The Role of the State and International Organizations in Reconciling Sustainable Development and Globalization

DUNCAN A. FRENCH
University of Sheffield, United Kingdom

Abstract. The concepts of sustainable development and globalization have developed separately, with little recognition that there is significant overlap between them. This article seeks to argue that there is a need to try to reconcile these concepts and that, in particular, it is a fundamental mistake to consider globalization as inevitable whilst seeing sustainable development as an optional policy choice. In seeking to achieve this reconciliation, the role of the State and international organizations in maintaining public governance is reaffirmed.

Key words: functional State, globalization, international organizations, public governance, reconciliation, sovereignty, sustainable development

Introduction

One of the most important issues pertaining to the continued relevance of sustainable development to the political debate is its relationship, both conceptually and on a practical level, with the notion of globalization. Globalization, in all its various manifestations, is often considered as an inevitable force; a largely corporate-led movement towards greater interdependence between nation States and, to a lesser extent, their harmonization, primarily in terms of their economic systems, but also socially and politically. Of particular note is the diffuse nature of the causes of globalization, which has provided it with much of its apparent justification. In an international society where the vast majority of States endorse the principle of market liberalization and seek to encourage rather than hinder the use of their territory by transnational corporations and business networks, globalization is considered unavoidable. At the same time, however, the international community continues to grapple with the implications of sustainable development, recognizing that the present international system continues to engender structural inequalities and environmental damage. And unlike globalization, sustainable development is perceived less as an inevitability, and more of a policy choice. This article seeks to explore the tension between these two paradigms and examines whether they can – in any meaningful way – be reconciled. The

article concludes by noting that whilst there are no simple solutions to uniting globalization and sustainable development, little is achieved by maintaining the supposed conceptual dichotomy between the 'unchangeable' and 'corporate' nature of globalization and the 'optional' and 'public' nature of sustainable development. What is certain, however, is that for there to be any possibility of reconciliation, the role of public governance – as developed by *both* nation States and international organizations – will be pivotal in attempting to maintain a necessary balance between the numerous competing interests that such paradigms inevitably generate.

Sustainable Development and Globalization: Same Issues, Different Perspectives?

Globalization is difficult to define, but quite easy to appreciate. The porous nature of traditional national boundaries – cultural, political, socio-economic and regulatory – is a key element of globalization. Economic deregulation is a central part of the drive towards globalization, but it is not the only aspect. As Professor Anthony Giddens noted when giving the prestigious 1999 BBC Reith lectures, '[some] see the phenomenon almost solely in economic terms. This is a mistake. Globalization is political, technological and cultural, as well as economic'.[1] Critics of globalization would agree with this statement, suggesting that globalization has two fundamental characteristics; the corporatism of global society and, equally damaging, the creation of a global homogenous culture based predominantly on corporate-driven consumer values.[2] Of course, as a concept 'globalization' is heavily over-used.[3] Shifts in socio-economic trends, technological advances and changes in political thinking are all now measured by reference to globalization. The actions of States are carefully scrutinized to determine whether or not they are promoting globalization. If not, the assumption is made – often arguably incorrectly – that States are acting in a protectionist manner. Globalization, in short, is the new yardstick by which both public administrations and the corporate sector are tested. Nevertheless, regardless of its ubiquity, the notion of globalization represents an attempt to encapsulate something of the present global situation.[4]

Whether globalization is a force for good or bad remains unclear. As the International Law Association's 2000 Report on the Legal Implications of Sustainable Development notes, '[s]ome view this process as the "dollarization" and the onward march of global capitalism, whereas others consider globalization as ultimately the most effective way to achieve sustainable development, through eradication of poverty, protection of the environment and promotion of respect for human rights'.[5] The report continues by rhetorically asking whether we are 'witnessing a globalization without a human face?'.[6] Globalization presents many challenges, particularly to the nation State. Some suggest that if globalization implies only liberalization and deregulation, non-trade public policy goals such as social development and environmental protection are likely to be jeopardized.

The lack of meaningful provisions on these issues in the now-defunct draft Multilateral Agreement on Investment (MAI), negotiated within the Organization for Economic Co-operation and Development (OECD), is an often-used example of this.[7] For supporters of sustainable development, globalization threatens to undermine everything that they have worked for over the last two decades; the commercial imperative of global business being a much more aggressive opponent to the developmental and environmental tenets of sustainable development than simple political disinterest and institutional intransigence. On the other hand, globalization, which has so far dealt swiftly with most opposition (including, some would say, the very notion of sovereignty itself), sees in sustainable development a remnant of belief in the benevolent power of the State. Sustainable development – by its very nature – relies on the organizational ability of the State to manage change and to promote a particular vision of public policy. This dependence, if only partial, on the machinery of the State is regarded by critics as the elaboration of further unnecessary bureaucratic burdens.

The potential for conflict between the globalizing society and sustainable development is therefore quite clear. However, to truly understand the relationship between them (or more accurately, to surmise how this relationship might be improved) it is important to move beyond the usual rhetoric that is often part of such discussions. The first point of rhetoric that must be jettisoned is that globalization and sustainable development are separate debates. It might be assumed that whereas globalization is a corporate drive towards a more open and interconnected world economy (the ultimate beneficiaries of which are 'consumers'), sustainable development centres upon public goals of improving environmental standards and the position of the world's poor. The former clearly focused on the reach of the global market, whilst the latter focused on issues of environmental degradation and global poverty. But to suggest that globalization and sustainable development are separate debates is to miss the point. Even if one ignores the arguments based on a causal relationship between the globalizing economy and the existence of negative externalities,[8] it is important to recognize that globalization and sustainable development are the same debate, because they both focus on the same issues – if from slightly different perspectives. In short, both are attempts to understand a changing world, where increasing opportunities for commerce, communication and the linking of cultures exist alongside ever-worsening environmental problems and increasing social inequities. Or to put it slightly differently, whilst globalization presents the international order with a new future, sustainable development tempers this with a realism of past experience. As the Programme for the Further Implementation of Agenda 21 adopted by the UN General Assembly in Special Session in 1997 noted,

'The five years that have elapsed since the United Nations Conference on Environment and Development have been characterized by the accelerated globalization of interactions among countries in the areas of world trade, foreign direct investment and capital markets. Globalization presents new opportunities and challenges. It is important that national and international envi-

ronmental and social policies be implemented and strengthened in order to ensure that global-
ization trends have a positive impact on sustainable development, especially in developing
countries.'[9]

Moreover, whilst it is true that the debate on globalization has up to this point
largely focused on the 'private' and the 'corporate' and the debate on sustain-
able development has remained largely within the realm of public policy, this is
an artificial – and ultimately, damaging – divide.[10] And though an inevitable
suspicion of regulation seems to be a key feature of globalization,[11] in contrast with
the perceived importance of regulation in contributing to the attainment of sus-
tainable development, this is – I would submit – a current trend rather than a
permanent dichotomy. Political reality demands a much more integrated approach
from both the private and public sectors if either globalization or sustainable
development is to become a viable global proposition.

Of course, ultimately, the challenge is one of reconciliation, of ensuring that
the benefits of both globalization and sustainable development are achieved,
without losing the benefits of either. The second piece of rhetoric to reject, there-
fore, is that it is a question of either/or, that globalization and sustainable
development are mutually exclusive, and cannot be made to co-exist in any mean-
ingful manner. However, as the above quotation from the General Assembly
strongly argued, globalization and sustainability can be made – must be made –
to work together effectively. For those that are suspicious of the claims of global
capitalism and unconvinced of its ability to protect the weak and the unrepre-
sented,[12] there must come a moment, within serious debate,[13] when there is
recognition that change is only possible from within the present structure. As equal
manifestations of internationalism and global governance, globalization and sus-
tainable development must both be accommodated. Moreover, as the General
Assembly went on to note, globalization itself can play a part in assisting devel-
oping countries to reduce the amount and level of poverty within their territories,
though at present this was recognized to be an exception to the more usual negative
trend.[14] What is very clear, however, is that in the globalizing society, successful
implementation of sustainable development will require 'the creation of new levels
of cooperation among States, key sectors of societies and peoples'.[15] Specifically,
much will depend upon the nature and extent of the pressures exerted by forces
beyond the boundaries of a State's jurisdiction. As the 1997 Programme for the
Further Implementation of Agenda 21 noted, '[a]s a result of globalization, external
factors have become critical in determining the success or failure of developing
countries in their national efforts'.[16] This issue of the relationship between the State
and external factors is one that this article will return to later; the key point at
this stage to note is that whilst the relationship between globalization and sus-
tainable development may be difficult (with particular reference to the present
uneven nature of the global distribution of the benefits of globalization), it should
not be presumed that they are mutually exclusive.

The third – and final – piece of rhetoric that must be rejected is that whilst

globalization is concerned with ensuring open markets, a central feature of sustainable development is the protection of domestic markets, especially in developing countries. Many developing countries remain concerned that the present international trading system is weighed against them; that whilst access to many of their markets is subject to low tariffs and strict world trade rules, the markets of developed States remain disproportionately outside the remit of the rules of the World Trade Organization.[17] Sustainable development, on the other hand, as the successor in many ways to the New International Economic Order[18] is seen as promoting a more equitable global system, where trade preferences and differential treatment are an intrinsic feature of sovereign equality.[19] This is a key tension within the globalization/sustainability debate, but it is wrong, I would suggest, to argue that sustainable development requires – potentially even necessitates – *a priori* protectionism. It is undoubtedly the case that many developing States require greater external assistance to move away from the cycle of abject poverty and environmental degradation that they find themselves in. Further changes to the world trade regime which recognize that it is self-defeating to expect countries such as Burkina Faso to live up to the same standards as set for countries of the OECD would be one aspect of such assistance. But it is wrong to claim that 'true' sustainable development is only possible through a rejection of the principle of free trade. As the 1992 Rio Declaration correctly emphasizes, what is required is 'a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation'.[20] Economic protectionism can never ultimately be environmentally sustainable as it is premised upon an inefficient use of resources; *viz.*, a use of resources that stifles diversification, promotes perverse incentives and perpetuates irrational decision-making. Such an approach is also unsustainable in broader socio-economic terms, as wealth-generation – essential to poverty reduction – is similarly restricted.[21] And contrary to more radical positions, development that is based largely on subsistence livelihoods is not sustainable as it downgrades human welfare in favour of perceived environmental preservation.[22] Moreover, as has already been noted, for change to the global system to be politically realistic it will usually have to be incremental and modest, rather than being based on the pretence that one can start with a blank ideological canvas on which radical idealism can be wrought. International trade is a transnational reality, and those seeking to promote sustainable development must seek to operate within it. However, the aim should now no longer simply be the maintenance of the *status quo ante*, but rather the need to work towards a trading system that represents a fairer balance between developed and developing States.

Sustainable Development and Globalization: The Functional State

It is generally accepted that the present situation, in terms of environmental degradation and the social-economic situation of the majority of the world's pop-

ulation, is not positive; 'the overall trends with respect to sustainable development are worse today than they were in 1992 . . . the implementation of Agenda 21 in a comprehensive manner remains vitally important and is more urgent now than ever'.[23] Such a negative outlook might lead us to one of two conclusions. Either one can argue that sustainable development is a relatively meaningless concept (that the reason that it has had little or no effect is because it is devoid of conceptual and political substance)[24] or one can argue that whilst the notion of sustainable development is in itself conceptually justifiable, there has been a distinct lack of political will amongst those most able to promote its elaboration. Both are potentially valid arguments, and I think each contains a certain amount of truth. I would want to suggest, however, that the reality is much more complex. The remainder of this article will focus on two factors that will prove pivotal if sustainable development and globalization are, in any way, to be reconciled, *viz.*, the continuing relevance of the nation State, and the important subsidiary role of international organizations.[25]

The nation State is changing; it is losing its inherent superiority amongst global entities and becoming just another actor on the international stage, or so the argument goes. For many, the breakdown of artificial notions of sovereignty and the creation of new associations and networks – governmental, corporate and private – are a sign of significant and real developments in international relations.[26] It signifies the end of the centralization of political, socio-economic and, in some cases, military power by governments and the dispersion more widely of this authority. Others see the changing nature of the State as a positive step towards the creation of a global civil society, where the individual as the ultimate unit of law is more likely to find active expression and, equally important, protection.[27] Concurrently, the rejection of a *Westphalian* concept of sovereignty and the consequent impact that this has on the legitimacy of public authority inevitably promotes greater opportunities for those who would seek to take advantage of the perceived fading of the State. Whether it is the increase in the fragmentation of traditional States along ethnic lines, the rise of multinational corporations or the emergence of 'supranational' networks such as the European Union and NAFTA, the collapse of self-confidence in the power of the State to provide genuine solutions to the wants and desires of its population is a prominent factor.[28] Moreover, the diminution of national boundaries and the rise of an encroaching global market mean that States cannot now rely upon simplistic and artificial notions of sovereignty to prevent unwanted external interference. From the outside, the actions of States are increasingly subject to international supervision and censure (whether initiated by States, often at the behest of corporate interests[29] or directly by multinational corporations[30]). And within States themselves, the fundamental message of global capitalism has been internalized, with States recognizing the need to maintain their international competitiveness, sometimes at any cost.[31]

This analysis, however, is misguided if it leads one to assume – or expect –

that the State has become, or soon will be, redundant. The State remains an important cornerstone of international affairs, simply because, even with the significant changes that are taking place, it remains the most complete nexus of relationships that continues to exist within the international order. Whether it be for reasons of culture, patriotism, socio-economic welfare, the need for legal certainty[32] or simply subconscious allegiance (in fact, probably a seamless combination of all of the above) the State continues to be recognized as a vital institution possessing both important symbolism and real authority. And if this is the case, this leads us on to ask what role the State can and should still play in international affairs, particularly for the purposes of this article, reconciling globalization and sustainable development? This, in turn, requires recognition of the changing nature of sovereignty; sovereignty shaped in terms of the functions that a State should legitimately pursue, rather than simply based on a legal fiction. A sovereignty derived and legitimized not through abstract juridical principle, but constituted with reference to a new normative framework[33] and perceived as valid only when utilized to accomplish certain objectives deemed to be for the public good.[34] An important part of this process of change is the need for States to reflect upon, *inter alia*, their place in the global system, the necessity of appropriate, yet active, relations with non-governmental and corporate actors, and the imperative of promoting human welfare. By asking such questions and finding creative answers thereto, States can maintain their prominence within the international order. Sovereignty should not be viewed as a static notion, but rather as a flexible tool through which States can more effectively act – whether unilaterally, regionally or multilaterally – in an increasingly interdependent global society.[35]

For many developed States a key challenge is how to achieve sustainable development without a return to centralized planning, an anathema to most States with developed market economies.[36] Such States have internalized the message of globalization (indeed, have embraced and exported it to developing States) and, as a consequence, seek to implement sustainability through a restricted public-sphere paradigm which places great emphasis on the corporate imperative. Namely, the belief that the reach of the State must not extend beyond that which is absolutely necessary, so as to prevent the State itself jeopardizing the competitiveness of domiciled corporate interests in the wider globalized economy. Of course, it is undoubtedly the case that globalization has produced many societal benefits, many of which either are, or can be made, sustainable. However, what is more debatable is whether an inherent distrust of public policy on issues of common concern, such as environmental degradation and socio-economic deprivation, which characterizes much of the anti-globalization discourse, is equally sound, both politically and in terms of ensuring respect for broader notions of fairness and equity.[37] The role of the State in the process of sustainable development is therefore both controversial and absolutely central to this debate. There is a balance to be drawn somewhere between overly prescriptive regulation, on the one hand, and the withdrawal of the State from the debate all together, on the other. It is certain

that the market, left on its own without appropriate institutional direction, can neither sufficiently achieve public goals (such as poverty eradication and environmental conservation), nor meet wider societal objectives (such as sustainability and intergenerational equity – key aspects of sustainable development). But nor can the State hope to be able to prescribe a sustainable future through general edict and regulation. As noted above, sustainable development raises fundamental questions about the public/private – public/corporate – divide, and requires a much more collaborative approach if the benefits of both globalization and sustainable development are to be attained. Nevertheless, the continued existence (even pre-eminence) of a pro-active State is essential, particularly if the intergenerational and intragenerational aspects of sustainability are to be respected. As Stern notes generally about the role of the State within a globalizing world, not only can a State play the part of arbitrator between market and society, '[o]nly a State can correct the negative consequences of globalization for the community of individuals living on its territory . . . [and] ensure a minimum of social sharing of wealth and national solidarity'.[38]

International Organizations: International Governance and Globalization

Whilst the role of States is vital in reconciling globalization and sustainable development, what is less clear – and something that has not been as readily discussed – is the role of international organizations within this process. How should we consider international organizations?[39] Are they the agents of globalization, through which individual national regulatory schemes are transformed into a harmonized global approach? Many would look at such texts as the Sanitary and Phytosanitary Agreement and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) – both concluded within the World Trade Organization (WTO) – as examples of this multilateral harmonization.[40] Alternatively, some international organizations may be seen not as agents of globalization and change, but rather as a further level of bureaucracy and State control. It is not the nation State itself which is the impediment to globalization, but regulation *per se*, whatever its guise. Whether it is national or international regulation, the *effect* is to impede – rather than facilitate – globalization and economic growth. US industries' dislike of the 1997 Kyoto Climate Change Protocol and the 2000 Cartagena Biosafety Protocol fall, for example, within this category. The perceived bureaucratic burden imposed by the European Union is another. Of course, an alternative perspective is that global regulation is neither attractive nor heinous, just a necessary aspect of international public governance.[41]

    One of the most important aspects of reconciling sustainable development and globalization is the issue as to how best to ensure that the concept is appropriately incorporated within international and regional organizations and programmes. Whether one views sustainable development in terms of a goal to be achieved or as a process through which the international community must continually

refashion itself, the elaboration of what sustainable development means and how this is to be implemented alongside globalization are of key importance. Whilst some changes have been made to the structures and policies of many bodies,[42] there remains an ambivalence as to what sustainable development means, and what it entails for the bodies concerned. Rather than suggesting a comprehensive picture, I pick out four key areas where change is necessary.

First, international organizations must reflect the will and diversity of their membership. Whether one sees globalization as an inevitable force or not, the nature and extent of its impact is not beyond the control of the international community. The international community must seek to utilize the corporate drive towards globalization in a way that reflects the concerns and interests of States, particularly developing States. The rationale for international organizations is that they provide a forum for common issues to be debated and appropriate solutions hopefully found. Rather, therefore, than arguing whether international organizations promote or hinder globalization, the question should be whether such organizations achieve what their members seek from it. Who is setting the political agenda, and is it an agenda to which most of the international community can subscribe? Sustainable development is about – if it is about anything – ensuring that legitimate human needs are met without sacrificing environmental resources in the process. If one is to believe that States have 'adopted' sustainable development as the way forward, this needs to be reflected in what goes on within international organizations of which they are a part. International organizations must be active, not passive, players in global developments reflecting the interests of their members.

Second, as the international community reflects a diversity of views and socio-economic and political opinions, international organizations are a principal means through which deals are 'brokered', compromises found and action taken. In terms of international governance, therefore, there is no single institutional model that can be shown to facilitate these aims over-and-above any other.[43] Much depends upon the context of the situation. What may be right in some situations will be inappropriate in others. However, whilst efficacy is an important criterion in determining whether a particular international organization should act, there must be an outer limit to such a relativist approach. Though not a particularly helpful term as regards international governance, 'democracy' nevertheless has a crucial part to play in determining appropriate institutional frameworks. The UN General Assembly, for instance, may not be the most effective of organizations, but its emphasis on universalism and one-State-one-vote at least recognizes the continued importance of formal State sovereignty within the international system. What relevance is all of this to sustainable development? A central component of any international approach to sustainable development is the active participation and involvement of all affected States. This requires a careful balance between the imperative of sovereign equality on the one hand, and the need for efficiency in operation, on the other. In particular, formal equality does not mean equity.

Developing States must be given the chance to present their views, have their arguments heard, their suggestions discussed, and – on a substantive level – have their issues addressed. Implementation of sustainable development will require international organizations – above all else – to be able to manage disagreement effectively. The first point made was that international organizations must be active, not passive, in the process of global change, reflecting member States' interests. The second point is supplementary to that; international organizations must be able to both 'absorb' the differences and disagreements between States, and be able to manage them effectively.

The third issue – in the light of the protests in such cities as Seattle against the World Trade Organization, in Washington and Prague against the World Bank and International Monetary Fund, in Quebec against a 'Free Trade for the Americas' and in Genoa against the G-8 – is that there is a growing sense of antagonism between international organizations and the general public. To some extent – without condoning the violence – this is a good thing. International organizations have for too long hidden behind the veil of the sovereignty of their member States; few in the general population or the media knew or cared about what these institutions did. They were seen as simply the conduit through which States carried out their international 'business' – value-neutral and procedural. Now whilst it is important not to ignore the fundamental fact that their effectiveness is largely dependent upon the will of their members, organizations themselves must take some of the responsibility for their own failure to recognize and react to the growing concern about their lack of transparency and the generally secretive way that they operate. In addition, the apparent reticence of, particularly, the international economic institutions to engage in the sustainability debate and integrate social and environmental issues within their work appeared to highlight still further their distance from particular political agendas.[44] Attempts by international organizations to defend themselves through cries of 'no legal mandate', *ultra vires* and 'lack of resources' were never likely to halt the wave of opinion against them. Third, therefore, international organizations must find ways to be more open, to appreciate the importance of – at least listening – to non-State actors, and to be more responsive – as far as their sovereign constituencies will allow them – to the concerns of such people and non-governmental organizations.

The fourth point is the need for greater synergies between international organizations.[45] Ever since the emergence of the United Nations system, there has been a trend towards the increased fragmentation and simplification of international law into subject-specific fields. The *de facto* separation of the Bretton Woods system from the rest of the United Nations system is an obvious example.[46] Of course, such fragmentation has generally proven to be beneficial in the development of international law, with the emergence of an international civil service both knowledgeable in the general workings of the international community and specialized in particular areas of international law and policy. And through this, the international legal system has become both more efficient and ultimately

more comprehensive. However, a negative aspect of this development has been the general lack of integration between subject areas; not only in terms of the substantive content of international law, but also, just as importantly, between the personnel who make up the international system. This lack of integration is particularly evident between economic policy and non-economic policy objectives, where the international system has not been conducive to the cross-fertilization of ideas, or personnel. Sustainable development, on the other hand, demands much greater integration in policy-making and implementation. Principle 4 of the 1992 Rio Declaration states that '[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it'.[47] This general principle is not restricted in context and applies as much to international institutions and programmes as it does to national and local situations. Moreover, its effect is two-fold. First, it requires individual organizations to ensure that what they are doing is compatible with sustainable development (so, for example, the World Bank must be able to justify its approach internally). But secondly, Principle 4 does not talk about integration in terms of individual organizations but in terms of the 'development process' – a 'process' that involves a myriad of institutions and programmes. There is, in addition, an implied responsibility on institutions collectively to try to manage their affairs so that the international effort towards sustainable development is not undermined.

Moving Forward: The Continued Relevance of Public Governance

The aim of this article has been to examine some of the points of contact between what superficially appear to be two very different paradigms, *viz.*, globalization and sustainable development. In particular, it was the purpose of this article to reject the often espoused rhetoric that globalization is an inevitable progression for international society, without recognizing that sustainability must also be seen as an integral part of this global movement. Of course, the integration of these two ideals will rarely be an easy task; however, it is an essential one if international society is to achieve both greater interdependence amongst its component parts and a more equitable and sustainable global order. Whilst the nation State may be undergoing a transformation in its nature and form, with the consequent implications that that has for international public governance, it would be wrong to diminish the role of the State and, by implication, international organizations in reconciling the various tensions inherent within the globalizing society.[48] And whilst at a particular level of idealism one cannot but agree with Phillip Allott in the virtue of creating an international legal system 'for disaggregating the common interest of all humanity, rather than a system merely for aggregating the self-determined interests of so-called States',[49] in an ever-changing world, it would be unwise and short-sighted to fail to recognize – and consequently devalue – the core of certainty that nation States and international organizations repre-

sent. In the attempts to codify and progressively develop the present state and future direction of international law in the field of sustainable development, it is imperative that the international community continues to uphold public governance as being of pivotal importance in the attainment of balanced and global sustainable development. Without this, the globalizing society faces a much more uncertain, insecure and inequitable future.

Notes

1. See http://news.bbc.co.uk/hi/english/static/events/reith_99/ for the full text of Professor Giddens' 1999 BBC Reith lectures.
2. T. Athanasiou (1996), *Slow Reckoning: The Ecology of a Divided Planet* (pp. 220–221), London: Secker & Warburg: 'Today's future is marked by brutal globalism and disoriented localism, by high technology and dismal village poverty, by planetary TV, computerized back-office sweatshops, and frustrated, furious youth. It is a transnational future of nationalist backlash, in which twentieth-century institutions and twenty-first-century technology combine to yield an almost nineteenth-century capitalism'.
3. See D. Held *et al.* (1991), *Global Transformations*, Cambridge: Polity. 1: 'globalization is in danger of becoming, if it has not already become, the cliché of our times: the big idea which encompasses everything from global financial markets to the Internet but which delivers little substantive insight into the contemporary human condition'.
4. *Ibid.*: 'Clichés, nevertheless, often capture elements of the lived experience of an epoch'.
5. *Report of the Sixty-Ninth Conference of the International Law Association (ILA)* (2000), (held in London 2000) (pp. 655–656), London: ILA.
6. *Ibid.*, 656.
7. B. Stern (2000), 'How to Regulate Globalization' in M. Byers (ed.), *The Role of Law in International Politics: Essays in International Relations and International Law* (p. 249), Oxford: Oxford University Press: 'the MAI would allow total liberalization, not only for international trade which transcends the State's frontiers by itself, but also for investment and therefore production, an activity rooted within the State's territory. This, then, ultimately constitutes an attack against the State's territorial sovereignty, and for this reason has met with very negative reactions from the majority of European countries, and even greater majority of developing countries'.
8. Such externalities arguably include the exploitation of cheap labour in many developing States and a perceived 'race to the bottom' as multinational corporations seek to locate in territories with lower environmental safeguards. Other externalities, such as the rise in pollution through increased trans-frontier movement of persons and goods, are also considered to be consequences of the globalizing society.
9. UN Doc. A/RES/S-19/2 Annex (1997) paragraph 7.
10. This reference to a 'public/private' dichotomy is distinct from the traditional division often rejected in feminist jurisprudence. In that instance, 'private' refers primarily to the domestic sphere. This is not to say that a feminist perspective cannot assist in our understanding of international society's response to globalization and sustainable development. As Charlesworth and Chinkin note, 'the boundary [between the public and private spheres] is constantly shifting in response to economic and social developments such as national 'privatization' policies and globalization' (H. Charlesworth and C. Chinkin (2000), *The Boundaries of International Law: A Feminist Analysis* (p. 30), Manchester: Manchester University Press.
11. Martti Koskenniemi (1994), 'The Wonderful Artificiality of States' in *The Transformation of*

Sovereignty (p. 25), American Society of International Law Proceedings: 'The neo-right critique of the social welfare state is increasingly prominent in Europe and elsewhere. Voices stress the function of the market in creating acceptable conditions for social life. For them, states and state organization create artificial boundaries that hamper the creation of efficient financial and commodity markets. According to these critics, a workable system of production and distribution of economic values can be attained only by doing away with state bureaucracies' (footnotes omitted).

12. Including that which cannot represent itself, *viz.*, natural resources and future generations.

13. As compared with the violence that has characterized many recent anti-globalization protests at international conferences and meetings of world leaders.

14. *Supra*, n. 9 paragraph 8: 'Although economic growth – reinforced by globalization – has allowed some countries to reduce the proportion of people in poverty, for others marginalization has increased'.

15. 1992 Rio Declaration on Environment and Development, preamble.

16. *Supra*, n. 9 paragraph 25.

17. A. Cassese (2001), *International Law* (p. 410), Oxford: Oxford University Press: 'some specific standards prove of little benefit or even disadvantageous to emergent countries. Thus, for instance, the Agreement on Subsidies and Countervailing Measures prohibit subsidies normally used by developing countries, whereas they exempt from the prohibition *agricultural subsidies* used by developed States' (author's italics).

18. For reference purposes, see the 1974 Declaration on the Establishment of the New International Economic Order (UNGA Doc. A/RES/3201 (S-VI) (1974)) and the 1974 Charter on Economic Rights and Duties of States (CERDS) (UNGA Res. 3281 (XXIX) (1974)).

19. 1986 ILA Seoul Declaration on the Progressive Development of Principles of Public International Law Relating to a New International Economic Order: '[w]ithout ensuring the principle of equity there is no true equality of nations and states in the world community consisting of countries of different levels of development' (*Report of the Sixty-Second Conference* (held in Seoul, South Korea 1986) (1987), London: ILA, paragraph 3.1. See also the Committee Report: 409–487).

20. Principle 12 Rio Declaration.

21. Moreover, as the following quotation highlights, whilst trade is obviously not value-neutral in terms of the generation of negative externalities (on which, see n. 8), it is not necessarily international trade *per se* that is the major reason for unsustainability within a society: 'trade may give the appearance of being the fundamental cause of environmental degradation, but the actual role of trade is generally one of reinforcing the lack of appropriate market signals, effective policies and institutional mechanisms that are the true underlying causes of many environmental problems' (D. Pearce and E. Barbier (2000), *Blueprint for a Sustainable Society* (p. 138), London: Earthscan. This reasoning applies equally, of course, to many of the social problems confronting such countries.

22. Similar tensions between preservation and sustainable utilization can be seen in the debates within the Convention on International Trade in Endangered Species (CITES) as regards the protection of the African elephant.

23. *Supra*, n. 9 paragraph 4.

24. Cf. See W. Beckerman (1994), '"Sustainable Development": Is it a Useful Concept?' 3 *Environmental Values* 205: '"sustainability" should be interpreted as a technical characteristic of any project, programme or development path, not as implying any moral injunction or over-riding criterion of choice'.

25. *Supra*, n. 9 paragraph 22: 'While it is the primary responsibility of national Governments to achieve the economic, social and environmental objectives of Agenda 21, it is essential that international cooperation be reactivated and intensified'.

26. Cf. A. Slaughter, 'International Law in a World of Liberal States' (1995) 6 *European Journal of International Law* 538: 'The world of liberal States . . . is a world of individual self-regulation facilitated by States; of transnational regulation enacted and implemented by disaggregated political institutions – courts, legislatures, executives and administrative agencies – enmeshed in transnational society and interacting in multiple configurations across borders; of double-edged diplomacy and inter-governmental agreements vertically enforced through domestic courts. Such a world is neither a utopia nor a panacea'.

27. International Criminal Tribunal For The Former Yugoslavia: Decision in *Prosecutor v. Dusko Tadić* (Establishment of The International Tribunal) 35 ILM 32 (1996): 'the impetuous development and propagation in the international community of human rights doctrines, particularly after the adoption of the Universal Declaration of Human Rights in 1948, has brought about significant changes in international law, notably in the approach to problems besetting the world community. A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach'.

28. There is, of course, the danger that governments-qua-States will often use the pretence of globalization to justify unpopular policies, such as the refusal to adopt higher domestic environmental and labour standards or the decision not to increase investment in social welfare provision. Nevertheless, the fact that administrations are prepared to use such arguments highlights once again the ubiquitous nature of globalization.

29. In the original WTO panel decision between the United States *et al.* and the European Communities relating to the latter's allegedly discriminatory practices as regards the importation, sale and distribution of bananas, the EC unsuccessfully argued that 'interest of companies, such as Chiquita and Dole Foods, was not the same as a legal interest of the United States in bringing a case under the GATT' (WT/DS27/R/USA (22 May 1997) paragraph 11.22).

30. Sands, P. and Klein, P. (2001), *Bowett's Law of International Institutions,* 5th edn (p. 369), London: Sweet and Maxwell: 'The essential aim of ICSID [International Centre for the Settlement of Investment Disputes] is to foster private foreign investment by providing a mechanism for settlement of investment disputes, but without elevating such disputes to an inter-state confrontation. This necessarily means that the private investor is directly a party to the dispute with a state, litigating on the international plane'.

31. D. Korten (1992), 'Sustainable Development: A Review Essay' 9 *World Policy Journal* 173 (as quoted by O. Schachter (1997), 'The Decline of the Nation-State and Its Implications for International Law' 36 *Columbia Journal of Transnational Law* 9): 'Often governments must borrow to finance the social and physical infrastructure needed to attract private investors. Having pushed the almost entire social and environmental costs of production onto the community, many firms are able to turn a handsome profit. Having bargained away their tax base and accepted low wages for their labour, many communities reap relatively few benefits from the foreign investment, however, and are left with no evident way to repay the loans contracted on the firms' behalf'.

32. Schachter (1997), 'The Decline of the Nation-State' 23: 'the juridical state, with its territorial base, [is] a necessary structure of authority, capable of affording protection to all its people on the basis of equity and justice. I do not believe that its reduced autonomy portends its demise'.

33. The protection of human rights being a central component of this new normative framework. As the tribunal in the *Tadić* case (*supra* n. 27) noted when discussing why certain rules of humanitarian law traditionally applicable only to international conflict should also apply to rules of internal armed conflict: '[i]f international law, while of course duly safeguarding the legitimate interests of States, *must gradually turn to the protection of human beings*, it is only natural that the aforementioned dichotomy should gradually lose its weight' (italics added).

34. The nature and extent of these objectives remain, of course, the key battleground as regards how far the traditional functions of the State should be diminished in the face of liberalization and deregulation.

35. Many developing States remain, at best, ambivalent as to the changing nature of sovereignty within international affairs. The notion of sovereignty, as traditionally constituted, provided an important legal principle during the development of the New International Economic Order. As the ILA Seoul Declaration (*supra* n. 19) states very clearly, 'Permanent sovereignty, which emanates from the principle of self-determination, is inalienable. A State may, however, accept obligations with regard to the exercise of such sovereignty, by treaty or by contract, *freely entered into*' (paragraph 5.2) (italics added).

36. Of equal – if not greater – concern, of course, is how developing States and particularly the least developed are to promote sustainable development without an infrastructure as elaborate as that available in developed States.

37. Indeed, it can be strongly argued that ultimately an approach to globalization and market liberalization that is premised on a minimalist State is not efficient either, if one accepts the view that the market is unable by itself to internalize the cost of externalities, as such externalities will inevitably damage the very market that failed to recognize the societal – and thus market – relevance of such externalities.

38. Stern, 'How to Regulate Globalization', *supra* note 7, 267.

39. The term 'international organizations' is used loosely to also include what Churchill and Ulfstein call 'autonomous institutional arrangements' (see R. Churchill and G. Ulfstein (2000), 'Autonomous Institutional Arrangements in Multilateral Agreements: A Little-Noticed Phenomenon in International Law' 94 *American Journal of International Law* 623–659).

40. Of course, individual national action often remains permissible, but must be justified in international forums, rather than being accepted as an intrinsic aspect of State sovereignty. An often-used example within international economic law is Article XX of the GATT, which permits unilateral action in a number of specific areas so long as 'such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade'.

41. Schachter (1997), 'The Decline of the Nation-State' 10: 'Global capitalism and more integrated investment and trade may bypass state control, but they require international "public goods" that go beyond the province of the nation-state . . . International markets require regimes for telecommunication and transportation, rules and procedures for financial stability and performance of contractual obligations, industrial and product standards, environmental protection rules, and much more'.

42. The United Nations, European Union and the World Bank are amongst those organizations that have tried to integrate sustainable development both within their structures and in terms of policy development.

43. The international community has long struggled with questions of structure and form, and today one can still see the various models that international governance may take. These include the universalism of the UN General Assembly, the trusteeship of the UN Security Council, the multilateralism of the international environmental Conference of the Parties, the technocratic specialization of the *Codex Alimentarius* Commission on food safety, the weighted voting system used by the World Bank and others, the symbolic impartiality of the International Court of Justice, and so we could go on. This is evidence – if any was needed – that one size has not fitted all. State sovereignty jostles with technocratic rationality and the existence of a quasi-homogenous international civil service in a system that is institutionally diverse and conceptually inconsistent. And it is in this system that sustainable development must find expression.

44. The World Bank is hoping that recent attempts to more fully integrate environmental, social and developmental issues within its policies may assuage some of its critics. However, such

criticism – particularly the more vociferous anti-globalization criticism – often relates as much to the existence of the World Bank as it is does to any particular policies.

45. Some of the ideas in this paragraph first appeared in D. French (2000), '"The Changing Nature of Environmental Protection": Recent Developments regarding Trade and the Environment in the European Union and the World Trade Organization' XLVII *Netherlands International Law Review* 1–26.

46. The 'Bretton Woods' group were to be the three main international financial institutions established after the Second World War, *viz.*, the World Bank (formally the International Bank for Reconstruction and Development), the International Monetary Fund and the International Trade Organization. Only the first two were ever established. The International Trade Organization never came into being – with the General Agreement on Tariffs and Trade [GATT 1947] only ever being applied provisionally. However, since the entry into force of the 1994 Uruguay Round, the World Trade Organization now provides the revised GATT and its related instruments with an institutional structure as was originally envisaged in 1944.

47. See also Article 6 EC Treaty (as amended): 'Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities . . . in particular with a view to promoting sustainable development'.

48. United Nations Development Programme (1999), *1999 Human Development Report* (p. 12), New York: Oxford University Press: 'An essential aspect of global governance, as of national governance, is responsibility to people – to equity, to justice, to enlarging the choices of all'.

49. P. Allott, 'The Concept of International Law' in Byers (ed.), *The Role of Law* (p. 88).