A Conceptual and Legal Perspective on the Green Economy

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The 2012 United Nations Conference on Sustainable Development had as one of its two main themes 'a green economy in the context of sustainable development and poverty eradication'. The conference did not agree upon a definition of green economy and limited itself to 'encourage each country to consider the implementation of green economy policies' as one of the different approaches available to achieve sustainable development. Nevertheless, its outcome document provides a host of indications about the challenges and opportunities to achieve sustainable development through the green economy. This article offers a conceptual and legal perspective on the green economy, by investigating the evolution of the related policy debate and focusing on whether the text on the green economy adopted at Rio+20 provides new insights on the implementation of sustainable development, notably in relation to environmental integration, intra-generational equity, human rights and corporate accountability.

INTRODUCTION

The United Nations Conference on Sustainable Development (UNCSD, or 'Rio+20') had as one of its two main themes 'a green economy in the context of sustainable development and poverty eradication'.[1] The conference did not agree upon a consensus definition of green economy and limited itself to 'encourage each country to consider the implementation of green economy policies' as one of the different approaches available to achieve sustainable development.[2] Nevertheless, the Rio+20 outcome document provides several indications of the challenges to, and opportunities for, achieving sustainable development through the green economy. Against this background, this article offers a conceptual and legal perspective on the green economy as a means of implementation for sustainable development, by investigating the evolution of the related policy debate, starting from the shift in discourse from green growth to green economy. It then assesses whether the text on the green economy included in the outcome document provides new insights on the implementation of sustainable development, notably in relation to key principles of international environmental law, such as environmental integration and intra-generational equity, and challenging questions for the development and implementation of international environmental law, such as the link with human rights and corporate accountability.

ORIGINS AND EVOLUTION OF THE DISCOURSE

The notion of 'green economy' is rooted in environmental economics. The term appears in a 1989 report by Pearce *et al.*, which elaborated the cornerstones of

[1] Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development (UNGA Resolution A/RES/64/236, 24 December 2009), at paragraph 20(a).
[2] The Future We Want (UN Doc. A/RES/66/288, 11 September 2012), Annex, at paragraphs 56 and 62.

environmental valuation, based upon the premise that placing proper values on the services provided by the natural environment is necessary to ensure its sustainable use and conservation.[3] These ideas have increasingly underpinned environmental regulatory experiments, most notably schemes for the payments of ecosystem services.[4] Economic valuation has gradually become prominent in multilateral environmental negotiations. It was given wide resonance by the Stern Review on the Economics of Climate Change.[5] More recently, the report on the Economics of Ecosystems and Biodiversity (TEEB)[6] has palpably influenced intergovernmental guidance to enhance implementation of the Convention on Biological Diversity.[7] Along similar lines, in the run-up to the Rio+20 conference, the EU, Germany and the Secretariat of the UN Convention to Combat Desertification[8] launched the 'Economics of Land Degradation' initiative,[9] in an effort to provide new impetus to international cooperation on desertification through determining the costs of global land degradation and inaction to counter this.[10]

In addition to its emphasis on environmental valuation, the green economy has been promoted recently by key international institutions to address the global financial, food and climate crises in an interconnected manner, by placing environmental protection centre stage.[11] In this context, the term green economy has been used to refer to resource-efficient and low-carbon economic development that contributes to the protection and enhancement of the natural resource base and promotes sustainable consumption and production patterns.[12] This rapidly evolving discourse has

[3] D. Pearce, A. Markandya and E.B. Barbier, *Blueprint for a Green Economy* (Earthscan, 1989), at 5.

[4] There are several definitions of the term 'payment for ecosystem services' in the literature. They may be defined as voluntary transactions where a well-defined ecosystem service (or type of land use likely to secure that service) is bought by at least one ecosystem service buyer from at least one ecosystem service provider, if and only if the provider secures ecosystem service provision (conditionality). S. Wunder, *Payments for Environmental Services: Some Nuts and Bolts* (Center for International Forestry Research, 2005).

[5] N. Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007). The United Kingdom submitted a summary of the findings of the review. See UNFCCC Dialogue on Long-term Cooperative Action to Address Climate Change by Enhancing Implementation of the Convention Second Workshop Nairobi, 15-16 November 2006, Dialogue Working Paper 20/Add.1 (2006), found at: <http://unfccc.int/files/meetings/dialogue/application/pdf/wp_20_add.1_e.pdf>.

[6] TEEB, *The Economics of Ecosystems and Biodiversity for National and International Policy Makers – Summary: Responding to the Value of Nature* (United Nations Environment Programme (UNEP), 2009).

[7] Convention on Biological Diversity (Rio de Janeiro, 5 June 1992; in force 29 December 1993) ('CBD'). See Decision X/4, Third Edition of the Global Biodiversity Outlook: Implications for the Future Implementation of the Convention (UN Doc. UNEP/CBD/COP/10/27, 20 January 2011); and discussion in: E. Morgera and E. Tsioumani, 'Yesterday, Today and Tomorrow: Looking Afresh at the Convention on Biological Diversity' 21 *Yearbook of International Environmental Law* (2011), 3, at 12-13.

[8] United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, (Paris, 14 October 1994; in force 26 December 1996).

[9] <http://eld-initiative.org/>.

[10] European Commission Communication of 20 June 2011, Rio+20: Towards the Green Economy and Better Governance, COM (2011)363, at 3 and 12.

[11] A. Steiner, 'Focusing on the Good or the Bad: What Can International Environmental Law Do To Accelerate the Transition Towards a Green Economy?', 103 *American Society of International Law Proceedings* (2009), 3, at 4-5.

[12] The Future We Want – Zero Draft of the Outcome Document of the UN Conference on Sustainable Development, 10 January 2012, ('Zero Draft'), found at:

emphasized opportunities for business development, job creation and public-sector savings arising from incorporating environmental industries, technologies and infrastructure in stimulus packages and investment promotion, as well as from the promotion of biodiversity-based businesses.[13] As we show below, although the debate on the green economy predates the UN General Assembly decision to organize the Rio+20 conference, the negotiations in preparation for the conference faced the challenge of further clarifying this notion and its role as a means of implementation for sustainable development.[14] The need for conceptual clarity was partly due to the fact that at the policy level, attention had initially focused on green 'growth',[15] rather than the green economy. This section traces the origin of this debate, starting from the discourse on green growth.

GREEN GROWTH: THE VISION OF A RESTRICTED GROUP OF COUNTRIES?

The concept of green growth has been deployed in economics literature to identify the conditions of compatibility between economic growth and environmental sustainability.[16] The underlying notion is that sustainable growth is indeed possible, as opposed to theories of limits to growth.[17] The policy discourse on green growth to a great extent seems to reflect the views of advanced economies and developed countries.[18]

The first intergovernmental endorsement of green growth came with the Fifth Ministerial Conference on Environment and Development in Asia and the Pacific, held in 2005.[19] The conference launched the Seoul Initiative on Environmentally Sustainable Economic Growth (Green Growth).[20] In this context, green growth was presented as 'a policy focus for the Asia and Pacific region, emphasizing

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<http://www.uncsd2012.org/rio20/content/documents/370The%20Future%20We%20Want%2010Jan%20clean%20_no%20brackets.pdf>, at paragraph 20. It should be noted that Rio+20 endorsed the 10-year Framework of Programmes on sustainable production and consumption, which is not discussed in this contribution. See The Future We Want, n. 2 above, at paragraph 226.

[13] See A. Steiner, n. 11 above, at 4.

[14] United Nations Department of Economic and Social Affairs (UNDESA), *A Guidebook to the Green Economy* (UNDESA, 2012), at 5.

[15] For an overview, see e.g. L.Ø. Blaxekjær, The Emergence and Spreading of the Green Growth Policy Concept, Paper prepared for Earth System Governance Conference 2012, Lund University, 18-20 April 2012.

[16] See for example P. Ekins, *Economic Growth Human Welfare and Environmental Sustainability: The Prospects for Green Growth* (Routledge, 2000), at 78.

[17] D.H. Meadows *et al.*, *Limits to Growth* (Universe Books, 1972), and D.H. Meadows, J. Randers and D.L. Meadows, *Limits to Growth. The 30 Years Update* (Chelsea Green, 2004).

[18] See however the National Green Growth Roadmap adopted by Cambodia and Rwanda. Kingdom of Cambodia, *The National Green Growth Road Map*. (2009), found at: <http://www.greengrowth.org/?q=publication/national-green-growth-roadmap-cambobia>; Republic of Rwanda, *Green Growth and Climate Resilience*. (2011), found at: <http://cdkn.org/wp-content/uploads/2010/12/Rwanda-Green-Growth-Strategy-FINAL1.pdf>. References to green growth were furthermore included in China's 12th Five-Year Plan, adopted in 2010, found at: <http://www.apcoworldwide.com/content/pdfs/chinas_12th_five-year_plan.pdf>.

[19] <http://www.unescap.org/mced/>; see also UNDESA, n. 14 above, at 33.

[20] United Nations Economic Commission for Asia and the Pacific (UNESCAP), Seoul Initiative on Environmentally Sustainable Economic Growth (Green Growth) (UN Doc. E/ESCAP/SO/MCED(05)/6, 21 March 2005).

environmentally sustainable economic progress to foster low-carbon, socially inclusive development.'[21] The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) subsequently adopted a work programme on green growth, linking regional implementation of international environmental conventions with capacity building.[22] In a 2012 report,[23] UNESCAP presented green growth as a leapfrogging opportunity for developing countries that needs to be driven by government.[24] Five main tracks for a transition to low-carbon green growth were identified, namely: 1) improving the quality of growth and maximizing net growth; 2) closing the gap between economic and ecological efficiencies; 3) planning and designing eco-efficient infrastructure; 4) turning environmental protection into a business opportunity; and 5) formulating and implementing low-carbon development strategies.[25] UNESCAP's roadmap singled out the importance of legal and institutional frameworks to create the enabling conditions for green growth,[26] making specific reference to the adoption of carbon pricing, cap and trade schemes, eco-labelling and extended producer responsibility.[27]

The Republic of Korea has played a prominent role in promoting the green growth agenda in Asia and beyond.[28] The country joined the Organisation for Economic Co-operation and Development (OECD) in 1996 and adopted specific policies to foster green growth already in 2008.[29] Although it does not have any binding emission reduction or limitation commitments under the Kyoto Protocol, the Republic of Korea is the world's ninth largest greenhouse gas emitter.[30] Against this background, the country adopted an economic stimulus package focusing on energy-efficient buildings, renewable energy, low-carbon vehicles and development of the rail network, as well as more efficient use of freshwater and waste.[31]

In 2009, the package was complemented by a National Strategy for Low Carbon Green Growth. The strategy revolves around three core objectives: mitigating climate change and strengthening the country's energy independence; creating new growth 'engines' (i.e. technologies); and improving the quality of people's lives and enhancing Korea's international standing. The strategy requires the government to invest 2 percent of GDP in green growth for the first five years. It was supported by

[21] <http://www.greengrowth.org/?q=static-page/sat-10012011-1104/about-green-growth>.
[22] <http://www.unescap.org/esd/environment/greengrowth/>.
[23] UNESCAP, *Low Carbon Green Growth Roadmap for Asia and the Pacific* (UNESCAP, 2012).
[24] Ibid. at xix.
[25] Ibid., at xxii.
[26] Ibid., at 49.
[27] Ibid., at 54.
[28] The efforts of the Republic of Korea have had wide international resonance, and the country played a key role in facilitating the adoption of the OECD Declaration on Green Growth (see below) See UNDESA, n. 14 above, at 33-34. The Republic of Korea was also instrumental in the establishment of the Global Green Growth Institute in 2010, which was endorsed as a new international organization by Australia, Cambodia, Costa Rica, Denmark, Ethiopia, Guyana, Kiribati, Norway, Papua New Guinea, Paraguay, the Philippines, Qatar, the UAE, the UK, and Vietnam on the sidelines of the Rio+20 Conference. See <http://www.gggi.org/news/release/2011/00/00/gggi-holds-signing-ceremony-convert-international-organization-rio20-0>.
[29] <http://www.greengrowth.go.kr/?page_id=42454>.
[30] <http://www.greengrowth.go.kr/?page_id=42461>.
[31] UNEP, *Overview of the Republic of Korea's National Strategy for Green Growth* (UNEP, 2010), at 43.

the creation of a Presidential Committee on Green Growth to streamline governmental action on green growth.

In 2010 a Framework Act on Low Carbon Green Growth was adopted, further detailing steps to promote the development of the national economy through low-carbon green growth.[32] The Framework Act establishes a system of mandatory reporting of carbon emissions by all carbon and energy-intensive industries and entrusts the government with the adoption of a broad spectrum of measures, including support for green industry,[33] facilitating research development and commercialization of green technologies,[34] and the realization of a low-carbon society[35] by setting targets for greenhouse gas emission reductions, energy efficiency and renewable energy.[36] The Framework Act also includes provisions concerning life-style changes and the adoption of public awareness-raising measures.[37]

On this basis, the government adopted a 30 percent greenhouse gas emissions reduction target by 2020 and recently passed cap-and-trade legislation.[38] The Republic of Korea has also adopted plans to enhance energy efficiency by 2020, including measures specifically targeting high emission industries, more stringent fuel efficiency standards for automobiles, and a ban on incandescent light bulbs.[39] Announced further measures include targets to increase the share of renewable in the energy mix, which is set to reach 11 percent in 2030.[40]

The Korean government has furthermore adopted a series of measures to incentivize the production of hybrid and hydrogen fuel cell cars,[41] and energy efficiency targets for the building sector.[42] Even with the planned improvements, however, the United Nations Environment Programme (UNEP) has estimated that the country is projected to remain below the OECD average for energy efficiency.[43] Implementation of the strategy has also lead to the adoption of measures aimed to improve the country's water infrastructure, through a large-scale operation of river restoration (the Four Rivers Restoration Project).[44]

Green growth policies adopted by the Republic of Korea thus appear to be largely focused on low-carbon growth, with a special emphasis on climate change and energy efficiency, and the embedding of related targets in legislation. This focus is reflected in parallel policy developments in the European Union (EU).

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[32] Framework Act on Low Carbon, Green Growth, Act 9931 (13 January 2010), Article 1.
[33] Ibid., Article 23.
[34] Ibid., Article 26.
[35] Ibid., Chapter V.
[36] Ibid., Article 42.
[37] Ibid., Chapter VI.
[38] <http://www.greengrowth.go.kr/?page_id=42461>.
[39] See UNEP, n. 31 above, at 25.
[40] Ibid., at 10.
[41] See <http://www.greengrowth.go.kr/?page_id=42472>.
[42] See UNEP, n. 31 above, at 11.
[43] Ibid., at 9.
[44] J. Card, 'Korea's Four Rivers Project: Economic Boost or Boondoggle?', *Yale Environment 360* (21 September 2009), found at: <http://e360.yale.edu/feature/koreas_four_rivers_project_economic_boost_or_boondoggle/2188/>.

Green growth is the second pillar of the EU's Europe 2020 Strategy: a strategy for smart, sustainable and inclusive growth, adopted in 2010.[45] The green growth pillar ('promoting a more resource-efficient, greener and more competitive economy') mainly reiterates the EU's pre-existing '20-20-20' climate change target of cutting greenhouse gas emissions within the EU by 20% from 1990 levels by the year 2020, while also increasing the share of renewable energy to 20% and improving energy efficiency by 20%.[46]

The predominance of climate concerns emerged also in relation to the concept of 'resource-efficient' Europe, which was initially defined as decoupling growth from the use of resources, but shifted towards a low-carbon economy, increasing the use of renewables, modernizing the transport sector and promoting energy efficiency.[47] Only quick references to preventing environmental degradation, biodiversity loss and unsustainable use of natural resources have been included in the flagship initiative on a 'resource-efficient Europe'.[48] Here the concept of resource efficiency encompasses energy efficiency, reforms of fisheries and agricultural policies, biodiversity and ecosystem services conservation, building a 'circular economy' based on recycling and waste generation reduction, climate change adaptation and water efficiency.[49]

Europe 2020 also led to the flagship initiative on 'an industrial policy for the globalization era,' which emphasizes competitiveness and the promotion of green technologies. There, however, attention is also drawn to the need to monitor 'sustainable competitiveness', review sustainable consumption and production policies, and address emerging issues in corporate social responsibility, such as business and human rights, and company disclosure of environmental, social, employment-related, and governance information.[50] The document links competitiveness with the idea of a 'bioeconomy', based on the production of renewable biological resources and their conversion into value-added products, such as food, feed, bioenergy as well as other agricultural, fisheries, forestry products.[51] To achieve a bioeconomy, the EU points to the need to improve the knowledge base and foster innovation to achieve productivity while ensuring sustainable resource use and environmental stress avoidance, climate change adaptation, participatory governance

[45] European Commission Communication of 3 March 2010, 'Europe 2020: A strategy for smart, sustainable and inclusive growth', COM (10)2020. The commitment to green growth is complemented by the 'smart growth' pillar on developing an economy based on knowledge and innovation; and the 'inclusive growth' pillar, which concerns fostering high-employment economy in delivering social and territorial cohesion.

[46] European Commission Communication of 23 January 2008, '20 20 by 2020. Europe's Climate Change Opportunity', COM(08)30. For a commentary of the legal implications of the strategy, see K. Kulovesi, E. Morgera and M. Muñoz, 'Environmental Integration and the Multi-faceted International Dimensions of EU Law: Unpacking the EU's 2009 Climate and Energy Package', 48:3 *Common Market Law Review* (2011), 829.

[47] European Commission Communication of 26 January 2011, 'A resource-efficient Europe – Flagship initiative under the Europe 2020 Strategy' COM(11)21, at 5.

[48] Ibid., at 14 and 20.

[49] Ibid., at 6.

[50] European Commission Communication of 25 October 2011, 'A Renewed EU strategy 2011-14 for Corporate Social Responsibility' COM(11)681.

[51] European Commission Communication of 13 February 2012, 'Innovating for Sustainable Growth: A Bioeconomy for Europe', COM(12)60, at 4.

and coherence in sectoral policies.[52] Particular emphasis is placed on the need to support the implementation of an ecosystem-based management, as well as provision of ecosystem services.[53] The consideration for ecosystem services is reasserted also in the 'Roadmap for Moving to a Competitive Low-carbon Economy in 2050', where the Commission mentions enhancing the resilience of ecosystems as a potential tool to increase resource efficiency,[54] while emphasizing also the need for improved agricultural and forestry practices to address the dual challenges of global food security and climate change.[55]

In parallel, green growth has been promoted by the G8 and G20 as a win-win solution to both the climate and economic crises.[56] In 2009, the G8 Leaders declared that 'we must seize the opportunity to build on synergies between actions to combat climate change and economic recovery initiatives, and encourage growth and sustainable development worldwide'.[57] In 2012, G20 finance ministers and central bank governors also requested the OECD, the World Bank and the UN to prepare a report that provides options for G20 countries on 'inserting green growth and sustainable development policies into structural reform agendas, tailored to specific country conditions and level of development'.[58] It has been suggested that the shift to green growth operated in these fora may also be viewed as a utilitarian strategy in relation to competitiveness concerns.[59]

The OECD has sought to clarify the concept of green growth since 2009, when OECD Ministers signed a Declaration on Green Growth at a meeting held, prepared and chaired by the Republic of Korea.[60] The Declaration was adopted ahead of the Copenhagen climate change conference, which was at the time expected to produce crucial decisions on further action to fight climate change. Accordingly, the Declaration builds explicit links between the green growth and action to tackle climate change. In particular, the Declaration underscores the need to ensure that 'each country pursues green growth policies, including tackling climate change, in accordance with existing international agreements and based on the principles of free trade and investment'.[61]

Moving away from this original focus on climate change, the OECD has since undertaken a host of initiatives on green growth with much broader environmental

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[52] Ibid.
[53] Ibid., at 4.
[54] European Commission Communication of 8 March 2011, 'Roadmap for Moving to a Competitive Low Carbon Economy in 2050', COM(2011)112, at 6.
[55] Ibid., at 9.
[56] See L.Ø. Blaxekjær, n. 15 above, at 15.
[57] G8 Leaders Declaration 2009: Responsible Leadership for a Sustainable Future, found at: <http://www.g8italia2009.it/static/G8_Allegato/G8_Declaration_08_07_09_final,0.pdf>, 08 July 2009.
[58] <http://climate-l.iisd.org/news/g20-finance-ministers-and-chancellors-discuss-green-growth/>.
[59] See, e.g., J. Leitner, in Korean Green Growth Policy as Paradigm Shift: Implications for Development, Sustainability, and International Environmental Law (2012), found at: <http://envirocenter.yale.edu/calendar/63/108-Korean-Green-Growth-Policy-as-Paradigm-Shift-Implications-for-Development-Sustainability-and-International-Environmental-Law>.
[60] Declaration on Green Growth Adopted at the Meeting of the Council at Ministerial Level on 25 June 2009 (C/MIN(2009)5/ADD1/FINAL).
[61] Ibid., at 2; see also the contribution by J. Viñuales to this issue.

remit, underscoring its role as a means of implementation for sustainable development.[62] In a summary report released in 2011,[63] the OECD emphasized that green growth is not a replacement for sustainable development, but should be rather considered as a 'subset' of it,[64] that it is an 'operational policy agenda that can help achieve concrete, measurable progress at the interface between the economy and the environment', and that it gives rise to new sources of economic growth consistent with resilient ecosystems.[65] Within this context, green growth has been defined as fostering economic growth and development while ensuring that natural assets continue to provide the resources and environmental services on which human well-being relies.[66]

The OECD has provided a series of indications about the contours and substance of green growth as a means of implementation for sustainable development. It recognizes the dual role played by natural capital in both contributing to the production of marketable goods and directly providing valuable ecosystem services to individuals and society at large. The report acknowledges that, while markets are a powerful force for uncovering and creating value, they are influenced by payoffs which do not fully reflect the value of the entire asset base of the economy when it comes to market decisions relating to the use of natural capital. Properly valuing natural capital is therefore regarded as an essential part of a green growth strategy.[67] The report suggests that green growth strategies should focus on identifying major environmental priorities, and investigating any overlap between structural economic reform priorities and major constraints to green growth.[68] Implementing a green growth strategy is expected to involve a mix of policies that mutually reinforce economic growth and the conservation of natural capital, such as fiscal and regulatory tools (like tax and competition policy), innovation policies placing a premium on the inventiveness needed to use natural capital more efficiently, as well as policies targeted at incentivizing efficient use of natural resources and making pollution more expensive,[69] although potential risks of trade discrimination are noted.[70]

This overview illustrates how the policy discourse on green growth has developed mostly in emerging and developed economies as a strategy to overcome the economic recession. The overview also suggests a narrow view of the environmental challenges to be addressed through green growth, pointing to the prominence of climate change

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[62] <http://www.oecd.org/document/10/0,3746,en_2649_37465_44076170_1_1_1_37465,00.html>.
[63] OECD, *Towards Green Growth* (OECD, 2011), at 9.
[64] Ibid., at 11.
[65] Although the report does not address the issue in further detail, the matter of ecosystem services is addressed in another of the green growth reports prepared by the OECD. See OECD, *Paying for Biodiversity: Enhancing the Cost-Effectiveness of Payments for Ecosystem Services* (OECD, 2010).
[66] See OECD, n. 63 above, at 9.
[67] Ibid., at 19.
[68] Ibid., at 126.
[69] Ibid.
[70] Ibid., at 141, and Annex I, which reproduces a Communication issued by the OECD-hosted Freedom of Investment Roundtable. The Freedom of Investment process is an intergovernmental forum hosted since 2006 by the OECD Investment Committee, bringing together governments from around the world to exchange information and experiences on investment policies at regular roundtables with the aim to develop guidance for open, transparent and non-discriminatory investment policies. See <http://www.oecd.org/document/7/0,3746,en_2649_34887_37363207_1_1_1_1,00.html>.

concerns. This original narrow focus has, however, broadened in time, particularly in the policy and legal developments that occurred in the EU in relation to the idea of the bio-economy, and in the conceptual work undertaken by the OECD, which has emphasized ecosystem services.

The notion of green growth elaborated in these fora seems to pay limited attention to social dimensions. The Asia-Pacific Programme on Green Growth includes only a brief reference to a 'sustainable livelihoods rights-based approach',[71] whereas the Europe 2020 strategy encapsulates an inclusive social policy,[72] making just a brief mention of human rights in the context of corporate social responsibility, and participatory governance in the context of the green growth pillar.

FROM GREEN GROWTH TO GREEN ECONOMY

There are significant overlaps between the concepts of green growth and green economy.[73] The European Commission, for example, initially suggested that the green economy applied 'in particular to developing countries', even though the concept appeared largely similar to the notion of green growth adopted by the EU.[74] This section illustrates that the debate on the green economy has attempted to better encapsulate the visions of both developed and developing countries, as well as broader environmental and social considerations.

UNEP, which oversees the Green Economy Initiative, has been the main international bureaucracy engaged with shaping the notion of green economy.[75] The Initiative was launched with the sponsorship of the Norwegian Government in 2008,[76] and almost immediately subsumed as one of nine UN-wide Joint Crisis Initiatives adopted in 2009 to provide a UN response to the global financial and economic crises.[77] The aim was to respond to challenges and imbalances that underlie the food, water, energy, ecosystem and climate crises, by motivating policymakers to adopt green investments responses, based on the premise that investing in green sectors has a better chance to bring about recovery and sustainable growth, while tackling acute environmental problems.[78] UNEP's efforts are notable for combining ideas to revive the world economy and saving or creating jobs, with the need to protect vulnerable groups,[79] and to broaden the range of countries' perspectives. In 2009, the Initiative called for a

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[71] <http://www.greengrowth.org/?q=programme/capacitydevelopmentgreengrowth>.
[72] See COM (10)2020, n. 45 above, at 17-19.
[73] See UNDESA, n. 14 above, at 60.
[74] See COM (2011)363, n. 10 above, at 5, where it made reference to the economic valuation of natural resources, sustainable consumption and production, market-based mechanisms and greater private sector involvement.
[75] The Green Economy Initiative encompasses a wide range of research and capacity-building activities, including managing the developments of the TEEB Reports. See <http://www.unep.org/greeneconomy/AboutGEI/WhatisGEI/tabid/29784/Default.aspx>.
[76] UNEP, 'Towards a Green Economy' (UNEP, October 2008), found at: <http://www.unep.org/pdf/towardsgreeneconomy-flyer.pdf>.
[77] UN System Chief Executives Board for Coordination, *Global Financial and Economic Crisis. UN System Joint Crisis Initiatives* (2009), found at: <http://www.undg.org/docs/10783/UN-System-Joint-Crisis-Initiatives,-16-Sept-2009.pdf>.
[78] Ibid, at 25.
[79] UNEP, *Global Green New Deal* (UNEP, 2009), at 5.

'global Green New Deal' to address the financial crisis and its social, economic and environmental impacts, while simultaneously addressing global climate, food, fuel and water challenges.[80] It made the case for directing governments' economic stimulus spending towards green sectors and activities, such as energy efficient buildings, sustainable energy, sustainable transport, ecological infrastructure and sustainable agriculture.

In 2011, UNEP's initiatives culminated in the blueprint 'Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication',[81] with the objective to 'contribute to the Rio+20 process and the overall goal of addressing poverty and delivering a sustainable 21st century'.[82] The blueprint emphasized that a green economy is not intended to 'replace' sustainable development,[83] but that achieving sustainability rests almost entirely on 'getting the economy right'.[84] It identified 'enabling conditions' for the transition to a green economy, singling out key areas of policy-making, such as: public investment and spending; market-based instruments, such as taxes and tradable permits; subsidy reforms in areas that deplete and degrade natural capital; reforming national regulatory frameworks to sustain environmentally and socially valuable activities.[85] Payments for ecosystem services, reducing emissions from deforestation and forest degradation (REDD), and environment-related taxes were included amongst the instruments to address environmental externalities and market failures,[86] while property laws and access rights, traditional command and control regulations and effective enforcement are identified as potential drivers for green investment.[87]

Notably, the blueprint set out to dispel the 'myth' that green economy is a luxury only wealthy countries can afford, arguing that it can instead be a new engine for growth, as well as a strategy for the elimination of persistent poverty.[88] The blueprint recommends investing 2 percent of global GDP in greening key sectors of the economy in order to shift development and 'unleash public and private capital flows onto a low-carbon, resource-efficient path'.[89] The green economy is defined as one that results in 'improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities'.[90] Within this framework, growth in income and employment is expected to be driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services.[91] Emphasis is placed on a development path that rebuilds natural capital as a critical economic asset and source of public benefits, especially for poor people whose livelihoods and

[80] Ibid.
[81] UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (UNEP, 2011).
[82] Ibid., at v.
[83] Ibid., at 17.
[84] Ibid.
[85] Ibid., at 552.
[86] Ibid., at 560.
[87] Ibid., at 564.
[88] Ibid., at 16.
[89] Ibid., at 24.
[90] Ibid.
[91] Ibid.

security depend strongly on nature.[92]

Overall, UNEP's indications about the policy tools for the green economy are very similar to those discussed in the context of the discourse on green growth, although the approach appears more cognizant of social dimensions. Along similar lines, the World Bank facilitated a conceptual transition from green growth to green economy as '*the* pathway to sustainable development',[93] by making green growth relevant to *all* nations, including poor countries, and emphasizing its social inclusiveness dimension.

In a report released in 2012, the Bank argued that green growth should aim at operationalizing sustainable development by reconciling developing countries' 'urgent need for rapid growth and poverty alleviation' with the need to avoid 'irreversible and costly environmental damage'.[94] To this end, the Bank emphasizes social inclusiveness as a fundamental component of green growth (referring to 'inclusive green growth'), underscoring that political and social acceptability require that green growth policies be designed with the specific goals of mitigating tradeoffs and offsetting costs by maximizing synergies and short-term economic benefits.[95] It is furthermore argued that innovative solutions should combine political legitimacy with the ability to commit to long-term objectives and to monitor progress towards them[96] through iterative, multistakeholder involvement and extensive consultation.[97] Poverty reduction strategies, economic development plans, disaster risk reduction strategies, and climate strategies are seen as particularly propitious opportunities in this connection.[98] The Bank also suggests aligning budget expenditures with environmental policy goals, giving proper consideration to tradeoffs, pointing also to: pricing and fiscal policies; taxes, subsidies or subsidy removal; natural capital, agriculture and ecosystem services management; and infrastructure, building, urbanism, transport and energy.[99] On renewable resources, the Bank recommends focusing policy efforts on defining property rights and helping firms move up the value chain. For cultivated renewable resources, policy should instead focus on innovation, efficiency gains, sustainable intensification, and 'integrated landscape' approaches,[100] to avoid regarding the elements of natural capital in isolation and increase production of both 'regulating' and 'provisioning' services of natural capital.[101]

THE NEED FOR CONCEPTUAL CLARITY IN THE RUN-UP TO RIO+20

The idea of a global understanding of green economy certainly permeated the policy

[92] Ibid.
[93] World Bank, *Inclusive Green Growth* (World Bank, 2012), at xi. The report defines green growth as 'growth that is efficient in its use of natural resources, clean in that it minimizes pollution and environmental impacts, and resilient in that it accounts for natural hazards and the role of environmental management and natural capital in preventing physical disasters.' Ibid., at 2.
[94] Ibid. and at 25.
[95] Ibid., at 153.
[96] Ibid., at 154.
[97] Ibid., at 155.
[98] Ibid.
[99] Ibid., at 160.
[100] Ibid., at 105.
[101] Ibid.

debate in the UN General Assembly on the possibility to organize a high-level event on sustainable development in 2012, when Brazil suggested working towards 'a comprehensive political declaration that would indicate new areas of convergence and consolidate the international consensus on the paradigm of *green economy*', as well as a 'plan of action for the achievement of the objectives set forth by the conference, including the implementation of the *green economy* paradigm'.[102] The European Commission welcomed the focus on the green economy and, departing from its earlier views,[103] emphasized that 'the green economy offers opportunities to *all* countries, irrespective of their level of development and the structure of their economies'.[104]

The qualified reference to the green economy 'in the context of sustainable development and poverty eradication' included in the UNCSD mandate[105] highlights the concerns about the relationship between the green economy, sustainable development and poverty eradication. It hints at uneasiness about the green economy 'hijacking' the sustainable development agenda.[106] And indeed, the preparatory work for the conference led by the UN Secretary-General greatly focused on clarifying this conceptual and politically charged question.

In a report prepared to support discussions ahead of the Rio+20 conference, based on existing literature as well as contributions of States, major groups and UN entities, the Secretary-General suggested that the concept of green economy is one amongst 'several mutually complementary constructions' that have emerged to enhance convergence between the different dimensions of sustainable development, together with national sustainable development strategies, the Millennium Development Goals, integrated policy and planning, sustainable livelihoods and pro-poor approaches.[107] The report defined green economy as an 'omnibus term', comprising a suite of economic instruments that could harness economic activity in support of one or more sustainable development goals, including taxes, subsidies and procurement policies.[108] Emphasizing that a green economy model could slow the development process,[109] the Secretary-General cautioned that prescriptions on internalizing externalities could have adverse social impacts if they are not carefully designed and complemented by additional demand- and supply-side policies.[110] The main concern emerging from the Secretary-General's groundwork was therefore that developmental and social dimensions, in particular poverty eradication, were not covered adequately in the debate on the green economy. The report also underscored that further conceptual clarity was needed on the links between a green economy and sustainable development, particularly in as much as distributional implications, international cooperation and the global dimensions of international trade, investment and

[102] As reported in UNGA Resolution A/RES/64/236, at paragraph 64 (emphases added).
[103] As highlighted above, the European Commission initially suggested that the concept of the green economy applies 'in particular to developing countries'. See COM (2011)363, n. 10 above, at 5.
[104] Ibid.
[105] UNGA Resolution A/RES/64/236, n. 1 above, at paragraph 20.
[106] See also UNDESA, n. 14 above, at 61
[107] UN Secretary General, Progress to Date and Remaining Gaps in the Implementation of the Outcomes of the Major Summits in the Area of Sustainable Development, as well as an Analysis of the Themes of the Conference, Summary (UN Doc. A/CONF.216/PC/2, 1 April 2010), at paragraph 43.
[108] Ibid., at paragraphs 57 and 44.
[109] Ibid., at paragraph 45.
[110] Ibid.

technology transfer were concerned.[111]

As the preparations for the UNCSD proceeded, a second report of the Secretary-General emphasized that the concept of a green economy had gained new currency as 'a lens for focusing on and seizing opportunities to advance economic and environmental goals simultaneously',[112] underscoring that its scope is greater than mere low-carbon growth.[113] By emphasizing 'the context of sustainable development and poverty eradication', the Secretary-General called for a bottom-up approach to economic decision-making that responds to national and local priorities and challenges.[114]

THE RIO+20 NEGOTIATIONS

Notwithstanding these important conceptual steps forward, in the run-up to the Rio+20 summit submissions from governments, international organizations and other stakeholders continued to point to a clear lack of agreement on a common definition for the green economy.[115] Some consensus seemed to emerge, however, that a green economy should take the Rio Declaration[116] and its principles as a fixed point of reference, and that it needed to be kept sufficiently broad and flexible, without turning into a constraining international rule or standard.[117] These specifications responded to developing countries' concerns that the green economy may be used to impose restrictions on trade or aid, justify 'green protectionism',[118] undermine the principle of common but differentiated responsibilities and respective capabilities,[119] or downplay the social development pillar of sustainable development.[120] In this regard,

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[111] Ibid., at paragraphs 55 and 57.

[112] Objective and Themes of the United Nations Conference on Sustainable Development, Report of the Secretary-General (UN Doc. A/CONF.216/PC/7, 22 December 2010) ('Objective and Themes'), at paragraph 24.

[113] Ibid., at paragraph 118. As suggested, for example, in M. Huberty et al., 'Shaping the Green Growth Economy' (The Berkeley Roundtable on the International Economy, 2011), found at: <http://www.uncsd2012.org/content/documents/Shaping-the-Green-Growth-Economy_report.pdf>, at 6, where the notion of green growth is defined as: 'job creation or GDP growth compatible with or driven by actions to reduce greenhouse gasses.'

[114] See Objective and Themes, n. 112 above, at paragraph 117.

[115] Synthesis Report on Best Practices and Lessons Learned on the Objective and Themes of the United Nations Conference on Sustainable Development, Note by the Secretariat (UN Doc. A/CONF.216/PC/8, 21 January 2011) ('Synthesis Report'), at 60. The preference for framing green economy as a 'tool to achieve sustainable development', rather than for providing a definition had already emerged in the regional preparatory meetings for Rio+20. See P. Chasek, 'Incorporating Regional Priorities into Global Conferences: A Review of the Regional Preparatory Committee Meetings for Rio+20', 21:1 *Review of European Community and International Environmental Law* (2012), 4, at 6.

[116] Rio Declaration on Environment and Development, found in Report of the UN Conference on Environment and Development (UN Doc. A/CONF.151/26/Rev.1 (Vol. I), 14 June 1992), Annex ('Rio Declaration').

[117] See Synthesis Report, n. 115 above, at 61-62.

[118] As suggested, for example, in the submissions by Botswana, China, Cuba, Ecuador, Egypt, Guatemala, India, Kenya, Nepal, Pakistan, The Philippines, The Russian Federation and Venezuela. Found at: <http://www.uncsd2012.org/comp_memberstates.html>

[119] As suggested, for example, in the submission by Cuba; see also the discussion by J. Pauwelyn in this issue.

[120] As suggested, for example, in the submission by Algeria.

it was suggested that UNCSD needed to ensure that resources, technical assistance and technology transfer[121] be made available to enable countries to participate competitively in a global green marketplace, and that green industries generate jobs and improve livelihoods and reduce inequality both within and between countries.[122] In addition, UN Members had divergent views on the relative emphasis accorded to different types of green economy policies (e.g. internalization of environmental externalities through prices, taxes and subsidies, and public expenditures on green infrastructure and technologies),[123] although some agreement on core elements of a green economy (such as renewable energy, energy and material efficiency improvements and sustainable buildings, as well as on the importance of a supportive fiscal policy framework) appeared to emerge.[124] Explicit financial commitments and the definition of the transitional steps both at the national and international level were equally considered necessary to achieve consensus.[125]

The most ambitious proponents of the green economy called for the adoption of 'roadmaps' setting specific goals, objectives and actions at the national and international levels to promote international coordination and policy coherence to support the green economy.[126] Switzerland, for example, suggested that the outcome of UNCSD should include a shared vision guided by the Rio principles, common goals, indicators and a timeline for the next 20 years, as well as a toolbox with concrete approaches and measures based on best practices.[127] The EU similarly prioritized the adoption of an international green economy roadmap,[128] underscoring the role of private sector activities in promoting and adopting a sustainable business model, including environmental and social concerns in their investment decisions, coupled with a capacity development scheme for voluntary country-specific (and, where appropriate, region and sector-specific) actions.[129] Developing countries, however, cautioned that the adoption of a global roadmap might not respect developmental and economic diversity and impose an external timeline determining the pace of countries' transitions to a green economy, potentially limiting their economic growth.[130]

As formal negotiations went underway, the 'zero draft' compiled on the basis of the input received from States and stakeholders, as well as comments offered during an intersessional meeting in December 2011, stated that a green economy in the context

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[121] See also the contribution by C. Correa to this issue.
[122] See Synthesis Report, n. 115 above, at paragraph 78, quoting the submission by ECLAC.
[123] Ibid., at paragraph 65.
[124] Ibid.
[125] Ibid., at paragraph 79.
[126] For an overview of submissions on this specific issue, see A. Cutter, *Briefing Note: Green Economy Roadmaps* (2011), found at: <http://www.stakeholderforum.org/fileadmin/files/Briefing%20Note%20Green%20Economy%20Roadmaps.pdf>.
[127] Compilation Document – Rio+20 - United Nations Conference on Sustainable Development (2012), found at: <www.uncsd2012.org/compilationdocument>, at 407.
[128] Contribution by the European Union and its Member States to the UN Department of Economic and Social Affairs (2011), at 3. Found at: <http://www.uncsd2012.org/index.php?page=view&type=510&nr=240&menu=20>
[129] Ibid., at 9.
[130] See A. Cutter, n. 126 above, at 5. On resistance against the idea of a 'roadmap' in the regional preparatory process for Rio+20, see P. Chasek, n. 115 above, at 7.

of sustainable development and poverty eradication should

> contribute to meeting key goals – in particular the priorities of poverty eradication, food security, sound water management, universal access to modern energy services, sustainable cities, management of oceans and improving resilience and disaster preparedness, as well as public health, human resource development and sustained, inclusive and equitable growth that generates employment, including for youth.[131]

The zero draft also indicated that the green economy was not intended as a rigid set of rules, but rather as a decision-making framework to foster integrated consideration of the three pillars of sustainable development in all relevant domains of public and private decision-making.[132] Roadmaps were presented as an essential step in measuring global progress towards the achievement of a green economy over the period 2012-2030.[133] While portraying an environmentally broad notion of green economy and trying to balance the concerns of developed and developing countries, the text on the green economy was notably silent on economic evaluation, human rights and corporate accountability. Elsewhere in the zero draft, however, references to ecosystem services and investment in natural capital were made with specific regard to biodiversity,[134] and to the need to explore mechanisms to compensate and reward mountain communities for the services they provide through ecosystem protection.[135] Human rights were mentioned only in connection to the right to water, the right to food and the UN Declaration on the Rights of Indigenous Peoples.[136]

At Rio+20, delegates could not agree on a common understanding on whether the green economy is to be regarded as the preferable 'means to achieve sustainable development'[137] or just as a mere 'decision-making framework to foster integrated consideration of the three pillars of sustainable development'.[138] The conference reached the modest conclusion that 'a' green economy[139] is '*one* of the important tools available for achieving sustainable development'.[140] And instead of calling for 'a transition' to the green economy and endorsing a roadmap for such transition, the outcome document simply encourages 'each country to consider the implementation of green economy policies', promising international support to those developing countries that wish to do so.[141] The summit succeeded, however, in shifting away from the 'original monocultural model' of green growth,[142] confirming a broader

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[131] See Zero Draft, n. 12 above, at paragraph 25.
[132] Ibid., at paragraph 27.
[133] Ibid., at paragraphs 40 and 43.
[134] Ibid., at paragraph 91.
[135] Ibid., at paragraph 94.
[136] Ibid., at paragraphs 67, 64 and 21.
[137] Ibid., at paragraph 26.
[138] Ibid., at paragraph 27.
[139] It is noteworthy that the article 'the' is never used before 'green economy' in the Outcome Document.
[140] The Future We Want, n. 2 above, at paragraph 56 (emphasis added).
[141] Ibid., at paragraph 62.
[142] P. Kohona, 'The Future We Wanted – The Future We Will Get', 42:3 *Environmental Policy and Law* (2012), 137, at 138.

environmental remit[143] and emphasizing its social dimension and need for inclusiveness.[144]

One thing was certainly clarified at the Rio+20 Summit: the green economy should be regarded as a strategy for achieving sustainable development,[145] a paradigm to better plan and operationalize sustainable development, not a replacement of it. What remains to be elucidated is whether these difficult negotiations have actually contributed to further the international community's understanding of how to better achieve sustainable development. Does the text on the green economy adopted at Rio+20 add anything new to the debate on more effective implementation of international environmental law?

LEGAL DIMENSIONS

To answer this question, the following sections will analyse the outcome document of the Rio+20 Conference related to a green economy from three inter-related legal perspectives: the principle of environmental integration; the principle of intra-generational equity and related human rights questions; and international standards on corporate environmental accountability.

ENVIRONMENTAL INTEGRATION

The policy debate on the green economy held the potential to overhaul environmental integration, by enabling a shift from just 'taking into account' environmental concerns (without prioritizing them over short-term economic and social priorities) to placing environmental management at the centre of economic development. Environmental integration is a crucial facet of sustainable development[146] and has been described as practical tool by which issues relevant to sustainable development can be synthesized.[147] As opposed to a negative approach to environmental integration

[143] See references to 'maintaining the healthy functioning of the Earth's ecosystems' in The Future We Want, n. 2 above, at paragraph 56; to 'sustainable resource management, resource efficiency and waste reduction' in ibid., at paragraph 60; and to 'sustainable production and consumption, and conservation and sustainable use of biodiversity and ecosystems' in ibid., at paragraph 61.

[144] See references to 'enhancing social inclusion, improving human welfare and creating opportunities for employment and decent work for all' in ibid., at paragraph 56; to '[p]romote sustained and inclusive economic growth, foster innovation and provide opportunities, benefits and empowerment for all and respect of all human rights' in ibid., at paragraph 58(d); to enhancing 'the welfare of indigenous peoples and their communities, other local and traditional communities and ethnic minorities, recognizing and supporting their identity, culture and interests, and avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication of poverty', in ibid., at paragraph 58 (j); and to 'the welfare of women, children, youth, persons with disabilities, smallholder and subsistence farmers, fisherfolk and those working in small and medium-sized enterprises, and improve the livelihoods and empowerment of the poor and vulnerable groups in particular in developing countries' in ibid., at paragraph 58(k).

[145] C. Spence and A. Vavilov, 'Summary of the UNCSD Informal Consultations and Third Intersessional Meeting: 17-19 May 2010', 27:1 *Earth Negotiation Bulletin* (2010), at 8.

[146] A. Boyle and D. Freestone, 'Introduction', in: A. Boyle and D. Freestone (eds.), *International Law and Sustainable Development* (Oxford University Press, 1999), at 4; see also C. Voigt, *Sustainable Development as a Principle of International Law: Resolving Conflicts Between Climate Measures and WTO Law* (Brill, 2009), at 36.

[147] International Law Association, Committee on International Law on Sustainable Development, Seventy-Forth Report (2004), at 13; S. Jodoin, *The Principle of Integration and Interrelationship in*

focused on preventing and mitigating environmental damage arising from economic development,[148] the green economy bore the promise of a positive approach whereby environmental protection measures would be actively favoured to achieve economic development. Whether Rio+20 contributed to materializing this potential can only be ascertained in a historical perspective, considering previous international normative developments on environmental integration.

Environmental integration was addressed in the 1972 Stockholm Declaration, which called for an integrated approach to development planning so as to ensure that development is 'compatible' with the need to protect and improve the environment for the benefit of the population.[149] The 1992 Rio Declaration cemented this concept, stating that environmental protection shall constitute an 'integral part' of the development process and cannot be considered in isolation from it.[150] Chapter eight of Agenda 21 already pointed to the usefulness of economic instruments and market (and other) incentives for integrating environment and development in decision-making and establishing systems for integrated environmental and economic accounting.[151] The 2002 Johannesburg Declaration underscored a collective responsibility to ensure that environmental regulations are seen as 'interdependent and mutually reinforcing pillars' of sustainable development, together with economic and social development.[152]

Against this background, the debate on the green economy at UNCSD was an opportunity for the international community to reflect progress in the understanding of the effectiveness of market-based and economic instruments for environmental management – an approach that was already contemplated in Agenda 21. The concept of ecosystem services[153] could have been useful to highlight that the most promising path, not only for effective international cooperation but also for business development and job creation at national and local levels, is to systematically seize the new investment opportunities and economic savings that result from the innovative environmental management approaches. The notion of ecosystem services highlights the connection between environmental protection, human well-being and poverty eradication, as well as the need to carry out an economic valuation of ecosystems and of their protection (or of the costs of lack of protection).[154]

Relation to Human Rights and Social, Economic and Environmental Objectives (Centre for International Sustainable Development Law, 2005), at 13.

[148] V. Barral, 'Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm', 23:2 *European Journal of International Law* (2012), 337 at 337; based on Award in the Arbitration regarding the Iron Rhine Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, 27 RIAA (2005), 35, at paragraph 59.

[149] Stockholm Declaration on the Human Environment, found in Report of the UN Conference on the Human Environment (UN Doc. A/CONF.48/14/Rev.1, 16 June 1972), Principle 13.

[150] Rio Declaration, n. 116 above, Principle 4.

[151] Agenda 21, found in Report of the UN Conference on Environment and Development (UN Doc. A/Conf.151/26, 14 June 1992), Chapter 8.

[152] Johannesburg Declaration on Sustainable Development, found in Report of the World Summit on Sustainable Development (UN Doc. A/CONF.199/20 26 August- 4 September 2002).

[153] See A. Steiner, n. 11 above, at 9. Instead, references to ecosystem services can be found in other parts of the Future We Want, n. 2 above, at paragraphs 177; 193; 197 and 201.

[154] E. Morgera, 'The 2005 UN World Summit and the Environment: The Proverbial Half-Full Glass', 15 *Italian Yearbook of International Law* (2006) 53.

The 2005 Millennium Ecosystem Assessment[155] was the first global study garnering international consensus on the term ecosystem services as the benefits people obtain from ecosystems, including provisioning services such as food, water, timber, and fibre; regulating services that affect climate, floods, diseases, wastes, and water quality; cultural services that provide recreational, aesthetic, and spiritual benefits; and supporting services such as soil formation, photosynthesis, and nutrient cycling. This understanding has been more recently complemented by global economic valuation studies that show why prosperity depends on maintaining the flow of benefits from ecosystems and why successful environmental protection needs to be grounded in sound economics, including explicit recognition, efficient allocation, and fair distribution of the costs and benefits of conservation and sustainable use of natural resources. As pointed out at the outset, this approach has particularly influenced the CBD[156] but not (yet) other multilateral environmental processes.

The Rio+20 outcome document reflects this *status quo*: ecosystem services appear nowhere in the agreed text on the green economy, and the term is only used with reference to biological diversity.[157] Equally, the use of economic valuation to ensure better environmental regulation is only mentioned in connection with biodiversity:

> We support mainstreaming the consideration of the socioeconomic impacts and benefits of the conservation and sustainable use of biodiversity and its components, as well as ecosystems that provide essential services, into relevant programmes and policies at all levels, in accordance with national legislation, circumstances and priorities. We encourage investments, through appropriate incentives and policies, which support the conservation and sustainable use of biological diversity and restoration of degraded ecosystems, consistent and in harmony with the Convention on Biological Diversity and other relevant international obligations.[158]

Another useful input from Rio+20 could have been a focus on the green economy as an opportunity to ensure mutual supportiveness[159] among disparate sectoral environmental efforts.[160] The 'internal' dimension of environmental integration foresees that environmental law itself is to be construed and interpreted broadly, taking into consideration all global environmental objectives – in essence requiring a holistic approach to global environmental law-making.[161] Challenges to the internal

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[155] The Millennium Ecosystem Assessment, Ecosystems and Human Well-Being: Synthesis (2005), found at: <www.maweb.org/en/index.aspx>. Note that the notion had already been discussed in the natural science literature, e.g. P.R. Ehrlich and H.A. Mooney, 'Extinction, Substitution, and Ecosystem Services', 33:4 *BioScience* (1983), 248.

[156] See TEEB, n. 6 above, at 6; see also E. Morgera and E. Tsioumani, n 7 above.

[157] The Future We Want, n. 2 above, at paragraphs 177, 197, 201 and 204.

[158] Ibid., at paragraph 201.

[159] R. Pavoni, 'Mutual Supportiveness as a Principle of Interpretation and Law-Making: A Watershed for the WTO-and-Competing-Regimes Debate?', 21:3 *European Journal of International Law* (2010), 649, at 662.

[160] The potential link between green economy and the fragmentation of global environmental governance is discussed by J. Gupta and N. Sanchez, 'Global Green Governance: Embedding the Green Economy in a Global Green and Equitable Rule of Law Polity', 21:1 *Review of European Community and International Environmental Law* (2012), 12.

[161] This dimension has been mostly explored in EU Environmental Law: see N. Dhondt, *Integration of*

dimension of environmental integration are becoming apparent as climate change assumes an increasingly prominent position in global development and security agendas.[162] Possible negative impacts of climate change response measures on other areas of environmental protection and cooperation are particularly evident with regard to biodiversity.[163] Although the debate on the green economy has stressed the need to address in a mutually supportive manner the climate, biodiversity loss and energy crises,[164] the increased need for global attention to the internal dimension of environmental integration was not adequately emphasized in the Rio+20 outcome document. While the zero draft at least mentioned 'multiple interrelated crises' of financial, economic, energy, food, climate change and biodiversity loss,[165] this language was not retained in the final document.

INTRA-GENERATIONAL EQUITY AND HUMAN RIGHTS

In addition to environmental integration, intra-generational equity is another essential dimension of sustainable development,[166] representing a concrete objective towards which States are expected to take identifiable steps.[167] While the intergovernmental negotiations preceding the Rio+20 conference highlighted concerns related to equity and fairness among States, comparatively little debate took place on how the green economy might negatively impact equitable relations between governments and their communities. In particular, it had been observed that few States addressed the question of whether a green economy focusing on business opportunities and cost-effectiveness in environmental protection would adequately factor in interlinkages with human well-being[168] and community livelihoods,[169] and whether it could lead to

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Environmental Protection into Other EC Policies (Europa Law Publishing, 2003), at 179; and E. Morgera, 'Ambition, Complexity and Legitimacy of Pursuing Mutual Supportiveness through the EU's External Environmental Action', in: B. Van Vooren, S. Blockmans and J. Wouters (eds.), *The EU's Role in Global Governance: The Legal Dimension* (Oxford University Press, 2013, forthcoming).

[162] In the EU context this is well exemplified by the specific mention of climate change in Article 191.1 of the Consolidated Versions of the Treaty on the Functioning of the European Union, [2008] OJ C115/49, which reads: 'Union policy on the environment shall contribute to pursuit of the following objectives: … promoting measures at international level to deal with regional or worldwide environmental problems, *and in particular combating climate change*' (emphasis added). For an earlier discussion of the political priority attached to climate change by the EU, see E. Morgera and G. Marín Durán, 'The UN 2005 World Summit, the Environment and the EU: Priorities, Promises and Prospects', 15:1 *Review of European Community and International Environmental Law* (2006), 1.

[163] The parties to the CBD have increasingly addressed the environmental sustainability of response measures to climate change. See E. Morgera, 'Far Away, So Close: A Legal Analysis of the Increasing Interactions between the Convention on Biological Diversity and Climate Change Law', 2:1 *Climate Law* (2011), 85; and Secretariat of the CBD, *Connecting Biodiversity and Climate Change Mitigation and Adaptation: Report of the Second Ad Hoc Technical Expert Group on Biodiversity and Climate Change*, Technical Series, No. 41 (Secretariat of the CBD, 2009).

[164] See A. Steiner, n. 11 above, at 5 and 12.

[165] See Zero Draft, n. 12 above, at 11.

[166] P. Sands *et al.*, *Principles of International Environmental Law* (Cambridge University Press, 2012), at 206-217.

[167] See V. Barral, n. 148 above.

[168] See, e.g., R. Costanza *et al.*, *Building a Sustainable and Desirable Economy in Society in Nature* (United Nations Division for Sustainable Development, 2012).

[169] K. Bosselmann, P.G. Brown and B. Mackey, Enabling a Flourishing Earth: Challenges for the Green Economy, Opportunities for Global Governance', 21:1 *Review of European Community and International Environmental Law* (2012), 23.

the further marginalization of indigenous peoples and local communities that contribute to environmental conservation and management in ways that are difficult to capture in purely economic terms.[170] As noted above, the UN Secretary-General also highlighted that these dimensions of the green economy had only sporadically emerged in the policy debate on this concept. These considerations were thus not reflected in the zero draft. In the lead-up to the Rio+20 conference, however, human rights advocates drew attention to the need for procedural guarantees at the international and national levels for new global environmental and sustainable development goals.[171] Indigenous peoples' representatives highlighted concerns about the lack of attention to substantive rights of access to natural resources and to the protection of traditional knowledge.[172]

In this regard, Rio+20 could have established a clearer link between the green economy and ecosystem services, human wellbeing[173] and the ecosystem approach. The latter in particular could have provided a lens to identify both procedural and substantive human rights concerns. The ecosystem approach has been defined as the integrated, iterative, adaptive and precautionary[174] approach to environmental management that is based on broad stakeholder engagement and consideration of the impacts of environmental degradation and management options on the most vulnerable sectors of society.[175] A key element that has emerged in the context of the ecosystem approach is the sharing of benefits arising from the conservation and sustainable use of biological resources and from access to genetic resources.[176]

According to the benefit-sharing approach, governments are expected to involve indigenous peoples and local communities in decision-making and good faith negotiations. Furthermore, they are also to reward communities for sharing their traditional knowledge in planning and environmental management, or compensate them for the negative impacts of conservation or sustainable management activities on

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[170] D. Shelton, 'Commentary on Achim Steiner's 2009 Grotius Lecture', 25:5 *American University International Law Review* (2010), 877. As noted above, some references to these issues surfaced in the negotiations on other portions of the outcome document, namely mountains.

[171] Open Letter from Special Procedures Mandate-holders of the Human Rights Council to States Negotiating the Outcome Document of the Rio+20 Summit, found at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/OpenLetterRio20.aspx>.

[172] 'Indigenous Peoples Insist on Rights-based Approaches and Respect for Traditional Knowledge and Practices in Rio+20 Outcomes' (20 June 2012), found at: <http://www.uncsd2012.org/index.php?page=view&nr=1259&type=230&menu=38>.

[173] A. Steiner, n. 11 above, at 9, stresses a 'fundamental link between ecosystem services and human rights', while P. Doran, 'Care of the Self, Care of the Earth: A New Conversation for Rio+20?', 21:1 *Review of European Community and International Environmental Law* (2012), 31, at 42, suggests that human wellbeing '*is* the collateral damage' of the green economy.

[174] A. Trouwborst, 'The Precautionary Principle and the Ecosystem Approach in International Law: Differences, Similarities and Linkages', 18:1 *Review of European Community and International Environmental Law* (2009), 26.

[175] CBD Decision V/6, Principles of the Ecosystem Approach (UN Doc. UNEP/CBD/COP/5/23, 22 June 2000); and Decision VII/11 Refinement and Elaboration of the Ecosystem Approach, Based on Assessment of Experience of Parties in Implementation (UN Doc. UNEP/CBD/COP/DEC/VII/11, 13 April 2004).

[176] This argument is fully developed, on the basis of a series of decisions of the CBD Conference of the Parties, in E. Morgera and E. Tsioumani, 'The Evolution of Benefit-sharing: Linking Biodiversity and Community Livelihoods', 19:2 *Review of European Community and International Environmental Law* (2010), 150.

their natural resources or cultural practices. Governments are therefore expected to provide communities with a direct stake in protecting the environment, a legal market with moderate prices for sustainable natural resource use and an economic or other incentive to prevent degradation. Significantly, benefits can be of a monetary and non-monetary nature. In many instances communities may be more interested in the latter, particularly where the benefits involve legal recognition of traditional rights to access to certain resources or protection of customary sustainable use practices. Benefits may also refer to the provision of guidance (such as training or capacity-building) to improve the environmental sustainability of community practices, and the proactive identification of opportunities for better/alternative livelihoods in these endeavours, with a view to facilitating understanding of, and compliance with, the law.[177] They may also include opportunities for indigenous peoples and local communities to participate in private investments, and indeed international guidance on benefit-sharing has been drafted and applied directly also to the private sector.[178]

A conceptualization of the green economy that placed development within an ecosystem-based framework would call upon the State (and the private sector, in the absence of, or in addition to, relevant State action) to adopt a bottom-up approach to building a true partnership with communities for the conservation and sustainable use of the environment by proactively providing a combination of economic and non-economic benefits. This would enable the proper valuation and rewarding of the environmental stewardship of indigenous peoples and local communities.[179] While ecosystem services or the ecosystem approach were not resorted to, the final text on the green economy does contain important references to human rights and community livelihoods.

First of all, the outcome document recognizes that green economy policies should 'provide opportunities, benefits and empowerment for all and respect of all human rights'.[180] In addition, it asserts that green economy policies should

> enhance the welfare of indigenous peoples and their communities, other local and traditional communities and ethnic minorities, recognizing and supporting their identity, culture and interests, and avoid endangering their cultural heritage, practices and traditional knowledge, preserving and respecting non-market approaches that contribute to the eradication on poverty.[181]

Finally, green economy policies should

> enhance the welfare of … smallholder and subsistence farmers, fisherfolk and those working in small and medium-sized enterprises, and improve the livelihoods and empowerment of the poor and vulnerable groups in particular in

[177] Ibid.
[178] E. Morgera, 'From Corporate Social Responsibility to Accountability Mechanisms', in: P.M Dupuy and J. Viñuales (eds.), *Protecting the Environment in the XXIst Century – The Role of the Private Sector* (Cambridge University Press, 2013, forthcoming).
[179] This argument was initially put forward in E. Morgera, 'Rio+20: Charting the Way to a Green Economy', 3:3 *Solutions* (2012), found at: < http://www.thesolutionsjournal.com/node/1100>.
[180] The Future We Want, n. 2 above, at paragraph 58(d).
[181] Ibid., at paragraph 58(j).

developing countries.[182]

Overall, Rio+20 seized the opportunity to strengthen the social dimension of the green economy, and also firmly encapsulated a human rights-based approach in it. This is probably the most important advance compared with previous summits.[183]

CORPORATE ACCOUNTABILITY

One could have expected the discussion on a green economy to concentrate on, or at least be the natural conceptual framework for, taking stock of international normative developments on corporate environmental accountability. The 2002 World Summit on Sustainable Development had indeed placed emphasis on 'corporate accountability'[184] as the legitimate expectation that reasonable efforts be put in place, according to international environmental standards, by private companies.[185] And since then the international community has made significant progress in accepting that business entities have certain 'responsibilities' vis-à-vis international law, notably in relation to human rights[186] and environmental sustainability.[187] In particular, a continued and increasingly marked convergence has characterized disparate international standard-setting and monitoring activities, leading to a clear set of minimum expectations about environmentally sustainable business conduct that respects human rights.[188] It is therefore quite striking and unfortunate that the Rio+20 outcome not only does not attempt to follow up on the agreed language on corporate accountability in Johannesburg, but does not even reflect or make reference to relevant international developments on corporate environmental accountability that have occurred since then. Norway and the EU attempted to include specific references to international corporate accountability guidelines, notably the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights and the UN Global Compact,[189] but without success.

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[182] Ibid.

[183] D. Shelton, 'What Happened in Rio to Human Rights?', 3 *Yearbook of International Environmental Law* (1992), 75.

[184] Plan of Implementation of the World Summit on Sustainable Development, found in Report of the World Summit on Sustainable Development (UN. Doc. A/CONF.199/20, 4 September 2002), Resolution 2, Annex, at paragraph 49.

[185] E. Morgera, *Corporate Accountability in International Environmental Law* (Oxford University Press, 2009), 21-24.

[186] Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Protect, Respect and Remedy: A Framework for Business and Human Rights (UN Doc. A/HRC/8/5, 7 April 2008); Guiding Principles on Business and Human Rights to implement the UN Protect, Respect and Remedy Framework (UN Doc. A/HRC/17/31, 21 March 2011).

[187] OECD, *The OECD Guidelines for Multinational Enterprises* (OECD, 2011); IFC Performance Standards (IFC, 2012), found at: <http://www.ifc.org/ifcext/policyreview.nsf/Content/2012-Edition#PerformanceStandards>; Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People (UN Doc. A/HRC/12/34, 11 August 2008) ('2008 Report of the Special Rapporteur').

[188] On the continued convergence of international standards on corporate environmental accountability, see E. Morgera n. 178 above.

[189] A. Schulz et al. 'Summary of the Third Round of UNCSD Informal Informal Consultations: 29 May - 2 June 2012', 27:40 *Earth Negotiation Bulletin* (2012), at 6-7.

An invitation to business to 'act in accordance with the UN Global Compact'[190] would have at least highlighted how the Compact evidences that a vast number of private companies share the understanding that key international environmental and other principles are directly relevant for their operations. Instead the Rio+20 outcome document merely 'invite[s] business and industry as appropriate and in accordance with national legislation to contribute to sustainable development and to develop sustainability strategies that integrate, *inter alia*, green economy policies'.[191] Elsewhere, the outcome document uses more forceful language in specific relation to mining, by 'recogniz[ing] the importance of strong and effective legal and regulatory frameworks, policies and practices for the mining sector that … include effective safeguards that reduce social and environmental impacts, as well as conserve biodiversity and ecosystems, including during post-mining closure' and by 'call[ing] on governments and business to promote the continuous improvement of accountability and transparency'.[192]

Significantly, Rio+20 missed the opportunity to tightly link the UN Framework on Business and Human Rights with relevant global environmental standards – a critical gap that at the moment only the UN Special Rapporteur on the Rights of Indigenous Peoples is trying to fill.[193] The conference therefore was not able to respond to criticisms of the green economy as an effort to 'neuter critiques of global capitalism and corporate control'.[194]

CONCLUSIONS

The evolution of the academic and policy debate on the green economy provides a useful background to better understand the difficulties of the Rio+20 negotiations, even if the distinction between green growth and green economy may have become of little relevance.[195] The policy discourses on these two concepts have greatly overlapped, strongly focusing on the intersection between the environment and the

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[190] Draft of the Rio+20 Outcome Document (2 June 2012), at paragraph 63 (bracketed language), on file with authors.. For the full text of the Global Compact, see <http://www.unglobalcompact.org/aboutthegc/thetenprinciples/index.html>.

[191] The Future We Want, n. 2 above, at paragraph 69.

[192] Ibid., at paragraph 228.

[193] 2008 Report of the Special Rapporteur, n. 187 above; Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, James Anaya, (UN Doc. A/HRC/15/37, 19 July 2010), Section III. See discussion in E. Morgera, n. 179 above.

[194] See P. Doran, n. 173 above, at 32. Although the creation of the 'Friends of paragraph 47' by Brazil, Denmark, France and South Africa to support sustainability corporate social responsibility reporting in their respective countries and share their experience with the rest of the world may be seen as a positive development: UNEP press release, 'Brazil, Denmark, France and South Africa Join in Commitment to Sustainable Reporting, 20 June 2012, http://www.unepfi.org/fileadmin/events/2012/Rio20/Press_release_Rio_outcome_document.pdf.

[195] UNDESA, n. 14 above, at 61, which emphasizes that 'there is no internationally agreed definition of green economy and at least eight separate definitions were identified in recent publications' (Ibid., Appendix 1). By way of example, the database compiled in preparation for UNCSD lists green growth and green economy initiatives together: <http://www.uncsd2012.org/rio20/gedatabase.html>; and the OECD, the World Bank, UNEP, and the GGGI's Green Growth Knowledge Platform, launched in February 2012, is an international knowledge-sharing platform that brings together international organizations supporting and promoting both green growth and green economy: <http://www.greengrowthknowledge.org/Pages/GGKPHome.aspx>.

economy, with increasing emphasis also on social dimensions.[196]

Throughout the Rio+20 process the debate on the green economy seemed to crucially revolve around whether all countries should undertake to restructure their economies to better accommodate environmental objectives, or whether only countries at an advanced level of economic development should be required to do so. Overall, the green economy has failed to turn into a ground for widespread consensus. The summit succeeded, however, in framing a multifaceted vision of green economy policies that takes into account different circumstances, priorities and understandings of various countries at different stages of development. It also confirmed that green economy policies are but one option to pursue sustainable development.

The legal implications of the new 'magic word'[197] green economy and its suitability to concretely contribute to the implementation of sustainable development remain difficult to ascertain.[198] Rio+20 was significant in embedding in the green economy the need to take into account human rights and the specific contributions of indigenous peoples and local communities to environmental management as a strategy towards achieving sustainable development. The conference did not, however, say anything new on the role of economic valuation and ecosystem services for environmental mainstreaming in other policy areas or in ensuring mutual supportiveness among disparate, sectoral environmental efforts. Neither did it take stock of advances by the international community on corporate accountability.

Even if the Rio+20 conference did not endorse a transition to the green economy and did not include a roadmap to that end, the green economy will remain a key theme at least in some multilateral environmental negotiations. While parties to the UNFCCC could not agree upon referencing to the Rio+20 outcome document at their last meeting,[199] UNEP and the EU continue to invoke the green economy concept under the CBD[200] to bring forward economic valuation as a tool for more effective environmental integration, treaty implementation and involvement of the private sector. Perhaps progress in the understanding of the role of the green economy for accelerating and measuring progress towards sustainable development, including through the creation of the right incentives and the catalyzing of funding to achieve it, will become apparent in that context.

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[196] See UNDESA, n. 14 above, at 60. Although the same report notes that the two terms still appear to be capable of further convergence. Ibid., at 62.

[197] For this terminology, see R. Bratspies, 'Tracing the Limits of the Green Economy' (14 May 2012), found at: <http://ssrn.com/abstract=2058212>, at 5.

[198] The EU, for instance, in one occasion has simply put a 'green economy' label on its pre-existing policy priority for chemicals management: in its thematic strategies for external environmental funding, the Commission indicated that the 'green economy' is largely limited to sustainable chemicals management. See European Commission, Environment and Natural Resources Thematic Programme – 2011–2013 Strategy Paper and Multiannual Indicative Programme (ENRTP Strategy 2011–2013), 29 October 2010, at 25. Compare: European Commission, Thematic Strategy for the Environment and Sustainable Management of Natural Resources, Including Energy', 14 May 2007, at 18.

[199] T. Akanle Eni-ibukun *et al*., 'Summary of the Doha Climate Change Conference: 26 November – 8 December 2012, 11 December 2012', 12:567 *Earth Negotiations Bulletin* (2012), at 17.

[200] K. Louw, *et a*l., 'Summary of the Eleventh Meeting of the Conference of the Parties to the Convention on Biological Diversity, , 22 October 2012', 9:595 *Earth Negotiations Bulletin* (2012), at 3 and 20.

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