International environmental law has been one of the fastest developing areas of international law in modern times. While there were some indications of a growing international legal consciousness about the environment in the early part of the twentieth century, it was not until after the formation of the United Nations that real opportunities arose for determined multilateral environmental initiatives. The 1972 Stockholm meeting was a pivotal event in that process which set in train a host of measures which effectively gave birth to international environmental law. The 1992 Rio conference resulting in the Rio Declaration and associated conventions on Climate Change and Biological Diversity further solidified those gains in the development of the law and continue to be influential to the present day.

However, notwithstanding these developments international environmental law lacks a foundational instrument which identifies the core concepts and principles, goals and objectives, of the field. Here a contrast can be made with the field of international human rights law, which can look to the 1948 Universal Declaration on Human Rights and the subsequent 1966 International Covenants as providing the foundation for what has become known as the ‘International Bill of Rights’. Likewise, in the law of the sea the 1982 United Nations Convention on the Law of the Sea is a foundational instrument which outlines the extent of coastal states rights and responsibilities and creates a framework for global oceans management and governance.

In the absence then of any overarching international environmental legal instrument, international environmental law has had to look to principles as the basis upon which the legal regime has been built. This has proven to be challenging in a field of international law which is comparatively young, and where some of those principles as they have been tentatively put forward have been heavily contested. The 2009 Copenhagen Climate Change negotiations served to illustrate just how fragile global consensus is on some environmental principles, and while the collapse of that process may ultimately reflect more upon the politics of climate change than environmental principles, it does highlight the difficulty in precisely identifying the principles upon which contemporary international environmental law is founded.

What this suggests is that identification of international environmental principles is increasingly significant in terms of understanding not only the
foundation upon which international environmental law is based, but also how that law is to be interpreted and developed into the future. The principles themselves have of course been subject to much analysis and debate and in the early 1990s many scholars in the field expended considerable effort in identifying precisely what those principles were. However, given the immaturity of the international environmental legal system at the time, it was difficult to always identify a consistency in the state practice and implementation of those fledgling principles.

This is where Akhtarkhavari makes an important contribution in discussing the role of social learning and how there must first be an institutional appreciation of the issues before proper operationalisation and implementation can take place. This is especially highlighted in the context of the International Court of Justice, which in its very first judgement in the Corfu Channel Case outlined principles of state responsibility which had significant consequences for the developing law on transboundary environmental harm. Since that time, the Court has grappled with its understanding of environmental principles as highlighted by its decisions in the Danube Dam case and more recently in its 2010 Pulp Mills decision.

However, the International Court of Justice was only one institution undergoing the social learning process when it came to international environmental principles. The United Nations through its Global Compact was another, as were State parties to International Maritime Organization negotiations on ocean dumping. Through these cases studies of how various international institutions and actors grappled with environmental principles, Akhtarkhavari highlights the challenges the international community has faced in coming to terms with these principles and the consequences they have at both the international and national level.

In the absence of an overarching global environmental treaty, environmental principles remain pivotal to the further development of international environmental law, but perhaps most crucially to the operationalisation and implementation of the existing law by the international community and individual State actors. They will prove fundamental in resolving the climate change debate, but also in reassessing some existing international regimes such as that dealing with whaling. A better appreciation of those principles and how they are institutionally adopted – at all levels – remains fundamental for the future success of the international environmental project.

13 May, 2010
Donald R. Rothwell, Professor of International Law, ANU College of Law, Australian National University, Canberra