

Long Lines at Disney World Reduced by Sunstroke! or Can International Law Control Climate Change?

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Résumé de l'article

Réunis à La Malbaie du 5 au 7 août 1990, une trentaine de juristes et d'économistes européens, nord-américains et africains ont échangé sur l'évolution du droit international économique.

Ce premier colloque organisé par la SDIE (Canada) en collaboration avec la SDIE (France) aborde les aspects historique, théorique, pratique et éthique de ce secteur du droit qui couvre l'organisation de la production et du commerce, les relations monétaires et financières, le droit du commerce international, la gestion des ressources et la protection de l'environnement.

Le présent dossier reproduit, en français ou en anglais, les principaux exposés. Les deux premiers textes traitent de questions générales et du cadre dans lequel se développe le droit international économique. Les exposés suivants présentent divers aspects de ce secteur du droit en cours de transformation.

NOTES, INFORMATIONS ET DOCUMENTS

Société de droit international économique (SDIE)* Colloque international de La Malbaie (1990) sur la transformation du droit international économique

International Economic Law Society (SDIE)* La Malbaie International Colloquium (1990) on Transformation of International Economic Law

RÉSUMÉ

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ABSTRACT

In the course of a meeting held in La Malbaie (Québec, Canada) on August 5th to 7th, 1990, thirty european, north-american and african jurists and economists exchanged ideas on the evolution of international economic law.

This first colloquium organised by the SDIE (Canada) in cooperation with the SDIE (France) covered historical, theoretical, practical and ethical aspects of this sector of

* Nous tenons à remercier Philips & Vineberg, M^{cs} Bruno Deslauriers, Godin, Raymond, Harris, Thomas ainsi que Jolicoeur, Lacasse, Simard, Normand et associés pour leur soutien financier dans la publication de ces actes de colloque, monsieur Jacques Paquet ainsi que monsieur Ernest Caparros, de la *Revue générale de droit*.

* We would like to express our thanks to Philips & Vineberg, Mes Bruno Deslauriers, Godin, Raymond, Harris, Thomas and Jolicoeur, Lacasse, Simard, Normand & associates for the financial support in publishing these acts Mr. Jacques Paquet and to Mr. Ernest Caparros of the *Revue générale de droit*.

du droit qui couvre l'organisation de la production et du commerce, les relations monétaires et financières, le droit du commerce international, la gestion des ressources et la protection de l'environnement. Le présent dossier reproduit, en français ou en anglais, les principaux exposés. Les deux premiers textes traitent de questions générales et du cadre dans lequel se développe le droit international économique. Les exposés suivants présentent divers aspects de ce secteur du droit en cours de transformation.

law which covers the organisation of trade and production, monetary and financial relations, international trade law, resources management and environmental protection. The present document reproduces the texts submitted by the speakers in their original language. The first two papers aim at giving a general perspective of the variables of International Economic Law. The following papers focus on specific areas of international economic law where changes are taking place.

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Long Lines at Disney World Reduced by Sunstroke! or Can International Law Control Climate Change?

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There are some subject matters which are not linked to the territory of states and therefore fall within the common responsibility of mankind. These include the protection of that part of the natural environment which lies beyond the reach of any national jurisdiction and to which no state can claim sovereignty: the atmosphere. The possibility of a changing atmosphere resulting in climate change only serves to underscore the magnitude of the difficulties created by the prospect of collective management of this global commons.

Concerns that climatic changes will be brought about by a global warming due to an enhanced "greenhouse effect" have increased as of late. The greenhouse effect is itself a natural occurrence caused by the entrapment of heat by gases naturally present in the atmosphere, primarily water vapor and carbon dioxide.² Without this phenomenon, the surface temperature of the earth would not allow life to exist as we know it.³

That the greenhouse effect exists is not the subject of scientific dispute. It is also generally agreed that various greenhouse gases in the atmosphere, including carbon dioxide, chlorofluorocarbons (CFCs), hydrogenated CFCs, methane, tropospheric ozone and nitrous oxide, have

1. The author would like to thank Dr. Glen Plant for his comments upon an earlier draft of this paper, presented at the International Economic Law Society Conference in Québec, August 1990. A portion of the paper's title was taken from "The David Letterman Show".

2. The greenhouse theory has been attributed to Svante Arrhenius, who, in 1896, suggested that a doubling of carbon dioxide, one of the main greenhouse gases, could cause a rise in global temperature. "On the Influence of Carbonic Acid in the Air Upon the Temperature on the Ground", Vol. 41, April 1896, *Philosophical Magazine*, pp. 237-276. A French physicist, Jean Baptiste Fourier, argued in 1827 that the atmosphere acted like a greenhouse in that it allowed heat in without permitting its escape.

3. Stephen H. SCHNEIDER, *Global Warming: Are We Entering The Greenhouse Century?*, Cambridge, The Lutterworth Press, 1989, pp. 13-35. The earth's average surface temperature would be about 33 degrees celsius cooler without this natural greenhouse effect.

been increasing in concentration due to human activity,⁴ thus creating an “enhanced” greenhouse effect. It is estimated that the excess warming due to all greenhouse gases is now increasing more or less linearly with time, although the concentration of carbon dioxide may be rising exponentially.⁵ Computer models suggest that these emissions will drive up the global temperature, with impacts on rainfall, sea-levels and ecosystems.⁶ Scientific agreement as to the severity of climatic effects is, however, not complete,⁷ creating a disincentive for collaborative international action.

I. INTERNATIONAL ORGANIZATIONS AND THEIR ROLE IN RELATION TO CLIMATE CHANGE

The role of international law and international organizations in managing environmental crises is increasingly becoming more demanding, as the problems acquire global characteristics. The specific features of contemporary environmental issues contribute to these “organizational dilemmas”:

The units of analysis and units of effective action are not only transboundary in the sense of national frontiers, they are organizationally transboundary. They require internal organizational changes and new patterns of interaction among sectors and institutions.⁸

A. INTERGOVERNMENTAL

There are many intergovernmental agencies that play a role in the management of the environment. From among these, the United Nations has emerged to play the leading role, specifically the UN Environment Programme (UNEP).

4. Christopher FLAVIN, *Slowing Global Warming: A Worldwide Strategy*, Worldwatch Paper 91, Washington, D.C., Worldwatch Institute, 1989, p. 13. Carbon dioxide build-up is the direct result of fossil fuel burning and deforestation; the principal source of CFCs is industry use in foams, aerosols, refrigerants and solvents. Methane is given off by wetlands, rice cultivation, livestock and fossil fuels, and nitrous oxide stems from fossil fuels, fertilizers and deforestation. Tropospheric ozone is a by-product of traffic and industry emissions.

5. *Global Climate Change*, A scientific Review Presented By The World Climate Research Programme, WMO and ICSU, January, 1990, p. 15.

6. Michael GRUBB, *The Greenhouse Effect: Negotiating Targets*, London, Royal Institute of International Affairs, Energy and Environmental Program, 1989, p. 3.

7. See, for instance, C. Boyden GRAY and David B. RIVKIN, Jr., “A ‘No Regrets’ Environmental Policy”, *Foreign Policy*, No. 83 (Summer 1991), pp. 47-65 and *The Greenhouse Conspiracy*, an edited transcript, London, Channel 4 Television, (1990).

8. Patricia SCHARLIN, «Reshaping Institutions to Meet Environmental Crises: Beyond Business as Usual», *Report of the Fifth Talloires Seminal on International Environmental Issues*, delivered at Tufts European Center, Talloires, France, May 14-18, 1989, p. ii.

1. United Nations Environment Programme

UNEP was established through UN Resolution 2997 of the UN General Assembly on 15 December 1972. The 1972 Stockholm Conference on the Human Environment,⁹ the most significant occasion in environmental protection to date,¹⁰ assigned to UNEP “a catalytic and coordinating role” concerning the environment,¹¹ as well as the task of implementing an environmental action plan containing 106 recommendations.¹²

In order to more fully address the challenge of climate change, the United Nations General Assembly adopted in 1987, Resolution 42/184, agreeing:

[...] that the United Nations Environment Programme should attach importance to the problem of global climate change and that the Executive Director should ensure that the Programme cooperates closely with the World Meteorological Organization (WMO) and the International Council of Scientific Unions (ICSU) and maintains an active, influential role in the World Climate Programme.

The General Assembly reaffirmed its position by adopting Resolution 43/53, in 1988 entitled “Protection of Global Climate for Present and Future Generations of Mankind”.¹³ This action endorsed:

the action of the WMO and the UNEP in jointly establishing an Intergovernmental Panel on Climate Change [IPCC] to provide internationally co-ordinated scientific assessments of the magnitude, timing and potential environmental and socio-economic impact of climate change and realistic response strategies[...]

The IPCC is the largest international environmental research and assessment undertaking to date.¹⁴ Divided up into three working groups concerned with (1) developing scientific understanding of the climate, (2)

9. The Conference is noted for its Declaration of the Human Environment, including the oft-cited Principle 21 declaring 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”.

10. The principal accomplishments of the Conference include legitimizing the placing of the biosphere on the international agenda and the creation of UNEP. Lynton Keith CALDWELL, *International Environmental Policy: Emergence and Dimensions*, 2d ed., Durham, Duke University Press, 1990, p. 60. Also notable was the focusing of attention on the needs of developing states. John MCCORMICK, *The Global Environmental Movement: Reclaiming Paradise*, London, Belhaven Press, 1989, pp. 104-105.

11. *Environmental Law in the UN Environment Programme*, Nairobi, UNEP, 1985, p. 3.

12. *Action Plan for the Human Environment*, UN Doc. A/CONF. 48/5 (1972), reprinted in 11 *ILM* 1421 (1972).

13. UN Res. 53 (XLIII), reprinted in Michael R. MOLITOR (ed.), *International Environmental Law: Primary Materials*, Deventer, Netherlands, Kluwer Law and Taxation Publishers, 1991, pp. 13-15.

14. M. GRUBB, *op. cit.*, note 6, p. 1.

studying environmental implications of such change and (3) recommending appropriate responses to manage such change,¹⁵ the final report of the Panel was completed in August 1990, at Sundsvall, Sweden. There, agreement was reached among the industrialized nations that the threat of global warming is real.¹⁶ This consensus was timely, in that it came shortly before the Second World Climate Conference, where the IPCC Report was to be officially presented and preliminary negotiations for a climate change treaty were to get underway.¹⁷

The negotiating process for a climate convention has been placed in the hands of an Intergovernmental Negotiating Committee, under the authority of the General Assembly.¹⁸ UNEP's role in the negotiation process, therefore, is relegated to that of a supporting one. The IPCC will continue to provide technical and scientific support to the negotiating team.¹⁹

2. World Bank

Another agency with the prospect of becoming a formidable force in environmental affairs is the World Bank. Already the leading source of international funding for economic development,²⁰ the World Bank, together with UNEP and the UN Development Programme, has subsequently set up a US\$ 1 billion Global Environment Facility (GEF). Funds will be drawn from it for projects to aid the fight against global warming, ozone depletion and loss of biodiversity.²¹ Because a successful agreement on climate change will require world-wide cooperation, a "policy of inclusion"²² of developing states during the negotiations is crucial. The

15. *Global Climate Change*, UK Department of the Environment, UK, Her Majesty's Stationery Office, 1989. p. 13.

16. "Talks Next Month on Global Warming Pact", London, *The Times*, August 31, 1990, p. 8.

17. Environmental Law Institute, "Introduction By the Environmental Law Institute", *Addressing Global Climate Change: The Emergence of a New World Order?*, Report Prepared for the US EPA Office of International Activities, Washington, D.C., Environmental Law Institute, 1989, p. 52.

18. UNGA Res. 45/212 on the Protection of Global Climate for Present and Future Generations of Mankind, A/45/851, reprinted in UN Press Release GA/8165, 21 Jan. 1991, Dept. of Public Information, News Coverage Service, NY, pp. 263-266. See text *infra*, Section II.B.

19. American Society of International Law, *International Environmental Law Interest Group Newsletter*, "Climate Change", May 1991, p. 3.

20. L.K. CALDWELL, *op. cit.*, note 10, pp. 109-111.

21. "Green Aid", *Our Planet: The Magazine of the UNEP*, Vol. 2, No. 4 (1990), p. 9.

22. Lynne M. JURGIELEWICZ, "Development Issues and Global Environmental Change", *International Economic Law Society Bulletin*, Vol. 4, no. 2 (Printemps-Été 1991), p. 30.

primary concern of these states being their economic development, initiatives such as the GEF are critical for successful negotiations.

3. Organization for Economic Co-operation and Development (OECD)

Still another intergovernmental organization working with environmental issues is the Organization for Economic Co-operation and Development (OECD). Although the OECD is commonly looked upon as an agency for economic development and international trade, an Environment Committee was established in 1970 to review, among other things, environmental acts of member states, with emphasis on the economic and trade effects.²³

The OECD recently held an international experts' workshop on greenhouse gases and sinks, in February 1991, intended to bolster the climate change treaty negotiations held shortly after the workshop, at Chantilly, Virginia.²⁴

4. European Community

The European Community has also become involved in the area of climate change. It has stated the need for an international agreement, passing a resolution to that effect in June of 1989, highlighting the necessity for Member States to devise and execute a response to the problem. The resolution also called for the Commission to "launch a substantial policy-options study programme". Central to the programme are identification of measures to reduce greenhouse gas emissions, analysis of the implications of these measures, evaluation of likely benefits of various options and identifying measures necessary to adapt to unavoidable results of the greenhouse effect.²⁵

B. NON-GOVERNMENTAL ORGANIZATIONS

1. International Council of Scientific Unions (ICSU)

Non-governmental organizations also play an active role in the environment. One such group is the International Council of Scientific

23. L.K. CALDWELL, *op. cit.*, note 10, pp. 98-100.

24. *OECD Press Release SG/PRESS(91)11*, Paris, 27 February 1991. See text *infra*, Section II.B.

25. *EC Council Resolution on the Greenhouse Effect and the Community*, 21 June 1989 (89/C 183/03).

Unions (ICSU), a non-governmental scientific organization. The ICSU is best known for its coordination of scientific research activities in Antarctica. ICSU's Scientific Committee on Antarctic Research (SCAR) provided the groundwork for the 1959 Antarctic Treaty.²⁶ One of ICSU's major involvements concerning climate change was its organization, together with WMO and UNEP, of the 1985 Villach Conference on greenhouse gases.²⁷ This conference subsequently resulted in a two part workshop in 1987, the first part held again in Villach, Austria and the latter half held in Bellagio, Italy. In 1987, ICSU jointly undertook a project with WMO in the area of climate change. This project, known as the World Climate Research Programme (WRCP), is "the international scientific programme which has been established to provide a quantitative understanding of climate and predictions of global and regional climate changes of all time scales".²⁸

2. International Union for Conservation of Nature and Natural Resources

Another non-governmental organization playing a large role in the environment is the International Union for Conservation of Nature and Natural Resources (IUCN). Its primary concerns are dealing with harm to the quality of the natural environment. Initially focusing on wilderness areas and endangered species, the IUCN has expanded its scope to include the "development of ecologically and economically sustainable human societies".²⁹ The result of this widening of objectives is the World Conservation Strategy. A statement of goals and targets, the Strategy iterates the objectives of conservation and requisites for achievement and the priorities for both national and international action.³⁰ These include a stated need for legal development and emphasize the concept of sustainable development. The IUCN was also the architect of the "World Charter for Nature", adopted by the UN General Assembly in 1982.³¹

C. PRESSURE GROUPS

Also important actors on the environmental stage are the "pressure groups" such as Greenpeace and Friends of the Earth. They are

26. Lee KIMBALL, "The Role of Non-Governmental Organizations in Antarctic Affairs", in Christopher C. JOYNER and Sudhir K. CHOPRA (eds.), *The Antarctic Legal Regime*, Netherlands, Martinus Nijhoff Publishers, 1988, p. 35.

27. *Developing Policies for Responding to Climatic Change*, World Climate Programme Impact Studies, WMO/TD-No. 225, p. i.

28. Global Climate Change, *supra*, note 5, p. 4.

29. L.K. CALDWELL, *op. cit.*, note 10, pp. 115-117.

30. *Id.*, pp. 322-325.

31. *Id.*, pp. 90-93.

becoming more and more involved in negotiations on the environment. Although not endowed with voting privileges, these groups are able to make their presence felt at conferences.³² This “presence” may generate a nervousness to the actual negotiating parties, who are all too aware of the powerful use of press conferences by these groups to broadcast to the public the proceedings of a closed-door conference. These pressure groups often feel that developing countries do not have enough “armory” in their negotiation battles and so may “tutor” and brief representatives of these countries as to what they should be knowledgeable of.

D. NEW INSTITUTIONS

In addition to the established organizations and agencies, there have also been proposals for the creation of new organizations to handle global environmental problems such as climate change. While the success of present institutions has not been textbook perfect, it does not necessarily follow that replacement bodies would have a better track record.

Because climate change involves such diverse issues as science, economics, development, conservation, law and politics, all of the above organizations have a role to play. None of them could adequately deal with all aspects of the problem, yet each has something valuable to contribute. This conglomeration of organizations may actually be necessary to achieve the necessary “patterns of interaction among sectors and institutions”³³ required by contemporary environmental issues such as climate change, and for a “complex regime”³⁴ aimed at controlling climate change to succeed.

II. CURRENT LEGAL DEVELOPMENTS ON CLIMATE CHANGE

A. OZONE MODEL

To date, there is no international agreement on climate change, although negotiations for a treaty are underway. The 1985 Vienna Convention on the Protection of the Ozone Layer, along with the 1987 Montreal Protocol, deal with one of the greenhouse gases, CFCs, critical to the problem of climate change. The Montreal Protocol, strengthened at the 1990 London Ozone Conference where it was agreed that CFCs are to be phased out by 2000, is to be reviewed in 1992 to discuss whether new curbs on CFCs restrictions are needed. In addition, this is the first

32. Patrick SZELE, Lawyer, UK Dept. of the Environment, Private conversation with author, August 9, 1990.

33. See text *supra*, Section I.A.

34. See text *infra*, Section III.B.

international treaty on the environment to include financial aid and procedures for transfer of technology to the developing world.³⁵ This fact alone is considered a critical requirement for the success of any international agreement.³⁶

Whether or not the ozone agreement can be used as a model for a climate change agreement is debatable. The unique characteristics present in ozone depletion; the convincing scientific proof provided by the discovery of the Antarctic ozone hole and the support of the leading producer of CFCs, DuPont, may not be as easily transferable to global warming and climate change.³⁷ For example, scientific agreement is still inconclusive as to the cause of global temperature rise and global warming is not limited to CFCs use.³⁸ Nevertheless, work has proceeded in the attempt to formulate an agreement on climate change in time for the 1992 UN Conference on Environment and Development.

B. CLIMATE CHANGE TREATY

In June 1988, a Conference on the Changing Environment was held in Toronto, hosted by the Canadian government. The Conference Statement recommended that a framework convention on protection of the atmosphere be adopted, with additional protocols; that a fund be established for transfer of technology to developing countries; and that carbon dioxide emissions be reduced by 20 % of 1988 levels by the year 2005.³⁹

Within three years of the Toronto Conference, the first meeting of the Intergovernmental Negotiating Committee (INC) for a climate change convention was held outside of Washington D.C., at Chantilly, Virginia in February 1991.⁴⁰ Although there was disagreement concerning specific limits on emissions of greenhouse gases, some results were achieved. These included the adoption of guidelines for the negotiations; the establishment of two working groups, one for dealing with the substantive portions of the

35. See, for instance, Richard Elliot BENEDICK, *Ozone Diplomacy: New Directions In Safeguarding The Planet*, Cambridge, Harvard University Press, 1991.

36. P. SZELE, *supra*, note 32.

37. "Developments In The Law: International Environmental Law", *Harvard Law Journal*, Vol. 104, No. 7 (May 1991), p. 1545.

38. *Id.*, p. 1546.

39. David A. WIRTH and Daniel A. LASHOF, «Beyond Vienna and Montreal-Multilateral Agreements on Greenhouse Gases'', *Greenhouse Warming: Negotiating a Global Regime*, A World Resources Institute Report (January 1991), pp. 16-17.

40. This was in accordance with GA Res. 45/212, *supra*, note 18, which called for negotiating sessions to be held in Feb. 1991 at Washington, D.C., and later in Geneva and Nairobi in May/June 1991, September and November/December 1991, and as appropriate between January and June 1992.

treaty and another to consider the legal and institutional mechanisms; and the adoption of rules of procedure.⁴¹

III. ROLE OF INTERNATIONAL LAW IN BRINGING ABOUT A TREATY

A. FORM OF TREATY

There are two different approaches to an international agreement on the atmosphere that can be taken. One is a comprehensive “umbrella convention” to deal with all foreseeable problems simultaneously, such as was attempted in the Law of the Sea Convention. The other is to develop a “framework convention” that recognizes the problem at hand and which provides a general framework for future protocols on the subject.⁴² Certain obstacles to creating an agreement for climate change have been acknowledged, including lack of a leader state to guide the negotiations, multi-party and multi-issue negotiations, and lack of consensus on whether the atmosphere is a global commons.⁴³ While the lack of a leader state may not be an insurmountable barrier to cooperation, coalitions in lieu of a leader state may frustrate negotiations by blocking or vetoing proposals. In addition, multi-party negotiations make it difficult to predict whether any zone of agreement exists. Also, preferences may change as negotiations reveal new information.⁴⁴

The 1985 Vienna Convention on the Protection of the Ozone Layer, with its accompanying Montreal Protocol is an example of a framework convention. Arguably, the ozone convention is flexible in that it responds to new scientific evidence and thus can cope with high levels of uncertainty,⁴⁵ an important consideration in the climate change negotiations. In addition, the framework convention will encourage more states to join, since there will be few, if any, real legal commitments until protocols are agreed upon. The complexity of the negotiations should be reduced as a result of dealing with each issue area separately, in additional protocols. Lack of a common perspective on the atmosphere, scientific uncertainty, large groups and multi-issues, and absence of an imminent crisis, all characteristics present in climate change, do not promote an umbrella approach.⁴⁶

41. “Climate change”, *supra*, note 19.

42. M. GRUBB, *op. cit.*, note 6, pp. 9-10.

43. Fen Osler Hampson, “Climate Change: Building International Coalitions of the Like-Minded”, *International Journal*, Canadian Institute of International Affairs, Vol. XLV, No. 1, (Winter 1990), pp. 47-54.

44. *Id.*, pp. 49-53

45. *Id.*, p. 65.

46. *Id.*, p. 71.

However, there are weaknesses in the framework convention model. Because the convention and protocols are negotiated at different times, two periods of bargaining are required for regulations to take effect.⁴⁷ The framework approach may also not be able to prevent "hold-outs": those states who will sign the convention for political reasons but will subsequently refuse to join a protocol.⁴⁸ In addition, separate protocols may prevent issue linkage, since each protocol will deal with a separate issue. Issue linkage allows states to compromise by linking a deal on one issue to agreement on another.⁴⁹ This is important as the negotiating positions of states are not equal. States such as the US, Japan and the EC find themselves with more to surrender in terms of emissions than less industrialized nations such as Norway or Sweden. Accordingly, more industrialized countries will be less likely to sign an agreement restricting their emissions of greenhouse gases without some sort of compromise on other issues.

Suggestions have been put forth that include negotiating a framework convention that includes provisions for implementation of states' domestic environmental policies, expediting regulation before the protocols enter into force.⁵⁰ This would of course require state cooperation in implementing domestic procedures, but states would still be required to implement these procedures eventually under a protocol approach.⁵¹

Regardless of the ultimate choice of treaty form, a formal international agreement on climate change will be hard to attain in light of the present political view on state sovereignty. Is there a better way?

B. ACHIEVING A MIDDLE GROUND: AN INTERNATIONAL ENVIRONMENTAL REGIME

In the world of international relations, there are two extreme views taken of the world community: one conviction held is that states will only cooperate on an issue if it is in their interest to do so; the other view sees international law controlling the actions of global society.⁵² None of these extremes holds true in environmental protection. States have cooperated on the CFCs issue, against their own interests, yet a legal obligation not to cause environmental harm to other states, is at best, unclear

47. "Developments In The Law," *supra*, note 37, pp. 1543-1544.

48. *Id.*, p. 1544.

49. *Id.*, p. 1545.

50. *Id.*, pp. 1547-1548. See, also, *Greenhouse Warming: Negotiating a Global Regime*, A World Resources Institute Report (January 1991).

51. *Id.*, p. 1548.

52. Richard L. WILLIAMSON, Jr., "Building The International Environmental Regime: A Status Report", *Inter-American Law Review*, Vo. 21, No. 3 (Summer 1990), p. 738.

and at worst, nonexistent.⁵³ To provide a middle ground between these two extremes, international relations offers the concept of regimes. A regime is defined as “principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area”.⁵⁴ Perhaps more simply, almost

all regimes involve some use of international treaties and organizations (and thus international law), but have other critical elements which are not legal” and “[t]hey all exist in part because [...] norms and principles are important and frequently succeed in inducing countries to behave in ways which differ from their abstract preferences, even though they cannot be compelled to abide by community norms. Regimes thus occupy a functional niche between ad hoc arrangements and international law and a structural “order”.⁵⁵

Thus, while regimes may not fit any formal definition of international law, they may form an integral part of the development of international law.

Building on this concept of regimes, one commentator suggests the use of a “complex regime” in international environmental protection, or, in other words, international arrangements that include a group of very similar problems (rather than a single area) and a group of institutional structures (instead of a single one) that arise, as a majority of the world community adopts a number of integrated measures, both binding and not, towards a common aim, supported by “shared values, norms, or fears”.⁵⁶ The end result is to slowly “make the goal itself more nearly universally accepted, gradually transforming pragmatic arrangements into normative constraints on behavior”.⁵⁷ An example of a complex regime is the area of nuclear proliferation: it is comprised of “two major treaties, [...] an international organization, [...] ancillary measures, ... non-treaty agreements on export controls, informal understandings that certain technologies of special concern will not be exported, intelligence sharing, and an active diplomacy[...]”.⁵⁸

For states concerned with sovereign rights, this is a more easy-going approach to regulation of the environment, and thus a more practical and feasible approach to environmental protection in general, and climate change in particular. Research into how this might be accomplished should be encouraged as the condition of the environment worsens, yet states stubbornly retain their right of sovereignty.

53. *Ibid.*

54. Stephen D. KRASNER, “Structural Causes and Regime Consequences: Regimes as Intervening Variables”, in Stephen D. KRASNER, ed., *International Regimes*, Ithaca, Cornell University Press, 1983, p. 1.

55. WILLIAMSON, *loc. cit.*, note 52, pp. 739-740.

56. *Id.*, pp. 740-741.

57. *Id.*, p. 743.

58. *Id.*, pp. 741-742.

Obviously, for a complex regime on environmental protection to work, states must agree to at least recognize their responsibility not to cause significant harm to the environments of other states and to take some action while scientific certainty is not conclusive.⁵⁹ This, however, will be significantly easier to accomplish than creating a new international order, yet will aid in the development of international environmental law.⁶⁰

IV. CONCLUSION

The UN General Assembly set out an ambitious agenda in its “Environmental Perspective to the Year 2000 and Beyond”.⁶¹

The report welcomed “as the overall aspirational goal for the world community the achievement of sustainable development on the basis of prudent management of available global resources and environmental capacities and the rehabilitation of the environment[...].”⁶² The task required of nations to accomplish this is large, increasing the importance and necessity of the development of international law. While Stockholm Principle 21 and other legal instruments may attempt to establish the responsibility of states in preventing environmental damage, the “fashioning of necessary institutions and norms to influence both national and international[...] policies” relies on the convergence of “scientific, legal, economic and political interests and pressures”.⁶³ At this time, that may be through the creation of an international environmental regime. Whether this should be a series of simple regimes specific to certain environmental issue areas or a complex regime covering environmental protection in general, deserves further study. And not only to keep the lines at Disney World long. The international legal order is depending on it.

59. *Id.*, pp. 752-755.

60. *Id.*, p. 760.

61. *Global Outlook 2000*, New York, United Nations Publications, 1990, p. 102.

62. *Id.*, p. 103.

63. Ved P. NANDA, “Global Climate Change and International Law and Institutions”, in: Ved P. NANDA (ed.), *World Climate Change: The Role of International Law and Institutions*, Boulder, CO, Westview Press Inc., 1983, p. 237.