

# INTERNATIONAL INVESTMENT AND THE ENVIRONMENT

By

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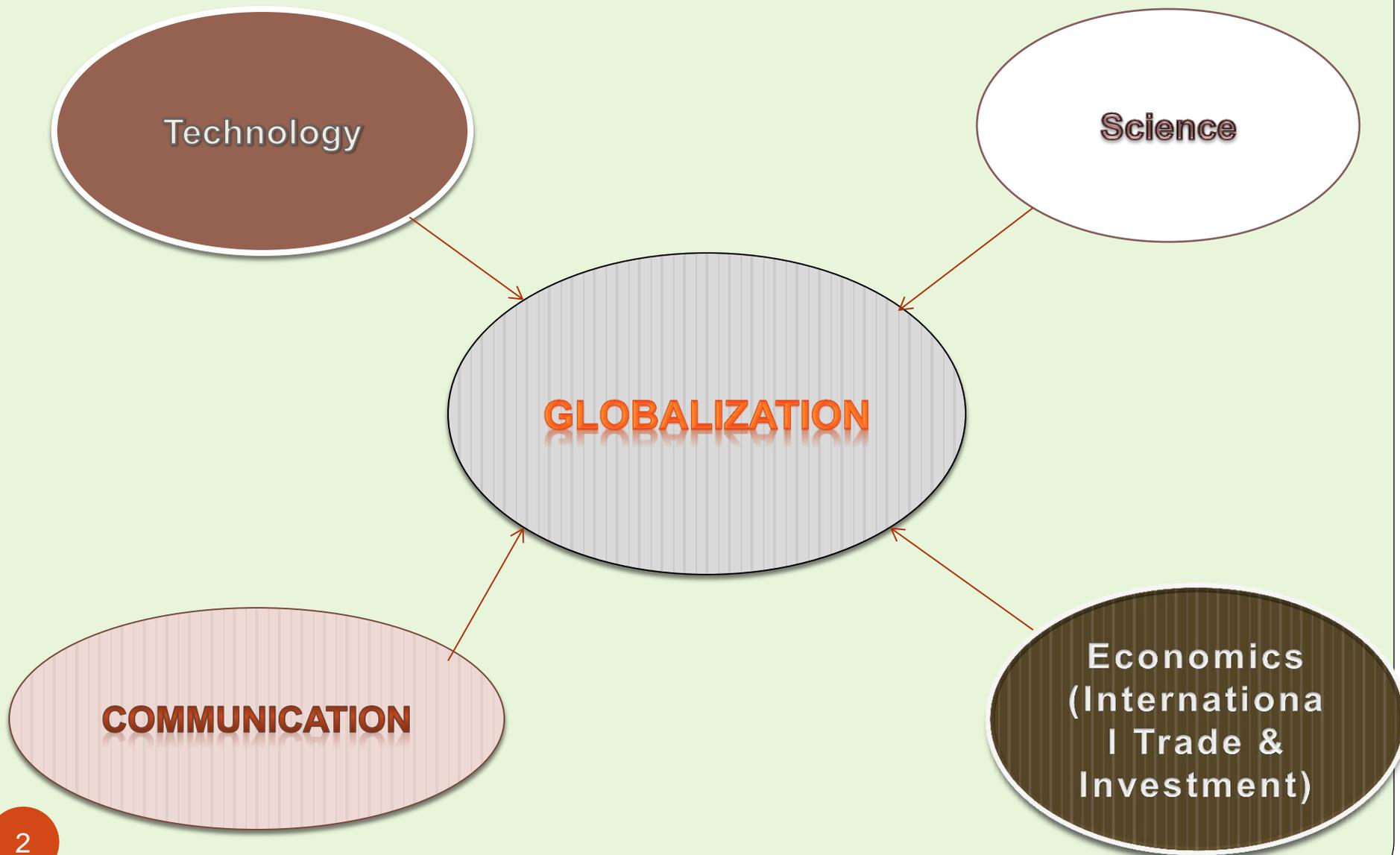
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- **The Four Broad Arms of Globalization**



# • Growth of International Investment

- 1990 – 1996, private capital flowing to developing countries increased tenfold, from US\$22 billion to US\$ 244 billion;
- By 1998, it increased to US\$350 billion
- The surest way to improve your environment is to become rich???
- Reduction of economic growth will reduce environmental quality???

# • Emerging Trends and Realities... Last 25 Years

- Global poverty and inequality is on the rise;
- Number of people in absolute poverty has grown to 1.3 billion;
- Global freshwater systems have declined by 50%;
- Marine ecosystems have deteriorated by 30%;
- Forest cover has reduced by 10%;
- Energy use powered by fossil fuel has increased by over 70% bringing with it increased greenhouse gas emissions;
- Developing countries are locked in stagnation, particularly, Sub-Saharan Africa (conflicts, debts, falling commodity prices);
- Unprecedented increase in environmental disasters.

# • What Have We Realized?

➤ Environmental degradation is neither limited to, nor recognized by international borders;

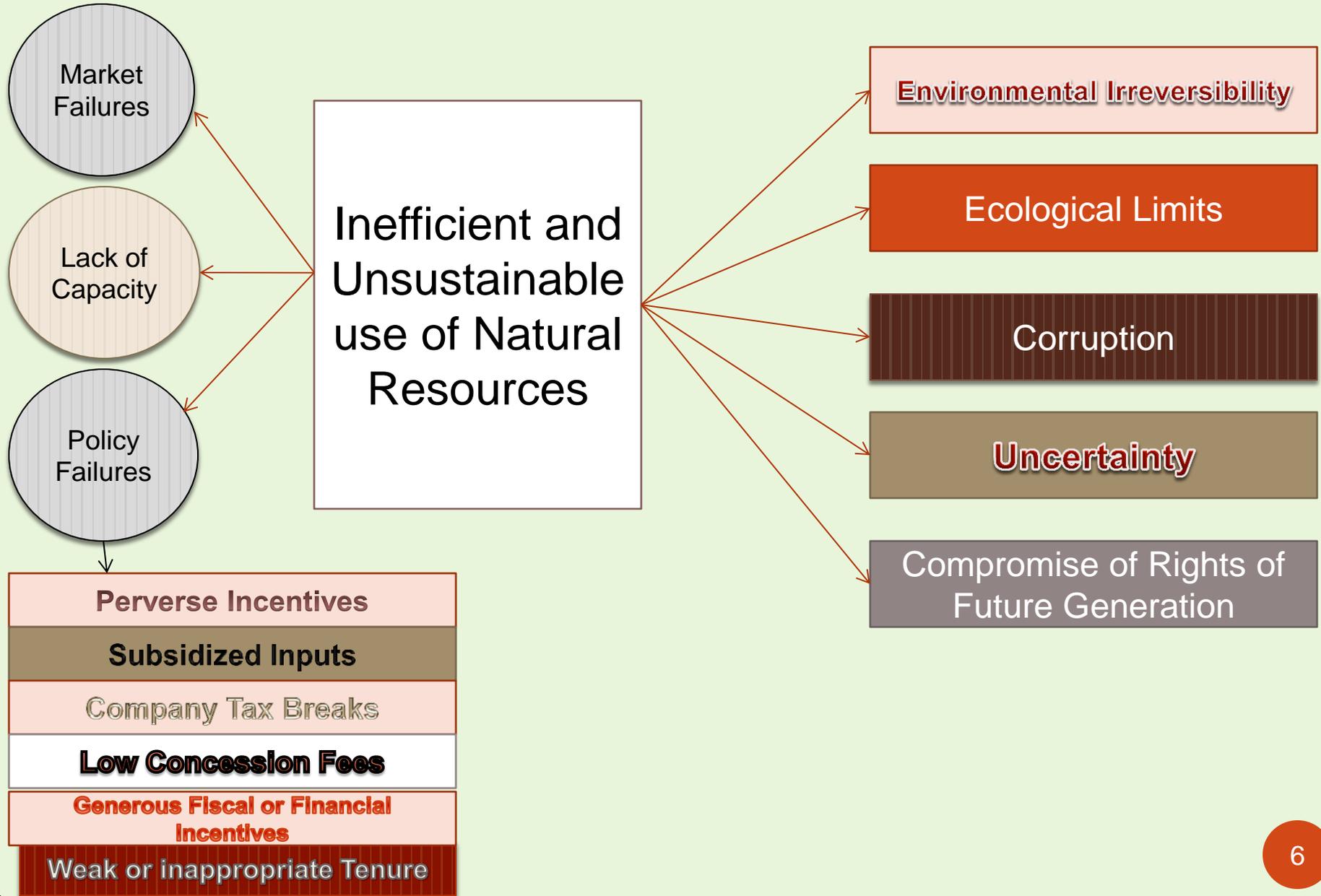
➤ Economic growth produced by FDI is fuelled at the expense of natural and social environment;

➤ Economic trends mask accompanying social and environmental problems;

➤ Inefficient and unsustainable use of natural resources is deepening;

➤ Economic growth continue to capitalize on the difficulty in ascertaining value of environmental assets.

# • Fundamentals of Inefficient Use of Natural Resources



# • Approach to Regulatory Framework

➤ Global environmental crisis has resulted in the growth of environmental law:

(i) Local and National Environmental Laws;

(ii) International Environmental Treaties and Conventions;

(iii) International Covenants (international trade agreement).

➤ All of the above are designed to offer a variety of environmental safeguards – How potent has these been?

- **Local and National Environmental Laws and Regulations**
  - Designed more to promote investment of foreign private capital:
    - “*Race to the bottom theory*” and “Pollution haven hypothesis” arising from “*Regulatory chill*”;
    - The Mexican Border Power Plants;
    - Short term economic gains;
  - Resulting FDI is characterized by patterns of investment and production that do not allow for internalization of social and environmental costs.

# • International Environmental Law

- Started with the Stockholm Declaration in 1972 (integration of environment and development);
- Rio Declaration on Environment and Development in 1992
  - Polluter pays principle (Principle 16)
  - Precautionary principle (Principle 15)

***“[w]here there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”***

- Agenda 21 further urge government to use ***free market mechanisms in which the prices of goods and services... increasingly reflect the environmental costs.***

# • International Trade Agreements

- North American Free Trade Agreement (NAFTA) is hailed as a landmark in providing for environmental protection within a free trade agreement:
  - utilizes concepts/principles of international environmental law;
  - its fundamental is first to establish free trade;
  - contain provisions that significantly weaken functionality of environmental protection:

***“No party may directly or indirectly nationalise or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment”.***

***- Chap 11 of NAFTA***

- **International Trade Agreements...**

- Chapter 11 has been effectively used to challenge measures promoted by governments as necessary to protect the environment and human health.
- NAFTA arbitral tribunals are closed to public participation;
- Arbitral tribunals are not bound to base their judgments on precedent or any external rule of law.

# • WHO and The Environment

- Sustainable development and protection of the environment are fundamental goals of the WHO;
- They form part of the Marrakesh Agreement;
- Members can adopt trade-related measures aimed at protecting the environment provided conditions to avoid misuse of measures for protectionist ends are fulfilled:

***“Application of such measures must not constitute “a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade...”.***

***Article XX of GATT***

## • Obstacles to Consensus on Measures to Protect the Environment

- Absence of a parallel organization dedicated to environmental protection at the international level puts the WTO as the candidate for resolving disputes on environmental issues;
- Differences in income, climate, population density, preferences are obvious source of tension in effort to protect global commons;
- Lack of a well developed understanding of many key issues at the trade-environment interface e.g. the case with global warming.

## • Influence of Environmental Regulation on Investment Decision

- Environmental abatement costs;
- Competitive advantage that will strengthen capacity of firms to absorb additional environmental costs;
- Encourage R & D to capture new markets (niche products, green products);
- Create potential for green technologies;
- Orientate/change consumption patterns;
- Afford protection to environmentally friendly industries.

## • Transition to Sustainability – Developing Countries

- Institutional response will always lag behind economic pressures, particularly in highly competitive global markets;
- Policy reforms that will go against immediate economic incentives for higher resource exploitation;
- Increased access to environmental justice;
- Increased access to public participation and information;
- Effective environmental governance.

## • Responsibility of Developed Countries

- Go beyond basic corporate responsibility to active corporate citizens;
- Reduce unsustainable consumption levels;
- Provide resources to support environmental governance in developing countries;
- Ensure that companies operate responsibly abroad;
- Reform investment subsidies to discourage damaging investment;
- Greater transparency in public and private processes surrounding investment decision.

## • Other Stakeholders

- NGOs and other civil society groups both home and host countries;
- International financial institutions and export promotion agencies.

- **Conclusion**

- International investment can bring substantial benefits, especially to developing countries, in terms of the transfer of resource (financial, technical and human). However, positive outcomes will only occur inside a national and international regulatory framework that promotes sustainable development and ensures environmental limits are preserved.

**Thank You**