

Carbon Conundrum: The Dichotomy between Energy Security and Climate Change

by

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LL.B., University of Nigeria, 2007

B.L., Nigerian Law School, 2008

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Supervisory Committee

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Abstract

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This paper is a law thesis that is based on a combined theoretical framework of Green Legal Theory (GLT) and Theories of International Regimes (TIR). GLT has a broad conception of ‘law’. It is based on the argument that ‘laws’ exist at different levels and in different forms, and that ‘legal laws’ are themselves manifestations of regulatory dynamics that are embedded in institutions and processes; and cultural logics that generate and support those laws. TIR examines the negotiation, development, formation, and sustenance of international regimes. The paper is a critical analysis of, especially, the combined effects of capitalist laws and the liberal democratic system of state-based governance. This allows me to highlight the underlying factors/dynamics that are responsible for the continuing inability to address climate change because of the mandated pursuit of energy security (i.e. the regulatory imperative). The analysis revolves around four key global actors, which are the multinational corporations (MNCs), the state, civil society (Non-governmental Organizations), and global institutions. First, I discuss the growing economic and political powers of MNCs in a liberalized and deregulated system, and establish the need for a better regulatory system. Second, I criticize the territorial sovereignty principle and deconstruct the contemporary system of national governance, while highlighting the need to relax the Westphalian system for global constitutionalism. Third, I analyze two approaches to globalization, and make a case against ‘globalization from above’ while arguing for ‘globalization from below’. I also highlighted the crucial role non-governmental organizations have begun to play in global governance. Fourth, I make a critical analysis of inter-state relations in global institutions to show the underlying factors that have compromised the level of cooperation needed to address the conundrum. Finally, based on all of the issues that I analyze in the paper, I propose some foundational principles, and a specific strategy, that

would help to propel the needed re-form in global governance, to help to restore its ability to address global problems.

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Dedication

To my grandmother Late Madam Paulina Ulasi

Mama, the thought that I could not attend your burial ceremony breaks my heart. I am consoled by the fact that you would have supported my decision.
Rest in Peace.

Chapter 1: Introduction

The world is beset with a conundrum—the need to reduce climate change and at the same time maintain energy security. To environmental lawyers, this conundrum is pursued as a regulatory challenge to pass suitable laws at the national and international levels, to combat climate change and wean the economies from carbon fuels. This is what I call the ‘carbon conundrum’ as pursuing one goal seems to entail compromising the other. To address this conundrum and underlying dynamics that bound possible outcomes challenges our conception of the potential of ‘legal’ law and the broader nature of ‘law’. Ever since the 1973 oil embargo,¹ energy security has been a global concern.² Energy security has become an everyday concept in our present world. Given the concerns over

¹ The term ‘energy security’ was coined after the 1973 oil embargo, which marked the beginning of anxiety over the price and supply of petroleum products. Before the oil shock, issues of energy security came up during the Second World War, when there was a shortfall in supply of fuels to the military. During the Second World War, the British Navy had switched their primary source of energy from coal, which was produced domestically, to oil imported from the Middle East. T. Mitchell, ‘Carbon Democracy’, *Economy and Society*, 38 (2009), 399–432. The vulnerability of the system was revealed when enemy forces attacked their transportation lines, oil fields, and refineries. The importance of oil increased after the war as it became the central foundation for re-industrialization. The oil shock was an eye-opener to the world. It revealed how oil can be used as a political weapon to bring the economies of target states to a virtual standstill. The first oil embargo was in 1967, but it did not make any significant impact because the Arab members of oil producing nations did not agree on their target states. But the 1973 embargo was effective due to better organization. It had a significant impact on the economies of the United States (US), Europe and most other industrialized nations. The embargo arose when Egypt and Syria, with the support of other Arab nations attacked Israel, but the latter received support from the US and some European nations. Aleh Cherp and Jessica Jewell, ‘The Three Perspectives on Energy Security: Intellectual History, Disciplinary Roots and the Potential for Integration’, *Current Opinion in Environmental Sustainability*, 3 (2011), p.202-203; *The Oxford Encyclopedia of the Modern World* (Oxford; New York: Oxford University Press, 2008). W. L. Kohl, ‘OPEC Behavior, 1998–2001’, *The Quarterly Review of Economics and Finance*, 42 (2002), p.4

² Daniel Yergin defines energy security as “the availability of sufficient supplies at affordable prices.” He also noted that the definition of energy security is relative, and depends on state resources, energy policies, and whether they import or export primary energy. He affirmed that “different countries interpret what the concept means for them differently. Energy-exporting countries focus on maintaining the "security of demand" for their exports, which after all generate the over-whelming share of their government revenues. For Russia, the aim is to reassert state control over "strategic resources" and gain primacy over the main pipelines and market channels through which it ships its hydrocarbons to international markets. The concern for developing countries is how changes in energy prices affect their balance of payments. For China and India, energy security now lies in their ability to rapidly adjust to their new dependence on global markets, which represents a major shift away from their former commitments to self sufficiency. For Japan, it means offsetting its stark scarcity of domestic resources through diversification, trade, and investment. In Europe, the major debate centers on how to manage dependence on imported natural gas-and in most countries, aside from France and Finland, whether to build new nuclear power plants and perhaps to return to (clean) coal. And the United States must face the uncomfortable fact that its goal of "energy independence" a phrase that has become a mantra since it was first articulated by Richard Nixon four weeks after the 1973 embargo was put in place is increasingly at odds with reality.” D. Yergin, ‘Ensuring Energy Security’, *Foreign Affairs*, 2006, p.70-71

resource depletion and the impacts of resource development and use continued dependence on fossil fuels as a primary source of energy raises concerns, especially given the likelihood of increases in price and/or shortfalls in supply, and the effects that these would have on the economy. Energy security refers to the need to maintain an optimum supply of primary energy resources to sustain the economy of a nation. Fossil fuels are the driving force of every modern state, and disruption to supply is a serious national security concern given its potentially devastating economic impacts. Fluctuations in the supply and demand of petroleum resources have a tremendous negative impact on the economies of the affected states. Sima Golden noted that:

[T]he oil embargo, which swooped down on the unsuspecting world October 17, has not brought great nations to their knees. Nor have the Arabs hurt their primary target, the United States, as much as their secondary targets in Europe and Japan. But the oil weapon (which looks more like a shotgun than a rifle) has hit its target. For the last five months, the American economy has been swept by worsening inflation and hobbled by slow growth.³

After the devastating effects of the first oil shock, the US and most other petroleum consuming nations engaged in “project independence”, which aims at exploring the use of alternative energy resources to replace the use of fossil fuels.⁴ After the oil shock, although the International Energy Agency (IEA) was established by major oil consuming states to address energy security concerns, the organization was not able to guarantee the needed level of security among the member states. This is due to the fact that 30 years after the initial move to explore alternative sources of energy, another major oil shock occurred from 1998 to 2005 that led to over 300% increase in price of crude oil.⁵ The world is highly dependent on fossil fuels as a primary source of energy.⁶ Over 83% of global primary energy is sourced from fossil fuels.⁷ Nations are dependent on each other for the supply of fossil fuels. Presently, transnational trade in fossil fuels is a *sine qua non* for the sustenance of the world economy. The combined effects of interdependence of

³Soma Golden, ‘Impact of Embargo Lingers On’, *New York Times (1857-Current file)*, 1974, 1

⁴Golden.

⁵James. Hamilton, ‘Causes and Consequences of the Oil Shock of 2007–08’, *Brookings Papers on Economic Activity*, 2009 (2009), p.215.

⁶ Natural gas, coal, and oil are the major energy resources derived from fossils fuels.

⁷May, “Energy Security and Climate Change.”

nations, transnational trade, inter-state competition, and world politics generate unending anxiety over energy insecurity. Insecurity can also be linked to other factors such as natural disasters in exploration zones, political instability in exporting nations, terrorist activities, accidents on international petroleum platforms, and many other causes. Another driving force of energy insecurity is the dwindling state of fossil fuel reserves, particularly crude oil. Most nations are caught between relying on the international market and developing other primary sources of energy to meet national demand. The IEA was the primary regime established to address energy security⁸ issues and to counter the hegemonic control the Organization for Petroleum Exporting Countries (OPEC) exercised over the global oil market. OPEC was originally established to secure favorable prices for the member states⁹ and to check the influence of the dominant states in the global oil market. The conflicting objectives of these institutions reduce the chances of possible collaborative efforts to address the issue of global energy security.¹⁰

Climate change is a global problem.¹¹ It is manifested in the form of severe natural disasters such as extreme temperatures, floods, storms, and drought. In the recent past,

⁸ The primary aims of the organization are: 1) to maintain and improve systems for coping with oil supply disruptions; 2) to promote rational energy policies in a global context through co-operative relations with nonmember countries, industry and international organizations; 3) to operate a permanent information system on the international oil market; 4) to improve the world's energy supply and demand structure by developing alternative energy sources and increasing the efficiency of energy use; 5) to assist in the integration of environmental and energy policies R. Scott and C. S. Bamberger, *The History of the International Energy Agency, 1974-2004: IEA, the First 30 Years. Vol. 4* (Organization for Economic, 2004).

⁹ OPEC has been largely successful in regulating the daily production of its members so as to enhance their economic and political clout in global politics. This became abundantly clear in 1973. A. Florini and B. K. Sovacool, 'Who Governs Energy? The Challenges Facing Global Energy Governance', *Energy Policy*, 37 (2009), 5242

¹⁰ OPEC's mandate is not focused on ensuring energy security. A.F. Alhaji and David Huettner compared OPEC with other commodity cartels. They noted that the organization (1) shares the market among its members based on a quota system, (2) maintained a monitoring system to prevent any form of violation, (3) established a punishment system for potential violators and cheaters, (4) ensured that the organization's apparatus and not its members provide the enforcement, (5) maintained both cash and buffer stocks to regulate and support prices, to prevent substitution or market erosion from the cartel. OPEC directly challenges the hegemony of dominant capitalist states. A. F. Alhaji and D. Huettner, 'OPEC and Other Commodity Cartels: a Comparison', *Energy Policy*, 28 (2000), p.1153-1155

¹¹ It is a trite statement that climate change due to anthropogenic activities is a global problem. Climate can be described as "the average weather in terms of the mean and its variability over a certain time-span and a certain area", while climate change is referred to as "statistically significant variations of the mean state of the climate or its variability, typically persisting for decades or longer" WGI IPCC, 'Climate Change 2001: The Scientific Basis', *Contribution of Working Group I to the Third Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge Univ. Press, Cambridge, 2001), .p.1

climate changes have made a significant impact across the globe. In Africa, records from the World Food Programme (WFP) on the recent Kenyan drought noted that approximately 3.5 million people were affected by the disaster.¹² In Europe, new temperature records were established in Britain on 2nd October 2011, where a high temperature record of 24.4 degrees centigrade established in October 1959 at Jersey was broken with an increment of about 2.5 degrees. The British Broadcasting Corporation (BBC) also reported that Wales had a new national record of 28.2 degrees centigrade.¹³ In North America, Hurricane Sandy which engulfed part of the northeastern coast of the United States (US) in October 2012 is believed to be the deadliest hurricane in the area in 40 years and the second most destructive in US history. An estimate of 72 deaths was linked directly to the disaster; while an average of 87 other deaths were indirectly tied to the hurricane. The damage caused by the hurricane was estimated to about \$50 billion (US).¹⁴ Similar deadly disasters have occurred in Asia, South America, and other parts of the world.¹⁵ The World Health Organization (WHO) released figures to show that an average of 150,000 lives is lost each year due to the effects of climate change, including disasters such as hurricane Sandy. It has been projected that there would be an average increase in the number of people displaced as a result of coastal storms, from the present 75 million to 200 million people by 2080.¹⁶ All of these changes and the carefully collected scientific evidence confirm beyond reasonable doubt that the globe is getting

¹² The Kenyan disaster created the world's largest refugee camp. Approximately 447,000 refugees were camped in north-western Kenya, in Kakuma there are 79,000 refugees in addition to approximately 368,000 refugees in Dadaab. 'Kenya | WFP | United Nations World Food Programme - Fighting Hunger Worldwide' <<http://www.wfp.org/countries/Kenya/Overview>> [accessed 24 October 2011]; 'Africa Drought Pushes Kenya and Somalia into Pre-famine Conditions', *the Guardian*, 28 June 2011, section Environment <<http://www.guardian.co.uk/environment/2011/jun/28/africa-drought-kenya-somalia-famine>> [accessed 7 January 2012].

¹³ 'New Temperature Record for Island', *BBC*, 2 October 2011, section Jersey <<http://www.bbc.co.uk/news/world-europe-jersey-15144435>> [accessed 24 October 2011].

¹⁴ 'Hurricane Sandy Was the Second-costliest Hurricane in US', *Staten Island Advance - SILive.com* <http://www.silive.com/news/index.ssf/2013/02/hurricane_sandy_was_the_second.html> [accessed 14 February 2013].

¹⁵ 'Express.co.uk - Home of the Daily and Sunday Express | World News': 'Death Toll Hits 381 in Bangkok Flood Hell' <<http://www.express.co.uk/posts/view/280558/Death-toll-hits-381-in-Bangkok-flood-hell>> [accessed 31 October 2011].; 'Bangkok Flood Evacuation Widens', *BBC*, 7 November 2011, section Asia <<http://www.bbc.co.uk/news/world-asia-15615876>> [accessed 14 February 2013].; Robin Yapp, 'Brazil Floods: Worst Ever Natural Disaster as Death Toll Rises', *Telegraph.co.uk*, 14 January 2011, section world news <<http://www.telegraph.co.uk/news/worldnews/southamerica/brazil/8259444/Brazil-floods-worst-ever-natural-disaster-as-death-toll-rises.html>> [accessed 15 February 2013].

¹⁶ Patz et al., "Impact of regional climate change on human health."

warmer. Yet, the debate on a feasible agreement to address the global issue of climate change has been raging through the United Nations Framework Convention on Climate Change¹⁷ (UNFCCC) has been unceasing for over two decades since the Convention was agreed to by the international community; meanwhile the global rate of carbon emission is on the increase.¹⁸ Although over 200 states are represented at the UNFCCC, the level of cooperation at the agency is at low ebb. The low level of cooperation can be attributed to the same underlying factor that led to the formation of OPEC and IEA—the dependence on energy, and the need to protect energy security. The UNFCCC is divided between big energy economies (including Southern nations like China, Brazil, and Indonesia), and smaller economies that suffer the effects of the history of Northern development and the anticipated future of the huge economies in the North and South. At the UNFCCC, most nations within the Southern group had an insignificant historic carbon footprint, and as such, they focus on opposing the dominance of the Northern group, while exploring possible options to improve their individual economies. A majority of the states in the North group, who dominate the UNFCCC, had high historic carbon footprints and were not willing to take immediate and drastic steps to reduce their emission levels. States in neither group are making the effort needed to address the global conundrum that confounds the problems of high and growing energy consumption, with the compulsion for economic growth, despite their impacts on the level of carbon emissions

The economy of most modern states is coupled to the amount of energy that is consumed within the territory. The direct connection between the rate of energy consumption and

¹⁷Harro Van Asselt, 'From UN-ity to Diversity? The UNFCCC, the Asia-Pacific Partnership, and the Future of International Law on Climate Change', *The UNFCCC, the Asia-Pacific Partnership, and the Future of International Law on Climate Change (July 1, 2007). Carbon and Climate Law Review*, 1 (2007), 17–28. Jing Huang, 'A Leadership of Twenty (L20) Within the UNFCCC: Establishing a Legitimate and Effective Regime to Improve Our Climate system.(Global Insight)(United Nations Framework Convention on Climate Change)', *Global Governance*, 15 (2009), 435.

¹⁸ Reports show that the rate of global carbon emission has never been reduced except in 2009 which recorded a 1% reduction due to the 2008 financial meltdown, while in 2010 there was a 5% increase in global carbon emission. 'Long-term Trend in Global CO2 Emissions; 2011 Report - PBL Netherlands Environmental Assessment Agency' <<http://www.pbl.nl/en/publications/2011/long-term-trend-in-global-co2-emissions-2011-report>> [accessed 18 January 2013]

economic growth has been long been demonstrated¹⁹ leading to an increase in the rate of carbon released in to the atmosphere.²⁰ The difficulty in addressing the problem of climate change and energy security²¹ is linked to the ideological, systemic, institutional, and structural deficiencies present in contemporary processes of governance at national and global levels. To address the carbon conundrum, this thesis will focus on identifying the root causes of the problem and those factors that militate against the resolution of the conundrum. Through the application of insights from two frameworks—green legal theory (GLT) and Theories of International Regimes (TIR), this will be achieved by analyzing how the dynamic influence of social, economic and political ideologies of a state shapes (i.e. regulates) its possible relations to the environment, other states, and global institutions. My analyses will aim at deconstructing the contemporary liberal economic and political system, to establish the need for major institutional and systemic reforms. All of the analyses that will be covered in this thesis will revolve around four global actors: the state, the Multinational Corporations (MNCs), the civil society,²² and international institutions.²³

1.1 Scope

Considering that the primary focus of this thesis is to examine the structural and systemic deficiencies of the contemporary global order, and how these affect the carbon conundrum chapter two will introduce the concept of *global governance*. In the chapter, the contemporary system of global governance is problematized, while highlighting the influence of capitalist laws to the system. The second section of chapter two is a

¹⁹TsaniStela Z., ‘Energy Consumption and Economic Growth: A Causality Analysis for Greece’, *Energy Economics*, 32 (2010), p.582–590.; Shyamal Paul and Rabindra N. Bhattacharya, ‘Causality Between Energy Consumption and Economic Growth in India: a Note on Conflicting Results’, *Energy Economics*, 26 (2004), 977–983; Chien-Chiang Lee and Chun-Ping Chang, ‘Energy Consumption and Economic Growth in Asian Economies: a More Comprehensive Analysis Using Panel Data’, *Resource and Energy Economics*, 30 (2008), 50–65; John Asafu-Adjaye, ‘The Relationship Between Energy Consumption, Energy Prices and Economic Growth: Time Series Evidence from Asian Developing Countries’, *Energy Economics*, 22 (2000), 615–625. Bernhard May, ‘Energy Security and Climate Change’, *South Asian Survey*, 17 (2010), 19–30.

²⁰ An estimate of 57% of the global total carbon emissions is traced to the use of fossil fuels.

²¹ For brevity purposes, the use of ‘climate change and energy security problems’ will be substituted with ‘the conundrum’ or ‘carbon conundrum’

²² Analyses of the civil society will concentrate on the activities of the Non-governmental organizations (NGOs).

²³ Although some of the key global institutions will be mentioned and discussed in passing, this thesis will focus on the primary regimes that are directly responsible for addressing the twin global problem, such as the UNFCCC, IEA, OPEC, and International Energy Forum (IEF).

discussion of the Green Legal Theory (GLT) and Theories of International Regimes (TIR), which are the theoretical lenses used in the thesis. Chapter three is an analysis of the global capitalist economic system and the crucial role multinational corporations play in the system. It also examines the how multinationals exacerbate the dichotomy between energy security and climate change. Chapter four is an analysis of the state and its system of administration, to show how it contributes to the conundrum. Chapter five focuses on civil society with particular reference to NGOs. Analyses of the present global order were made in terms of ‘globalization from above’ and ‘globalization from below’, while reflecting on the crucial role NGOs play in democratizing and legitimizing the process of global governance. Chapter six traces the historical development of the contemporary global order from an institutional perspective, while identifying the deficiencies of the present global order. It also examines global climate governance, with particular focus on the UNFCCC, to identify those factors which impede the success of the system. Finally, in Chapter 7, I will suggest a possible direction that might help to address the necessary re-forms in an analysis of how the global platform could lead to the resolution of the conundrum.

Chapter 2: Global Governance

2.1 Introduction

What I have called the carbon conundrum can be resolved by an effective approach to global governance. According to James Rosenau, global governance is the "systems of rule at all levels of human activity-from the family to the international organization-in which the pursuit of goals through the exercise of control has transnational repercussions."²⁴ Lawrence Finkelstein defines the phrase as "governing, without sovereign authority, relationships that transcend national frontiers. Global governance is doing internationally what governments do at home."²⁵ James Rosenau's popular definition highlights four key elements of global governance. It (1) exists at multiple levels, (2) entails diverse approaches to regulatory systems, (3) demands an explicit attention to differing goal orientations, and (4) has broad international implications.

The multiple levels of interaction among global actors on an issue-area is one of the key elements of global governance. Global governance involves activities at the local, state, regional, national, supranational, and international levels. This makes the identification of the locus of power difficult. It recognizes the top-bottom and the bottom-top flow of power, authority, and political influence. Michael Barnett and Raymond Duvall argue that "power is the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate."²⁶ They identified difference in forms of power:

Compulsory power refers to relations of interaction that allow one actor to have direct control over another. It operates, for example, when one state threatens another and says, "change your policies, or else."
Institutional power is in effect when actors exercise indirect control over others, such as when states design international institutions in ways that work to their long-term advantage and to the disadvantage of others. *Structural power* concerns the constitution of social capacities and interests of actors in direct relation to one another. One expression of this form of power is the workings of the capitalist world-economy

²⁴James N. Rosenau, 'Governance in the Twenty-First Century', *Global Governance*, 1 (1995).p.13

²⁵Lawrence S. Finkelstein, 'What Is Global Governance', *Global Governance*, 1 (1995),p.369

²⁶Michael N. Barnett and Raymond Duvall, *Power in Global Governance*, Cambridge Studies in International Relations (Cambridge University Press, 2005).p.3

in producing social positions of capital and labor with their respective differential abilities to alter their circumstances and fortunes. *Productive power* is the socially diffuse production of subjectivity in systems of meaning and signification. A particular meaning of development, for instance, orients social activity in particular directions, defines what constitutes legitimate knowledge, and shapes whose knowledge matters.²⁷

Rosenau's second element is a system of regulation. Diverse mechanisms and techniques regulate the behavior of actors and they may be direct or indirect. They can be seen in directives, policies, norms, rules, treaties, and agreements that shape the behavior of individual actors. Myriam Senn noted that:

[A]regulation is not only a product of state activity, but also of civil society, based on the efforts of individuals and private markets actors. In that regard, a basic assumption is that regulation in the traditional sense of state activity is just one form of normative ordering among others. Much more, regulation is understood as a form of governance, whose appearance can vary greatly. Regulation is not discussed as a static set of unmovable rules, but on the contrary as a dynamic one. It evolves both over the course of time and depending on the policy issues at stake as well as technological and societal developments... [T]he process of globalization gives rise to the emergence of different, non-state, private autonomous regulatory regimes characterizing that broadened concept.²⁸

In a regulatory system, an enforcement mechanism and political authority are not always necessary. Francis Snyder identifies international regulations as soft law that he defines as "rules of conduct which, in principle, have no legally binding force but which nevertheless may have practical effects."²⁹ This attention to informal forms of systemic regulation that are now normally included in the more limited conceptions of "law", and that become constitutive of diverse systems of 'governance' fits well with the approach taken by GLT (discussed below).³⁰

²⁷Barnett and Duvall,p.3-4

²⁸Myriam Senn, *Non-State Regulatory Regimes: Understanding Institutional Transformation* (Springer Verlag, 2011).p.5-6

²⁹F. Snyder, 'Soft Law and Institutional Practice in the European Community', *The construction of Europe. Essays in honor of Emile Noel*, 1994,p.198M. M'Gonigle, 'A New Naturalism: Is There a (Radical)'Truth beyond the (Postmodern) Abyss?', *Journal for the Study of Religion, Nature and Culture*, 2007.p.36

³⁰Michael M'Gonigle, 'Liberal Limits of Democracy'.p.6

The third feature is the existence of diverse motivations of actors who converge around specific issue-areas that they intend to address, and they consciously pursue these objectives. The Theories of International Regimes (TIR) categorize the motivation of global actors in international regimes into three schools of thought: structural, functional, and cognitive.³¹

Finally, the identification of their broad international implication means that the action has diverse international effects³² Lawrence Finkelstein wrote:

...governance should be considered to cover the overlapping categories of functions performed internationally, among them: information creation and exchange; formulation and promulgation of principles and promotion of consensual knowledge affecting the general international order, regional orders, particular issues on the international agenda, and efforts to influence the domestic rules and behavior of states; good offices, conciliation, mediation, and compulsory resolution of disputes; regime formation, tending, and execution; adoption of rules, codes, and regulations; allocation of material and program resources; provision of technical assistance and development programs; relief, humanitarian, emergency, and disaster activities; and maintenance of peace and order.³³

Global governance is based on a flexible system of association. Leon Gordenker and Thomas Weiss argue that it involves "efforts to bring more orderly and reliable responses to social and political issues that go beyond capacities of states to address individually. Like the NGO universe, global governance implies an absence of central authority, and the need for collaboration or cooperation among governments and others who seek to encourage common practices and goals in addressing global issues."³⁴

³¹ These schools of thought are well elaborated at the latter part of this chapter.

³²K. Dingwerth and P. Pattberg, 'Global Governance as a Perspective on World Politics', *Global governance: a review of multilateralism and international organizations*, 12 (2006), 185–203.

³³Finkelstein.p.370-371

³⁴L. Gordenker, 'Pluralizing Global Governance: Analytical Approaches and Dimensions', *Third world quarterly*, 16 (1995), p. 357.

The present system of global governance as it applies to the two issues of energy security and climate change, is dominated by a few states and is ineffective in addressing the carbon conundrum that these two issues have generated (discussed below). Numerous international structures that were established after the Second World War enshrine the state as their key actor. Over half a century after the Second World War, coupled with major developments in the social, political, and economic capacity of states no major change has been effected to align global governance to the realities of the present world. The expansion of capitalism, by promoting inter-state competition has worsened an already dysfunctional global order by reducing the chances of achieving uniform agreement on global issues. These factors underlie the carbon conundrum.

2.2 Gaps in Global Governance and the Influence of Capitalism

The Westphalian principle and the dominance of the great powers have been a major challenge to effective international cooperation. Nation-states are pre-occupied with protecting their individual interests because capitalism and power tussle create antagonistic global arena, where states are in intense competition for economic growth. This does not support an effective system of global governance, but results in hegemonic relations, exclusion of important actors, lack of accountability, and legitimacy challenges.

Historically, a few dominant states have imposed their will, laws, norms, values, and culture on other actors. The capitalist economic system, practiced by an ever-increasing number of states, is a tool for promoting the hegemonic interests of the dominant states. The pursuit of economic growth, globalization, and the liberalized economic system exposes the economies of most states to intense global competition. The global market is shaped by international regimes and multinationals which are also instruments of hegemonic control.

Many debates in the international arena have been characterized as divided between the North and the South. The North group comprises wealthy industrialized nations, while the South group is made up of what have been variously characterized as ‘underdeveloped countries’, developing nations, and today as ‘emerging economies’. The

dominant states in the North caucus are the rule-makers, while nations in the South group are the rule-takers. This is evident in the World Bank, International Monetary Fund (IMF), and the United Nation, where the substantive and procedural laws of these organizations serve the interests of the dominant states. The South presses for better representation and inclusion against decision-making processes that have been largely set in unfavorable terms.³⁵ Notwithstanding the contribution and growing significance of civil society, especially global NGOs, it is largely excluded from global governance, inadequately represented and recognized in key international institutions. NGOs are poorly represented in government decision-making especially in particular countries (such as China and Russia, Laos and Nigeria) that practice what might be called ‘authoritarian capitalism.’³⁶ Instead, recent processes of globalization have empowered MNCs. Multinationals control huge capital outlays and employ millions of people. They play an increasingly important role in world economy, Robert Pastor noted that “of the world’s 100 greatest economies, 51 are companies and 49 are countries. One of those companies – General Motors – produced nearly the same amount of goods and services in 1997 as did all of Europe in 1900.”³⁷ Multinationals are neither explicitly recognized nor held accountable as actors in global institutions, even though they exert major influence in those institutions. Wolfgang Reinicke and Francis Deng point to the divergence between formal and informal governance structures for both sets of actors:

States and international organizations can no longer afford to bypass the concerns of transnational actors who have successfully politicized many global issues and have strengthened their bargaining positions with significant financial and ideological resources. For example, NGOs have been very successful in placing the distributional aspects of economic integration and technological change on the global agenda and keeping them there. Transnational corporations, likewise, are

³⁵ The G8 was started as G7 in 1976. The G7 was made up of Italy, Germany, France, Canada, Japan, the US and the United Kingdom. Russia joined in the group in the 1990s. Although the 2008 financial crisis led to the formation of the G20 which includes some of the Southern countries; the G8 still exercise dominant control over key global institutions. Gordon S. Smith, *G7 to G8 to G20*, CIGI G20 Papers (Centre for International Governance Innovation, 2011), p.6

³⁶Michael M’Gonigle, ‘Between Globalism and Territoriality: The Emergence of an International Constitution and the Challenge of Ecological Legitimacy’, *Canadian Journal of Law and Jurisprudence*, 15 (2002), 159.

³⁷Geoffrey Edwards and John N. Clarke, *Global Governance in the Twenty-first Century*, Global Issues Series (Palgrave Macmillan, 2004).

increasingly important players and have gained political leverage relative to states and international organizations.³⁸ Yet existing institutional processes and structures of governance offer few points of access and active participation in public policymaking for these forces. Both the United Nations and the World Bank have made informal efforts to include both civil society and the private sector, but these clearly fall short of a concerted approach that bring all sectors together and therefore may even be counterproductive. The formal governance structures of intergovernmental institutions have not changed at all...there are no transmission mechanisms by which the interests of scattered stakeholders can be aggregated and fed into the global political process.³⁹

Global level institutions of governance are different from national system of governance. The former are unaccountable and thrive on the positive response of actors. The low level of accountability has a negative impact on the response of states to the policies that emanate from these institutions. Second, legitimacy concerns have discredited most global institutions; and as such states do not feel obligated to respond positively to the mandates and objectives of such regimes. The legitimacy of a regime is very important in governance because states are often not bound to obey the rules and directives of most global institutions, except for the few that are inherently binding.⁴⁰

From my discussions in this section, I highlighted how the contemporary system of global governance impedes the resolution of global issues. The conundrum is part of the key global concerns that challenge the present global order. Full analyses of how the contemporary order has failed to address the conundrum are made in subsequent chapters. Next, I will consider the need to engage in reforms in the present global order

³⁸ In contemporary global institutions, the NGOs have soft influence and minimal hard power, while the MNCs have hard influence and power. To effectively engage the NGOs and the MNCs in global governance, it is necessary to increase the rights and responsibilities of both actors. The NGOs need greater authority to overcome their limited soft power, while the hard powers of the MNCs need to be checked by establishing a system to ensure a higher level of transparency and accountability in their transactions.

³⁹W. H. Reinicke, F. M. Deng and J. M. Witte, *Critical Choices: The United Nations, Networks, and the Future of Global Governance* (Idrc, 2000) p.19

⁴⁰ Generally, laws and regulation that emanate from most global institutions need to be domesticated before they become binding on the state. But regulations from some specialized regimes like World Trade Organization (WTO), International Monetary Fund (IMF), and Organisation for Economic Co-operation and Development (OECD) among others, are structured in a way that they are directly binding on member-states. Kenneth W. Abbott and others, 'The Concept of Legalization', *International Organization*, 54 (2000), 401–420. Richard H. Lauwaars, 'Interrelationship between United Nations Law and the Law of Other International Organizations, The', *Mich. L. Rev.*, 82 (1983), 1604.

2.3 Changes in Global Governance

It is necessary to identify the deficiencies of the present system. The definition of global governance reveals that it involves relations with transnational repercussion. To resolve the carbon conundrum the needed reforms ought to focus on modifying the role key actors play in global politics. The aim of this research is to identify ways of resolving the conundrum; as such the key actors to be addressed are the state, MNCs, civil society (NGOs), and international institutions.

The state is the major actor in global governance. First, the Westphalian principle⁴¹ recognizes the state as the primary subject in international relations. They are the main representative and recognized connection between the global institutions and people living within bounded territories. Territorial sovereignty recognizes the state as an independent entity which has virtually absolute authority and power over its territory.⁴² This constitutional feature makes it difficult to bind a state to international agreements except by its own accord. Most international agreements must be ratified to be effective, and then operate on the contractual principle of *pacta sunt servanda*,⁴³ which also requires parties to act in good faith in relation to agreements to which they have acceded. Second, state governments are directly accountable for their survival not to international regimes, but to the citizens who elect them to office. As a practical result, they implement laws and regulations that will guarantee their political interests. These entail measures

⁴¹ The Westphalian principle was established in the Peace of Westphalia 1648. Leo Gross wrote that “[t]he Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world [...] In the political field it marked man's abandonment of the idea of a hierarchical structure of society and his option for a new system characterized by a multitude of states, each sovereign within its territory, equal to one another, and free from any external sovereignty.” Leo Gross, ‘The Peace of Westphalia, 1648-1948’, *The American Journal of International Law*, 42 (1948), p.28-29

⁴² Cornelia Navari, ‘States and State Systems: Democratic, Westphalian or Both?’, *Review of International Studies*, 33 (2007), 577–595. p.578-580 Andreas Osiander, ‘Sovereignty, International Relations, and the Westphalian Myth’, *International Organization*, 55 (2001); Gunther Handl, ‘Territorial Sovereignty and the Problem of Transnational Pollution’, *American Journal of International Law*, 69 (1975), 50.

⁴³ The principle means that all international agreements are to be observed and obeyed. *A Dictionary of Law*, 5th ed., reissued with new covers (Oxford: Oxford University Press, 2003); Professor Dr Oliver Dörr LL.M. (Lond.) and Professor Dr Kirsten Schmalenbach, ‘Article 26. Pacta Sunt Servanda’, in *Vienna Convention on the Law of Treaties*, ed. by Oliver Dörr and Kirsten Schmalenbach (Springer Berlin Heidelberg, 2012), pp. 427–451. Jason Webb Yackee, ‘Pacta Sunt Servanda and the State Promises to Foreign Investors before Bilateral Investment Treaties: Myth and Reality’, *Fordham International Law Journal*, 32 (2009), 1550.

that will facilitate the economic growth that will benefit their domestic populations. Third, sustaining domestic economic growth in a capitalist world context ironically increases inter-state competition, and makes inter-state cooperation problematic.⁴⁴ This closes the circle of contradiction—states co-operate on agreements that, inherently, foster a context of competition. This is part of the carbon conundrum.

Fossil fuels are the primary source of energy in most economies. They underlie the pursuit of mechanical efficiency and they are cheap relative to other forms of energy.⁴⁵ Yet, they emit a high concentration of carbon which is responsible for climate change. To effectively resolve the conundrum of maintaining secure access to these cheap fuels while addressing climate change, a reasonable level of inter-state cooperation is necessary to reform the energy dependence of individual states. This will facilitate a secure and uniform transition from present unsustainable modes of economic production. The state and its system of administration pose a huge challenge to these reforms because of the following reasons. First, most elected government officials have a short term of 4-5 years to execute projects that will return them to office, but the needed reforms will be long-term and capital intensive. Second, assessing the success or failure of an administration is based primarily on the state government's achievements within the territory, not benefits that accrue to common global interests. Finally, inequality among states coupled with conflicting individual interests in a competitive global economic system, privileges the maintenance of energy security⁴⁶

⁴⁴Toufiq Siddiqi, 'China and India: More Cooperation Than Competition in Energy and Climate Change', *Journal of International Affairs*, 64 (2011), 73.

⁴⁵ Compared to other sources of energy, small amounts of fossil fuels have the capacity to generate enormous amount of energy during combustion. Advancements in technology have made the location, drilling and refinement of these resources a lot easier. Ability to locate a massive quantity of resources in a particular site makes the exploration of fossil fuels cost-effective. The transportation of crude oil and natural gas is relatively convenient, which makes the process of distribution easy and cost-effective. Although transportation of coal may not be as convenient as other minerals, when the coal plants are stationed close to the mining centre, the need for distant transportation is eliminated. 'Advantages of Fossil Fuels', *Conserve Energy Future* <http://www.conserve-energy-future.com/Advantages_FossilFuels.php> [accessed 18 February 2013]

⁴⁶Maike Sippel and Karsten Neuhoff, 'A History of Conditionality: Lessons for International Cooperation on Climate Policy', *Climate Policy*, 9 (2009), 481–494.

MNCs play a crucial role in the expansion of the global economy. Capitalist ideology that demands continuous growth led to the deregulation and liberalization of the global economy. It facilitated the process of globalization and the growth of multinationals. States gradually reduced their control over the economy; corporations took over and increased their economic and political powers.⁴⁷ Multinationals now exercise high influence in social, political and economic activities within the states; yet they do not have parallel responsibilities as subjects of international law. They control far greater funds than the annual budget of most nation-states. As at 2007 there were approximately 79,000 transnational corporations with over 790,000 subsidiaries. They employ over 81.6 million workers worldwide.⁴⁸ Undoubtedly, to address the conundrum, it is necessary to involve them because, oil and gas corporations are responsible for the extraction, production, and refinement of crude oil, while others rely heavily on the cheap resources for profit maximization. Oil and gas corporations are responsible for the extraction, production, and refinement of crude oil, while others rely heavily on the cheap resources for manufacturing, transportation, and service provision. MNCs also contribute to the conundrum in other ways. First, globalization has empowered them to expand or relocate their subsidiaries to any state they choose. Because states strive to retain them for economic growth, they have significant capacity to dictate the regulatory policies and laws that are established in those states. Second, capitalist laws entice states to compete for them; this lure states to set low regulatory standards. Third, they are more powerful and influential than most governments in developing states so these states especially lack the capacity needed to regulate them. This allows them to engage in practices that are not benign to the environment. Finally, they indirectly influence the political affairs of the state, shape public opinions and influence legislative processes, and do so without accountability.

Civil society (NGOs) is the third global actor that will be analyzed in this work. Civil groups play increasing role in global governance, but have not received the level of

⁴⁷V. Cable, 'The Diminished Nation-state: A Study in the Loss of Economic Power', *Daedalus*, 1995, 23–53; V. A. Schmidt, 'The New World Order, Incorporated: The Rise of Business and the Decline of the Nation-state', *Daedalus*, 1995.

⁴⁸*UNCTAD Training Manual on Statistics for FDI and the Operations of TNCs: Collecting and Reporting FDI* (United Nations Publications, 2009).

recognition they deserve.⁴⁹ With globalization, institutions and structures of governance are gradually migrating from the state to regional, supranational, and international regimes; this process distances governance from the people. Stephen Gill describes this phenomenon it as a “new constitutionalism.”⁵⁰ He wrote:

New constitutionalism is an international governance framework. It seeks to separate economic policies from broad political accountability in order to make governments more responsive to the discipline of market forces and correspondingly less responsive to popular-democratic forces and processes. New constitutionalism is the politico-legal dimension of the wider discourse of disciplinary neoliberalism. Central objectives in this discourse are security of property rights and investor freedoms, and market discipline on the state and on labor to secure 'credibility' in the eyes of private investors, e.g. those in both the global currency and capital markets.⁵¹

Increasing disconnection between governance and the governed make governing bodies less sensitive and ignorant of real issues at the grassroots. This reveals the dichotomy between ‘globalization from above’ and ‘globalization from below’.⁵² The conundrum affects states differently, depending on their location and resources. This variance of impact affects individual state’s attitudes and approaches to the issues. They focus on negotiating agreements to improve their individual economy. Within the state, they implement projects to stimulate economic growth. The individualistic approach to global issues reduces the chance of resolving issues for the collective benefit, let alone for collective human social benefit. NGOs and other civil groups represent the interests of people across national borders. They have the capacity to balance the conflicting interests of states.⁵³ NGOs play other crucial roles in global governance. First, they facilitate negotiations by providing expert advice and also by monitoring the degree of compliance

⁴⁹Michael M’Gonigle, ‘Between Globalism and Territoriality’ p.171-172; B. Gemmill and A. Bamidele-Izu, ‘The Role of NGOs and Civil Society in Global Environmental Governance’, *Global Environmental Governance: Options & Opportunities*, 77 (2002);Claudia Kissling, Patrizia Nanz and Jens Steffek, *Civil Society Participation in European and Global Governance*, Transformations of the State (Palgrave Macmillan, 2008).

⁵⁰Stephen Gill, ‘European Governance and New Constitutionalism: Economic and Monetary Union and Alternatives to Disciplinary Neoliberalism in Europe’, *New Political Economy*, 3 (1998), p.5.

⁵¹Gill, ‘European Governance and New Constitutionalism’

⁵²R. Falk, ‘Resisting “globalization-from-above” through “globalization-from-below”’, *New Political Economy*, 2 (1997), p.17-24

⁵³ The civil society does not represent the interest of individual states, and as such is able to facilitate negotiations, to ensure that all interests are well represented.

by each state. Second, they influence public opinion through awareness programs. Third, they can legitimize international policies by vouching for their authenticity.⁵⁴ Fourth, they can engage in direct operational activities to advance agreed upon policies on the ground.

International institutions provide the common medium for global governance. These institutions exercise direct and indirect power and authority oriented to shaping and directing policy developments in member states. The Bretton Woods institutions were established after the Second World War to create a global economic architecture that would ensure global stability while also protecting the interests of the victorious allies.⁵⁵ Ever since, Southern states ('emerging economies') have struggled to gain recognition and influence in these institutions (having largely failed to create alternative ones reflecting different economic ideologies), while the dominant states strive to maintain control.⁵⁶ These factors ensure that these institutions have become arenas for the assertion of global hegemony, rather than advancing global economic discourse and resolving global issues. The demise of the UN Conference on Trade and Development (UNCTAD) after its advocacy in the 1970s of a 'non-aligned' (i.e. neither communist nor capitalist) movement attests to the influence of capitalist states in setting the agenda for global institutions. Similarly, twenty years after the establishment of UNFCCC, it has achieved very little in addressing climate issues. This is partly attributed to the dichotomy between the 'North' and 'South' groups.⁵⁷ This has begun to change with the expansion of informal organizations such as the G20 and the increasing of some Southern countries in international trade organizations (as long as they literally adopt the neoliberal interests of

⁵⁴ Iain Attack notes that "NGOs are also becoming increasingly active in their efforts to influence the development policies of both governments (North and South) and multilateral institutions or intergovernmental organizations (third generation activities). UN agencies such as UNHCR and UNICEF not only rely on NGOs for service provision, but also try to involve them in project formulation and policy consultations, for example. The Overseas Development Institute refers to "the reverse agenda whereby the approach and methods of the NGOs are now influencing the activities and perceptions of donors and official aid programs." Iain Attack, 'Four Criteria of Development NGO Legitimacy', *World Development*, 27 (1999), p. 857.

⁵⁵ Michael M'Gonigle, 'Between Globalism and Territoriality' p.166

⁵⁶ Gordon S. Smith.; *Global Governance: Meeting the Challenges of the 21st Century*, Economic Policy Series (Canadian Chamber of Commerce, 2009).

⁵⁷ Jyoti Parikh, 'North-South Issues for Climate Change', *Economic and Political Weekly*, 29 (1994), 2940–2943. Ramesh Jaura, 'North-South "Debate" Expected at Climate Change Meet', *Inter Press Service*, 1997, 1; J.T. Roberts and B.C. Parks, *A Climate of Injustice: Global Inequality, North-south Politics, and Climate Policy* (The MIT Press, 2007).

the globalization mandate of these organizations, a condition of membership that reaches right down to the regulate the lives of the citizens of these countries). In the energy sector, contention for economic powers is between the IEA (which represents petroleum consuming nations that are mainly developed and emerging economies) and OPEC (that represents petroleum producing developed nations). These entrenched divisions will not facilitate the resolution of the conundrum.

2.4 Green Legal Theory (GLT)

2.4.1 Description of Green Legal Theory

GLT is an approach to understanding law developed by Professor Michael M’Gonigle.⁵⁸ It is a critical legal theory that aims at highlighting the inadequacies of environmental law regimes. It tries to relocate and redefine ‘law’. It has a broad conception of law, which it defines as an “authoritative processes of cultural self constitution”.⁵⁹ It is based on the argument that ‘laws’ exist at different levels and different form, and that ‘legal laws’ are themselves manifestations of higher level regulatory dynamics that are embedded in higher level institutions and processes (e.g. the state, capitalist economics) and cultural processes that shape what is permissible and what is not. Laws are not only found in explicit ‘rules’ but are embodied within material and cultural logics that generate and support those laws. It analyzes the structure of the state, for example, to identify the dynamics that prevent it from facilitating significant change to the system.⁶⁰ It makes an analysis of law from three perspectives; the power logics of material economic and political forces, and the codes of cultural processes.⁶¹ M’Gonigle sees these deeper logics, when they have been allowed to play out as practical dynamics in the social world as having a determinative effect on what can be created as “legal law.”⁶² Such laws are

⁵⁸ He is a professor in the Faculty of Law and the Department of Environmental Studies, University of Victoria. He is the Eco-Research Chair in Environmental Law and Policy and a co-founder of Greenpeace International, the Sierra Legal Defense Fund, and Smart Growth British Columbia.

⁵⁹M. M’Gonigle, ‘Green Legal Theory’, *Ökologisches Wirtschaften*, 23 (2008).p.36;

⁶⁰Michael M’Gonigle, *Liberal Limits of Democracy*.p.45

⁶¹M’Gonigle.

⁶²M’Gonigle,p.43

products of limited “functional knowledges”⁶³ that are ingrained in conventional “liberal tradition of individualism, free markets, and limited by rational government.”⁶⁴ He identifies the need to understand the political logics that, like economic logics, shape the laws⁶⁵ by which a society is constructed and which shape what is possible in the legal system. To illustrate such economic and political power law, M’Gonigle notes that “modern society is ‘addicted to oil’ and economic policies attend to the ‘imperative of growth’. The very term of ‘addiction’ and ‘imperative’ imply a law-like obedience”.⁶⁶ He noted that power laws, and at a cultural level what he calls ‘culture codes’ are hidden processes that are manifested in specific and explicit social regulations. GLT calls for a full reassessment of environmental regulations in light of economic and state structures and embedded cultural logics, to establish new functional systems that allow for processes of building a healthy socio-environment. GLT maintains that the only way to attain a healthy environment is by looking outside the present regulatory paradigm which is locked into systems that, by their inherent constitutional character, undervalue nature.⁶⁷ It looks at the need to unify man with the ecosystem, which will be attained by ‘re-forming’ state institutions and structures not simply asking these structures to ‘reform’ laws that accord with their entrenched interests and embedded logics.

The first task of GLT is to identify critical economic logics. These are often economic processes that society presents as natural facts of life, while in actual fact they are social constructs that emerged through time due to the influence of power.⁶⁸ These laws are reflected in the content and institutional features of environmental laws, which are products of neo-classical economic assessment. These economic evaluations are subject to absolute adherence to constant economic growth, and protection of the capital market. GLT aims at liberating global environmental discourse from the shackles of hegemonic neoclassical economic assessments.⁶⁹ It seeks to invigorate an economic analysis that can

⁶³M’Gonigle.

⁶⁴M’Gonigle.

⁶⁵M’Gonigle.

⁶⁶M’Gonigle,p.44

⁶⁷M. M’Gonigle, ‘Green Legal Theory’.p.34

⁶⁸M’Gonigle,p.46

⁶⁹M’Gonigle,p.35

frame the right questions and attach appropriate values to nature.⁷⁰ Its perspective is drawn from political ecology, which makes nature the frame of human activities. GLT is highly critical of the capitalist system that uses economic growth as the parameter for evaluating environmental laws; this ideology is ingrained in the system to the level that it also influences the way environmentalists think. It recognizes that the logic of capitalism monetizes the physical and social world and displaces the ‘real’ value of goods. This step destabilizes the social and moral order of nature. The accumulation of much wealth without apportioning appropriate values to the wealth is responsible for the present global environmental and economic crisis. Over-exploitation of natural resources results in the failure of nature to keep up with the conditions of production. This causes crises in a capitalist economic system. The crisis situation produces both the concern for maintaining energy security concern (that dominates the political agenda) and the contrary problem of climate change (that is emasculated by that agenda). This state of affairs is one of the factors that gave rise to GLT’s attention to the need for re-form as compared to environmental law’s focus on reform. M’Gonigle noted that “critical political economy and political ecology pursue a common concern with what the classical economist, Adam Smith, termed the ‘nature and causes of wealth’. This contrasts with today’s concerns for the processes that can simply increase growth and profit, such as free trade and productivity...”⁷¹ He noted that critical political economy investigates the prospects for people asking crucial economic questions, such as where does physical wealth including capital, actually come from? What is the role of nature in providing the wealth? What are its real physical and institutional limits, and how did we come to push up against them? What forms of economic production and social decision-making and what sorts of cultural practices might make the society able to address these questions? M’Gonigle concluded that without asking those questions, thoughts of the possible limits to the resources are circumvented, while allowing the free market system to “set prices automatically to reflect relative scarcities, and thus shift to new sources of supply that can keep growth on track.”⁷²

⁷⁰M’Gonigle,p.47

⁷¹M’Gonigle.

⁷²M’Gonigle,p.48

The second concern of GLT is the power logics of the state. GLT seeks to challenge the ideology of the naturalization of capitalism but also the naturalization of the sovereign state as the only acceptable form of political organization.⁷³ It elucidates the connection between the dynamics of state institutions, and the formation of legal regulations. Critical political knowledge is informed by critical history and philosophy that attends to the origins of the modern state, such as the concept of sovereignty as established in the Peace of Westphalia 1648, and to the state's particular ways of relating to its physical territory. GLT questions the dynamics that follow from the territorial sovereignty of a state, a dynamic of centralized power that has led to virtually uncontrolled exploitation of natural resources that can ensure the continuous flow of economic products to support the state-managed capitalist economy.⁷⁴ It is critical of the capitalist economic system, which evaluates the success of a state government based on its achievements within the state territory. The focus on the generation of monetary wealth has created a gap between the real sources of material wealth, (which draw above all, on the natural environment) and the ways in which societies are able even to conceive of wealth.⁷⁵ It recognizes the impact of neoliberalism on the present political system, which is reflected in the displaced priority given to free-trade, privatization, and commodification of nature.⁷⁶ GLT acknowledges the need for the expansion of the democratic right of individuals, and communities and, indeed, of nature itself, during the re-form process and supports constitutional changes at the global level that would have direct influence over the state. M'Gonigle writes:

When one begins to consider the contradictions emanating from a centrally administered society—and where one does not minimize them in the usual terms of ‘necessary trade-offs’ or ‘making value choices’ but takes seriously the deterioration in the conditions of socio-ecological health and survival—only then might one be motivated to problematize both the accommodationist environmental reformism of ecological modernization and state-centric thinking. Only then, might one seriously enquire into appropriate new structures and forms of social regulation.⁷⁷

⁷³M'Gonigle, p.50

⁷⁴M'Gonigle, p.164-165

⁷⁵M'Gonigle, p.163

⁷⁶M'Gonigle, p.38

⁷⁷M'Gonigle, p.56

The third perspective of GLT is culture codes and cultural awareness. It perceives culture as the living law and the prime regulator of human life and examines the role culture plays in regulating human behavior.⁷⁸ It claims that there is a form of culture in every social activity; it is reflected in the value systems, societal practices, and institutions. It asserts that the difficulty in managing crises of economic growth and modernity is not solely an issue of lack of political will or feasible economic options, but is also connected to the deficiencies in cultural possibilities. GLT deconstructs the prejudices that are ingrained in the cost-benefit paradigm. It presents the need for cultural change and the need for new cultural institutions. It looks for new movements that make critical assessment of material conditions, which are not confined to traditional knowledge, but devise ways of combining conditions of production with the dominant forms of economic, political, and constitutional power. GLT claims that legal laws are human creations that are a visible command, as against power laws and culture codes that are neither visible nor consciously legislated as ‘laws’ yet powerfully shape social ordering, even when they are neither seen nor recognized as a form of social regulation.

M’Gonigle notes that:

...culture exists not just in the mind and values of people, but in the practices, routines and institutions that shape those relations and are, in turn, shaped by them. Car culture is about cars as well as drivers, about the complex production process as well as desire of consumption, about the panoply of grand historical forces behind the automobile industry as well as in the personal choices of brand and color. Culture thus implies whole complexes that shape who we are and that, in turn, are shaped by what we do. Culture is not just regulatory but is, in turn, itself constituted, shaped by inherited patterns while also shaping future imaginings of which a culture is capable...⁷⁹

GLT relates the influence of culture codes on social orderings to the principles developed by Michel Foucault, which perceives them as delicate forms of regulation that affect every work of human life.⁸⁰ M’Gonigle is of the view that the Foucauldian concepts of governmentality, hegemony, and truth are essential to understanding regulatory processes

⁷⁸M’Gonigle,p.36

⁷⁹M’Gonigle,p.60

⁸⁰M. M’Gonigle, ‘Green Legal Theory’ .p.36

that influence the cultural constitution of society. Governmentality is a kind of power that is different from public policies or legislation. GLT points to nebulous forms of social regulation that is commonly located in regimes of domination. Hegemony is the awareness that shapes discourse, which dictates the acceptability or unacceptability of a discussion. This signifies the limitations on critical scholarship to effectively influence cultural change. Foucault uncovers the process of establishing the ‘truth’, which involves a power tussle between different ‘regimes of knowledge’. The truth gains its status by virtue of the power that backs and sustains it, coupled with the economic and political role it is presumed to play.⁸¹ GLT considers the need for a reconstitution of the truth, which can be attained by a change in the political, economic, and institutional regime for the ‘production of the truth’. This involves a re-form in the national and global systems of governance.⁸²

2.4.2 Relevance of GLT to the Conundrum

The principles of GLT are of great importance in analyzing the conundrum. It is of peculiar importance to the study of climate change and energy security policies, regulations, laws, discourse, and regimes because it helps one to understand the sources and possible solutions to global concerns. What makes GLT indispensable to a full understanding of the conundrum is that the theory is not shackled to the present hegemonic framework that governs the issues. It looks outside the restricted ‘box’ of *truthful-lies* that has dominated the discourse, and suggests a new perspective to its resolution. The relevance of GLT to the conundrum would be viewed from three perspectives: critical economic logics, critical political logics, and culture code and awareness.

From the perspective of economic power logics, it makes possible an analysis of those climate change and energy sector ideologies, and those schools of thought that focus on cost-benefit-analysis (CBA), as the only acceptable way to resolve the conundrum. CBA is a social construct that developed over time, based on the support it received from the

⁸¹M’Gonigle,p.67

⁸²M’Gonigle.

capitalist economic system and the state.⁸³ GLT is useful in assessing the conundrum beyond those boundaries created by economic power logics. It unpacks the philosophy, which hinders successful negotiation for a global climate agreement. It makes an analysis of the increasing quest for supply and consumption of fossil fuels. GLT underscores the ideology of national and global economic growth, which is the fundamental “authoritative process of cultural self-constitution” of all nations. The system rejects any counter-philosophy or ideology that does not support its values. GLT points to the need for a whole new “legal” way forward to the resolution of the conundrum. It rejects any form of economic evaluation process that is subject to the hegemonic condition of a naturalized capitalist calculus. GLT is informed instead by a political ecology which makes the physical world the frame and controlling limit of human activity. It encourages the development of energy strategies (especially reduction in energy production, and greater equity in energy use) that are benign to the environment. It sheds light on the conundrum, to raise awareness on the need to liberate the mind from ideologies of the present paradigm, which does not have regard for equity or distributive justice.

Critical political knowledge is relevant to the discourse on the conundrum. It challenges the basis of the political ideology of individualism and economic growth, which informs decisions of the dominant states at the UNFCCC. It explains the reason why nations are not making adequate effort to manage the rate of energy consumption and carbon emission. GLT leads a legal ‘re-former’ to unpack the connection and the negative impacts of tackling global issues from a state-centered paradigm. It informs the need for a global regime that will facilitate a process which guarantees an equitable use of communal resources for communal benefit. It informs the need to relocate emphasis from the focus on abstract capital (money) to the building of a physically and culturally sustainable society. GLT indicates that the crisis situations of the conundrum can be fixed by adopting a system that attaches greater value to the environment. It initiates a movement to revolutionize the energy sector. This requires drastic adjustments to the neoliberal conception of democratic rights. It also supports a global constitutionalism of a

⁸³Blake Anderson and Michael M’Gonigle, ‘Does Ecological Economics Have a Future?: Contradiction and Reinvention in the Age of Climate Change’, *Ecological Economics*, 84 (2012), 37–48.

very different sort than that presently embedded in the dominant institutions of global governance.⁸⁴

Culture codes and cultural awareness are relevant to the resolution of the dual global crisis because they arose as a result of the generally accepted social, political and economic practices. The present global system is based on a culture that supports high consumption of fossil fuels, and that is distanced from human impacts on the physical and cultural worlds. GLT is interested in the role culture plays in the regulation of human behavior. It makes explicit how we must collectively shape ('regulate') our culture codes and discourses to discourage patterns of living and experience that demand high consumption of fossil fuels. It challenges the nature of the appropriate measures of 'reform'. It maintains that cultural transformation is part of the process necessary for the solution to the conundrum.⁸⁵

2.5 Regime Theory

2.5.1 Core Principles of Theories of International Regimes (TIR)

International institutions are crucial in global governance. One of the major objectives of global institutions is to establish rules, directives, and policies to guide global actors. To avoid a state of anarchy, independent states come together to negotiate issues, which leads to the formation of a *regime*. Stephen Krasner defines a regime as a "set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations".⁸⁶ Regimes are at the centre of world politics. The study of regimes—as forms of law—fits well with GLT because its expansion of the concept of law beyond mere rules. TIR examine the negotiation, development, formation, and sustenance of international regimes. The theory is categorized into structural, functional, and cognitive schools of thought. The structural school (neorealism) claims that regimes are based on power relations. The functional

⁸⁴M Michael M'Gonigle, 'Between Globalism and Territoriality: The Emergence of an International Constitution and the Challenge of Ecological Legitimacy', *Canadian Journal of Law and Jurisprudence*, 15 (2002), p.159

⁸⁵M. M'Gonigle, 'Green Legal Theory' p.38

⁸⁶Stephen D. Krasner, *International Regimes* (Cornell University Press, 1983).

school (neoliberalism) asserts that regimes are based on a constellation of interests and benefits. The cognitive school is of the view that regimes are based on knowledge, communication, and identities.⁸⁷ They complement each other in analyzing the role actors play in establishing and maintaining global institutions.

The structural school analyzes regimes as products of power relations. They link formation of regimes to the existence of dominant powers whose primary objective is to prevent anarchy. They concentrate on the conflicts that exist among nations and recognize the constant struggle for scarce resources, which leads to the convergence of states with similar interests. They assume that power and security are the primary needs of every state.⁸⁸ They examine the significant role economic wealth and military capacity play in international politics to establish the locus of power. Structuralism analyzes how the superpowers make weaker states their allies by providing economic support and protecting their territorial sovereignty. They examine how weaker states become less dependent on the super-powers after attaining some level of economic development. The realists are of the view that changes in the governance of regimes are due to increase and decrease in the powers of states. They draw attention to the coordination of independent states and how the superpowers govern weaker states by stipulating the conditions for interaction.⁸⁹ They assert that the world's most important foreign policies emanate from the dominant states. They assert that there would never be an international regime, if there were no constraints on independent decision making.⁹⁰ Regimes exist because of the circumscription of independent decisions.

The functional school examines global regimes from a cost and benefit perspective. They maintain that the acceptance of a global regime by individual states reinforces the impact of the regime as an institution. They maintain that adhering to rules which emanate from the interactions between actors, coupled with the anticipated benefits that accrue from the

⁸⁷A. Hasenclever, P. Mayer and V. Rittberger, 'Interests, Power, Knowledge: The Study of International Regimes', *Mershon International Studies Review*, 1996, p 178

⁸⁸R.G. Gilpin, 'The Richness of the Tradition of Political Realism', *International Organization*, 38 (1984), 287-304, p 290-291

⁸⁹R.O. Keohane and J.S. Nye Jr, 'Power and Interdependence', *Survival*, 15 (1973), 158-165.

⁹⁰Arthur A. Stein, 'Coordination and Collaboration: Regimes in an Anarchic World', *International Organization*, 36 (1982).p 301

association, explains how global regimes are formed. They assert that regimes are flexible; their strengths and weaknesses are predominantly based on the response of actors.⁹¹ They believe that regimes are complex social institutions, which are dynamic in nature due to social changes. They believe that the regulation of behaviors results in the convergence of beliefs which leads to the growth and sustenance of global institutions.⁹² Global institutions are attitudinal phenomena because the behavior of states emerges from complying with agreed norms, principles, and rules. The functionalists believe that the key principles of regimes are to determine the hierarchy of norms, enforceability of regulations.⁹³ They identify government officials, international agencies, and transnational organizations as key actors in world politics. They note that the identification of an “issue-area” is one of the attributes of a global regime; and once an issue-area has regulatory principles, they reflect the authority of the dominant actors.⁹⁴

The cognitive school asserts that to understand a global regime, one must consider the value systems of the actors, their ideologies, how they achieve particular goals, and their belief systems. States acquire knowledge through new contact channels, and reduce uncertainties during the process of regime change or formation.⁹⁵ Learning is the collective appreciation of knowledge that is essential for understanding communal gains. It occurs when actors adopt new rules of behaviour that reflect the information and knowledge or employ new means for examining the information. Learning is a form of persuasion. Persuasion is a process of reaching compromise among conflicting interests. The process of regime formation is facilitated by learning, which involves the resolution of conflicting interests, to attain a point of convergence based on consensual knowledge.⁹⁶ The functionality of a regime is influenced by the actors’ knowledge or lack

⁹¹S. Haggard and B.A. Simmons, ‘Theories of International Regimes’, *International Organization*, 41 (1987).

⁹²O.R. Young, ‘Regime Dynamics: The Rise and Fall of International Regimes’, *International Organization*, 36 (1982). V. Rittberger and P. Mayer, *Regime Theory and International Relations* (Clarendon press Oxford, 1993)p.234

⁹³Joseph S. Nye, ‘Neorealism and Neoliberalism’, *World Politics*, 40 (1988), 235–251.p 246

⁹⁴D.J. Puchala and R.F. Hopkins, ‘International Regimes: Lessons from Inductive Analysis’, *International Organization*, 36 (1982).

⁹⁵Ernst B. Haas, ‘Technological Self-Reliance for Latin America: The OAS Contribution’, *International Organization*, 34 (1980), p 389

⁹⁶Haas.p.392-393

of knowledge, coupled with the ability or inability of parties to evaluate information at their disposal. International regimes are based on a rationalist perspective.⁹⁷ International regimes are implanted in the normative configuration of the global community. Social institutions such as pressure groups and non-governmental organizations influence the choices of states. Without the influence it would be difficult to categorize rational behavior.⁹⁸ Cognitive theory is based on an assumption that man, through a process of selective response, actively forms his environment. The use of compromise and understanding are necessary tools in negotiation processes. Trust and the sincerity of other states during the bargaining processes are important during negotiation. Sincerity secures the confidence of actors to reciprocate concessions made by the opposing parties. Payoffs complement trust in the process of regime formation. There is a high likelihood for regime formation when the benefits from communal co-operation exceed the benefits derived from maintaining a dissenting position.⁹⁹ Framing problems is a vital aspect of regime formation which they tag as ‘generative metaphors’. The proper framing of issues directs the process of solving the problem. ‘Generative metaphors’ facilitate the formation of issue-areas which build international regimes.¹⁰⁰

2.5.2 Relevance of TIR to the Conundrum

TIR is useful in analyzing inter-state relations in global institutions.¹⁰¹ The theory will be used to deconstruct the role of actors in principal global institutions on the conundrum. The structural perspective will be drawn upon to show that inter-state relations at the UNFCCC are more a power tussle than a union to resolve climate issues. It will demonstrate that the establishment of OPEC was to counter the hegemonic powers of the dominant states, and the IEA was established to neutralize the powers of OPEC. The significant role of economic capacity and the need to grow the economy play in global regimes will also be analyzed from a structural perspective. The dichotomy between the

⁹⁷J.D. Berejikian, ‘Model Building with Prospect Theory: A Cognitive Approach to International Relations’, *Political Psychology*, 23 (2002), 759–786.

⁹⁸A. Hasenclever, P. Mayer and V. Rittberger, *Theories of International Regimes* (Cambridge UnivPr, 1997).

⁹⁹C. Jönsson, ‘Cognitive Factors in Explaining Regime Dynamics’, V. Rittberger (ed.), 1993.

¹⁰⁰Jönsson, p 211.

¹⁰¹M’Gonigle, p.165-166.

North and South groups in global institutions will also be analyzed to explain how emerging economies (powers) seek to gain prominence in world politics.¹⁰² The functional perspective will show that the primary reason states converge is to form or to participate in a global regime is the anticipation to benefit from the interaction. It will demonstrate that the weaknesses exhibited in the climate and energy regimes are due to the negative attitude and response of the key actors and such weaknesses can be addressed by reforming the present system of social and political relations among global actors. The system of compliances with agreements, principle and norms will be analyzed from a functional perspective to show that it is highly dependent on the attitude of other actors. It will also establish the need to improve the recognition that is given to NGOs and MNCs.¹⁰³ The cognitive school will be drawn upon to demonstrate that the attitude of actors is based on their ideology, culture, beliefs, and value systems. These affect the success or failure of the regime. It will highlight the key role NGOs play in information dissemination, to improve the knowledge of the actors, thereby facilitating the negotiation process; and the need to adopt new approach to negotiations, which is necessary for the needed transformation in global governance. It will show that the difference in individual state interests and other conflicts of interest can be resolved by a process of consensual interest to realize collective goals. The cognitive perspective will establish how NGOs and other pressure groups influence policy direction in states and global institutions. It will highlight the importance of trust and sincerity as some of the key features that are necessary for successful negotiations. Finally, the way issues on the conundrum are framed, contributes to the chances of resolving the problem.

2.6 Methodology-- Perspectival Narrative and Analysis

The methodological approach that will be used for the research is a combination of perspectival narrative and analysis. Perspectival narrative will be used to set out the historical development of the conundrum from a GLT analytical perspective. The analysis will show how global actors like the state and MNCs contribute to the problem

¹⁰²Nye.p.246; Rittberger and Mayer,p.299.

¹⁰³Susan Strange, 'Cave! Hic Dragones: A Critique of Regime Analysis', *International Organization*, 36 (1982),p.491.

and how the institution and structure of the state prevents feasible measures that could lead to its resolution. Likewise, perspectival narrative will be used in presenting inter-state relations in global institutions from a TIR perspective. An analysis of the positive and negative influence NGOs and MNCs exert on states and global institutions will be made. The influence of factors like capitalism, liberalism, competition, power, hegemony, globalization, and all other factors will be examined to show how they affect international relations. The GLT and TIR will be used to analyze those key factors necessary to establish a 'regulatory' (in the broad sense) regime that will effectively represent the interest of all people and nations and will be the appropriate platform for the resolution of global issues. The aim of this methodological approach is to reveal the underlying social, economic, and political factors that pose a challenge to the resolution of the conundrum. This must be address in a large process of structural 're-form' not a bounded process of instrumental 'reform'.

Chapter 3: The Multinational Corporations and the Carbon Conundrum

3.1 Climate Change

Climate change is a global problem. The present atmospheric conditions are as a result of the development pattern of the past two centuries. The proximate cause of the present climate crisis is linked to heavy dependence on fossil fuels, without proper carbon management systems. As we will see in later chapters, other significant causes of climate change can be attributed to those patterns of thought and political dynamics that infuse the structure of the modern state.

This chapter will consider how the dynamics of a capitalist economic system exacerbates the dichotomy between climate change and energy security issues. The first section describes the historical development of climate change from a GLT/TIR perspective, to identify those underlying dynamics that led to the carbon conundrum. The second section identifies some of the regulatory challenges created by globalization and a capitalist economic system. The increasing influence of multinationals in the global arena is problematized. The third section is an analysis of how the multinationals exacerbate the conundrum.

3.2 Fossil Fuels and the Development of Climate Change

Our contemporary world is built on the law¹⁰⁴ of maximization of resources. This law is paramount in a capitalist economic system. Maximizing profit from energy and other resources supports the dynamics of creation of cheap wealth which gives rise to the continuing high dependence on fossil fuels for economic development. The use of coal¹⁰⁵ dominated all other energy sources during the first industrial revolution, which took place between the early 1750s to the 1850s.¹⁰⁶ The second wave of industrial revolution started in the 1860s. The use of fossil fuels, still coal but now augmented by crude oil, dominated all other sources of energy. Francisco Parra wrote:

In 1950, the United States was the only country where the oil industry was well-developed. Between 1950 and 1973, the industry in the rest of

¹⁰⁴ GLT defines law broadly. It perceives “culture” as a form of law.

¹⁰⁵ It is cheap, mobile, and able to generate a huge amount of energy.

¹⁰⁶ Gerard Turnbull, ‘Canals, Coal and Regional Growth during the Industrial Revolution’, *The Economic History Review*, New Series, 40 (1987), p.546

the world grew nine fold--a rate of increase of 10 percent per year sustained, amazingly, over a period of twenty-three years. Two hundred new refineries were built outside the United States and some older ones expanded. About 1,750 tankers of ever-increasing size were launched. Over 2.5 billion new motor vehicles were put on the roads, more than half of them in the United States. Air travel replaced ocean liners and every other form of long-distance travel. In Western Europe and Japan, oil dethroned coal. Petrochemicals brought a wide range of entirely new products. World oil demand including the United States and the Centrally Planned Economies (CPEs) more than quintupled, growing from 11 million barrels per day (mbd) in 1950 to 57 mbd in 1970.¹⁰⁷

From the 1950s, it became obvious that the global system was structured on fossil fuels. It dominated all the energy demanding industries. Coal was the major source of primary energy for generating electricity. Crude oil was the principal energy for automobiles.¹⁰⁸ Empirical research on world carbon emissions for the period of 1950-1990, which covered 141 nations,¹⁰⁹ shows that before the late 1980s, carbon was not classified as a pollutant. There were no significant regulatory laws to curtail its emission.¹¹⁰ It was presumed that building tall chimneystacks to release carbon and other emissions high into the atmosphere was environmentally benign. It was not envisioned that the high concentration of carbon in the atmosphere would trigger major changes in climate conditions. Environmental assessment legal regimes did not anticipate that failure to employ carbon management and sequestration processes will lead to climate related catastrophes.

In the early 1980s, reports analyzing global warming triggered a series of debates and scientific investigations on the probable causes, impact, and timelines of global warming. This period, the anthropogenic nature of the problem and the dangers of human carbon dependence were often denied. These denials originated from the US. They made many skeptical of the reality of 'climate change'. The Reagan Administration employed a range

¹⁰⁷Francisco Parra, *Oil Politics: A Modern History of Petroleum* (I. B. Tauris, 2004),p.33

¹⁰⁸'Historical Timeline - Alternative Energy - ProCon.org'

<<http://alternativeenergy.procon.org/view.resource.php?resourceID=002475#1950-1999>> [accessed 9 April 2012].

¹⁰⁹ Note that these nations represent around 98.6% of global population.

¹¹⁰Richard Schmalensee, Thomas M. Stoker and Ruth A. Judson, 'World Carbon Dioxide Emissions: 1950-2050', *The Review of Economics and Statistics*, 80 (1998).p16

of tactics to suppress the environmental movement's dependence on critical science, calling the evidence of climate change 'junk science'.¹¹¹ Funded by the fossil fuel industry and its supports in the business community, actors like conservative think-tanks, 'experts' from academia, contrarian scientists,¹¹² conservative politicians and conservative media¹¹³ worked to generate a mood of 'environmental skepticism'.¹¹⁴ Lever and others observed that:

Conservative think-tanks produce an enormous number of press releases, reports and policy briefs critical of environmental science and policy-making... in the 1990s they began to issue more and more books. In fact, an analysis of 140 books published through 2005 which espoused environmental skepticism (many focused on climate change per se) found that 130, or 92 per cent, were linked to a conservative think-tank in the US or other nations.¹¹⁵

By the early 1990s, it was palpable that the earth was getting warmer, and was beginning to generate changes in the climate. Although on the ground experience was still limited, scientific models predicted significant anthropogenic climate change if nothing was done to regulate the amount of carbon being released into the atmosphere.¹¹⁶ This state of affairs spawned the need to establish new regulatory regimes, and to investigate and devise feasible means for restricting the emission of 'greenhouse gases'.¹¹⁷ From the early

¹¹¹ Constance Lever-Tracy, *Routledge Handbook of Climate Change and Society* (Routledge, 2010), p.240

¹¹² Patrick Michaels and other contrarian scientists were funded by Peabody Coal and ExxonMobil, alongside other associations like Western Fuels Association and American Petroleum Institute

¹¹³ A good example is the right-wing radio commentator Rush Limbaugh and Fox News.

¹¹⁴ "Environmental skepticism is defined by its denial of the seriousness of environmental problems and dismissal of scientific evidence documenting these problems... Second, environmental skepticism draws upon the first theme to question the importance of environmental protection policies. Third, environmental skepticism endorses an anti-regulatory/anti-liability position that flows from the first two claims. Lastly, environmental skeptics cast environmental protection as threatening Western progress". Lever-Tracy, p.243

¹¹⁵ Lever-Tracy, p.244

¹¹⁶ J.T. Houghton and others, *Climate Change 2001: The Scientific Basis* (Cambridge University Press Cambridge, 2001); John T. Hardy, *Climate Change: Causes, Effects, and Solutions* (John Wiley and Sons, 2003); Katherine Richardson, Will Steffen and Diana Liverman, *Climate Change: Global Risks, Challenges and Decisions* (Cambridge University Press, 2011).

¹¹⁷ The major global regimes are the UNFCCC with its reliance on the Intergovernmental Panel on Climate Change. The IPCC was established in 1988 by the joint effort of the United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO). The objective of the organisation was to "assess the state of knowledge on the various aspects of climate change including science, environmental and socio-economic impacts and response strategies." The IPCC is recognized as the authoritative source of facts on climate change. Its assessments influence the negotiation process and the policies that emanate from the UNFCCC. 'IPCC and UNFCCC - Institutional Framework'

1990s to date, several measures have been taken to check the increasing accumulation of carbon, but the rate of emission is still increasing.¹¹⁸

A wide range of treaties and programs were established under the UNFCCC to manage the rate of carbon emission. These programs were framed in ways that would not challenge the laws of capitalism and the liberalized economic system; as such the focus is on resolving the problem based on the parameters set by the system that created it. A good example is the Kyoto Protocol which was adopted in 1997, to commit its signatories to programs that will reduce their carbon footprints.¹¹⁹ The protocol established several means for individual states to reach their emission targets in ways that will not affect economic growth. The Clean Development Mechanism (CDM)¹²⁰ and Joint Implementation (JI) mechanism were established by the Kyoto Protocol.¹²¹ Other programs such as Reducing Emissions from Deforestation (RED) which was initiated in 2005; the Forest Carbon Partnership Facility (FCPF) was introduced by the World Bank and the UN in 2006; and Reducing Emissions from Deforestation and Forest Degradation (REDD) introduced in 2007 commenced later.¹²² These programs are designed to use

<http://www.grida.no/graphicslib/detail/ipcc-and-unfccc-institutional-framework_9145> [accessed 23 February 2013].

¹¹⁸ Report shows that the rate of global carbon emission has never fallen except in 2009 which recorded a 1% reduction due to the 2008 financial meltdown, while in 2010 there was a 5% increase in global carbon emission. 'Long-term Trend in Global CO₂ Emissions; 2011 Report - PBL Netherlands Environmental Assessment Agency'; IEA, *Key World Energy Statistics 2011* (France, 2011), p.45

¹¹⁹Mustafa H Babiker and others, 'The Evolution of a Climate Regime: Kyoto to Marrakech and Beyond', *Environmental Science & Policy*, 5 (2002), 195–206. M. Samenfeld-Specht, 'Strengthening the Kyoto Protocol: Accountability, Monitoring, and Enforcement', *Papers on International Environmental Negotiation*, 17 (2009), 103. Jan-Tjeerd Boom, 'International Emissions Trading Under the Kyoto Protocol: Credit Trading', *Energy Policy*, 29 (2001), 605–613. C. Hepburn, 'Carbon Trading: a Review of the Kyoto Mechanisms', 2007.

¹²⁰ The CDM is a program that encourages nations with high carbon footprints to invest in technology and infrastructure in nations with low carbon footprints. Depending on the extent and level of investment, the investor nation will claim credit for meeting its obligations under the protocol. Shaikh M. Rahman, Ariel Dinar and Donald F. Larson, 'Diffusion of Kyoto's Clean Development Mechanism', *Technological Forecasting and Social Change*, 77 (2010). 'Kyoto Protocol (international Treaty, 1997) -- Britannica Online Encyclopedia' <<http://www.britannica.com/EBchecked/topic/737984/Kyoto-Protocol>> [accessed 23 February 2013].

¹²¹ The JI mechanism is provided under Article 6 of the Kyoto Protocol. Klaus Illum and Niels Meyer define the JI mechanism as "a means of obtaining least-cost solutions through joint projects between countries at different technological levels and with different resources and economies." Klaus Illum and Niels I Meyer, 'Joint Implementation: Methodology and Policy Considerations', *Energy Policy*, 32 (2004), p.1013.

¹²²Jailab Kumar Rai, 'Global and Local Discourses on Climate Change: A Perspective from the Concept of Embeddedness', *Dhauagiri Journal of Sociology and Anthropology*, 4 (2010), p.150-152.

economic and financial incentives to reduce greenhouse gases. The global system is confronted by its “addiction”¹²³ to fossil fuels. The difficulty in addressing climate issues can be attributed to the laws and system dynamics of capitalism. The focus on the creation of wealth (driven by the need to seek returns on capital) is a principal economic dynamic that has a de facto regulatory effect by preventing the enactment of effective environmental laws. The focus on creating new wealth leads to the financialization of the natural world as represented as Money=Commodity=Money (M=C=M). This dynamic has been moved to the centre of social decision-making.¹²⁴ Bruce Scott identified this reasoning in his study of the development and dynamics of capitalism. He wrote:

In the new, reformed scheme of things, the new standard of societal value for almost everything could be calculated in a single objective measure: the dollar. Commerce was no longer a means to an improved standard of living; it was the end in itself. Money was not just a store of value or a measure of value; money was the supreme arbiter of value and its accumulation the key measure of success for many.¹²⁵

The world economy is structured around this basic system dynamics. M-C-M is ‘logic’ inherent in capital. It becomes a system dynamic as a result of its being allowed free rein in the social world such that it becomes a regulatory reality as to what is necessary, what is possible, and what is not, even if not recognized as such, that is, as a social ‘law’. The capitalist economic system evolved over a period of time. Bruce Scott examined the historical developments of capitalism as a system of governance when he explains that:

¹²³ During his presidential campaign in 2008, the US President Barack Obama stated “Our addiction to fossil fuels is one of the most serious threats to our national security in the twenty-first century”. Michael T. Klare, ‘America’s Fossil Fuel Fever’, *The Nation*, 29 February 2012 <<http://www.thenation.com/article/166521/americas-fossil-fuel-fever>> [accessed 12 November 2012].

¹²⁴ This shift was explained by Karl Polanyi in his work *The Great Transformation*. Blake Anderson and Michael M’Gonigle articulated this ideology where Polanyi distinguished between a market system that exchanges commodities for use from that which concentrates on the creation of wealth. They noted “...markets that trade in goods and services have existed in virtually all societies, and need not grow where they are submerged in a larger set of cultural calculations and constraints. That is, they can be maintained in a steady state, because they are intended to, and do, meet the needs of their society. To do this, they must meet social needs, producing real ‘use values’...In contrast, markets driven by *capital needs* are designed for one end, to seek *returns to capital*, that is to maximize ‘exchange values’ that can grow the quantum of capital. These markets must grow *by their nature* because the point of any investment of capital is to return more capital to it, and they do this only through the exchange process itself.” Blake Anderson and Michael M’Gonigle, ‘Does Ecological Economics Have a Future?: Contradiction and Reinvention in the Age of Climate Change’, *Ecological Economics*, 84 (2012), p.42.

¹²⁵B. R. Scott, *Capitalism: Its Origins and Evolution as a System of Governance* (Springer, 2011), p.519

The laissez-faire model adopted after 1980 turns out to be radically different from its pre-1932 predecessors because US policymakers deregulated the social and political systems beginning in the late 1960s, with effects that I believe have been grossly underestimated...Furthermore, the transformation of the US systems of governance can only be partially accounted for by “macro” forces such as increasing powers of either government or firms...In this period government had immense powers, but had increasing difficulty bringing them to bear on the economic actors ...which seems to me to have been in considerable measure a rationalization of a lust for increased power and wealth by a ruling oligarchy within the private sector...¹²⁶.

Bruce Scott argues that the modern day capitalist economic system embraces values that promote competition,¹²⁷ unlimited freedom (laissez-faire), continuous creation of wealth (M=C=M), economic growth, and unlimited freedom in creation of wealth (deregulation).¹²⁸ The resulting complex of dynamic relations has made the dichotomous imperatives of resolving the climate issue while maintaining secure access to energy for economic growth irresolvable. The dynamics of continuous quest for wealth have shaped global political, economic, and social relations to the extent that they have been ‘naturalized’, that is, to be seen as just the way things are.¹²⁹ The process of ingraining liberal institutions (such as free-trade, limited state constitutionalism, democratic individualism and human rights, and market capitalism) was achieved at a very high cost. Sánchez-Flores argues that “Western liberalism is based on the cultural achievements of modernity, which got its own self-awareness in Europe and North America during the long historical stretch that encompasses all the modern revolutions: scientific, industrial, and political.”¹³⁰ The laws of capitalism saw to the diffusion of political and economic powers from the state to the private sector. Within the private sector, corporations took advantage of the liberalized system by expanding their market influence. They gained a

¹²⁶Bruce Scott, *Capitalism* (Springer New York, 2011).p515-516

¹²⁷Bruce R. Scott.p.473

¹²⁸ Joseph Schwartz notes that “ to truly comprehend the crisis of American corporate governance one must pierce the veil of ‘free market ideology’ to comprehend the workings of a new, state-constructed form of capital accumulation that prioritizes the “health” of equity markets over the workings of ‘productive’ capital” J. M. Schwartz, ‘Democracy Against the Free Market: The Enron Crisis and the Politics of Global Deregulation’, *Conn. L. Rev.*, 35 (2002)., p 1097-1098

¹²⁹Michael S Northcott, ‘Anthropogenic Climate Change, Political Liberalism and the Communion of Saints’, *Studies in Christian Ethics*, 24 (2011).p.34-37

¹³⁰Mónica Judith Sánchez-Flores, *Cosmopolitan Liberalism* (Palgrave Macmillan, 2010).p.2

lot of economic and political influence and experienced tremendous growth across the globe. The extraordinary accumulation of private power is typified by the fact that in the US, companies with an average workforce of 100 employees in the 19th century increased their employees by over 100,000 workers in the 20th century.¹³¹ These corporations were able to exercise enormous control over the economy. This gave them significant (if informal) ‘regulatory’ power. The imperatives of economic liberalism support unregulated markets and globalization, which have led to high level competition for limited natural resources that are located across the globe. Although coal had been a principal source of energy, in the early 1950s, crude oil took over a huge part of the energy market and led to an increase in energy consumption.¹³² Presently, the danger of releasing carbon into the atmosphere is public knowledge but is confronted by the huge challenge posed by the underlying ideologies that control the present system.

In short, although most environmental lawyers work to create new state laws to control climate change, this analysis suggest that, to combat climate change and (as we will see, to deal with the related policy drivers that leads states to pursue ‘energy security’), it is crucial to reform those core legal regimes and logics that drive the economic system.¹³³ The inherent logics of capitalism, translated into a whole complex of system dynamics are the major contributing factors that hinder effective steps to reduce carbon emission. They are the stumbling block to better inter-state relations for the resolution of global issues.¹³⁴

The twenty-first century capitalist economic system evolved through time, based on the legal regimes and policy supports which it received from governing authorities. Origins of the capitalist economic system can be traced to the 15th century. It evolved from the feudal economic system¹³⁵ that was highly structured around hierarchical power relations

¹³¹ Scott, p. 8-9

¹³² Historical Timeline - Alternative Energy - ProCon.org’.

¹³³ The key reform should focus on changing the ideology of accumulation of wealth.

¹³⁴ David Manuel-Navarrete, M. R Redclift and Mark Pelling, *Climate Change and the Crisis of Capitalism*, Routledge Studies in Human Geography (Routledge, 2012), xxxvii, p 129-133

¹³⁵ According to the *Encyclopedia of the Early Modern World*, “feudalism refers to the medieval dependency/service relationship between lords and their vassals or to the political subordination and service of lesser lords to higher lords or princes. It faded in the early modern centuries as princes developed

that limited individual freedoms and promoted inequality. Struggles for social, political, and economic liberty led to the introduction of the capitalist system.¹³⁶ At the early development phase of the capitalism, the state had a high level of control over the economy and played a crucial role in creating the required environment to build and develop capitalist laws and ideologies. Bruce Scott and Linnea Meyer analyzed how the US government facilitated economic growth as had occurred in European states, by favoring capitalist legal regimes and ideologies against other conflicting interests and laws including those that might promote human rights.¹³⁷ In the mid 19th century, the corporation was given the status of a person and authorized to create holding companies which resulted in “quasi-monopolies” and conglomerates. During this period, the corporation developed oligopolistic power that limited competition and led to concentrated economic and political power so that the state’s control over these corporations and its economic authority dwindled. Subsequently, efforts by the federal and state governments to regain control over the system were countered by lobbyists at the legislative houses and by legal interpretations that often rendered laws inconsistent with laissez-faire capitalist rules as unconstitutional. In *Dartmouth v. Woodward*, delivering his majority opinion, Chief Justice John Marshall established the legal personality of a corporation and nullified the notion that they are “instruments of the state”. He also barred political interventions and government control.¹³⁸ These factors contributed to building the legal regimes that gave the private sector unlimited freedom and support to adopt diverse means in creation of wealth and expansion of investments beyond national territories.

institutionally complex states and replaced unreliable feudal levies with mercenaries and, eventually, standing armies.” James L. Goldsmith, ‘Feudalism’, in *Europe, 1450 to 1789: Encyclopedia of the Early Modern World*, ed. by Jonathan Dewald (New York: Charles Scribner’s Sons, 2004), II, p.385

¹³⁶Richard Lachmann, ‘Feudal Elite Conflict and the Origins of English Capitalism’, *Politics & Society*, 14 (1985); R. H. Hilton and Christopher Hill, ‘The Transition from Feudalism to Capitalism’, *Science & Society*, 17 (1953).

¹³⁷ From the 1890s to the 1930s, the Supreme Court supported corporations that brought suit against labor unions for restraining trade against the Sherman Antitrust Act of 1890. In *Re Debs* (158 US 564, 1895), the Court held that the federal government had the capacity to issue injunction against labor unions whose actions opposed or hindered interstate commerce. B. R. Scott, *Capitalism*.p.473

¹³⁸Bruce R. Scott.p.435

Foreign investments led to the emergence of MNCs. Geoffrey Jones traced the history and development of contemporary MNCs. He noted that major international investments in the mining industry began in Europe in the 1820s.¹³⁹ By the 1850s, the German electrical company Siemens had established its first plant outside Germany, while Singer Sewing Machines, a US based corporation, established a plant abroad in 1860s. The two corporations were the first manufacturing multinationals following in the long-established British tradition of supporting global trading companies such as the Hudson's Bay and Northwest Companies. The first wave of broad globalization started in the 1880s and reached its peak in 1929. In 1914 foreign direct investment (FDI) was estimated at \$40-\$45 billion (US). Within this period, there was rapid increase in the number of international investments, which covered a wide range of products. Some of the multinationals that were established during this period were "free-standing companies".¹⁴⁰ There were major advancements in the liberalization of the economy, which made most nations to start withdrawing from economic activities. The first wave of globalization started disintegrating in 1929. It introduced the legal regime of "trade protectionism"¹⁴¹ and the sequestration of "enemy investments"¹⁴², which was a partial departure from the ideologies of a liberal economic system.¹⁴³ Most multinationals responded by establishing subsidiaries in their target states.

¹³⁹ Geoffrey Jones noted that international trade began as early as 3500 BC in the Near East and 'multinationals' were seen in Assyrian kingdom around 2000 BC. In this context, international trade requires investments outside the jurisdiction where the corporation is incorporated. Geoffrey Jones, *Multinationals and Global Capitalism* (Oxford University Press, 2005), p.16-17

¹⁴⁰ These were corporations which are incorporated in the home country but are formed to exclusively operate abroad with no prior domestic business. Geoffrey Jones describes them as "international venture capitalists exploiting the numerous opportunities of the booming world economy and expanding imperial frontiers" Jones, p.21

¹⁴¹ This is the act of restricting the import of foreign goods. Trade protectionism contributed to the failure of the first wave of globalization. On the other hand, it led to the establishment of multiple subsidiaries that are the backbone of modern day globalization. Robert Carbaugh noted that those multinationals that had interest in selling their goods in jurisdiction with trade barriers and high tariffs had to establish subsidiaries within those territories. A typical example is the establishment of auto-assembly plants in the US by Japanese corporations. Similarly, US corporations had to establish subsidiaries within the European Union nations to avoid the high tariff they placed against non-member states. Robert J. Carbaugh, *International Economics* (Cengage Learning, 2010), p.6

¹⁴² It is the term used in describing those companies established by nations who were at war with their country. Germany lost most of its investments to allied nations who were victorious after the First World War.

¹⁴³ This is the act of restricting the import of foreign goods. Trade protectionism contributed to the demise of the first wave of globalization. Jones, p.27

The second wave of globalization started in the early 1950s; US corporations enjoyed a unique position in the world economy as victors of the Second World War. The process of globalization was facilitated by a whole set of global agreements (including the General Agreement on Trade and Tariffs),¹⁴⁴ that were negotiated as the war was coming to an end in the hopes that greater global economic integration would forestall major international conflicts. The GATT was designed to reduce world trade barriers and integrates ever more countries into the global economy. The agreement was most effective in the 1960s when the Kennedy Administration in the US made drastic reduction in tariffs rates.¹⁴⁵ During this period the multinationals grew to be major actors in driving the global economy. The third wave of globalization started in the 1970s. The annual growth rate for FDI flow grew to 14%, and between 1996 and 2000, it grew to 40%. Most multinational investments were based on transnational mergers and acquisitions; FDI was estimated at \$6.8 trillion by 2001. There was high flexibility in transactional investments, which gave the multinationals opportunities to locate their subsidiaries across the globe for maximum exploitation.¹⁴⁶

The free trade system reduced barriers to trade. It facilitated the mobility of MNCs in order to promote the principal logic of returning capital to capital. This logic becomes entrenched as a system dynamic and makes the state regulation that undermines this dynamic difficult. MNCs can easily transfer resources or relocate their establishment to favorable parts of the globe. Debora Spar contrasts the neoliberal world with earlier times when the global market was less liberal:

For when firms from one country invest directly into the territory of another, they are physically transplanting the means of production from one place to another, taking with them the jobs, technology, taxes, and suppliers that their operation produces. The impact of this shift can be dramatic, so dramatic, indeed, that states frequently spend vast sums of money in an effort to woo multinational investors and make them stay. This is a far cry from the situation that prevailed earlier in the twentieth century, when nations derided multinationals as invaders and often entangled them in years of negotiation and yards of red tape. Yet both reactions reveal how important foreign investment can be for a host

¹⁴⁴Jones.p.27

¹⁴⁵ At this period the US accounted for 85% of FDI globally.

¹⁴⁶Jones.p.16-41

country, and thus how closely these countries are bound to regulate, monitor, and administer investment flows.¹⁴⁷

Most governments are fearful of taking measures that may prompt the multinationals to relocate from their territory. The power of mobility gives the MNCs the capacity to extract favorable regulations and dictate the policy direction of their host state in those issue-areas that affect their operations.¹⁴⁸ This is another de facto regulatory dynamic that cannot be understood within the normal meaning of ‘regulation’. With the bargaining power tilting in favor of the MNCs, states are compelled to expose their growing domestic corporations and economy to global competition while offering multinationals preferential treatment to attract or retain them. Preferential treatment can take many forms, such as the Malaysian government’s ‘multimedia super-corridor’¹⁴⁹ and the Philippine government’s ‘Export Processing Zones’ (EPZs).¹⁵⁰

Corporate mobility produces a system dynamic that facilitates self-regulation for these multinationals, which is another system dynamic that gives the multinationals de facto regulatory power. For example, it empowers them to limit the amount of taxes they pay to their host state and to resist restrictive environmental laws. Similarly, because MNCs operate across national borders, this de facto regulatory authority strengthens their ability to influence supranational regimes. This is a ‘constitutive’ systemic authority that is higher/greater than mere individual laws. David Levy and Aseem Prakash argue that MNCs are better off when the regulatory authority moves from the national government to supranational agencies; as they are instrumental in reducing regulatory standards across transnational space. They assert that supranational institutions are cost-effective to

¹⁴⁷Debra L. Spar, ‘8. National Policies and Domestic Politics’, in *The Oxford Handbook of International Business*, 1st edn (Oxford, England: Oxford University Press).

¹⁴⁸B. Roach, ‘Corporate Power in a Global Economy’, 2007, p.11

¹⁴⁹ This is a government designated zone, instituted to move Malaysia into the information and knowledge age. This program covers high-tech schemes such as electronic business, smart card systems, government departments and telemedicine. Tim Bunnell, ‘Multimedia Utopia? A Geographical Critique of High-Tech Development in Malaysia’s Multimedia Super Corridor’, *Antipode*, 34 (2002), 265–295.

¹⁵⁰ According to Encyclopedia of Geography, it is a location that is “set up by a government to promote and capture foreign direct investment, international trade, technological transfer, and industrial development. These zones provide preferential treatments and incentives to attract foreign enterprises and investors.” *Encyclopedia of Geography* (Thousand Oaks, Calif: Sage Publications, 2010).p.1067

lobby, once the MNCs with similar interests pull their resources together.¹⁵¹ Amjad Hadjikhani and Pervez Ghauri conducted empirical research on the political influence of five Swedish multinationals in the European Union(EU).¹⁵² They noted that the concentration of legislative matters at the EU parliament allows multinationals with interest in similar issue-areas to combine their resources to ensure that favorable laws are passed, especially as they affect liberalization and deregulation of the market. They observed that each of the organizations has a special division that handles political affairs. These departments monitor and influence legislative processes through legal officers, committee members, parliamentary staff, Swedish representatives, commissioners and EU ministers. Multinationals channel significant resources, directly and indirectly into shaping the laws and directives that emanate from the EU parliament. They observed these departments spend approximately 50% of their time meeting with parliamentarians and delegates.¹⁵³ The logics of capitalism and, when given full social rein, the resulting system dynamics strengthen the subservience of public to private power, thus reducing the chances of democracies enacting laws in the ‘public interest’. Promotion of a free-market system by the MNCs is primarily aimed at advancing the primary logic/goals of achieving greater returns to investment and expanding their market size to achieve that. Dennis Rondinelli stated that with the pretense of promoting globalization and democracy, the MNCs have gained access to most nations in a way that is disadvantageous to those nations.¹⁵⁴ Once they are established it is more difficult to regulate the MNC because of their political power.¹⁵⁵ MNCs are thus a truly ‘constituent’ authority.

¹⁵¹D. L. Levy and A. Prakash, ‘Bargains Old and New: Multinational Corporations in Global Governance’, *Business and Politics*, 5 (2003),p.132

¹⁵² The names of the multinationals are Telia (telecommunications industry), Vattenfall (electric power industry), Scandinavian Airlines System (SAS), ABB Groups (automation and power industry) and Ericsson (telecommunications)

¹⁵³A. Hadjikhani and P. Ghauri, ‘Multinational Enterprises and Their Lobbying Activities in the European Union’, *Corporate and Institutional Transparency for Economic Growth in Europe*, 2006,.p.10-18

¹⁵⁴ Most developing nations must expose their weak and growing economies to the highly competitive global economy, in anticipation to benefit from it but the process does not favor developing economies. V. Shiva, *Earth Democracy: Justice, Sustainability and Peace* (Zed Books, 2006).,p.87

¹⁵⁵D. A. Rondinelli, ‘Transnational Corporations: International Citizens or New Sovereigns?’, *Business Strategy Review*, 14 (2003).

The laws of capitalism are gradually disempowering the masses on issues of governance, while the system dynamics enable the multinationals to increase their political and economic regulatory powers. Deregulation and liberalization of the global market are manifestations of liberating the dynamics of capitalist laws that removed trade barriers, thereby allowing the multinationals to draw enough resources and political influence to become constitutive of new systemic relations that shape the polity of any individual state.¹⁵⁶ These system dynamics gradually and continuously diminish the democratic powers of the people, by way of loss of political, social, and economic freedom. Joseph Schwartz used the “Enron Crisis” to expose the calamities of liberalism and deregulation. He noted that:

The Enron scandal is best understood as a case-study of the costs of the global neo-liberal model of deregulation. The dirty secret is that financial deregulation inevitably leads to speculative bubbles and bursts.¹⁵⁷ ... In September 2001, the Enron Corporation ranked as the seventh largest U.S. transnational firm in terms of total balance-sheet revenues. We now know how cooked its books really were. But in the seven years preceding the scandal, *Fortune magazine* had ranked Enron as our most innovative firm. What did Enron do? It traded almost anything on its futures and derivatives markets and produced almost nothing...The roots of the Enron scandal go back two decades to the deregulatory policies of the Carter and Reagan Administrations... the victims were not the taxpayers as a whole, but those employees whose pensions depended upon their forced holdings of Enron stock...¹⁵⁸it is another calamitous product of a deregulated financial system that places all the costs of corporate risk-taking on ordinary citizens and allows the speculative risk-takers to get away with--for them--costless failure.¹⁵⁹

The democratic powers of the people to influence legislative processes and public policies through labor unions and election processes have been weakened by private sector multinationals. Assessing the union membership as an indicator of the powers of the labor unions, Brian Roach states that unions are significantly weaker in the advent of globalization. He stated that the decline in union membership is noticeable in most OECD nations. In the US, the competitive system dynamics of capitalism have led to

¹⁵⁶Jeffrey A. Winters and Benjamin I. Page, ‘Oligarchy in the United States?’ *Perspectives on Politics*, 7 (2009).

¹⁵⁷Schwartz,p.1097-1098

¹⁵⁸Schwartz,p.1099

¹⁵⁹Schwartz,p.1100

weakened powers of labor unions. This is reflected in the massive reduction in their membership from around a third of the workforce in the mid-1950s to less than 10% in 2007.¹⁶⁰ David Korten asserts that in the process of attracting MNCs, most governments suppress labor unions and make arrangements to maintain lower wages and labor standards.¹⁶¹ They now exercise little control over their affairs because of the strong bargaining power of the MNCs. Decision making is becoming more centralized around a few public and private actors, while democratic laws are dwindling. It is not difficult to link failures of labor unions to the dynamics of liberalism.¹⁶² Reports and case-studies have shown that market reform which aims at opening a state's economy to the global market led to the decimation of trade unions.¹⁶³ Electoral processes ordinarily are meant to facilitate the election of leaders that would represent and protect the interests of citizens by enacting appropriate laws, but the private sector-- MNCs have hijacked the process.¹⁶⁴ The situation has been a longtime in the making. Alerting the Congress that the growth of private power could lead to fascism, President Franklin D. Roosevelt in his message delivered on April 29, 1938 stated that:

The liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than the democratic state itself. That in its essence is fascism: ownership of government by an individual, by a group or any controlling private power.¹⁶⁵

The primary aims of electing representatives are becoming more elusive, when the MNCs have the capacity to influence the process. With their huge capital outlay, these MNCs are able to influence both electoral and legislative processes from the nomination of candidates by political parties to their positions on specific legislative issues or public policies. They channel a lot of resources into sponsoring the campaign of their choice as

¹⁶⁰Roach,p.15

¹⁶¹D. C. Korten, *When Corporations Rule the World* (Berrett-Koehler Pub, 2001)].

¹⁶²M. Svensson, 'Neoliberal Globalization—the End of Labor Unions in the Third World?'

¹⁶³H. Haarstad, 'Globalization and the New Spaces for Social Movement Politics: The Marginalization of Labor Unions in Bolivian Gas Nationalization', *Globalizations*, 6 (2009), 169–185.

¹⁶⁴'Multinational Corporations Try to Buy an Election', *The Nation*<<http://www.thenation.com/blog/155269/multinational-corporations-try-buy-election#>> [accessed 6 January 2013].

¹⁶⁵'Franklin D. Roosevelt: Message to Congress on Curbing Monopolies.' <<http://www.presidency.ucsb.edu/ws/index.php?pid=15637>> [accessed 18 January 2013].

candidates. Successful candidates respond to their support by protecting their interests in both the legislative and the executive arms of government. This level of influence exhibits the domineering nature of public/private relations within the state. They are contrary to democratic principles. In the US, figures released by the Center for Responsive Politics (CRP) shows that in 2006, over \$2.6 billion (US) was spent in federal lobbying which is a 62% increase in the amount spent in 2000. Statistics show that in the 2004 elections, half of the highest 100 political donors to federal candidates were MNCs and the majority of the others were organizations that represent business interest.¹⁶⁶

Rajesh Makwana examined how corporations shape public opinion and governance to accumulate more wealth. He argued that in the past 150 years, the powers of MNCs have been on the increase. Over 70% of world trade is controlled by five hundred multinationals. Over 80% of global multinationals are located in the US and EU, and these multinationals maintain some 30,000 lobbyists in both Washington (US capital) and Brussels (location of EU Parliament), with the principal aim of influencing laws. An average of 4.5 million US dollars is spent by corporations yearly on lobbying each Congress member. From 1997-2000 over \$9.7 billion (US) were invested in lobbying. In the US and the UK, the same set of individuals who occupied executive positions in corporations were appointed as government officials to occupy positions which were in direct conflict with their corporate interest. Lord Simon of Highbury, who was the former chairman of British Petroleum (BP) and the vice chairman of the European Roundtable of industrialists, which is a powerful corporate lobby group, was appointed as the minister for Trade and Competitiveness in Europe under the Department of Trade and Industry.¹⁶⁷ Makwana stated that for the 2004 US presidential elections, approximately

¹⁶⁶<http://www.opensecrets.org/>.Roach, p.171; Hobson Jr, 'The Unseen World of Transnational Corporations' Powers'.p.26

¹⁶⁷ Rajesh Makwana noted that "...the same conflict of interest exists at the highest levels in the US government, only more openly and to greater detriment. The majority of President Bush's cabinet are millionaires and several are multimillionaires. The President, Vice-President, Commerce Secretary and National Security Adviser all have strong ties to the oil industry. The Bush family had strong ties to Enron-which was President G. W. Bush's largest corporate source of funding. Bush's father, the former President, has exploited his government connections to solicit investments on behalf of the Carlyle Group. Vice-President Dick Cheney amassed some £50m-\$60m while he was chief executive of Halliburton Oil Company. Condoleezza Rice was a director of Chevron. Secretary of Commerce Donald Evans held stock valued between \$5m and \$25m in Tom Brown Inc, the oil and gas exploration company he headed, and the

\$880,500,000 (US) was generated for campaigns.¹⁶⁸ Money was the key factor in the 2002 Congressional elections because 75% of Senate seats and 95% of House of Representative seats were won by those that spent the most amount of money. Finally, on shaping public opinion, he noted that for 2006, global advertising was valued at over \$427 billion (US). In the US, about 100 of the largest multinationals bought over 75% and 50% of commercial and public television time respectively.¹⁶⁹

Multinational corporations exercise greater influence in emerging economies and developing nations. The UN General Assembly Resolution 1514 (XV) of 14 December 1960,¹⁷⁰ facilitated the formal abolition of colonialism. At the time the declaration was made, laws of capitalism and its dynamics had already set a new form of colonialism, known as neocolonialism.¹⁷¹ Moreover, colonial attitudes continue to exist in both the colonizer and colonized, in diverse and subtle forms, a concern of ‘post colonialism’. In transnational space, multinational corporations and international institutions are the key promoters of neocolonialism. From a GLT perspective, one could say that by empowering these MNCs they embed dynamics that are culturally constitutive. In such a situation, they produce what are thus effectively ‘laws’ and do so at such a high level of impact that they have a ‘constitutional’ character in both a practical and legal sense (i.e. they are both effective and authoritative). These laws both create the enabling environment for multinationals to exercise political and economic authority over nations that are of economic interest to them and shape how the systems—economic, political,

list goes on, highlighting in particular a pronounced concentration of energy connections.”Makwana Rajesh, *Multinational Corporations (MNCs): Beyond The Profit Motive* (Share The World’s Resources, 2006).

¹⁶⁸Rajesh.

¹⁶⁹Rajesh.

¹⁷⁰Declaration on the Granting of Independence to Colonial Countries and Peoples. ‘The

¹⁷¹ The Encyclopedia of Governance defines *neocolonialism*, “as the control of less-developed countries by developed countries through an indirect means. The term was first used after World War II to refer to the continuing dependence of former colonies on foreign countries. Its meaning soon broadened to apply, more generally, to places where the power of developed countries was used to produce a colonial-like exploitation, for instance, in Latin America, where direct foreign rule had ended in the early nineteenth century. The term is now widely used to refer to a system of global governance in which transnational corporations and global and multilateral institutions combine to perpetuate colonial forms of exploitation of developing countries. Neocolonial governance has been broadly theorized as a further development of capitalism that enables capitalist powers (both nations and corporations) to dominate subject nations through the operations of international capitalism, rather than by means of direct rule.” ‘Neocolonialism’, in *Encyclopedia of Governance* (Thousand Oaks, CA: Sage Reference, 2007), II, p. 596

and cultural—are allowed to develop. The MNCs influence the political and economic activities that take place in host states, most especially in developing nations. Neocolonialism has resulted in cases of political oppression. Some of these MNCs have been identified with corrupt practices.¹⁷² There have been cases where the activities of the MNCs have resulted in the destabilization of the political system of their host state. John Dobson connected the concept of free trade to neocolonialism, when he wrote:

Freedom of investment - freedom to expatriate profits, to manipulate local politics, to pay workers slave wages, to block social programs, to spoil the environment unhindered by regulation - has been the true meaning of the word 'free' in 'free market'. It involves stealing away national sovereignty, repressing labor organizing and political parties, destroying self-sufficiency in food and basic goods (and imposing food and basic goods import dependency), keeping wages and the standard of living low, and broadening the gap between rich and poor.¹⁷³

It should be reiterated that these are real impacts that have been effectively mandated through the liberation of regulatory logics, even if such logics are not formalized in legal terms.

The AIDS medication case was a dispute between US multinational pharmaceutical companies and the South African government. The key issue was between the public health of South Africans and corporate profit: which should take precedence? AIDS is a huge problem in South Africa, where one in ten people are HIV positive. For the treatment of HIV patients, anti-retroviral drugs are used in controlling the replication of the viruses cost a patient an estimated \$15,000 (US) annually. To treat the 4.2 million AIDS patients in South Africa, it would cost the South African government about \$63 billion (US), which is approximately 20% of its Gross Domestic Product (GDP). Due to the high cost of the medication, only .001% of AIDS victims in Africa have access to the

¹⁷² In 1975, the Honduran President Oswaldo López Arellano, was removed from office after his bribe scandal with Eli Black, the then Chairman and President of United Brands Company (now Chiquita) was revealed. It was reported that he enacted laws that doubled the tax on exported bananas. The president of the corporation then bribed him with \$2.50 million (US), which was paid to a Swiss Bank account over a period of two years, to revert the tax to its original position. This saved the corporation approximately \$7.5 million (US) yearly. The corrupt activities were foiled by US police when investigating the circumstances surrounding the sudden death of Eli Black. Robert Carbaugh, "International Factor Movements and Multinational Enterprises," *South-Western*, 2002.p.17

¹⁷³ John Dobson, 'TNCs and the Corruption of GATT: Free Trade versus Fair Trade', *Journal of Business Ethics*, 12 (1993).p.575

drugs. Meanwhile NGOs and AIDS activist groups had been mounting pressure on the multinationals to reduce the price of the drugs for nations like South Africa, considering that they make only 1% of their profit from the region. The multinationals did not make any effort to reduce the price of the drugs. Under the WTO Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), for the protection of patents it allows for compulsory licensing and parallel importation, as methods nations can employ to lower the price of medication. South Africa adopted these practices and was able to bring down the price of the medication by as much as 82% of the original price. The drug corporations were concerned that if their customers in Western nations discovered how low the price became, it would affect their profits and so enacted measures to prevent South African government from adopting those practices. They lobbied the US government to apply bilateral pressure to the South African government.¹⁷⁴ Dennis Rondinelli maintains that such activities now challenge the very idea of the ‘sovereignty’ of the nation-state with a form of government which is unregulated and unaccountable.¹⁷⁵

This form of government does not allow for effective environmental laws. These dynamics encourage multinationals to employ methods that are not benign to the environment. The exploitative objective of these MNCs is not restricted to their host states but extends to other nations where their products are consumed.¹⁷⁶ They bargain for low royalties and tax rates, and low environmental standards. To guarantee easy transfer of profits, they seek autonomy from government regulation in areas like profit repatriation, currency conversion, and other local content requirements.¹⁷⁷ The US Senate subcommittee on Homeland Security and Governmental Affairs reported that Microsoft and Hewlett-Packard, amongst other US multinationals, exploited the flaws in their tax code to evade taxes on overseas profits worth billions of dollars. Microsoft transferred some of its intellectual property rights to a Puerto Rican subsidiary, and the process saved the corporation approximately \$4.5 billion (US) between 2009 -2011. Hewlett-Packard

¹⁷⁴‘AIDSTRIPS: Intellectual Property and AIDS Medication in South Africa’ <<http://www1.american.edu/ted/aidstrips.htm>> [accessed 4 December 2012].

¹⁷⁵Rondinelli.p.19

¹⁷⁶William I. Robinson, ‘Global Capitalism and Nation-State-Centric Thinking — What We Don’t See When We Do See Nation-States: Response to Critics’, *Science & Society*, 65 (2001),p.505

¹⁷⁷Levy and Prakash. 140

used billions of dollars of internal loans to avoid taxes on foreign profits, which the corporation used in funding its U.S. operations.¹⁷⁸ The logics of economic growth and globalization put enormous pressure on states to enact lenient legislation; this gives multinationals the room to exploit such states.¹⁷⁹ A good example is the Income Tax (Amendment) Act that was passed by the Jamaican House of Representatives, which encourages multinationals to establish their head office in Jamaica by exempting the officers of the corporations who are not Jamaicans from paying income tax. The Minister of Finance and Planning, Dr Peter Phillips stated that “the purpose of the bill is to provide incentives for large international corporations operating in multiple jurisdictions to move their activities to Jamaica.”¹⁸⁰ The political and economic contradictions and resultant effects that accompany these leniencies are not usually envisioned by states.

The present global order and the logics of capitalist growth have altered the effect of competition in a free market system. Competition in a free trade system is seen to lead to efficiencies in production, and thus to lower costs for consumers. In a closed system, the ability of the most efficient firm to undercut others leads to the demise of the less competitive corporation and to the concentration of market power in fewer and fewer actors. Growth in the size of market can provide somewhat of a relief valve by expanding the field for all players without necessarily driving the less efficient ones out of business in a closed system. Eliminating competition gives bigger corporations the power to regulate the price of goods.¹⁸¹ John Bellamy Foster and others examined the increasing concentration of global multinational companies noting that in 1995 the assets of the six largest bank holding companies in the US were 17% of the US GDP, but by 2006 it had increased to 55%, and in 2010, it climbed to 64%. In the retail industry in 1992, the top

¹⁷⁸Jia Lynn Yang, ‘Report: U.S. Multinationals Exploit Tax Code’, *The Washington Post*, 21 September 2012, section Business <http://www.washingtonpost.com/business/economy/report-us-multinationals-exploit-tax-code/2012/09/20/463d7a10-0360-11e2-91e7-2962c74e7738_story.html> [accessed 5 December 2012].

¹⁷⁹‘Role of Multinational Corporations in International Politics’ <<http://www.preservearticles.com/201106208270/role-of-multinational-corporations-in-international-politics.html>> [accessed 18 August 2012].

¹⁸⁰‘Jamaica Tax Guide 2012’ (PKF International Limited, 2012).p.3-4 “Jamaica Seeking to Attract Multinational Corporations | Share News’ <<http://sharenews.com/jamaica-seeking-to-attract-multinational-corporations/>> [accessed 6 December 2012].

¹⁸¹Hobson Jr.Alessandro Bonanno, Douglas H. Constance and Heather Lorenz, ‘Powers and Limits of Transnational Corporations: The Case of ADM’, *Rural Sociology*, 65 (2000).

50 firms had 22.4% of the market share, which then increased to 37% in 2007. They wrote:

All of these developments are commonly seen as engendering greater competition in the economy, and could therefore appear to conflict with a notion of a general trend toward monopolization. However, the reality of the case is more nuanced. ... Twentieth-century monopoly capitalism was not returning to its earlier nineteenth-century competitive stage, but evolving into a twenty-first-century phase of globalized, financialized monopoly capital. The booming financial sector created turmoil and instability, but it also expedited all sorts of mergers and acquisitions. In the end, finance has been—as it invariably is—a force for monopoly. Announced worldwide merger and acquisition deals in 1999 reached \$3.4 trillion... In 2007, just prior to the Great Financial Crisis, worldwide mergers and acquisitions reached a record \$4.38 trillion, up 21 percent from 2006. The long-term result of this process is a ratcheting up of the concentration and centralization of capital on a world scale.¹⁸²

Wayne Ellwood argues that mergers and acquisitions that eliminate competition are contrary to the original ideals of a free market, where competition is crucial for efficient allocation of resources.¹⁸³ Mapping out the origin of the competing multinationals in a global arena, William Robinson identified European, the United States, and Japan as the parent state of most of the multinationals. They focus on developing their national trade, investment, and currency patterns that have produced oligopolistic patterns within global trade relations.¹⁸⁴ Describing the effects of the ‘free market’ system and competition on developing economies Vandana Shiva stated:

Farmers like Lee were robbed of their right to live by WTO rules which forced Korea to open its rice market to US agribusiness giants like Cargill and ConAgra. In 2001, the cost of production of rice was \$18.66 per bushel in the US but was sold internationally at \$14.55 per bushel. This dumping — selling products at below the cost of production--is legal under the WTO and resisting dumping has been made illegal.¹⁸⁵

¹⁸²John Bellamy Foster, Robert W. McChesney and R. Jamil Jonna, ‘Monopoly and Competition in Twenty-First Century Capitalism’, *Monthly Review*, 62 (2011), p.10

¹⁸³W. Ellwood, *The No-nonsense Guide to Globalization* (Verso, 2001).

¹⁸⁴W. I. Robinson, ‘Beyond Nation-state Paradigms: Globalization, Sociology, and the Challenge of Transnational Studies’, in *Sociological Forum*, 1998, XIII.p.576

¹⁸⁵Shiva.p.77

Put another way, there is an absence of uniform and binding laws to contain and guide the activities of the multinationals. This absence pervades labor, environmental, health, tax, and employment legal regimes; it defines the limits of law. Where such laws exist, the key problem is the enforcement process. As many MNCs have greater flexibility of action than their host states, it is challenging to enforce internationally recognized laws on them. This gives them the latitude to regulate themselves. The self-regulation which is practiced by the multinationals has resulted in corporate irresponsibility. The Bhopal disaster is a typical illustration of the dangers of self-regulation in developing nations. The 2nd and 3rd December 1984 will remain indelible on the minds of the people of Bhopal, in India. It was the day the worst industrial disaster in history occurred as a result of a gas leak from the Union Carbide India Limited pesticide plant. Twenty eight years after, the people are still counting their losses. The gas leak was reported to have killed over 15,000 people and injured over half a million people. To date it was reported that the ground water in the community is still contaminated. Many suffer from a wide range of lung diseases, cancer, infertility, nervous breakdowns, and the community records an average stillbirth rate of 25%. To date, Bhopal Memorial Hospital and Research Centre which was established to take care of the victims, attends to an average of 4,500 patients on a daily basis. The Indian Drug Administration reported that multinational pharmaceutical companies such as AstraZeneca, GlaxoSmithKline and Theravance use human beings as guinea pigs for conducting drug tests, and this has resulted in 14 deaths. All these are attributes of a self-regulating system.¹⁸⁶

3.3 The MNCs and the Carbon Conundrum

The escalating series of economic and environmental crises, coupled with the growing level of social inequality in an age of plenty, reveals the deficiencies of capitalism. Similarly, the naturalization of globalization—in the words of Margaret Thatcher, “There is no alternative”—reveals its regulatory and constitutive power even in the face of its obvious failures. The present global issues on climate change and energy security can be linked to the *laissez-faire* laws projected by capitalism. Notwithstanding, the causes of

¹⁸⁶‘Twenty-Eight Years On, History’s Worst Industrial Disaster Still Kills The Babies Of Bhopal’ <<http://www.worldcrunch.com/world-affairs/twenty-eight-years-on-history-039-s-worst-industrial-disaster-still-kills-the-babies-of-bhopal/bhopal-india-clinical-trial-pharmaceutical/c1s10316/>> [accessed 7 December 2012].

climate change are public knowledge. The need to reduce the rate of energy consumption and to diversify the primary sources of energy is unquestionable, but the changes that have been made are bound by the mandate not to challenge the free play of the logics of capitalism, and this situation has pervaded the very fabric of contemporary global governance¹⁸⁷

Global issues can be effectively addressed when nations appreciate the nature of the problem and the possible ways of addressing it both individually and collectively. The carbon conundrum is linked together because most laws or policies that are made for one have some direct effects on the other. Although regulatory proposals are produced in global institutions where most nations are represented, approving effective international rules and accepting them domestically would reduce the availability and use of cheap fossil fuels with direct impacts on the cost of production and most importantly the profit margin of the corporations, including the multinationals. The mobility of MNCs will then enable them to relocate to where the laws and regulations are weaker or not enforced. As globalization connects the economic activities of nations, and the economies of most nations are powered by fossil fuels, innovative change is stymied at every level. In an effort to discourage the implementation of emission constraint regulations, the CEO and Chairman of Exxon Mobil, Lee Raymond stated:

Although the science of climate change is uncertain, there's no doubt about the considerable economic harm to society that would result from reducing fuel availability to consumers by adopting the Kyoto Protocol or other mandatory measures that would significantly increase the cost of energy. Most economists tell us that such a step would damage our economy and almost certainly require large increases in taxes on gas and oil. It could also entail enormous transfers of wealth to other countries.¹⁸⁸

Such resistances highlight the need for nations to engage in a collaborative effort to create uniform regulatory laws across the globe to give the world a chance of resolving the carbon conundrum.

¹⁸⁷Anderson and M'Gonigle.

¹⁸⁸S. Van den Hove, M. Le Menestrel and H. C. de Bettignies, 'The Oil Industry and Climate Change: Strategies and Ethical Dilemmas', *Climate Policy*, 2 (2002), 3–18.

The increasing rate at which public powers are ceded to a small class of MNC managers does not bode well for the resolution of the carbon conundrum, that is, of overcoming the dichotomy between guaranteeing energy security and resolving climate change concerns. The political position of the state on energy needs, in particular, determines the fundamental principles and ideologies that guide environmental laws. The situation does not operate in reverse, environmental needs shaping energy security policies. With the influence and resources of the multinationals, and the monetization of electoral processes, the private sector effectively determines the kind of laws that will be enacted. It will be extremely difficult to enact carbon constraint laws or legislation to reduce or depart from fossil fuels, when multinational oil and gas corporations sponsor the leading political party into power.¹⁸⁹ Analyzing the response of business organizations in Canada and the US to the ratification of Kyoto Protocol in 2002, Kathryn Harrison affirmed that MNCs enthusiastically campaigned against the Kyoto Protocol by engaging in defensive lobbying tactics, to prevent the establishment of regulations that would restrict carbon emissions. The Canadian Coalition for Responsible Environmental Solutions (CCRES) an organization that is made up of over 30 business associations, including MNCs that have interest in oil and gas, used the media to spread negative information on the impact of the Kyoto targets on Canadian economy.¹⁹⁰

Neocolonialism is exhibited in the remote control that parent companies exercise over subsidiaries in other states. David Levy and Ans Kolk identified that multinationals are subject to the pressure from their home country and each firm's history and experiences. They noted that the pressure is partly connected to the fact that the senior management team of the multinationals are concentrated at the home country and that climate strategies are formulated to replicate the cognitive structure and regulatory system of the home country environment. They also noted that the home country's economic and

¹⁸⁹Hobson Jr.p.26

¹⁹⁰K. Harrison, 'The Road Not Taken: Climate Change Policy in Canada and the United States', *Global Environmental Politics*, 7 (2007), 92–117., B. Eberlein and D. Matten, 'Business Responses to Climate Change Regulation in Canada and Germany: Lessons for MNCs from Emerging Economies', *Journal of business ethics*, 86 (2009)., D. L. Levy and A. Kolk, 'Strategic Responses to Global Climate Change: Conflicting Pressures on Multinationals in the Oil Industry', *Business and Politics*, 4 (2002).

physical resources, national economic and industrial policies, and the cultural and institutional norms are key factors that generate divergent pressure on operations of the MNCs in host country.¹⁹¹In no uncertain terms, Bade Onimode explained that:

In Nigeria as elsewhere, the giant multinational corporations are the basic units of imperialism in its contemporary neo-colonial stage. The analysis of these monopoly 'sharks' is critical to the understanding of the mechanisms through which Third World countries are exploited, manipulated, and perpetuated as the collective 'wretched of the earth'. These activities are closely coordinated with such other imperialist mechanisms as foreign investment, export-import trade, and foreign aid. They have generated and perpetuated the seemingly intractable problems of mass poverty, stifling foreign domination, savage exploitation, open starvation, debilitating disease, pervasive illiteracy, widening inequality, irrational waste, cultural degradation, and political instability in Nigeria and other Third World countries within the imperialist orbit.¹⁹²

With this kind of influence, it would be difficult to establish and implement laws to discourage the use of fossil fuel.

The operation of Shell Oil Company in Nigeria is a good reflection of the exploitative nature of the MNCs and its impact on the environment. Alfredo Quarto painted a good picture of the exploitative nature of its operations. He stated that since Shell Oil Company started its operation in the Niger Delta area in Nigeria, it has generated over \$300 billion (US) from crude oil; yet the people in the Niger Delta region are starving and live with high level of environmental degradation.¹⁹³Omofonmwan and Odia argue that the operations of the multinationals for the past 50 years in the Niger Delta region of Nigeria have produced increased levels of poverty, inequality, environmental degradation, deprivations, and inflation. These factors contribute to the underdevelopment of the region, numerous cases of youth restiveness, and social

¹⁹¹Levy and Kolk.p.281-282, 289. AnsKolk and David Levy, 'Winds of Change:: Corporate Strategy, Climate Change and Oil Multinationals', *European Management Journal*, 19 (2001),.p.501-509

¹⁹²B. Onimode, 'Imperialism and Multinational Corporations: A Case Study of Nigeria', *Journal of Black Studies*, 1978,.p.207

¹⁹³'Nigeria In a Land of Oil and Agony'

<http://www.thirdworldtraveler.com/Africa/Nigeria_Land_Oil_Agony.html> [accessed 21 August 2012].

disorder.¹⁹⁴ Assessing the ethical dilemma of the multinational oil firms, Sybille van den Hove and others concluded that from ExxonMobil's perspective, it is preferable for the society to put up with the consequences of climate change, than to face the economic effects of mitigating it. They noted that the position of ExxonMobil on the carbon conundrum is that, "...it is better to have a risk of climate change and a profitable oil industry that can boost the economy and technological development, than to try to reduce the risk—and hence, diminish profits for the oil industry—since it would presumably impact on the whole economy."¹⁹⁵

There are no universally recognized rules for monitoring or regulating the MNCs. The British Petroleum (BP) oil spill that occurred at the Gulf of Mexico on the 20th day of April 2010 is a good example of the deficiency of self regulation. The spill started after an explosion occurred on Macondo platform; it killed 11 persons and injured 17 others. The BP oil spillage is believed to be the worst environmental catastrophe in the U.S. history as over 4.5 million barrels of oil was spilled, and a fine of 19 billion US dollars was levied on the company. The spill which lasted for three months can be attributed to lack of adequate regulatory system in deepwater drilling.¹⁹⁶ Michael M'Gonigle wrote:

As British Petroleum's Macondo well daily gushed thousands of barrels every day into the sensitive Mississippi delta, the world was again faced with the need for seemingly impossible human actions. The financial crisis had presented a nightmare scenario of an economic world spiraling into depression and collapse. The oil spill presented a new scenario of a tiny mechanical malfunction spiraling beyond human technical capabilities that proffered a runaway disaster for the physical world. And just as the financial crisis demanded new forms of regulation, so too did the oil spill... President Obama noted: 'For years there's has been a scandalously close relationship between oil companies and the agency that regulates them... The oil and gas industry has leveraged such power that they have effectively been allowed to regulate themselves'... Many saw the BP oil spill as a game-changer given the unimaginable scale and out-of-control character of the

¹⁹⁴S. I. Omofonmwan and L. O. Odia, 'Oil Exploitation and Conflict in the Niger-Delta Region of Nigeria', *Journal of Human Ecology*, 26 (2009).

¹⁹⁵Van den Hove, Le Menestrel and de Bettignies.p.15

¹⁹⁶'Counting the Cost of the BP Disaster One Year On', *BBC*, 20 April 2011, section Business <<http://www.bbc.co.uk/news/business-13120605>> [accessed 17 May 2012].L. Smith, M. Smith and P. Ashcroft, 'Analysis of Environmental and Economic Damages from British Petroleum's Deepwater Horizon Oil Spill', *Available at SSRN 1653078*, 2010

accident, and the almost criminal acquiescence of the regulators with their quiet waivers, incompetence and alleged corruption.¹⁹⁷

3.4 Conclusion

In this chapter, I examined the global economic and political influence of the MNCs. I highlighted how laws of capitalism facilitate the corporations in exacerbating the carbon conundrum. To resolve the conundrum, there is need to establish better systems to regulate the MNCs.

¹⁹⁷Michael M’Gonigle, *Liberal Limits of Democracy*.p.7-8

Chapter 4: The State

4.1 Introduction

Black's law dictionary defines a state as "a body politic, or society of men united together for the purpose of promoting their mutual safety and advantage, by the joint efforts of their combined strength."¹⁹⁸ According to Oxford dictionary of law, a state is defined as "a sovereign and independent entity capable of entering into relations with other states and enjoying international legal personality." For an entity to be recognized as a state, it must have a permanent population, defined territory, an organized government, and must be recognized by other 'sovereigns'.¹⁹⁹

The territorial sovereignty system of global governance was not designed to deal with the carbon conundrum. Sovereignty is "the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation."²⁰⁰ The right to territorial sovereignty is a major impediment in international relations because it generally excludes other states and international bodies from interfering in the internal affairs of a state.²⁰¹ Subject to contrary inter-state agreements, it gives a state absolute right over its land, air space, internal waters and subsoil for its benefit, and it prohibits other states from violating that right.²⁰² These might be seen as 'logics' that flow from the nature of sovereignty that has governed global relations in the Westphalian world. They remain the backbone of international law.²⁰³

¹⁹⁸ *Black's Law Dictionary, 8th Edit.*

¹⁹⁹ *A Dictionary of Law*. Article 1 of the Montevideo Convention on Rights and Duties of States 1933 provides that State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.

²⁰⁰ *Black's Law Dictionary, 8th Edit.*

²⁰¹ Christopher Rudolph argues that the sovereignty of a modern state is threatened by globalization, because of the increase in social, economic, and political interdependence, and the growing influence of supranational political entities. Christopher Rudolph, 'Sovereignty and Territorial Borders in a Global Age', *International Studies Review*, 7 (2005).p.3 'Charter of the United Nations: Chapter VII: Action with Respect to Threats to the Peace, Breaches of the Peace and Acts of Aggression' <<http://www.un.org/en/documents/charter/chapter7.shtml>> [accessed 7 January 2013].

²⁰² G. Distefano, 'Theories on Territorial Sovereignty: A Reappraisal' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1688967> [accessed 23 August 2012]

²⁰³ David Held, *Political Theory Today* (Stanford University Press, 1991).p.256

The deficiencies of international relations based on Westphalia principles were exposed by the First and Second World Wars. These wars prompted efforts to create more cooperative international institutions to regulate economic, social, and political relations, efforts that might be seen to compromise the strict application of state sovereignty. Nevertheless, states still exercise a very high degree of control over activities within their territories.²⁰⁴ As David Held has argued:

The new global politics-involving, among other things, multibureaucratic decision-making within and between governmental and international bureaucracies, politics triggered by transnational forces and agencies and new forms of multinational integration between states-has created a framework in and through which the rights and obligations, powers and capacities of states have been redefined. The state's capacities have been both curtailed and expanded, allowing it to continue to perform a range of functions which cannot be sustained any longer in isolation from global or regional relations and processes²⁰⁵.

The complexities of inter-state affairs as seen in our contemporary global system and the growing interdependence of states for social, economic, and political purposes resulted in the emergence of supranational regimes and economic/political regional units like the European Union (EU), African Union, Economic Community of West African States, and others. The development of the EU reflects the new trend of transnational governance that emerged with the aim of meeting the demands of the present world, while dealing with the inadequacies of the Westphalian system. For example, the EU project started after the Second World War in 1945. By 1950, European Coal and Steel Community fostered limited economic and political cooperation among several European states, which led to the creation of European Economic Community (EEC) by the Treaty of Rome in 1957. Over time, the EEC attracted more European states seeking to benefit from the economy of scale that it represented, and to enhance it further with ever more possibilities for the free movement of people, services, goods, and money. The creation of the European Union in 1993 led to greater economic integration, leading to the creation of a common currency (the Euro) that has been a central player in seeking a

²⁰⁴ The UN Charter merely encourages peaceful resolution of conflicts and restricted the use of force in the inter-state conflict. Held, *Political Theory Today*.

²⁰⁵ David Held, *Democracy and the Global Order* (Stanford University Press, 1995).p.92

resolution to the consequences of the 2008 economic meltdown that, among other things, threatens the common European currency itself. The EU is also working to reduce carbon emission by investing in green technology.²⁰⁶ These supranational bodies enact laws that are binding on member states and some maintain independent mechanisms for law enforcement. States have voluntarily ceded many sovereign rights to these organizations. Nevertheless, global governance is still based in inter-state relations, and this system of global governance impedes the resolution of the carbon conundrum.

4.2 How the State-centered System of Governance Exacerbates the Conundrum.

Despite these supranational developments, the continued focus on the nation-state system of global order has limited new forms of global governance, most especially those that might lead to the resolution of issues like climate change.

In most democratic systems, a term in office runs between four to five years. Within that period, an elected government has to execute projects that are perceived to benefit its population in order to stand a chance for re-election to office. To address the carbon conundrum, long-term plans, capital investments, and new tax regimes that extend beyond this period will be needed. Such plans may have short-term negative effects.²⁰⁷ This creates an opportunity for key political actors like the multinationals, media houses, opposition parties, and special interest groups who contribute in shaping public opinion, to criticize these initiatives and stir up opposition. This was reflected in the 2012 presidential debate between the Democrat presidential candidate President Barak Obama and the Republican candidate Governor Mitt Romney, where the latter criticized and condemned Obama's plan to fund green energy development. Romney criticized the president for picking "losers" in the energy sector, and ignoring the needs of the fossil fuel industry which the government subsidizes annually with only \$2.8 billion (US),

²⁰⁶ 'EUROPA - The History of the European Union' <http://europa.eu/about-eu/eu-history/index_en.htm> [accessed 8 January 2013].

²⁰⁷ A. Giddens, 'The Politics of Climate Change', *public policy research*, 2009, p.17

which is paid to oil and gas companies.²⁰⁸ On the issue of subsidies, Michael M’Gonigle wrote:

From the early common law “rule of capture”(that allocated ownership of oil to the person who finds and takes control of it), diverse legislative instruments have been developed over the years to facilitate oil exploration and development—the ‘expensing’ of intangible drilling cost, depletion allowances, multiple tax breaks, subsidies and waivers. Between 1974-2000, for example, the US federal government spent more than \$100 billion (US) on energy research and development. Federal fossil fuel subsidies between the years 2002-08 amounted to \$72.5 billion. This is a world pattern that sees the energy sector receiving annual state subsidies of up to \$300 billion. And these numbers do not include the unpriced environmental subsidies in the form of ‘externalities’ such as air and water pollution (let alone climate change), biodiversity loss, human health impacts, and the disruption (and destruction) of diverse territorial cultures displaced by energy development. Less directly, there is also the massive subsidy provided by the military to protect foreign supplies.²⁰⁹

Romney criticized the investment of 90 billion US dollars in renewable-energy projects;²¹⁰ and raising regulatory standards for fossil fuels. He concluded that such policy direction will not guarantee energy security. In defense, President Obama stated that the investment is crucial for the nation’s long-term energy autonomy.²¹¹ Although President Obama was re-elected, a government that adopts this line of development, which is sustainable and resilient, is set to face great opposition and a herculean task of justifying its plans.

The system of accountability in the state-centric approach to governance is another militating factor against the resolution of the conundrum. In a democratic system, the

²⁰⁸ ‘Romney Debate Attack on Green Energy, Says Obama Picks “losers”’, *The Washington Times* <<http://www.washingtontimes.com/news/2012/oct/4/debate-on-green-energy-losers-vs-fossil-fuels-heat/>> [accessed 8 January 2013].

²⁰⁹ Michael M’Gonigle, *Liberal Limits of Democracy*, p.10.

²¹⁰ The \$90 billion (US) investment by Obama’s administration was allotted as follows: “\$29 billion for energy-efficiency improvements to homes and businesses; \$21 billion for “renewable generation,” such as the installation of wind turbines and solar panels; \$10 billion for modernization of electric meters and the nation’s electric grid; \$6 billion for advanced car batteries; and \$3 billion for carbon capture technology necessary for clean coal, among others.” ‘Romney Debate Attack on Green Energy, Says Obama Picks “losers”’.

²¹¹ ‘Romney Debate Attack on Green Energy, Says Obama Picks “losers”’

government of a state is meant to be accountable to the people.²¹² Based on this premise, most governments ostensibly strive to implement laws and embark on projects that will have a direct positive impact on the lives of the people. This system of accountability makes it more challenging to induce individual states to address climate issues and transition away from a fossil economy, because there is constant pressure on administrators to deliver projects that will improve the ‘living standard’ of the people, which means to increase material wealth. On the other hand, transitioning from a fossil economy may impose some degree of material hardship on the people. With no accountability, low incentive, and minimum pressure from international regimes, states are not motivated enough to address these issues.

Multiplicity of interests is another major impediment to the resolution of the conundrum. Land, unlike the atmosphere, is divided into territories, and most of the territories are under the sovereign authority of a state. Each state maintains a government that administers its internal and external affairs to facilitate the realization of her policy goals. Presently, the world is composed of over 190 states and governments.²¹³ This means that over 190 interests are promoted and protected by different governments for the benefit of the entities within their territory. Depending on the resources available to the state, they maintain different energy security plans that have different effect on the atmosphere. Nations whose primary sources of energy are fossil fuels have the propensity to emit more carbon than those that rely on other forms of energy. Yet, the negative effects of carbon emission affect all states. To address climate change, some level of international cooperation among high energy consumer nations is necessary.

Bernhard May noted that in 2005, the low income nations generated less than 5% of global carbon emissions, while the middle and the high income nations generated around 50% and 45% respectively. These figures highlight the importance of engaging the middle-income and the high-income nations in plans geared at resolving the conundrum.

²¹² As discussed in the earlier section, the obvious exception is the “money politics” that is in place in most democratic system.

²¹³ ‘Member States of the United Nations.’ <<http://www.un.org/en/members/index.shtml>> [accessed 20 July 2012].

He stated that the US, China, India, and Russia are jointly responsible for over 50% of global carbon emissions. The US and China do not have specific carbon reduction goals, while the EU has specific goals of attaining 20% reduction in carbon emissions, 20% increase in energy efficiency, and 20% increase in renewable energy.²¹⁴ Although the likelihood of unifying the individual interests of every state is very low, setting parameters on how states pursue their energy plans is a prerequisite to the resolution of the climate/energy conundrum.

Globalization and capitalism have made the principle of “survival of the fittest” the guiding rule in international relations.²¹⁵ If a state plans to combat climate change by engaging in carbon constraint programs, the state will be put into a disadvantageous competitive position. The benefits that accrue from it are also enjoyed by their competitors. William Greider described inter-state competition for lower environmental standards as a “race to the bottom”.²¹⁶ Barry Rabe and others affirmed that without general regulations, competition among states for relocating business would indeed create a “race to the bottom” whereby states reduce environmental standards to encourage companies to transfer their facilities to these states, and away from states where their demands are not met.²¹⁷ Jeffrey Frankel writes that:

The “*race to the bottom*” hypothesis is perhaps the strongest basis for fearing that international trade and investment specifically (rather than industrialization generally) will put downward pressure on countries’ environmental standards and thus damage the environment across the global system. Leaders of industry, and of the unions whose members are employed in industry, are always concerned about competition from abroad. When domestic regulation raises their costs, they fear that they will lose competitiveness against firms in other countries. They warn of a loss of sales, employment, and investment to foreign competitors. Thus domestic producers often sound the competitiveness alarm as a way of applying political pressure on their governments to minimize the burden of regulation. The “race to the bottom” concern is that, to the extent that

²¹⁴Bernhard May, ‘Energy Security and Climate Change’, *South Asian Survey*, 17 (2010).p.25-26

²¹⁵S. Wennekers and R. Thurik, ‘Linking Entrepreneurship and Economic Growth’, *Small business economics*, 13 (1999).p.35

²¹⁶ Inter-state competitions and the pressure from multinationals lure states to reduce their environmental, health and safety, labor, and wage standards. William Greider, *One World, Ready or Not* (Simon & Schuster, 1997).

²¹⁷B.G. Rabe, M. Roman and A.N. Dobelis, ‘State Competition as a Source Driving Climate Change Mitigation’, *NYU Envtl. LJ*, 14 (2005),.p.5

countries are open to international trade and investment, environmental standards will be lower than they would otherwise be.²¹⁸

A report on global climate change released by Council on Foreign Relations noted that:

Distribution of global emissions reinforces the need for broad multilateral cooperation in mitigating climate change. Fifteen to twenty countries are responsible for roughly 75 percent of global emissions, but no one country accounts for more than about 26 percent. Efforts to cut emissions—mitigation—must therefore be global. Without international cooperation and coordination, some states may free ride on others' efforts, or even exploit uneven emissions controls to gain competitive advantage. And because the impacts of climate change will be felt around the world, efforts to adapt to climate change—adaptation—will need to be global too.²¹⁹

In a state-centric system of global governance which operates a party political system, change in administration leads to policy changes. This process affects long-term projects on climate change and the transition away fossil energy negatively. Failure to institute a special department that handles energy and climate issues separately is a militating factor to the resolution of the carbon conundrum. In most states, climate change and energy security policies are treated like any other political issue, and are subject to the discretionary powers of a new administration. This flexibility will always be a huge challenge to the resolution of the conundrum. Anthony Giddens identified the challenge in sustaining long-term projects in an adversarial political system, and the propensity of a new administration sacrificing unpopular climate policies for political gains. He writes that:

By their very nature, it could be argued, democratic countries tend to be driven by the immediate concerns of voters at any one time. How do we think long term in societies that tend to be dominated by short-term issues? We surely have to reintroduce planning of some sort, but how and of what kind? In a democratic system, how can binding decisions be made that will override changes of government? There has to be a cross-party consensus about overall climate change policy—no more red-green coalitions, or talk about green being the new red—but what

²¹⁸J. Frankel, 'Global Environmental Policy and Global Trade Policy', 2008.p.3

²¹⁹'The Global Climate Change Regime', *Council on Foreign Relations*<<http://www.cfr.org/climate-change/global-climate-change-regime/p21831>> [accessed 9 January 2013]..

type of consensus, and how is it to be sustained in the face of the tendency of parties always to look for political capital to exploit?²²⁰

David Held and Angus Fane Hervey argue that it is crucial to sacrifice some democratic principles in order to effect the necessary changes that will halt climate issues.²²¹

The high levels of inequality among states, coupled with the gap in stages of development impede the resolution of the conundrum. In a state centric system of global governance, individual states have their social, economic, and political concerns, which they prioritize differently and adopt different approaches to addressing those problems. These factors reduce the chances of inter-state collaboration. States facing major on-going problems of poverty, disease, internal political conflicts, low social amenities, and low living standard will most likely place high priority on these problems against climate issues.²²² The collaborative efforts of states are fundamental for the resolution of global climate issues; as such, the need to breach the level of inequality is fundamental to a lasting solution to climate change.²²³ Wytze van der Gaast and Katherine Begg argued that the structural character of the climate challenge would require states to develop a complex set of responses that would “support technology development and transfer, improve enabling environments for innovation, address equity issues such as poor people’s energy access, and make implementation of activities possible at the desired scale within the country.”²²⁴ They also identified the connection between climate policy with other policies like energy security and poverty reduction. They wrote:

In developing countries, the interdependency between climate change and domestic policies is even greater as a changing climate directly affects people’s well-being, such as limited access of poor people to energy. With this in mind, there is every reason to address access to energy to reach the Millennium Development Goals, a priority goal for

²²⁰Giddens.p.8

²²¹D. Held and A. F. Hervey, ‘Democracy, Climate Change and Global Governance’, *Policy Network [online]*, 2009.p.5

²²²Brian C. O’Neill, F. Landis MacKellar and Wolfgang Lutz, *Population and Climate Change* (Cambridge University Press, 2000) ., K. L. O’Brien and R. M. Leichenko, ‘Winners and Losers in the Context of Global Change’, *Annals of the Association of American Geographers*, 93 (2003).

²²³F. Biermann and K. Dingwerth, ‘Global Environmental Change and the Nation State’, *Global Environmental Politics*, 4 (2004).

²²⁴Wytze van der Gaast and Katherine Begg, *Challenges and Solutions for Climate Change*, Green Energy and Technology Ser. (Springer, 2012).p.1-27

many developing countries, as a part of adopting low-emission technologies for avoiding climate change... Energy poverty is critically undermining the achievement of the [Millennium Development Goals, MDG]. As long as hundreds of millions of people remain deprived of the basic energy services needed to stay fed and healthy, earn a living, and allow the time needed for learning and fulfillment, the MDGs will remain out of reach...the increasing inter-linkage of climate change with other policy areas is that in developing countries, the urgency of climate change exists alongside the development urgencies as formulated by the Millennium Development Goals (MDGs).²²⁵

4.3 Conclusion

In this chapter, the nation-state was analyzed to show how it has contributed to promoting the carbon conundrum. Climate change and energy security will, by their nature, require nations to sacrifice their individual interests for effective global action.²²⁶This will be extremely difficult to achieve in the present global order, where competition motivated by capitalism and individual state interests is the guiding 'legal' rule.

²²⁵Gaast and Begg.

²²⁶May, 'Energy Security and Climate Change' .p.25

Chapter 5: Civil Society²²⁷ (Non-governmental Organizations)

5.1 Introduction

Globalization is commonly understood as the facilitated process by which capital, labor, goods and services cross national borders and develop a transnational character.²²⁸ The *Encyclopedia of Power* refers to it as various processes that link national and regional economies, societies, and cultures.²²⁹ Gary Teeple defines globalization as “the unfolding resolution of the contradiction between ever expanding capital and its national political and social formations.”²³⁰ Jeremy Brecher and others distinguish between “globalization from above” and “globalization from below”. They identify the former as the kind of globalization celebrated by economists, corporate executives, and the leaders of the world’s richest nations while they describe the latter as the mechanism through which the masses at the grassroots level around the world network to impose their interests on the process of globalization.²³¹ Alice Johnson argues that globalization from above is undemocratic and represents the interest of the powerful, while globalization from below connects grassroots organizations with people in different countries.²³²

The carbon conundrum seems to have defied all the solutions projected within the past two decades. This calls for concern as to whether there is any feasible solution to the problem. This chapter will show that the process of devising a feasible solution to the conundrum has been unsuccessful because of the structural and systemic deficiencies of the institutions charged with this responsibility. These deficiencies are ‘regulatory’ in their effect, producing certain inevitable outcomes and blocking others. This chapter will

²²⁷ In this chapter, ‘civil society’ represents NGOs

²²⁸ Julie Newman, *Green Ethics and Philosophy: an A-to-Z Guide* (Thousand Oaks, CA.: SAGE Publications, Inc., 2011).

²²⁹ ‘Globalization: Encyclopedia of Power’ <<http://sage-reference.com.ezproxy.library.uvic.ca/view/power/n158.xml?rskey=2TiYEH&result=1&q=globalization>> [accessed 20 July 2012].

²³⁰ *Globalization and Its Discontents* (Houndmills, Basingstoke, Hampshire: New York: Macmillan Press; St. Martin’s Press, 2000).p.9

²³¹ Jeremy Brecher, Tim Costello and Brendan Smith, *Globalization from Below: The Power of Solidarity* (South End Press, 2000).

²³² A. K. Johnson, ‘Globalization from Below: Using the Internet to Internationalize Social Work Education’, *Journal of Social Work Education*, 35 (1999), p.377–394.

also highlight the importance of the civil society in global governance, after which a case will be made for their incorporation in global governance.

5.2 Need for Change

To resolve the carbon conundrum in the same global paradigm that created the problem is improbable. The present global order is predominantly relocating governing bodies to regional, supranational and transnational institutions, which distance governance from the people. It is necessary to incorporate grassroots actors like NGOs that are flexible and dynamic to reconnect structures of governance to the people. Ann Clark, Elisabeth Friedman, and Kathryn Hochstetler stated that “as contributors to the wealth of global activity, NGOs are some of the more curious contenders for a role at the UN world conferences. Their most important claims for inclusion rest on norms of democracy and civic participation, which historically have been weak at the international level.”²³³

A proper democratic system situates the locus of power with the people. Instead, global capitalism has caused the movement of economic and political powers from the public sector to private corporate actors, particularly multinational corporations (MNCs). More broadly, Jessica Mathews argues that “national governments are not simply losing autonomy in a globalizing economy. They are sharing powers—including political, social and security roles at the core of sovereignty—with businesses, with international organizations, and with a multitude of citizens groups. The steady concentration of power in the hands of states that began in 1648 with the Peace of Westphalia is over, at least for a while.”²³⁴ Multinationals exercise some level of influence in world politics and economy. Liberalization and deregulation of the economy empowered the multinationals that are partly responsible for the present economic and environmental crisis. Increasing the liberty of profit-driven multinationals is not a responsible approach to global governance. To build a sustainable society, the unregulated system needs to be reformed. An effective global regulatory system that transcends state boundaries is needed to

²³³A. M. Clark, E. J. Friedman and K. Hochstetler, ‘The Sovereign Limits of Global Civil Society: a Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights, and Women’, *World politics*, 51 (1998), p.6

²³⁴J. T. Mathews, ‘Power Shift’, *Foreign Aff.*, 76 (1997), p.50

monitor the multinationals that also transcend these boundaries but do so without global responsibility. They are not restricted by the territorial boundary of states. The NGOs are able to facilitate the monitoring and regulation of MNCs because like the latter they are not restricted by boundaries. Sushil Vachani Jonathan P. Doh and Hildy Teegen stated that:

... [A]s NGOs become more successful in growing their membership and developing sophisticated networks to effect change, they become more integrated into the institutional environment in which they operate, and the more they will influence the formal institutional setting for MNC investment... Since it is vital for the MNC to achieve and maintain legitimacy in all its environments, the MNC will experience the pressure to adopt local practices and become isomorphic with the local institutional context. NGOs and the broader civil society and community interests that they represent clearly constitute important and increasingly influential elements of this institutional environment.²³⁵

The carbon conundrum can only be resolved by an effective global approach. The world is divided by territorial boundaries and states strive to protect their interests. The competing and conflicting interests hinder agreement on a feasible action to resolve this conundrum. A resolution will require that approaches be developed that can transcend the individual interests of states. This can be achieved by harnessing the multiple networks of civil society that has the capacity to balance these interests. Larry Diamond argues that:

[A]richly pluralistic civil society, particularly in a relatively developed economy, will tend to generate a wide range of interests that may cross-cut, and so mitigate, the principal polarities of political conflict. As new class-based organizations and issue-oriented movements arise, they draw together new constituencies that cut across longstanding regional, religious, ethnic, or partisan cleavages.²³⁶

Civil society can facilitate the process of addressing those cultural practices that encourage high consumption of fossil fuels by raising the needed awareness through their multiple networking systems.

²³⁵Sushil Vachani, Jonathan P. Doh and Hildy Teegen, 'NGOs' Influence on MNEs' Social Development Strategies in Varying Institutional Contexts: A Transaction Cost Perspective', *International Business Review*, 18 (2009), p.451

²³⁶L. J. Diamond, 'Toward Democratic Consolidation', *Journal of democracy*, 5 (1994), p.9

5.3 Prospect for Change from the Present Global System

Before the advent of capitalism, the world had experienced a series of economic systems.²³⁷ Change in systems of governance is effected when a system no longer suits contemporary social, political, and economic needs of the masses.²³⁸ It is usually facilitated by individuals in the middle and lower class, because they bear the brunt of a deficient system. The masses effect these changes by marching against the oppressive system.

The last two decades have witnessed the rise of a series of movements, in response to the oppressions and deficits in their specific areas of interest. These movements arose in different states based on the need to change those social ills. Jessica Mathew stated that:

No one knows how many NGOs there are or how fast the tally is growing. Published figures are badly misleading. One widely cited estimate claims there are 35,000 NGOs in the developing countries; another points to 12,000 irrigation cooperatives in South Asia alone. In fact, it is impossible to measure a swiftly growing universe that includes neighborhood, professional, service, and advocacy groups, both secular and church-based, promoting every conceivable cause and funded by donations, fees, foundations, governments, international organizations, or the sale of products and services. The true number is certainly in the millions, from the tiniest village association to influential but modestly funded international groups like Amnesty International to larger global activist organizations like Greenpeace and giant service providers like --CARE, which has an annual budget of nearly \$400 million.²³⁹

These movements restructure and modify their objectives to reflect contemporary social and political ills. Some movements with similar objectives are more successful than others. This can be attributed to the difference in national systems of administration. Jessica Mathew links the difference to culture and authoritarian systems of governance.²⁴⁰ It is necessary for civil societies around the world to support each other by increasing their networking systems. Jan Aart Scholte argues that “a civil society organization that is

²³⁷Paul M. Sweezy, *The Transition from Feudalism to Capitalism*, Foundations of History Library (Humanities Press, 1976).

²³⁸Martin Ruef and David Reinecke, ‘Does Capitalism Produce an Entrepreneurial Class?’ *Research in Organizational Behavior*, 31 (2011), 225–252 <doi:10.1016/j.riob.2011.09.006>.p.230

²³⁹Mathews.p.53

²⁴⁰Mathews.p.53

weak in isolation can become stronger through cooperation with other groups. Cross-sectoral networks can be particularly helpful in strengthening the position of subordinated populations... South-North and South-South coalitions have often strengthened the position of weak civil society groups in poor countries.”²⁴¹

Civil society leads major changes in global policy decisions. They use their broad networks to detect issues that subsequently became of global concern. Improvements in information technology facilitate networking among civil groups and their connection to grassroots. It gives them an edge in receiving information and creating awareness. They have a unique connection to the public. Michele Betsill and Elisabeth Corell argue that:

NGOs are increasingly successful in using their specialized knowledge to modify the actions taken by state decision-makers by altering their conceptions of their interests. Such knowledge is a particularly valuable resource as international environmental issues are highly complex, and decision-makers often turn to NGOs for help in understanding the nature of the problems and the implications of various policy alternatives under consideration. This knowledge provides NGOs with legitimacy and access to negotiations and can be used as a source of leverage to achieve their desired goals.²⁴²

Civil society plays a key role in negotiating, monitoring, and even influencing the creation of standards in a wide range of issue-areas, because it is their primary focus. They can facilitate the revolution that is required in the present global order. Simmons stated that:

NGOs on the ground often make the impossible possible by doing what governments cannot or will not. Some humanitarian and development NGOs have a natural advantage because of their perceived neutrality and experience. The International Committee of the Red Cross, for example, is able to deliver health care to political prisoners in exchange for silence about any human-rights violations that its members witness. Other groups such as Oxfam International provide rapid relief during and after complex humanitarian disasters-with and without UN partners. Moreover, as governments downsize and new challenges crowd the international agenda, NGOs increasingly fill the breach. ...the UN and nation-states are depending more on NGOs to get things

²⁴¹J. A. Scholte, ‘Civil Society and Democratically Accountable Global Governance’, *Government and Opposition*, 39 (2004), p.224-225

²⁴²M. M. Betsill and E. Corell, ‘NGO Influence in International Environmental Negotiations: a Framework for Analysis’, *Global Environmental Politics*, 1 (2001), p.74

done. Total assistance by and through international NGOs to the developing world amounted to about \$8 billion in 1992-accounting for 13 percent of all development assistance and more than the entire amount transferred by the UN system...International NGOs also play critical roles in translating international agreements and norms into domestic realities. ..Environmental NGOs police agreements such as the Convention on International Trade in Endangered Species, uncovering more accurate data on compliance than that provided by member nations. Perhaps one of the most vital but overlooked NGOs roles are to promote the societal changes needed to make international agreements work.²⁴³

The connection between civil society and their diverse localities is of fundamental importance to global governance. They bring the people and the stakeholders to dialogue about specific issue-areas. They give voice to the people that were originally voiceless by creating an environment where they can deliberate important issues. Thomas Princen argues that:

[B]y building expertise in areas diplomats tend to ignore and by revealing information economic interests tend to withhold . . . it is influence gained from speaking when others will not speak, from espousing something more than narrow self-interest, from sacrificing personal gain for broader goals... it is the influence gained by filling a niche that other international actors are ill-equipped to fill.²⁴⁴

Civil society groups are flexible. They enjoy the liberty of structuring and constantly restructuring their connection with local communities, for engagement and sensitivity to their plight.²⁴⁵

It is necessary to increase the powers and responsibilities of civil society in global governance²⁴⁶Barbara Gemmill and Abimbola Bamidele-Izu enumerated the roles of NGOs in global environmental governance. First, NGOs can compete intellectually with government because of their capacity to employ better analytical and technical expertise

²⁴³P. J. Simmons, 'Learning to Live with NGOs', *Foreign Policy*, 1998, p 86-87

²⁴⁴T. Princen and others, *Environmental NGOs in World Politics: Linking the Local and the Global*. (Routledge, 1994) <<http://www.cabdirect.org/abstracts/19941808785.html>> [accessed 29 January 2013].p.41-42

²⁴⁵Reinicke, Deng and Witte.

²⁴⁶José Seoane and Emilio Taddei, 'From Seattle to Porto Alegre: The Anti-neoliberal Globalization Movement', *Current Sociology*, 50 (2002), p.99–122.Eddie Yuen, Daniel Burton-Rose and George N. Katsiaficas, *The Battle of Seattle: The New Challenge to Capitalist Globalization* (Soft Skull Pr, 2001).

and their ability to respond quickly to emergencies. Second, they are able to promote the interest of minority, unrepresented, and oppressed groups in policymaking. Third, they facilitate negotiations by providing politicians with valuable advice and expert analysis. They expose them to schemes that are completely out of their bureaucratic sources. Fourth, NGOs can raise awareness on key political issues through campaigns and outreach. They have the capacity to shape public opinion. Fifth, they can legitimize global policies by improving the authoritativeness of the policy choices of global institutions. Sixth, they strengthen transnational agreements by monitoring negotiations and compliance processes. Finally, NGOs provide both humanitarian and technical services and also participate in a wide range of operational activities.²⁴⁷ All these are crucial regulatory processes that facilitate an effective system of global governance. Civil society is rich in human resources as it draws its membership from across the globe. This singular characteristic gives it the leverage to make better analyses of policy decisions with due regard to the multiple backgrounds from which these policies and decisions originated. NGOs bring issues to the fore for their own sake, help overcome interest-based (corporate) and inter-state (political) competition, and bring forward collective values and interests.

Notwithstanding the growing importance of the civil society in global governance, it still has some limitations and challenges. Jan Art Scholte identifies some of these challenges. First, NGOs face serious financial constraint and long-term financial security. Struggles to acquire funds have compromised the autonomy of some NGOs. Second, the ability to influence the system is dependent on their relationship with governing authorities. If the authorities are reluctant to engage the NGOs or give them some political space, it reduces their prospect of facilitating a democratic system. Third, the low level of mass media coverage limits their ability to influence global governance. Civil society initiatives enjoy low quality press treatment. The negative impression from the mainstream media is also a challenge. Fourth, the political culture of the state determines their effectiveness. Civil society groups are more effective in states and regions that are rooted in democratic traditions and accommodate the culture of citizen mobilization. Finally, most civil society

²⁴⁷Gemmill and Bamidele-Izu,p.7

groups operate limited accountability systems, and as such fall short of formal accountability requirements. Some lack public mandate, their leaders are self-elected, do not engage in proper public consultation, do not report their activities, have poor complaint channels, and have poor financial monitoring arrangements. These factors have some negative effects on their ability to influence global governance.²⁴⁸

The present global order is in crisis. This situation can be remedied with the help of civil society.²⁴⁹ The internet and social networks can be harnessed for the dissemination of information among civil groups across the globe. Civil society can challenge all forms of hegemony that distance governance from the people. Just like the labor movement,²⁵⁰ NGOs can employ strategies such as public campaigns, picketing, strike actions, and peaceful demonstrations to challenge gathering aimed at promoting globalization from above. These challenges will sensitize governing bodies on the deficiencies of the present system. Some proposals will be made on possible structural and systemic re-forms to address the deficiencies of the present system.

5.4 Conclusion

In this chapter, I highlighted the growing importance and influence of the civil society in global governance. I argued that they have the capacity to bridge the gaps that exist between governing institutions and the grassroots. The civil society will be instrumental in resolving the conundrum.

²⁴⁸Scholte, 'Civil Society and Democratically Accountable Global Governance', p.222-232

²⁴⁹D. Della Porta, *Globalization from Below: Transnational Activists and Protest Networks* (Univ of Minnesota Press, 2006)].

²⁵⁰C. B. Craver, 'The Impact of Labor Unions on Worker Rights and on Other Social Movements', *ABA Journal of Labor and Employment Law*, Vol. 26, 2011

Chapter 6: Global Governance and International Institutions

6.1 Introduction

According to a policy paper from the *Canadian Chamber of Commerce*, global governance is defined as “a process of cooperative leadership that brings together national governments, multilateral public agencies, and civil society to achieve commonly accepted goals.” It provides strategic direction and marshals collective energies to address global challenges.²⁵¹ The *Commission for Global Governance* defines it as:

[T]he sums 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 co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest.²⁵²

The underlying idea is that global governance is a process that involves innumerable actors and institutions. It is necessary to understand how governance systems work *as* systems, that is, how the dynamics are structured in ways that shape permissible and impermissible outcomes. Such an understanding allows one to establish how global governance is connected to various exhibitions of power.²⁵³ To achieve this objective, those global institutions established to manage the carbon conundrum will be examined.

6.2 Global Governance: Deficiencies of the Present System

One of the major deficiencies of the present global order is the huge participatory gap that exists between the superpowers, the developing nations, and other key players such as the NGOs and MNCs (although MNCs exercise great informal influence). This gap is evident in the UN and most global institutions like the IMF, WTO and World Bank. It is reflected in most decision-making procedures. The use of vetoes and weighted voting systems in deciding key political and regulatory matters are some of the institutional

²⁵¹ *Global Governance*, Economic Policy Series (Canadian Chamber of Commerce, 2009).p.2

²⁵² O. N. G. G. Commission, *Our Global Neighborhood* (Oxford, Oxford University Press, 1995).p.2

²⁵³ “Power is the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate” Barnett and Duvall, XCVIII. p. 8

techniques used by the dominant states to exclude from, or at least control other states and global actors in the process. The use of the “power of veto”²⁵⁴ by the permanent members of the UN Security Council to promote their political and economic interests is a typical illustration of the gap between the superpowers and other global actors. Sahar Okhovat argues that the permanent members use the veto power to serve their individual interest and the interests of their allies, which is against the original aim of preventing the UN taking action against the permanent members.²⁵⁵

In the IMF and World Bank, the quota voting system indicates that 40% of the votes in these institutions are held by 5 states, while 23 African states hold around 1% of the vote.²⁵⁶ They stated that:

From the outset it was recognized that because the IMF was to marshal and dispense large amounts of scarce financial resources, its decisions would have to be legally binding rather than merely recommendatory. Some form of weighted voting was also perceived to be necessary since, ‘it was inconceivable that national legislatures appropriating funds for such transactions would not insist upon having in their disposition a voting-power closely related to the size of their contributions’ ... Decision methods based on Westphalian conceptions of sovereign equality, in the extreme a one-country, one-vote rule, would not be acceptable to the major powers contributing the bulk of the IMF’s resources. Accordingly, a scheme was devised by which each national member of the IMF has a quota that equates almost directly to its financial contribution to the organization.²⁵⁷

Global institutions are instruments used by the superpowers to exercise power and control over other global actors. Most developing states did not participate in negotiating the structure, functions, and the mode of operation of these institutions. They were fundamentally setup to respond to the crisis of the Second World War to foster peaceful relations—as it was perceived many decades ago. In subsequent years, states were

²⁵⁴ It is the power vested on the five permanent members of the UN Security Council to nullify any non-procedural issues with a negative vote notwithstanding the amount of support it receives from the Non-permanent members of the Security Council and the General Assembly. Article 27 Charter of the United Nations: Chapter V.

²⁵⁵ Sahar Okhovat, ‘The United Nations Security Council: Its Veto Power and Its Reform’ (Centre for Peace and Conflict Studies, 2012).p.3

²⁵⁶ International Monetary Fund, Annual Report 2000’ (Washington, DC: IMF, 2000).p. 176-9.

²⁵⁷ D. P. Rapkin and J. R. Strand, ‘Reforming the IMF’s Weighted Voting System’, *The World Economy*, 29 (2006), p.6-7

compelled to join in a structure which they had no hand in designing. The dominant states suppress calls to update them to reflect the realities of contemporary global developments. Present legal reforms are blocked by the historic dynamics of the systems of governance inherited from the past. Most global institutions do not give sufficient recognition to other global actors apart from the state. They have failed to move from the Westphalian system, to a new system that acknowledges the significant influence of some especially states, let alone other actors like MNCs, NGOs, and other civil society groups. Jan Aart Scholte argued that most social, political, and economic relations have been globalized, but most global institutions are yet to incorporate democratic principles in their administrative system.²⁵⁸ Wilkinson and Hughes argued that:

Independent or unilateral action by states or governments is *ineffective* in the face of transboundary and global environmental problems and *inefficient* in the face of shared or common environmental concerns. They are required to be democratic and participatory to take account of the competing interests of a variety of stakeholders ranging from business and corporate actors through local governments and scientific associations to indigenous peoples' organizations and environmental NGOs. The democratic efficiency argument assumes that environmental agreements will work better if all those who are affected by the environmental problem under consideration or who have legitimate interests in the search for a solution are included in negotiations. This includes local voices and local concerns, territorially embedded within states but often silenced or marginalized in the interests of *globally* embedded economic elites.²⁵⁹

The absence of transparent and accountable global institutions is part of the deficiencies of the present global order. These institutions operate a state-centered system and are guided by laws of capitalism; therefore the members are keen to secure their individual interests. Jan Aart Scholte is of the view that "in each area of global policy popular participation, consultation, transparency and accountability are generally weak. So it is no exaggeration to say that contemporary globalization has provoked a crisis of democracy. This crisis derives from two major structural problems, which are in turn reflected in a host of institutional deficiencies."²⁶⁰ Invariably, lack of transparency and accountability

²⁵⁸J. A. Scholte, 'Civil Society and Democracy in Global Governance', *Global Governance*, 8 (2002),p.13

²⁵⁹Rorden Wilkinson and Stephen Hughes, *Global Governance* (Routledge, 2002).p.60

²⁶⁰Scholte, 'Civil Society and Democracy in Global Governance', p.12-13

creates an environment for oppression. It creates room for the superpowers to exercise compulsory forms of power which gives them the latitude to impose their will directly on other actors.²⁶¹ Gilpin argues that the dominant states are able to establish and shape global governance by using those superior factors that distinguish them from other actors, to directly coordinate the activities of weaker states to ally with their interests.²⁶² Lack of transparency and accountability eliminates the obligation on global leaders to take responsibility for their actions or omissions in governance. This can be seen in the attitude and response of the permanent members of the UN Security Council on major inter-state political conflicts where their actions were primarily motivated by their individual interests.²⁶³

There is no transparency in the activities that take place in most global institutions. In each institution, the superpowers struggle for power by establishing small a caucus of allied nations to maintain a support system that will forestall any political or economic agenda, which does not serve their interest. As the present governance system operates on a paradigm that lacks transparency and accountability, no nation is able to hold the superpowers who normally occupy the administrative positions in these institutions, liable for any strategy they adopt in governance. Thomas Hale confirmed that amplifying the function of actors like NGOs and establishing a transparent system that provides for maximum disclosure, can go a long way in democratizing global governance.²⁶⁴ Lack of transparency and accountability reduces the chance of attaining a reasonable level of trust and positive co-operation from the member states.

²⁶¹ Max Weber defines compulsory power as the “probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability exists.” M. Weber, *The Theory of Social and Economic Organization*, Tr. by AM Henderson and Talcott Parsons, Ed. with an Introd. by Talcott Parsons (New York, 1947).p.52

²⁶²R. Gilpin, ‘A Realist Perspective on International Governance’, *Governing Globalization: Power, Authority and Global Governance*, 2002, 237–48.

²⁶³Joy Gordon, ‘Accountability and Global Governance: The Case of Iraq’, *Ethics & International Affairs*, 20 (2006).

²⁶⁴Thomas N. Hale, ‘Transparency, Accountability, and Global Governance’, *Global Governance*, 14 (2008), p.91; R. W. Grant and R. O. Keohane, ‘Accountability and Abuses of Power in World Politics’, *American Political Science Review*, 99 (2005).

A critical context for understanding the operational features of the present system of governance is economic globalization. Globalization has led to concentrations of power and authority that reaches from the supranational level all the way down to shape and regulate the daily life of every citizen on the planet. James Rosenau notes:

[A] pervasive tendency can be identified in which major shifts in the location of authority and the site of control mechanisms are under way on every continent and in every country, shifts that are as pronounced in economic and social systems as they are in political systems. Indeed, in some cases the shifts have transferred authority away from the political realm and into the economic and social realms even as in still other instances the shifts occur in the opposite direction.²⁶⁵

Locating power at these global institutions disconnects the people from the governing body, which makes most global institutions deficient in local engagement. The present global order is structured in a way that governance is distanced from the masses at the same as it permeates “everyday life”. In GLT terms, it is ‘culturally constitutive’ at the same time as it imposes, de facto, a set of system dynamics that ‘regulates’ what is ‘legally’ possible.²⁶⁶ Put more simply, it makes it extremely difficult for the people in a particular state to oppose with any effect any international policy which has a direct impact on them. Thomas Weiss argued that “governance invokes shifting the location of authority in the context of integration and fragmentation”.²⁶⁷ Stephen Gill relates this system of governance to new constitutionalism. He wrote:

A central objective of new constitutionalism is to prevent future governments from undoing commitments to a disciplinary neoliberal pattern of accumulation. Thus a central purpose of new constitutionalism is to redefine the relationship between the “political” and the “economic” and thus reconstruct the terms through which political action is possible in a capitalist society. New constitutionalism redefines political limits of the possible now and in the future. And it entails efforts to politically contain challenges to the disciplinary neoliberalism project through co-optation, domestication, neutralization and depoliticization of opposition. In sum, new constitutionalism is the political/judicial form specific to neoliberal processes of accumulation and to market civilization. It is in fact a combination of old and new and has a lineage stretching back to the bourgeois revolutions of the

²⁶⁵Rosenau.p.18

²⁶⁶M’Gonigle,p.60-61

²⁶⁷Thomas G Weiss, ‘Governance, Good Governance and Global Governance: Conceptual and Actual Challenges’, *Third World Quarterly*, 21 (2000), 795–814 <doi:10.1080/713701075>.p.806

seventeenth and eighteenth centuries, that is, a process where effective representation was unequal and that depends upon property.²⁶⁸

On the location of power and authority in global institutions, Manuel Castells identified the “growing gap between the space where the issues are defined (global) and the space where the issues are managed (the nation-state).”²⁶⁹ He noted that this gap creates political crises in the state including: a “crisis of efficiency” given the inability to address global issues; a “crisis of legitimacy” due to the location of the debates about major national political issues outside national space; a “crisis of identity” as national cultures become disorganized by political decisions from global institutions; and a “crisis of equity” given the economic effects of globalization that provoke an intense and imbalanced competition for economic growth.²⁷⁰ The location of power and authority outside the state is made worse by the threat to impose sanctions on states that fail to comply with the directives that are issued by global institutions.²⁷¹ The power exhibited by this approach to governance is structural. It defines the interactive capacities of an actor with other subjects, and the interests that motivate their actions,²⁷² and it constrains the potential for resistance because these institutions are not accessible—power has been transferred *up and away*. Decision makers are government (and corporate) bureaucrats beyond the reach of state legislators; meetings are closed and held in remote locations where only those with state credentials and expense budgets can attend; materials (such as draft texts of agreements) are secret and only revealed when they are ready for approval. Some decisions are made by executive, not legislative, action. Not surprisingly, therefore, these institutions give minimum (and usually only token) recognition to civil society who are rendered unable to breach the gap between citizen communities and the state, let alone the international institutions dominated by power elites. Chimni notes:

The relocation of sovereign space in international institutions undermined the traditional form of resistance. Among other things

²⁶⁸Stephen Gill, ‘Constitutionalizing Inequality and the Clash of Globalizations’, *International Studies Review*, 4 (2002), p.48

²⁶⁹M. Castells, ‘Global Governance and Global Politics’, *PS, Political Science and Politics*, 1 (2005), p.12

²⁷⁰Castells, p.10

²⁷¹Shiva, p.88; J. Gaventa, ‘Towards Participatory Local Governance: Six Propositions for Discussion’, *Currents*, 28 (2002).

²⁷² Structural power is manifested in the internal relations that exist between actors, which conditions how they interact with each other and other external actors. Barnett and Duvall, p.18

those affected in the Third World are prevented by sheer physical distance from expressing their doubts directly to concerned international institutions...the simple fact that WTO has no address in India..., it is impossible for Indian farmers to protest, like their French and Belgian counterparts, in front of the WTO office in Geneva.²⁷³

Meanwhile, against this political background, globalization and capitalism have caused new inter-state competitions for resources, markets, technologies, finance and so on. Thus, the control over the institutions becomes critical and their rules are designed to favor the wealthy powers.

Nevertheless, some ‘developing countries’ have now been redefined as ‘emerging economies’; successfully growing their economies and increasing their political power. According to a policy brief released by the Canadian Chamber of Commerce, the OECD Secretary-General notes that even as China and India²⁷⁴ have emerged as “economic powerhouses and formidable global competitors”, key global economic, financial and social decisions are still restricted to the conventional group of advanced nations—the Group of Eight (G8), while emerging and nations do not have any a proportional influence on those institutions.²⁷⁵

Analyzing US domineering control over global institutions, John Ikenberry and Thomas Wright argued that after the Second World War, the global order was established around “multilateralism, alliance partnership, strategic restraint, cooperative security, and institutional and rule-based relationships”.²⁷⁶ They argued that the institutionalized system of global order made the leadership position of the US “more durable and less threatening to other states—rising, declining, or otherwise”.²⁷⁷ Efforts by the ‘emerging economies’ to gain better recognition threaten the position of the dominant states. Again,

²⁷³B. S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’, *European Journal of International Law*, 15 (2004), p.23

²⁷⁴The OECD Secretary-General also noted that nations like Brazil, Russia, Indonesia, South Africa, Mexico and the Gulf States which are some of the emerging economies were exercising increasing influence in world economy. OECD Publishing, *Globalization and Emerging Economies* □: *Brazil, Russia, India, Indonesia, China and South Africa* (OECD, 2009).

²⁷⁵*Global Governance*.p.3

²⁷⁶G. J. Ikenberry and T. Wright, ‘Rising Powers and Global Institutions’, *Washington, DC, The Century Foundation*, 2008,p.10

²⁷⁷Ikenberry and Wright.p10

one can see the effects of this dominance in the demise of the UNCTAD-based proposals for a new international economic order—or NIEO—that would have given tangible benefits to the so-called ‘non-aligned movement’.²⁷⁸ Robert Pastor painted a good picture of how the capitalist pursuit of economic growth that, in turn, leads to global competition, determines the status and the influence nations are able to exert in international relations. He noted that:

[S]even countries are responsible for half of the world’s trade, two-thirds of the world’s output, and nearly three-quarters of the world’s defense expenditures. The great powers are still defined in terms of their ability to influence or respond to events far beyond their borders. They still shape the world, but in much more subtle and indirect ways than they did at the beginning of the twentieth century. The principal goal of the great powers is to advance the economic and social interests of their people, and their leaders recognize that achieving that goal requires an international system that promotes trade and investment and contains and tries to resolve conflicts.²⁷⁹

Power balance is an essential feature that is missing in the present global order; it cuts across all other deficiencies. The way power is distributed and applied in most global institutions is a reflection of the apportionment of powers that took place over a half century ago, that is after the Second World War, but even that (as discussed earlier) has much deeper historical roots. It is worth mentioning that unlike the form of power which is exercised by direct control over the subject, the power exercised in global institutions is indirect and remote. This form of power becomes effective once a state joins the institution and agrees to obey its procedures and regulations. Reacting to the power imbalance that is common in most global institutions, especially the trade bodies, and the challenges BRIC²⁸⁰ need to surmount, India Foreign Secretary Shivshankar Menon argued:

It is now widely appreciated that globalization, development and economic processes cannot be left solely to the mercies of an

²⁷⁸GamaniCorea, ‘Unctad and the New International Economic Order’, *International Affairs (Royal Institute of International Affairs 1944-)*, 53 (1977), p.177–187 .

²⁷⁹Edwards and Clarke,p.140

²⁸⁰ BRIC refers to Brazil, Russia, India and China.

unregulated free market... It is becoming clearer and clearer that international decision-making on global economic issues must necessarily be democratized to reflect present realities. What we see is a situation where the major powers simultaneously compete and cooperate with each other, each with all others, to a greater or lesser degree, the shift we are witnessing is probably towards a flatter distribution of power in the world. Existing power holders are always reluctant to share or lose power. This fact alone therefore shows that an unavoidable shift in the balance of economic power is underway, and that the international role of the BRIC countries will increase further... BRIC is already the buzzword around the world.²⁸¹

It must be reiterated that the increasing struggle by BRIC and other emerging economies to adjust the present balance of power system in global governance is not the key to the resolution of the carbon conundrum. These nations have assimilated the ‘crises-prone’ economic ideologies and are fully committed to the capitalist/growth paradigm.²⁸² The primary purpose of their struggle to join the ‘league of hegemon’ is to benefit from the political and economic privileges that accrue from the status.

It is obvious that the contemporary global order is deficient and lacks the capacity to address the carbon conundrum. The system is locked in an ideological paradigm that is predetermined for failure for all values except those internalized by the economic ideology upon which it is based. A series of economic ideologies like ecological modernization, carbon taxes, emission trading, offsetting, and transfer payment and allocation, which are based on the economic principle of cost-benefit analysis that aims at facilitating economic growth,²⁸³ cannot resolve the carbon conundrum. Michael M’Gonigle wrote:

The carbon tax was being attacked as a green cloak that protected the government from critical discussion of the government’s larger development and privatization agenda. The tax itself was so small that many saw it as more of a clever political gambit than a serious economic game-changer²⁸⁴...environmental law helped to produce this

²⁸¹ ‘Shift in Global Balance of Economic Power Underway, Says Menon’, *The Hindustan Times*, 2009.

²⁸² Montek S Ahluwalia, ‘Emerging Economies Perspectives’, *Comparative Economic Studies*, 53 (2011), p.349–353 ;Deepti Ramesh, ‘Emerging Economies Stay Resilient’, *Chemical Week*, 175 (2013), p.25.

²⁸³ Blake Anderson and Michael M’Gonigle, ‘Does Ecological Economics Have a Future?: Contradiction and Reinvention in the Age of Climate Change’, *Ecological Economics*, 84 (2012), p.39; .M’Gonigle,p27

²⁸⁴ M’Gonigle,p.22

chaotic landscape, undermining the very goals it was intended to achieve. It has done so because it ignores a basic natural reality: linear growth cannot continue forever²⁸⁵ ... Ecological modernization underpins much environmental law employing a diverse mixture of government policies, market signals, technological incentives, and business innovations that is intended to foster both economic growth and environmental health.²⁸⁶ ... Modern environmental law has proved a colossal failure, despite the good intentions and hard work of many citizens, lawyers and government officials.²⁸⁷

There is a fundamental need to ‘look outside the box’, which is one of the key theses of GLT; to make the hard decision of employing a new approach to the driving ideologies, institutional arrangements, inter-actor relations, and global governance the underlying operational patterns of which provide the constitutional structure for possible futures.

6.3 Climate Governance: Why the Present Global System Failed

The UNFCCC is the key global institution charged with climate governance for almost twenty years. It was established to harmonize and regulate global actions so as to mitigate and adjust to its adverse effects jointly across all sectors of the society and the global economic system, while recognizing the differences in the contributions of developing and developed countries in addressing global climate change.²⁸⁸ The primary objective of the organisation is stated in Article 2 of the UNFCCC which provides that:

The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.²⁸⁹

²⁸⁵M’Gonigle,p.23

²⁸⁶M’Gonigle,p.27

²⁸⁷M’Gonigle,p.25

²⁸⁸Bernd Hackmann, ‘Analysis of the Governance Architecture to Regulate GHG Emissions from International Shipping’, *International Environmental Agreements □: Politics, Law and Economics*, 12 (2012), p.85.

²⁸⁹‘United Nations Framework Convention on Climate Change’ (United Nations Publications, 1992) <<http://unfccc.int/resource/docs/convkp/conveng.pdf>>.

The organisation was established for global climate governance but was constituted completely independent of the economic institutions and, as a result, has had virtually no success.

As in the above institutions, a participation gap exists in the UNFCCC. Although there is a high number of participating nations under the UNFCCC, they are divided between the Northern countries responsible most of the historic emissions of greenhouse gases and that maintain high carbon footprints, and Southern countries seeking to become industrialized and wealthy like the North. The latter group is presumed to have made an insignificant contribution to historic emissions although their carbon footprint is rapidly increasing. This group has numerical strength and is represented by the G77.²⁹⁰ The primary objective of the G77 is to “provide the means for the developing world to articulate and promote its collective economic interests and enhance its joint negotiating capacity on all major international economic issues in the United Nations system.”²⁹¹ At the UNFCCC, the G77 plays a crucial role in challenging the hegemony of the North. The participatory gaps that exist between the two groups, coupled with the non-binding nature of agreements that are established in the organization, gave some of the dominant states the opportunity to withdraw from negotiations. Nevertheless, the G77 was not unanimous in its interests and demands,²⁹² nor did it have the capacity to compel the dominant states to take feasible and comprehensive steps to reduce their carbon footprints. The division between the North and the South is reflected in the self-centered proposals that were projected by each group, either to benefit themselves or avoid taking responsibility.

²⁹⁰ The Group of 77 originated in Geneva in 1964, at the first UN Conference on Trade and Development (UNCTAD), with the primary aim of advancing the economic concerns of developing nations. The group has gained a lot of popularity with the UN and other global institutions. The group derived its name from the original coalition of 77 nations, but over 130 states have joined that group. The chairman of the group who serves as the spokesperson is rotated annually between Africa, Asia and Latin America. Sjur Kasa, Anne T. Gullberg and Gørdil Heggelund, ‘The Group of 77 in the International Climate Negotiations: Recent Developments and Future Directions’, *International Environmental Agreements: Politics, Law and Economics*, 8 (2007), p.115

²⁹¹ ‘About the Group of 77’ <<http://www.g77.org/doc/>> [accessed 19 January 2013].

²⁹² It is important to note that the member states within the G77 maintain divergent interests. As noted earlier the BRIC states are primarily focused on increasing their international economic and political influence. Antto Vihma, Yacob Mulugetta and Sylvia Karlsson-Vinkhuyzen, ‘Negotiating Solidarity? The G77 Through the Prism of Climate Change Negotiations’, *Global Change, Peace & Security*, 23 (2011), p.328.

The primary legal instrument to come out from the UNFCCC negotiations to address the release of greenhouse gases was the Kyoto Protocol that was adopted in Kyoto, Japan, on 11 December 1997.²⁹³ It is important to note that before the Kyoto Protocol, the Montreal Protocol was adopted on 16 September 1987, to regulate the use of chemicals that contribute to the depletion of Earth's ozone layer.²⁹⁴ That instrument is often used as evidence of what can be achieved internationally. However, success reflected the availability of a relatively cheap technical 'fix' that did not entail serious disruption to business as usual.²⁹⁵ In contrast the Kyoto Protocol is necessarily oriented to having wealthier nations make strenuous effort to reduce their carbon footprints to the level of emissions that existed in 1990.²⁹⁶ It also contains a 'grandfathering' principle that allowed the G77 nations to avoid initial commitments to making carbon reductions. Since the conclusion of the Protocol, the rate of carbon emission from some of the G77 has skyrocketed, especially given the much higher rates of economic growth in the emerging nations over the past decade. The Council on Foreign Relations wrote:

There can be no doubt that the global climate change regime is inadequate... The Kyoto Protocol includes firm commitments to curb emissions only from developed countries, but does not include the United States and has no meaningful consequences for noncompliance; it has also come under unprecedented strain as Canada officially withdrew from the accord in December 2011... As Japan and Russia could soon follow Canada's example, the hopes for a legally binding climate accord—even if desirable—may be fading. Additionally, the regime, other than providing numerous exemptions regarding greenhouse gas emissions, fails to provide emerging big emitters like China and India with meaningful targets and incentives to curb their emissions. The architecture for global climate governance looks particularly shaky... The variance between commitment and action remains an obstacle to the development of a comprehensive solution.²⁹⁷

The per capita approach to negotiation of climate change was proposed by the Africa group under the leadership of Rungano Karimanzira of Zimbabwe during an inter-

²⁹³ 'Kyoto Protocol (international Treaty, 1997) -- Britannica Online Encyclopedia'.

²⁹⁴ 'Montreal Protocol (international Treaty) -- Britannica Online Encyclopedia'

<<http://www.britannica.com/EBchecked/topic/391101/Montreal-Protocol>> [accessed 27 February 2013].

²⁹⁵ Kurt J. Beron, James C. Murdoch and Wim PM Vijverberg, 'Why Cooperate? Public Goods, Economic Power, and the Montreal Protocol', *Review of Economics and Statistics*, 85 (2003), 286–297.

²⁹⁶ Roberts and Parks, p.139

²⁹⁷ 'The Global Climate Change Regime'

sessional negotiation in Bonn, Germany in August 1997. It was also discussed at the Kyoto conference in December 1997.²⁹⁸ This approach is based on an egalitarian principle which holds that every individual on Earth retains equal right to the atmosphere.²⁹⁹ The proposal aims at attracting funds from the Northern group states with higher per capita emission to the G77 member states that have lower per capita rates.³⁰⁰

A third approach to emission reduction is “carbon intensity.” This was supported by the United States, after initially ratifying Kyoto. The carbon intensity approach calls for a global climate change policy which aims at reducing carbon emission by adopting control measures such as carbon sequestration, energy efficiency, and use of cleaner energy.³⁰¹ This approach favors the developed nations because it does not specifically provide for actual reductions in carbon emission, merely reduced carbon emissions per unit of economic output. These proposals prove that attempts to address the issue of climate change have not yielded the expected result. Although this has not been the character of international negotiations to conclude multilateral agreements, the inter-state nature of such agreements and the process by which they are concluded has rewarded rivalry that protects individual interests rather than co-operation that advances collective interests.³⁰² In a world where there was space to allow for such rivalry, it is one thing. In a full world with global consequences that cannot be avoided, this is now something else--a defective global order. Jing Huang painted a good picture of the gaps that exist between the caucus of states at the UNFCCC:

Despite growing global convergence on the urgency for actions on the climate change issue, there is substantial divergence, especially between the developed (North) and developing (South) countries, on how concrete actions—from emission standards to allocation targets, from financial arrangements to technology transfer, from industrial models to market development, and from adaptation plans to preservation of ecological systems—need to be taken to deal with this

²⁹⁸ Aubrey Meyer, ‘Contraction and Convergence: The Global Climate Solution’ (Green Books, 2000), p.27

²⁹⁹ Roberts and Parks, p.144

³⁰⁰ Roberts and Parks, p.144

³⁰¹ Roberts and Parks, p.145-146; Carlos Pascual and Jonathan Elkind, *Energy Security*: Economics, Politics, Strategies, and Implications (Washington: Brookings Institution Press, 2008).

³⁰² Walden Bello, ‘Climate and Capitalism in Copenhagen’, *Globalizations*, 7 (2010), 303–305

exacerbating problem. Beneath these differences are not only varied perceptions and explanations of the causes, and hence responsibility for climate change, but also substantial conflicts of interest caused by the gap between the North and South in socioeconomic development.³⁰³

Inadequate recognition and representation of all key global actors and stakeholders is another issue that impedes progress in the negotiation of an effective climate policy in the UNFCCC. Michele Betsill and Elisabeth Corell argued that

As UN members, only states have formal decision-making power during international negotiations. They establish rules for who may participate and the nature of that participation (e.g. through formal interventions or by directly engaging in floor debate), and ultimately it is those states who vote on whether to adopt a particular text. In contrast, NGOs participate as observers and have no formal voting authority. This makes it difficult for NGOs to influence the negotiating process.³⁰⁴

When such key actors are not adequately recognized and represented, the policies that emanate from such institutions have very low chances of addressing the relevant issues that are connected to climate change. This is reflected in the fact that the key issue under negotiation at the UNFCCC is the likely impact of climate change on the economy instead of on planet and its inhabitants.³⁰⁵ Kathrin Dombrowski wrote:

The problem of representation failures is further compounded by the fact that those communities who risk being marginalized from intergovernmental rule-making for the reasons discussed above are often the same communities who are particularly vulnerable to the global problems that these institutions are set up to address (such as climate change) and also disproportionately affected by development, environment or trade policy-related decisions taken at the global level. As a result, the interests of the most vulnerable are often unrepresented or passed over in the making of those decisions that are likely to affect them the most. This discrepancy between democratic control and actual or potential affectedness risks undermining the congruence between the 'people' that is being governed, and the 'people' that is supposed to govern. In the context of environmental politics (but also in other issue

³⁰³J. Huang, 'A Leadership of Twenty (L20) Within the UNFCCC: Establishing a Legitimate and Effective Regime to Improve Our Climate System', 2009.p.435

³⁰⁴Betsill and Corell,p.68

³⁰⁵A. Lange and others, 'On the Self-interested Use of Equity in International Climate Negotiations', *European Economic Review*, 54 (2010).

areas); this means that international institutions are unlikely to pass the democratic litmus test that ‘all those potentially affected by risks should have some meaningful opportunity to participate or otherwise be represented in the making of the policies or decisions which generate such risks.’³⁰⁶

Accountability is an important democratic principle that is lacking in the present global climate governance. Inter-state relations at the UNFCCC are not structured to demand the appropriate level of accountability from the actors. Peter Newell argued that lack of accountability has a negative impact on the potential level of cooperation because agreements that are made through an undemocratic process hamper the independence and responsiveness of the institution. Secondly, he noted that accountability in global regimes accompanies terms like ‘liability’ and ‘redress’, which are crucial for efficiency. Thirdly, accountability highlights procedural loopholes and the democratic flaws of the present system. Finally, he noted that accountability serves as a tool for assessing policies, and their ability to address climate change.³⁰⁷ The UNFCCC is structured in a way that member states lack the capacity to question the acts or omissions of other member states or those at the helm of affairs. To expect some level of accountability at the minimum, it is necessary to stipulate procedures, principles, values, and norms to guide the activities of these institutions towards achieving her objectives. Unfortunately, the UNFCCC and most international institutions operate in a liberal political order; as such the actors focus more on the benefits they anticipate to derive from the process, rather than solving a collective concern. On the sorts of issues that should be addressed in order for the Kyoto parties to harmonize the goals of climate protection with planetary economic interests, Max Roch wrote:

The common interests of the developing countries are expressed by the G77 and its demand to link climate policy to structural reforms of the global economy. The idea of the ‘right to development’, for instance, was combined with the demand for an individual greenhouse gas emissions account that would apply to each inhabitant of the globe; the

³⁰⁶Kathrin Dombrowski, ‘Filling the Gap? An Analysis of Non-governmental Organizations Responses to Participation and Representation Deficits in Global Climate Governance’, *International Environmental Agreements: Politics, Law and Economics*, 10 (2010), p.400

³⁰⁷Peter Newell, ‘Civil Society, Corporate Accountability and the Politics of Climate Change’, *Global Environmental Politics*, 8 (2008).p.128-129

demand for debt relief was issued in conjunction with the admission of historical guilt and responsibility for climate change by the North; and the recognition of the atmosphere as a common good was linked to consideration of the specific needs of local communities in developing countries with respect to their adaptation to climate change.³⁰⁸

Climate change is an issue that affects a wide range of actors with diverse interests. The problem will necessarily require collective action to resolve. Unfortunately, the structures of global governance do not allow for this to occur. As a result, a crisis of legitimacy infects the present climate governance system. Daniel Bodansky is of the view that an institution can attain legitimacy based on the circumstances that led to its establishment, employment of fair procedures, and its ability to produce results that are satisfactory to the members.³⁰⁹ All of these factors are absent in the UNFCCC and, except for a brief period when global economic growth contracted, the global rate of carbon emissions has increased steadily. The legitimacy crisis is evident in the failure for member states to take seriously the Protocol's aims and objectives.³¹⁰

Protecting its historical advantage, the North has instead driven Southern countries, on the one hand, to try to counter the hegemony of the North while, on the other hand, increase their own individual and collective advantage (that is, play the game that they have inherited). Max Roch concludes that the "lack of success in global climate negotiations has been exacerbated by the lack of trust caused by the continued existence of massive inequalities between the developed and the developing world."³¹¹ Hayley Stevenson and John Dryzek noted that:

³⁰⁸Max Koch, *Capitalism and Climate Change* (Basingstoke: Palgrave Macmillan, 2011)p. 151-2

³⁰⁹Daniel Bodansky, 'The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?', *The American Journal of International Law*, 93 (1999),p.612

³¹⁰Jing Huang argues that for a global climate institution to be legitimate, it must meet the following criteria: a) It must be universally recognized and supported by the world community. b) Its mission and operation must be consistent with those of the existing international institutions and regimes. c) It has the mandate and capability to enforce the implementation process of any adopted agreements on climate change. d) Its authority is based not just on its legitimacy, but is institutionalized with clear rules, compliance procedures, operational standards, and adequate financial resources. e) Its decision-making and operation are transparent and in accordance with established international norms, principles, and laws. f) Its administration must be subject to term limits and must be held accountable for the consequences of its actions. Huang, p.437-438

³¹¹Koch,p.140

[I]n discursive terms, the legitimacy of the UNFCCC is severely lacking. Firstly, discursive representation is skewed in favor of Mainstream Sustainability and a weak form of ecological modernization, which are blind to the concerns, interests, and values of many potentially affected people. Secondly, the debates and negotiations that take place fail to meet most of the basic conditions of authentic deliberation.³¹²

The potential level of trust necessary in climate negotiations is lessened by the capitalist economic system coupled with globalization that facilitates inter-state competition for economic growth. It is necessary for states to believe that other states will take steps to implement climate policies.

Another impediment to the success of the UNFCCC is the disconnection with the local and the failure to establish local engagement as part of its primary objective. To address climate change in our present paradigm, it will require major changes in policy and regulatory laws that will have a direct impact on people's lives. At the national-level, the ruling administration faces the task of implementing policies that will have a positive impact on the lives of people, to secure a chance of re-election to office. This demands a strong and growing economy which, in turn, requires that its large economic interests (including MNCs) prosper and are satisfied. When states see these interests threatened, they abandon the goals of the process. This is especially when the domestic population perceives climate change as being a 'global' problem where actions by an individual state will not have an impact while they will hurt domestic interests. Thus states face the 'collective action' problem—everyone must co-operate, or no one will co-operate. States must have reason to believe that other states will take similar steps to implement climate policies which may have a short-run negative effect on each state's economy in a fair fashion. Unfortunately, MNCs pose insuperable obstacles to taking such collective action as they play one state off against the other as they pursue their individual profit-making interests freed of a territorial or public responsibility.³¹³ This is a profound system dynamic that is constitutive in nature and, as a result, bounds possible outcomes at the

³¹²Hayley Stevenson and John S. Dryzek, 'The Legitimacy of Multilateral Climate Governance: a Deliberative Democratic Approach', *Critical Policy Studies*, 6 (2012),p.9

³¹³Hari M. Osofsky and Janet Koven Levit, 'Scale of Networks: Local Climate Change Coalitions', *Chicago Journal of International Law*, 8 (2007), 409.

‘legal’ level. Irene Lorenzonia, Sophie Nicholson-Coleb, and Lorraine Whitmarsh investigated the barriers that prevent the UK masses from engaging with climate change. They identified a number of factors, which they categorized into individual barriers and social barriers. For individual barriers, they noted that limited knowledge on the causes, consequences, and possible solutions to climate change was a huge factor. Second, they noted vagueness and skepticism on the cause and seriousness of the issue. Third was distrust towards the veracity of the information they received from the media. The fourth factor was the idea of imposing the responsibility and culpability of climate issues the government and corporations. The fifth factor was the presumption that climate threats are distant and there is a need to focus on more pressing issues. For social barriers, they identified lack of political action by businesses, national governments and international institutions; concerns about free-riders; and lack of effective schemes.³¹⁴ These factors establish the need to educate the grassroots on climate issues.

As capitalist stimulated competition which has infiltrated all global institutions (most especially through the pervasive influence of MNCs and the ideology of globalization), and member states at the UNFCCC are at different levels of development, any policy that can feasibly address climate issues will require both new forms of power to offset the MNCs and new forms of economic development that can reconcile climate change mitigation with equitable economic development and in ways that can reduce fears of energy insecurity. Transfers of resources and technology between states will be critical within the context of a new model of low impact development. The whole process will be hugely capital intensive. The situation has, however, been made more challenging during the lifetime of the UNFCCC by the rise of China as an intensely capitalist, and high carbon-emitting nation without internal democratic accountability. This model also drives other “emerging economies” including India, Brazil, Mexico, Indonesia, Turkey to name a few. As Max Koch notes about a subset of such countries (oil exporters):

³¹⁴I. Lorenzoni, S. Nicholson-Cole and L. Whitmarsh, ‘Barriers Perceived to Engaging with Climate Change Among the UK Public and Their Policy Implications’, *Global environmental change*, 17 (2007),p.450-451

[T]hat short-sighted national competitive interests normally outweigh long-term ‘global’ concerns when international negotiations are being held also seems to apply to the developing world, whose divisions follow largely the logic of specific export interests. Since the economic development of countries that export raw materials, and especially fossil energy carriers, is undermined to a much greater extent by climate protection measures than the economies of countries that do not, it is no coincidence that the OPEC countries form an almost homogenous block in climate negotiations. United in their interest to sell oil in the world market, they are viewed by most observers as foot-draggers in relation to climate protection. The OPEC countries have formed coalitions with the US on many occasions.³¹⁵

6.4 Conclusion

In this chapter, I analyzed how global institutions are used as instruments to exercise indirect power over weaker global actors. I identified the deficiencies that exist in present global order and explained why climate governance was not successful. It is necessary to address these issues to create the appropriate environment for the resolution of the carbon conundrum.

³¹⁵Koch,p.152

Chapter 7: Conclusion

As I have hoped to demonstrate in this thesis, the inability to resolve the carbon conundrum can be attributed to the dynamics embedded in present structures of global governance. As a result, overcoming this conundrum will require some ‘re-formation’ of these structures. After reviewing what we have learned about the ‘constitutive’ nature of the global order in light of both GLT and TIR, this chapter will discuss some potential ‘legal’ re-forms that might lead to larger changes. I will examine one proposed set of reforms that was forwarded by the Earth System Governance Group, in light of my argument in this thesis. I suggest that at least in some areas, these proposals might not be adequate on their own, and should be supplemented with my proposals.

7.1 A Review of the Thesis

From a GLT perspective, I attempted to identify (in GLTese) those ‘authoritative processes of cultural self constitution’ that ‘regulate’ what is possible and what is not in seeking a resolution of the carbon conundrum. I highlighted those internal and external (national and international) de facto ‘regulatory’ pressures that direct global behaviors and how they promote a short-term, self-interested state-centric approach. I argued for the need to relax the territorial sovereignty principle, and the need to establish a more functional system that can overcome material and cultural dynamics that disassociate humans from their physical world. One need is to alter the discourse and the way issues are framed based on the economic paradigm of cost-benefit analysis, which is geared to sustaining economic growth. I combined GLT and TIR to provide an analytical approach that can help us to foster improved global regimes. I argued that it can be achieved by reforming the foundational logics and legal regimes that control the present system, particularly the logic of capitalism and its associated state dynamics. At the same time, it will be necessary to regulate the ceding of power by the state to private bodies such as the multinationals.

I further argued that the naturalization of ‘globalization from above’ must be checked more effectively than it has in the past. This can be achieved by the development of a

more coordinated ‘globalization from below’ that empowers new global actors. I argued that the dominant approach to globalization and global governance inherently generates crises and results in problems of inefficiency, illegitimacy, and inequity. I acknowledged that within the past three decades, the key development in global governance is the rise in the power of the multinationals and, to a lesser degree, of NGOs. Finally, I made a case for the need to redistribute the balance of power in global institutions to reinforce the increasing presence of NGOs in global governance. This will be critical in checking the undemocratic powers of MNCs.

7.2 Deductions from the Thesis

From my analysis it is unlikely that the dichotomy between climate change and energy security can be reconciled in the present global order without engaging in some systemic reforms. With regard to the state, the carbon conundrum will be difficult to resolve in the present state system, where elected government officials have a short-term in office and thus hesitate to execute long-term projects, which would have negative (even if transitional) effects on the economy. Second, the multiple competing economic and political interests that are pursued by individual states, within and outside their territory will not allow for the needed level of cooperation to address the carbon conundrum. Third, the enactment of lax laws to attract the multinationals that facilitate economic growth will always deter effective environmental laws. Fourth, the combined effects of a capitalist economic system and party political system which is common in most states, subject climate issues to unending political debate that leads to continued policy modifications. Finally, the gap in development stages and the high level of inequality among states places the carbon conundrum at different priority agenda for individual states.

For the multinationals, I noted that the carbon conundrum will be difficult to address in a free market system where the multinationals are highly mobile and can easily relocate or move their resources to states with substandard environmental laws. Second, the multinationals have accumulated a lot of economic and political powers within the past three decades. They have the capacity to influence legislative processes to protect their

unhealthy environmental practices. Third, the carbon conundrum cannot be addressed in a system where the multinationals are used by the dominant states as instruments of neocolonialism to exercise economic and political influence in developing states. Finally, a liberalized and deregulated system where the multinationals are self-regulated is not appropriate for the resolution of environmental issues.

For global institutions, I analyzed inter-state relations in these institutions, while making particular reference to the UNFCCC, to show the degree of division between the Northern and the Southern groups. The low levels of cooperation among states will not facilitate the resolution of the conundrum. Second, the lack of transparency and accountability that is common in most global institutions will always militate against possible chances of inter-state cooperation to resolve global problems. Third, legitimacy concerns will always be a problem in most contemporary global institutions that distance governing bodies from the people. Finally, the power imbalance in most global institutions coupled with the fact that the dominant states use these institutions as tools for exercise of indirect powers over other actors will not facilitate the resolution of global problems.

Civil society groups are the fourth global actor that was analyzed in the thesis. I discussed the increasing role NGOs play in global governance; yet they are not given sufficient recognition to strengthen their influence as a global actor. Second, NGOs have a potential capacity to bridge the gap between the governing institutions and the people. Third, they can act as neutral intermediaries in the negotiation of those issue-areas like the conundrum, which generates a lot of tension among states. Fourth, they have a potential capacity to facilitate the process of restoring the legitimacy that is lacking in most global institutions. Finally, their flexible and transnational character is useful to monitor the implementation of international agreements. In other words, despite their own limitations (financial and accountability) civil society is a potentially huge resource to help overcome the imbalanced regulatory dynamics that dictate international policy outcomes.

The present system of governance is locked in a political and economic paradigm that seems insurmountable. The state of affairs prompts me to concur with Fredric Jameson who said that “it is easier to imagine the end of the world than to imagine the end of capitalism.”³¹⁶ This is the reason why we need to explore alternative arrangements in global governance.

7.3 Possible Structural and Systemic Re-form in Global Governance

Earlier in this paper, it was noted that some scholars see the need for a decrease in democracy as states are unable to make tough decisions due to their need to get citizen support. The proposal that follows goes in the other direction. In particular, I suggest that we need to increase democracy by increasing the number of recognized global actors and providing new forums for them to work out ways to overcome the carbon conundrum. The present global order has failed to give adequate recognition to global actors that might provide a counterbalance to the power of MNCs and that can allow collective governance to escape the inability to act that besets the state-centric governance system inherited from an earlier age. It is crucial for global institutions to liberate the potential power of such actors—particularly NGOs—in the governance system and, in the process, to reconstitute global institutions themselves. To resolve the dichotomy between climate change and energy security, it is crucial to change the meaning that is given to the term ‘energy security’. Energy security should change from the state-centered ideology which focuses on economic growth to the basic need of securing the energy need of individuals across the globe. This interpretation will present discourse on energy security in the same light as climate change discourse which aims at solving genuine problem. Also, it is necessary to shift attention from mere legal reforms to ‘constitutional’ ones. Many of today’s problems were unimagined at that time most contemporary global institutions were established. From a GLT and TIR perspective, these institutions and the underlying dynamics that control their operations make them deficient.

³¹⁶Erik Swyngedouw, ‘Apocalypse Forever? Post-political Populism and the Specter of Climate Change’, *Theory, Culture & Society*, 27 (2010), p.216.

Scholars have been exploring possible alternatives and ways to address the deficiencies of the present political and economic system. One such proposal was made by the Earth System Governance Group (ESGG). It is based on a ten-year social science-based research program under the auspices of the International Human Dimensions Programme on Global Environmental Change (IHDP). It acknowledges the need for human societies to change course and steer away from critical tipping point in the Earth system that may result in rapid and irreversible change. The assessment was a contribution to the 2012 United Nations (UN) Conference on Sustainable Development in Rio de Janeiro that was focused on sustainable development and potential reforms of the intergovernmental governance system. ESGG identify the need for “reorientation and restructuring of national and international institutions toward more effective Earth system governance and planetary stewardship.”³¹⁷ They also acknowledge the need for major structural change in the UN system of global governance and made the following seven proposals.

The first proposal of the ESGG is to reform the environmental agencies of the UN by upgrading the UN Environmental Programme to a specialized agency for environmental protection. The agency would be stronger and maintain a substantial role in agenda-setting, norm-development, compliance management, science assessment, and capacity-building.³¹⁸

The second proposal is the integration of the social, economic, and environmental pillars of sustainable development, from local to global levels. They advocate for the creation of a high-level UN Sustainable Development Council which will be directly under the UN General Assembly. The regime would rely not on traditional UN modes of geographical representation, but give special predominance to the largest economies—the G20—as primary members that hold at least 50% of the votes in the council. This will allow the UN Sustainable Development Council to have a meaningful influence in areas such as economic and trade governance. They argue that the G20 nations represent about two-thirds of the world's population and around 90% of global gross national product. This

³¹⁷F. Biermann and others, ‘Navigating the Anthropocene: Improving Earth System Governance’, *Science*, 335 (2012), p.1306-1307.

³¹⁸Biermann and others.

will legitimize a considerable institutional role for these nations as primary members of a powerful UN Sustainable Development Council.³¹⁹

The third proposal is to close other regulatory gaps at the global level. The ESGG argues for better governance and regulation of the development of emerging technologies, such as nanotechnology, synthetic biology, and geo-engineering. They believe that these technologies should be supported with a global institutional arrangements to facilitate forecasting, transparency, and information-sharing; development of technical standards; clarification and applicability of existing treaties; promotion of public discussion and input; engagement of multiple stakeholders in policy dialogues, and to ensure that environmental concerns are fully respected.³²⁰

Fourth, they propose for governments to place stronger prominence on environmental concerns in economic governance. This can be achieved by integrating environmental goals into global trade, investment, and finance regimes, to prevent the activities of global economic institutions from undermining environmental treaties due to poor policy coherence. They advocate for changes in world trade law to encourage recognition and investments in environmentally friendly products and technologies, while discriminating against environmentally unfriendly products.³²¹

The fifth proposal is for a stronger reliance on qualified majority voting system to accelerate international norm-setting. The assertion is based on a political science research which shows that governance systems that rely on majority-based rule arrive at far-reaching decisions quicker and that consensus-based systems limit decisions to the preferences of the least ambitious country. They argue for the extension of majority-based decisions to all global issues. They also advocate for a weighted voting system, which does not grant any power of veto, to ensure that all major interests among governments are taken into consideration.

³¹⁹Biermann and others.

³²⁰Biermann and others.

³²¹Biermann and others.

The sixth proposal is to institute legitimate and stronger intergovernmental regimes by adopting transparent and accountable procedures. They argue that accountability can be strengthened when stakeholders gain better access to information and decision-making through stronger participation in councils that govern resources and in commissions that hear complaints. They believe that there is greater transparency when citizens are empowered to hold governments and private actors accountable. They advocate for stronger consultative rights for civil society representatives in intergovernmental institutions. This right will be balanced with a transparent and effective accountability system for civil society representatives in relation to their constituencies. They also argue for appropriate mechanisms that will resolve the imbalances in the strength of civil society among different countries and for power differentials among different segments of civil society.³²²

The final proposal is for equity and fairness to be at the heart of a durable international framework for sustainable development. They also advocate for strong financial support for poorer nations, which can be generated through novel financial mechanisms, such as global emission market or air transportation levies for sustainable purposes.³²³

I agree with the ESGG proposals as they are the most interesting proposals that have been made in the recent past. They addressed some of the critical issues in global governance. The first proposal is crucial as it would facilitate the creation of better environmental laws while giving due consideration to those dynamics that reduced the efficiency of the present regimes.³²⁴ A stronger environmental agency would help to overcome those factors that impeded the success of weaker agencies like the UNFCCC. It is necessary for the agency to conduct a legal assessment that identifies the dynamics that shaped environmental laws and consider how they might be reformed to embrace the new dynamics that are crucial for systemic re-form.

³²²Biermann and others.

³²³Biermann and others.

³²⁴M'Gonigle.p.26-30

On the second proposal, notwithstanding that the UN Sustainable Development Council may facilitate a process of sustainable development; it has the propensity to sustain an imbalanced system of representation. It could also encourage inter-state power tussle for economic and political influence, which is common in most global institutions and has impeded the resolution of global issues. These are some of the factors that contributed to the failure of the UNFCCC. The deficiencies of this proposal can be addressed by an effective application of the fifth and sixth proposals.

On the third the proposal, as acknowledged by the ESGG emerging technologies pose huge threats to sustainable development. They have the capacity to perpetuate those regulatory deficiencies that distance economic production from its impact on the ecosystem because they focus on adopting efficient means to maintain the present unsustainable system. The combined effect of a capitalist economic system and the territorial sovereignty principle may also impede the implementation of these policies.

The fourth proposal will address some of the concerns I raised on the third proposal. It is very useful for reshaping cultural practices and the development of new norms and values. There is a need to move away from those cultural practices that value the accumulation of wealth, excess consumption, and unsustainable economic growth. This will be achieved by putting in place new system dynamics that will generate new community-based allegiances, equitable public infrastructures, environmental preservation and production practices that are sustainable, and so on. The key point, however, is that these practices must be oriented to creating new cultural values, and rights to democratic participation, that can allow for better decisions in the future. The multiple networks of civil society groups will be useful in publicizing and raising awareness on these cultural practices, from the grassroots to the global levels.

On the fifth proposal, the majority voting system will create an equitable environment where global issues can be deliberated and resolved but the weighted voting system which is common in most contemporary international institutions will create opportunity for dominance. The aim of a majority voting system should be to allow for a sincere,

equitable, and egalitarian manner of deliberation in order to come up with sophisticated and creative strategies that are not merely one-side in their rhetoric and that have a substantial degree of legitimacy.

I would go further with the sixth proposal, by recommending a global platform. A global platform can best be described as an international body that coordinate and integrate NGOs and related civil society groups, to maintain a uniform and united front on key global issues. The organisation could be initiated by the civil society itself, inspired by the experiment of the World Social Forum (WSF).³²⁵ The forum is an ingenious approach to facilitate the present system because it is a meeting point for all NGOs. The global platform could evolve from the WSF. However, my proposal is different, unlike the WSF which is a mere ‘open space for deliberation’, a new platform that would actually work to create co-operative solutions based on a careful consideration of what might work were the political dynamics of global governance are not such an obstacle. This will create the needed balance of representation among the participants and maintain an environment where global concerns might be discussed in a fashion that allows the full range of perspectives to be expressed in ways that might help to shape the results.

Rather than setting out a detailed prescription for the global platform that would work to shift the influence of civil society to a new level with a coordinated body that can help to shape global debate and, hopefully, lead to action. My specific proposal evolves from the WSF with a better coordinated approach to global problems. The platform would be

³²⁵ The WSF was officially launched in January 2001. Most of the coordinators of the forum traced its origin to the First International Conference for Humanity in 1996. Within two years, the number of participants at the WSF grew from 10,000 to 100,000. The WSF can best be described as an “open space for activists to gather, exchange experiences, support each other’s struggles, build transnational alliances, and plan coordinated strategies and actions.” The forum is flexible and includes a wide range of civil groups. Presently, it does not make collective recommendations or formal statements for the members. Participants to the forum do not hold a uniform position on neoliberal globalization. The International Council is responsible for arranging a representative system of leadership in the forum. They decentralized the decision making structures, while ensuring that all groups are represented. The key objective of the forum is to educate participants and mobilize international supports for their struggle. Jackie Smith, ‘The World Social Forum and the Challenges of Global Democracy’, *Global Networks*, 4 (2004), .p.414 Heikki Patomäki and Teivo Teivainen, ‘The World Social Forum’, *Theory, Culture & Society*, 21 (2004), p.415-416. Boaventura de Sousa Santos, ‘The World Social Forum: Toward a Counter-Hegemonic Globalization (Part I)’, in *World Social Forum: Challenging Empires*, 2004 <http://www.ukzn.ac.za/ccs/files/reader_dos%20santos.pdf> [accessed 2 March 2013].

structured like a confederated system of governance, where the global platform is the central unit, and the regional platforms are the confederal units. The global platform will be a vehicle for facilitating grassroots mobilization—initiated and implemented by civil society with support from those states, and economic interest (such as supportive individuals and organizations) who understand the difficulty of overcoming the carbon conundrum within the present governance systems. Representation and deliberation at the platform will be based on issue-areas. It will accommodate a range of key global NGOs in order to debate those specific initiatives that might facilitate the complex reforms that are necessary in globe governance. The focus of the platform will be to sensitize the public and raise awareness on specific issue-area. The role of the public will be to facilitate change within their individual communities, states, countries and continent through direct actions, political engagement, organizing new constituencies, to mention a few.³²⁶ It will be in the form of ‘globalization from below’ that can challenge the present political powers. The platform will seek to generate workable positions on key political issues that reflect the collective social and environmental interest. The global platform will rest on regional platforms that would be the meeting point where issues that are peculiar to each region will be discussed. The global-regional relationship will be a dynamic one, but the global platform will play a crucial role in connecting the regional bodies. This arrangement will be the appropriate approach to spread the policy framework of C&C (discussed below) that has challenges global powers. The significance of this approach is that all political and economic powers will be challenged from within their individual states as against some external forces that could be surmounted easily.

In accord with the seventh ESGG proposal that supports creation of avenues to finance poorer nations, the platform would need to generate similar support. Diverse sources of funding for these platforms are crucial to prevent wealthy participants from dominating the system. More responsibilities in policy development could be handled by the NGOs because they are flexible enough to map local and regional issues for effective resolution.

³²⁶ A typical example of the resultant effect of sensitizing the public on political issues is the growing “Ideal No More Movement” in Canada. The movement has shown how individuals and the public at large can influence policies and systems of governance.

This will be in line with the first ESGG proposal. The global platform will, by its nature increase the networking abilities of civil society groups across the globe. It will ensure that civil groups that are involved in the same issue-area maintain effective communication to guarantee even development across the globe. Good networking systems and efficient information sharing across issue-areas, will also facilitate capacity building across groups in different regions.

The seventh proposal will potentially facilitate the implementation of approaches such as ‘contraction and convergence’ (C&C) for the resolution of the carbon conundrum because the policy framework is based on equity and fairness. Based on an equitable global entitlement to the atmospheric carrying capacity, C&C points to a fundamentally new foundation for global ‘development’. It is a policy framework proposed by Global Common Institute (GCI) to check the global rate of carbon emission. Contraction is a process of making a long-term plan to reduce the global total amount of carbon emission to the barest minimum and in a measurable way over a specified period of time. Convergence refers to the global apportionment of emission rights amongst nations, based on per capita entitlements. The process of convergence starts with an initial entitlement that is equal to the current emission capacity of each nation, but would gradually converge to a point where the global per capita average emission is equal, and then decline based on the contraction arrangements.³²⁷ C&C is framed as a precautionary way to avert the impending catastrophe that will result from the stalemate that follows from the carbon conundrum. It makes a long-term carbon budget for all nations to monitor the global rate of carbon emission. It is based on the principle of equity and provides for common but differentiated responsibility for all nations. It acknowledges that the atmosphere is communal responsibility (and ‘resource’) which justifies the idea behind proposal for nations with history of high carbon footprints to make immediate cuts while nations that are still developing are allowed to make gradual adaptations. In contrast with the Kyoto Protocol which has been criticized as impracticable and lacking

³²⁷Marcel M. Berk and Michel G.J. den Elzen, ‘Options for Differentiation of Future Commitments in Climate Policy: How to Realise Timely Participation to Meet Stringent Climate Goals?’, *Climate Policy*, 1 (2001), p.466-467.Meyer.

in objective targets³²⁸ C&C makes specific and attainable targets. It gives nations the latitude to make hard decisions on their energy consumption patterns. It aims at discouraging the use of fossil fuels while making provision for transfer of emission entitlement. Finally, it creates an avenue for the transfer of technologies to developing nations with low carbon footprints in exchange for excess carbon entitlement. The initial focus of overcoming the dichotomy between climate change and energy security can be attained through practical steps to achieve C&C. The policy framework can be implemented only by developing detailed understandings as to how it could be implemented across the globe, with the requisite support from a variety of affected social groups. This can be facilitated by the global and regional platforms. The approach developed here could also provide the foundation for expansion into other challenges.

The ESGG proposals are a good starting point for the resolution of the deficiencies of the present system, but need to be further enhanced by specifying issue-areas that require necessary relaxation of the territorial sovereignty principle, consideration of possible economic alternatives, and promotion of greater trans-national relations. Here, a greater role for civil society groups by developing a platform for them to develop a new basis for global organizing, and decision making. These reforms go beyond the incremental changes that were proposed by ESGG. They will lead to major changes in structures and systems of global governance.

7.4 Conclusion

To address the carbon conundrum the needed reforms will affect all aspects of the social, political, and economic life of states. Applying the principles proposed in this thesis might offer a new opportunity for the resolution of the carbon conundrum, as it facilitates a process of creating a more egalitarian society.

³²⁸Roberts and Parks,p.142

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