partners to governments. However, as Willetts emphasises, it is superficial to believe that no power to vote means no power to negotiate.⁶⁰⁴ Today, NGOs participate in most of the crucial decision making panels, and they influence the decision making authorities whose votes finally decide outcomes.

Conclusion

The central issue that has been examined in this chapter is what potential NGOs can offer within the legal structure of the international system in the area of environmental governance. Because of the transnational nature of environmental issues, their initiatives have often made it possible for them to play significant roles in the decision-making

⁶⁰² Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, p. 191 – 212 at p. 194

⁶⁰³ Esty D. (1998), Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion, *Journal of International economic Law*, Volume 1, p. 123

⁶⁰⁴ Willetts P. (2000), From “Consultative Arrangements ” to “Partnership”: The Changing Status of NGOs in Diplomacy at he UN, *Global Governance*, Volume 6, p. 191-2121 at p. 207

processes to the extent where they can participate, alongside governments, in voicing their various concerns. However, these non-state actors have not yet been offered complete access to the global decision-making fora that consist entirely of state parties,⁶⁰⁵ since, in many instances they are excluded from participating where the most crucial decisions are being taken. A key reason for this exclusion is that the formal legal structures do not recognise their role as official participants. Therefore the States, as privileged actors within the scope of international law, will always have greater privileges in governance than non-state actors.

On the other hand, any attempts to enhance NGO participation will face many barriers within the existing legal structures of global governance. As this chapter has shown, the absence of legal personality of NGOs obstructs their attempts to become established as full partners in governance. Moving towards wider participation in governance is a challenging task, since the rules and regulations on NGO involvement in international decision-making are still crafted by the States; consequently, NGO influence on the formation of the governing rules has often been minimal.

Nonetheless, some scholars have expressed positive legal and political suggestions for enhancing access for NGOs. Dupuy and Vierucci suggest NGOs will be granted some form of legal personality, such as the international legal personality granted by the ICJ to the United Nations in 1949,⁶⁰⁶ by arguing that, since the UN was recognised as having a legal personality in that it had been a ‘great necessity’ for the world community. Dupuy, therefore, argues that the law needs to recognise NGOs in the same way, since it has

⁶⁰⁵ Ibid, p.192

⁶⁰⁶ Dupuy and Vierucci refer reparation for Injuries Suffered in the Service of the United Nations, ICJ Reports, 1949,pp.174ff. Dupuy P. (2008), Conclusion: return on the legal status of NGOs and on the methodological problems which arise for legal scholarship in NGOs in *International Law: Efficiency in Flexibility?* edited by Dupuy P and Vierucci L., Edward Elgar, p.208-209

become an equally ‘great necessity’ in today’s context.⁶⁰⁷ However, in presenting a different opinion, Lindblom states that: “... an international legal system based on states was accepted as a fact which is unlikely to be replaced by another system, such as cosmopolitan democracy, at any time in the nearer future”.⁶⁰⁸ But she does suggest, as of today, NGOs have at least a legitimate expectation, if not for a general right, to participate in international legal discourse.⁶⁰⁹ Willetts, by suggesting that NGOs are now increasingly playing a partnership role with the states in international negotiations,⁶¹⁰ argues that the partnership role of NGOs is in evidence with the changing of the interstate system into a multiactor system both politically and legally.⁶¹¹ I therefore believe that NGOs, through their inexorable move towards wider participation as a result of their involvement in governance and transnational environmental issues have become crucial actors in contemporary global governance discourse.

Another important issue on the subject of NGO participation in global governance is that the UN Charter authorizes only one institution – ECOSOC – to make arrangements for ‘consultation and cooperation’ with NGOs. The World Bank and the IMF, as the world’s financial institutions, do not have any legal provision for NGO participation within their constituent instruments, which means that most international institutions that have consultation, collaboration or accreditation relationship with NGOs, are guided by secondary regulations adopted by the governing bodies of such institutions.⁶¹² This lack of

⁶⁰⁷ Dupuy P. (2008), Conclusion: return on the legal status of NGOs and on the methodological problems which arise for legal scholarship in *NGOs in International Law: Efficiency in Flexibility?* edited by Dupuy P and Vierucci L., Edward Elgar, p.209

⁶⁰⁸ Lindblom A. (2005), *Non-Governmental Organizations in International Law*, Cambridge University Press, p. 524

⁶⁰⁹ Ibid, p.526

⁶¹⁰ Willetts P. (2000), From “Consultative Arrangements” to “Partnership”: The Changing Status of NGOs in Diplomacy at the UN, *Global Governance*, Volume 6, pp.191-212

⁶¹¹ Ibid, p. 208

⁶¹² Ripinsky S. and Bossche P.V. (2007), *NGO Involvement in International Organizations : A Legal Analysis*, British Institute of International and Comparative Law, p.207-222

recognition both as actors in global governance and in international legal discourse, motivates NGOs to seek alternative prospects in informal arrangements, such as by way of involvement in transnational networks.

Chapters 4 and 5 will explore the possibilities of NGO participation towards voicing Southern environmental concerns in the absence of state intervention in any effective international negotiation. It is my proposition that the increase in NGO participation could be used in order to narrow the political gap between North and South in global decision-making. Many Southern States are unable to meet the standards of international agreements for several reasons, which include the lack of finance and/or expertise or because of their different developmental priorities; as Karen T. Litfin states:

Many “sovereign” Third World states even lack sufficient funds to send delegates to international treaty negotiations. Thus, a formalistic understanding of sovereignty as constitutional independence offers little insight in to the environment/sovereignty nexus, either in the Third World or elsewhere.⁶¹³

In this sense, NGO participation might be considered to be an incentive for Southern governments to face up to the challenges of becoming involved in international decision-making. However, the limit of NGO participation is formally decided by the legal boundaries, which are strictly maintained by traditional state-centred legal interpretations, as I mentioned earlier, certain legal definitions of NGOs are yet to be established. Under these circumstances the legal personality of NGOs should be redefined in order that the boundaries of their participation might be clarified. It is also important to understand that

⁶¹³ Litfin T.K. (1998), ‘The greening of Sovereignty: An Introduction’, in *The greening of Sovereignty in World Politics* edited by Litfin T.K. Cambridge, MA: THE MIT Press,, pp1-23 at p.7

the formal structures of governance are hugely influenced and challenged by multidimensional frameworks, which are becoming popular because of increasingly globalized input. An example of such forward-thinking governance might be transnational NGO networks, which make considerable impact on global environmental governance whilst not being official members of it.⁶¹⁴ Therefore, perhaps those involved in formulating international legal frameworks need to be more flexible regarding multidimensional governance structures, in order to face up to the environmental challenges ahead.

This chapter has emphasised the great need to seek alternative legal paths by which NGOs might articulate Southern environmental concerns more effectively. As Charnovitz observes: “[L]ooking ahead, I predict that NGOs will continue to inject competing facts and sentiments into public debate, and that inter governmental consultation with NGOs will help to achieve more englobing international law in the twenty-first century.”⁶¹⁵

Chapter 4, which will contain an analysis of a case study based on global forest negotiations, will explore the North-South dimension of interstate negotiations and what NGOs can offer in order to minimise the differences between the two groupings. In so doing, it will examine Southern environmental concerns in relation to forests while considering the feasibility of NGOs voicing those concerns more effectively at global decision making fora.

⁶¹⁴ Chapter 5 of this thesis will analyse transnational NGO networks in detail, pp: 240-294

⁶¹⁵ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p. 348 at p. 372

4. Global Forest Negotiations: North-South Dimension and the Roles of NGOs

“In the final analysis the bargain was not struck. The South did not gain the concessions it wanted from the North, and the North did not extract any binding commitments from the South on tropical forest conservation.”⁶¹⁶

David Humphreys

Introduction

The previous chapters have established that in an age of globalisation, when environmental problems are no longer considered to be mere national or local concerns, multilateral cooperation of the entire international community needs to remain committed towards finding sustainable solutions for environmental concerns of a global nature. Achieving a common solution for contemporary environmental issues has become a highly challenging task in the context of the North-South dimension, where any common ground swings between two contradictory goals i.e. developmental and environmental protection. The ability of Southern states to voice Southern environmental concerns at global decision making forums is hampered by many conceptual and practical constraints based on the various historical, political, economic and political factors that were explored in Chapter 1. Chapter 3 of the thesis, described the role of multidimensional framework of governance

⁶¹⁶ Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.103

with a particular emphasis on NGOs. It described the current legal standing of NGOs in global governance and explored the positive institutional approaches of environmental institutions towards their broader engagement in policy forums.

The first section of this chapter will further explore the issues related to North-South dimension raised in Chapter 2 in the context of a case study on the global forest negotiations. It will also determine what insights might be gained from the Case Study (described below) in the areas of participation and policy-making. Among the key issues highlighted in this section will be the differences between North and South regarding the underlying causes of the forest problem. The aim, therefore, will be to examine how valid the theoretical constructs of events and situations, as described in the previous chapters, are in the context of the reality of the global UN institutions and to describe the role of NGOs in voicing the South's concerns regarding global forest negotiations.

This chapter will go on to assess the role of NGOs in representing Southern forest issues at the global level. It argues that many barriers that the South suffers at global negotiations can be overcome by effective NGO contributions. Issues, such as the lack of, a research base, expertise, technology, interpersonal negotiation skills, and transnational network facilities, have made it difficult for Southern countries to provide NGOs to represent them in vital global negotiations. Exploring the possible roles that NGOs might play in voicing Southern environmental concerns, therefore, is one of the key themes of this thesis. Because the forest debate interlinks with many other international regimes of global environmental governance, this discussion offers a broader understanding of both international law and the political background in order for NGOs to participate more effectively in global governance.

This chapter will also put forward the argument that the North-South dimension has always impacted on global forest negotiations and it will analyse how successful NGOs have been in raising the South's concerns, as discussed in Chapter 3, about global forest negotiations.

The Case Study

There are several reasons for selecting forest negotiations as a Case Study in order to examine the North-South dimension of international environmental governance. Firstly, the forest negotiations are still in the process of developing a formal international law regime. Much research involving certain elements of international law that need to be further developed has been, and is being, conducted⁶¹⁷, therefore there are many issues that, when they are resolved, will contribute to the creation of new law.

Secondly, because the aim of this thesis is to develop a strong argument for NGOs to voice Southern concerns in the process of forest negotiations, since they can provide invaluable information, a Case Study may be of benefit in the future development of international law. The main focus of the study, therefore, will be the potential contribution of NGOs towards the development of environmental policy, rather than of the implementation of a particular policy that has already been established.

Thirdly, forest negotiations are a research area of great interest during a period when climate change is considered to be the most challenging environmental priority in the world. As Barry Gardiner, a member of the UK parliament stated in 2009, "If the world is

⁶¹⁷ Many of them explore issues related to a formal legal document on forests. Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc.

to solve the problem of climate change it must solve the problem of forest loss.”⁶¹⁸ At the Bali negotiations states’ parties agreed to reduce carbon emission from deforestation and forest degradation (REDD) thereby emphasising the interconnectivity of two major issues – climate change and deforestation. Furthermore, forest issues are interlinked with biological diversity, which is another important international environmental concern. The argument put forward in this thesis, therefore, is that forest issues require strong international commitments from the global environmental governance authorities.

Fourthly, forest negotiations offer a good platform from which to evaluate how seriously Southern environmental concerns are taken into account when an international legal forest regime is being developed. It will also indicate the impact Southern environmental concerns actually have at global decision making forums when such a regime is being developed.

The Case Study that follows, therefore, will aim to fulfil two main objectives. Firstly, to identify North-South differences regarding the level of participation and policy implementation within the governance structure. Secondly, to assess the level of NGO participation in the governance structure in order to judge whether they might minimize the differences between North and South by ensuring that the voice of the South is effectively projected into the negotiations.

⁶¹⁸ Commonwealth Forestry Association Newsletter, No. 44, March 2009, Commonwealth Foundation, p. 4

An Overview of International Forest Negotiations

Forests

Forests, mainly the tropical variety, concern many aspects of human and natural life on earth.⁶¹⁹ They provide a range of human necessities from consumer items to rather nebulous entities such as national development and international trade. Many studies have identified the four main functions of forests: (i) environmental, (ii) ecological, (iii) economic, and (iv) social – such as religious, spiritual and cultural.⁶²⁰ Environmental functions can be described as the potential for maintaining the natural cycle of nature. Tropical forests in particular fulfil ecological functions by maintaining biological diversity, while they have been good economic providers for many, since they produce a variety of consumer goods, including logging timber, which is a very important commercial aspect of forests. Finally, forests are the centre of attraction for dwellers and non-dwellers alike, since they provide different opportunities in terms of accommodation, religious practice and entertainment.⁶²¹

As a result of such broad usage, political forest negotiations encompass a wide array of diverse issues and concerns that cover many areas of global governance, which involve

⁶¹⁹ Multi functionality of forest usage is mentioned in para b and c of the Preamble to The Forest Principles, 1992.

⁶²⁰ The categorization is mainly based upon the following literature; Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands., Gale F. P. (1998), *The Tropical Timber Trade Regime*, Macmillan Press., Brown K. and Pearce D. W. (edited) (1994), *The Causes of Tropical Deforestation: The economic and statistical analysis of factors giving rise to the loss of the tropical forests*, UCL Press.

⁶²¹ Rosendal K.G. (2001), *Overlapping International Regimes: The Case of the Intergovernmental Forum on Forests (IFF) between Climate Change and Bio Diversity*, International Environmental Agreements: Politics, Law and Economics, Volume 1, pp:447-468 at p.449, Smouts M.C.(2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, pp. 2- 15, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, pp:68-72

numerous international actors from governments, international organisations, such as the World Bank, the Food and Agricultural Organisation (FAO), UNDP, and WTO together with non-state actors, such as NGOs, and other relevant business representatives. Also, because forest issues interconnect with other international environmental matters, such as climate change, desertification and bio-diversity, forest related provisions have been included in numerous international conventions in many areas of international environmental law and governance.⁶²² Consequently, decisions taken on the world's forests potentially affect many other aspects of international decision making.

The Evolution of the Forest Regime

Whereas most other international environmental regimes are structured around a single legal convention and its subsequent protocols, there is no single formal legal authority for the forest regime. Therefore, an overview of forest negotiations covers a variety of events and instruments that took place over several decades. Global forest negotiations can be divided into three periods: (i) the period prior to UNCED in 1992, which began with agreements about the international trade of tropical timber, (ii) the UNCED international negotiations, and (iii) the period following UNCED, i.e. the current negotiations period.⁶²³

With the establishment of the FAO in 1946 several forest conservation and development initiatives were taken, including the establishment of the FAO Forestry Department.⁶²⁴

Like many other environmental issues, forestry did not attract global attention until the

⁶²² For example: Reducing Emission from Deforestation and Degradation (REDD) provisions under UNFCCC discuss many forests related issues. <http://www.un-redd.org/> (last accessed on 28.02.2011) Convention on Biological Diversity includes forests related issues from the perspective of biodiversity. <http://www.cbd.int/convention/articles/?a=cbd-03> (last accessed on 28.02.2011),

⁶²³ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, pp:127-128

⁶²⁴ Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.32

1972 UNCHE Conference, which drew attention to the environmentally negative effects of industrialisation. At the same time, the developing country-front of the UN initiated a meeting in Founex in Switzerland, which led to the 1971 “Founex Report” on environmental degradation and the destruction of valuable forest.⁶²⁵ The report not only pointed out that the expansion of agriculture in developing countries caused the loss of vast area of tropical forest, but that environmental problems can arise as a result of underdevelopment and poverty.⁶²⁶ Therefore, many developing countries expressed their concern about new and additional financial and technological transfer from the North the South.⁶²⁷ In fact, the recognition of forests issues in the Founex Report shows that the North-South dimension has been part and parcel of forest debates since the early negotiation period. In the light of this, the report advocated “incorporating environmental considerations into development strategies as a way of avoiding making the same mistake that had been made by industrialised countries in the past.”⁶²⁸

Many initiatives were taken in relation to forests during the 1970s, however, most post-UNCHE forest-related legal principles were not directly derived from forest-related documents, but from other international legally-binding conventions.⁶²⁹ For instance, the 1971 “Ramsar Convention on Wetlands of International Importance”⁶³⁰, which applied to marsh forests and mangroves, covered some aspects of forest conservation. The 1973

⁶²⁵ United Nations document, A/CONF.48/10, Annex I: II-3, 22 December 1971, <http://www.stakeholderforum.org/fileadmin/files/Earth%20Summit%202012new/Publications%20and%20Reports/founex%20report%201972.pdf> (last accessed on 26.02.2011)

⁶²⁶ Principle 1.4, Chapter 4, Founex Report, 1971

⁶²⁷ Principle 4.17, Chapter 4, Founex Report, 1971

⁶²⁸ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.129

⁶²⁹ Smouts M.C. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp. 132-133

⁶³⁰ The Convention on Wetlands of International Importance Especially as Waterfowl Habitat, adopted at Ramsar, Iran on 2 February 1971.

http://www.ramsar.org/cda/ramsar/display/main/main.jsp?zn=ramsar&cp=1-31-38^20708_4000_0 (last visited on 01.09.2009)

“Convention on International Trade in Endangered Species of Wild Fauna and Flora”,⁶³¹ which covered many species of trees, made provisions that reflected the Northern “conservationist” approach, since they mainly focused on global forest protection and conservation. During this period, also, forests became a significant issue in other global governance aspects, for example: The 1972 UNESCO “Convention Concerning the Protection of the World Cultural and Natural Heritage” included forests in its concern for world heritage.⁶³²

A decade later, in 1985, at the United Nations Conference on Tropical Timber, the International Tropical Timber Organisation (ITTO) was established to monitor tropical forestry. Two years ago in 1983, the International Tropical Timber Agreement (ITTA), which reflected the increased global concern over tropical deforestation in developing countries, was created for maintaining environmental friendly timber trade activities (this was renegotiated in 1994 and 2006).⁶³³ Humphreys highlights two Articles in the Agreement in this regard. Firstly, Article 1(b), which aims to ‘promote the expansion and diversification of international trade in tropical timber’. Secondly Article 1(h), which states that the ITTA promotes ‘the development of national policies aimed at sustainable utilization and conservation of tropical forests and their genetic resources, and at maintaining the ecological balance in the regions concerned’.⁶³⁴ He argues that these ITTA

⁶³¹ The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed at Washington D.C. on 3 March 1973 and amended at Bonn on 22 June 1979. <http://www.cites.org/eng/disc/text.shtml#texttop> (last visited on 01.09.2009)

⁶³² Convention Concerning the Protection of the World Cultural and Natural Heritage, Adopted at Paris on 16 November 1972 <http://whc.unesco.org/archive/convention-en.pdf> (last visited on 01.09.2010)

⁶³³ United Nations International Tropical Timber Agreement, 1994, TD/Timber.2/16, United Nations International Tropical Timber Agreement, 2006, TD/Timber.3/12, The agreements are available: <http://www.itto.int/itta/> (last accessed on 08.12.2010)

⁶³⁴ UN document TD/ TIMBER/ 11 Rev.1, International Tropical Timber Agreement, 1983, p.8, Humphreys David (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.129

objectives represent a balance in the policies on forests between development and conservation.⁶³⁵ Weiss evaluates the effectiveness of Article 1(b) of the ITTA as follows:

For the producer countries, (this addition to the 1983 treaty) was expected to offer opportunities to expand and receive technical transfers and financial assistance from consuming countries. Consuming countries, in turn, were to enjoy expanded and stable supplies of tropical timber as well as increased esteem in the eyes of domestic constituents and international organizations.⁶³⁶

During 1983 and 1994, the ITTA mainly focussed on the scope of the tropical timber trade and conservation; however, in 2006 it extended the scope of the previous two agreements to incorporate a new dimension on topical issues, which included forest law enforcement, illegal logging and non-timber products.⁶³⁷ Consequently, the ITTA's current objectives are now much more diverse. Following the establishment of ITTA, in the mid-1980s global forest negotiations gradually moved towards the formulation of the global forestry treaty, accomplished at the beginning of the 1990s. Post-UNCED, global forest negotiations had been marked by several rounds of negotiations with the purpose of producing a formal legal regime, therefore, the discussions at UNCED in 1992 were mainly based on two documents – Chapter 11 (Forest Section) of Agenda 21, and the “Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management,

⁶³⁵ Humphreys points out that these Articles, which stress the necessity for balance between development and conservation came out as a result of the influence of IUCN over formatting ITTA objectives. IUCN emphasised that neither development nor conservation could be achieved in isolation. Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.56- 57

⁶³⁶Weiss B.E. and Harold J.K. (1998), *Engaging Countries: Strengthening Compliance with International Environmental Accords*, Cambridge, Massachusetts: The MIT Press, p. 117

⁶³⁷ Para (m) of the International Tropical Timber Agreement, 2006, TD/TIMBER.3/12, 1st February 2006, United Nations Conference for the Negotiations of a Successor Agreement to the International Tropical Timber Agreement, 1994
<http://www.environmenthouse.ch/docspublications/reportsRoundtables/forests2006.pdf> (last accessed on 02.03.2011)

Conservation and Sustainable Development of All Types of Forests” (the Forest Principles) a currently prevailing soft law created at the Rio summit in 1992.⁶³⁸

After UNCED there followed International Policy Forum (IPF) proposals in 1997, International Forum on Forests (IFF) proposals in 2000 and a number of United Nations Forum on Forests (UNFF) resolutions made since 2002.⁶³⁹ During the post-Rio (1992) period, many commitments were made in global forest architecture. IPF/IFF proposals for action, the growth of regional criteria and indicator process for sustainable forest management and development of national forest programmes in many countries are indicative of the progress made since the 1992 UNCED conference.⁶⁴⁰

The UNFF was created with the goals of promoting “the management, conservation and sustainable development of the world’s forests, and to strengthen long-term political commitment to this end”.⁶⁴¹ This was established under the aegis of ECOSOC to progress the tasks carried out under IPF and IFF. However, Davenport and Wood note that the UNFF process was largely affected by the lack of engagement and consensus among members.⁶⁴² Referring to UNFF-5 in 2005, they explained that the negotiations to initiate a legally binding forest convention failed as a result of the contradictory positions of the

⁶³⁸A/CONF.151/PC/100/Add.16,A/CONF.151/PC/WG.I/L.43 – Chapter 11 of the Agenda 21, A/CONF.151/PC/WG.I/CRP.14/Rev.2 – Forests Principles, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.153

⁶³⁹ For more information on these documents and institutions: Davenport D. S and Wood P. (2006), Finding the Way Forward the International Arrangement on Forests: UNFF-5,-6, and -7, *RECIEL*, Volume 15, Issue 3. Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, Humphreys D. (1999), The Evolving Forest Regime, *Global Environmental Change*, Volume 9, pp: 251-254

⁶⁴⁰ Steiner M. (2002), The Journey from Rio to Johannesburg: Ten Years of Forest Negotiations, Ten Years of Successes and Failures, *Golden Gate U.L.Review*, Volume 32, p. 631

<http://digitalcommons.law.ggu.edu/ggulrev/vol32/iss4/7> (last accessed on 03.03.2011)

⁶⁴¹ ECOSOC Resolution E/2000/3, Economic and Social Council Official Records (2000), Supplement No 1, para. 11

⁶⁴² Davenport D. S and Wood P. (2006), Finding the Way Forward the International Arrangement on Forests: UNFF-5,-6, and -7, *Review of European Community and International Law*, Volume 15, Issue 3, p. 317

delegates.⁶⁴³ UNFF is criticised by Humphreys for the fundamental structure and internal weaknesses of its components, which are fragmented, and that systematic communication among these components is not happening.⁶⁴⁴ It appears, therefore, that progressive integration in these areas needs to be established in order that UNFF might achieve its forest management objectives.

In addition to the above initiatives, a number of relatively recent international forest conventions have covered the issues from various different angles.⁶⁴⁵ Chapter 11 of the 1992 “Agenda 21”⁶⁴⁶, the 1992 “Convention to Combat Desertification” (CCD)⁶⁴⁷, the 1992 “Convention on Biological Diversity” (CBD)⁶⁴⁸ and the 1992 “United Nations Framework Convention on Climate Change” (UNFCCC)⁶⁴⁹, which created provisions for combating desertification, which indirectly applies to some of the world’s big forests. For example, Article 4(1) (d) of the UNFCCC provides a legal framework for the conservation of sinks and reservoirs of greenhouse gases, including forests.⁶⁵⁰ However, even though several provisions cover forest issues from many different aspects, the global governance system has not succeeded in creating a legally binding document that is totally committed to global forests.

⁶⁴³ Davenport D. S and Wood P. (2006), Finding the Way Forward the International Arrangement on Forests: UNFF-5,-6, and -7, *Review of European Community and International Law*, Volume 15, Issue 3, p. 317

⁶⁴⁴ Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London.

⁶⁴⁵ Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, pp.190-191, Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc., pp.101-102

⁶⁴⁶ http://www.un.org/esa/dsd/agenda21/res_agenda21_00.shtml (last visited on 01.09.2010)

⁶⁴⁷ A/Res/47/188

⁶⁴⁸ <http://www.cbd.int/doc/legal/cbd-en.pdf> (last accessed on 08.12.2010)

⁶⁴⁹ FCCC/INFORMAL/84, GE 05-62220 (E) 200705

⁶⁵⁰ Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc., p. 102

This brief overview of forest negotiations concludes with a comment about the comprehensive significance of forests resources in the broad context of global environmental governance. Recognition of the gravity of forest issues has led many intergovernmental initiatives to develop legal and political regimes to reverse deforestation and degradation. However, in spite of these efforts, the widespread view among policy makers, scholars, researchers, and most others involved in the debate is that the world's forests are still under immense threat.⁶⁵¹ High consumption levels of industrialised countries and rapidly increasing demand of developing countries contribute to further damage to the forest, which will ultimately cause irrecoverable effects to the natural cycle of the world. As the quotation above clearly emphasises, the North-South dimension has decisively impacted on negotiations about the challenge of deforestation and other forest degradation.

The North considered forests, including their resource, to be a “global common” and it emphasises the importance of common responsibility in its approach to a global solution for the problem. In contrast, the South stresses that the forests are sovereign national resources and emphasises common, but differentiated, responsibilities towards a solution.⁶⁵² The following section, which will highlight the differences between the negotiation positions of North and South will conclude that intergovernmental efforts towards forests have largely failed due to the impact of the North-South dimension. Furthermore, it will argue that Southern states have failed to voice Southern forest concerns at a global level effectively.

⁶⁵¹ Steiner M. (2002), *The Journey from Rio to Johannesburg: Ten Years of Forest Negotiations, Ten Years of Successes and Failures*, Golden Gate U.L.Rev., Volume 32
<http://digitalcommons.law.ggu.edu/ggulrev/vol32/iss4/7> (last accessed on 03.03.2011)

⁶⁵² Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.98

North-South dimensions in Forest Negotiations

Forest negotiations, which provide a valuable field of observation for North-South conflicts on global decision-making, are highly influenced by the North-South dimension regarding the development of a legal regime, or any other concrete solution, to the forest problem. In the next section, the main obstacle for reaching a forest convention, which has largely been due to the contrasting position of developed and developing worlds on forest policies, will be analysed. The general Northern position is that forests are a natural common property that should be preserved to ensure that the world's natural cycle is balanced, an argument that is based on the adverse effects of deforestation and on the many other potential environmental catastrophes, such as climate change and the threat to biological diversity.

Conversely, the Southern position rests on the ideology of forests as properties within a territory that serves the purposes of conservation and development in that particular territory. This argument is founded on the prevailing distrust of the South that the North's global approach might lead to a state of "environmental colonialism".⁶⁵³ Therefore the South strictly holds to the stand that forests are national properties that may be utilized according to each country's national developmental priorities. These distinctively different priorities and agendas, therefore, are the driving factors that have led North and South to take distinctly different paths in the forest debates.

The argument of this thesis is that Southern states have previously encountered unfairness, inequity and injustice in global environmental negotiations. This Case Study will apply the

⁶⁵³ Agarwal A. and Narain S. use this term in Agarwal A., Narain S. (1991), *Global Warming in an Unequal World. A Case of Environmental Colonialism*, New Delhi: Centre for Science and Environment, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.85

following three conditions as used by Najam to assess the nature of the collective South's negotiations in the global environmental conferences in Stockholm (1972), Rio (1992) and Johannesburg (2002): Firstly, the *negotiating position* as determined by the fundamental basis of the South's arguments secondly, the *negotiating structure*, which involves the basic structure of the particular decision-making forum, such as its agenda and the composition of its governing bodies, and finally, *the substance of the negotiations*, which includes an analysis of the South's contribution based on the policy documents, norms and outcomes of the negotiation.⁶⁵⁴ In this study, therefore, the Southern perspective on the different stages of the international forest negotiation will be scrutinised in order to assess what level of influence the South has had over the global decision-making process.

The South's negotiating position

Historically, the negotiating position of the developing countries in forest matters is shaped by four factors: (i) their preoccupation with economic growth, (ii) fear of the high costs of environmental protection, (iii) the sovereignty claim over forests, and (iv) the general distrust of the environmental policies of industrialised countries.⁶⁵⁵ Each of these positions, adopted by the South, have had an impact on the nature of its contribution to the negotiations because of the severe effect they have had on their countries' poverty eradication and developmental goals. As Porter *et al* stated in 2000, "for most developing countries, economic growth, employment, and overcoming poverty have been the dominant concerns."⁶⁵⁶ The following discussion on the South's negotiating position display two important features: (i) the South's representation as one group – the G77, and,

⁶⁵⁴ Najam A. (2005), A tale of three cities: Developing Countries in Global Environmental Negotiations in *Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C., Sjostedt G., Corell E. , Green Leaf Publishing Ltd., pp.124-143 at p.124-125

⁶⁵⁵ Porter G. *et al* (2000), *Global Environmental Politics*, Third Edition, Westview Press, P.178

⁶⁵⁶ *Ibid*, P.178-179

(ii) the sovereign ownership of forests – the South’s main ideology. The following section will explore these two aspects of the South’s negotiating position.

One of the key issues that reflect the North-South dimension concern the two competing claims for forest ownership: (i) the North’s belief that forests are a “global common” and (ii) national sovereignty. This chapter will analyse these two claims in the context of the North-South dimension.

The debate as to whether forests are a part of the “global commons”, or whether they are “national property”, was illustrated in 1992 by Hurrell:

Deforestation raises particularly difficult issues because of the fact that the forests are wholly located within a particular country [...] and that their preservation or destruction lies within the sovereign jurisdiction of [...] state. This raises important question as to whether and to what extent rainforests are in fact part of the ‘global commons’ and represent a collective good.⁶⁵⁷

Defining the forest as ‘a natural resource that can be recognized as a common heritage of mankind’ can lead to a global authority over forests. In contrast, defining it as ‘belonging to a sovereign land within territorial boundaries’ can give rise to the belief that they fall under national jurisdiction.⁶⁵⁸ Many Northern countries identify forest issues as matters of global concern, while many developing countries argue that it is their sovereign right to

⁶⁵⁷ Hurrell A. (1992), Brazil and the International Politics of Amazonian Deforestation in *The International Politics of the Environment* edited by Herrell Andrew and Kingsbury Benedict, Oxford University Press, p. 401

⁶⁵⁸ For in depth analysis on sovereignty and environment debate read Ltfm K. T. (1998) (edited) *The Greening of Sovereignty in World Politic*, The MIT Press, London.

make decisions over their own forests.⁶⁵⁹ As Hurrell explains, ownership claims of forests either as a global common or as state property can be argued both ways, depending on what environmental issue is being debated. As he states:

Thus the use of CFCs, or the burning of fossil fuels, has a direct impact on the atmosphere, which clearly is a global common and provides collective goods from which all benefit. Tropical forests, like the ozone layer or the atmosphere provide benefits for all and are in this sense a collective good. They are therefore characteristic of commons in terms of the functions that they perform. On the other hand, unlike the ozone layer, the oceans, or Antarctica, forests are located firmly within particular sovereign states and do not share the typical characteristic of collective goods: indivisible and non-excludability.⁶⁶⁰

These parallel themes of a problem either being global or centred within a national boundary, should be separated from each other in order to eliminate further confusion. At the end of 1980s, as with many other environmental issues, forests, because of increasing awareness about the timber trade and the alarming rate of deforestation, became a global issue.⁶⁶¹ Explaining the rapid increase in global attention, Smouts wrote:

In addition to the loss of economically valuable timber resources and the destruction of environments and habitats on which many populations and their cultures depend, the destruction of tropical rain forests began to imply the extinction of millions of living species

⁶⁵⁹ I will analyse the principle 21 of the Stockholm Conference in relation to the forest ownership later in this chapter. Smouts M.C. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp. 28-29, Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, pp.24-26

⁶⁶⁰ Hurrell A. (1992), Brazil and the International Politics of Amazonian Deforestation, *The International Politics of the Environment* edited by Hurrell Andrew and Kingsbury Benedict, Oxford University Press, p. 401

⁶⁶¹ Smouts M.C. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp.28-29

lost forever to medicine, agriculture, industry, and ... to our contemplation. The issue had become global.⁶⁶²

As soon as forests became a global political issue, they became a concern for international negotiation. More often than not international negotiations lead to global political, economic and legal implementations that require adjustments in national and worldwide practices.⁶⁶³ The question here is when an issue located within national boundaries – hence subject to state sovereignty – becomes a global concern, who holds the authority to make the relevant laws and led to the establishment of different positions regarding proprietorial status. As has been previously stated, the developed North stands for the “global common” forest argument and the developing South, through G77, for “sovereign status”, for fear of opening their boundaries to global governance.⁶⁶⁴ The South’s position was clearly highlighted in the forest negotiations at the 1992 UNCED, when the G77 opposed the developed countries’ call for a global forest convention on grounds of the sovereignty principle, which emphasises that the international authorities cannot make legally binding rules with regard to resources located within a specific territory.⁶⁶⁵

At present, under the concept of sovereignty, international law establishes national ownership. Also, since the very early stages of their independence in the 1960s, the sovereign right over natural resources was established in international law resulting from the developing countries involvement in General Assembly Resolution 1803 XVII (1962)

⁶⁶² Ibid, p. 46

⁶⁶³ Ibid, p. 26

⁶⁶⁴ Levin K. *et al*(2008), The climate regime as a global forest governance: can reduced emissions from Deforestation and Forest Degradation (REDD) initiatives pass a ‘dual effectiveness’ test?, *International Forestry Review*, Volume 10, Number 3, p.541, Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, p.22

⁶⁶⁵ Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, p.22

recommended the sovereign right of every state over its natural resources.⁶⁶⁶ The Declaration on the Establishment of a New International Economic Order (NIEO) and the Charter of Economic Rights and Duties of States in 1974, again reaffirmed permanent sovereignty over natural resources.⁶⁶⁷ These international legal provisions were assured by the 1972 Stockholm Principle 21.⁶⁶⁸

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own *environmental policies*, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁶⁶⁹

These sovereign rights were confirmed in the same words in Principle 2 of the 1992 Rio UNCED Declaration.

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own *environmental and developmental policies*, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.⁶⁷⁰

However, the sovereign right over natural resources established by the Stockholm declaration was further expanded by the Rio Declaration as ‘to exploit their own resources

⁶⁶⁶ Boyle A. and Birnie P. (2002), *International Law and the Environment*, second edition, Oxford University Press, p. 138.

⁶⁶⁷ This issue is discussed in Chapter 1 in much detail, pp: 36-44

⁶⁶⁸ Principle 21, Stockholm Declaration of the United Nations Conference on Human Environment in 1972. <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503> (last accessed 20.08.2010)

⁶⁶⁹ Principle 21 of the Stockholm Declaration of the United Nations Conference on Human Environment in 1972. <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1503> (last accessed 20.08.2010) (Author’s italic)

⁶⁷⁰ Principle 02 of the Rio Declaration of the United Nations Conference on Environment and Development in 1992. <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=78&ArticleID=1163> (last accessed on 02.09.2010) (Author’s italic)

pursuant to their own environmental and developmental policies.’⁶⁷¹ Humphreys refers to a G77 spokesperson’s comments at the Rio conference when emphasising the firm position of the developing countries: ‘We cannot accept the application of such concepts as “global commons” or the “common heritage of mankind” with regard to the territorial domain of developing countries.’⁶⁷² The negotiation position of the South, therefore, has been founded on the recognition of forests as that belonging within sovereign boundaries of states and that any international negotiations should be implemented according to the priorities of each state’s national environmental and developmental policies.

As explained in Chapter 1 and 2, the position of the South in international negotiations is often represented collectively as the G77 since, in spite of differences in economic and political power amongst themselves. The member states share many common issues in relation to environment, it is therefore sensible for them to come together as one group at international negotiations.⁶⁷³ However, more recently, the growing disparity among different groupings within G77 has become widely discussed under the topic of climate change.⁶⁷⁴ The rapidly industrialising G77 countries, such as Brazil, India and China, are reaching their developmental goals more quickly than others in the group, while others, such as the G77 OPEC countries, with their influence on the global oil market, affected not

⁶⁷¹ Ibid.

⁶⁷² Humphreys D. (2006), *Logjam: Deforestation and the Crisis of Global Governance*, Earthscan Publications Ltd. London, p.22. Humphreys refers to Kufuor E. quoted by Chatterjee P. (1991), G77 rejects “stewardship”, *Crosscurrents*, UNCED PrepCom 3, No. 8, 28-29 August, p.4

⁶⁷³ Barnett J. (2008), The Worst of Friends: OPEC and G77 in Climate Change Regime, *Global Environmental Politics*, Volume 8, Issue 4, pp. 1-8, Najam A. (2005), A tale of three cities: Developing Countries in Global Environmental Negotiations in *Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C., Sjostedt G., Corell E., Green Leaf Publishing Ltd. , Porter G. and Brown J.W.(1996), *Global Environmental Politics: Dilemmas in World Politics*, Westview Press.

⁶⁷⁴ Kasa S. et al (2008), The Group of 77 in the International Climate Change Negotiations: Recent developments and Future Directions, *International Environmental Agreements*, Volume 8, pp:113-127

only developed countries but, to an even greater extent, their fellow G77 members.⁶⁷⁵ Also, during negotiations on desertification, the conflicting agendas of African and non-African members greatly affected G77's united position.⁶⁷⁶ However, as Miller notes, in spite of differences in economic and political power, common-property resource issues allow the developing countries to exercise some influence in environmental regime formation.⁶⁷⁷ As Najam explains:

The real surprise has been that despite these differences the countries of the South have so constantly stuck together on so many issues, very often even on those where they had different interests, and that even when they chose to pursue their differentiated interests in global negotiations they nearly always did so within the framework of the G77.⁶⁷⁸

The representation of the South as one group is significant in many environmental negotiations, consequently, international forest negotiations provide an important example from which to analyse the Southern position in international environmental negotiations in general, and the different dimensions of the G77's representations. The fundamental guiding position of the G77 was the common wish to secure national sovereignty and economic development within an international forest regime. To this end, it has exercised

⁶⁷⁵ Barnett Jon (2008), The Worst of Friends: OPEC and G77 in Climate Change Regime, *Global Environmental Politics*, Volume, Issue 4, pp. 1-8

⁶⁷⁶ Agarwal A. et al (eds.) (1999), *Green Politics: Global Environmental Negotiations I*, New Delhi: Centre for Science and Environment

⁶⁷⁷ Miller M.(1995), *The Third World in Global Environmental Politics*, Open University Press., p.137, For a similar position: Kolk A. (1996), *Forests in International Organizations, NGOs and the Brazilian Amazon*, International Books, p. 38-39

⁶⁷⁸ Najam A. (2005), A tale of three cities: Developing Countries in Global Environmental Negotiations in *Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C., Sjostedt G., Corell E., Green Leaf Publishing Ltd., Porter G. and Brown J.W. (1996), *Global Environmental Politics: Dilemmas in World Politics*, Westview Press., p. 129

its considerable bargaining powers over forests resources owned by the South.⁶⁷⁹ As Humphreys states:

The UNCED forest negotiations saw North and South engaged almost entirely in a distributive-positional bargaining game. The South, aware of the high value attached to forest conservation in Northern societies, tried to shift the jurisdictional responsibilities of the North with respect to finance and technology. The objective was to realise relative gains for the G77.⁶⁸⁰

The G77 strategy had been used previously in global negotiations on ozone and climate regimes, and Humphreys recognised its bargaining strategy as a “veto coalition” recognisable in a situation where the cooperation of a particular group of countries is decisive in a negotiation if it possesses the power to block the regime creation.⁶⁸¹ He further explains that, if a state identifies that a certain regime creation threatens its interests, then that state may engage with a group of other countries that have a collective interest in the matter to form a veto coalition.⁶⁸² Porter and Brown also identify that “veto coalition” could play a vital role in the formation of a global regime.⁶⁸³ The veto coalition, as part of the bargaining process, can either strengthen or weaken the negotiation process.

⁶⁷⁹ Humphreys D. (2001), *Forest Negotiations at the United Nations: Explaining Cooperation and Discord*, Forest Policy and Economics, Volume 3, pp: 125-135 at p. 127

⁶⁸⁰ Ibid.

⁶⁸¹ Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.157, Miller M.(1995), *The Third World in Global Environmental Politics*, Open University Press. Miller analyze three environmental regimes to assess the position of the developing countries in formation of different regjmes; Ozone layer protection regime, hazardous waste trade regime and biodiversity regime.

⁶⁸² Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.157

⁶⁸³ Porter G. and Brown J.W. (1996), *Global Environmental Politics: Dilemmas in World Politics*, Westview Press. pp.72-77

The Southern position on forest issues reflects the power to use the veto coalition, since the South possesses a far greater proportion of the world's rainforest. As a consequence, the North realises that, in order to minimise the environmental threat created as a result of deforestation, the cooperation of the South is essential. In her analysis of three environmental regimes – ozone layer protection, biodiversity and hazardous waste – Miller utilizes this concept in regard to how the South uses its bargaining power to influence crucial global decision making authorities where common-property resources are in contention.⁶⁸⁴ Humphreys further explores this issue in relation to forest issues, noting that the South possesses important material capabilities in its tropical forests, either directly, such as goods produced from timber, or indirectly, such as carbon sinks.⁶⁸⁵ Regarding the power of the South to use its “veto coalition” in forest negotiations, Humphreys explains that mere economic capabilities of one party does not guarantee bargaining strength when the other party possesses a much more critical factor, such as is the case with tropical forests in the developing countries.⁶⁸⁶ It is in this context, therefore, that the South bargained the ownership of tropical forest cover into positions of economic and political stability within their individual territories. Consequently, the G77 has proved to be the point of reference upon which the Southern countries gathered in order to contest the North's demands in the global forest negotiation process.

The Southern position, therefore, has been moulded by its sovereignty claims over forests ownership and by its representation as a collective under G77. The discussion now moves on to analyse how far the South can influence the negotiating structures of the forests discourse.

⁶⁸⁴ Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press., pp.132-133

⁶⁸⁵ Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.157

⁶⁸⁶ Ibid, p. 160

Southern Impact on the Negotiating Structure of Forest Negotiations

The main focus of this section is an analysis of the impact of Southern participation in the structures of forest negotiations based on negotiating agendas, arenas, forums, and the composition of the decision making panels.⁶⁸⁷ The South has succeeded in impacting significantly on the structure and context of global environmental negotiations in general.⁶⁸⁸ With the representation of G77 the South moved forward from its mere presence in the 1972 Stockholm conference to its meaningful participation in the decision-making process in environmental governance in both the 1992 Rio and 2002 Johannesburg conferences.⁶⁸⁹ However, this thesis argues that, for historical, financial, technological and political reasons, the Southern states do not make their influence felt as effectively as they should.

The Southern position on the actual negotiating structures are central to the next section of this chapter because the extent of its impact on decision making has been shaped by the G77 negotiation position, as described above, in that its environmental concerns have been linked to their developmental concerns and claims of sovereignty against the North's "global commons" claims. The G77 Chairperson, a position that rotates annually between the three geographical sub-groups of Asia, Africa and South America, serves as the spokesperson for all the Southern states – a position that is significant for the structure of the negotiations because it reflects the strength of the Southern voice.⁶⁹⁰ Equal distribution

⁶⁸⁷ Najam A. (2005), *A tale of three cities: Developing Countries in Global Environmental Negotiations in Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C. and Sjostedt G., Corell E., Green Leaf Publishing Ltd., pp.124-143 at p.124-125

⁶⁸⁸ Ibid.

⁶⁸⁹ Ibid.

⁶⁹⁰ Recently Abdulla M. Alsaidi, head of delegation of the republic of Yemen made a statement on behalf of the Group of 77 and China at the Sixteenth Conference of Parties of the UNFCCC in Cancun, Mexico, 29th November 2010. <http://www.g77.org/statement/getstatement.php?id=101129b> (last accessed on 20.12.2010)

of the Chairpersonship of G77, therefore, is an important element in maintaining unity; however, this unity has become increasingly challenged by the growth in diversity of the countries concerned.⁶⁹¹

It is important now to revisit the various stages of forest negotiations in order to explain how the gradual development of the South has impacted on the structure of forest negotiations over the years. As noted above, Global forestry concerns had emerged with the establishment of the FAO in 1945, within which the North, through its pioneering activities, and with the strong support of the US, established a Forestry Division. In 1947, the Director-General of the FAO, Sir John Boyd Orr, reported that:

[...] There is a story of the shocked surprise of the late President Roosevelt, flying to Tehran, upon realizing that the bare waste of rocks below his plane was all that remained of Lebanon's cedars and the one-time heart of the biblical land of milk and honey. The impression bit deep and was an added reason for the United State's firm belief that the projected Food and Agriculture Organisation should have a strong forestry division.⁶⁹²

Therefore, during the early years of forest negotiations, the agenda and structure of the Forest Division was decided by the North, whose contribution in its initiation was significant. This also led to the North's continuous influence on so many of the earlier FAO forest programmes and structures, many of which were directed at managing the timber industries of the UK, the US, Canada, Germany and other industrialised

⁶⁹¹ Kasa S. et al (2008), The Group of 77 in the International Climate Change Negotiations: Recent developments and Future Directions, *International Environmental Agreements*, Volume 8, pp:116-125, Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, p.77

⁶⁹² Sir Orr Boyd J. (1947), One World-One Forest, *Unasylva: An International review of Forestry and Forest Products*, July –August 1947, The Food and Agriculture Organization of the United Nations.

countries.⁶⁹³ As a consequence, the decisions taken by Northern states had a huge impact on African and Asian forests, where the changes in the South had considerable economic and trade costs to the North.

The Northern attitude towards Southern forests was expressed in an article by Aubreville, published in 1947 by the FAO in *Unasylya* – a journal on forest related issues – who found that there would be serious economic consequences globally, as well as locally, as a result of deforestation in Africa. His main concern, however, was for the threat to the timber industry in industrial countries.⁶⁹⁴ The primary cause for forest clearing, Aubreville's stated, was the 'primitive, nomadic method of agriculture [that] has been practiced by all native populations.'⁶⁹⁵ Other causes he cited were an increase in the density of population and intensive commercial crop cultivation, which were the consequence of developmental activities in Africa and other parts of the South. Therefore, during the early period of forest governance, there were signs of Northern domination over Southern forests in the form of forest conservation. In his article, Aubreville suggested:

As a beginning, we believe that, within the framework of the international agencies, an office for the protection of African soils and forests could first usefully be entrusted with the study of all these problems; later this office would become well-qualified to promote policies of protection which should be adhered to by all governments. It would also become the agency empowered to make recommendations and suggest measures which should be adopted, and

⁶⁹³ Aubreville A.M. (1947), *The Disappearance of the Tropical Forests Africa, Unasylya: An International review of Forestry and Forest Products*, July –August 1947, The Food and Agriculture Organization of the United Nations.

⁶⁹⁴ Ibid.

⁶⁹⁵ Ibid.

to keep under observation the evolution of a continent which at present seems doomed to become unproductive grassland or even a desert.⁶⁹⁶

It is important to note here that the author's suggestions on forest governance do not include the participation of the national or local community in the decision making process. This could be because, at the time, most African countries were still the colonies of major European countries, and they did not gain their independence until the mid-1960s.⁶⁹⁷ This quotation is a classic example of Northern influence on the global forest structure in its early stages and reflects its methods of identifying the issues, defining its causes and suggesting solutions, without involving, or even consulting, the 'locals'.

Following the establishment of the FAO's Forest Department in 1947, the disproportionate impact of the North over forest issues continued until the beginning of 1970s, when the NIEO revealed the South's disquiet about the exclusively Northern impact on global forest issues. This was strongly emphasised at the Stockholm conference, which ultimately shaped Principle 21 which reasserted a state's sovereign authority over its natural resources.

The 1972 Stockholm Conference was influenced by the 'Founex Report' (1972), which, in expressing the Southern position on environmental matters, emphasised that when the North claims that development is a cause of environmental problems, the South's view is

⁶⁹⁶Ibid.

⁶⁹⁷ The British Colonial Office (1947), *Exportable Timber Resources of the British colonial Territories, Unasylya: An International review of Forestry and Forest Products*, September-October 1947, The Food and Agriculture Organization of the United Nations. The British colonial officer here explains the estimates of the forest resources of several British colonies, which shows that the authority of the colonizer over colonial resources.

that many of the problems were caused by underdevelopment and poverty.⁶⁹⁸ The outcome of the Stockholm Convention was that Southern environmental concerns changed the theme of global discussions from environmental protection to sustainable development, a trend that was carried throughout negotiations, with particular attention being given to the sovereign authority over forests within the territorial boundaries.⁶⁹⁹

As has been noted earlier, during the earlier discussions, the South did not play so prominent a part due to a combination of, (i) a lack of awareness, (ii) the non-availability of research facilities, which meant that most of the first-hand research was carried out by the developed countries, and (iii) it was engaged either with independence movements or the rebuilding of their countries after long years of imperialism.⁷⁰⁰

At the beginning of 1980s, indications of deforestation became apparent and several alarming findings from surveys⁷⁰¹ published in the late 1970s and early 1980s revived the

⁶⁹⁸ Founex Report (1972), Development and Environment, Report and Working Papers of Experts Convened by the Secretary-General of the United Nations Conference on the human Environment, Founex, Switzerland, 4-12 June 1971, pp:5-6, Najam A. (2005), A tale of three cities: Developing Countries in Global Environmental Negotiations in *Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C., Sjostedt G., Corell E., Green Leaf Publishing Ltd., pp.124-143 at p. 130

⁶⁹⁹ Ibid, p.131

⁷⁰⁰ Karlsson S. (2002), The North-South Knowledge Divide-Consequences for Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty D.C. and M. Ivanova New Haven CT, Yale School of Forestry and Environmental Studies.

⁷⁰¹ Many of these surveys are criticized for lack of reliable methodologies. Most of the surveys are based on data gathered from remote sensing techniques. Therefore inaccuracy in data and lack of prominent methodologies in estimating forests has been an issue raised by many scholars over the years. In 1990 FAO published a new assessment of tropical forests which was based on both existing information and multitude high-resolution satellite data. To make the assessment date more convenient to handle a software programme known as Forest Resource information System was released. Brown K. and Pearce D.W. (edited) (1994), *The Causes of Tropical Deforestation: The economic and statistical analysis of factors giving rise to the loss of the tropical forests*, UCL Press, p.7, Bilsborrow F. et al (1994), Population, land-use and the environment in developing countries: what can we learn from cross-national data? in *The Causes of Tropical Deforestation: The economic and statistical analysis of factors giving rise to the loss of the tropical forests* edited by Brown K. and Pearce D.W. UCL Press, pp:106-130, Smouts M.C. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp.28-29

international discussion on forests and the search for global solutions.⁷⁰² One of the first estimates of the rate of deforestation was given in a 1976 FAO report published in *Unasylva* and a widely used estimate was published in 1980 by FAO and UNEP.⁷⁰³ In 1990, the FAO initiated a new assessment of tropical forests – ‘Forest Resources Assessment 1990: Tropical Countries’ – one of several assessments that demonstrated the scale and significance of deforestation and its consequences, which led the world community to agree to the formation of a permanent institution on forests.⁷⁰⁴

The conflict of interests between North and South appeared again in the context of a permanent institution and it affected the agenda. An analysis of the chronology of global forest issues and events reveals several tides of official eagerness to create global forest conventions that have increased from time to time then diminished because of strong Southern disapproval since the South’s effect on the forest agenda often prioritizes development related issues by requesting additional financial and technical support.⁷⁰⁵ Unsurprisingly, therefore, disagreement between North and South over conservation versus development has been visible in all the various stages of forest negotiations.

The North-South conflict regarding organisational agendas clearly shows in the membership of the ITTO, which divides into producer and consumer countries, since most

⁷⁰² According to United Nations; deforestation is occurring when ‘a forest is cleared to give way to another use of land’ and forest degradation is occurring ‘when the species diversity and biomass are significantly reduced through, for instance, unsustainable forms of forest utilization’ UN document A/CONF.151/PC/27, ‘Conservation and Development of Forests: Progress Report by the Secretary-General of the Conference’, 5 February 1991, para 6, p.8. referred by Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, p.1

⁷⁰³ Sommer A. (1976), *Attempt at an Assessment of the World’s Tropical Moist Forests*, *Unasylva*, An *International review of Forestry and Forest Products*, Volume 28, 1976 II-III, The Food and Agriculture Organization of the United Nations: refers by Smouts M.C. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp.28-29, Tropical Forest Resources 1980, Food and Agriculture Organization of the United Nations, 1981(Rome)

⁷⁰⁴ Forest Resources Assessment 1990: Tropical Countries: Forestry Paper 112, Food and Agriculture Organization of the United Nations, 1993 (Rome)

⁷⁰⁵ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, pp:153-159

producers members are from the South and most consumers from the North. Gale, however, produces two examples that contradict this rationale; he argues that, although some countries are listed as either consumers or producers, they could still belong to the opposite category.⁷⁰⁶ For instance, he says that, although Australia is listed as a consumer country, it has a considerable amount of forest cover, while Thailand, which is listed as a producer, is very close to becoming a consumer. Therefore it would seem that the ITTO membership is categorised more along the lines of developing and developed country, not on what they actually own by way of tropical forest cover.

The division of South and North into producing and consuming countries, though, was clearly shown in ITTO Council Sessions between 1987 and 1994 when, following tradition, the G77 spokesperson for the “producing-country coalition” raised, on many occasions, the popular sovereignty claim of the South.⁷⁰⁷ Gale saw it thus:

[...] These economic and political interests helped determine the composition of national delegations to the ITTO, which both reflected and refracted an interpretation of the ‘national interest’ grounded in a developmentalist ‘paradigm.’ This developmentalist interpretation privileged the utilization of tropical rainforests by sovereign states in the pursuit of national economic development and, in so doing, helped cement producing-country governments together in a cohesive global coalition.⁷⁰⁸

The common political and economic interests formed by the South into one coalition to negotiate for a fair, equal and just share in the timber trade, therefore, clashed with the developed countries “consuming-country coalition”, led by the US, the UK, the

⁷⁰⁶ Gale Fred P. (1998), *The Tropical Timber Trade Regime*, Macmillan Press., p. 81

⁷⁰⁷ Ibid, p. 105

⁷⁰⁸ Ibid.

Netherlands and Japan.⁷⁰⁹ For several reasons, the consumer-country coalition were not as dependent on the timber trade as were the producing-country coalition, since, to a greater extent, they were politically and economically independent, therefore they were not as heavily affected by changes in the trade. To demonstrate this, Gale draws on the example of Japan, which, while it was the largest tropical timber importing country, it was not entirely dependent on the timber trade since it had several options to counteract supply short-falls and price rises.⁷¹⁰

During the negotiations, the consumer country coalition was not always driven by a common agenda. There were sub-groups, such as the European Community (EC, now the European Union) driven by different interests within the major category. Gale saw the position of the EC – in the context of ITTO – as a factor that created complications for the organisational structure of the consumer-country coalition and he pointed out that the position and unity of the EC varied on certain matters.⁷¹¹ For example, on commodity matters, the EC preferred to speak with one voice through their official representative, whereas, on development assistance matters, each EC country presented its own individual position.⁷¹² Added to this, the UK and the US dominated discussions through their spokespersons' positions. Consequently, the many divisions in the consumer-country coalition resulted in the producing countries being more influential regarding the making of the ITTO agenda; thus, together with its claim to sovereignty over the forests, the South was able to influence an agenda biased towards development strategies.⁷¹³

⁷⁰⁹ Ibid, p. 106

⁷¹⁰ Ibid.

⁷¹¹ Ibid, p. 114 -115

⁷¹² Ibid.

⁷¹³ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.137

The significant role of G77 in creating forest negotiation structures was highlighted in the forest negotiations at UNCED (1992), where the main agenda relating to a forest convention was initiated by the North and opposed by the South.⁷¹⁴ As a consequence, the North's prime demand to globalise forest issues through an internationally binding convention was nullified and replaced by a 'Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests', popularly known as the "Forest Principles".⁷¹⁵

The first paragraph of the Forest Principles reflected the South's influence on the agenda – '[T]he subject of forests is related to the entire range of environmental and development issues and opportunities, including the right to socio-economic development on a sustainable basis.'⁷¹⁶ Furthermore, Principle 2 (a) provided for a wide scope for developmental concerns:

States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation, including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land-use policies.⁷¹⁷

⁷¹⁴ A/CONF.151/6/Rev.I: preamble (g), (d)/ para.8(d), Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.158

⁷¹⁵ Generally call Forest Principles; 'Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests', A/CONF.151/26 (Vol. III), 14 August 1992, UNCED.

<http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed 28.08.2009)

⁷¹⁶ Preamble of the 'Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests', A/CONF.151/26 (Vol. III), 14 August 1992, UNCED.

⁷¹⁷ Principle 2 (a) 'Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests', A/CONF.151/26 (Vol. III), 14 August 1992, UNCED.

Following the 1992 Rio Conference, agendas and structures of forest negotiations were guided mostly by these Forest Principles. The Southern impact on negotiations, therefore, which had been considerable during the Convention, continued in the same vein thereafter. As Najam states ‘[T]he impact that the South has had on the framing and structure of global environmental negotiations has also had a slow but perceptible impact on the actual results of these negotiations.’⁷¹⁸ An analysis of the Southern influence on the agendas and structure of forest negotiations suggests that Najam’s statement is valid. Therefore, although its impact on forest negotiations was not very effective in 1945 when the FAO was furnished with a forestry division, the South gradually enhanced its influence to a remarkable level. However, as in any other environmental negotiation, it also needs strong research and expertise, state-of-the-art technology and adequate financial resources in order to build on its capacity to influence negotiating structures. Unfortunately, many of these necessities are still to be met, which may result in it once again being marginalised in the global decision-making forums. The following section will explore the South’s impact on the substance of the global forest negotiations in order to develop further the argument that its level of influence is in effective

Southern Impact on the Substance of the Negotiations

The substance of the negotiations will be examined this section in order to assess the impact made by the South on forest negotiations by an exploration of the relevant policy documents, norms, regimes and decisions.⁷¹⁹ As has been previously explained the main theme of the forest negotiations has swung between conservation and usage for

⁷¹⁸ Najam A. (2005), A tale of three cities: Developing Countries in Global Environmental Negotiations in *Global Challenges: Furthering the Multilateral Process for Sustainable Development* edited by Kallhauge A.C., Sjostedt G., Corell E., Green Leaf Publishing Ltd., pp.124-143 at p.132

⁷¹⁹ Ibid, p.125

developmental reasons, consequently, the substance of the negotiations involves a commitment to both these crucial aspects.

The negotiation substance of forest debates has been greatly shaped by the deep-rooted North-South division, with the Southern perspective being shaped by two principal concerns – the sovereignty claim over natural resources and the NIEO demands for additional financial and technical support, over the North’s single concern – deforestation. Consequently, the South attempted to strike a global bargain with the North over its tropical forest resources.⁷²⁰ As early as the 1980s, these different priorities had also appeared as the substance of tropical timber negotiations. The ITTA (renegotiated in 1994 and 2006), which will now be explored in terms of the South’s impact on the negotiation substance and regulations.

The International Tropical Timber Agreements

Humphreys identified three norms that were reflected in the 1983 ITTA, which he described as the three global norms of neoliberalism.⁷²¹

First, the sovereignty of the producing members over their forest resources is asserted. Second, an objective of the Agreement is ‘the expansion and diversification of international trade in tropical timber’. And third, industrial development was explicitly endorsed; the Agreement was principally a commodity agreement that aimed at encouraging ‘further

⁷²⁰ Humphreys D. (1996) Hegemonic Ideology and the International Tropical timber Organization in *The Environment and International Relations* edited by Vogler J. and Imber M.(edited) Routledge Publishers, p.217

⁷²¹ Ibid, p.221

processing of tropical timber in producing member countries with a view to promoting their industrialisation'.⁷²²

The objectives of the Agreement clearly reflected the different negotiating priorities of the North and the South. The South's principal argument of sovereignty over natural resources was incorporated into the Agreement's objectives, which reflected the considerable impact it had over the negotiation's substance. Article 1 of Chapter 1 of the ITTA, 1983, describes the objectives of the Agreement, which, at the beginning of the first paragraph, ensured the sovereignty of the producing states over tropical forest:

[...] for the benefit of both producing and consuming members and bearing in mind the sovereignty of producing members over their natural resources, the objectives of the International Tropical Timber Agreement, 1983 (hereinafter referred to as "this Agreement") are [...]⁷²³

Therefore the Southern perspective of state sovereignty was recognised and agreed by all member states. A similar approach was adopted at the ITTA in 1994:

Recognizing the sovereignty of members over their natural resources, as defined in Principle 1 (a) of the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, the objectives of the International Tropical Timber Agreement, 1994 (hereinafter referred to as "this Agreement") are: [...]⁷²⁴

⁷²²Ibid.

⁷²³ UN document TD/TIMBER/11/Rev. 1, International Tropical Timber Agreement, 1983, Chapter 1, Article 1

⁷²⁴ Article 1, Chapter 1, International Tropical Timber Agreement, 1994. United Nations Document TD/TIMBER.2/16

However, the importance given to the recognition of state sovereignty over natural resources within the objective section changed in ITTA, 2006. In that Agreement, the member states only included the recognition of state sovereignty over tropical forests within its Preamble, which was less emphatic than the 1983 and 1994 Agreements. Both previous Agreements had emphasised state sovereignty over forest resources, which, couched as it was within an Article, had formed a separate issue. Also, the provision in ITTA 2006, by including both sovereignty rights and responsibilities over a state's natural resources, demonstrated the limitation of the sovereignty claim, as may be seen in Paragraph (d) of the ITTA, 2006:

Recognizing that states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and have the responsibility to ensure that activities within their jurisdiction and control do not cause damage to the environment of other states or of areas beyond the national jurisdiction [...]⁷²⁵

This paragraph, therefore, explicitly recognises not only a right but also a responsibility, regarding a state's natural resources.⁷²⁶ As a consequence, the latest provision on state sovereignty over the forest resources, limits, to a certain extent, the broader, and sole, authority granted in the previous provisions in 1983 and 1994. Paragraph (d) of the Preamble, therefore, signalled a distancing from the consistent Southern claim that a state not only has sovereign authority, but also a responsibility to ensure that other countries are not affected by activities within its jurisdiction. In the next section, negotiations of the Forest Principles will be analysed to assess the South's impact on their substance.

⁷²⁵ Para d, Preamble of the International Tropical Timber Agreement, 2006

⁷²⁶ Humphreys D. (1996), Hegemonic Ideology and the International Tropical timber Organization, in *The Environment and International Relations* in Vogler J. and Imber M., Routledge Publishers, p.216

Forest Principles at UNCED (1992)

By investigating the substance of the Forest Principles and the UNCED negotiations process it is possible to show how far North and South claims have been represented in forest policies.⁷²⁷ The negotiation process was hotly debated between the Organisation for Economic Co-operation and Development (OECD) countries in the North and the “G77 with China” in the South⁷²⁸, whose main concern was whether the negotiating document on forests should result in a legally binding convention, or a non-legally binding document, with technology transfer and additional financial assistance as its secondary concerns.

Principally, the G77 was strictly opposed to a forest convention on the grounds that it would threaten national sovereignty over natural resources and it was anxious to prevent any legal requirement that would allow national policies on forests to be determined from outside.⁷²⁹ The Northern claims on forests, however, were neatly formed around the acceptance of forests as a ‘global common’, which demanded all countries to be bound by a unique set of legal principles, therefore they advocated a legally binding global convention on forests with the aim to place forest conservation in a better global regulatory framework.⁷³⁰ After several rounds of long and intensive debate, UNCED concluded with a ‘Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on

⁷²⁷ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, pp. 153-160, Humphreys David (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, Dimitrov R.S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc.

⁷²⁸ Dimitrov R.S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc., p.102

⁷²⁹ Humphreys D. (2001), *Forest Negotiations at the United Nations: Explaining Cooperation and Discord*, *Forest Policy and Economics*, Volume 3, pp:125-135 at p. 127

⁷³⁰ Humphreys D. (1996), *Forest Politics: The Evolution of International Cooperation*, Earthscan Publications Ltd. London, pp.122-124

the Management, Conservation and Sustainable Development of All Types of Forests’, more commonly known as The “Forests Principles”.⁷³¹

Several provisions in these principles demonstrate the Southern influence on the negotiations substance. For instance, Paragraph (g) of the Preamble states, ‘forests are essential to economic development and the maintenance of all forms of life’⁷³², which reflects the Southern perspective of forests as a potential source to overcome underdevelopment. Another instance lies in Principle 1(a) whereby state sovereignty ensures the right to forest usage and which also emphasises the state’s responsibility to prevent damage to other states, or other areas outside its territory.⁷³³ Yet another instance appears in Principle 2(a) whereby a state has a sovereign right to exploit its own resources in accordance with its development priorities and policies.⁷³⁴ Principle 2(a), however, includes a wider sustainable development framework on which the sovereignty right is based:

States have the sovereign and inalienable right to utilize, manage and develop their forests in accordance with their development needs and level of socio-economic development and on the basis of national policies consistent with sustainable development and legislation,

⁷³¹ Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations Documents, A/CONF.151/26 (Vol. III), at Rio de Janeiro, 3-14 June 1992.

<http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed on 10.09.2010)

⁷³² Para. (g) of the Preamble to the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations Documents, A/CONF.151/26 (Vol. III), at Rio de Janeiro, 3-14 June 1992. <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed on 10.09.2010)

⁷³³ Principle 1 (a), Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations Documents, A/CONF.151/26 (Vol. III), at Rio de Janeiro, 3-14 June 1992. <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed on 10.09.2010)

⁷³⁴ Principle 2(a), Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations Documents, A/CONF.151/26 (Vol. III), at Rio de Janeiro, 3-14 June 1992. <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed on 10.09.2010)

including the conversion of such areas for other uses within the overall socio-economic development plan and based on rational land-use policies.⁷³⁵

Although this provision reaffirms a state's sovereignty over its resources, in the latter part it is coupled with "sustainable development and conservation" policies, which demonstrates a clear attempt to limit Southern authority by including international conservation principles, which lie at the heart of the Northern agenda. Even though several provisions in the Forest Principles enshrine the Southern claims of sovereignty, it is hard to deny the inclusion of some decisive provisions that reflect a Northern influence. One such instance was when the Northern OECD countries succeeded in deleting a provision that referred to their responsibility for the historical of forests in their own countries, as well as in tropical forests in developing countries, for their "industrial development" during the colonial period.⁷³⁶ Also, the North used its financial and political power against the Southern insistence on debt relief, additional financial resources and the transfer of technology. Furthermore, the North refused any major commitment of financial resources to maintain the negotiations. Kolk describes the Northern and Southern positions at the forest negotiation table as follows:

Although the South largely succeeded in closing ranks (especially when typical North-South issues were involved) and avoiding unwanted environmental regulatory agreements, it did

⁷³⁵ Principle 2(a), Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, United Nations Documents, A/CONF.151/26 (Vol. III), at Rio de Janeiro, 3-14 June 1992. <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (Last accessed on 10.09.2010)

⁷³⁶ United Nations documents, A/CONF.151/6:para.10, A/CONF.151/6 para.8 (a). in Kolk Ans (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.158, Dimitrov R. S. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc., p.103-104

not obtain major concessions from the North on international economic reforms, trade, debt, transfer of technology or financial resources.⁷³⁷

During the UNCED forest negotiations, therefore, the North largely ignored the fact that, without the support of the South, no global environmental problem could be addressed. The South, however, brought some of the NIEO agendas back to the table, such as the transfer of additional financial and technological resources for forest protection from the industrial countries to the developing countries. According to Kolk, many elements of financial resources impacted upon the North-South issues of contention thus: “the calculations of environmental costs and how these should be divided between North and South, the financing of the future transfer of funds, and the control over and management of these financial resources”.⁷³⁸ However, an overall assessment on the negotiations shows that the South still suffered from a lack of effective participation and the many restrictions they faced at the negotiation table will be analysed more comprehensively later in this chapter. The 1991 South Centre reported that the negotiation process had to be more balanced between the two bargaining positions in that the North needed to make firm financial commitments in order to demand from the South a commitment to environmental conservation:

[...] engaging in more balanced negotiations between the North and the South, and it could yield results that the developing countries have been seeking for some time. Global action on the environment cannot succeed without the full participation and collaboration of the South. Indeed, UNCED is an international conference where the North is seeking

⁷³⁷ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p. 40

⁷³⁸ Ibid, p. 163-171

environmental concessions from the South, and where South can make such concessions in return for firm commitments by the North to restructure global economic relations.⁷³⁹

Consequently, at the UNCED in 1992 a compromise was found between the conflicting positions of North and South in that a less authoritative international document was produced than would have been produced out of a Forest Convention. Therefore, at the second Preparatory Committee meeting in April-March, 1991, “it was decided that, in view of the ‘special situation and needs of developing countries’, the minimum goal would be a ‘non-legally binding authoritative statement of principles’ for all types of forest”, which amounted to soft, rather than hard, law.⁷⁴⁰

Although the South’s impact throughout the negotiations on the structure and substance of the global forest negotiations shows a gradual progress, nevertheless, it has not been very effective in furthering its concerns at the global level. As has been demonstrated, at the outset of the international forest discourse, the North held the preponderance of power and exercised the greatest influence when the forest instruments and institutions were created, consequently, due to their financial and political strength, they rendered the South unwilling to bring their own forest issues to the table. The following section will explore the constraints on the South that prevents it from effective participation.

⁷³⁹ South Centre, 1991, Environment and Development. Towards a Common Strategy for the South in the UNCED Negotiations and Beyond, Geneva, p.1-2 referred in Kolk A.(1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.39

⁷⁴⁰ A/CONF.151/PC/WG.I/L.18/Rev.I:para. 5, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.154, similar analysis can be found in Dimitrov R. (2006), *Science & International Environmental policy: Regimes and Nonregimes in Global Governance*, Rowman & Littlefields Publishers, Inc., p.102-104

What is lacking in Southern Participation?

As has been explained throughout this chapter, certain elements of effective participation have been absent in the South's campaign. However, the reasons for this cannot be discussed in isolation since they need to be recognized in the context of the North-South dimension in environmental negotiations. Therefore, this specific Case Study on forest negotiation coincides with the broader argument of this thesis, that the South faces certain difficulties when it participates in global negotiations, not only politically and financially, but also in other miscellaneous respects. Most importantly, the North-South divide is not only based on development and under-development, but also on the absence of power to influence the decision-making process, the lack of competence to include its own interests in the global law-making process. As Adil Najam explains:

The popular view of the North-South divide as a binary distinction between 'haves' and 'have nots' is a shorthand, and not untrue, way of understanding the concept. However, one must remember that what the South wishes to 'have' is not simply economic development, but a say in the political decision that affect its destiny.⁷⁴¹

Therefore, incorporating the vision of the South within the global environmental discourse needs to be accomplished in a series of economic, social and political initiatives. The South's role in global forest negotiations suggests that such initiatives need to be considered. It is recognised that an inadequate knowledge base of scientific research data is a key difficulty for the South in voicing its concerns effectively. Since updated data and

⁷⁴¹ Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp. 303-321 at p.305. Najam further refer to 1990 south Commission Report that elaborates North-South divide on not merely on the grounds of economic poverty but also poverty of influence.

relevant information is a principal factor that predicates the much stronger negotiating position of the North, which dominates resources, research and scientific output; also, according to Karlsson, ninety-four percent of indexed scientific literature is contributed by OECD countries.⁷⁴² As Gutman also notes, the North carries out almost all basic research and analysis on environmental change, and often it does not take into account its relevance to the South. Using the global warming debate as an example, he states that several studies have indicated that most Northern studies overstate Southern emissions and responsibilities and understate the potential costs of reducing energy consumption in the South.⁷⁴³ A similar understanding of the problem is expressed by Gupta, who states that, in the climate change debate, the relatively small amount of domestic environmental research severely handicaps the Southern negotiators by compelling them to rely on foreign researchers⁷⁴⁴:

[...] some scientific controversies indicate that (foreign) researchers may have selected certain research questions, assumptions, methods and theories in their research and the choice in favour of these tools has (perhaps inadvertently) led to results that tend to favour industrialised countries [...] To the extent that developing countries will always be behind in the research on problems signalled by industrialised countries, there will be structural imbalance in knowledge which will affect the negotiation process.⁷⁴⁵

⁷⁴² Karlsson S. (2002), The North-South Knowledge Divide-Consequences for Global Environmental Governance in *Strengthening Global Environmental Governance: Options and Opportunities* edited by Esty D.C. and M. Ivanova, New Haven CT, Yale School of Forestry and Environmental Studies.

⁷⁴³ Gutman P. (1994), Developing Countries and International environmental Negotiations: The Risks of Poorly Informed Choices, *Society and Natural Resources*, Volume 7, Issue 4, pp. 389-397,

⁷⁴⁴ Gupta J. (1997), *The Climate Change Convention and Developing Countries: From Conflict to Consensus*, Kluwer Academic Publishers. For similar understanding of the importance of scientific research on climate change from a Southern perspective read: Kandlikar M. and Sagar A. (1999), Climate Change Research and Analysis in India: an Integrated Assessment of South- North Divide, *Global Environmental Change*, Volume 9, pp:119-138, In their assessment Kandlikar and Sagar emphasis many factors that hold researchers from developing countries back such as financial, technical and administrative bureaucratic and less scientific exposure with the outer world.

⁷⁴⁵ Gupta J. (1997), *The Climate Change Convention and Developing Countries: From Conflict to Consensus*, Kluwer Academic Publishers, p. VIII

Although this observation is based on climate change, it is relevant to any environmental issue, including forests. Self-evidently, therefore, knowledge about forest resources is absolutely salient to policy making both locally and globally. The research findings on forest biodiversity and ecosystem services, for example, have a major influence on decision making authorities and organisations.⁷⁴⁶ As Gulbrandsen explains, “whereas a few decades ago science was primarily used to increase productivity and yield knowledge about the environmental effects of forestry [it] is now seen as salient and relevant to policy-making.”⁷⁴⁷ Developing countries face various hindrances that prevent them from broadening their research base on forests, since they are often not to be found as a main priority item within the primary development goals; therefore Southern countries do not necessarily dedicate large financial resources on forests related research⁷⁴⁸. Asadi further emphasises the impact of poverty and under development issues on Southern forest development programmes:

[...] many societies in the developing community, grappling with endemic, dehumanizing poverty and mired in the vicious circle of underdevelopment, are hardly in a position to formulate, much less execute, a national forest programme as part and parcel of a comprehensive national development strategy and programme.⁷⁴⁹

When the national priorities focus more on developmental agendas forest programmes do not catch the attention of national policy makers; consequently, the South’s forest data research base is relatively lower, and less significant, than the North’s.

⁷⁴⁶ Gulbrandsen L. H. (2008), The Role of Science in Environmental Governance: Competing Knowledge Producers in Swedish and Norwegian Forestry, *Global Environmental Politics*, Volume 8, Issue 2, p.99 at p. 111

⁷⁴⁷ Ibid

⁷⁴⁸ Asadi B. (2008), International Forest Deliberations, Processes and Civil Society: An Historical Account (1992-2007), *International Forestry Review*, Volume 10, Issue 4, p. 666

⁷⁴⁹ Ibid.

Therefore, many international environmental index and standards have been estimated and established on the Northern scientific data base. One such instance is the 1990 the World Resources Institute (WRI), a US based think tank, published a ranking of countries on the basis of their contribution to the greenhouse effect; according to the World Report 1990/91, it ranked China, India and Brazil – three major developing countries – among the greatest contributors to world carbon dioxide emissions.⁷⁵⁰ This finding was contested on the grounds of Northern bias in the scientific data analysis.⁷⁵¹ In this instance, arbitrariness in the analysis of data occurred because a greater emphasis had been given to “global warming on vegetation, deforestation and livestock, rather than of fossil fuel emissions”.⁷⁵² Such iniquitous preferences accorded to specific factors that are most commonly found in the South demonstrates further the North-South divide. In addition to this, the WRI considered 1987 deforestation figures for Brazil while, for most other countries, 1980 deforestation figures were used.⁷⁵³ Thus, the criteria it used to estimate greenhouse gas emissions attest the nature of the impact by North and South differences in approaching the global decision making forums. Agarwal and Narain point out that, as a result of Northern based research and scientific data, a situation of environmental colonialism is created in global governance, since many international negotiations and documents base their positions on figures and data contributed by Northern based research centres.⁷⁵⁴ The precedent set by such a WRI report may also lead to the publication of contradictory data.

⁷⁵⁰ <http://www.wri.org/publications?page=8> (last accessed 20.12.2010), Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p. 84-86

⁷⁵¹ Agarwal A., Narain S. (1991), *Global Warming in an Unequal World. A Case of Environmental Colonialism*, New Delhi: Centre for Science and Environment, Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.85

⁷⁵² Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p.85

⁷⁵³ Ibid

⁷⁵⁴ Ibid.

Among other dilemmas that developing countries face in forest negotiations is the lack of technological resources for gathering, recording and maintaining data, since some of the highly sophisticated application of technology is still a far distant goal for most.⁷⁵⁵ In his examination of the forest research base in India, Pandey points out that developing countries do not have access to state of the art computer applications that speedily store accurate information and data. Satellite data collection and remote sensing technology have also become a method of rapidly recording forest data in the North, all of which needs to be introduced to the South. However, numerous infrastructure restrictions such as lack of availability of the internet, poor condition of telecommunication facilities prevent the implementation of modern technology in developing countries, consequently, the lack of technology remains a drawback for the South's forest negotiators.⁷⁵⁶

The size and the makeup of the delegation in international negotiations is another disadvantage faced by developing countries, since they are likely to be represented by a single government official, a diplomat or a politician, who is required to cover almost all areas of the negotiation. On the other hand, industrialised countries are more likely to be represented by a team of specialists for each aspect of the negotiation, for instance experts from the scientific, industrial, economic, legal and political disciplines.⁷⁵⁷ A recent news article on the BBC (7th September, 2009) reveals that even sending a government delegate to an international negotiation is beyond the agenda of some developing countries.⁷⁵⁸

⁷⁵⁵ Pandey D. (2008), India's Forest Resource Base, *International Forestry Review*, Volume 10, Issue 2, p.116

⁷⁵⁶ For an analysis on remote sensing technology and its application as a source of forest information read: Foody M.G. *et al* (2003), Predictive Relations of Tropical Forest Biomass from Landsat TM data and their Transferability between Regions, *Remote Sensing of Environment*, Volume 85, pp: 463-474

⁷⁵⁷ Miller M. (1995), *The Third World in Global Environmental Politics*, Open University Press., p. 80, Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp. 303-321

⁷⁵⁸ British Broadcasting Corporation news on Monday, 7th September 2009.
http://news.bbc.co.uk/1/hi/world/south_asia/8243091.stm (last accessed 22.09.2011)

Maldivian President, Mohamed Nasheed, issued a statement recently stating that his country does not wish to participate in a Climate Change Summit because his government cannot afford to pay the travel expenses; however, they would be willing to send a delegation if the costs were covered – a situation that clearly shows the sorts of financial constraints faced by some Southern countries.⁷⁵⁹ This lack of exposure to research and decision making bodies resulting in further communication and negotiation barriers, creates yet another disadvantage for the South. Given the above disadvantages, it is essential that are included in the negotiation process.

A number of reforms have been introduced in global environmental governance in response to growing concerns about equitable participation of North and South in the decision making process. Dombrowski states that “some of these initiatives are intended to increase the transparency of international organisations, changes to formal governance structures to give more voting rights to Southern governments, and a marked increased level of engagement with civil society actors.”⁷⁶⁰ In this regard, the following section will explore the possibility of introducing multidimensional governance strategies to represent Southern forest concerns. As was pointed out in the analysis in Chapter 3, NGOs can play a significant role in environmental negotiations towards strengthening the Southern negotiating position, because, as Lisowski states, there are many positive outcomes of NGO participation in environmental negotiations:

International environmental negotiations are distinguished from most other multilateral negotiations by a particularly constructive relationship between negotiations and non-

⁷⁵⁹ British Broadcasting Corporation news on Monday, 7th September 2009.
http://news.bbc.co.uk/1/hi/world/south_asia/8243091.stm (last accessed 22.09.2011)

⁷⁶⁰ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p. 400

governmental organizations (NGOs). Negotiators generally recognize the benefit of engaging NGOs, as representatives of key stakeholders, in such negotiations: if properly managed, NGO participation can help optimize the international response to a particular environmental danger and enhance the transparency of the intergovernmental process.⁷⁶¹

It is interesting to examine whether NGO participation in forest negotiations has witnessed similar positive outcomes as Lisowski suggests here in the more general context of international environmental negotiations, since the key idea of NGO participation, as proposed in this thesis, is their capacity to voice Southern environmental concerns at a global level. The following section, therefore, will examine the possibility of NGOs representing the South in forest negotiations. In doing so some ideas about the role of NGOs in the climate change negotiations will be presented.

The Prospect of NGOs Representing the Southern Voice

NGOs have been actively engaging in forest negotiations since the 1980s following the alarming rate of deforestation reported worldwide stimulated global interests and put pressure on national and international decision-making bodies to treat forests as a high priority.⁷⁶² NGO involvement in global forest discourses widens the spectrum of issues tackled, from the social, political and economic perspectives of forest usage. They can contest such diverse matters as deforestation, reforestation, sustainable management, socio-

⁷⁶¹ Lisowski M. (2005), How NGOs Use their Facilitative Negotiating Power and Bargaining Assets to Effect International Environmental Negotiations, *Diplomacy and Statecraft*, Volume 16, pp: 361-383 at p. 361

⁷⁶² Asadi B. (2008), International Forest Deliberations, Processes and Civil Society: An Historical Account (1992-2007), *International Forestry Review*, Volume 10, Issue 4, p. 657, Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume.4, Issue 2, p.51

economic power conflicts in internationally funded projects, and concerns of indigenous and local communities whose livelihoods are mainly dependent on the forests.⁷⁶³

The main theme of this section, therefore, is to explore the nature of NGO involvement in voicing Southern environmental concerns at global forest negotiations. Many biologically diverse forests are found in the South where governments need to prioritise land usage, whether for agriculture, development projects, timber production or for purposes of conservation. NGOs promote both the conservation of biological diversity in global decision-making forums and, at the local level, help to minimise the damage created to forests from economical usage.⁷⁶⁴ According to Humphreys, they have successfully represented ecological and human dimension of forests usage.⁷⁶⁵ Karsenty also states that biological diversity is among NGO's highest priority; consequently, when their participation is observed over time it appears clear that they mainly represent the conservation agenda.⁷⁶⁶

In the late 1970s, when intervention by NGOs in forest related issues began, their activities were guided by principles of forest conservation. At an intergovernmental meeting held prior to the formal timber negotiations, the International Union for Conservation of Nature (IUCN) it was argued that the ITTA should recognise the importance of forest

⁷⁶³Ibid, p.52

⁷⁶⁴ Among these economical instruments for forest conservation Karsenty recognises three instruments; namely, conservation easements, tradable development rights, conservation concessions. Karsenty A. (2007), Questioning Rent for Development Swaps: New Market-Based Instruments for biodiversity acquisition and the land-use issues in tropical countries, *International Forestry Review*, Volume 9, Number 1, 503-513 at pp. 504-505

⁷⁶⁵ Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume 4, Issue 2, p.51

⁷⁶⁶ Karsenty A. (2007), Questioning Rent for Development Swaps: New Market-Based Instruments for biodiversity acquisition and the land-use issues in tropical countries, *International Forestry Review*, Volume 9, Number 1, 503-513 at p. 505, Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume 4, Number 1, pp: 51-74 at p.71

conservation and tropical forest development.⁷⁶⁷ The influence of this IUCN argument is reflected in Article 1(h) in the ITTA, 1983, which states that parties to the Agreement should aim at the “sustainable utilization of and conservation of tropical forests and their genetic resources, and at maintaining the ecological balance in the regions concerned.”⁷⁶⁸ The conservation concerns of the NGOs were welcomed by the consumer countries, most of which being developed countries. Therefore, from the beginning of the forest negotiations, developed countries and NGOs worked together to put forward their demands in relation to conservation, while the timber producing countries, as previously stated, wanted the ITTA to reflect Southern developmental priorities.

As a consequence of the NGO bias towards conservation, the Southern states were not pleased and their displeasure was emphasised when Malaysia and Indonesia expressed their objection to a proposal drafted by the NGO Friends of the Earth which was presented by the UK delegates on timber labelling.⁷⁶⁹ Although the objection to the proposal was unsuccessful, the South made the same argument, albeit in another form, when the NGO World Wide Fund for Nature (WWF) proposed that a Forest Stewardship Council should administer a timber certification system, which would be an independent voluntary certification system. The objective of the WWF’s proposal, which was supported by the UK and other consumer countries, was to encourage the timber trade to adopt sustainable processes. It can be argued, therefore, that this form of NGO participation in forest debates

⁷⁶⁷ Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume 4, Issue 2, p.51 at p.54 Although IUCN is in an ambiguous state whether to recognize as an NGO or not. The main confusion is IUCN governing bodies are represented both governments and non-governments. Therefore it cannot be categorized as a pure NGO. According to the NGO accreditation status within ECOSOC, UN IUCN is recognized as an NGO.

⁷⁶⁸ Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume 4, Issue 2, p.51 at p.54

⁷⁶⁹ ITTO document PCM (V)D.1, Report to the International Tropical Timber Council, fifth Session of the Permanent Committee on Economic Information and Market Intelligence, 3 November, 1989, Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, Volume 4, Issue 2, p.51 at p.55

aligns them closely with the North. In circumstances such as this, as Chapter 2 of this thesis argues, the South is often under-represented in global environmental matters, which gives emphasis to the claim that the governance system lacks equity and justice. It also brings into question how fairly decision-making rights are distributed between North and South and whether the South is under-represented in the final outcome of global negotiations.⁷⁷⁰

This thesis argues, within this context, that NGOs could be potential advocates for the South in forest negotiations in order to counter-balance the aspects, described above, where it is lacking. If properly recruited and organised, therefore, NGOs can help optimize the Southern environmental concerns about global environmental governance. The focus of this argument is based primarily on NGOs' greater transparency in the negotiation process, their wider access to negotiators and documentation, their facilitative negotiating powers, research strengths and expertise in seizing transnational networking opportunities.⁷⁷¹ It is the want of each of these factors that has led, directly or indirectly, to the marginalisation of Southern states from the global decision-making process. It is the strong contention of this thesis, therefore, that NGOs should be encouraged to voice the South's environmental concerns at global forums.

Regarding the assets of NGOs, Dombrowski states:

By highlighting the need for formal representation structures that give sufficient voice to particular affected and vulnerable countries, by drawing attention to issues that are of

⁷⁷⁰ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p. 402

⁷⁷¹ Lisowski M. (2005), How NGOs Use their Facilitative Negotiating Power and Bargaining Assets to Effect International Environmental Negotiations, *Diplomacy and Statecraft*, Volume 16, pp: 361-383

particular concern to these countries and by providing practical support and expertise to certain delegations, the NGOs are to some extent seeking to address obstacles to the effective representation by governments of their citizens in international forums.⁷⁷²

As can be seen from the above section, compared to the resources and expertise of most developing countries, many international environmental NGOs possess significant technological expertise, scientific research facilities, financial resources and networking opportunities, which are precisely what developing countries often lack at international negotiations. As stated above, many NGOs are richer in research and expertise than many Southern countries, as Lisowski explains in his analysis of NGO's impact in the Climate Change negotiations:

ENGOS [Environmental Non-Governmental Organisations] bring experts of all kinds to the negotiations, including international lawyers, economists, atmospheric scientists, and carbon sinks experts. These individuals analyse negotiating texts and proposals on an on-going basis. Their views are then personally conveyed to negotiators, and occasionally distributed in hardcopy or used in ECO articles. Over time, certain individuals and organizations gain reputations for providing accurate, useful information.⁷⁷³

It is clear that research base and expertise that NGOs possess are vital in environmental negotiations. This is one quality that should be utilised by the South to support their voice at global level.

⁷⁷² Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p. 410

⁷⁷³ Lisowski M. (2005), How NGOs Use their Facilitative Negotiating Power and Bargaining Assets to Effect International Environmental Negotiations, *Diplomacy and Statecraft*, Volume 16, pp: 361-383 at P.371

As previously discussed, negotiations at UNCED were highly polarised, with representatives of both parties showing more concern for defending their own positions, rather than searching for common ground. Consequently, NGOs, as “third parties”, had a fair chance of becoming actively involved in the negotiations. As Humphreys states: “NGOs were able to exploit the intergovernmental differences by lobbying different delegations on different issues, depending on the preferences of individual delegations.”⁷⁷⁴ However, at UNCED, the roles played by NGOs were recognised in different ways – some were seen as important sources of expertise and some were invited to join official delegation as members or observers.⁷⁷⁵ Asadi points out the significance of NGO influence as follows:

They (NGOs) managed to make “combating deforestation” an important element in [the] Rio process, and finally succeeded, along with their powerful allies in the intergovernmental body (both developed and developing) to translate it into Chapter II of Agenda 21 and the “Forest Principles”.⁷⁷⁶

The ensuing “Forest Principles” attest to the active and engaging role of NGOs in the UNCED negotiations. With a similar emphasis on NGO participation on forest negotiations, the Report of the World Commission on Forests and Sustainable Development in 1993, stressed the importance of developing new civil society institutions to improve governance and accountability issues related to forest governance⁷⁷⁷. Asadi

⁷⁷⁴ Humphreys D. (2004), Redefining the Issues: NGO Influence on International Forest Negotiations, *Global Environmental Politics*, vol.4, issue 2, p.51 at p.59

⁷⁷⁵ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p. 255, Canada, India, the Netherlands and US had members of NGOs in their official delegation as members or observers.

⁷⁷⁶ Asadi B. (2008), International Forest Deliberations, Processes and Civil Society: An Historical Account (1992-2007), *International Forestry Review*, Volume 10, Issue 4, p. 662

⁷⁷⁷ Soderlund M. and Pottinger A. (Eds.) (2001), *Rio+8: Policy, practice and progress towards sustainable management*, Oxford, Commonwealth Forestry Association

believes that such a recommendation, though not fully implemented, has had a positive impact on civil society engagement in the process.⁷⁷⁸

Since the implementation of Agenda 21 (1992), which recommended the involvement of NGOs in “policy design, decision-making, implementation and evaluation”, the significance of NGO participation has been widely accepted in all environmental negotiations.⁷⁷⁹ A broader engagement of NGOs in forest issues could also be perceived at the “Forest Principles” negotiations at UNCED (1992) relating to UNFCCC and CBD (the Convention on Biological Diversity).

As discussed in previously, NGO participation could affect international negotiations in terms of both substance and procedure.⁷⁸⁰ The substance of forest negotiations has been shaped by contributions of NGOs in providing research and information, which has helped to craft their context.⁷⁸¹ Such well-established international NGOs as the WWF, the IUCN, the International Institute for the Environment and Development (IIED), Friends of the Earth and the World Resources Institute (WRI) were among the pioneering NGOs that helped to design the format of the ITTA, and other forest related agreements and documents.⁷⁸² Hence, the strength of NGO research data can be used to make up for the South’s lack of expertise and research information.

⁷⁷⁸ Asadi B. (2008), International Forest Deliberations, Processes and Civil Society: An Historical Account (1992-2007), *International Forestry Review*, Volume 10, Issue 4, p. 662

⁷⁷⁹ Agenda 21, United Nations Commission on Sustainable Development, 1992: 27.9

⁷⁸⁰ Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp. 243-284 at 255- 279

⁷⁸¹ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands, p. 255

⁷⁸² WRI’s mission was to research ways of satisfying human needs without depleting natural resources and provoking irreversible changes in the environment. It soon established itself as a top-level centre of expertise and it reputedly acts as a research unit for World Bank referred in Smouts M. (2003), *Tropical Forests International Jungle: The Underside of Global Ecopolitics*, Palgrave Macmillan, pp. 226, In 2008 IIED published independent assessment on World Bank’s proposal on creating a global partnership that links local

Many insights gathered from the Climate Change negotiations can be transferred into forest negotiations. Dombrowski analyses one such instances when a detailed draft design for a Copenhagen treaty, submitted by a group of environmental NGOs, emphasised that the governance structure of the proposed Copenhagen Climate Facility “should reflect a democratic decision-making structure with an equitable and balanced representation, ensuring significant representation from developing countries”. They also stressed the importance of hearing the voice of the most vulnerable countries, since they were the most likely to be impacted by its consequences.⁷⁸³ The efforts made by NGOs to strengthen the Southern position in climate change could be a precedent for the NGO involvement in forest negotiations.

A further advantage of NGOs representing the Southern voice is that they can reach broader audiences and raise public and official awareness better than governments can.⁷⁸⁴ They can also exchange information from the ground to global levels more effectively, since improvements in information technology allow for wider and cheaper communications with other NGOs.⁷⁸⁵ NGO’s negotiations are mostly conducted outside the formal procedural structures by maintaining e-mail lists that enable them to gather and disseminate information from local to global levels world-wide in order to promote their

and global processes. IIED information support the bottom-up decision making process within global partnerships on forests. The full IIED report and summary can be found at : www.iied.org (last accessed on 20.12.2010)

⁷⁸³ A Copenhagen Climate Treaty, Version 1.0. A proposal for a Copenhagen Agreement by members of the NGO community submitted to UNFCCC on 6 June 2009, http://unfccc.int/parties_observers/ngo/submissions/items/3689.php. (last accessed on 16.12.2010) Referred in Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-413 at p. 403

⁷⁸⁴ Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp. 243-284 at p.274

⁷⁸⁵ Lisowski M. (2005), How NGOs Use their Facilitative Negotiating Power and Bargaining Assets to Effect International Environmental Negotiations, *Diplomacy and Statecraft*, Volume 16, pp: 361-383 at pp: 369

campaigns. Because of the lack of similar networks and resources, developing countries are left far behind in crucial aspects of negotiation procedures, which adds further to the contention of this thesis that NGOs can offer a better service to the South than their collective representatives can.⁷⁸⁶

The support of NGOs in representing the South might, therefore, might well address the difficulties that its delegations face in the negotiations process. As mentioned earlier, a number of developing countries cannot afford to send expert delegates to international negotiation, so, because most transnational NGOs have branches in the cities where regular international environmental negotiations take place, they are ideally placed to provide representation. Also, the NGOs are rich in expertise in various different areas of environment governance, which means that they can provide their services, often by one expert covering more than one area.

Furthermore, NGO involvement in negotiation procedures makes the process much more flexible, since their network structures and diversity of expertise offer more effective and authoritative modes of participation. As Zoe Pearson explains in relation to the establishment of the International Criminal Court:

[...] These NGOs recognized that a combined effort by a coalition of NGOs with diverse interests and capacities was more likely to be able to maintain relationships with a large group of states and to contribute their expertise to all parts of the complex negotiations.⁷⁸⁷

⁷⁸⁶ The research capabilities and expertise of some international NGOs could be used to benefit the poor research base in the South. For example: WRI maintain high research profile in many environmental issues including climate change, biological diversity, and deforestation. <http://www.wri.org/projects> (last accessed on 03.03.2011)

⁷⁸⁷ Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp. 243-284 at 255

As Yamin states, environmental NGOs are capable of “work at multiple levels of governance across national boundaries [...]”.⁷⁸⁸ Some environmental NGO networks have enforced mechanisms to ensure the Southern voice is sufficiently heard at decision making forums. Climate Action Network (CAN), for example, has appointed a designated “Southern Capacity Programme Coordinator” to ensure that Southern concerns are heard on the global network.⁷⁸⁹

This thesis will develop further the argument in the next chapter for NGO participation in order to effectively voice the concerns of the South in global forest negotiations.

Conclusion

This chapter on forest negotiations developed two principal arguments regarding negotiation positions, structures and substance – the first being “conservation”, i.e. the recognition of forests as “global commons”, championed by the North, and the, “development”, i.e. the recognition of forests as “national properties”, championed by the South. The evidence suggests that, even though the South has partly established its claim, the decision makers have not been completely won over due to the dominant influence of the politically and economically powerful North. As a consequence, therefore, negotiations are still fundamentally affected by the North-South dimension, which raises grave concerns about the Southern position not being effectively voiced at the global level.

⁷⁸⁸ Yamin F. (2001), NGOs and International Environmental Law: A Critical Evaluation of Their Role and Responsibilities, *Review of European Community and International Environmental Law*, Volume 10, Number 2, pp: 149-162 at p. 150

⁷⁸⁹ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-413 at p. 409

Secondly, since the South has largely failed to influence the negotiation process, the other aim of this chapter, which was to analyse the potential assistance NGOs might give to the South, was to consider how much more effective its case might be if it were to be enhanced at the global negotiations table by NGO participation. NGOs have contributed to significant changes in terms of shaping the international forest agenda, however, there are still many areas in which they can contribute to make Southern participation more effective.

Research and expertise, interpersonal management, transnational networking opportunities and communication skills are some of the areas that have been discussed in this chapter to indicate those areas where NGOs can strengthen the negotiation abilities of the South. The current literature mainly highlights NGOs' contributions in terms of the general development of the international forest regime, which has primarily concentrated on such areas as deforestation, illegal logging, developing the forest related research base and providing scientific expertise in forest protection. What is absent in the available literature, though, is a debate about the prospect of NGOs participation in voicing Southern environmental concerns. This thesis, therefore, argues strongly for future research to be focussed on the most effective way by which NGOs are enabled to voice Southern forest concerns at the global governance level.

The constructive participation of NGOs could minimise the many practical barriers that have held the South for so long at the margins of global forest decision-making. As this chapter has shown, through their well-established and diverse experiences, expertise and capacity, together with their transnational communications networks, NGOs should be

enabled to play crucial roles in achieving a much more equitable status for the South in global forests negotiation.⁷⁹⁰

Since NGO enhances the substantive and procedural aspects of negotiations by the mobilisation of additional resources in terms of information, finance and expertise, in the next chapter, this thesis will develop an argument for transnational NGO network collaborations, consisting of both Southern and Northern NGOs, in order to broadcast Southern environmental concerns more broadly and effectively. It is in this context, therefore, that the next chapter will argue that transnational NGO networks should be aimed at addressing the obstacles, described in this chapter, in order for the South to participate more effectively in global environmental governance.

⁷⁹⁰ Agenda 21, United Nations Commission on Sustainable Development: 1992, Chapter 27.3 The document is available on http://www.un.org/esa/dsd/agenda21/res_agenda21_27.shtml (last accessed on 20.12.2010)

5. A Vision for More Balanced Environmental Governance: NGO Responses to North-South Inequities in Global Environmental Governance

“Modern networks are not conveyer belts of liberal ideas, but vehicles for communicative and political exchange, with the potential for mutual transformation of participants.”⁷⁹¹

Margaret Keck and Kathryn Sikkink

Introduction: “Borrowing Power to Fill the Gap”?⁷⁹²

As the Case Study on global forest negotiations in the previous chapter illustrated, finding the most effective way of enhancing Southern capacity to voice environmental concerns has proven to be a challenge in global environmental governance. This chapter will inform the current debate about the participatory inequalities experienced by Southern countries that have not yet overcome the barriers created as a result of the inequitable intergovernmental arrangements emanating from the North-South division in decision-making forums. It suggests alternative arrangements negotiated by a transnational NGO network that will be in a better position to offer a variety of different options to traditional intergovernmental methods.

⁷⁹¹ Keck M. and Sikkink K. (1999), *Transnational Advocacy Networks in International and Regional Politics*, UNESCO, Blackwell Publishers, Oxford, pp: 89-101 at p. 100

⁷⁹² “Borrowing power” and “filling the gap” are two terms used to indicate the NGO representation of voices that are not heard at global governance respectively in Betzold C. (2010), *‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997* online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011), and in Dombrowski K. (2010), *Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance*, *International Environmental Agreements*, Volume 10, pp: 397-410.

Such a network provides for a multidimensional phenomenon that will encompass local, national, and supranational systems of environmental governance, which is particularly important for this thesis as it explores the possibility of transnational NGOs voicing the developing countries claims and concerns in global environmental negotiations. In addition to this, the thesis argues for the development of a greater vision in order to enhance the legitimacy of NGO participation. Because its basis relies on principles of equity, fairness and justice in global governance, it has explored the different dimensions of NGO networks giving close regard to their ability to establish legitimate representation of Southern environmental claims.

This thesis, therefore, contributes to the current literature in two ways: firstly, it suggests that transnational NGO networks are more effective alternatives to traditional state-centric representation and participation, which have proved deficient in global environmental governance. Secondly, this thesis supports transnational NGO networks in strategies that include members from both North and South in order to achieve greater collaboration. Such strategies are particularly important in areas such as technical information, scientific research and expertise, where the South has so often been marginalised when it has come to influencing global decision making.⁷⁹³

The approach of this thesis differs from current transnational NGO networks literature, which mostly takes the view that by importing external global environmental values states

⁷⁹³ Betzold C. (2010), '*Borrowing Power*' to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

should be forced to implement certain international environmental standards.⁷⁹⁴ This thesis, however, takes the opposite view – that by focusing mainly on bringing Southern states’ internal environmental concerns into global forums, the decision-makers will hear their concerns more clearly than they do at present.

The discussion begins with an insight into three different categories of international governance that have expressed Southern environmental concerns at global decision-making forums. Firstly, the centuries old ‘state-centric’ category, whereby states participate in intergovernmental negotiations individually; this is the most common form of representation in the global decision-making process and it has been practiced by many international organizations, such as the UN General Assembly (UNGA) and the World Trade Organization (WTO). The second category is the ‘inter-state coalition’, which voices environmental concerns more effectively than individual states in the first category⁷⁹⁵; an example is the G77 at the 1992 Rio Summit.⁷⁹⁶ Thirdly, the ‘alternative multidimensional’ category consisting of transnational NGO networks; examples of these are the Rainforest Action Network (RAN) and the Climate Action Network (CAN).

This chapter will reiterate Chapters 1 and 2 regarding the inequalities being experienced by the South in the North-South dimension within current decision-making negotiations. It will identify four specific areas where the South is required to ‘borrow power’ in order to

⁷⁹⁴ Eccleston B. (1996), Does North-South Collaboration Enhance NGO Influence on Deforestation policies in Malaysia and Indonesia in *NGOs and Environmental Policies Asia and Africa* edited by Potter D, Franck Class: London.

⁷⁹⁵ For historical analysis of state coalitions and G77 read: William M. (1991), *Third World cooperation: the group of 77 in UNCTAD*, Printer Publishers Ltd. London.

⁷⁹⁶ Najam A.(2005), Developing Countries and Global Environmental Governance: From contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp.303-321

exert its influence.⁷⁹⁷ In addition, it will revisit the arguments made in Chapter 3 regarding the roles of NGOs representing the Southern voice, and these will be developed further in order to take into account the dynamics of proliferating transnational NGO networks, which are better equipped to meet today's ongoing demands. This chapter will also make the point that transnational NGO networks are sufficiently flexible to accommodate new strategies in order to address the numerous issues faced by the South when negotiating with their better equipped Northern partners. As Princen and Finger observe, that they will make a positive impact in global decision-making where North-South differences currently paralyze the effort of states to reach a united goal. The arguments of this thesis are based on the following statement made by Princen and Finger:

Environmental NGOs gain influence by building assets based on legitimacy, transparency, and transnationalism, assets that, in the environmental realm, states, intergovernmental organizations, and profit-making organizations are hard-pressed to match.⁷⁹⁸

As they suggest, transnational environmental NGOs are capable of playing a leading role in global negotiations, it is, therefore, imperative that their capacities are utilised in the many international forums where, previously, the Southern countries have failed to represent their most crucial issues for environmental governance. The utility of this strategy, however, depends on how far NGO networks can effectively address Southern concerns. The following discussion identifies four issues as Southern concerns for the purpose of this thesis.

⁷⁹⁷ Betzold C. (2010), 'Borrowing Power' to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁷⁹⁸ Princen, T. and Finger, M. (1994), *Environmental NGOs in World Politics*, Routledge, London. P.36

Southern Environmental Concerns

The aim of this chapter is to identify the four main constraints on Southern participation that suggest an urgent need for transnational NGO networks to voice the South's environmental concerns more effectively at global decision-making forums.⁷⁹⁹

Linking environmental protection with development.

The environment and natural resources play a key part in any development process. Tackling forest degradation and deforestation, water, air, sound, soil and atmospheric pollution, together with increasing urbanisation, are a few of the commitments to the environment made by a state to increase the developmental indices of a certain area.⁸⁰⁰ Because the environment and its natural resources are limited throughout the world, protection agendas often emphasise the need for a certain level of sacrifice in industrial and other development processes. The South, however, contests the magnitude of development that could be reached within a certain period of time might be subjected to decrease as a result of environmental protection standards. This has led, on many occasions, to G77 contesting the linkage between development and environmental protection.⁸⁰¹

⁷⁹⁹ Williams M. (1993), Re-articulating the Third World Coalition: the role of the environmental agenda, *Third World Quarterly*, Volume 14, Number 1, pp: 7-29 at p. 20

⁸⁰⁰ Kolk A. (1996), *Forests in International Environmental Politics: International Organizations, NGOs and the Brazilian Amazon*, International Books, Netherlands., Gale Fred P. (1998), *The Tropical Timber Trade Regime*, Macmillan Press., Brown K. and Pearce D. W. (edited) (1994), *The Causes of Tropical Deforestation: The economic and statistical analysis of factors giving rise to the loss of the tropical forests*, UCL Press.

⁸⁰¹ Kasa S., Gullberg A. and Heggelund G. (2008) , The Group of 77 in the International climate negotiations: recent Developments and Future Directions, *International Environmental Agreements* Volume 8, 113-127

The perception that responsibility for the current environment threat lies with the industrialised countries.

Following on from the first point, the South often stresses the ‘common but differentiated’ responsibilities principle in environmental negotiations, the foundation of which is that the historical responsibility rightly lies with the North for its environmental exploitation of natural resources for the purposes of industrial development. The Southern position in environmental negotiations, therefore, depends heavily on the historical interpretation of the present environmental catastrophe.⁸⁰²

The South’s claim for additional financial resources in order to establish environmental programmes in its own countries.⁸⁰³

According to the ‘common but differentiated’ principle the North is bound to provide additional financial resources for the environmental cost of development in the South.⁸⁰⁴ Many Southern states are highly indebted and they have to fulfil other, more basic, developmental priorities. Therefore, unless the Northern states provide sufficient financial resources to implement and maintain sustainable environmental standards, even the most important global environmental issue will be given lower priority nationally.

⁸⁰² French D. (2000), Developing States and International Environmental Law: The Importance of Differentiated Responsibilities. *International and Comparative Law Quarterly*, Volume 49, pp: 35-60

⁸⁰³ The Founex Report on Development and Environment in 1971, <http://www.stakeholderforum.org/fileadmin/files/Earth%20Summit%202012new/Publications%20and%20Reports/founex%20report%201972.pdf> last accessed on (06.04.2011), The Challenge to the South: The Report of the South Commission, 1990, Oxford University Press.

⁸⁰⁴ Anand R. (2004), *International Environmental Justice: A North-South Dimension*, Ashgate Publishing Ltd.

The provision of technological assistance and research expertise to the South is regularly mentioned at environmental negotiations.

The Case Study on forests showed that the South's representation has been a considerable failure in two respects:⁸⁰⁵ (i) the low standards of research capacity, and (ii) an under-developed technological capacity – both burning issues that have led to its marginalisation. Because many developing countries' environmental projects require a large capacity of technological and research expertise for their successful implementation, without a bank of updated research evidence contributing to them, this has become highly challenging. Consequently, equal emphasis has been placed on the provision of technological and research assistance as it has on the need for additional financial resources.

These four issues, which appear at the top of the list of the South's global environmental negotiations, have been basic elements in the quest for equitable, fair and just treatment in decision-making over the past few decades of global environmental discourse. Various mechanisms have been set up to address its claims by its furtherance of inter-state Southern coalitions and non-state collaborations. The next section, therefore, will deal with the different mechanisms that have been utilised to voice the South's environmental and social concerns and how far these methods have achieved their intended goals.

⁸⁰⁵ Chapter 4 of this thesis, pp. 181-236

The Story of Success and Failure: the Role of Southern States at the Global Environmental Governance level

State-to-State Negotiation

As Chapter 1 and 2 have argued, the ‘state-centric’ and ‘states only’ systems of intergovernmental governing methods have reinforced the under-representation of the South at decision-making global forums, both directly and indirectly. For example: the two most politically and financially powerful global institutions, the Security Council and the Bretton Woods institutions, follow decision-making procedures that result in inequality among member states because of (a) the veto power of the permanent members in the Security Council, and (b) the weighted voting system in the World Bank and the IMF, both of which were explained in Chapters 1 and 2. To reiterate – five permanent members have veto power in the UN Security Council, the majority of which represent the North.⁸⁰⁶ Therefore, as was argued in Chapter 1, the sovereign equality of all UN member states is weakened by the veto powers in the Security Council. Thus, as was argued in Chapter 1, since the number of votes for each member state is decided on the basis of its share to the World Bank fund, the key global financial institution is largely influenced by the North.⁸⁰⁷ Currently, global governance structures present a significant challenge to the principles of equity, fairness and justice in global inter-state negotiations. Chapter 4 established the argument that the global forest negotiations are heavily impact by the North-South dimension, which has ultimately resulted in a lack of success in bringing the states into an agreement on forests issues, consequently, few Southern forest issues have been adequately voiced at inter-state negotiations. Chapter 2 analysed the role of the Global

⁸⁰⁶ Chapter 1 of this thesis, p. 32

⁸⁰⁷ Chapter 1 of this thesis, p. 27

Environment Facility (GEF) in environmental governance and concluded that its governance structures were dominated by the World Bank, which was one of its three implementing agencies.⁸⁰⁸

This thesis recognises that because the North instigated many of the global institutional structures in the aftermath of the Second World War, the South remains at the periphery of most decision-making processes. Also, its negotiating position at inter-state negotiations has been weakened by a number of miscellaneous factors, some of which have been identified in previous chapters, such as the lack of resources, the participation of small delegations due to poor financial resources, the low level of expertise and a weak research base, the under-development of both information technology and general technology. Consequently, the South – particularly in forest negotiations – has also been marginalised due to the lack of forest-based scientific research and expertise. Without properly developed data and research, therefore, the South has not been able to voice its concerns accurately.⁸⁰⁹ As mentioned above, the size of national delegations to global negotiations is another issue that creates a vacuum in Southern contributions. Many Northern countries send technical experts, diplomats with negotiating experience, high-level government officials and international lawyers to cover the different issues under discussion. Conversely, though, the South cannot afford such an entourage and, on many occasions, they will only send their resident diplomat whose efforts will seldom meet their needs.⁸¹⁰

As P.S. Chasek states:

⁸⁰⁸ Chapter 2 of this thesis, pp.111-118

⁸⁰⁹ Chapter 4 of this thesis, pp. 222-226

⁸¹⁰ Chapter 4 of this thesis, p.226 reference to the Maldivian president's statement on unavailability of sufficient funds for to send a delegation to climate talks.

[...] if the negotiations are taking place in Geneva, it is most cost-effective to use someone from the UN mission in Geneva. The fact that this person may have no institutional memory of the negotiations (especially if prior sessions have taken place in New York, Nairobi, Bonn or elsewhere), no in-depth knowledge of the issue under negotiation and no working relationship with the key negotiators from other countries cannot be considered important if there is no other choice. As a result, these people may be able to keep their country's chair warm, but rarely have an impact on the negotiations.⁸¹¹

Therefore the participation of small delegations at negotiations is more likely to hinder effective Southern participation in global environmental negotiations, which means that Southern states remain less influential and effective in negotiating global debates.⁸¹² Therefore, finding the most effective way to enhance Southern capacity in environmental negotiations remains a challenge. In order to reduce this deficit in financial, political and other capacities, the South has experimented with the idea of being presented as a united group by forming a coalition for important occasions in global political history.

South-South coalitions – “the Alliance of the Powerless”

Because individual efforts by Southern states have failed to effectively influence global decision-making forums, their chosen alternative has been to form coalitions to voice their concerns, many of which have been initiated over the past few years.⁸¹³ In explaining the rationale and motivation behind the Southern coalitions, Williams notes:

⁸¹¹ Chasek P.S. (2001), NGOs and State Capacity in International Environmental Negotiations: The Experience of the Earth Negotiations Bulletin, *Review of European Community and International Environmental Law*, Volume 10, Number 2, pp: 168-176 at P.169

⁸¹² Najam A. (2005), Developing Countries and Global Environmental Governance: From contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp.303-321, Williams M. (1993), Re-articulating the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume 14, Number 1

⁸¹³ Forman S. and Segaar D. (2006), New Coalitions for Global Governance: The Changing Dynamics of Multilateralism, *Global Governance*, Volume 12, pp. 205-225 at p. 209, Williams M. (1993), Re-articulating

The unity of the developing countries arises, in the first place, from the inability of these states to exert significant influence on the world events. The global power structure is dominated by the advanced industrial countries. Taking any of the conventionally accepted indices of power, i.e. political, economic, military, cultural or ideological, the leading Western nations emerge as the dominant states in international politics. For the most part, Third World decision-makers feel marginalized by, and in, the global dominance system. The material weakness and an inability to influence policy making provides a powerful stimulus for the establishment of an alliance of [the] powerless.⁸¹⁴

As discussed in Chapters 1 and 2, the G77 and the NAM (Non-Aligned Movement) were among the pioneer alliances formed to address the North-South division. The NAM, which had been established in 1961 to present a ‘neutral front’ in the East-West division of the Cold War⁸¹⁵, eventually expended its mandate to include such issues as “independence and sovereign equality; decolonisation and anti-racism; economic and social development; economic equality between states including sovereignty over natural resources...”⁸¹⁶ G77 was established in 1964 as a response to demands in the structure of the international economy; its mandate, however, was designed according to the industrial countries’ economic principles.⁸¹⁷ In calling for a New International Economic Order under the banner of G77, though, the South gradually began to question the equality, fairness and justice of the international system and its practice within the North-South dimension.⁸¹⁸

the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume14, Number 1, p.9

⁸¹⁴ Williams M. (1993), Re-articulating the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume14, Number 1, p.9

⁸¹⁵ Ibid, p.12

⁸¹⁶ Ibid, p.11

⁸¹⁷ For historical analysis of state coalitions and G77 read: Williams M. (1991), *Third World cooperation: the group of 77 in UNCTAD*, Printer Publishers Ltd. London

⁸¹⁸ Najam A. (2005), Developing Countries and Global Environmental Governance: From contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, p. 305

The G77 and NAM, therefore, came to voice the Southern concerns from political, economic and other perspectives at global negotiations, thus providing the weaker states with an ability to voice their concerns.

So far, however, these collaborations have not completely succeeded in this aim, and Chapter 1 presents some of the reasons why.⁸¹⁹ One such is the growing diversity of the coalitions themselves, since the economic interests of some of their members are quite distinct from others, a situation that creates different factions, which, ultimately, make it difficult for compromises to be found in the bargaining positions – a difficulty that threatens their unity and reduces the effectiveness of their bargaining positions against Northern groups.⁸²⁰ Also, it is not only Southern state's economic interests that are incompatible, but also their political, social and cultural differences sometimes impact their unity.⁸²¹

Nevertheless, these coalitions have proven that they are stronger in their approach to negotiations than single states. However, even though they have succeeded with some outcomes, the stability of the group is threatened not only for economic interests, as described above, but also by increasing globalisation, which has produced political, cultural and geographical differences.⁸²² Consequently, the Southern parties should look for more efficient partners in order to voice their environmental concerns. To this end, this chapter will argue that a multidimensional approach to global negotiations would offer a far more efficient, timely and practical alternative to the prevailing single dimensional system.

⁸¹⁹ Chapter 1 of this thesis, pp: 48-54

⁸²⁰ Williams M. (1993), Re-articulating the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume14, Number 1, p.10

⁸²¹ Chapter 1 of this thesis, p. 52

⁸²² Chapter 1 of this thesis, P. 52-53

A proposition to minimise Southern participation deficit in global environmental governance

While individual states and state coalitions are not strong enough to voice Southern environmental concerns at global environmental negotiations, NGOs provide diverse options in order to fill the gap.⁸²³ As Bramble and Porter explain:

The environmental aspects of all these topics are central to government negotiations that could lead to sustainable forms of development. NGOs do not always agree on these tough issues that are central to North-South co-operation. But the dialogue and negotiations among NGOs themselves offer a path for international problem-solving that may be a good alternative to the often-paralysed intergovernmental forums.⁸²⁴

When states largely fail, they suggest that, in order to contest transnational environmental political discourse, NGOs are considered to be a strong influence in most negotiations.⁸²⁵ As has already been described, global governance in the twentieth century involved multiple actors interacting with each other alongside traditional state actors. However, changes in global governance now question traditional state-centred negotiation strategies, which have been shown to be ineffective; this suggests the adoption of new strategies rather than a repetition of old ones.⁸²⁶ This need for alternative mechanisms is particularly

⁸²³ The term filling the gap is used in Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410

⁸²⁴ Bramble Barbara J. and Porter Gareth (1992), Non-Governmental Organizations and the Making of US International Environmental Policy, in *The International Politics of the Environment: Actors, Interests, and Institutions*, edited by Hurrell A. and Kingsbury B., Clarendon Press, Oxford, p. 322.

⁸²⁵ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, pp:348-372 at p.348

⁸²⁶ Williams M. (1993), Re-articulating the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume14, Number 1, p.7

important in the environment field because “environmental problems are increasingly escaping the control of individual states and international institutions have often been too weak to step into the breach”.⁸²⁷ A further concern of intergovernmental governing patterns today is that they need to handle more complex, urgent, global and transnational issues than at the time when most intergovernmental institutions arrangements were being established.⁸²⁸ Certainly, in the environmental arena, there is a demand for governance that can cross boundaries to address issues that do not impact on one particular state or community only. Consequently, adverse environmental crises have pushed the world towards multilateral systems of governance by bypassing traditional modes.

As was discussed in Chapter 3, although there is a great debate about the validity of the participation of NGOs in law and policy making, their presence has been highly noticeable in all the important international legal and political negotiations. Charnovitz interestingly points out their influence in the field of international law, as follows:

Nongovernmental organizations ... have exerted a profound influence on the scope and dictates of international law. [They] have fostered treaties, promoted the creation of new international organization (IOs), and lobbied in national capitals to gain consent to stronger international rules. A decade ago, Antonio Donini, writing about the United Nations, declared that “the Temple of States would be a rather dull place without nongovernmental organizations”. His observation was apt and is suggestive of a more general thesis: had NGOs never existed, international law would have a less vital role in human progress.⁸²⁹

⁸²⁷ Bodansky D. (1999), The Legitimacy of International Governance: A coming Challenge for International Environmental Law?, *American Journal of International Law*, Volume 93, pp. 596-624 at p.623

⁸²⁸ Forman S. and Segaar D. (2006), New Coalitions for Global Governance: The Changing Dynamics of Multilateralism, *Global Governance*, Volume 12, pp. 205-225, Williams M. (1993), Re-articulating the Third World Coalition: The Role of Environmental Agenda, *Third World Quarterly*, Volume 14, Number 1, pp:7-29

⁸²⁹ Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, pp:348-372 at p.348

According to Charnovitz, NGOs have played a significant role in shaping international law; elaborating on this point, the versatile character of NGOs is also visible in the human rights, humanitarian and environmental areas of international law and politics. Many fruitful negotiations, conventions and institutions have been established where profound contributions have been forthcoming from NGOs throughout the proceedings; for instance, on many occasions during climate change negotiations, the interests of small island states have been facilitated by environmental NGOs, and there have been times when their experts have been accredited as advisors to small island states delegations.⁸³⁰ Another example was at the 1989 Basel Convention on trade in toxic wastes, which was furnished with findings and data provided by Greenpeace and the Centre for Science and the Environment in New Delhi, Greenpeace both advised Southern states regarding negotiating strategies and distributed relevant information.⁸³¹ As may be seen from these examples, NGO influence on the creation of international environmental agreements has been significant by providing assistance to Southern states. Chapter 3, therefore, argued strongly for their wider participation in global negotiations.

Also discussed in much detail in Chapter 3 was NGO involvement in global governance in terms of the UN ECOSOC framework, whereby Article 71 of the UN Charter provided them with the necessary format for consultative status within ECOSOC. Although this

⁸³⁰ Hans H., Magnus J. (2009), Look Who's Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Issue 4, pp: 429-448, Chasek P.S. (2001), NGOs and State Capacity in International Environmental Negotiations: The Experience of the Earth Negotiations Bulletin, *Review of European Community and International Environmental Law*, Volume 10, Number 2, pp: 168-176 at p.171, Chasek refers to the representation of Jacob Werksman of FIELD and Ian Fry formerly of Greenpeace, who represented several Pacific small islands states at climate change negotiations

⁸³¹ Betsill M. and Bulkeley H. (2004), Transnational Networks and Global Environmental Governance: the Cities for Climate Protection Programme, *International Studies Quarterly*, Volume 48, pp: 471-193 at p. 473, Chasek P.S. (2001), NGOs and State Capacity in International Environmental Negotiations: The Experience of the Earth Negotiations Bulletin, *Review of European Community and International Environmental Law*, Volume 10, Number 2, pp: 168-176 at p.171

formal framework was defined in the Charter, the current practice of NGOs in the field of international law and policymaking is far more diverse, which Pearson explains as “the ways in which NGOs participate in international law are growing more quickly than the structures in which they seek to act are changing.”⁸³² As a result of the diverse and complex nature by which NGOs are involved in global governance, they have set up interesting ‘creative’ structures outside the ‘official framework’ of UN Charter Article 71, which have been formed into transnational networks, which increasingly offer alternatives to the traditional state-based governing formats.⁸³³

The current chapter, therefore, will explore the suitability of the structures of NGOs to represent Southern environmental concerns; it will also outline the key elements of a framework for transnational NGO networks by discussing and analysing what they are, how they work, why they emerge and what conditions need to be fulfilled for them to achieve their goals. This chapter will also argue that, because transnational NGO networks are more diverse, highly technical, cross-border by nature, and have flexible working structures, than any individual government agency can be, they are capable of voicing Southern environmental concerns at global environmental negotiations.

Transnational NGO Networks

The participation of NGOs in global governance has taken place in many different forms. When the broader categories of NGO participation in global forums are analysed, they indicate a wide spectrum of methods. The involvement of NGOs in global environmental negotiations can be divided into three major categories: (i) NGOs in their individual

⁸³² Pearson Z. (2006), Non Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284 at p. 249

⁸³³ Ibid, p. 250

capacity that have a network of national and local members (ii) NGOs operating under a particular major international environmental NGO, and (iii) NGOs in transnational network forms.⁸³⁴ The diversity of NGO participation depends on the different contexts in which they operate, such as the matters discussed, the different priorities and the global significance of the issues raised, their complexity and their geographical context.

International environmental NGOs

In some circumstances, NGOs act in their individual capacities upon their own environmental agendas. For instance, Greenpeace, Friends of the Earth (FOE) and WWF – well-known international environmental NGOs – generally conduct their environmental campaigns independently from each other by using diverse methods to promote them. In his summary of a number of Greenpeace campaigns in 2001, Mate states:

Greenpeace campaigns aim to weave together scientific and technical research, moral and philosophical discourse, public outreach and information dissemination, non-violent direct actions and confrontations, media and public communication strategies, national policy advocacy, policy advocacy at meetings, corporate campaigning, and market interventions which combine technological innovations, collaboration with environmentally responsible companies, coupled with consumer advocacy.⁸³⁵

This observation describes the broad and complex nature of some international NGOs that are involved in transnational decision-making structures, whose methods often impact on

⁸³⁴ Keck M. and Sikkink K. (1999), Transnational Advocacy Networks in International and Regional Politics, *International Social Sciences Journal*, Volume 51, p. 89-101, Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880

⁸³⁵ Mate J. (2001), Making a Difference: A Case Study of the Greenpeace Ozone Campaign, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 190-198 at p. 192

local, national and international decision-making forums.⁸³⁶ From time to time these organisations operate within certain environmental parameters, such as saving an extinct species, promoting climate change awareness, preventing deforestation or protecting biological diversity.⁸³⁷ As well as country-specific concerns, they are also involved with more international environmental issues.⁸³⁸

For instance, international environmental NGOs influence many dimensions of the environmental decision-making panels, again at local, national and international levels⁸³⁹, the IUCN, as a knowledge-based network organisation, explains its wider representation and influence over all levels of governance, thus.⁸⁴⁰

The World Conservation Union supports and develops cutting-edge conservation science; implements this research in field projects around the world; and then links both research and results to local, national, regional and global policy by convening dialogues between governments, civil society and the private sector.⁸⁴¹

International NGOs also cover many different aspects of a specific environmental regime. For example, all the major NGOs show immense interests in climate change regimes and they often work independently, using different strategies to contribute to the same cause.

⁸³⁶ Scherrer Y.M. (2009), Environmental Conservation NGOs and Sustainable Development, *Journal of Business Ethics*, Volume 85, Issue 3, pp:555-571, Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880, Mate J. (2001), Making a Difference: A Case Study of the Greenpeace Ozone Campaign, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 190-198

⁸³⁷ <http://www.worldwildlife.org/home.html>, <http://www.greenpeace.org/international/en/campaigns/>, http://www.foe.co.uk/what_we_do/about_us/friends_earth_values_beliefs.html (last accessed on 16.06.2010)

⁸³⁸ <http://www.greenpeace.org/usa/en/>, <http://www.foei.org/> (last accessed on 16.03.2011)

⁸³⁹ Lisowski M. (2005), How NGOs Use Their Facilitative Negotiating Power and Bargaining Assets to Affect International Environmental Negotiations, *Diplomacy and Statecraft*, Volume 16, pp: 361-383,

⁸⁴⁰ Scherrer Y.M. (2009), Environmental Conservation NGOs and Sustainable Development, *Journal of Business Ethics*, Volume 85, Issue 3, pp:555-571 at p. 567

⁸⁴¹ www.iucn.org/en/about/index.htm (last accessed on 17.01.2011) refers by Scherrer Y.M. (2009), Environmental conservation NGOs and Sustainable Development, pp:555-571

In 2011, Friends of the Earth was campaigning for a strong and fair international climate agreement, while, simultaneously, Greenpeace was advocating for climate solutions that would help development without damaging the planet and WWF was assessing the potential climate risks to vulnerable species.⁸⁴²

Collective members of major NGOs

This is a network of several national and local NGOs working in collaboration with one major transnational NGO. For example, the Greenpeace Ozone campaign was carried out by many national Greenpeace members.⁸⁴³ Also, as Doherty recognises, the transnational Friends of the Earth maintains a network relationship with its national groups from both North and South.⁸⁴⁴ In this sort of case, with diverse actors representing different cultures, languages, social and developmental backgrounds, a serious clash of values could ensue within the group. Therefore, such networks need to be able to respond to certain group diversity challenges; this will be analysed in more detail later in this chapter.⁸⁴⁵

These collective environmental NGOs operate world-wide through their grassroots member organisations. Although these have limited resources in their local operations they, nevertheless, have contributed to global decision making meaningfully and constructively as a result of being a part of a major organisation. Indeed, some Northern partner organisations extend support to their Southern counterparts in order to strengthen their capacities in the areas of research, statistics, resources and environmental

⁸⁴² <http://www.worldwildlife.org/home.html>, <http://www.greenpeace.org/international/en/campaigns/>, http://www.foe.co.uk/what_we_do/about_us/friends_earth_values_beliefs.html (last accessed on 11.02.2011)

⁸⁴³ Mate J. (2001), Making a Difference: A Case Study of the Greenpeace Ozone Campaign, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 190-198

⁸⁴⁴ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880 at p.862

⁸⁴⁵ Ibid.

campaigning.⁸⁴⁶ NGO networking, therefore, plays a significant part in this thesis, which advocates as wide a range of NGOs as possible in order that the Southern voice may be heard more clearly in global decision-making forums.

Transnational NGO Networks

In a slightly different dimension to above-mentioned collective NGOs, a transnational NGO network participates in a global context in the form of a united group that is described either as a network, a coalition or collaboration. The difference between collective groups of NGOs operating under a major transnational NGOs and the transnational NGO network is the way the organisations are structured. The collective groups described in the previous section are organised within a governance framework determined by a major NGO, such as Greenpeace, whose members work in different countries to its agenda. Transnational networks such as CAN are “forms of organizations characterized by voluntary, reciprocal, and horizontal patterns of communication and exchange”, many NGOs, therefore, agree to form a network in order to tackle a particular environmental catastrophe.⁸⁴⁷ A transnational environmental NGO network may consist of a number of major transnational NGOs, such as CAN, which has yet other transnational NGOs, i.e. Greenpeace, the WWF and FOE among its members.⁸⁴⁸ These decentralised networks share common goals and often work according to a specified set of rules.⁸⁴⁹

⁸⁴⁶ Doherty refers to an instance when Friends of the Earth France group helped Friends of the Earth Cameroon group monitor illegal logging in Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, p. 866

⁸⁴⁷ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp. 860-880 at p. 862, Keck M. and Sikkink K. (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press, p. 8

⁸⁴⁸ Alock F. (2008), Conflicts and Coalition Within and Across the ENGO Community, *Global Environmental Politics*, Volume 8, Number 4, pp:66-91 at pp. 81-82

⁸⁴⁹ Duwe M. (2001), The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p. 179

Transnational NGO networks are increasingly establishing their position as important elements in environmental negotiation processes. CAN, for instance, is working as a network of transnational NGOs towards achieving common climate standards by bringing out concerns of the North and the South. Also, during the establishment of the International Criminal Court, NGOs, operating as the ‘Coalition for an International Criminal Court’, coordinated NGO participation throughout the negotiations.⁸⁵⁰ Another example is the ‘Rain Forest Action Network’, which consists of sixty environmental and human rights NGOs worldwide and is involved in awareness-raising, sharing information and campaigning against all matters relating to deforestation.⁸⁵¹

Charnovitz observes that when NGOs form networks, or federations, in different countries, they create ‘transnationalism’, which serves to strengthen NGOs in intergovernmental forums; also, according to De Mars, NGO networks facilitate the transnational movement of norms, resources, political responsibility and information.⁸⁵² Over the past two decades, NGO networks have also had a noticeable impact on issues of international trade and development, human rights, environmentalism and humanitarianism.⁸⁵³ Keck and Sikkink (1999) see the nature of transnational networks as, “a transnational advocacy network [that] includes those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services”.

⁸⁵⁰ Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscape of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284 at p.255

⁸⁵¹ <http://ran.org/content/our-mission-and-history> (last access 16.06.2010)

⁸⁵² Charnovitz S. (2006), Nongovernmental Organizations and International Law, *American Journal of International Law*, Volume 100, p.348. De Mars W. (2005), *NGOs and Transnational Networks: Wild Cards in World Politics*, Pluto Press at pp: 50-61

⁸⁵³ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880, Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscape of International Law, *Cornell International Law Journal*, Volume 39, Number 2, p.243-284, Rutherford K. R. (2000), The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines, *World Politics*, Volume 53. Number 1, p. 74-114

They also believe that opportunities for network operations have increased over the past few decades due to the advancement of information technology and cheaper and more efficient air travel”.⁸⁵⁴

This thesis focuses mainly on the two latter categories of NGO participation in global environmental governance – that is (i) the network of national and local member NGOs working under a particular major international NGO, and (ii) transnational NGO network collaborations, which should exhibit certain qualities in order to promote Southern global concerns. Hudson describes these qualities as:

[...] sets of interconnected nodes that are flexible and dynamic. They possess these qualities because networks are open structures that can expand without limit, integrating new nodes as long as they are able to communicate with the network sharing values and goals [...] In contrast to hierarchies and markets, networks are relatively flat organizational forms that are based upon trust, cooperation, loyalty and reciprocity between the constituent parts, rather than the vertical command structures of hierarchies, or market-based exchange [...] Similarly, [...] ‘[n]etworks are forms of organization characterized by voluntary, reciprocal and horizontal patterns of communication and exchange’ [...].⁸⁵⁵

The non-sovereignty nature of transnational network make them more flexible communicators that can cast their voices beyond territorial boundaries and bring the most marginalised Southern voices to the decision-making forums by developing effective yardsticks to measure legitimacy. Many researchers have examined the various aspects of

⁸⁵⁴ Keck M. and Sikkink K. (1999), *Transnational Advocacy Networks in International and Regional Politics*, *International Social Sciences Journal*, Volume 51, p. 89-101 at p. 89 and Keck M. and Sikkink K. (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, London: Cornell University Press, p. 2

⁸⁵⁵ Hudson A. (2001), *NGOs’ Transnational Advocacy Networks: from ‘legitimacy’ to ‘political responsibility’?*, *Global Networks*, Volume 1, Number 4, pp: 331-352 at p.334

transnational networks, which have opposed the hegemonic Northern influences in a wide range of global decision-making forums for a few decades.⁸⁵⁶ Peter Evans, who believes that such networks could link disregarded Southern communities into more powerful global networks, points out that they are capable of “shift[ing] power by connecting under-privileged Third World groups and communities to political actors and areas that can affect decisions in hegemonic global networks”.⁸⁵⁷ However, the main thrust of this thesis is mainly directed at the strategic use of transnational NGO networks in order to gather information and conduct campaigns to assist Southern states deficiencies at the governance of powerful global organisations.⁸⁵⁸

In summary, therefore, this thesis argues that flexible, cooperative, reciprocal, non-hierarchical and non-sovereign transnational NGO networks are best suited to represent the South in global decision-making forums. Such networks work in two dimensions: (i) they influence states to take action on certain national and local political issues, thereby ensuring that international environmental principles and concerns are correctly addressed – an “outside-in” approach, and (ii) they impact on global decision-making forums in such a way as to further the international political agenda – an “inside-out” approach. The second dimension will be the focus of this chapter, while the negotiating methods of transnational

⁸⁵⁶ Duwe M. (2001), The Climate Action Network: A Glance Behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189, Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 36, Number 2, pp: 243-284, Evans, P. (2000), Fighting Marginalization with Transnational Networks: Counter-Hegemonic Globalization, *Contemporary Sociology*, Volume 29, pp:230-241

⁸⁵⁷ Evans P. (2000), Fighting Marginalization with Transnational Networks: Counter-Hegemonic Globalization, *Contemporary Sociology*, Volume 29, pp:230-241 at p.231, Hudson A. (2001), NGOs’ Transnational Advocacy Networks: From ‘Legitimacy’ to ‘Political Responsibility’?, *Global Networks*, Volume 1, Issue 4, 331-352 at p. 335

⁸⁵⁸ Duwe M. (2001), The Climate Action Network: A Glance behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-180, Keck M. and Sikkink K. (1999), Transnational Advocacy Networks in International and Regional Politics, *UNESCO*, Blackwell Publishers, Oxford, pp: 89-101 at pp.89-90

NGO networks in voicing Southern environmental concerns where the states themselves have largely failed, will be the central focus of this thesis.⁸⁵⁹

The nature of the organisation of transnational NGO networks will be analysed next in order to understand their capacity to make an impact on global environmental governance. Their approach to international issues can be recognised in two dimensions: agenda setting and Influence.

Important Aspects of the Involvement of Transnational Networks

Agenda setting

A broad analysis of NGO networks shows a wide-range of involvement in the international political process. They approach international issues by agenda setting and norm creation, in that they focus on issues in their global political context.⁸⁶⁰ Keck and Sikkink (1998) note: “Networks generate attention to new issues and help set agendas when they provoke media attention, debates, hearings, and meetings on issues that previously had not been a matter of public debate or at intergovernmental forums.”⁸⁶¹

Rutherford explained the process by which a transnational NGO network introduced the landmine issue into the international political agenda as having been achieved in the following two interrelated stages. Firstly, by initiating discussions, it planted the issue onto

⁸⁵⁹ Eccleston B. (1996), Does north-South Collaboration Enhance NGO Influence on Deforestation policies in Malaysia and Indonesia in *NGOs and Environmental Policies Asia and Africa* edited by Potter D, Franck Class: London.

⁸⁶⁰ Rutherford K. R. (2000), The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines, *World Politics*, Volume 53, Number 1, p. 74-114

⁸⁶¹ Keck M. and Sikkink K. (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, London: Cornell University Press, Rutherford K. R. (2000), The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines, *World Politics*, Volume 53. Number 1, p. 74-114 at pp:77-78

the agenda by emphasising the devastating human consequences of landmines, and, secondly, it transformed the norm into a powerful instrument by helping to articulate and codify the ban in international law.⁸⁶² In order to succeed in introducing an issue such as this onto the international agenda, NGO networks use various strategies, including the extensive use of information technology and media, research statistics and by recruiting high profile public figures such as Diana, Princess of Wales in the landmine ban campaign.⁸⁶³ In this way, NGO networks have been able to introduce new political agendas of intergovernmental forums to bear on areas of lesser priority.

Influence

A picture of global decision-making forums, from a developing countries' perspective, is often not a positive one because global decision-making processes are often poorly informed about Southern environmental concerns due to their low level of influence, the reasons for which, such as historical, political and economic factors, have been discussed comprehensively in previous chapters. As Najam stated in 2005:

[...] the South remains a key but reluctant actor in global environmental policy whose ability to influence global environmental processes has remained severely constrained by its self-perception of marginalization and its capacity-limitations.⁸⁶⁴

Given this, how far transnational NGO networks are capable of representing Southern concerns at global governance forums, thereby influencing the decision-making process, is

⁸⁶² Rutherford K. R. (2000), The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines, *World Politics*, Volume 53. Number 1, p. 74-114 at p. 77

⁸⁶³ Ibid, p. 87

⁸⁶⁴ Najam A.(2005), Developing Countries and Global Environmental Governance: From contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp.303-321

a primary concern of this thesis. These networks use many ways to influence international decision-making forums, such as information dissemination, lobbying, research and advocacy when they represent governments at the various forums. In order to influence state delegations, industry representatives and delegations from the various international organizations, they engage with numerous scientific and policy issues.⁸⁶⁵ The major NGOs, in particular, are able to introduce high levels of expertise and scientifically proven data gleaned from a broad research base in order to influence decision making. These issues will be analysed further in relation to the practice of transnational networks in the climate change regime in the following section.

How do transnational environmental networks work?

Alongside the main objective of this chapter, networks that represent the South at a global level should be able to identify with its broad environmental concerns. Keck and Sikkink's recognition of networks as "communicative structures"⁸⁶⁶ serves to highlight the principal goal of this research. De Mars, also, recognizes them as being "communicative" by identifying four crucial factors that are present in any type of NGO network that "can move along its relational channels: normative frames, material resources, political responsibility, and information. In other words, NGO networks are normative, distributive, obligative, and communicative".⁸⁶⁷ The interpretation of networks as communicative structures includes the wider spectrum in which they are engaged, in that they are

⁸⁶⁵ Scherrer Y.M. (2009), Environmental conservation NGOs and Sustainable Development, *Journal of Business Ethics*, Volume 85, Issue 3, pp:555-571, Betzold C. (2010), 'Borrowing Power' to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011, Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410

⁸⁶⁶ Keck M. and Sikkink K. (1998), *Activists beyond Borders: Advocacy Networks in International Politics*, London: Cornell University Press

⁸⁶⁷ De Mars W. (2005), *NGOs and Transnational Networks: Wild Cards in World Politics*, Pluto Press at p.51

information exchanges whereby they “bring new ideas, norms and discourses into policy debates [and] promote norm implementation [and] monitoring compliance with regional and international standards”.⁸⁶⁸ This perception of networks as “communicative structures” illustrates the process by which the marginalized Southern concerns could become part of the international arena where decisions that affect them are taken.

This chapter will now draw on examples of transnational NGO’s responses in certain aspects of the climate change regime in order to show how well they respond to “participation inequalities” in global environmental governance. The following discussion shows that transnational NGO networks can successfully influence global decision making processes and outcomes by supporting demands for equal Southern participation.

Transnational NGO Networks Representing Southern Concerns in Climate Change Negotiations

At present, climate change has become the largest global environmental issue that raises many issues on equity, fairness and justice claims in relation to the North-South dimension.⁸⁶⁹ The relevance of the climate change issue in terms of North-South divisions may be analysed in the following three dimensions. Firstly, Southern states are the least responsible for the creation of climate change, which is more generally attributed to the North’s emissions of greenhouse gases during industrialisation, secondly, the South did not benefit economically from the processes that emitted those gases, and thirdly, the South is the most environmentally vulnerable as a result of climate change, since it has the least

⁸⁶⁸ Keck M. and Sikkink K. (1999), Transnational Advocacy Networks in International and Regional Politics, *International Social Science Journal*, Volume 51, p. 89-101 at p. 90

⁸⁶⁹ Anand R. (2004), *International Environmental Justice: North-South Dimension*, Ashgate Publishing Ltd., pp. 54-55, Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

capacity to face its challenges.⁸⁷⁰ Consequently, it is important to understand that both the costs and benefits of climate change are unequally distributed between North and South. The following is an argument about how meaningful contributions of transnational NGO networks may help to mitigate the differences in participation in international climate change forums.

Recently, some scholars have expressed positive views regarding NGOs representing the South in climate change governance.⁸⁷¹ In 2010, Betzold stated that low-power parties, such as AOSIS (the Association of Small Island States), can exert influence by “borrowing power” – that is by drawing on external power sources, such as NGOs.⁸⁷² Dombrowski argues that transnational NGOs have responded to representation inequalities by proposing more equitable forms of representation.⁸⁷³ The following discussion draws upon instances where transnational NGOs support demands for principles of equity, fairness and justice in climate change decision making procedures.

The primary criterion to check on equal distribution of representation among member states is the voting system, in which, following the adoption of the UN method of distributing votes, the UN Framework Convention on Climate Change (UNFCCC) apply a

⁸⁷⁰ Ibid.

⁸⁷¹ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 , Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁸⁷² Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁸⁷³ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p. 402

one-country-one-vote arrangement.⁸⁷⁴ However, the equal distribution of votes alone does not ensure equality in decision-making powers. As this thesis argues in Chapters 1 and 2, even within the formal structures of equal representation, Southern claims are marginalised due to North/South power politics.⁸⁷⁵ For example, even though the one-country-one-vote mechanism applies, Southern states remain at the periphery because of, amongst other things, their outdated, hence invalid, research input.⁸⁷⁶ In response to this disparity of resources, however, a group of transnational NGOs submitted a draft design to the 2009 Copenhagen Treaty in which they stressed the importance of forming democratic decision-making structures with an equitable and balanced regional representation to safeguard equal representation of Southern concerns.⁸⁷⁷ The group further emphasised that “securing the representation of the most vulnerable countries should be a priority, as they will be most impacted by unchecked climate change”.⁸⁷⁸ In Article 2(3) of the draft proposal the group states clearly about the importance of application of common but differentiated responsibilities in Climate Change negotiations:

⁸⁷⁴ Article 18(1) of the UNFCCC, FCCC/INFORMAL/84 GE.05-62220(E)200705, the document is available on: <http://unfccc.int/resource/docs/convkp/conveng.pdf> (last accessed on 10.03.2011)

⁸⁷⁵ Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p.402

⁸⁷⁶ Kandlikar M. and Sagar A. (1999), Climate Change Research and Analysis in India: an integrated assessment of a South-North Divide, *Global Environmental Change*. Volume 9, pp: 119-138

⁸⁷⁷ David Suzuki Foundation, Germanwatch.V., Greenpeace International, IndvACT, NECU and Worldwide Fund for Nature International were included in this transnational NGO group. A Copenhagen Climate Treaty, Version 1.0, A Proposal for a Copenhagen Agreement by Members of the NGO Community, submitted to UNFCCC on 6 June 2009. http://www.wwf.de/fileadmin/fm-wwf/pdf_neu/NGO_Treaty_Overview.pdf and also available on <http://www.germanwatch.org/klima/treaty1legal.pdf> (last accessed on 16.04.2011), referred in Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p.403

⁸⁷⁸ A Copenhagen Climate Treaty, Version 1.0, A Proposal for a Copenhagen Agreement by Members of the NGO Community, submitted to UNFCCC on 6 June 2009. Published on line: http://www.wwf.de/fileadmin/fm-wwf/pdf_neu/NGO_Treaty_Overview.pdf and also available on <http://www.germanwatch.org/klima/treaty1legal.pdf> (last accessed on 16.04.2011), referred in Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p.403

Effort sharing to achieve the ultimate objective of the Convention and pursuant to the shared vision of this Article and that of the Kyoto Protocol should be based on the criteria of responsibility, capability and potential to mitigate and take into account the principles of common but differentiated responsibility and respective capability, equity, fairness and consider that economic and social development, poverty eradication and adaptation to climate change are the top priorities for developing countries.⁸⁷⁹

It is important that transnational NGOs should voice Southern concerns since it lacks the financial and technological means to mitigate any adverse impact as a result of the change. This thesis contends, therefore, that when transnational NGOs effectively represent Southern concerns they strengthen its bargaining position, which is Betzold's concept of "borrowing power" whereby even weak actors negotiate with strong actors successfully and often obtain sizable results.⁸⁸⁰

A very significant instance of where a transnational NGO network represented Southern concerns was when CAN-International, a network coalition of more than 550 NGOs worldwide, emphasised that equity, fairness and justice principles should be observed in relation to future financial mechanisms by stating its case in a position paper on principles for climate finance under the UNFCCC Framework Convention.⁸⁸¹ This chapter will pay

⁸⁷⁹ A Copenhagen Climate Treaty, Version 1.0, A Proposal for a Copenhagen Agreement by Members of the NGO Community, submitted to UNFCCC on 6 June 2009. Published on line: http://www.wwf.de/fileadmin/fm-wwf/pdf_neu/NGO_Treaty_Overview.pdf and also available on <http://www.germanwatch.org/klima/treaty1legal.pdf> (last accessed on 16.04.2011)

⁸⁸⁰ Betzold C. (2010), 'Borrowing Power' to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997, p. 4 online published in http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁸⁸¹ http://www.climatenetwork.org/sites/default/files/CAN_Principles_of_Financial_mechanism_september09.pdf (last accessed on 10.03.2011), Dombrowski K. (2010), Filling the Gap? An Analysis of Non-Governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance, *International Environmental Agreements*, Volume 10, pp: 397-410 at p.403

attention to few of the arguments taken from the above-mentioned position paper. Firstly, CAN insisted on adherence to the following principles:

Funding must be substantial and adequate to meet the scale of needs identified by developing countries and should be based on the UNFCCC principles of “common but differentiated responsibilities” and respective capabilities [...] The financial mechanism must also support technical assistance for building developing countries’ capacity to access larger pools of financing, in accordance with self-identified development priorities.⁸⁸²

CAN’s claim here reflects the arguments made in Chapter 2 of this thesis whereby common, but differentiated, responsibilities were recognised as an international environmental law principle that would ensure principles of equity, fairness and justice within the governance process.⁸⁸³ CAN further mentions the necessity for capacity building in developing countries as well as the importance of providing technical assistance. This thesis, in the above section on Southern Environmental Concerns, identifies the lack of technical expertise as one of the issues that hampers effective Southern participation,⁸⁸⁴ thus CAN voices one of the vital aspects of the North-South dimension by including the provision of technical assistance to the South.

CAN was also able to guide the climate debate in a positive direction by including provisions for equitable representation:

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http://www.climatenetwork.org/sites/default/files/CAN_Principles_of_Financial_mechanism_september09.pdf (last accessed on 10.03.2011)

⁸⁸³ Chapter 2 of this thesis, p.95

⁸⁸⁴ Chapter 5 of this thesis, p.250

Equitable representation in political decision-making processes is essential to ensure a just outcome. Representative governance, based on the model of the Adaptation Fund Board, must include majority of non-Annex 1 countries with specific and significant representation of most vulnerable developing countries.⁸⁸⁵

In this way, CAN developed its argument on the grounds of “common but differentiated responsibilities”; it also emphasised that a majority of developing countries should make up the decision-making bodies of any proposed financial mechanism. Earlier in this section it was argued that Southern states are the least capable of facing climate change challenges, therefore, with this proposal CAN demonstrated that equitable representation plays a key role in mitigating North-South governance inequalities.

Apart from supporting Southern concerns through documentation, transnational NGOs provide expertise services to assist in several areas of negotiations, such as by providing scientific information, technical facilities and legal advice.⁸⁸⁶ For instance, they furnished the Alliance of Small Island States (AOSIS) with scientific knowledge regarding climate change,⁸⁸⁷ to the point where, as Betzold argues that their delegates became “fluent in climate speak”.⁸⁸⁸ Consequently, not only was the NGO contribution immensely important,

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http://www.climatenetwork.org/sites/default/files/CAN_Principles_of_Financial_mechanism_september09.pdf (last accessed on 10.03.2011)

⁸⁸⁶ Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997, p.8 published online: http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁸⁸⁷ Duwe M.(2001), The Climate Action Network: A Glance Behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p.182, Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997, p.8 published online: http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

⁸⁸⁸ Betzold C. (2010), ‘Borrowing Power’ to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997, p.8 published online: http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

since updated scientific information and data play a crucial role in any climate negotiation, it left an educative legacy that would stand AOSIS in good stead for future negotiations.⁸⁸⁹

The lack of legal expertise and negotiation skills are other areas where Southern states have fallen short in global governance forums. However, there are now transnational NGOs, whose expertise is international law, who will provide them with legal advice. For instance, AOSIS was supported by the Foundation for International Environmental Law and Development whereby they provided the appropriate legal facilities.⁸⁹⁰ Transnational NGO's highly experienced legal experts are much more confident and aware of international legal procedures than are states' delegates who might have no expertise that particular field. As Betzold explains, "The expertise and knowledge that these [NGO's] lawyers brought with them were important assets, and clearly contributed to the prominent role of AOSIS, for, as one interviewee explains: 'they had something to say, [and] they could present it well'".⁸⁹¹

The preceding analysis on the role of transnational NGO networks in climate regime illustrate how Southern concerned are effectively voiced at global forums and the ability of transnational NGOs to strengthen the participation of the South by providing the required facilities. Thus transnational network collaborations enrich global environmental governance, however, as Duwe emphasized in 2001, the confrontation of different organizations can become both gift and burden, since they also have their limitations, as

⁸⁸⁹ Ibid

⁸⁹⁰ Duwe M.(2001), The Climate Action Network: A Glance Behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p.182

⁸⁹¹ Betzold C. (2010), 'Borrowing Power' to Influence International Negotiations: AOSIS in the Climate Change Regime, 1990-1997, p.8 published online: http://www.psa.ac.uk/journals/pdf/5/2010/1603_1456.pdf (last accessed on 08.03.2011)

this chapter goes on to describe.⁸⁹² This chapter will also analyse, in depth, the literature from Matthias Duwe on the Climate Action Network (CAN), Brian Doherty on Friends of the Earth International (FOIE) and Zoe Pearson on the Coalition for an International Criminal Court (CICC) in order to explore how the different and diverse organisations might converge and collaborate as transnational networks, since it is highly important to establish whether “transnational networks themselves have to deal with North-South conflicts.”⁸⁹³

Challenges to Overcome in NGO Networks Format

Transnational NGO networks, by creating effective mechanisms and influencing the agendas and negotiations of global governance on behalf of Southern global environmental concerns, shed light on the key component of this thesis, which argues the necessity of utilising the most effective methods of communication in order to operate where interstate efforts have largely failed. However, there remain a number of challenges that need to be negotiated whenever a collaboration of different groups with distinctly different characteristics, priorities and interests, try to achieve a common agenda. This section bases its analysis on two major issues. Firstly, how to overcome diversity problems. The transnational networks include actors from different backgrounds who work in different contexts; they will also possess different capacities, therefore the first challenge derives from their diversity. Following this, the accountability or legitimacy of the NGOs will be analysed. As mentioned in Chapter 3, international law and governance policies are not entirely clear regarding NGO participation in the global decision making process because the traditional and formal governance structures have still not been made wide enough to

⁸⁹² Duwe M.(2001), *The Climate Action Network: A Glance Behind the Curtains of a Transnational NGO Network*, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p. 177

⁸⁹³ Ibid.

allow for it. At the end of this section, therefore, this thesis will argue the necessity to develop unconventional legitimacy criteria in order to handle the increasingly progressive multidimensional governance structures.

Diversity among groups

Transnational NGO networks consist of NGOs that have been created within different contexts; diversity, in terms of geographical origination, issue priorities, the nature of their involvement in negotiations, plus many more, therefore, is inevitable. Hinchberger identified four such categories within the NGO groups that participated in UNCED in 1992: Firstly, environment versus development, secondly, large versus small, thirdly, North versus South, and fourthly, lobbyists versus activists.⁸⁹⁴ Chapter 2 of this thesis elaborated on the differences on priority issues between states in inter-state negotiations, where the impact made by the North-South division was recognised, as it has been throughout this thesis, as a major barrier for reaching common positions. It is, therefore, important to discuss to what extent these issues can threaten the unity of the group and what implications they have on the negotiation structures. Keck and Sikkink explain this as:

... [by influencing] discourse, procedures, and policy, activists may engage and become part of larger policy communities [where] group actors work on an issue from a variety of institutional and value perspectives. Transnational advocacy networks must also be understood as political spaces, in which differently situated actors negotiate – formally or informally – the social, cultural, and political meaning of their joint enterprise.⁸⁹⁵

⁸⁹⁴ Hinchberger B. (1993), Non-Governmental Organizations: The Third Force in the Third World, *Green Globe Year Book*, Volume 45.

⁸⁹⁵ Keck M.E. and Sikkink (1998), *Activists Beyond Borders: Advocacy Networks in International Politics*, Cornell University Press. p.3

As may be seen, therefore, the political interests and values of different groups in a network can sometimes be a challenge to the unity of the network. A common claim by Southern NGO groups in networks is the North-South dimension that operates within them. Such differences could be in relation to financial strength, the level of expertise and technology, or political, cultural and social conditions.⁸⁹⁶ Many scholars, in different case studies, have analysed the diversity within the networks. For instance, Doherty discusses North-South issues, inequalities of language and resources and differences among members in a network working for Friends of the Earth International (FOEI)⁸⁹⁷ and Duwe of the CAN points out the differences in the North-South dimension and the size of the NGO's research and resource funding.⁸⁹⁸ Although a different subject matter, Pearson's in depth analysis on the Coalition for an International Criminal Court (CICC) presents useful guidance for this thesis towards understanding certain challenges in relation to diversity within the network. Her findings were mainly based on political interests, resources and funding capacities, expertise, and the size of the NGOs.⁸⁹⁹

Doherty's case study on FOEI engages in a detailed discussion on the North-South differences within the network that ultimately caused disagreements over agenda setting, representation and policy making of FOEI.⁹⁰⁰ Contrasting the FOEI network with two

⁸⁹⁶ Pearson Z. (2006), Non Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284 at p. 259, Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880 at p.867, Duwe M. (2001), The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p. 180

⁸⁹⁷ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880

⁸⁹⁸ Duwe M. (2001), The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189

⁸⁹⁹ Pearson Z. (2006), Non Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284 at pp:259-264

⁹⁰⁰ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880

other transnational environmental NGOs – WWF and Greenpeace – Doherty argues that the FOEI maintains environmental justice as a central theme of their governance structures.⁹⁰¹ By drawing examples from equal voting system and the FOEI’s Southern-driven working agenda, he demonstrates its commitment to “address environmental issues through a critique of social and political inequality.”⁹⁰² In a statement on its website, they express their representation for social justice issues:

We are the world’s largest grassroots environmental network and we campaign on today’s most urgent environmental and social issues. We challenge the current model of economic and corporate globalization, and promote solutions that will help to create environmentally sustainable and socially just societies.⁹⁰³

However, in the history of FOEI, there are instances where it was criticised by its Southern members for failing to ensure that Southern concerns were represented sufficiently in its agenda. One significant instance was when Accion Ecologica (AE) in Ecuador left the FOEI in 2002, they expressed their dissatisfaction over the Northern dominance in its representation at the WSSD in Johannesburg in 2002.⁹⁰⁴ Doherty notes that, according to AE, “[the] Southern branches of FOEI were weakened and their agendas ‘invisibilised’ by the Northern agenda; also that representatives of the FOEI groups from South Africa, Nigeria and Uruguay supported many of the arguments.”⁹⁰⁵ Transnational NGO networks, therefore, should seriously consider the challenges posed by the North-South dimension right down to its fundamental base and functional system. Duwe, in his analysis on CAN, states that the North-South dimension influences its functions and framework in terms of

⁹⁰¹ Ibid, p.862

⁹⁰² Ibid.

⁹⁰³ <http://www.foei.org/en/what-we-do> (last accessed on 06.01.2011)

⁹⁰⁴ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880 at p.868

⁹⁰⁵ Ibid.

priorities and positions as well as in its access to funding.⁹⁰⁶ Another weakness in the system is that, because the number of NGOs participating for the North is higher than the number participating for the South, an imbalance in the decision making process has been created. In addition, CAN is a network that consists of various major transnational NGOs, which carry their own North-South issues with them into the decision making forums. As Doherty states, FOEI is a member of CAN and its own North–South concerns will impact on its responses in CAN.⁹⁰⁷

Although the North–South dimension is the obvious key reason for diversity among the members of a network, many other differences appear within it. Pearson identifies these as political interests and funding and resources within the CICC,⁹⁰⁸ which means that working towards achieving a common goal is very complicated. Furthermore, a common stand from within the network can be influenced by the numerous religious and gender issues of its members.⁹⁰⁹ Its diversity depends on the size of its member organisations, as Duwe explains in the context of CAN, many small NGOs depend on the funding facilities coming from well-established major NGOs, which affect the independence of small NGOs.⁹¹⁰ Transnational NGO networks within both Northern and Southern NGOs, therefore, often struggle with the problem of diversity. However, many Southern NGOs are small with limited financial strength, whereas the well-established major NGOs tend to be from the North and these are mainly concerned with environmental protection. Because the major

⁹⁰⁶ Duwe M. (2001), *The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network*, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p. 180

⁹⁰⁷ Doherty B. (2006), *Friends of the Earth International: Negotiating a Transnational Identity*, *Environmental Politics*, Volume 15, Number 05, pp:860-880 at p.867

⁹⁰⁸ Pearson Z. (2006), *Non Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law*, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284

⁹⁰⁹ *Ibid*, p.259

⁹¹⁰ Duwe M. (2001), *The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network*, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at pp: 181-182

NGOs that facilitate grassroots projects, usually in the South, work together with much smaller local NGOs, local agendas and functions are very often subverted. Ultimately, therefore, governance systems are largely controlled by the North. As Duwe explains, the smaller NGOs often fear for their survival and they struggle to be independent in their bargaining position at the network against the major NGOs.⁹¹¹

Although the diversity of members within a network is a challenge to the functioning of the transnational networks, sometimes it can enrich the decision-making process by offering a broader representation of the issues. In her discourse on the importance of the diversity of NGOs in the context of the CICC, Pearson states:

NGO and state representatives alike were aware of the importance of the presence of diversity of NGOs, particularly in terms of geographical representation, in order to ensure broad-based global support for the International Criminal Court, and to promote the recognition that the issues in the ICC negotiations were of worldwide relevance, rather than solely concerning “western” issues and values.⁹¹²

Consequently, it is important for transnational NGO networks to receive the benefit of different perspectives on their issues of concern, therefore, the input of small Southern NGOs will furnish them with useful information in order that they might frame a well-balanced, common agenda in the same way that the presence of major NGOs makes the network a powerful actor in a global political context.

⁹¹¹ Ibid

⁹¹² Pearson Z. (2006), Non Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284 at p.263

Nevertheless, as has been mentioned earlier, while diversity enriches the transnational identity of NGO networks, the differences among them create complications for developing a common-action plan; therefore, it is important that they understand what actions and methods need to be avoided, or minimised. For example, North-South dimensions, or other differences, could be avoided by the application of proper governance strategies, such as voting mechanisms, agenda setting and an adherence to the principles of equity, fairness and justice in their procedures, since it has been recognised that their absence results in an imbalance of power.⁹¹³ For instance, FOEI, which has seventy-six national member groups, guarantees an “equal vote [system] irrespective of the size of its membership or financial contribution to the Federation”, which means that formal participation in decision-making is equitable.⁹¹⁴ As discussed in detail in Chapters 1 and 2, the World Bank’s ‘weighted’ voting system marginalises Southern participants that lack financial strength, therefore, when FOIE national member groups use their voting power at its Biennial General Meeting, where the really important decisions are taken, equal voting system could be considered appropriate for a transnational NGO network to apply in order to articulate the Southern voice in global forums. In this way, relatively small Southern NGOs will secure a place at the decision-making tables, at least, if it is formally guaranteed by a network’s governance structures.

However, voting rights alone will not necessarily achieve equal participation unless the infrastructure and other resources are forthcoming from the group. A lack of financial resources to carry out environmental research, to implement particular environmental standards, to access sufficient funds, and to acquire human resources and technology, is vital. Duwe, in his research on CAN – the global network of NGOs – states:

⁹¹³ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880

⁹¹⁴ Ibid, p.862, <http://www.foei.org/en/who-we-are> (last accessed on 10.01.2011)

Most of the interviewees saw a North-South divide within the CAN, some foremost in different priorities and objectives, others just in numbers of representation at meetings. The main reason for the latter was found in a lack of funding, which not only made it more difficult to travel, but also leads to a lack of human resources, as staff are occupied with other duties, salaries are low and financial insecurities obstruct long-term planning.⁹¹⁵

If the differences remain within a network, what ultimately happens is similar to the North-South dimension in an interstate context. In his observations on the necessity to map the differences within a network, Duwe concludes:

Therefore, CAN is geographically misrepresented at conferences, and differences, for example in priorities, are ignored out, as Northern NGOs come to dominate the agenda and the process, as they are greater in number and stronger in institutional capacity.⁹¹⁶

It is this thesis's contention that mechanisms and facilities should be developed within NGO networks to enhance the participation of Southern groups both quantitatively and qualitatively. This means that they should be able to send many members, say, to represent FOEI, which should include not only representatives, but participants with high levels of scientific expertise and relevant technical knowledge in order to debate the matters in discussion. Doherty refers to the FOEI representation at WSSD meetings when he states that sometimes FOEI was overrepresented by Northern groups as they are able to send

⁹¹⁵ Duwe M. (2001), *The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network*, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p.183

⁹¹⁶ Ibid.

several staff⁹¹⁷, he also stated that in the meetings where decisions were made on consensus and not on voting, the domination of the North in FOEI was clear. Other issues, such as language barriers and limited access to information technology, also reduced the effectiveness of Southern participation.⁹¹⁸

In order to mitigate the differences emanating from the North-South division, together with other issues of concern, FOEI formed a Network Process Team organised on a regional basis, which was charged with checking how it should face the challenges of political diversity within the network.⁹¹⁹ Because funding facilities need to be maintained by transnational NGO networks in order to encourage the Southern NGO participation, Duwe suggested creating a trust fund, to be administered within the UNFCCC, made up from fixed annual membership contributions, which would facilitate more equitable developing country participation.⁹²⁰ Other transnational NGO networks might also be encouraged to apply similar methods into their governance system, in order that the smaller NGOs might enjoy equal participation in decision-making processes.

⁹¹⁷ Doherty B. (2006), Friends of the Earth International: Negotiating a Transnational Identity, *Environmental Politics*, Volume 15, Number 05, pp:860-880 at p.870

⁹¹⁸ Ibid pp.870-871

⁹¹⁹ Ibid, pp.871-872

⁹²⁰ Duwe M. (2001), The Climate Action Network: A glance behind the Curtains of a Transnational NGO Network, *Review of European Community and International Environmental Law*, Volume 10, Issue 2, pp. 177-189 at p. 188

Legitimacy and accountability of NGOs

It is important that, in their participation, transnational networks reflect legitimacy and accountability especially where Southern interests are at stake. Referring to the Background Paper for the Cardoso Report of June 2004 on “We the Peoples: Civil Society, the United Nations and Global Governance”, Bossche states:

“‘well handled’ involvement of NGOs in the policy deliberation and international decision-making processes of international organisations ‘enhances the quality of decision-making, increases ownership of the decisions, improves the accountability and transparency of the of the process and enriches outcomes through a variety of views and experiences’”.⁹²¹

Although the idea that NGOs enrich the legitimacy debate of global governance processes as expressed in the Background Paper, one of the greatest challenges that transnational NGO networks face is legitimacy and accountability in relation to their own participation in global politics, and this is particularly relevant for those that voice Southern concerns because legitimacy and accountability concepts are deeply rooted in the North-South discourse.⁹²²

⁹²¹ We the Peoples: Civil Society, the United Nations and Global Governance (New York: UN 2004), also available as UN Doc. A/58.817 (11 June 2004), referred by Bossche P.V. (2007), *Regulating Legitimacy of the Role of NGOs in Global Governance: legal status and accreditation in NGO Involvement in International Governance and Policy: Sources and Legitimacy* edited by Vedder A. *et al*, Martinus Nijhoff Publishers, pp: 136-173 at pp: 135-136

⁹²² Hey E. (2003), *Sustainable Development, Normative Development and the Legitimacy of Decision-Making*, *Netherlands Yearbook of International Law*, Volume XXXIV, pp: 3-54 at p.12

Vedder argues that “Legitimacy is the state or quality of being legitimate.”⁹²³ Legitimacy ensures that the actors in international decision making processes should conform to the relevant rules while accountability of transnational networks, questions how NGOs are accountable to their constituencies?”⁹²⁴ To whom are transnational NGO networks accountable? Can they be held responsible for their actions? Perhaps logic suggests that the members of an organisation should be held responsible for its decisions and undertakings under the concept of accountability. However, trying to analyse the activities of networks in terms of their legitimacy and accountability is a highly challenging task, since the concepts of ‘legitimacy and accountability’ are historically defined in context of state-centric governance; consequently, ‘legitimacy literature’ often focuses on inter-state decision making processes and procedures.⁹²⁵

In order to establish the context in which the legitimacy concept may be incorporated into the governance system, this section will analyse briefly the legitimacy discussion generally. In identifying several bases of legitimacy that are very much central to the state-centric governance system, Bodansky (1999) believes that decision-making authorities should act according to the principles of democracy and law – which is the category of ‘legal legitimacy.’⁹²⁶ His next category concerns transparency and public participation in the actual decision-making process, and his final category is ‘expert legitimacy’, which

⁹²³ Vedder A. *et al* (2007), *NGO Involvement in International Governance and Policy: Sources and Legitimacy*, Martinus Nijhoff Publishers, p.6

⁹²⁴ Hudson A. (2001), NGOs’ Transnational Advocacy Networks: from ‘Legitimacy’ to ‘Political Responsibility’? *Global Networks*. Volume 1, Issue 4, pp:331-352 at 331

⁹²⁵ Vedder A. *et al*(edited) (2007), *NGO Involvement in International Governance and Policy: Sources and Legitimacy*, Martinus Nijhoff Publishers, p.6, Bodansky D.(1999), The Legitimacy of International Governance: A coming Challenge for International Environmental Law?, *American Journal of International Law*, Volume 93, pp. 596-624, Franck T.M. (1995), *Fairness in International Law and Institutions* , Oxford, Clarendon Press, pp: 354-356

⁹²⁶ Bodansky D.(1999), The Legitimacy of International Governance: A coming Challenge for International Environmental Law?, *American Journal of International Law*, Volume 93, pp. 596-624 at p.612-623

means that decision-making should be based on the ‘best-proven scientific evidence’.⁹²⁷ These criteria are designed to judge the authorities of states whose representation is based on democratic elections, hence state officials should be guided by rules and norms that are perceived to be legitimate. Questions are raised about the basis for NGO representation, because they lack the link with a necessary constituency. There is also debate about how NGOs might be regulated and what mechanisms they use to influence global negotiations.⁹²⁸

Transnational NGOs, therefore, cannot be regarded as democratically elected in the same way as governments, since their validity is derived from completely different sources, therefore their representation at global forums creates a number of legitimacy and accountability issues.⁹²⁹ Chinkin states that:

NGOs are often non-democratic, self-appointed, may consist of only a handful of people, and determine their own agendas and priorities with a missionary-like or elitist zeal. Their own decision-making process may not be transparent and are often concealed behind a deluge of information. They do not have to address the full range of opinions concerns. The other side of the coin of representation is accountability. NGOs are acquiring a measure of international legal personality through procedural rights of access and standing, but their accountability has barely been addressed.⁹³⁰

⁹²⁷ Ibid, pp. 619 – 623

⁹²⁸ Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp:429-448 at 434

⁹²⁹ Collinwood V. (2006), Non-governmental Organisations, Power and Legitimacy in International Society, *Review of International Studies*, Volume 39, pp: 439-454

⁹³⁰ Chinkin C. (2001) Human Rights and the Politics of Representation, in *The Role of Law in International Politics: Essays in International Relations and International Law* edited by Byers M. , Oxford University Press, p.143-144

Contemporary international law and politics deal with multidimensional governance systems in which NGOs present their arguments at global decision making forums alongside states and other international organisations. However, NGOs do not base their representations formally and democratically, as do states and other international organisations, instead they base them on alternative claims, which will be dealt in detail below.⁹³¹

In the search for different legitimacy criteria to be applied to NGO participation in global governance, it would be interesting to explore whether the legal framework of NGOs constitutes legitimate participation.⁹³² Vedder et al argue that, although legality of NGO participation can contribute to legitimacy, “it is neither a necessary nor a sufficient condition for legitimacy.”⁹³³ Van den Bossche recognises conformity to the legal rules constitutes regulatory dimension of legitimacy. He explains the regulatory dimension in the context of legal rules that affirm their participation in the international decision-making process by dividing the legal rules into two categories: (i) the rules defining the legal status of NGOs in certain international organisations, and (ii) the substantive and procedural rules for international organisations regarding NGO accreditation.⁹³⁴ With reference to the provisions in international organisations, such as the UN, UNCTAD, WHO, ILO, van den Bossche argues that their main instruments provide explicit legal bases for NGO participation in the decision-making process.⁹³⁵ However, although

⁹³¹ Ibid

⁹³² Bossche P.V. (2007), *Regulating Legitimacy of the Role of NGOs in Global Governance: legal status and accreditation in NGO Involvement in International Governance and Policy: Sources and Legitimacy* edited by Vedder A. et al, Martinus Nijhoff Publishers, pp: 136-173

⁹³³ Vedder A. et al (edited) (2007), *NGO Involvement in International Governance and Policy: Sources and Legitimacy*, Martinus Nijhoff Publishers, p.9

⁹³⁴ Bossche P.V. (2007), *Regulating Legitimacy of the Role of NGOs in Global Governance: legal status and accreditation in NGO Involvement in International Governance and Policy: Sources and Legitimacy* edited by Vedder A. et al, Martinus Nijhoff Publishers, pp: 136-173

⁹³⁵ Article 71 of the UN Charter provides legal basis for NGO accreditation, Rule 77 of the Rules of Procedures of the UNCTAD Trade and Development Board grants observer status, UN Resolution

legality/regulatory legitimacy implies a basis for legitimacy in terms of NGO participation, Bossche concludes that “there is still considerable room for improvement of the regulatory legitimacy of NGO involvement in international organisations”.⁹³⁶

In comparison to the legitimate basis of states and international organisations as discussed in Chapter 3, it seems clear that the legitimacy and accountability status of NGOs in terms of their participation in global governance is questionable within the current framework. Therefore, because of the unique nature of NGO representation many efforts have been made to find different criteria than those that offer traditional legitimacy in order to evaluate environmental NGO representation in international governance. Princen and Finger, for instance, describe four such criteria: (i) the cultural validity of the social values espoused, (ii) an association with universal goals, (iii) the acquisition of reputations for specialist or grounded knowledge, and (iv) representation of important constituencies’.⁹³⁷ The ability to work beyond territorial boundaries to achieve universal goals is a key feature of transnational NGOs; for example, because FOEI can claim that their representation does not belong to any particular nation or region the environmental issues they espouse carry universal weight, which contributes to their legitimacy claim from a different legitimacy perspective.

2997(XXVII) provides implicit legal basis for the participation of NGOs in the UNEP. For a detailed discussion on various international organisations in relation to legal status of NGOs: Bossche P.V. (2007), *Regulating Legitimacy of the Role of NGOs in Global Governance: legal status and accreditation in NGO Involvement in International Governance and Policy: Sources and Legitimacy* edited by Vedder A. et al, Martinus Nijhoff Publishers, pp: 136-173

⁹³⁶ Bossche P.V. (2007), *Regulating Legitimacy of the Role of NGOs in Global Governance: legal status and accreditation in NGO Involvement in International Governance and Policy: Sources and Legitimacy* edited by Vedder A. et al, Martinus Nijhoff Publishers, pp: 136-173 at pp:172-173

⁹³⁷ Jepson P. (2005), *Governance and Accountability of Environmental NGOs*, *Environmental Science and Policy*, Volume 8, Issue 5, pp: 515-524 at p. 519, Jepson refers to Princen, T. and Finger, M. (1994), *Environmental NGOs in World Politics*, Routledge, London. P.36 – 37

Many transnational NGOs contribute to scientific research and bodies of expertise in a number of international environmental initiatives, hence their representation of important constituencies places them in a strong position to influence decision-making processes, which, ultimately, provides them with a legitimate base. It is important, therefore, to mention that the dominance of the traditional state-centric criteria of legitimacy, such as being democratically elected and having legal origins, require NGO networks to consider alternative ways of checking their legitimacy and making them transparent. Edwards and Hulme, in their observation that transparency in relation to the practical dimension of NGO activities, involves a statement of goals, transparency in decision making, relationships, honest reporting of resource utilisation, and achieved targets.⁹³⁸ However, they make it clear that the international governance system has not yet established a uniform method – i.e. a normative yardstick to evaluate the legitimacy of transnational NGO networks.⁹³⁹

The interpretation of accountability criteria of NGO networks that this thesis proposes is the closest to that suggested by Backstrand. The three forms of accountability criteria she suggests, therefore, is worth explaining further. She emphasizes the need for “plural forms of accountability to evaluate the modern forms of non-traditional transnational network governance”.⁹⁴⁰ In focusing on a broad area of transnational climate networks that grow out of public and private partnerships, she proposes a “non-electoral accountability, such as peer, reputational, and market accountability” to provide the legitimacy base for transnational NGO networks. “Peer accountability consists of mutual evaluation of

⁹³⁸ Edward M. and Hulme D. (1996), Too close to Comfort? The Impact of Official Aid on Nongovernmental Organizations, *World Development*, Volume 24, pp: 961-973

⁹³⁹ Edward M. and Hulme D. (1996), Too close to Comfort? The Impact of Official Aid on Nongovernmental Organizations, *World Development*, Volume 24, pp: 961-973, Collinwood V. (2006), Non-governmental Organisations, Power and Legitimacy in International Society, *Review of International Studies*, Volume 39, pp: 439-454 at p. 447

⁹⁴⁰ Backstrand K. (2008), Accountability of Networked climate Governance: The Rise of Transnational Climate Partnerships, *Global Environmental politics*, Volume 8, Issue 3, pp. 74 -102 at p. 75

organizations by their counterparts.”⁹⁴¹ As a consequence of the peer accountability method, a system of ‘checks and balance’ may be operated among members of the network as well as between other networks. Reputational accountability, which is closely connected with media and public reputation, is an important issue includes the availability of information to the public, open-access to the network’s decision-making processes, and transparency of the network’s agendas.⁹⁴² The third form of accountability in Backstrand’s categories, which mainly covers the market partnership within climate networks, states that “market signals provide the base for reward and punishments for performance by investors, shareholders and ultimately consumers.”⁹⁴³

As has been shown, traditional forms of legitimacy and accountability criteria are no longer pertinent within a multilateral system of governance, where the complex collaboration of actors play several non-hierarchical roles. As Backstrand points out, participatory accountability, transparency and availability of monitoring mechanisms should be the measure for the legitimacy of transnational NGO networks.⁹⁴⁴ Consequently, this thesis argues that transnational NGO networks that represent Southern global environmental concerns need to apply legitimacy mechanisms to their own structures when they participate in international multidimensional governance systems.

Another crucial element in the legitimacy claims of transnational NGO networks is whether their representation of the South invests them with legitimacy, since many of them

⁹⁴¹ Ibid, p. 81

⁹⁴² Ibid.

⁹⁴³ Backstrand K. (2008), Accountability of Networked climate Governance: The Rise of Transnational Climate Partnerships, *Global Environmental politics*, Volume 8, Issue 3, pp. 74 -102 at p. 81

⁹⁴⁴ Ibid. p. 82

claim just that.⁹⁴⁵ Hudson observes that “fewer than 10% of the NGOs examined claimed to be ‘speaking for’ the South or Southern NGOs, but many argued that they were representing, or more subtly, promoting the interests of, the South, or values that emerged from their work in the South”.⁹⁴⁶ He goes on to say that when transnational NGO networks represent the South it is important to specify which norms they will invoke, and on whose behalf; what information will be communicated, and to whom; how will political responsibility be assigned; and what resources will be distributed, and to whom?⁹⁴⁷ Representation debate leads many issues and concerns with regard to NGOs voicing Southern concerns and the following section will analyse different dimensions of representation debate in relation to North-South dimension.

The Debate on Representation

The debate on representation may be divided into few key issues: The first is that NGO networks do not have democratically elected members – they are, in Rosenau’s terms, “sovereignty-free actors”⁹⁴⁸. Therefore, according to the traditional governance approach, they do not possess legitimacy simply by representation. As has been shown earlier, then, in order to advance the NGO network legitimacy debate it is necessary to move away from the traditional criteria, since the constant comparison of state legitimacy with non-state legitimacy remains a barrier to progress. Collinwood elaborates this as follows:

⁹⁴⁵ Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp: 429-448, at pp: 434-437, Hudson A. (2001), NGOs’ transnational Advocacy Networks: from ‘legitimacy’ to ‘political responsibility’?, *Global Networks*, Volume 1, Number 4, pp:331-352 at pp: 337-339

⁹⁴⁶ Hudson A. (2001), NGOs’ Transnational Advocacy Networks: from ‘Legitimacy’ to ‘Political Responsibility’? *Global Networks*. Volume 1, Issue 4, pp:331-352 at 338

⁹⁴⁷ De Mars W. (2005), *NGOs and Transnational Networks: Wild Cards in World Politics*, Pluto Press at, pp: 58-59

⁹⁴⁸ Rosenau J. (1997) *Along the Domestic – Foreign Frontier: Exploring Governance in a Turbulent World*, Cambridge University Press.

The comparison underpinning many of the criticisms of transnational NGOs' legitimacy, contrasting the legitimacy of 'state' and 'non-state' actors, is thus ultimately unconvincing. NGOs are frequently compared with idealised institutions that bear little relationship to the reality of modern governance, nor the extent to which distinctions between public and private power have become blurred under conditions of globalisation. It is doubly ironic that in critiques of NGOs, the state is held up as a model of legitimate power precisely at a time when the integrity of the state as a 'public' body bound to act in the common interest has been eroded.⁹⁴⁹

It is, therefore, questionable that how accurately the NGO networks' representation of the Southern voice can be justified, or judged, should use the traditional criteria. Here, Collinwood emphasises the need for recognising novel ways that go beyond the traditional understanding of legitimacy:

The argument that NGOs are not democratic because they are not formally representative, or do not allow direct participation by stakeholders in decision-making, displays, at best, a failure of political imagination, and at worst, a desire to misrepresent how transnational NGOs actually function.⁹⁵⁰

The development of different legitimacy bases for transnational NGO representation, which is both crucial and essential for contemporary multi-dimensional governance systems, leads to the second issue of the legitimacy claim based on representation – whether the transnational NGO networks represent the real issues of the South. It is important to analyse whether the transnational NGO networks truly engage with, and

⁹⁴⁹ Collinwood V. (2006), *Non-governmental Organisations, Power and Legitimacy in International Society, Review of International Studies*, Volume 39, at p.453

⁹⁵⁰ *Ibid*, p. 451

communicate to, the global forums and also, what influence do the networks have on Southern interests. In most instances, as the previous section on diversity revealed, many Southern states and NGO groups in the networks depend financially on major Northern NGOs and this largely impacts on North-South NGO group relationships. A common criticism is that such relationships adversely influence the ability of Southern groups to voice their own concerns, which challenges the notion that they legitimately represent the Southern voice, or whether they are simply transferring western concepts into the South. This thesis, as is explained in detail in Chapter 1 and 2, argues that this question constitutes a serious threat to the principles of equity, fairness and justice, which should be the core principles of all transnational networks.⁹⁵¹ Unless the networks apply these principles within their own decision-making processes they will never be able to present a balanced Southern case.

Another dimension of the representation of transnational NGO networks is that NGO groups in a network are not really aware of who they are accountable for. According to some authors there is an absence of true purpose in the representation of Southern causes.⁹⁵² Some NGO groups working in a network do not even know that they are representing Southern concerns that have been truly marginalised and unheard at a global level, and that they are accountable to those countries that they represent. Hudson recognises two types of accountability claims on representation of NGO networks.⁹⁵³ The first – ‘upward accountability’ – includes line-managers, donors, trustees and boards of governors. Hudson observed that fifty percent of NGOs in his research declared that they

⁹⁵¹ This issues is discussed in Chapter 1 of this thesis, pp: 54-59 and Chapter 2 of this thesis, pp:85-93

⁹⁵² Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp:429-448 Hudson A. (2001), NGOs’ Transnational Advocacy Networks: from ‘Legitimacy’ to ‘Political Responsibility’? *Global Networks*, Volume 1, Issue 4

⁹⁵³ Hudson A. (2001), NGOs’ Transnational Advocacy Networks: from ‘Legitimacy’ to ‘Political Responsibility’? *Global Networks*, Volume 1, Issue 4, pp:331-352 at 338

were accountable to the officials mentioned above and that this is his definition of upward accountability.⁹⁵⁴ The second is ‘downward accountability’, which is being answerable to those whose interests the networks claim to promote.⁹⁵⁵ It is central to the argument of this thesis that transnational NGO networks should be intensely aware of this category of accountability in their practice.

When transnational NGO networks represent Southern concerns at global level they should truly be accountable to those who are being represented by them. Therefore, all networks should clearly understand the real aspirations that lie behind Southern environmental interests. Some scholars have pointed out instances where major transnational NGOs who are protesting on behalf of Southern environmental matters neglect the protest when they learn that the groups they are representing have developmental elements in their protests.⁹⁵⁶ For instance, Holmen and Jirstrom state that “on a number of occasions, large, strong and well-connected NGOs have been found to use this platform to pursue completely opposite agendas while still pretending to be the voice of the unheard.”⁹⁵⁷ They refer to the support of transnational major NGOs to the Chipko movement – a genuine grassroots protest against the development projects that destroy the environment and livelihood of an area in the Indian Himalayas. When the NGOs learned that Chipko movement was “not against the development but rather against not being part of it” they withdrew their representation.⁹⁵⁸ In such an instance, the NGO networks’ commitment to

⁹⁵⁴ Ibid

⁹⁵⁵ Ibid

⁹⁵⁶ Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp: 429-448, at 436-437, Mallaby S. (2004), NGOs: fighting Poverty, Hurting the poor, *Foreign Policy* Volume 144, pp: 50-58, Chapin M. (2004), A challenge to conservationists, *World Watch Magazine*, November/December Issue, World Watch Institute, pp:17-31

⁹⁵⁷ Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp: 429-448, at p. 436

⁹⁵⁸ Ibid.

represent Southern peripheral concerns lacked legitimacy. Holmen and Jirstrom quote Chapin in their paper to show the bitter side of NGO representation of the Southern voice:

Chapin likewise shows how a number of big INGOs [...] allegedly campaigning on behalf of poor, indigenous peoples and cultural diversity – betray their clients when these are found to prioritize development and economic well-being over preservation of natural resources. As one interviewed NGOs representative put it: ‘Quite frankly, I don’t care what the Indians want. We have to work to conserve the biodiversity’.⁹⁵⁹

One of the most significant challenges that the transnational NGO networks need to address is that Southern groups within the networks are supposed to be at centre-stage and not on the periphery. The application of principles of equity, fairness and justice within the networks should overcome the barriers of limited capacity, resources and political power of diverse range of NGOs within the network.

In discussing legitimacy and accountability claims on transnational NGO networks many issues were analysed in relation to legitimacy criteria. Firstly, the argument of legitimacy that tends to be rooted in the traditional interstate or state-centric context limits the multidimensional approach of transnational network legitimacy. Therefore, further research is needed to seek a practical approach into transnational network representation of Southern concerns at a global level. The representation of transnational NGO networks opens up another debate on legitimacy, which they should take seriously in order to improve their legitimate claims and to ensure principles of equity, fairness and justice in

⁹⁵⁹ Holmen H. and Jirstrom M. (2009), Look Who’s Talking! Second Thoughts about NGOs as Representing Civil Society, *Journal of Asian and African Studies*, Volume 44, Number 4, pp: 429-448, at p. 437, Chapin M. (2004), A challenge to conservationists, *World Watch Magazine*, November/December Issue, World Watch Institute, pp:17-31 at p. 21

their approach to Southern concerns are adhered to. This thesis argues, therefore, that the major transnational NGOs must pay more attention to Southern issues and concerns before actually representing them.

Conclusion

In developing much further the arguments established in Chapters 1, 2 and 4, this chapter has concluded that state-centred governance mechanisms have largely failed to do justice to the marginalised South. The historical and political exploration of the North-South dimension in Chapters 1, 2 and 3 indicated the need for a more up-to-date approach in voicing Southern global concerns. This chapter has, therefore, argued that it is vital that the political, economic, research and technological capacities of transnational NGO networks be utilised in this regard, since they constitute a more effective framework that would move the peripheral Southern states into the centre-ground of decision-making in order to both enrich the global environmental discourse and further their own aims.

Several issues have been identified as essential for the successful establishment of a new strategy within the proposed framework. Recognition of the collective identity of a transnational NGO network plays a crucial role in achieving its common goals and complexities and diversities within their constituent NGOs should be strategically overcome. In addition, the main criticism regarding transnational NGO networks revolves around their legitimacy and accountability. As has been demonstrated in this chapter, this criticism is aimed at traditional conceptions of legitimacy, therefore, it is crucial that a new approach to legitimacy claims within the modern multidimensional governance system be established. Furthermore, this thesis argues that the representation of Southern concerns by transnational NGO networks should stress the vital importance of applying the principles

of equity, fairness and justice within the governance process. In summary, therefore, it is the contention of this thesis that any aspiring transnational NGO network should be compelled to adopt these principles in order to emphasise its accountability to those whose interests it claimed to promote.

Conclusion

The main argument of this thesis, which is based on the conflict between North and South and its impact on global environmental decision-making, was based on two key factors inherent in current global governance. Firstly, the North-South dimension, which impacts on the principles of equity, fairness and justice and which has resulted in the marginalisation of the South to the periphery of the international decision-making process. Secondly, the significant mitigating role played by NGOs in order to redress the inequalities suffered by the South in the area of global environmental governance.

It is the contention of this thesis, however, that all states should be committed to the demands of global environmental governance, such as, in the case of global forests – particularly tropical forests – the prevention of deforestation and degradation resulting from major development projects, population growth and illegal logging. The same also applies to slowing down climate change by reducing the carbon emissions produced mainly by developmental activities, and to the protection of the ozone layer by eradicating the ozone-depleting substances primarily used in industrial manufacturing. It is the contention of this thesis that environmental commitments require certain levels of sacrifice from within the development targets of Southern states, which is where the North-South dimension enters the environmental debate. The Southern states are being expected to slow down their development phases – an expectation that appears logical, since it is they, and not the Northern states, that are undergoing development. In return the South questions the current responsibilities and duties of the North for the environmental space they had once used for their own industrial development process. It is, therefore, crucial to establish a global governance system that is capable of balancing the conflict of interests and

agendas of both sides. Fundamentally, therefore, this thesis is guided by this aim, that is, to find more effective alternatives in order to mitigate participation inequalities in global environmental governance.

The earlier chapters of the thesis explore the history and politics of the North-South dimension, and they expose and examine the contestation between the environmental priorities of the North and the developmental priorities of the South. The first two chapters also contain an analysis of the decision-making process of global governance and the need to find alternatives to the current inter-state methods of drawing Southern concerns more effectively into the decision-making process. The thesis refers throughout to the literature relating to the North-South dimension, which makes clear that the traditional means by which Southern concerns have been presented have not had sufficient impact on the processes and outcomes of global environmental governance. Chapter 3, which analyses the international legal decision-making structures, goes on to discuss the need for the traditional framework of governance be reconsidered and replaced by a structure whereby NGOs represent Southern concerns in order to face the challenges brought about by the rapid changes in globalisation.⁹⁶⁰

In Chapter 4, the practical application of international governance, which was discussed in the first three chapters at a predominantly theoretical level, are scrutinised by way of a Case Study, based on forest negotiations. It further establishes the argument that inter-state efforts have largely failed to address North-South inequalities in forest governance. Chapter 4 is, therefore, presents an in-depth analysis of the North-South forests debate

⁹⁶⁰ Pearson Z. (2004), Non-Governmental Organisations and International Law, *Australian Year Book of International Law*, Volume 23, pp: 73-103 at p.93, Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284

regarding the capacity of NGOs to negotiate on behalf of Southern states. Chapter 5 considers the advantages brought by such NGO networks to the decision-making forums, such as their universality, their greater financial resources, their superior expertise, and their research and technological capacity, together with their skills in negotiation. Chapter 5 also emphasises the need to maintain legitimacy and accountability criteria in transnational NGO networks' representation of Southern issues. This thesis, therefore, argues that transnational NGOs could play a significant role in voicing Southern concerns and go a long way to avoid further marginalisation in decision-making forums.

However, this thesis does not believe that simply introducing NGO networks as negotiators for the Southern states would necessarily be completely successful, and neither would it automatically confer "legitimacy" on the NGOs, since, as discussed in Chapter 5, the issues of legitimacy, accountability and representation will remain questionable regarding their own internal structures and policies. Nevertheless, given the recent changes in multidimensional global governance frameworks, in comparison to the Southern states' own attempts at negotiation and influencing the decision-making process, the transnational NGO networks' voice would certainly prove more effective.

A fundamental argument of this thesis, which is based on the history, economics and politics of the North-South dimension, is that Southern states have suffered enormously from the effects of the "poverty of influence" (as explained in Chapter 1) – i.e. the South's right to have "sufficient environmental space"⁹⁶¹ to achieve its developmental goals.⁹⁶²

⁹⁶¹ The right to have sufficient environmental space to achieve the Southern development goals was emphasised by the Report on Environment and Development: Towards a Common Strategy for the South in the UNCED Negotiations and Beyond published by the South Centre, the follow-up office of the South Commission in November, 1991

⁹⁶² Najam A. (2005), Developing Countries and Global Environmental Governance: From Contestation to Participation to Engagement, *International Environmental Agreements*, Volume 5, pp: 303-321 at p.305

When examining the institutional global law-making processes in general, and environmental governance in particular, it seems clear from their outcomes that Southern concerns have not been sufficiently recognised and that policy has deviated from the principle of “adequate environmental space” and of equity, fairness and justice.

This thesis, it is hoped, will act as a guide for future empirical research into how international law may be further developed in terms of the involvement of transnational NGO networks. Such research, I believe to be absolutely essential, since existing international laws have already been questioned on the basis of their applicability to non-state actors.⁹⁶³ Also essential will be research into the development of a “legitimacy” baseline to be applied by the NGO networks. However, in any such research, it will be necessary to develop appropriate yard-sticks for ensuring that the networks abide by the principles of legitimacy and accountability. Therefore, with the caveat that they meet acceptable standards of performance, transnational NGO networks could prove invaluable in mitigating the disadvantages faced by the South, which have been so apparent in its past participation in environmental governance.

⁹⁶³ Pearson Z. (2006), Non-Governmental Organizations and the International Criminal Court: Changing Landscapes of International Law, *Cornell International Law Journal*, Volume 39, Number 2, pp:243-284

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