

**IUCN World Parks Congress: Governance Stream
Governance and the Law**

Globalisation and decentralisation: The role of legal frameworks

Friday 12 September 2003 09h00-12h00

Chairperson: Mr J Scanlon (Environmental Law Centre, Bonn)

Introduction

The chairperson welcomed those attending and introduced the session by referring to the Millennium Development Goals, which mentions the desire that globalisation must become a positive force for all the world's people – currently its benefits and costs are unevenly distributed. It was pointed out that globalisation, conventionally considered as synonymous with trade liberalisation, is a far wider concept since it includes movement of people, species, increased access to information and communication, and so on.

The second trend considered today is decentralisation, which entails the movement of decision-making away from centralised bodies towards the local level. The chairperson highlighted the observation that there is often seen to be tension between the two impulses of globalisation on the one hand and decentralisation on the other.

The central question for this session was how these forces impact on protected areas.

Speakers

The session contained speeches from six representatives from different countries as follows:

Ms Maria Socorro Manguiat (Philippines)

Ms Manguiat indicated that the Philippines has always been open to external forces, which suggests that globalisation is impacting on the country. From the perspective of decentralisation, the geographical configuration of the country leads to strong local government.

The traditional view of globalisation sees the concept as entailing the free flow of income in and out of the country, but in a broader sense it leads to greater international linkages. For the Philippines, globalisation is seen as an opportunity for increasing global competitiveness. This leads to greater export incentives and developments such as incentives to resource extractors (eg mining). These give rise to risks to natural resources found in Protected areas. On the other hand, globalisation has influenced the Philippines to introduce conservation legislation and similar initiatives (such as an integrated protected area system, funded by the European Union and other donors).

As for decentralisation, the Constitution obliges empowerment of local government, but there have been difficulties in implementation. There is an economic policy of regionalisation, which intensifies infrastructure development - another threat to protected areas.

Global competitiveness leads to tension between national government and lower levels of government due to different conceptions, yet it has strengthened the call for local empowerment.

As far as the future is concerned, it is important that decentralisation must be seen as empowering local populations (not just local government). Moreover, the sustainability of funding of protected areas is problematic – donor funding may run out.

See Ms Manguiat's paper in full at

http://www.iucn.org/themes/law/pdffdocuments/WPC_Philippines_Manguiat.pdf

Professor Nicholas Robinson (USA)

Professor Robinson pointed out that globalisation works at several levels, but that it has led to substantial dislocations as a result of liberalised trade, which is motivated by short term goals. He asked whether free trade was a new phenomenon, and concluded that it is not new but it is a more pluralistic perception today, since it is not seen as originating from one superpower (eg Rome in the past).

His perception of the economics of globalisation is that 'trickle down' economics has not worked in the USA.

On the other hand, globalisation of factors like communications, education, organisations (such as the IUCN) etc can be seen as a good thing. He mentioned the example of satellite photography in pinpointing the Indonesian fires.

Quoting Rene Dubos's mantra – "Think globally, act locally", Professor Robinson cited as an example of this type of thinking the system of mutual aid between Canada and USA for forests, which is in contrast to SE Asia, where there is nothing like this. The message is that local responses must be developed for problems that are perceived when we think globally.

He urged those present to reclaim globalisation. Another example he offered was Adirondack protected area, where protection was adopted in the late 1800s in order to stop exploitation that led to fires, floods, erosion etc. Today, there is a sister movement to preserve Russian forests.

Globalisation is, therefore, something which should be seen as positive – it involves proactive thinking, and addressing problems by using global tools (such as communication).

Professor Robinson's paper may be found at
http://www.iucn.org/themes/law/pdffdocuments/WPC_USA_Robinson.pdf

Professor Antonio Benjamin (Brazil)

Globalisation, according to Professor Benjamin, is seen mainly in economic terms (trade), but it includes other aspects as well.

Brazil has an ambivalent position as regards globalisation – there is emphasis on economic globalisation, but simultaneous concern over threats of colonisation of the Brazilian economy as a result of economic liberalisation. Globalisation also entails the notion of internationalisation of nature, whereby this is seen as a passport to take over decision-making (as regards the Amazon, for example) that is part of Brazil's sovereignty.

Law has been an instrument and product of globalisation. What is the difference today? In the past legal globalisation arose due to 'Empire'. Globalisation today is more diffuse and not often associated with one power (it is not a synonym for legal imperialism).

There are positive and negative aspects of legal globalisation. The good include the erosion of the common/civil law divide; and positive influences on environmental law in particular – for example, protected areas in civil law countries are a product of globalisation. Negative aspects entail certain trends that weaken domestic legal regimes: trade rules (environmental measures seen as obstacles to free trade); and legal thinking being influenced by foreign trends that are threatening to the environment (eg US property rights thinking)

As for decentralisation, this has great appeal in third world countries, but it has not served conservation in the past. Balance has to be struck – local government must have a say but this has to be subject to recognition of the public trust. The appropriate limits can be set by an insistence that environmental matters have to be the responsibility of federal government (though not exclusively). In Brazil, states and local government may make decisions relating to environment but may not operate below the minimum federal levels/standards.

Professor Benjamin's paper can be found at
http://www.iucn.org/themes/law/pdffdocuments/WPC_Brazil_Benjamin.pdf

Ms Patricia Madrigal (Costa Rica)

Ms Madrigal suggested that globalisation involves many complimenting and conflicting forces. She emphasised that between the global and local levels lies the role of the states (ie national government). There has been tension between central government and local government as regards management of the commons. Commons are for the public interest, but community peoples' rights must be protected. She recommended the

following considerations to be taken into account in protected areas management: resource use must be based on ethical values; sustainability limits must be known; and recognition of cultural diversity in the use of resources.

Mr Pedro Solano (Peru)

Mr Solano described the general contextual background of Peru, including that it is both an Andean and Amazonian country. The burning issues in Peru are poverty, employment, and education. More specific issues in respect of environmental issues are institutional capacity building, and lack of direction (ie whether to emphasis agriculture/mining/tourism).

Globalisation is seen as bringing technology, information, investments – mainly oriented to global trends. New trends for conservation include that biodiversity is people oriented; issues relating to management, monitoring, benefits; and decentralisation. This is seen as beneficial for developing countries.

Natural protected areas will depend for their survival on contributing to development. For this to happen, money, education and capacity building are required. These resources (for public Protected areas) are increasingly scarce. Globalisation tends to focus on fashionable issues (eg hotspots) which may lead to more traditional concepts (eg protected public land) losing attention.

The Peruvian legal framework is comprehensive and has a direction and is situated nationally, provincially and locally. Enforcement is a big challenge. This needs political will and financial resources. The role of international law is that it inspires domestic regulation and legal formalisation of current global trends. Domestic law can be an impetus to influence global trends.

The future is now – globalisation should involve co-responsibility for the earth's resources. We need sustainable societies, better North-South relations. Finally, it is not sufficient to have good law - it must be enforced.

Mr Solano's paper can be found at

http://www.iucn.org/themes/law/pdffdocuments/WPC_Peru_Solano.pdf

Professor Robyn Stein (South Africa)

Professor Stein started by observing that law can be put to unsatisfactory ends, eg forced removals from protected areas in South Africa in the past. The correct approach to globalisation and decentralisation must be informed by emphasising the role of people in the environment. Decentralisation in South Africa is provided for by the Constitution, which envisages provincial and local government, as well as national.

Law is seen as essential in effecting transition, particularly new legislation, which has been based on a large amount of public participation.

She cautioned that globalisation implies commodification, and with this in mind it is important that resources are balanced. Conservation must not be sold off to the private sector, but natural resources must be held in the public trust.

Discussion

The participants raised the following points in discussion:-

- ❑ Changes are frequently triggered by technological revolution – globalisation is probably triggered by the communication/technological revolution and this means that globalisation must be taken as a given. It is unrealistic to aim at removing globalisation, but attention must be given to the need to maximise the positives and decrease the negatives. Benefits and burdens must be more equally distributed.
- ❑ Globalisation tends to engender specialisation and standardisation but there is also strength in new approaches that derive from devolution. Globalisation and decentralisation must be married together.
- ❑ What is good in one part of the world is not necessarily good in other parts of the world. Legal systems are not easily exportable.
- ❑ Commercialisation of protected areas must be carefully considered. Several points were made in this respect, with caution being expressed about the notion of self-sustainable protected areas. Conservation (including protected areas) is the government's responsibility and the government is responsible for the satisfactory financing of protected areas.
- ❑ International environmental law is a manifestation of globalisation. Regionalisation is very important – groups of countries are regionalising international responsibilities. These responsibilities are being played out at local level through an approach of common but differentiated implementation, and these endeavours need to be integrated.
- ❑ Decentralisation needs to be carried out with caution. In Indonesia, for example, there was a history of central power until 1999, whereupon central power was then legally devolved to provinces, including environmental decision-making. This has been highlighted by lack of capacity and scientific expertise and increased corruption.
- ❑ Globalisation is beneficial from a communication point of view – accessibility brings increasing success.
- ❑ There is often problematic implementation of international conventions due to domestic lack of capacity. In Costa Rica, for example, the government is examining how to integrate its responsibilities in terms of various international conventions.
- ❑ Globalisation has benefits and pitfalls. It must augment current good practices.

- ❑ National standard setting requires centralised skill and the standards set must be legitimate. Centralised power can be captured by small power groups (which can possibly be ‘good’ power groups as well as ‘bad’). Flexibility is necessary at the local level to implement national standards.
- ❑ Decentralisation can lead to people not being able to see the wood for the trees – people are too close to the issues.
- ❑ The process of (national) legislation must have local input.
- ❑ The World Trade Organisation is consistently threatening multilateral environmental agreements.
- ❑ All countries must ratify MEA’s (such as UNFCCC and CBD) in order to strengthen the international regime.
- ❑ The World Parks Congress could be asked to recommend a protocol to the CBD on Protected areas.
- ❑ Sector policies (eg agriculture, mining) seriously affect Protected areas – and these sector policies are profoundly influenced by globalisation.
- ❑ Local management entails very different legal possibilities in different countries.
- ❑ Donors play an important role – sometimes determine policies of protected areas.
- ❑ Do people understand the purpose of decentralisation? Ultimately, it entails empowerment of people to govern their own resources.
- ❑ Direct foreign investment can contribute to conservation – eg in some states in the USA, developers must pay for environmental impact assessment and are required to mitigate environmental impacts. It is important to ensure that money goes to the right destination – a dedicated conservation fund can be used (eg in Brazil). A foreign investment standard should be pursued.
- ❑ There should be an attempt to take what is referred to as the ‘whole of government’ approach to environment and protected areas. This would require every sector that impacts on protected areas to take account of the relevant principles. The necessary frameworks to achieve this should be established.
- ❑ There should be a review of the suite of legislation that impacts on protected areas to assess what can be done to allow for protected areas to be better provided for administratively, financially etc. A more integrated approach needed.
- ❑ Regionalisation is the first level of decentralisation.

Summary

The rapporteur concluded the session by summarising the salient points of the discussion as follows:

Globalisation is traditionally seen as entailing free trade and related economic aspects. In this respect, the impact of globalisation on protected areas is potentially mostly negative, through, for example, tension between WTO rules and domestic environmental conservation measures. In a related vein, movement of finance globally can lead to donor funding for protected areas but this has the drawback of the piper calling the tune and the problems of continuing sustainability once the short-term funding has been exhausted.

If, however, globalisation is seen as entailing a wider notion, the benefits are largely positive. Globalisation has led to international law, bodies like the IUCN, improved communication, access to information and so on, which are empowering. Care should be taken, however, to adapt global information and trends to local needs.

As far as international law is concerned, there should be increased efforts to achieve ratification by all countries of important conventions such as the CBD. This will strengthen multilateral environmental agreements, which can be further strengthened by the synthesis of existing agreements to remove overlap and duplication. Much attention also needs to be given to the domestic implementation of MEAs.

Moving to decentralisation, it has not been expressly mentioned in the session, but the underlying view is clearly that protected area management without the participation of local communities is doomed to failure. Decentralisation is therefore crucial, but this must be carried out carefully. First, there must be capacity-building and education at local level. Second, local communities must not be given carte blanche to make environmental decisions as they see fit. A model requiring local (or any decentralised) decision-making to conform to nationally-set standards is a good one, provided that those standards are set with the necessary skill and are legitimate.

At the domestic level, it is crucial that government, despite pursuing the options that are available for acquiring funds from the protected areas system, recognises that it is responsible for the preservation of the public trust of protected areas and that financial self-sustainability should never be regarded an indicator for the success of protected areas. It is recognised in many places that the continued funding of protected areas is problematic, so financial frameworks should be carefully considered and strengthened, for example, measures allowing for the movement of a percentage of foreign development funds to protected areas should be investigated (as in Brazil).

Finally, regionalisation is an aspect of decentralisation, being a step down from the centralised global view. This clearly has benefits in conservation and should be pursued, particularly in respect of something that was not expressly raised in the session, and that is transboundary protected areas.

Professor Michael Kidd (South Africa)
Rapporteur