

## **IDRC TECHNICAL REPORT**

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I.	Introduction.....	2
II.	Background and Context.....	2
	Factors influencing the international policy context.....	2
III.	Creating Knowledge and Shaping Ideas to Facilitate Change.....	7
	Policy Influence .....	8
	Policy influence in the context of international law/policy and health-environment linkages .....	10
	Overview of Health-Environment Linkages in International Law/Policy .....	10
	International Health Law (IHL) .....	11
	International Environmental Law (IEL) .....	13
	International Sustainable Development Law (ISDL) .....	15
	International Development Frameworks.....	16
	International Human Rights Law (IHL) .....	18
IV.	Implementing Ideas.....	26
	The Social Function of Law.....	26
	The role of law in society.....	26
	The Health Context .....	27
	The Environmental Context.....	29
	Health and environment linkages.....	30
	The International Development Context.....	32
	Criticisms regarding international law/policy.....	33
	Moving Forward .....	33
	Bibliography .....	37

# I. Introduction

The purpose of this paper is to provide an overview international law as it relates to the work of the Ecohealth Program Initiative (PI). Primarily, it is intended to provide some context regarding research to policy influence in the global governance context. Because a major aspect of policy influence is understanding the policy environment, I have included information on major trends affecting it, particularly globalization and an increase in the use of legal instruments, institutions and frameworks at the international level (legalization). This overview therefore encompasses several parts: factors influencing the development of international law; the relevance of international law in achieving development objectives; areas of international law that link health and environment; and critical perspectives regarding the use and role of international law. The areas of international law examined include: international health law; international environmental law; international sustainable development law; international development frameworks; and international human rights law. Particular attention was paid to human rights law, as requested. In addition, I have sent several papers with this report as recommended readings. They provide more in-depth information in a very useable way to supplement the overview I am providing here.

## II. Background and Context

### Factors influencing the international policy context

There are numerous factors shaping the global and local contexts within which international law and policy operate, and finding direct causal linkages is problematic. While it is therefore difficult to say which factors are more and less dominant, it is possible to narrow the scope of factors that can be attributed to impacting the form, direction, and substance of international law/policy.

The most commonly observed factor driving the international agenda is globalization. Keohane defines globalism as “a state of the world involving networks of interdependence at multicontinental distances.”<sup>1</sup> Such networks “can be linked through flows and influences of capital and goods, information and ideas, people and force, as well as environmentally and biologically relevant substances (such as acid rain or pathogens).”<sup>2</sup> Based on this definition, “globalization and deglobalization refer to the increase or decline of globalism,”<sup>3</sup> and globalization specifically can be thought of as “the process by which globalism becomes increasingly thick.”<sup>4</sup> In this sense, “thick relations of globalization involve many relationships that are intensive as well as extensive: long-distance flows that are large and continuous, affecting the lives of many

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<sup>1</sup> Robert O. Keohane, *Power and Governance in a Partially Globalized World* (2002) Routledge: New York 298 at 193.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.* 193.

<sup>4</sup> *Ibid.* at 198.

people.”<sup>5</sup> While globalism, as a phenomenon, is not a new occurrence, it is the pace and degree of intensity and extensity that distinguishes contemporary globalization.<sup>6</sup>

While globalization affects various aspects of human life, its impact on specific areas may be distinguished. In the area of international law/policy, one impact has been on the way in which transgovernmental relationships are negotiated and implemented. The impact for international law/policy is that the “degree of thickening of globalism is giving rise to increased density of networks, increased ‘institutional velocity,’ and increased transnational participation.”<sup>7</sup> The result is an increased importance of “system effects” – “[i]ntensive economic interdependence affects social and environmental interdependence, and awareness of these connections in turn affects economic relationships.”<sup>8</sup> In addition, “the extensivity of globalism means that potential connections occur worldwide, sometimes with unpredictable results.”<sup>9</sup>

In addition to this system effect, the process of globalization consists of different dimensions, including biological, military, social, and cultural.<sup>10</sup> The flow of information and ideas also contributes to other dimensions of globalization, such as the spread of political ideas about power and governance, or “the spread of legal practices and institutions to a variety of issues.”<sup>11</sup> It is therefore the systemic and multi-faceted complexity of globalization that necessitates new responses internationally to existing problems. The degree of integration between societies, ecosystems, and issues are increasingly recognized and deepened at an unprecedented rate. Globalization provides the broader context within which other trends must be considered.

The Food and Agriculture Organization (FAO) notes a series of driving factors that have contributed specifically to the development of international law since the United Nations Conference on Environment and Development (UNCED, Rio). These include the following.

- Increased environmental awareness and mobilization around environmental issues.<sup>12</sup>
- The collapse of communism. This collapse created a demand for new legal institutions and laws deemed necessary to moving into a market economy and creating functional democratic institutions.<sup>13</sup>
- Increased privatization and the influence of the philosophy of privatization.<sup>14</sup>
- Regionalization.<sup>15</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid* at 199.

<sup>7</sup> *Ibid* at 198.

<sup>8</sup> *Ibid.* at 199.

<sup>9</sup> *Ibid.* at 200.

<sup>10</sup> *Ibid.* at 195.

<sup>11</sup> *Ibid.* at 197.

<sup>12</sup> FAO Legal Office, “Introduction” in *Law and Sustainable Development Since Rio – Legal Trends in Agriculture and Natural Resource Management* (2002), available on-line at <http://www.fao.org/DOCREP/005/Y3872E/y3872e02.htm#bm02> at 3.

<sup>13</sup> *Ibid.* at 4.

<sup>14</sup> *Ibid.*

- The prominence of the good governance paradigm.<sup>16</sup>
- Devolution and decentralization. Many trends appear to “celebrate the potential of *divergence* – namely the growing emphasis on decentralization and devolution of government powers and responsibilities.”<sup>17</sup>

While these factors will not be examined in this paper, their implications should be considered when contextualizing the role and function of international law/policy. This complex interaction of these driving forces drives the demand for international cooperation, and also shapes the responses arising from that demand.

A major response has been a change in the substance and form of international cooperation. Substantively, the types of issues that have moved from being solely under domestic control to the international realm has increased, and there has been a shift in who is considered to have a legitimate voice in both framing and addressing global issues.

In terms of form, there has been an increase in the legalization of multilateral cooperation. The result has been a proliferation of treaties in relatively “new” areas of international law (including environmental and human rights accords), demands to improve to coherence and integration of these commitments, and a change in the way cooperation takes place. This increase in legalization has led to an increased role for institutions. A Liberalist approach<sup>18</sup> views institutions as “[a]ttempts to regulate transnational activity [that occurs] as a response to economic interdependence, in the context of pluralistic democracy.”<sup>19</sup> Institutions serve to

reduce the costs of making, monitoring, and enforcing rules – transaction costs – provide information, and facilitate the making of credible commitments. In this theory, the principle guarantors of compliance with commitments are reciprocity (including both threats of retaliation and promises of reciprocal cooperation) and reputation.<sup>20</sup>

Institutions govern and shape inter-state relations, and legalized institutions are distinct in that they “impose particularly strong constraints on political actors, as well as provid[e] opportunities for innovative strategies that involve legal action.”<sup>21</sup> Legalized institutions are purveyors of “hard law,” and in this sense we tend to think of legalization as “a particular form of institutionalization characterized by three components: obligation; precision; and delegation.”<sup>22</sup>

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<sup>15</sup> *Ibid.* at 4-5.

<sup>16</sup> *Ibid.* at 5-6.

<sup>17</sup> *Ibid.* at 6.

<sup>18</sup> Defined here, by Keohane at 10, as one that “emphasizes individuals, seeks to understand collective decisions, and, in an ethical sense, promotes human rights and attempts to ameliorate the human condition.

<sup>19</sup> Keohane, *supra* note 1 at 10.

<sup>20</sup> *Ibid.* at 3.

<sup>21</sup> *Ibid.* at 13.

<sup>22</sup> *Ibid.* at 132.

- *Obligation* means that states or other actors are bound by a rule or commitment or by a set of rules or commitments.<sup>23</sup>
- *Precision* means that rules unambiguously define the conduct they require, authorize, or proscribe.<sup>24</sup>
- *Delegation* means that third parties have been granted authority to implement, interpret, and apply the rules; and (possibly) to make further rules.<sup>25</sup>

These changes in the form and substances of intergovernmental relations therefore relate to the creation, delegation, mediation and use of power. From this perspective, legalization represents a way of dealing with power. The reality, however, is that governments must harness different types of power to exercise an effective world order.<sup>26</sup> Governments networks “have access to traditional ‘hard power’ or ‘coercive power’ . . . at the same time, much of the work of many horizontal government networks depends on soft power – the power of information, socialization, persuasion, and discussion.”<sup>27</sup>

In terms of “hard” power, legally binding treaties can be enforced, either through international dispute resolution (depending on the terms of the agreement) or through domestic courts. Whether or not they are actually enforced, they can provide advocacy groups with a powerful “shaming” tool and standard against which certain government actions can be measured. Domestically, the globalization of legalization is also leading to an increased role and relevance of international accords in interpreting domestic legislation. In particular, the judiciary has been increasingly “trained” in the interpretation and application of international law, especially in those developing countries that have been “receiving” legal technical assistance.

In terms of “soft power” international law/policy is usually of a declaratory, non-binding nature (e.g. the Rio Declaration). While this may seem to be less potent, soft law can often achieve progress in terms of framing issues, creating a common language for complex issues and for dealing with uncertainty, gaining consensus on politically charged issues, creating political will, moving research/scientific evidence forward, and creating legitimate spaces for negotiating and discussing issues.

In addition, the use of law – both internationally and domestically – as a tool in achieving development objectives has also gained acceptance, particularly with regard to good governance, marketization, and democratization paradigms. Legal institutions, from this perspective, are regarded as essential building blocks in creating stable, functioning governments, democracies, and markets.

In addition to the increase in demand of legalization, the form of intergovernmental relations has become increasingly networked. As with global society generally, the international policy context is largely influenced by technological change. Advances in

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<sup>23</sup> Keohane, *supra* note 1 at 132.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Anne-Marie Slaughter, *Government Networks, World Order, and the G20*, prepared for the IDRC meeting “The G20 at the Leaders’ level?” February 2004 at 4.

<sup>27</sup> *Ibid.* at 4.

information and communication technologies have contributed to the changing form that international relations take, and through which negotiation/implementation takes place. In addition, non-governmental actors have gained unprecedented legitimacy and power in negotiating global initiatives, framing issues, and implementing solutions. This rise has been accompanied by what many see as a decrease in the relevance of states as actors in international law. For many scholars, this has meant a rise in prominence of networked forms of governance whereby individuals and organizations are clustered by issue and/or regional groupings rather than national or departmental affiliations. According to Slaughter, governmental networks are presently contributing to world order in the following ways.

- *Creating convergence and informed divergence*: “government networks can lead to ‘regulatory export’ of rules and practices from one country to another. The result can be sufficient policy convergence to make it possible over the longer term to conclude a more formal international agreement setting forth a common regulatory regime. Soft law codes of conduct issued by transgovernmental regulatory organizations, as well as the simple dissemination of credible and authoritative information also promotes convergence.”<sup>28</sup>
- *Improving compliance with international rules*: “Vertical enforcement networks do this explicitly and directly by providing a supranational court or regulatory authority with a direct link to a national government institution that can exercise actual coercive authority on its behalf. Equally important, however, are the ways in which technical assistance flowing through horizontal networks can build regulatory or judicial capacity in states where the spirit is willing to enforce international obligations but the infrastructure is weak.”<sup>29</sup>
- *Increasing the scope, nature and quality of international cooperation*: “[G]overnment networks enhance existing international cooperation by providing the mechanisms for transferring regulatory approaches that are proving increasingly successful domestically to the international arena. Most important is regulation by information, which allows regulators to move away from traditional command and control methods and instead provide individuals and corporations with the information and ideas they need to figure out how to improve their own performance against benchmarked standards.”<sup>30</sup>

Networks are particularly relevant to the negotiation and achievement of international treaties, and to reaching international goals. Networks therefore place the implementation of international objectives, and particularly international legal obligations, in the hands of domestic agents, rather than international actors. In terms of regulation, “enforcement challenges constitute the primary driver behind the rise of networks. In the process, however, government networks are often a conduit for the

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<sup>28</sup> *Ibid.* at 8.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

diffusion of regulatory ideas, rules, and practices.”<sup>31</sup> Networks “socialize regulators from new jurisdictions . . . [and] increase the gains for states to engage in capacity building efforts.”<sup>32</sup> In this sense, domestic actors may have unprecedented direct access to international relations and outcomes.

In order to affect change in this context, the forces driving and shaping international law/policy must be explicitly considered, accounted, and incorporated strategically into planning processes. Given the abundance of information and opportunities available in this area, it will be important to maximize opportunities and strategize about how resources can best be used in terms of operationalizing policy influence and influencing the global, regional, national and/or local agendas. In addition to efforts to influence policy toward ecohealth approaches or health-environment linkages, influence should include a consideration of the particular law/policy instrument or tool being targeted. For example, in the environmental field

[t]he NAFTA experience illustrates that the regulatory diffusion that networks promote can also be strongly influenced by existing liberal internationalist institutions. NAFTA provided additional incentives for regulatory cooperation and an institutional structure within which collaborators’ collaborative and capacity building activities are organized.<sup>33</sup>

In terms of the international law/policy context, we need to account for the effects of increased legalization. We need to improve, strengthen and make more efficient and effective international institutions. We need to find ways and means to make international cooperation more effective, efficient, accountable, and just. When engaging questions of international policy, the question is how go about reaching these ends, and how IDRC and Ecohealth can both contribute to improving international policy, as well as take advantage of international cooperation to contribute to meeting its own goals.

### **III. Creating Knowledge and Shaping Ideas to Facilitate Change**

In terms of both improving international law/policy and using it as a tool, IDRC can focus on policy influence. International policy, and government policy more generally, gives shape, direction and inspiration to the way in which society functions and orders itself. To improve policy, there must be a more systematic and dialogic relationship between research and policy to ensure that lessons learned are actually learned and institutionalized to not only improve the way we think about or conceptualize issues, but

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<sup>31</sup> Kal Raustiala, *The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law* (2002) 43 Va. J. Int’l L. 1 at 51

<sup>32</sup> *Ibid.* at 53.

<sup>33</sup> *Ibid.* at 49.

also the options available for dealing with them. This will also improve the ability of policy to maintain relevance and flexibility in responding to uncertainty, lack of knowledge, questions of legitimacy, new knowledge, and increasing complexity.

## Policy Influence

There are many different ways to define and conceptualize the term “policy influence.” Variations among these themes depend largely on concepts of how policy is made and defined. Consistent among various theories, however, is the notion that there is no single, decisive formula for achieving policy influence. Rather, the particular means of affecting policy will depend on both the type of influence sought, the intended outcomes of that influence, and the particular context of policy- and decision-making. Each of these can be more or less complex, depending on the nature of the issue and the values at stake or being contested.

In the case of using an ecohealth approach, these questions are additionally complicated by the nature of the approach as both process-oriented and integrative. As a progressive means of conceptualizing both problems and their solutions, which aims at capturing complexity rather than reducing it, an ecohealth approach does not easily lend itself to translation into typical policy-making terms. This difficulty results in part from the structure and culture of government administration. Ecohealth necessarily engages transdisciplinarity, which translates into inter-departmental or cross-jurisdictional responsibility at the administrative level. It is also a bottom-up means of finding solutions, rather than a top-down “regulate and consult” framework. Both of these challenge governmental structures and hierarchies, potentially engaging competition amongst different governmental departments, authorities, or jurisdictions. They also potentially threaten the status quo of informational distribution, empowering local citizens to the cost of those holding power. The approach itself also challenges the way we typically think about issues of health and the environment. By deeply integrating factors of ecology, economy, culture, society, and broadening definitions of health, it is likely to engage “competing” interests.

The framework devised by Lindquist in IDRC’s research-policy influence study is based on a synthesis of various analytical frameworks including: knowledge utilization; policy communities and networks; values, conflict, and policy-oriented learning; different modes of policy inquiry; routine, incremental, and fundamental decisions; and agenda-setting and policy-making. In sum, Lindquist suggests that “[a]ssessing policy influence . . . is typically about carefully discerning *intermediate* influences, such as expanding capacities of chosen actors and broadening horizons of others that comprise a policy network. . . . [T]his requires developing a full view of the range of actors involved in a project’s ‘domain’, the nature of relationships among these actors, and a very good sense of how that network and policy field has evolved over time.”<sup>34</sup>

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<sup>34</sup> E. Lindquist, *Discerning Policy Influence: Framework for a Strategic Evaluation of IDRC-Supported Research* (2001) IDRC: Ottawa, available on-line, at 23.

In considering what is achievable, a certain amount of knowledge about the policy environment – both in terms of the policy-makers being targeted and the issues being engaged – is required. This type of landscaping or background work will be worth the investment in the stage of thinking strategically or planning activities/networking to achieve goals. But in the initial stages, the goal is to become aware of political sensitivities, the assumptions inherent to how and why decisions are made, constraining and facilitating factors in the decision-making process, key players, administrative or structural obstacles, and the ways in which health and environment are treated in policy and/or regulatory terms.

The degree to which ecohealth approaches may be received should become apparent in this context, and the type/goals of policy influence possible can be derived from these observations. It is likely that this information will not be obtained in a linear way, but rather absorbed and observed piecemeal and in fragments that may only be meaningful once more is learned. But in putting together the pieces, the learning gained and hopefully the relationships built will provide the foundations for future activities. It is also likely that the steps will be in constant dialogue with each other, and therefore evolving.

Lindquist suggests the following as intermediate means of policy influence.

Expanding policy capacities

- Improving the knowledge of certain actors
- Supporting recipients to develop innovative ideas
- Improving capabilities to communicate ideas
- Developing a new talent for research and analysis

Broadening policy horizons

- Providing opportunities for networking/learning within the jurisdiction or with colleagues elsewhere
- Introducing new concepts to frame debates, putting ideas on the agenda, or stimulating public debate
- Educating researchers and others who take up new positions with broader understanding of issues
- Stimulating quiet dialogue among decision-makers

Affecting policy regimes

- Modification of existing programs or policies
- Fundamental re-design of programs or policies<sup>35</sup>

Much of this type of work is already ongoing within in the PI in terms of making health-environment linkages through various programmatic entry points. The purpose of the next section is therefore to provide an explicit rationalization for linking with

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<sup>35</sup> *Ibid.* at 24.

international law/policy in the context of policy influence for both improving policy and promoting health-environment linkages.

### Policy influence in the context of international law/policy and health-environment linkages

In terms of regimes, ecohealth approaches in their most integrative form are likely to demand an entirely new regulatory structure created to accommodate for new thinking, innovation, and new ways of managing and governing issues. While this is a necessary corollary and extension of policy influence, it is not generally within the purview of what international law can or is intended to accomplish. For this reason, the concept of an ecohealth approach will be limited to the linking of health and environment in a direct or integral way.

A key outcome of the emergent international context is the demand that global issues be dealt with in an integrated manner. Health and environment linkages are already evident, and arguably prevalent, in the international normative and discursive context of international relations. Given the existence of the fact of health and environment linkages, and their (qualified) recognition in international law/policy, it may be fruitful to explore what opportunities exist in terms of institutionalizing ecohealth or health-environment integrative approaches and broadening their impact. This paper will identify existing health-environment points of linkage in the international law/policy context and suggest some possible ways of moving these areas forward.

In order to understand how to effectively influence policy, the policy context must be understood. In the previous section, I have looked at factors influencing the proliferation, substance, and form of international law/policy. The question of how to influence policy, broadly speaking, has also been addressed. In the next section, I will explore where linkages already exist to provide a more specialized context within which to apply the lessons outlined by Lindquist.

### ***Overview of Health-Environment Linkages in International Law/Policy***

One of the demands created by increased complexity in the world order is for improved knowledge and capacity in terms of addressing issues. There is a role here to play in terms of improving the available knowledge and creating the necessary capacity to implement these new ideas. According to Slaughter, because “a major set of obstacles to effective global regulation is a simple inability on the part of many developing countries to translate paper rules into changes in actual behaviour, governments must be able not only to negotiate treaties but also to create the capacity to comply with them.”<sup>36</sup> Each of

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<sup>36</sup> Slaughter, *supra* note 26 at 4.

the following areas of international law demonstrate either the potential for, or the acknowledgement of, health-environment linkages.

### International Health Law (IHL)

The area of international health law does not feature a large body of established instruments for advocacy, implementation, or further negotiation. Rather, as an emerging area of attention for international law, it presents an opportunity to influence future frameworks and to analyse the appropriate role for international law. As a general trend, “health is emerging as a central issue of multilateralism as a consequence of issue linkage in combination with the widespread impact of globalization.”<sup>37</sup> This section will briefly discuss the challenges and opportunities presented by IHL for promoting health-environment linkages.

International health law, as a discrete field, is rather limited. The reason for this situation is arguable. It may be that the nature of the subject lends itself to better resolution outside of a legal context, that global health issues have been left to the realm of science and medicine, or that politically health has been a marginalized issue. Regardless of the reasons for the origin, the role of health in international law/policy is increasingly central to the realization of other objectives, both social and economic. One reason for this centrality results from the pressures of increased globalism. According to Taylor, it has led to “the proliferation of cross border determinants of health status and is undermining the capacity of nation states to protect health through domestic action alone. Consequently, globalization is creating a heightened need for new global health governance structures to promote coordinated intergovernmental action.”<sup>38</sup> In addition, “increasing global integration has compounded the impact of other contemporary global developments that are strongly connected with health status and thereby magnified the need for frameworks for international cooperation.”<sup>39</sup> The potential for IHL to move beyond its more narrowly circumscribed niche is therefore significant.

In recent years, the centrality of health to other issue areas has brought global health law/policy into the forefront of many organizations, including the WHO. The need for integrated approaches to address issues of international priority has also created a demand for more formalized, rules-based and institutionalized ways to ensure health is included in economic, social and environmental policies. The World Health Organization (WHO), for example, has suggested that “[a]s a consequence of ‘issue linkage’ international health law is increasingly understood to be central to other traditional legal realms [and] is emerging as a central issue of multilateralism.”<sup>40</sup> As a result, health issues in particular are subject to the forces of increased legalization where they intersect with other areas that are more traditionally the subject of international law, such as trade, labour, the

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<sup>37</sup> Allyn L. Taylor, *Governing the Globalization of Public Health* (2004) 32 J.L. Med. & Ethics 500 at 501.

<sup>38</sup> *Ibid.* at 500.

<sup>39</sup> *Ibid.* at 501.

<sup>40</sup> Allyn L. Taylor, “Global governance, International health law and the WHO: looking towards the future” (2002) 80 (12) Bulletin of the World Health Organization 976 at 976.

economy, the environment, and human rights. Taylor notes that “[a]s nations at all levels of development increasingly recognize the need for frameworks for coordinated action on increasingly complex, intersectoral and interrelated global health problems, international health development will be likely to include the expanded use of international law.”<sup>41</sup> These suggest a demand for research and knowledge relating to potential means of integrating health into existing environmental and development regimes, or creating new ways of understanding health in terms of international law and policy.

The concepts of human development and sustainable development, which “encompass the idea of expanded intersectoral action and coordination of economic, social, and environmental policy to improve the human condition.”<sup>42</sup> These concepts embody the integrated approach to health issues. In addition, “public health policy-makers have expanded intersectoral global public health action to address the increasingly evident intersectoral determinants of health status, including poverty, education, technology, and the environment.”<sup>43</sup> This existing foundation of issue-linkage provides a strong opportunity to deepen health-environment linkage and ecohealth approaches. The heightened international attention on global health issues also makes international health law a potentially fruitful avenue for pursuing policy influence on a large scale.

The future of international health law is not without challenges that should be weighed. Because of its rapid pace of development, “little scholarly consideration has been paid to how twenty-first century global health lawmaking should be managed from an international institutional basis.”<sup>44</sup> In addition, “[w]ith multiple international organizations sharing lawmaking authority for global health and with other actors engaged in the international legislative process, international lawmaking shows potential for fragmented, uncoordinated, and inefficient sprawl.”<sup>45</sup> Scholars look to the example on international environmental law as a cautionary example, where “uncoordinated lawmaking activity by different intergovernmental organizations may have counterproductive and inconsistent results.”<sup>46</sup> Arguably, “global environmental governance has suffered from ‘institutional overload.’ That is, the plethora of treaties and organizations relating to the environment has exceeded the capacity of states to effectively participate in and comply with them.”<sup>47</sup> With the multiple organizations possessing jurisdiction over global health matters, international health law is similarly jeopardized. Health issues, as with global issues more generally, must also face the challenge of numerous non-state actors and the changing structure of international relations.

There is also the problem of health inequality. As an issue of equity, international health law faces particular challenges. With many health issues, “problems are particularly acute in the poorest nations that are in the weakest position to negotiate effective and

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<sup>41</sup> *Ibid.* at 976.

<sup>42</sup> Taylor (2004), *supra* note 37 at 501.

<sup>43</sup> *Ibid.* at 501.

<sup>44</sup> *Ibid.* at 500.

<sup>45</sup> *Ibid.* at 500.

<sup>46</sup> *Ibid.* at 503.

<sup>47</sup> *Ibid.* at 503.

collective international obligations.”<sup>48</sup> This means globally negotiated instruments may increase vulnerability and re-enforces the structures that contribute to existing and deepening poverty. In addition, “the expanding numbers of increasingly complex and multifarious transnational health concerns and determinants of health status considerably compounds the challenge of using international legislation as a means to promote global public goods.”<sup>49</sup>

Despite these challenges, however, IHL as an emerging field presents good opportunities to successfully promote integrated approaches and health-environment linkages, particularly since it is in the process of being developed, and given the potential to develop strong institutional ties to the World Health Organization (WHO).

### International Environmental Law (IEL)

In the environmental field, activists in the past few decades have been largely successful at putting environmental issues on the international agenda, in terms of both hard and soft law. International environmental law is fairly well-developed, and its maturity also means that many countries have legislation in place. The result, however, has been a vast number of negotiated accords and declarations, the implementation and coherence of which are posing pressing challenges to government officials. The difficulty, therefore, in using an environmental lens or entry point for health-environment linkages is to work within existing frameworks, which has both advantages and disadvantages.

In terms of advantages, environmental law is itself a unique type of law. The environment, as a subject of law, defies jurisdictional boundaries and demands a governance system that accommodates its nature. Nicholas Robinson describes environmental law as “neither just a national or municipal law, nor just international law.”<sup>50</sup> Instead, it should be thought of as “a network of legal relationships wherever human societies are functioning. To be effective, any governance system for environmental law must build the linkages between each level of government in this chain of stewardship for shared natural systems.”<sup>51</sup> In addition to this vertical integration, “environmental governance must function across all sectors of governance. Matrix systems permeate the field of environmental law. The same basic principles or legal tools can apply across many sectors, biomes, or environmental regions.”<sup>52</sup> Because of this combined horizontal and vertical integration, environmental regimes exhibit the potential “to provide the rules for the integration of environment and development across both the continuum and the matrices.”<sup>53</sup> From this perspective, IEL also demonstrates strong potential to promote health-environment linkages and integrated approaches more generally. Annex I to the WEHAB report (included as a “recommended read” to this

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<sup>48</sup> *Ibid.* at 502.

<sup>49</sup> *Ibid.* at 502.

<sup>50</sup> Nicholas A. Robinson, *Befogged Vision: International Environmental Governance a Decade After Rio* (2002) 27 Wm. & Mary Env'tl. L. & Pol'y Rev. 299 at 323-324.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.* at 324.

<sup>53</sup> *Ibid.* at 324-25.

report) *A Framework for Action on Health and the Environment* list major agreements on health and the environment and their objectives.

In terms of disadvantages, regimes may be structured sectorally with without much systematic issue-linkage, and with deeply entrenched interests already in place. Robinson notes that “disparate mandates and the difficulties associated with co-ordination among international bodies mirror national experience.”<sup>54</sup> For example, with respect to cross-cutting issues, the existence of domestic bodies to administer treaties negotiated at the international level is often tenuous: “there is rarely a national governmental agency analogous to the international entity; consequently, new environmental organizations tend to be rather weak in both policy formulation and program implementation.”<sup>55</sup> And where “[n]o specific sector of government is responsible for these functions or issues, and [they] tend to shun them as low priority.”<sup>56</sup> Another challenge is implementation: “[m]ultilateral environmental agreements were negotiated at a rapid pace in the 20<sup>th</sup> century. While accords continue to be developed, implementing existing commitments has become a major focus. This focus has drawn attention to the capacity –or lack thereof—for environmental regulation that many states possess.”

The function of many environmental treaties is to protect and maintain human well-being.<sup>57</sup> While this type of implicit linkage is at the less-integrated end of the health-environment spectrum, it does provide a foundation upon which to build deepened integration, since “almost all environmental treaties recognize the impact of environmental degradation on human health.”<sup>58</sup> Atapattu categorizes environmental treaties into three groups: “those dealing with pollution; those protecting natural resources; and those dealing with policy issues and principles like environmental impact assessments or sustainable development.”<sup>59</sup> Of these, she classifies those dealing with pollution as most significantly featuring human health protection, and notes the following: the Convention on Environmental Impact Assessment; the Convention on Long-range Transboundary Air Pollution; the Basel Convention on the Control of the Transboundary Movement of Hazardous Wastes and their Disposal; and the Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.<sup>60</sup> Treaties dealing with protecting natural resources, to a lesser extent, refer to human health in more limited way. She specifically notes: the Convention on Biological Diversity; the Cartagena Protocol on Biosafety; and the Protocol on Water and Safety. These issue-areas therefore exhibit foundations amenable to promoting or facilitating health-environment linkages at the stage of domestic implementation, or the negotiation of future protocols/amendments to the treaties, or in the interpretation of the terms.

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<sup>54</sup> Robinson, *supra* note 50 at 321.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

<sup>57</sup> Sumuda Attapattu, *The Public Health Impact of Global Environmental Problems and the Role of International Law* (2004) 30 Am. J. L. & Med. 283 at 291.

<sup>58</sup> *Ibid.* at 294.

<sup>59</sup> *Ibid.* at 293.

<sup>60</sup> *Ibid.* at 294-95.

The benefit of using environmental law/policy to advance health/environment linkages rests in its nature and maturity. The effectiveness of domestic environmental laws may be questionable in any country, but most countries, as a result of the prominence of environmental issues being prioritized at the international level, has environmental legislation in place. Here again is the opportunity to improve existing laws/policies by including consideration of the ecosystem in its human health context, or by assisting to build capacity to effectively enforce or re-design or implement existing policy tools. An additional advantage of the environmental sector is the existence of ecosystem-based governance structure from which to draw experience and evidence. Bodies such as the Great Lakes International Joint Commission between Canada and the US, for example, may provide valuable insight into the realities of integrated approaches at the transnational level.

### International Sustainable Development Law (ISDL)

The field of international sustainable development law is debatable as a distinct body of law, though it is increasingly being recognized. It has its roots in environmental law, and from the recognized need to integrate environmental and other issues in a fundamental way. To some, it represents a sub-set of international environmental law, or an evolution of it. Whether or not it represents a distinct body of law, it inherently links health and the environment as a core principle.

ISDL finds its conceptual origins with the Stockholm and Rio Declarations. According to the Food and Agriculture Organization, it “is not just environmental law, but an integrated approach in which environmental protection and its legal instruments are incorporated into the development process.”<sup>61</sup> Arguably, international sustainable development law has developed to assert a deeper integration than one rooted solely in environmental concerns. The subject of international sustainable development law is that area of law/those treaties that integrate economic, social, and environmental law or concerns. Because it is integrative in nature, this field brings health-environment linkages to the forefront of the debate.

One main disadvantage of this field of law is its lack of official establishment or ‘recognition,’ which may make it more difficult to generate public interest or political will. In addition, it is largely contained in the “soft law” instruments of declarations, and in the judicial or academic interpretation of legal obligations, rather than in traditional binding treaties. The integration, however, is quite explicit. Attapattu notes the following examples.

- Principle 1 of the Stockholm Declaration provides that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality

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<sup>61</sup> FAO, *supra* note 12 at 1.

that permits a life of dignity and well-being ...." While it is not clear what is meant by "adequate conditions of life," Principle 1 does seem to indicate that an environment of a particular quality is necessary for man to enjoy his rights.

- Principle 1 of the Rio Declaration is more explicit: "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature"
- Agenda 21, adopted at the Rio Conference, devotes a chapter to the issue of human health. Noting that sound development is not possible without a healthy population, it points out that "the linkage of health, environmental and socio-economic improvements requires intersectoral efforts."
- The Plan of Implementation adopted at the World Summit on Sustainable Development in 2002 also emphasizes the importance of public health. It calls upon states to "[d]eliver basic health services for all and reduce environmental health threats, taking into account the special needs of children and the linkages between poverty, health and environment."<sup>62</sup>

One of the most significant contributions of these types of "soft" instruments is the normative and discursive foundation they provide for future negotiation, for advocacy, and for education/awareness. They have created an agreed common language for different actors to use, and a way of conceptualizing and rationalizing integration that has made issue-linkage a mainstream approach to international law.

## International Development Frameworks

Since this area is being studied in-depth in the context of NEPAD, I will limit my discussion of it, except to relate it to the other areas I am discussing. It is also illustrative of the kinds of problems typical to the implementation of international accords,

The term "international development frameworks" refers to the arrangement centred on setting development agendas and priorities. While they are not legally binding arrangements, they can have significant relevance in the formulation and implementation of international law at global, regional, and local levels. More recent international development frameworks already exhibit health-environment linkages, as demonstrated in both the Millennium Development Goals (MDGs) and some arrangements that implement those goals, such as the NEPAD. Legally, they have little binding effect, except where they can be linked to human rights arguments or violations. However, the value of such frameworks from the perspective of international law/policy is in their

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<sup>62</sup> Attapattu, *supra* note 57 at 287-89.

ability to shape the international agenda, particularly through their communication potential, awareness-raising, “shaming potential” and ability to be monitored. With regard to their communication potential and awareness-raising capacity, instruments like the MDGs can engage both the public and the politicians, particularly regarding the inter-relatedness of development issues. Their “shaming potential” is related to the nature of development frameworks, as they are usually based on measurable goals that can be monitored and, more importantly, reported. As such, they can provide an entry or focal point for advocacy and assistance – an easily understood and high-impact message around which different actors can be mobilized.

The example of health-environment linkages in the NEPAD, however, provides a good example of how, despite the existence of linkages at the level of a regional arrangement that is designed to implement a global initiative, the domestic implementation of issues in an integrated manner can remain challenging. It has been observed that

NEPAD recognises the intricate links among health, environment and development in its program of action. The health strategy recognises the impact of environmental factors and other sectors on health, and proposes an intersectoral approach to addressing the disease burden in Africa.<sup>63</sup> NEPAD’s Environmental Action Plan also acknowledges the human health implications within its priority areas including pollution by agrochemicals; industrial, coastal, and freshwater pollution; and the impact of climate change on vector and water-borne diseases. A sub-theme, on ‘Environment and Health’ also identifies projects and actions related specifically to chemical contamination and management.<sup>64</sup>

Despite this recognition and attempts at integration, however, most activities proposed by NEPAD fail to make this integration in practice.<sup>65</sup> While the reasons for this are unclear, Dakubo suggests several reasons:

- the fact that health and environment are represented by different sectors and receive input from a set of different actors;
- the way knowledge on health and environment linkages is formulated and made accessible to decision makers; and
- lack of capacity to conduct policy-relevant research and feed into decisions at local, national and regional levels and to foster intersectoral coordination among institutions.<sup>66</sup>

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<sup>63</sup> NEPAD Health Strategy, 2003 p3.

<sup>64</sup> Crescentia Dakubo, Exploring Health and Environment Linkages in NEPAD – Working Draft (2004).at 3.

<sup>65</sup> *Ibid.* at 3.

<sup>66</sup> *Ibid.* at 3-4.

These difficulties also speak to the larger problem of knowledge in international law. While these treaties and goals are being formulated, lack of information, and problems of gaining the information necessary for effective policy implementation, are often underestimated or simply unknown. There are also political realities to account for, which may never be public but will exert a great deal of influence over who controls decision-making and resource-allocation. The challenge of lack of capacity in implementation is also common to other areas of international law, but the depth of the study undertaken by Crescentia will be revealing in better understanding what type of capacity needs to be improved. It will also be interesting to see whether and to what degree networks are playing a role at the regional level in the African context.

### International Human Rights Law (IHL)

The concept of human rights in international law are those rights “legally guaranteed by human rights law, protecting individuals and groups against actions that interfere with fundamental freedoms and human dignity. They encompass what are known as civil, cultural, economic, political and social rights.”<sup>67</sup> These rights were first articulated by the international community with the adoption of the *Universal Declaration of Human Rights* (UDHR) in 1948. The instruments that translate the provisions of the UDHR into binding law came in 1966 – heavily influenced by Cold War politics – with the creation of two separate treaties, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These treaties, and the UDHR form the core of international human rights law, often referred to as the “International Bill of Rights.” Subsequent treaties have either focused on specific groups or categories of populations.<sup>68</sup> These include: the *International Convention on the Elimination of All Forms of Racial Discrimination* (1963); the *Convention on the Eliminations of All Forms of Discrimination Against Women* (1979); the *Convention on the Rights of the Child* (1989); and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (1984). Together with the ICESCR and the ICCPR, these form the core of human rights law.

Human rights, in international law:

- are guaranteed by international standards;
- are legally protected;
- focus on the dignity of the human being;
- protect individuals and groups;
- oblige states and state actors;
- cannot be waived or taken away;
- are interdependent and interrelated; and
- are universal.<sup>69</sup>

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<sup>67</sup> WHO, *25 Questions and Answers on Health and Human Rights* (2002) Health and Human Rights Publication Series, Issue No. 1, available on-line at 7.

<sup>68</sup> *Ibid.* at 12.

<sup>69</sup> *Ibid.* at 7.

Treaties, which are legally binding on governments that have ratified them, however, should be distinguished from declarations and other agreements (e.g. Programmes of Action), which may be binding in customary international law, but do not necessarily carry the same authority. The degree to which such an agreement will be binding can only be decided on a case-by-case basis.

Compliance with international human rights law is observed through monitoring. Each of the six core treaties uses a treaty-monitoring body “which meets regularly to review State Party reports and to engage in a ‘constructive dialogue’ with governments on how to live up to their human rights obligations.”<sup>70</sup> Country reports are mandatory, as is their release and availability to the population of the country in question, which makes them a useful tool in generating debate, engaging civil society, and fostering public participation and scrutiny of government policies.<sup>71</sup> In addition to reporting requirements, the United Nations system features a Commission on Human Rights and a Sub-Commission on the Promotion and Protection of Human Rights, which appoint special rapporteurs or other independent experts to monitor and report on thematic human rights issues or specific countries.<sup>72</sup> In addition, regional arrangements exist in Africa, Europe, and the Americas.

Governments that have ratified human rights treaties are obligated by the principle of progressive realization of human rights. This principle imposes the duty “to move as expeditiously and effectively as possible towards that goal. . . . it acknowledges the constraints due to the limits of available resources but requires all countries to show constant progress in moving towards full realization of rights.”<sup>73</sup> With regard to non-state actors, the obligation on the part of the government extends to “ensure that third parties conform with human rights standards by adopting legislation, policies and other measures to assure adequate access to healthcare, quality information, etc., and an accessible means of redress if individuals are denied access to these goods and services.”<sup>74</sup>

### *Health and Human Rights*

The linkages between health and human rights in international human rights law are extensive. Figure 1 (below) illustrates these linkages.

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<sup>70</sup> *Ibid.* at 12.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.* at 13.

<sup>73</sup> *Ibid.* at 14.

<sup>74</sup> *Ibid.* at 15.

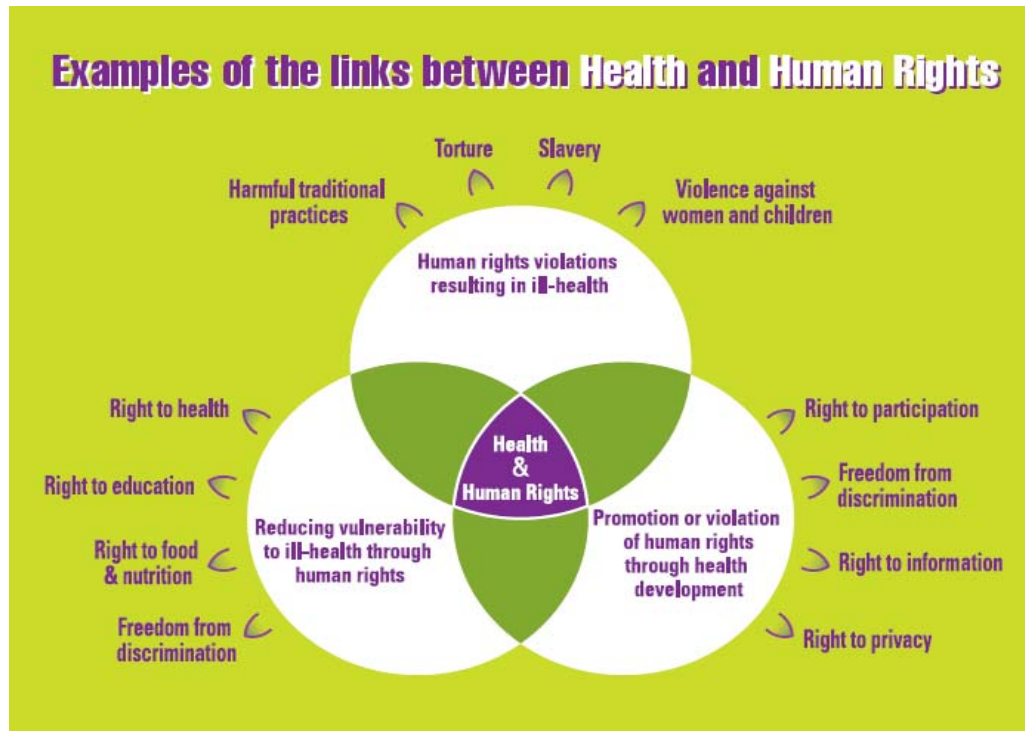


Figure 1.<sup>75</sup>

The substantive obligations inherent to these rights are fully articulated in various human rights instruments.<sup>76</sup>

International human rights – both legally and rhetorically – can be a potent tool for change. The most relevant rights for ecohealth approaches, and for health-environment linkages more generally are the right to health, and the right to a healthy environment. Other specific rights related to water, housing, food, and security may also be relevant, though these tend to be considered as part of other, broader rights. The articulation of the rights to health and to a healthy environment, and their implications, is presently the point of a broad discussion within interested communities. There are different opportunities presented by human rights for action and advocacy. Aside from presenting a clear and effective message, rights-based discourse directly engages issues of fairness, equity and justice – issues that are largely implicit to environment and health law/frameworks.

### *The Right to Health*

The right to health is a fairly well-established right. According to the WHO, “every country in the world is now party to at least one human rights treaty that addresses health-related rights, including the right to health, and a number of rights related to conditions necessary for health.”<sup>77</sup>

<sup>75</sup> WHO, *supra* note 67 at 8.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.* at 12.

The right to health has existed historically, even if it was not articulated as such. Kinney asserts that the “positive right to health had its origins in the Sanitary Revolution of the Nineteenth Century when public health reformers, also troubled by the economic dislocations of the Industrial Revolution and empowered with scientific advances, such as the germ theory of disease, pressed for state-sponsored public health reforms.”<sup>78</sup> Health is of fundamental importance to the realization of human rights, and the ability to live a fulfilling life. The health of a population is also necessary to support economic development.<sup>79</sup>

The right to health has been, and continues to be, included in many different human rights treaties. Constitutionally, human rights are built on the premises enshrined in the *United Nations (UN) Charter*.<sup>80</sup> The right to health is implicit to the UN’s task of promoting “higher standards of living, full employment, and conditions of economic and social progress and development.”<sup>81</sup> Later, a more explicit statement was included in the UDHR at Article 25.1: “Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.”<sup>82</sup> The most comprehensive recognition, however, exists in the ICESCR, which states at Article 12.1: “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>83</sup> The significance of the right to health is further demonstrated by its pervasive presence in other human rights treaties, such as the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1965, the *Convention on the Elimination of All Forms of Discrimination Against Women* of 1979, and the *Convention on the Rights of the Child* of 1989. In addition, “the right to health has been proclaimed by the Commission on Human Rights, as well as in the Vienna Declaration and Programme of Action of 1993.”<sup>84</sup> On a broader level, health concerns—regarding safe drinking water, maternal mortality, and the spread of HIV/AIDS, malaria, and other diseases<sup>85</sup>—are part of the *Millennium Declaration*. The *Declaration on the [Trade-Related Aspects of Intellectual Property (TRIPS)] Agreement and Public Health* is also premised on the significance of health: “We recognize the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis,

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<sup>78</sup> E.D. Kinney, “The International Right to Health: What Does This Mean For Our Nation and World?” (2001) *Indiana L. Rev.* 1457 at 1459.

<sup>79</sup> For a detailed examination of this relationship, see the Report of the Commission on Macroeconomic and Health, *Macroeconomics and Health: Investing in Health for Economic Development*, World Health Organization, 2001.

<sup>80</sup> R. Howes & M. Mutua, “Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization” International Centre for Human Rights and international Democracy, Policy Paper, online at [www.ichrdd.ca/frame.iphtml?langue=0](http://www.ichrdd.ca/frame.iphtml?langue=0).

<sup>81</sup> *Charter of the United Nations*, 26 June 1945, Article 55(a).

<sup>82</sup> *Universal Declaration of Human Rights*, Dec. 10, 1948, G.A. Res. 217 A, UN GAOR, 3d Sess., pt. I, Resolutions, at 71, UN Doc. A/810 (1948), Article 25.1.

<sup>83</sup> *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 19 December 1966, 993 U.N.T.S. 3, Article 25.1.

<sup>84</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, UN ESCOR, 2000, UN Doc. E/C.12/2000/4 at footnotes 2 & 3. [hereinafter *General Comment 14*]

<sup>85</sup> *Millennium Declaration*, G.A. Res. 55/2 at para 19.

malaria and other epidemics.”<sup>86</sup> This type of ‘interdisciplinary’ recognition of health as explicitly linked to issues of poverty eradication, development, and trade reflects its cross-cutting nature, and its relevance outside of the strictly human rights-based framework.

The right to health has also been recognized at the regional level. The *Organization of American States (OAS) American Declaration of the Rights and Duties of Man* states at Article 11 that “[e]very person has the right to the preservation of health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”<sup>87</sup> The more recent Protocol of San Salvador specifies a human right to health in its interpretation of the *OAS Convention on Human Rights*.<sup>88</sup> In addition, the *European Social Charter* of 1961 (as revised, at Article 11) and the *African Charter on Human and Peoples’ Rights* of 1981 (at Article 16) recognize the right to health.

Institutional recognition of the right to health is evident in the existence of the World Health Organization (WHO), which possesses a “legislative capacity to make international health regulations in addition to its health promotion functions.”<sup>89</sup> The WHO Constitution includes a right to the highest attainable standard of health,” defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>89</sup>

Signatories to the body of treaties recognizing the right to health cover the vast majority of nations, especially as contained in the *International Convention on the Rights of the Child*. This fact suggests that its normative acceptance is nearly universal. The dedication of a UN institution to promote and protect health reflects the importance of health as a necessary condition to the pursuit of economic and social development, and a basis upon which the attainment of other human rights must be founded.

#### *Legal Status of the Right to Health*

The legal status of a rule at international law is determined by its source.<sup>90</sup> The most relevant sources for the right to health are treaty and custom. The right to health has been codified in treaty law by the ICESCR, and therefore represents the consent of states to enforce the right as delineated in the text of the agreement. It is therefore a legally enforceable right susceptible of violation, though only to states that are signatories. While this fact is not in dispute, the actual content and meaning of the right to health are more controversial, as will be discussed in the next section. A grounding in international customary law would allow for broader enforceability of the right to health, making it

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<sup>86</sup> WTO, *Declaration on the TRIPS Agreement and Public Health*, WT/MIN(01)/DEC/W/2 at para 1.

<sup>87</sup> *American Declaration of the Rights and Duties of Man*, Mar. 30-May 2, 1948, O.A.S. res. XXX, adopted by the Ninth International Conference of American States, Bogotá Columbia, OEA/Ser. L/V/II, 23 doc., 21 rev. 6 (1948), reprinted in *Organization of American States, Basic Documents Pertaining to Human Rights in the Inter-American System* 17-24 (1988).

<sup>88</sup> Kinney, *supra* note 78 at 1460.

<sup>89</sup> *Constitution of the World Health Organization*, opened for signatures July 22, 1946, 62 Stat. 6279, 14 U.N.T.S. 185.

<sup>90</sup> Howse, *supra* note 80 at 4.

applicable to states not party to the agreement. It has been argued that “international law is increasingly treating fundamental basic human rights as a part of international customary law.”<sup>91</sup> The inclusion of the right to health as one of those rights having achieved such a binding status, however, is not clear. The possibility exists from this perspective, however, that the indivisibility of human rights incorporates all obligations in that category.

#### *Substantive Content of Obligations Under the Right to Health*

While widely recognized at the normative level, the actual content of the right to health lacked substantive clarity until the Committee on Economic, Social and Cultural Rights (CESCR) put out *General Comment 14* concerning the right to the highest attainable standard of health.

The indivisibility of human rights is of particular relevance with regard to health, because health is so dependent on social and economic factors. As such, the meaning of Article 12.1 of the *ICESCR* cannot be interpreted as merely referring to the provision of health care:

the drafting history and express wording of Article 12.2 acknowledge that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.<sup>92</sup>

The expansive range thereby encompassed includes economic, social, and environmental aspects that must all be addressed in realizing the right to health. The *ICESCR* further elaborates that the right to health contains: “both freedoms and entitlements;”<sup>93</sup> and “the interrelated and essential elements of availability, accessibility (incorporating non-discrimination, physical accessibility, economic accessibility, and information accessibility), acceptability, and quality.”<sup>94</sup>

At the level of implementation, the existence of different types of rights poses challenges since to be meaningful, “the content of the right to health must be essentially the same for all nations and people [but] implementation is dependent on the resources, as well as cultures, of individual countries.”<sup>95</sup> In addition, it “requires affirmative action on the part of the government, and implicates interventions in the internal domestic affairs of nations.”<sup>96</sup> Despite these challenges, the practical significance of giving effect to the different types of rights incorporated in the right to health is evident in the example of

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<sup>91</sup> *Ibid.* at 6.

<sup>92</sup> *General Comment 14*, *supra* note 24 at para 4.

<sup>93</sup> *Ibid.* at para 8.

<sup>94</sup> *Ibid.* at para 12.

<sup>95</sup> Kinney, *supra* note 78 at 1467.

<sup>96</sup> *Ibid.* at 1471.

HIV/AIDS. Kinney observes that “[a]ccording women equal status in marriage and divorce and recognition fully of their civil and political rights does much to empower women in rejecting unwanted sexual relations with HIV-infected partners.”<sup>97</sup> The recognition and enforcement of one type of rights therefore has direct consequences in realizing health objectives. In this example, the strengthening of civil rights for women could potentially help to prevent HIV infection and associated AIDS.<sup>98</sup>

Addressing the complexity of the issues involved in realizing the right to health at the international and domestic level demands a holistic approach in order to elucidate the relationships between the different types of rights inherent to the right to health. [ . . . ]

### *The Right to a Healthy Environment*

The right to a healthy environment is less established than the right to health. According to Attapattu, “[h]uman rights instruments do not readily link the right to health with a healthy environment, probably because such a link was not apparent when the earlier human rights treaties were adopted.”<sup>99</sup> However, several approaches to linking health, human rights, and environmental protection have been articulated. The first approach, according to Shelton, “understands environmental protection as a pre-condition to the enjoyment of internationally-guaranteed human rights, especially the rights to life and health. Environmental protection is thus an essential instrument in the effort to secure the effective universal enjoyment of human rights.”<sup>100</sup> A second, more instrumental approach, which is the most common in international environmental agreements since 1992, “views certain human rights as essential elements to achieving environmental protection, which has as its principal aim the protection of human health.”<sup>101</sup> These rights are more procedural in nature, such as access to information, public participation, and access to justice.<sup>102</sup> They are incorporated into environmental texts “in order to have better environmental decision-making and enforcement.”<sup>103</sup> The third approach articulates the link between health, the environment, and human rights “as indivisible and inseparable and thus posits the right to a safe and healthy environment as an independent substantive human right.”<sup>104</sup> Formulations of this right, however, are often qualified “by words such as ‘healthy’, ‘safe’, ‘secure’ or ‘clean,’ making explicit the link between environmental protection and the aim of human health.”<sup>105</sup>

The right to a healthy environment is mainly found in national law or in regional agreements.<sup>106</sup> Two regional human rights treaties specifically protect the right to the

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<sup>97</sup> *Ibid.* 1473-74.

<sup>98</sup> *Ibid.*

<sup>99</sup> Attapattu, *supra* note 57 at 285.

<sup>100</sup> Dinah Shelton, *Human Rights, Health and Environmental Protection: Linkages in Law and Practice* (2002) Background Paper for WHO, available on-line at [www.cedha.org.ar/docs/doc92.htm](http://www.cedha.org.ar/docs/doc92.htm). at 2.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.* at 3.

<sup>103</sup> *Ibid.*

<sup>104</sup> *Ibid.*

<sup>105</sup> *Ibid.*

<sup>106</sup> *Ibid.*

environment in Africa and the Americas. According to Shelton, the approaches differ in each. The *African Charter on Human and Peoples' Rights* (1991), at Article 24 states: "All peoples shall have the right to a general satisfactory environment favourable to their development." In contrast, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, at Article 11, states:

1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
2. States Parties shall promote the protection, preservation and improvement of the environment.

There has also been elaboration of human rights linking health and environment in various other legal forms, such as the decisions of human rights bodies, national constitutional provisions, laws, and jurisprudence.<sup>107</sup>

The links in human rights law between health and environment are established. The value of a rights-based approach to health and environmental protection is therefore worth exploring. Shelton notes several benefits of using rights-based approaches to health and environmental problems.

- The emphasis on rights of information, participation, and access to justice encourages an integration of democratic values and promotion of the rule of law in broad-based structures of government.
- A right to a healthy environment elevates the entire spectrum of environmental issues to become a fundamental value of society, on a level equal to other rights and superior to ordinary legislation.
- The goal of human health provides a basis for reinforcing both human rights and environmental protection.<sup>108</sup>

The field of human rights is demonstrably rich in its potential for linking health and environment, both in theory and in practice. The HIV/AIDS Legal Network has prepared a report for CIDA on how to program a human rights approach in the context of HIV/AIDS, which has been included with this report as a "Recommended Reading." Human rights provide a strong avenue for advocacy and are a growing area of the law. Rights-based discourse is increasingly powerful, and its use in mobilizing interest groups across borders is growing.

Each of the above-mentioned areas of international law provides different ways of expressing and examining the health-environment linkage. At the conceptual and textual level, the need to link health and environment has gained broad support from the international community as expressed in international law. It is in understanding how to implement and deepen this integration that the challenge arises. This section has provided a brief overview for further consideration of where policy influence may be

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<sup>107</sup> See generally Shelton, *supra* note 100 and Sumuda Atapattu, *The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment Under International Law* (2002) 16 Tul. Envtl. L. J. 65 for a more detailed discussion.

<sup>108</sup> Shelton, *supra* note 100 at 23.

effectively achieved in the area of international law/policy. The next section will provide a brief introduction to the role that law can play in both the achievement of development objectives, and with regard to health-environment linkages. It is meant to highlight aspects of law/policy that should be reflected on critically, as well as suggesting some areas deserving of further inquiry.

## **IV. Implementing Ideas**

Implicit to the idea of policy influence in the international context is an acceptance of the significance of international law to development research, and to the achievement of development goals – namely the improvement of human well-being. It is important, however, to interrogate what international law can actually contribute – the benefits and drawbacks – as well as the use of law in development more generally.

The purpose of this section is not to suggest that international law not be encouraged, developed, pursued or implemented as a means of influencing change. The purpose is to highlight the importance of thinking critically about how international law/policy is made, and the broader ideological, political, cultural, and economic contexts within which international cooperation takes place.

### ***The Social Function of Law***

Defining the role of law is an ongoing topic of scholarly debate. Suffice it to say that law can mean many things in many contexts, ranging from rules and regulations (criminal law) to customs that are felt to be of a binding or authoritative nature (social norms). Regardless of the context, however, it is the intimacy of law with power, wealth, and social control that makes it an increasingly popular means of achieving development objectives. The context for this paper is to understand the aspects of legal systems that relate to law as an instrument of change, specifically in regard to the improvement of human health. I will therefore first present a brief and general overview of relevant aspects of law in its social function, and then discuss how these relate specifically to the improvement of human health and the environment. The final section of the paper situates the discussion of law in the context on international development.

#### The role of law in society

From a sociological perspective, “law and the legal system form just one of a number of social control systems through which individual or group activities are encouraged or discouraged.”<sup>109</sup> Other systems – social, cultural, and religious – include rules and expectations that are as significant, if not more significant, than those formalized by the law. Often, “legal rules represent merely one end of a continuum of rules of varying

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<sup>109</sup> F.H. McClintock and T. Hadden, “Law in Social Control Systems: A Functional Analysis” in J.A. Jolowicz, ed., *The Division and Classification of the Law* (1970) London: Butterworths 49-53 at 49.

degrees of precision and effectiveness through which behaviour of a certain type may be influenced or controlled. As a general rule resort is made to law and legal sanctions only when other means have been shown to be ineffective.”<sup>110</sup> A legal system can therefore be considered to operate within, rather than apart from, wider systems of social control.<sup>111</sup>

Law is distinguished, however, by “a tendency to follow rather than to dictate ideological or economic developments, and its influence will therefore often be to discourage rather than to induce change.”<sup>112</sup> In this sense, legal systems traditionally emerged from a pre-existing cultural context, and accord with the social values and practices they were designed to preserve. As a distinct entity, “a legal culture consists of a set of assumptions, a way of doing things, a repertoire of language, of legal forms and institutional practices. As with all aspects of culture, it changes in response to new situations, but it also reproduces itself; its new responses fit into its existing forms.”<sup>113</sup>

A legal system can be analytically divided into legitimizing functions, and mechanical functions.<sup>114</sup> While the two are inextricably linked, this division can be useful in the context of societies where the legal system lacks legitimacy, yet still functions as a social control (e.g. the legal system in apartheid-era South Africa).<sup>115</sup> Legal norms are associated with the legitimising function. Toope and Brunnee argue that “legal norms are both constitutive and directive. Because they create a vocabulary, establish what ‘counts’ as argument, and define who can participate in a given debate, legal norms shape processes of decision.”<sup>116</sup> Legal norms therefore affect who has access to “justice” as much as how “justice” is defined. The mechanical functions of law can “best be understood as a way of creating powers, of endowing officials with regulated ways of acting, a weapon in the hands of the state rather than a defence against it.”<sup>117</sup> This function relates to social policy: the creation and carrying out of administrative power; the allocation of resources; the construction of decision-making structures; the adjudication of disputes; and the punishment of certain acts.

The general role of a legal system in society is therefore difficult to pinpoint and to extricate from its cultural embedment. Its role and effects are more and less significant, depending on the context. However, it is important to ensure that it is considered in evaluating both the causes and solutions of human problems.

### The Health Context

In order to more precisely understand the role of law in relation to problems of health and environment, it must be examined in a more narrowly defined context. This discussion

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<sup>110</sup> *Ibid.* at 50.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.* at 49.

<sup>113</sup> Martin Chanock, *The Making of South African Legal Culture 1902-1936: Fear, Favour and Prejudice* (2001) New York: Cambridge University Press at 23.

<sup>114</sup> *Ibid.* at 22.

<sup>115</sup> *Ibid.*

<sup>116</sup> Toope, Stephen J., and Brunnee, Jutta, “Freshwater Regimes: The Mandate of the International Joint Commission” 15 *Arizona Journal of International and Comparative Law* 273 at 273.

<sup>117</sup> Chanock, *supra* note 115 at 22.

will therefore focus on laws and policies, rather than legal systems as a whole. And while there has not yet been much research examining “whether and how law/policy may be operating to create or promote (un)healthy social conditions,”<sup>118</sup> it has been suggested that “by shaping what kinds of environments people live and work in, law/policy is both an *explanatory* variable determining population health and a potential *means* for improving it.”<sup>119</sup>

According to the HIV/AIDS Legal Network, “laws/policies, health-related or otherwise, are structural factors that can determine health status by: constituting the physical and social context or environment in which individuals and populations behave, defining options and influencing choices; and interacting with known determinants of health.”<sup>120</sup>

The attainment of the highest possible state of health and well-being is unachievable where people have no control over the things that determine their health.<sup>121</sup> This applies at varying scales of decision-making, from the household to the community, and beyond. Human well-being is structured by broad determinants, including “the economic, cultural, legal and political environments of a given society, which themselves are related and affect each other.”<sup>122</sup> Specific elements of the legal and policy environment “can include laws and legal institutions or actors, policy implementation (broadly defined to include litigation, regulation, law enforcement, and the setting of administrative, organizational and product standards), and community engagement in legal/policy debate.”<sup>123</sup> More specifically, law/policy

forms part of the context or environment surrounding individuals, albeit outside their direct control; their context is always already defined by law, policy or administration. Health is structurally determined in that individuals or groups may not make healthy choices because contextual legal, political or law enforcement factors may prevent them from doing so.<sup>124</sup>

While it is not the sole or necessarily most significant determinant, an analysis of law/policy as a structural determinant of health could lead to insightful or innovative means of seeing and addressing issues. It is important to emphasize both the constraining and facilitating aspects of law/policy in this context, as well as its nature as interacting with economic and cultural environments.

Law and policy, in addition to their constitutive function, interact with other more specific determinants of health to impact overall well-being. These specific determinants include: physical environments (e.g., access to and quality of shelter, food, water);

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<sup>118</sup> Maria Nengeh Mensah, *Healthy Public Policy: Assessing the Impact of Law and Policy on Human Rights and HIV Prevention and Care* (2003) HIV/AIDS Legal Network at 11.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.* at 9.

<sup>121</sup> *Ibid.* at 10.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

development as children (e.g., family poverty); health practices; household and labour practices; and use of health services.<sup>125</sup> In addition, laws/policies:

- affect how we experience our biological endowment (e.g. protection against discrimination in employment or housing based on disability, sex, or race/ethnicity);<sup>126</sup>
- regulate, not only by defining prohibited behaviour, but also explicitly or by implication, authorizing behaviour;<sup>127</sup>
- impose costs or confer benefits, or ration access to health-related behaviours, services, or products. . . . [where they] most powerfully operate indirectly, by influencing expectations or the understanding of experience, rather than by explicitly compelling or forbidding specific acts or guarding certain prerequisites.<sup>128</sup>

The interaction of laws/policies with other determinants of health is also likely to be cumulative, whether by having a simultaneous impact on multiple determinants, or by having multiple effects on a single determinant.<sup>129</sup> Understanding law as a structural determinant is relevant to understanding the problems it engages, as much as the solutions it constrains or facilitates. Effective legal and policy responses must be based on a solid empirical understanding.<sup>130</sup> The issue of how laws/policies affect coping should also be considered to achieve a comprehensive picture of the factors affecting human well-being.

### The Environmental Context

The relationship between environmental law/policy and science is not often discussed. However, the mutual influence they exert warrants examination as a systemic problem. According to Manno, “how we frame environmental policy questions has enormous implications for environmental science.”<sup>131</sup> The paradigm of cost-benefit analysis and simplified causal relationships affects the perspective from which scientific queries are made, and which issues receive the most attention. Driesen refers to this paradigm as “static efficiency.”<sup>132</sup> The result of an emphasis on static efficiency “in the design and implementation of law and policy creates incentives for scientists to ask questions that are narrowly focused on the most predictable and measurable environmental variables.”<sup>133</sup> In order to overcome the static efficiency paradigm, Driesen suggests to “consider the economic dynamics of environmental law and policy, to understand the effects of such laws and policies as a complex system of incentives that steer economic behaviour in ways that benefit or harm the environment.”<sup>134</sup> The result, according to Manno, is that

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<sup>125</sup> Mensah, *supra* note 118 at 13.

<sup>126</sup> *Ibid.*

<sup>127</sup> *Ibid.* at 17.

<sup>128</sup> *Ibid.* at 18.

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.* at 4.

<sup>131</sup> Jack Manno, *The Ecological Dynamics of Environmental Law and Policy* (2004) 31 *Envtl. Affairs* 607 at 609.

<sup>132</sup> See David M. Driesen, *The Economic Dynamics of Environmental Law* 11, 13 (2003).

<sup>133</sup> Manno, *supra* note 131 at 607.

<sup>134</sup> *Ibid.* at 608.

[l]aw and policies derived from a static efficiency paradigm therefore lead to a science of supporting stake-claiming and case-making in a process where the environment is understood to be one of several interests making claims on scarce resources. Treating the environment as an “interest” among competing interests significantly weakens the environmental case, which is fundamentally that the need to protect the environment is a responsibility and a constraint on all interests that use the resources the environment provides.”<sup>135</sup>

While these statements relate to environmental law rather than health-environment linkages, the relevance of law/policy in determining how to understand the problem being addressed is apparent. Law is revealed as a structural determinant that affects environmental science in addition to health determinants.

### Health and environment linkages

Laws/policies directly affect the physical environment. Environmental science has been discussed above, but apart from this, many important environmental and health debates take place in a legal context, whether in legislatures, in courts, or in administrative agencies. These take place in the law’s language, that is of rights, of duties, and of justice. These debates often help to tease out and clarify principles, and define what’s at stake in a given situation. The law therefore has instrumental as well as normative value in the context of advancing health-environment linkages. In turn, insights gained from such an advancement could help the legal system adapt to the pace of social and technological change. It has been asserted that the “overriding requirement for ecosystem health is a responsive policy framework and infrastructure that are conducive to corrective actions and maintaining management options.”<sup>136</sup> If ecosystem approaches to health can gain normative hold, then it can help to facilitate the structural changes required for it to be established and work effectively.

The nature of the root causes of environmental- and health-vulnerability also demand that concerns of justice and equity be addressed. As law is a primary vehicle through which society concerns itself with these principles, they must be explicitly considered and incorporated into any problem-solving framework. Issues of justice and equity are built into the very fabric of legal thinking, so it provides a natural locus from which to understand how to reconcile issues that touch the very core of human survival and quality of life. Law, as a forum for dispute resolution, and as a moderator of social interaction, also provides an innate intersection for revealing linkages between issues, as well as between different interest groups

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<sup>135</sup> *Ibid.* at 610.

<sup>136</sup> David Rapport, “Ecosystem Health: Exploring the Territory” (1995) 1 no. 1 Ecosystem Health 5 at 7.

In terms of regulation, legal norms provide the basis from which principles emerge dictating the missions for governmental authorities, the assignment of their functions, and instruction as to how they may exercise their power.<sup>137</sup> These, in turn, create the structure that will either constrain or release the potential of ecosystem health to develop. With regard to governance and management, the role for law and lawyers lies in contributing to, and benefiting from, the processes and values that form the concept of ecosystem approaches to human health. In the context of regime formation, there is an important role for lawyers in “articulating and promoting principles which can later harden into binding rules.”<sup>138</sup> In addition,

[t]here is a place for law, for example, in defining and policing procedural regularity, so as to reduce opportunities for interest-group capture, enhance opportunities for genuine democratic participation, and reduce the incidence of abuse and manipulation of fluid and largely unstructured processes by cynical agency officials or self-interested rent-seekers of any stripe. Lawyers can also bring to the table considerable expertise in questions of regulatory design and the architecture of successful institutions and processes.<sup>139</sup>

The articulation of the concepts of human and environmental well-being is complex. One way of articulating the relation is through the concept of ecosystem approaches to human health, which can create a new space to examine problems and explore solutions. As a concept, it represents the merging of approach and perspective, and suggests the benefit of combined expertise and experience. The conceptual framework dictates how knowledge and information should be gathered and understood, creating a new factual picture from which to base an analysis of human interests, values, and systems as they exist in relation to each other, and impact ecological and socio-economic contexts. There has also been increasing awareness with regard to the complex nature of these contexts, which has driven the demand for innovative thinking about the health and environment nexus. From this new picture, an ethics of ecosystem approaches to human health may begin to be defined, thereby enabling societies to use law to implement the ethical decision-making process<sup>140</sup> and facilitate a different way of thinking about the interactions of human and ecological systems, using an ecohealth lens can contribute to creating a new factual picture. If “legal and policy responses are to be effective, it is essential to base them on sound empirical understanding. . . . Good laws, like good ethics, will be founded in good data”<sup>141</sup>

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<sup>137</sup> Lawrence O. Gostin, “Public Health Law, Ethics, and Human Rights: Mapping the Issues” in Lawrence O. Gostin, ed., *Public Health Law and Ethics: A Reader*, (Los Angeles: University of California Press, 2002) at 8.

<sup>138</sup> Toope, *supra* note 116 at 274.

<sup>139</sup> B. Karkkainen, B., “Collaborative Ecosystem Governance: Scale, Complexity, and Dynamism” (2002) *Virg. Env'tl. L. J.* at 236-37.

<sup>140</sup> Clare Palmer, *Environmental Ethics* (Santa Barbara: ABC-CLIO Inc, 1997) at 112 discussing the relationship of ethics and law.

<sup>141</sup> Mensah, *supra* note 118 at 4-5.

## ***The International Development Context***

When speaking of the role of law in relation to development, I am speaking of “law” in two ways. The first two sections of this paper discussed international law as a means of influencing change. In this sense, international law and policy can be useful in achieving development objectives through channelling multilateral cooperation on issues that engage health and environment linkages. International law in this respect is an integral means of carrying out international relations and diplomacy – part of the decision-making process that enables development assistance to occur. Law, as a concept, is attractive from a development perspective because it can be viewed as sharing goals with development, because of the “perceived goods which it sustains and to which it contributes,” which are peace, stability and certainty, and equity.<sup>142</sup> The value and efficacy of law as a in this sense will continue to be debated, during which time multilateral negotiations will continue to structure multilateral cooperation for the foreseeable future.

An equally relevant issue that receives less scholarly attention is the idea of “law” at the domestic level used as a tool: as legislation; as a normative force; as policy; or as social control. In this sense, it has been increasingly associated with improving democratic capacity, and creating enabling conditions for foreign investment and economic growth and stability. The history of law to development in this sense, can be traced over about the past 30 years. There have been several incarnations, beginning with the “law and development” movement though to the present emphasis on technical assistance. In the 1990s, for example, “the US embarked on an extraordinarily ambitious and multifaceted drive to transplant laws and legal ideas and to foster legal reform or development abroad. Much of this wave of legal export efforts focused on legislation rather than institutional capacity.”<sup>143</sup> In contrast, more recent activities “go well beyond to touch on issues such as the structure of enforcement and the training of personnel. . . . an important addition that may render the impact of legal export more lasting and consequential.”<sup>144</sup> These activities include, for example, legislative importation, legal institution building, and judicial training.<sup>145</sup> These packages of technical assistance are often labelled “rule of law” assistance, and there has been little research into their impact and effectiveness. It is argued that “[g]ood laws and functioning legal institutions contribute to the predictability, security and flexibility needed to foster development. Conversely, poorly designed and implemented laws can inhibit effective action, by distorting incentives and discouraging appropriate interventions by government and civil society.”<sup>146</sup>

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<sup>142</sup> Ivan L. Head, “The Contribution of International Law to Development” in *Selected Papers in International Law: Contribution of the Canadian Council on International Law*, Yves Le Bouthiller, Donald M. McRae and Donat Pharand, eds. (1999) Boston: Kluwer Law International 59-78 at 66.

<sup>143</sup> Raustiala, *supra* note 31 at 53-54.

<sup>144</sup> *Ibid.*

<sup>145</sup> Head, *supra* note 142 at 66.

<sup>146</sup> FAO, *supra* note 12 at 2.

Since law and policy can form an important part of the context that contributes to understanding and addressing different issues related to health, environment, and development, both aspects of law should be considered as capable of exerting influence over context. Both can also be used as tools to achieve development objectives, but like any tool, they should be used with careful consideration of their appropriateness to the desired outcomes and their potential impact.

### Criticisms regarding international law/policy

In engaging and encouraging international policy processes, it is important to realize the facilitative and constraining aspects of international law. For example, “[s]ome applications of legal principles, designed as they often were in the industrialized countries, are not always equitable to the interests of the developing countries.”<sup>147</sup>

Colonial regimes are particularly illustrative: “[i]n a long period of colonial rules the interests of the major powers were accurately reflected in the body of law that developed. . . . Whatever the colonial purpose might have been, it was emphatically not to develop rationally local economies for local benefit”<sup>148</sup>

In addition to the explicit inequities of the colonial use of international law, legal exportation –and human rights in particular – has also been criticized as a specifically Western cultural system. In this sense, legal systems traditionally emerge from a pre-existing cultural context, and accord with the values and practices they are designed to preserve. In the context of development, however, law is often used to bring about change, rather than to formalize existing practices. New regimes are therefore often grafted onto the existing cultural context, whether or not the underlying values support the imported legal rules and system of assumptions.

Practically speaking, there are many limitations regarding timely commitment, implementation, enforcement, and effective use of resources regarding international law.<sup>149</sup> It is also difficult to ascertain the actual impact of international law, as it does not lend itself to a quantifiable means of identifying and measuring cause and effect in terms of why or how change definitively happens.

## ***Moving Forward***

The combined lessons from the different areas covered in this paper suggest some ways forward, as well as pointing out gaps in knowledge and understanding about how international law relates to policy influence, and contributes to affecting social change. The NEPAD project will provide a good perspective from which to understand the processes related to international law and relations, and discover the best approach for linking health and environment within that regional policy context.

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<sup>147</sup> *Ibid.* at 61.

<sup>148</sup> *Ibid.* at 69, 72.

<sup>149</sup> Taylor, *supra* note 37 at 500.

There is a general lack of capacity on the part of states at all levels of economic development in the domestic implementation of international obligations. The networked governance form may contribute to alleviating this demand, but what needs to be ensured is a set of “global rules without centralized power but with government actors who can be held to account through a variety of political mechanisms.”<sup>150</sup> And while there is a welcome increase in government interaction with non-state actors, multilateral cooperation must “reflect the interests of broader democratic publics rather than just those of narrow elites, traditional patterns of delegation will have to be supplemented by other means of ensuring greater accountability to public opinion.”<sup>151</sup> Keohane suggests seeking

to invigorate transnational society in the form of networks among individuals and NGOs . . . [so that] the future accountability of international institutions to their publics may rest only partly on delegation through formal democratic institutions. It’s other pillar may be voluntary pluralism under conditions of maximum transparency. International policies may increasingly be monitored by loose groupings of scientists or other professionals, or by issue advocacy networks.<sup>152</sup>

Mensah also suggests that it is “coordinated action that leads to health, income and social policies that foster greater equity. Joint action contributes to ensuring safer and healthier goods and services, healthier public services, and cleaner, more enjoyable environments.”<sup>153</sup>

In terms of the global policy context, “[c]onstant and variegated change is the only predictable pattern for the coming age. . . . no single compass always points the right way; no one technique will always assure agreements will be effective.”<sup>154</sup> Simmons and Oudraat did find, however, that the early stages of global diplomacy are quite determinative of the success or failure at a later stage.<sup>155</sup> In addition, “[b]uilding coalitions and mixing options are a slow and often frustrating way to make a difference, but for many global challenges, it is often the only effective way.”<sup>156</sup> And in terms of implementation “continuous, sharp-eyed scrutiny of performance makes much of the difference between lip service and genuine implementation.”<sup>157</sup>

Specifically with regard to health in the international law and policy context, Dantes suggests several lessons from the past that should be recalled:

- fostering local control of health initiatives;

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<sup>150</sup> Slaughter, *supra* note 26 at 19.

<sup>151</sup> Keohane, *supra* note 1 at Ch. 2.

<sup>152</sup> *Ibid.*

<sup>153</sup> Mensah, *supra* note 118 at 10.

<sup>154</sup> P.J. Simmons and Chantal de Jong Oudraat, *Managing Global Issues: An Introduction* at 686.

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.* at 719.

<sup>157</sup> *Ibid.* at 720.

- taking local capabilities and concerns into account during the agenda setting process;
- coupling responses to specific diseases with efforts to improve local health infrastructure and the socioeconomic conditions that foster disease;
- using regional programs to build momentum for broader initiatives;
- coordinating the work of NGOs and multinational health organizations;
- finding ways for recipients to pool their resources and work as equals with donors; and
- continuing research into new methods.<sup>158</sup>

While these lessons may already be at the core of Ecohealth's work, it is significant to note that they may be novel or marginal for other organizations or institutions working in the health or environmental policy field.

Taylor also suggests strong institutional support for WHO to play a major role in the future of international health law. In particular, she notes the following.

- WHO can provide leadership and promote more coherent and effective development of international health law by endeavoring to serve as coordinator, catalyst and, where appropriate, platform for important international health agreements.
- WHO can catalyze more effective and coordinated international health cooperation by promoting global awareness of international health law concerns and contributing to the "agenda-setting" that is acutely needed in this realm.
- WHO can establish a key role for itself in catalyzing international agreements and national action by, among other things, establishing a mechanism of educating and informing national policy-makers of critical public health issues ripe for international legal action. Among other things, WHO can institutionalize an open and inclusive process for identifying priority issues for international legal cooperation and promoting them among relevant constituencies. . . . Effective coordination of such a process with other relevant intergovernmental organizations may serve to expand the network of national actors involved in the global health law dialogue, promote national awareness and commitment, and contribute to the rationale development of the international legal regime.
- WHO can also promote effective consideration, better collective management, and development of international legal matters by monitoring and actively participating, where appropriate, in the

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<sup>158</sup> Octavio Gomez-Dantes, *Health* in P.J. Simmons and Chantal de Jong Oudraat, *Managing Global Issues*, 392-419 at 418.

increasing array of treaty efforts initiated in other forums that have important implications for global public health (507)

- WHO can also effectively steer intergovernmental health cooperation by serving, where appropriate, as a platform for the codification and implementation of international legal agreements . . . . WHO is the only public international organization that brings together the institutional mandate, legal authority, and public health expertise for the codification of treaties that principally address global public health concerns.<sup>159</sup>

While these options are fairly general suggestions, they are meant to provide guidance for further thinking on the issue of research-policy linkages. I hope this information will help the Ecohealth PI to make informed choices about the avenues open to it in the future, and those it chooses to pursue. The NEPAD project will provide invaluable experience in understanding policy influence at the transnational level. This paper is intended to complement the project and provide a broader picture to contextualize NEPAD. The NEPAD project is examining policy influence at the regional and domestic level. This paper is meant to provide an understanding of what influences global relations in terms of international law/policy, which in turn influences regional and domestic contexts. I hope it will be useful in guiding further research and contextualizing the NEPAD project as well as other on-going work.

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<sup>159</sup> Taylor, *supra* note 37 at 507.

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