

CHAPTER FOUR

THE NEXT 40 YEARS: THE EVOLUTION OF INTERNATIONAL ENVIRONMENTAL POLICY FROM 1972 TO THE PRESENT

4.0 INTRODUCTION

This chapter initially focuses on two signal events that were instrumental in shaping the international environmental law and policy agenda in the late 20th century—the 1972 UN Conference on the Human Environment in Stockholm, Sweden, and, 20 years later, the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil, popularly known as the “Earth Summit.” It further discusses subsequent significant developments, including the 2002 World Summit on Sustainable Development (WSSD) in Johannesburg, and the events leading to the 2012 UN Conference on Sustainable Development (UNCSD) or “Rio+20,” as a 20-year follow-up to the historic 1992 Rio Earth Summit. Highlighted are the activities of the United Nations Environment Programme (UNEP) and the Commission on Sustainable Development (CSD), the role of UNEP in the development of international environmental law norms and multilateral environmental agreements (MEAs), and the vexing issue of international environmental governance.

As Mostafa K. Tolba, former Executive Director of UNEP, has noted, the environment became a “top item on the world’s political agenda” in 1988.¹ However, public awareness of global environmental concerns preceded this date by 25 years, as advances in science and technology led to a growing realization that human activities were damaging the environment at an accelerated pace. Two 1960s publications—Rachel Carson’s book *Silent Spring*² and Garrett Hardin’s article “Tragedy of the Commons”³—in particular radicalized public and political thinking about the environment. By the late 1960s, concern over environmental degradation had catalyzed a proliferation of international conventions on transboundary air pollution,⁴ the world’s rivers,⁵ and

¹ UNEP, 1988 Annual Report of the Executive Director, at 1, U.N. Doc. UNEP/GC. 15/4 (1989) [hereinafter 1988 Annual Report].

² RACHEL CARSON, *SILENT SPRING* (1962).

³ Garrett Hardin, *Tragedy of the Commons*, 162 *SCIENCE* 1243–48 (1968).

⁴ See UNEP, *Environmental Law: An In-Depth Review* 5 UNEP Rep. No. 2, 1981 [hereinafter UNEP Rep. No. 2]. For a listing of conventions, see UNEP, *Register of International Conventions and Protocols in the Field of the Environment*, UNEP/GC./INFO.5 (1977), and accompanying supplements [hereinafter UNEP Register].

⁵ See *Developments in the Field of Natural Resources—Water, Energy and Minerals—Technical Aspects of International River Basin Development*, U.N. Doc. E/C 7/35, at 13 (1972).

transportation of oil on the high seas.⁶ In 1968, the UN General Assembly responded by calling for a world conference to address the human environment.⁷

Soon, world attention began to focus on providing a coherent management strategy for environmental issues, as there was a growing realization that existing environmental efforts were scattered, redundant, and insufficient to meet global needs. Two events in the early 1970s further spurred the growing global efforts. The first was the publication of the Club of Rome's controversial study, *The Limits to Growth*,⁸ which presented a bleak picture of humanity's future if environmental degradation were to continue. The second was the UN Conference on the Human Environment, held at Stockholm in June 1972 (Stockholm Conference).

The Stockholm Conference was the most successful international meeting held to that time on the environment, for an agreement was reached among the nations participating that concerted international action was needed in order to meet the environmental challenge. The Conference adopted the Stockholm Declaration, a set of 26 guiding principles, which represented the first global consensus on the nature and scope of the environmental challenge confronting the world community.⁹ It also produced an Action Plan containing 109 recommendations for environmental management and established a framework for a new international organization to implement it.¹⁰ The Stockholm Declaration and the resulting UN Environment Program (UNEP) will be discussed next.

4.1 THE STOCKHOLM CONFERENCE AND DECLARATION

4.1.1 Analysis

The lasting monument of the 1972 Stockholm Conference was the adoption of the Stockholm Declaration.¹¹ Although legally nonbinding, its 26 environmental principles reflected general agreement that concerted global action would be required in order to preserve and enhance the human environment, and a number have come to be viewed as binding international law.¹² The preamble recognized the risk that humans “can do massive and irreversible harm to the earthly environment on which our life and well-being depend.”¹³ It proclaimed the goal to “defend and improve the human environment for present and future generations,” along with the “fundamental goals of peace and of

⁶ See generally T. Mensah, *International Environmental Law: International Conventions Concerning Oil Pollution at Sea*, 8 CASE W. RES. J. INT'L L. 110 (1976).

⁷ G.A. Res. 2398 (XXIII) (Dec. 3, 1968).

⁸ D. Meadow, et al., *THE LIMITS TO GROWTH* (Report to the Club of Rome, 1972).

⁹ Report of the United Nations Conference on the Human Environment, U.N. Doc. A.CONF. 48/14/ and Corr. 1 (1972) [hereinafter *Stockholm Report*]; for the text of the Stockholm Declaration, see pages 3–5.

¹⁰ See *id.* at 6–28 (Action Plan).

¹¹ See generally L.B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L.J. 423 (1973).

¹² Stockholm Declaration, *supra* note 9, preamble.

¹³ *Id.* ¶ 6.

worldwide economic and social development.”¹⁴ Achievement of the environmental goal, it stated, would “demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts.”¹⁵

Principle 1 declared an individual “right” to a quality environment and linked this right to a “responsibility” on the part of the individual “to protect and improve the environment for present and future generations.” To assist the individual in fulfilling this responsibility, Principle 19 stated that education in environmental matters was “essential.” Principles 2 through 7 provided a philosophical foundation—presaging the modern notion of sustainable development—as they called for the safeguarding of the natural resources “for the benefit of present and future generations through careful planning or management.”¹⁶ Specific suggestions included improvement of “the capacity of the earth to provide vital renewable resources,”¹⁷ use of nonrenewable resources so as to “guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind,”¹⁸ wise management of wildlife and its habitat,¹⁹ control of pollution of the seas,²⁰ and protection from toxic and other dangerous substances.²¹ Science, technology, and research were seen as crucial instruments in protecting the environment.²² An “integrated and coordinated approach” to development and environmental protection, environmental planning, management, and institutions, and international cooperation were also declared to be essential.²³ Such focus on the ends and means of environmental protection was noteworthy, but a major obstacle in the implementation of these principles lay in the rather vague and platitudinous language in which they were couched.

The Conference proceeded to address a variety of policy issues.²⁴ The key one was the differing roles of developed and developing countries in the implementation of environmental programs. Developing countries emphasized their need to continue to develop, while acknowledging that the environment should be protected and conserved.²⁵ This notion—that planned economic development can be pursued without detriment to the environment—has evolved into the modern concept of sustainable development. Furthermore, developing states emphasized that their environmental problems were much different from those of developed states: developed states were concerned primarily with

¹⁴ *Id.* (emphasis added).

¹⁵ *Id.* ¶ 7 (emphasis added).

¹⁶ *Id.* Principle 2.

¹⁷ *Id.* Principle 3.

¹⁸ *Id.* Principle 5.

¹⁹ *Id.* Principle 4.

²⁰ *Id.* Principle 7.

²¹ *Id.* Principle 6.

²² *Id.* Principles 18, 20.

²³ *Id.* Principles 13–15, 17, 24.

²⁴ See M.A. Gray, *The United Nations Environment Programme: An Assessment*, 20 ENVTL. L. 291, 293 (1990).

²⁵ Stockholm Declaration, *supra* note 9, Principles 8–12. See J. Ntambirweki, *The Developing Countries in the Evolution of An International Environmental Law*, 14 HASTINGS INT’L & COMP. L. REV. 905, 906 (1991).

pollution resulting from development, whereas developing states were primarily concerned with environmental problems that stemmed from poverty and underdevelopment.²⁶

The outcome of this conflict was evident in the special treatment of developing states in the Stockholm Declaration. Principle 8 commenced with a broad statement that emphasized the importance of economic and social development—although it did not yet enunciate a right to development.²⁷ Principle 9 recognized the differentiated positions of developed and developing countries in regard to the environment. It stated that many environmental problems were the by-products of underdevelopment and poverty and provided for the transfer of technology and funds to the developing countries in an effort to stimulate economic development. Likewise, Principle 12 took into account the “circumstances and particular requirements of the developing countries” and reiterated the need to provide those states with financial assistance and technology in order that they might “incorporat[e] environmental safeguards into their development planning.”

Due to the conflict presented by the developed and developing states at the Conference, the Declaration constituted a compromise.²⁸ This compromise detracted somewhat from the status of the Declaration as customary international law, but it simultaneously evidenced the need—as a result of the different perceptions and concerns of states at different levels of development—for a flexible approach in regard to environmental issues.

Stockholm’s most important contribution is the often-cited Principle 21, which, while acknowledging the sovereignty right of states “to exploit their resources pursuant to their environmental policies,” limited that sovereignty by linking it to “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond their national jurisdiction.” This rule of “no transboundary harm” was a reiteration of the *sic utere* principle of state responsibility of the Trail Smelter arbitration²⁹ (see §§ 2.1.1 and 2.1.3).

A less successful declaration was Principle 22:

States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction.

Unfortunately, this aspiration remains largely unfulfilled.

²⁶ See *id.* at 907 (Ntambirweki cites a statement made by the Ugandan delegation to the Stockholm Conference).

²⁷ On the right to development, see generally V. Nanda, *A Right to Development: An Appraisal*, in *WORLD DEBT AND THE HUMAN CONDITION* (V. Nanda ed., 1993).

²⁸ See V. Nanda, *Trends in International Environmental Law*, 20 *CA. W. INT’L L.J.* 187, 189 (1990).

²⁹ *Trail Smelter (U.S. v. Can.)*, 3 *R.I.A.A.* 1905 (1938 & 1941).

4.1.2 Appraisal

The Stockholm Declaration was certainly the most ambitious environmental undertaking of the international community of its time and is to be lauded as a collection of forward-looking principles accepted by many diverse international actors with competing agendas. Although not initially binding on states as a formal treaty, the Declaration represented and continues to represent an unprecedented international consensus on environmental issues and a strong international legal authority for a number of the provisions which have evolved and are evolving into customary international law.³⁰

4.2 THE POST-STOCKHOLM PERIOD—THE FLOWERING OF UNEP

4.2.1 Introduction

Following the Stockholm Conference, the UN General Assembly established a number of bodies to implement the Conference's goals: the United Nations Environment Program (UNEP),³¹ consisting of a Governing Council comprising representatives of 58 governments, to serve as a legislative body; the Environmental Fund, financed by voluntary contributions and used to support the cost of new environmental issues undertaken within the UN system; and the Environmental Secretariat, which would serve as a focal point for environmental action and coordination within the UN system, as well as a catalyst for environmental action. In the post-Stockholm period, mounting concern for the environment, coupled with UNEP as a catalyst, led to promising developments. Within a decade, over 100 countries had established ministries of environment, compared to ten prior to Stockholm.³² An increasing number of developing states accepted the linkage between development and environmental protection.³³ At the international level, all UN specialized agencies and some UN organs began to include relevant environmental considerations in their policies and programs.

³⁰ See I. Hodkova, *Is There a Right to a Healthy Environment in the International Legal Order?* 7 CONN. J. INT'L L. 65, 67 (1991).

³¹ Institutional and Financial Arrangements for International Environmental Co-operation, G.A. Res. 2997, 27 U.N. GAOR Supp. (No. 30) at 43, U.N. Doc. A/8730 (1972). UNEP official documents are contained in UNEP, COMPENDIUM OF LEGISLATIVE AUTHORITY (1978).

³² See, e.g., J. Donohue, *Earthwatch*, 146 AMERICA 453 (1982).

³³ See, e.g., R. CLARKE & L. TIMBERLAKE, STOCKHOLM PLUS TEN—PROMISES, PROMISES? THE DECADE SINCE THE 1972 UN ENVIRONMENT CONFERENCE (1982). See also then-Indian Prime Minister Indira Gandhi's comment at the 1981 UN Conference on New and Renewable Sources of Energy: "We do not attach priority to the environment. We have to make our people more alive to the fact that conservation is not something extra, but is essential in the counting of costs—social costs and even basic economic costs." Interview: Mrs. Gandhi, 6 UNITERRA, No. 5, at 5 (1981). At the Stockholm conference she advocated the position of developing states, saying:

The rich countries may look upon development as the cause of environmental destruction, but to us it is one of the primary means of improving the environment of living. . . . How can we speak to those who live in villages and in slums about keeping the oceans, rivers and air clean when their own lives are contaminated at the source?

Quoted in N.Y. TIMES, June 15, 1972, at 12, col. 3.

It was, however, only after the occurrence of the environmental disasters in Bhopal, Chernobyl, and Basel in the mid-1980s³⁴ and the 1987 discovery of the hole in the ozone layer over the Antarctic³⁵ that the world community was roused to definitively confront environmental challenges. It was recognized that concerted global efforts were necessary,³⁶ and this realization led to an enhanced role for international organizations, especially UNEP, to work on international environmental problems and threats.

Two important documents on the environment appeared in 1987. One was the *Environmental Perspective to the Year 2000 and Beyond*, which cautioned that “despite noteworthy developments . . . , environmental degradation has continued unabated, threatening human well-being and, in some instances, the very survival of life on our planet.”³⁷ The second was the seminal report of the World Commission on Environment and Development (WCED), entitled *Our Common Future*.³⁸ The WCED was convened by the UN specifically to address the growing conflict between the developed nations of “the North,” with their focus on environmental protection, and the developing countries of “the South,” with their emphasis on economic development and fear that environmental protection standards would impede their legitimate interest in economic betterment. The WCED’s report advocated adoption of the compromise concept of “sustainable development,” which is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”³⁹ Adopted at Rio five years later, “sustainable development” will become the new international environmental legal paradigm. (See § 2.1.4.)

Although a large number of UN agencies and other IGOs have become active in the environmental field, UNEP remains the leading international body established to address environmental challenges. Envisioned as a vehicle for coordinating the goals of global environmental assessment and environmental management,⁴⁰ it performs this task through the coordination of environmental activities of the various UN agencies and the cooperation of governments, international scientific and professional communities, and nongovernmental organizations. Overall, it acts as “the environmental conscience of the UN.”⁴¹ The Action Plan adopted at Stockholm outlined a three-part functional framework

³⁴ See generally V. Nanda & B. Bailey, *Export of Hazardous Waste and Hazardous Technology: Challenge for International Environmental Law*, 17 DEN. J. INT’L L. & POL’Y 155 (1988).

³⁵ See R. W. Watson et al., *Present State of Knowledge of the Upper Atmosphere 1988: An Assessment Report* 18 (NASA Ref. Pub. 1208, Aug. 1988).

³⁶ See generally V. Nanda, *Stratospheric Ozone Depletion: A Challenge for International Law and Policy*, 10 MICH. J. INT’L L. 482 (1989); V. Nanda, *Global Warming and International Environmental Law: A Preliminary Inquiry*, 30 HARV. J. INT’L L. 375 (1989).

³⁷ 42 U.N. GAOR, Supp. No. 25, Annex 11, para. 1, U.N. Doc. A/42/25 (1987).

³⁸ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (Oxford University Press ed., 1987).

³⁹ *Id.* at 43.

⁴⁰ G.A. Res. 2997, 27 U.N. GAOR Supp. 30, at 43, U.N. Doc. A/8730 (1972).

⁴¹ This is how UNEP describes itself. UNEP in Brief (UNEP Information and Public Affairs Branch, Nairobi, Kenya, 1989).

for UNEP consisting of Environmental Assessment, Environmental Management, and Supporting Measures.⁴²

4.2.2 Environmental Assessment

To carry out its environmental assessment function, in 1977 UNEP established “Earthwatch,” a program of evaluation and review, research, monitoring, and information exchange that has been hailed as a substantial achievement.⁴³ Earthwatch’s major components included: (1) the Global Environmental Monitoring System (GEMS); (2) the International Referral System for Sources of Environmental Information (INFOTERRA); (3) the International Register of Potentially Toxic Chemicals (IRPTC); (4) the assessment of basic human needs in relation to outer limits of the tolerance of the biosphere, climactic changes, weather modification, risk to the ozone layer, and social outer limits; and (5) research and assessments.⁴⁴ Two of these components continue—GEMS and INFOTERRA—and will be described here.

GEMS encourages and coordinates the acquisition, analysis, storage, and dissemination of data by governments and international organizations. These activities are in keeping with UNEP’s dual mandate to coordinate environmental programs within the United Nations system and to play a catalyst role in initiating action where there are program gaps. GEMS has also conducted long-term studies of trends in environmental changes. GEMS projects have focused on: (1) resource monitoring; (2) climate-related monitoring; (3) human health-related monitoring in relation to air quality, water quality and food; (4) long-range transport of pollutants; (5) ocean monitoring; and (6) research and publications.⁴⁵ In the 1980s and 1990s, its programs included coordination of environmental monitoring in Africa, delimitation of West African and Amazon forest areas, glacier research, monitoring of climate systems, development of methods to assess the impact of pollution on forest ecosystems, and study of the behavior of pollutants in air, water, soil, flora, and fauna.⁴⁶ The GEMS data management program, Global Resource Information Database (GRID), was established in order to translate the highly technical environmental data assessments into information useable by managers and planners, especially in developing countries.⁴⁷ For facilitating access to scientific and technical information on chemicals, the International Register of Potentially Toxic Chemicals

⁴² See Stockholm Report, *supra* note 9, at 59.

⁴³ See Gray, *supra* note 24, at 297.

⁴⁴ UNEP, The Environment Programme: Medium-Term Plan 1982–1983, UNEP/GC.9/6, Mar. 1981, at 11–54 [hereinafter UNEP/GC.9/6]. In the following discussion under this section, we have relied on V. Nanda & P. Moore, *Global Management of the Environment: Regional and Multilateral Initiatives*, in *WORLD CLIMATE CHANGE* 93, 98–103 (V. Nanda ed., 1983).

⁴⁵ See *id.* at 14–21. See also UNEP, Report of the Governing Council of the United Nations Environment Programme on the Work of Its Ninth Session, Nairobi, May 13–26, 1981, UNEP/GC. 9/15, 5 June 1981, at 48–49 [hereinafter UNEP/GC.9/15]; UNEP, The Environment Programme: Programme Performance Report—Report of the Executive Director, UNEP/GC. 9/5, Feb. 25, 1981, at 8–12 [hereinafter UNEP/GC.9/5].

⁴⁶ 1988 Annual Report, *supra* note 1, at 22.

⁴⁷ UNEP/GCSS.1/7/Add.1 (Nairobi 1988) at 74 [hereinafter 1988 UNEP 1990–1995 Program].

(IRPTC) maintains records on more than 600 chemicals as well as experts' hazard assessments and risk evaluations.⁴⁸

INFOTERRA provides a complementary referral network for the exchange of environmental information. To accomplish its overall objective of ensuring that "the information needed for rational decision-making and for achieving environmentally-sound development is available to those who need it,"⁴⁹ UNEP decided in the early 1980s that its future activities should be focused on enhancing cooperation and linkages with governments, international organizations and appropriate information systems.⁵⁰ INFOTERRA continues to grow and provide access to scientific and technical information on environmental and resource issues all over the world by compiling and supplying needed information for environmental problem-solving between and among nations.⁵¹

4.2.3 Environmental Management

UNEP's environmental management began with the development of frameworks for the preparation of environmental impact assessment statements and for the application of cost-benefit analysis to environmental protection measures.⁵² In February 1980, at the United Nations Development Program (UNDP) headquarters in New York, nine multilateral development financing institutions signed a Declaration of Principles for incorporating environmental considerations into development policies, programs, and projects.⁵³

UNEP management activities in its first decade included: (1) environmental aspects of human settlements planning and human health; (2) terrestrial ecosystems, including arid and semi-arid ecosystems and desertification, tropical woodlands and forest ecosystems, mountain, island, coastal and other ecosystems, soils, water, genetic resources, wildlife, and protected areas; (3) environment and development, including integrated approaches and environmentally sound and appropriate technology; (4) industry and environment; (5) oceans, including marine pollution, living marine resources, and the regional seas program; (6) energy; (7) natural disasters; and (8) the development of environmental law.⁵⁴

Environmental management activities of UNEP in the late 1980s and 1990s evolved into: (1) oceans and coastal areas, including the global marine environment and the regional seas program; (2) water resources; (3) terrestrial ecosystems, including renewable resources, soils, forests, wildlife, and protected areas, genetic resources, bioproductivity research, and lithosphere; (4) desertification control; (5) environmental health, including agricultural chemicals; (6) peace, security, and the environment; and (7)

⁴⁸ 1988 Annual Report, *supra* note 1, at 34.

⁴⁹ UNEP/GC.9/6, *supra* note 44, at 22.

⁵⁰ *See id.* at 22–28.

⁵¹ 1988 Annual Report, *supra* note 1, at 34.

⁵² UNEP, Environmental Management—An Overview, 12–16 (UNEP Report No. 3, 1981).

⁵³ *Id.* at 17.

⁵⁴ *Id.* at 53-67.

technology and environment, including energy, industry and transportation, human settlements and natural disasters.⁵⁵

4.2.4 Environmental Law

Developing international environmental law is a vital component of environmental management, although it can be argued that this task does not fall squarely within UNEP's express mandate. However, because UNEP has the primary responsibility for implementing the principles incorporated in the Stockholm Declaration on the Human Environment, it follows that it is obligated to formulate environmental law rules.⁵⁶

UNEP's early law-developing activities included draft principles for the guidance of states in the conservation and harmonious utilization of natural resources that they share in common.⁵⁷ At its 34th session, the General Assembly requested that all states use the draft principles in the formulation of bilateral or multilateral conventions regarding natural resources shared by two or more states.⁵⁸ Subsequently, in 1981, a team of environmental law experts met under UNEP auspices and recommended that UNEP give its highest priority to three areas: (1) marine pollution from land-based services; (2) protection of the stratospheric ozone layer; and (3) transport, handling, and disposal of toxic and dangerous wastes.⁵⁹ The experts also suggested other areas for UNEP action including: (1) international cooperation in environmental emergencies, (2) coastal zone management, (3) soil conservation, (4) transboundary air pollution, (5) international trade in potentially harmful chemicals, (6) protection of rivers and other inland waters against pollution, (7) legal and administrative mechanisms for the prevention and redress of pollution damage, and (8) environmental impact assessment.⁶⁰ They recommended that periodic review of environmental law be undertaken by UNEP,⁶¹ and that in "codification, progressive development, and implementation of environmental law" special attention be given to the developing countries.⁶²

⁵⁵ 1988 Annual Report, *supra* note 1, at 39–58.

⁵⁶ The pertinent principle in the Stockholm Declaration, Principle 22, is unambiguous: "States shall cooperate to develop further the international law regarding liability and compensation for victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such states to areas beyond their jurisdiction." Under Resolutions 2997 and 3129, the General Assembly assigned UNEP the responsibility of fulfilling the mandate stated in Principle 22. G.A. Res. 2997, 29 U.N. GAOR Supp. 30, at 43, U.N. Doc. A/8730 (1972); G.A. Res. 3129, 28 U.N. GAOR Supp. 30, U.N. Doc. A/9030 (1973). It should be noted that, since most of the conventions developed by UNEP do not relate to liability but rather establish regulatory regimes, this major UNEP activity of drafting conventions on environmental issues does not appear to be directly fulfilling Principle 22.

⁵⁷ Draft Principles of Conduct in the Field of the Environment for Guidance of States in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States, approved by the UNEP Governing Council, May 19, 1978, U.N. Doc. UNEP/IG12/2 (1978); 17 I.L.M. 1097 (1978).

⁵⁸ G.A. Res. 3129, *supra* note 56.

⁵⁹ UNEP Rep. No. 2, *supra* note 4, at 28.

⁶⁰ UNEP, Programme Performance Report—Addendum, UNEP/GC. 1015 Add. 2, Dec. 7, 1981, at 2 [hereinafter GC 10/5/Add. 2].

⁶¹ *Id.* at 4.

⁶² *Id.*

The revised goals for UNEP for 1982 included “wide acceptance by Governments and application of international conventions and protocols in the field of the environment [both those now existing and those being developed]” and “[a]greement on the principles which should guide States in their relations with each other in respect of shared natural resources, the problems of liability and compensation for pollution and environmental damage, weather modification and risks to the ozone layer.”⁶³ Although there were some delegates who objected to UNEP’s initiatives in the development of environmental law,⁶⁴ UNEP continued to pursue this work vigorously.

UNEP also was concerned with the lack of environmental law administration skills faced by developing countries. It adopted specific goals and strategies to remedy the problem in a fourfold approach:⁶⁵ (1) promotion of national environmental law, (2) education and research, (3) acceptance and implementation, and (4) technical cooperation. Supporting measures included environmental education and training, communication of environmental information to decision-makers and the general public, and technical assistance.⁶⁶

4.2.5 Appraisal

UNEP was established as a catalyst and focal point for coordinating environmental activities in the UN system. However, its ability to coordinate global environmental efforts and to combat environmental degradation was questioned in the 1990s primarily on two grounds. First, because of severe underfunding, UNEP must rely upon individual state contributions as its source of financing,⁶⁷ for which reason some doubt that UNEP can have any substantial impact upon the policy development level of international environmental law.⁶⁸ Second, because of UNEP’s lack of enforcement power, its inability to compel compliance by violators of its environmental principles, it is viewed in some quarters as lacking teeth.⁶⁹ However, despite these monetary and enforcement hindrances, UNEP’s accomplishments during this period, especially in terms of assessment and monitoring of the global environment and acting as a catalyst, were notable.⁷⁰ Its activities since that time will be noted after a study of the Rio Summit in the next section.

Comment [TM1]: Note: I changed the text in this footnote because it was appearing in the wrong place (using 1st edition as reference). The text of this footnote now properly appears at note 72.

4.3 THE RIO CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

4.3.1 Introduction

⁶³ UNEP Rep. No. 2, *supra* note 4, at 15.

⁶⁴ UNEP/GC. 9/15, *supra* note 45, at 66.

⁶⁵ *Id.* at 195–98.

⁶⁶ UNEP/GC.9/5, *supra* note 45, at 41–45 & 68–70.

⁶⁷ See Gray, *supra* note 24, at 296; Developments in the Law—International Environmental Law (Part V. Institutional Arrangements), 104 HARV. L. REV. 1580, 1585 (1991).

⁶⁸ See *id.*

⁶⁹ G. Palmer, *New Ways to Make International Environmental Law*, 86 AM. J. INT’L L. 259, 261 (1992).

⁷⁰ See Gray, *supra* note 24, at 294.

The United Nations Conference on Environment and Development (UNCED or Rio) was held in Rio de Janeiro from June 3 to 14, 1992, to mark the 20th anniversary of the Stockholm Conference and address the North-South environment-development split. It attracted the largest attendance ever for an event of its kind—representatives from 175 countries and over 100 heads of state⁷¹—and represented the culmination of two years of intense preparatory committee (PrepComm) negotiations. During the 20 years between Stockholm and Rio, international environmental issues had indeed reached the forefront of the global political agenda. States had entered into a large number of international environmental conventions that contained binding legal obligations, many of which are still in force.⁷² Equally important were the continuous development of soft law and the work of international organizations, publicists' writings, and judicial and arbitral decisions, which had resulted in the emergence of general legal principles on the international environment (see Chapter 1).⁷³

Yet the environmental health of the planet—especially in the developing countries—had continued to deteriorate at an alarming rate. Maurice Strong, Secretary-General of both Stockholm and Rio, noted:

Although progress was made in many individual areas after Stockholm, it had little effect on environment-development relationships in the policies and practices of governments and industry. Even more ominous is the fact that the underlying conditions driving the risks to the human future that had been perceived at Stockholm did not fundamentally change in the two decades that separated Stockholm from Rio.⁷⁴

Strong graphically recounted the plight of the developing world:

As I traveled to every region of the world, retracing my steps of twenty years ago, the extent and nature of this environmental degradation and its tragic human consequences were everywhere. The cities of the developing countries, growing at rates beyond anything ever before experienced, are now among the world's most polluted, many of them headed for environmental and social breakdown. The appalling destruction of natural resources, loss of forest cover, erosion and degradation of soils, and deterioration of supplies and quality of water are visible

⁷¹ See *Brazilian President Proud of UNCED*, 15 INT'L ENV'T REP. (BNA), Curr. Rep. 395 (June 17, 1992).

⁷² *Environmental Law in UNEP* (UNEP Environmental Law No. 1, 1991); International Conventions and Protocols in the Field of the Environment, U.N. Doc. A/C. 2/46/3 (1991); UNEP/GC. 16/INF. 4 (Nairobi 1991); UNEP, *International Legal Instruments in the Field of the Environment*, Decision 15/31 of the Governing Council of the United Nations Environment Programme (May 25, 1989), reprinted in UNEP, Report of the Governing Council on the Work of Its Fifteenth Session, 44 U.N. GAOR Supp. No. 25, Annex 1, at 158, U.N. Doc. A/44/25. See also Decision 15/33 of the Governing Council of UNEP [hereinafter GC Decision 15/331], reprinted in GC Fifteenth Session Rep., at 160, noting the adoption of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, adopted and opened for signature Mar. 22, 1989, 28 I.L.M. 649 (1989) (entered into force May 5, 1992).

⁷³ See generally O. Schachter, *The Emergence of International Environmental Law*, 44 J. INT'L AFF. 457 (1991) [hereinafter Schachter].

⁷⁴ M. Strong, *Beyond Rio: Prospects and Portents*, 4 COLO. J. INT'L ENVTL. L. & POL'Y 21, 23 (1993).

throughout the developing world. Economic losses in agriculture, fisheries, and tourism are tragically manifested in diminished livelihoods for already impoverished and struggling people. This forbidding drama is unfolding throughout the developing world, threatening a massive human ecotragedy beyond any ever before witnessed, the grim portents of which can be seen in the recurring famines in Africa.⁷⁵

At Rio, World Bank President Lewis Preston proclaimed the magnitude of the environmental challenges that faced developing countries: over one billion people lacked safe drinking water, one-third of the world lacked adequate sanitation, and 1.3 billion people were exposed to indoor smoke and soot as a result of pollution. In addition, he expressed concern regarding soil erosion, loss of ecosystems and biodiversity, and climate change.⁷⁶

Negotiations preceding the Conference revealed the chasm had deepened between the North and the South regarding the goals of UNCED. Northern states focused primarily on the environment, while Southern states sought answers to their development dilemmas. Developing countries believed that UNCED constituted an opportunity to receive an unequivocal endorsement of their right to development. They also sought increased financial and technical assistance from industrialized states in order to meet their environmental and development needs.⁷⁷ Negotiations on the set of principles to form the Rio Declaration became “so divisive that even the name of the document could not be agreed upon.”⁷⁸

Ultimately, however, Rio was a stunning success in terms of international consensus and new legal authorities. It produced three nonbinding documents—the Rio Declaration (see next section), the Agenda 21 plan of implementation (see § 4.3.3), and the Forest Principles (see § 9.3); established two new binding treaties of major continuing consequence—the Framework Convention on Climate Change (see § 12.3) and the Convention on Biological Diversity (see § 9.3); and led to the formation of the UN Commission on Sustainable Development (see § 4.3.4).

4.3.2 The Rio Declaration on Environment and Development

The Rio Declaration originally was envisioned as an “Earth Charter,” modeled after the 1948 Universal Declaration of Human Rights,⁷⁹ that would set forth principles on sustainable development for the subsequent development of “hard law” conventions. (See § 2.1.4.) The document was anticipated to act as an “ideological umbrella” for Agenda

⁷⁵ *Id.*

⁷⁶ Reported in Earth Summit, 15 Int'l Env't Rep. (BNA), Curr. Rep. 395, 396 (June 17, 1992) [hereinafter Earth Summit].

⁷⁷ See, e.g., L. Mouat, *Earth Summit in Rio Faces Complex Issues*, CHRISTIAN SCIENCE MONITOR, Mar. 27, 1992, at 7.

⁷⁸ J. Kirwin, *Nations to Rescue Talks on Environmental Action Plan at Earth Summit*, 15 Int'l Env't Rep. (BNA), Curr. Rep. 311, 311 (May 20, 1992).

⁷⁹ Adopted Dec. 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/8 10, at 7 (1948).

21,⁸⁰ the implementation plan for effectuating the Rio principles in the 21st century. The developing countries, however, were uneasy about the title “Earth Charter,” which they viewed as placing too much emphasis on the environment. Hence the title was changed to the “Rio Declaration on Environment and Development.”⁸¹ There was controversy on every aspect of the document—its focus, precision, wording, and even its length. In reply to a statement by the US Ambassador to UNCED, Robert Ryan, that the United States would prefer a short text that could be printed on a poster and “used by children in their bedrooms,” the negotiator for G-77 (which has a membership of over 120 developing states) said that many children in developing countries “don’t have bedrooms.”⁸²

Eventually, UNCED representatives from 175 states adopted by consensus the Rio Declaration, which contains a preamble and 27 principles. At the conclusion of the Conference, Secretary-General Strong stated to the over 1,000 journalists in attendance,

We need to take stronger action than what is in these documents. The negotiations were difficult. Hopefully this conference will have raised awareness levels of an impending disaster if things do not change.

....

But it is vitally important that we use the momentum created here to make changes. Basically, we squandered the last twenty years. If you went back and looked at the speeches I made in Stockholm 20 years ago, there is no difference in what I am saying now.

We need to get on the fast track. If our economies don’t make some fundamental changes we are headed for disaster in the next century. I’m at a stage of my life where probably none of this is going to affect me personally. But it will affect my children and your children and all of our grandchildren.⁸³

The Rio Declaration incorporates Principle 21 of the Stockholm Declaration,⁸⁴ providing a delicate balance between recognition of the sovereign right of all states to “exploit their own resources pursuant to their own environmental and developmental policies,” and their “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”⁸⁵ (See § 2.1.3.) It explicitly links environmental protection to the development process by stating that the former constitutes an “integral part” of the latter

⁸⁰ Kirwin, *supra* note 78.

⁸¹ UNCED, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF. 51/26/Rev. I (Vol. 1), Annex 1, at 3 (1992) [hereinafter I UNCED Rep.], 31 I.L.M. 874 (1992) [hereinafter Rio Declaration]. For a commentary, see generally J.D. Kovar, A Short Guide to the Rio Declaration, 4 COLO. J. INT’L ENVTL. L. & POL’Y 119, 119–22 (1993) [hereinafter Kovar]. Mr. Kovar was a participant in the drafting of the Declaration. We have relied on his insights in our analysis of the Rio Declaration that follows.

⁸² See Kirwin, *supra* note 78.

⁸³ See Earth Summit, *supra* note 76, at 397.

⁸⁴ Stockholm Declaration, *supra* note 9.

⁸⁵ *Id.* Principle 2.

and thus “cannot be considered in isolation from it.”⁸⁶ It also expands on the Stockholm Declaration in its unambiguous recognition of the principle of intergenerational equity: “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”⁸⁷

While it obligates states to “cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem” (see § 2.1.2), the Rio Declaration recognizes states have “common but differentiated responsibilities” in view of their “different contributions to global environmental degradation.”⁸⁸ Developed countries acknowledge their responsibility “in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”⁸⁹ It calls for wide application of the “precautionary approach,” as well as application of the “polluter-pays” principle.⁹⁰ It particularly recognizes the vital role of women⁹¹ and of indigenous people and local communities⁹² in the achievement of sustainable development.

4.3.2.1 Analysis

The title of the Rio Declaration clearly linked environment and development, indicating acceptance by the negotiators of the G-77 desire that the title not emphasize the environment at the cost of development.⁹³ The Preamble reaffirms the Stockholm Declaration and seeks to build on it. While recognizing “the integral and interdependent nature of the Earth, our home” and the need to work towards international agreements “which respect the interests of all and protect the integrity of the global environment and development systems,” it sets the goal of “establishing a new and equitable global partnership.”

Principle 1 sets the tone of a human-centered focus for the Declaration, proclaiming that “[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” (See § 2.1.6.) Developing countries derailed the efforts mounted by some Western states and Western NGOs to steer the Rio Declaration away from the homocentric approach of previous UN pronouncements on the environment. Consequently, those who had wished to address “environmental concerns from a conceptual position within—as an integral part of the workings of the Earth’s ecosystem, not from the outside looking in”⁹⁴—were unable to do so.

⁸⁶ *Id.* Principle 4.

⁸⁷ *Id.* Principle 3.

⁸⁸ *Id.* Principle 7.

⁸⁹ *Id.*

⁹⁰ *Id.* Principle 15.

⁹¹ *Id.* Principle 20.

⁹² *Id.* Principle 22.

⁹³ See Kovar, *supra* note 81, at 123.

⁹⁴ *Id.* at 124, citing a proposal from Canada submitted at UNCED, a principle of a Draft Earth Charter presented by a working group of the U.S. Citizen’s Network on UNCED.

Principle 5 of the Declaration reflects the primary concern of developing countries—the eradication of world poverty—calling on all states and all people to “cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.” Similarly, Principle 3 recognizes the “right to development,”⁹⁵ and that it “must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” (See §§ 2.1.5 and 2.1.7.) This statement was a result of the developing countries’ demand that equity be the standard for meeting intragenerational and environmental needs.⁹⁶ Throughout the negotiations, the United States consistently opposed the concept of the “right of development.” Thus, the US added an interpretative statement to Principle 3 at the time of the Declaration’s adoption:

The United States does not, by joining consensus on the Rio Declaration, change its long-standing opposition to the so-called “right to development.” Development is not a right. On the contrary, development is a goal we all hold, which depends for its realization in large part on the promotion and protection of the human rights set out in the Universal Declaration of Human Rights.

The United States understands and accepts the thrust of Principle 3 to be that economic development goals and objectives must be pursued in such a way that the development and environmental needs of present and future generations are taken into account. The United States cannot agree to, and would disassociate itself from, any interpretation of Principle 3 that accepts a “right to development,” or otherwise goes beyond that understanding.⁹⁷

The new paradigm of “sustainable development” permeates the Declaration’s principles, inextricably linking environment and development. Principle 4 is the clearest example of their reciprocity, stating that “environmental protection shall constitute an integral part of the development process” and that environmental protection “cannot be considered in isolation from” development.

Several Principles in the Rio Declaration that elaborate on the environment-development linkage represent the developing countries’ “wish list.”⁹⁸ Thus, the Declaration gives “special priority” to the needs of developing countries, “particularly the least developed and those most environmentally vulnerable”— although it adds that international efforts “should also address the interests and needs of all countries.”⁹⁹ This

⁹⁵ On the status of the right to development, see generally Nanda, *supra* note 27 at 41-61.

⁹⁶ See, e.g., Agora: *What Obligation Does Our Generation Owe to the Next? An Approach to Global Environmental Responsibility*, 84 AM. J. INT’L L. 190 (1990).

⁹⁷ UNCED, Report of the United Nations Conference on Environment and Development, U.N. Doc. A/CONF. 151/26 (Vol. IV), at 20 (1992) [hereinafter IV UNCED Rep.] cited in Kovar, *supra* note 81, at 126.

⁹⁸ See, e.g., R. Panjabi, *From Stockholm to Rio: A Comparison of the Declaratory Principles of International Environmental Law*, 21 DENV. J. INT’L L. & POL’Y 215, 236–45 (1993).

⁹⁹ Rio Declaration, *supra* note 81, Principle 6.

addition was made at the insistence of former Soviet bloc European states with “economies in transition.” The G-77 and China had blocked any reference to a priority status for them, believing that such recognition could initiate competition for international assistance levels between the two groups of states.¹⁰⁰

The Rio Declaration explicitly recognizes the principle of “common and differentiated responsibilities” among states (see § 2.1.12) as follows:

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth’s ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.¹⁰¹

Neither the developing nor the developed countries were satisfied with the final wording.¹⁰² The former considered the text inadequate insofar as it did not directly blame developed countries for the prevailing environmental problems, while the latter objected to the language that described their special role.¹⁰³ Although the text was not reopened for negotiation at Rio, the United States added the following interpretative statement on Principle 7: “The United States understands and accepts that Principle 7 highlights the special leadership role of the developed countries, based on our industrial development, our experience with environmental protection policies and actions, and our wealth, technical expertise and capabilities.”¹⁰⁴

Principle 8 declares that “States should reduce and eliminate unsustainable patterns of production and consumption”¹⁰⁵ This call to developed countries to reduce their production and consumption excesses was couched in the milder “should” language at their insistence, although some would have preferred to condemn the wealthier countries for such patterns and to call for radical reductions.¹⁰⁶ Principle 8 links this with a reciprocal call that states “should promote appropriate demographic policies.”¹⁰⁷ This “should” was inserted at the insistence of developing nations, which initially had rejected

¹⁰⁰ Kovar, *supra* note 81, at 127–28.

¹⁰¹ Rio Declaration, *supra* note 81, Principle 7.

¹⁰² *Id.* For an insightful discussion on the drafting difficulties regarding this Principle, see Kovar, *supra* note 81, at 128–30.

¹⁰³ *Id.*

¹⁰⁴ IV UNCED Report, *supra* note 97, at 20–21, cited in Kovar, *supra* note 81, at 129–30.

¹⁰⁵ Rio Declaration, *supra* note 81, Principle 8.

¹⁰⁶ Panjabi, *supra* note 98, at 240; Kovar, *supra* note 81, at 130.

¹⁰⁷ Rio Declaration, *supra* note 81, Principle 8; see Kovar, *supra* note 81, at 130; Panjabi, *supra* note 98, at 223–26.

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any reference to the population challenge in the Declaration—a definite watering down of Stockholm Principle 16’s more forceful language.¹⁰⁸

The Rio Declaration provides clear guidance on environmental standards. Principle 11 notes states have the duty to “enact effective environmental legislation.” (See § 2.2.6.) This is qualified by the statement that environmental standards “should reflect the environmental and developmental context in which they apply.” In order to further assuage the apprehension of developing states that failure to meet developed country standards would result in discrimination, it recognizes that environmental standards “may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.”

The connection of international trade with sustainable development was of particular concern to the delegates. Principle 12 commences with a call for cooperation “to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation.” This was a response to the fear that environmental concerns might be used by developed countries in order to close their markets to developing countries’ products. Principle 12 continues:

Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.

The interrelationship between international trade law and international environmental law has yet to be fully coordinated, and trade sanctions (illegal under the former) still constitute one of the most effective enforcement tools of the latter. (See Chapter 13.) The European Community, Mexico, and several Latin American countries sought to include such a principle because of US legislation to protect dolphins¹⁰⁹ and turtles¹¹⁰ from certain tuna and shrimp fishing practices, respectively.¹¹¹ The US responded with the following interpretative statement on Principle 12: “The United States understands that, in certain situations, trade measures may provide an effective and appropriate means of addressing environmental concerns, including long-term sustainable

¹⁰⁸ “Demographic policies, which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned, should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development.” Stockholm Principle 16.

¹⁰⁹ International Dolphin Conservation Act of 1992, Pub. L. No. 105–123, 100 Stat. 3425 (1992), codified at 16 U.S.C. §§ 952–953, 973r, 1361, 1411–1418 (1994 & Supp. III 1997).

¹¹⁰ Pub. L. No. 101–162 § 609 103 Stat. 988 (1990).

¹¹¹ Kovar, *supra* note 81, at 132–33.

forest management concerns and environmental concerns outside national jurisdiction, subject to certain disciplines.”¹¹²

Several principles emphasize the importance of public participation in the process of sustainable development. (See § 2.2.1.) Principle 10 embodies all “three pillars” of public participation—access to information, access to participation in decision making, and access to justice. It calls for individuals to have “appropriate access to information . . . held by public authorities,” information on hazards in their communities, “and the opportunity to participate in decisionmaking processes.” States are obligated to make “information widely available” and to provide “[e]ffective access to judicial and administrative proceedings.” Principle 20 acknowledges women’s “vital role in environmental management and development,” and states that their “full participation is essential to achieve sustainable development.” Principle 21 similarly recognizes the role of youth. Principle 23 recognizes the importance of indigenous people and local communities in the achievement of sustainable development.

Two principles address issues of war and peace, and one principle functions as a political statement. Principle 24 calls warfare “inherently destructive of sustainable development,” and calls upon states to respect the existing international law of war providing for protection of the environment, and to cooperate in its further development. Principle 25 states that peace is a prerequisite for development and environmental protection. As a political statement, Principle 23 calls for the protection of the “environment and natural resources of people under oppression, domination and occupation.” The United States made a deal with Israel (the obvious target of 23): Israel would lift its objection to this language in the Rio Declaration if all references to “people under occupation” were removed from Agenda 21.¹¹³

As mentioned previously, international cooperation is a pervasive theme in the Declaration. (See § 2.1.2.) Cooperation is essential “to decrease the disparities in standards of living;”¹¹⁴ to “cooperate . . . to conserve, protect and restore the health and integrity of the Earth’s ecosystem;”¹¹⁵ “to promote a supportive and open international economic system;”¹¹⁶ “to cooperate to strengthen endogenous capacity building . . . through exchange of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies;”¹¹⁷ and to “discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.”¹¹⁸

¹¹² IV UNCED Report, *supra* note 97, at 21.

¹¹³ Kovar, *supra* note 81, at 137; see Panjabi, *supra* note 98, at 227–29.

¹¹⁴ Rio Declaration, *supra* note 81, Principle 5.

¹¹⁵ *Id.* Principle 7.

¹¹⁶ *Id.* Principle 12.

¹¹⁷ *Id.* Principle 9.

¹¹⁸ *Id.* Principle 14.

Principles that make special reference to the emerging norms of international law include the reiteration in Rio Principle 2 of Stockholm Principle 21's no-harm rule—a state's duty not to cause environmental damage outside its borders, combined with its sovereign right to use its natural resources pursuant to its environmental policies. (See § 2.1.3.) The words “and developmental” have been added after the word “environmental” to reflect the South's developmental concerns.¹¹⁹ Similarly, Stockholm Principle 22, which calls upon states to cooperate for further development of international law of liability and compensation, is reiterated with two minor additions: (1) the language calls for states to proceed “in an expeditious and more determined manner” for such development; and (2) states are also called upon to develop similar national laws.¹²⁰ (See § 2.1.14.) Finally, the Declaration calls for states and individuals to develop further “international law in the field of sustainable development.”¹²¹ The significance of this call is its subject matter, that is, not simply the development of international law of environment but that of sustainable development. However, given the unspectacular results achieved in the development of international environmental law on liability and compensation since the Stockholm Conference, one cannot be too optimistic as to the effect it will have on the international community.

Principle 26 obligates states to resolve their environmental disputes “peacefully and by appropriate means in accordance with the Charter of the United Nations.” This broad statement is a reiteration of UN member states' obligations under the UN Charter itself,¹²² and contains no specific methods of dispute settlement, which was a concession to developing nations.¹²³

The Declaration enumerates the following specific state obligations, which are illustrative of evolving soft law on the environment:

1. Principle 15 calls for wide application of the “precautionary approach,” defined as follows: where there is a threat of “serious or irreversible damage, lack of full certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (See § 2.2.4.) This very controversial principle would resolve the problem of scientific uncertainty essentially by switching the burden of proof. Under it, questionable risks, substances, or activities should be prevented until proved safe by their development proponents—rather than permitted until proved harmful by their environmental opponents.
2. Principle 16 adopts the polluter-pays principle, which was first introduced by the European Community,¹²⁴ underscoring the importance of applying free market

¹¹⁹ Rio Declaration, *supra* note 81, Principle 2.

¹²⁰ *Id.* Principle 13.

¹²¹ *Id.* Principle 27.

¹²² Article 2(4) of the UN Charter reads: “All members shall refrain in their inter-national relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

¹²³ Kovar, *supra* note 81, at 139.

¹²⁴ See generally S. E. Gaines, *The Polluter-Pays Principle: From Economic Equity to Environmental Ethos*, 26 TEXAS INT'L L.J. 463 (1991).

principles to address environmental problems. The United States and many other industrialized countries made clear early in the negotiations that reliance on market mechanisms was of major importance for the Declaration. This was considered particularly important given the information that has emerged about the terrible environmental consequences of former Soviet bloc central economic planning.¹²⁵

3. Principle 17 follows the model of the US National Environmental Policy Act,¹²⁶ calling upon nations to undertake environmental impact assessment “as a national instrument . . . for proposed activities that are likely to have a significant adverse impact on the environment [that] are subject to a decision of a competent national authority.” This practice quickly took hold in the international arena.¹²⁷ (See §§ 2.2.5 and 2.2.6.)
4. Principles 18 and 19 adopt the widely accepted notification and consultation principles. (See § 2.2.2.) Principle 18 reads: “States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.” And Principle 19 reads: “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.”

4.3.2.2 Appraisal

As a major statement on sustainable development, both in defining and clarifying the concept, the Rio Declaration reflects a profound change in thinking since the Stockholm Conference. No longer was the focus on the environment alone, but on the environment-development linkage and integration,¹²⁸ with priority given to development, as was sought by developing states. Because of the focus on development, the Declaration is a human-centered document that gives special attention to the needs and interests of developing countries. However, it avoided the confrontational North-South tone that marked the PrepComm meetings, especially the final New York meeting.¹²⁹

Perhaps the Declaration can be criticized for not concentrating enough on conservation issues.¹³⁰ However, the Declaration does further refine concepts that pertain to environmental management. Thus, it did surpass the Stockholm Declaration in its inclusion, for example, of the environmental impact assessment, the precautionary approach, and the polluter-pays principle. Yet by no means did it constitute a bold and visionary step toward the development of international environmental law.

¹²⁵ Kovar, *supra* note 81, at 135.

¹²⁶ National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370a.

¹²⁷ See, e.g., Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991 (a UN ECE Convention), 30 I.L.M. 800 (1991).

¹²⁸ See Strong, *supra* note 74, at 24–25.

¹²⁹ See generally Kovar, *supra* note 81, at 121–22.

¹³⁰ See Panjabi, *supra* note 98, at 251–52.

As a UN Declaration, the measure of the success of the Rio Declaration in the creation of international environmental law will be determined by how the principles are implemented by states and become reflected in future treaties and state practice. For it is only consistent state practice over a period of time, combined with *opinio juris*, that gives rise to rules of customary international law.¹³¹

4.3.3 Agenda 21

Agenda 21 is a unanimously adopted, minutely detailed, nearly 500-page “action plan” for managing the environment in the 21st century. It lays out numerous policies, plans, programs, processes, and other guidance for IGOs and national governments to follow in order to actually implement the international legal documents produced at Rio.

Agenda 21 gives in-depth meaning to the concept of “sustainable development” in its four sections and 40 chapters. Section 1 (Chapters 2–8) covers “Social and Economic Dimensions.” It includes recommended actions on sustainable development, cooperation in developing countries, poverty, consumption patterns, demographics, human health, human settlements, and integration of environment and development in decision-making.¹³² Section 2 (Chapters 9–22), “Conservation and Management of Resources for Development,” includes chapters on the protection of the atmosphere, land resources, combating deforestation, combating desertification and drought, mountain development, agriculture development, biological diversity, management of biotechnology, protection of the oceans, protection of fresh water resources, and management of toxic chemicals, hazardous wastes, solid wastes and radioactive wastes.¹³³ Section 3 (Chapters 23–32), “Strengthening the Role of Major Groups,” includes ways to increase the participation of major groups in sustainable development efforts, including women, youth, indigenous peoples and their communities, nongovernmental organizations, local authorities, trade unions, business and industry, the scientific and technological community, and farmers.¹³⁴ Section 4 (Chapters 33–40), “Means of Implementation,” comprises chapters on financial resources and mechanisms, technology transfer, cooperation and capacity-building, science, education, public awareness and training, international institutional arrangements, international legal instruments and mechanisms, and information for decision-making.¹³⁵

This action plan makes recommendations for over 2,500 actions in almost 150 program areas, without providing any explicit priority, although implicitly a high priority is placed on policies that build on the links between poverty reduction, economic efficiency, and sound environmental management. It establishes the environmental work program for the period beyond 1992 and into the 21st century.

¹³¹ See *The North Sea Continental Shelf Cases*, 1969 I.C.J. 3. For a discussion, see W. Friedmann, *The North Sea Continental Shelf Cases*, 64 AM. J. INT'L L. 229 (1970).

¹³² UNCED Rep. U.N. Doc. A/Conf. 151/26 at 14–110.

¹³³ *Id.* at 111–372.

¹³⁴ *Id.* at 373–411.

¹³⁵ *Id.* at 412–79.

In the chapter that specifically addresses international legal instruments and mechanisms,¹³⁶ four priority areas are identified. The first calls for review and assessment of previous performance and priorities for future lawmaking on sustainable development. Specifically mentioned are an examination of the feasibility of elaborating general rights and obligations of states regarding sustainable development, attention to differential obligations or gradual application, and designation of legal experts in order to carry out this task pursuant to earlier UNEP practice. Large-scale destruction of the environment in times of armed conflict and the possibility of drafting a nuclear safety convention in the framework of the International Atomic Energy Agency are referred to in particular. The second area concerns implementation mechanisms, calling for the establishment of efficient and practical reporting systems on the implementation of international legal instruments and appropriate ways to further develop these mechanisms. The third area addresses effective participation in international lawmaking, especially for developing countries. This section calls for scientific/technical expertise to ensure access to the necessary information and assistance in building up expertise in international law, particularly in relation to sustainable development. The fourth area calls for avoidance and settlement of disputes and arranging effective dispute resolution techniques.

The effectiveness with which Agenda 21 is actually funded and implemented will determine whether this ambitious document is successful.

4.3.4 The Commission on Sustainable Development

Following Rio, the UN General Assembly established a high-level Commission on Sustainable Development (CSD) to assist in the implementation of the recommendations and decisions of the Earth Summit.¹³⁷ With its headquarters in New York, it is composed of representatives of 53 states elected for three-year terms on a rotating basis and with representation on a geographical basis. Created to guide UN member nations toward sustainable development and environmental action, it acts as a central forum to review progress made in the implementation of Agenda 21 and to “advance global dialogue and foster partnerships for sustainable development.”¹³⁸

Its role is threefold:

- to review progress in the implementation of recommendations and commitments arising out of UNCED, *i.e.*, Agenda 21, the Rio Declaration, and the Statement of Principles on Forests;
- to elaborate policy guidance and options for activities in pursuance of the goals of Agenda 21; and

¹³⁶ *Id.* Chapter 39, at 469–72.

¹³⁷ See *General Assembly Approves Establishment of Commission on Sustainable Development*, 16 Intl Env't Rep. (BNA), Curr. Rep. 6 (Jan. 13, 1993).

¹³⁸ Programme for the Further Implementation of Agenda 21, U.N. Doc. A/RES/S-19/2, Annex, ¶ 16 (Sept. 19, 1997) [hereinafter Implementation Programme].

- to promote dialogue and build partnerships among governments, the international community and groups who have a significant role to play in bringing about sustainable development—including indigenous peoples, women, youth, nongovernmental organizations, scientists, labor, farmers, industry and business, and local authorities.¹³⁹

Thus, the Commission’s primary task is to facilitate the efforts being undertaken around the world to ensure that Agenda 21 is implemented and to review progress to that end. The CSD’s work will be studied after an appraisal of UNCED in the next section.

4.3.5 Appraisal

The Rio Conference was a compromise between the developed and developing countries, between ecology and economics. As for the issue that caused the major tension—the financing of environmental and development programs in the developing world—the disappointment of the developing countries was evident in the words of a senior Colombian diplomat: “[W]e are leaving Rio with the same resources we had when we arrived.”¹⁴⁰ This comment was a response to a compromise on the date by which industrialized countries should reach the target for providing 0.7 percent of their gross domestic product as aid to developing countries. The resultant text called on the wealthier nations to do so “as soon as possible,” although the agreement also said that “some countries agree or have agreed to reach the target by the year 2000.”¹⁴¹ A senior Malaysian diplomat also reiterated developing countries’ disappointment with the results of UNCED, saying, “[T]he commitments made by the developed countries’ leaders signaled a lack of political commitment to sustainable development,” adding that “[w]ith the lack of hard financial commitments it will be difficult to fund Agenda 21.”¹⁴² As feared by these delegates, the target was not reached by the time of the Johannesburg Summit on Sustainable Development in 2002.

Despite these weaknesses, UNCED definitely enhanced awareness of environment and development issues and the inextricable link between them. It also focused the world’s attention on the goal of achieving sustainable development. Equally important, the two conventions signed at Rio and the Rio Declaration, Agenda 21, and the Forestry Principles, constitute important steps in the development of international environmental law. Subsequent to the Rio Conference, the UN General Assembly also adopted a resolution establishing an intergovernmental negotiating committee modeled after the INC with the object of conducting negotiations on climate change and elaborating on a new international convention to combat desertification.¹⁴³

¹³⁹ See United Nations Sustainable Development, *Mandate of the Commission on Sustainable Development*, Mar. 26, 2001, <http://www.un.org/esa/sustdev/csdback.htm>.

¹⁴⁰ *Earth Summit: Compromise Reached in Financing; Developing Nations Dismayed with Accord*, 15 Intl Env’t Rep. (BNA), Curr. Rep. 395 (June 17, 1991).

¹⁴¹ *Id.*

¹⁴² *Id.* at 396.

¹⁴³ See 30 UN Chronicle at 80, 81 (March 1993).

4.4 THE UNEVEN ROAD FROM RIO TO RIO (1992–2012)

Attempting to build on the success of the 1992 Rio Conference, the UN has convened numerous meetings to review and stimulate progress in environment and sustainable development, with mixed success. The key meetings include the 1997 UNGA Special Session five years after Rio (dubbed “Rio+5”), the 2002 World Summit on Sustainable Development in Johannesburg, South Africa (“Rio+10”), and the scheduled 2012 UN Conference on Sustainable Development, symbolically to be held again in Rio de Janeiro (“Rio+20”). A discussion of these efforts and the changing work of the CSD and UNEP follows.

4.4.1 The CSD and “Rio+5”

The UN Commission on Sustainable Development (CSD), envisioned in Agenda 21, was promptly established by UNGA in December 1992 as a program of action to ensure effective follow-up of the Rio Summit accomplishments, enhance international cooperation, rationalize intergovernmental decision-making capacity, and examine and advise on progress in Agenda 21 implementation at the local, national, and international levels.¹⁴⁴ It is a body of the UN Economic and Social Council (ECOSOC), with 53 rotating country-members, that meets annually in New York City. The Division for Sustainable Development in the UN Department of Economic and Social Affairs (DESA) acts as its Secretariat. The CSD’s first five annual sessions (1993-1997) focused on cross-sectoral issues including finance, technology transfer, trade and environment, and consumption and production.¹⁴⁵

In June 1997, the UN convened a “Special Session of the UN General Assembly to Review Implementation of Agenda 21” (UNGASS) and what progress had been achieved in the five years since the Rio Summit. This “Rio+5” session observed that considerable work had been done by the CSD, UNEP, and others to promote sustainable development. However, while noting that some progress had been made, delegates concluded that much more remained to be done on the fundamental means of implementation set out in Agenda 21, particularly in the practical areas of finance, technology transfer, technical assistance, and capacity building.¹⁴⁶ The Special Session specifically targeted several areas requiring urgent action, including integration of economic, social, and environmental objectives; action on specific sectors and issues; and enhancing means of implementation.¹⁴⁷ Particularly important issues addressed under the first heading were the objectives of eradicating poverty,¹⁴⁸ changing consumption and production patterns,¹⁴⁹

¹⁴⁴ UN Division for Sustainable Development (UNSD), *About the UN Commission on Sustainable Development (CSD)* (2009) http://www.un.org/esa/dsd/csd/csd_aboutcsd.shtml; International Institute for Sustainable Development (IISD), *A Brief Introduction to the UN Commission on Sustainable Development* (2010), <http://www.iisd.ca/process/sustdevt-csdintro.htm>.

¹⁴⁵ IISD, *supra* note 144, contains a summary of the CSD’s meetings and output from 1993-2009.

¹⁴⁶ Programme for Further Implementation of Agenda 21, U.N. GAOR, 19th Special Sess. (June 23–28, 1997), Annex U.N. Doc. A/S: 19/29, ¶17 (1997), <http://www.un.org/documents/ga/res/spec/aress19-2.htm>.

¹⁴⁷ *Id.* ¶¶ 23-115.

¹⁴⁸ *Id.* ¶ 27.

making trade and environment mutually supportive,¹⁵⁰ promotion of decline in population growth rates,¹⁵¹ health for all,¹⁵² and sustainable human settlements.¹⁵³ The sectors and issues especially identified were fresh water,¹⁵⁴ oceans and seas,¹⁵⁵ forests,¹⁵⁶ energy,¹⁵⁷ transport,¹⁵⁸ atmosphere,¹⁵⁹ toxic chemicals,¹⁶⁰ hazardous and radioactive wastes,¹⁶¹ land and sustainable agriculture,¹⁶² desertification and drought,¹⁶³ biodiversity,¹⁶⁴ sustainable tourism,¹⁶⁵ small island developing states (SIDS),¹⁶⁶ and natural disasters.¹⁶⁷ Among the means of implementation singled out were financial resources and mechanisms,¹⁶⁸ transfer of environmentally sound technologies,¹⁶⁹ capacity-building,¹⁷⁰ science,¹⁷¹ education and awareness,¹⁷² and information and tools for measuring progress.¹⁷³

The Rio+5 Special Session set out a program of work for the CSD for the period 1998-2002 with the overriding issues being poverty and consumption and production patterns.¹⁷⁴ Initially, the CSD focused on energy for sustainable development, protection of the atmosphere, transport, information for decision-making and participation, and international cooperation for an enabling environment.¹⁷⁵ In addition, the CSD acted as the preparatory committee for the 2002 Johannesburg World Summit on Sustainable Development and hence was responsible for the plan of implementation for the Summit. (See § 4.4.3.) That “Rio+10” Summit caused the CSD to adopt a new approach - a multi-year work program for 2004-2017, consisting of two-year action-oriented “implementation

¹⁴⁹ *Id.* ¶ 28.

¹⁵⁰ *Id.* ¶ 29.

¹⁵¹ *Id.* ¶ 30.

¹⁵² *Id.* ¶ 31.

¹⁵³ *Id.* ¶ 32.

¹⁵⁴ *Id.* ¶¶ 34-35.

¹⁵⁵ *Id.* ¶ 36.

¹⁵⁶ *Id.* ¶¶ 37-41.

¹⁵⁷ *Id.* ¶¶ 42-46.

¹⁵⁸ *Id.* ¶ 47.

¹⁵⁹ *Id.* ¶¶ 48-56.

¹⁶⁰ *Id.* ¶ 57.

¹⁶¹ *Id.* ¶¶ 58-61.

¹⁶² *Id.* ¶¶ 62-63.

¹⁶³ *Id.* ¶¶ 64-65.

¹⁶⁴ *Id.* ¶ 66.

¹⁶⁵ *Id.* ¶¶ 67-70.

¹⁶⁶ *Id.* ¶¶ 71-72.

¹⁶⁷ *Id.* ¶¶ 73-75.

¹⁶⁸ *Id.* ¶¶ 76-87.

¹⁶⁹ *Id.* ¶¶ 88-97.

¹⁷⁰ *Id.* ¶¶ 98-100.

¹⁷¹ *Id.* ¶¶ 101-104.

¹⁷² *Id.* ¶¶ 105-110.

¹⁷³ *Id.* ¶¶ 111-115.

¹⁷⁴ *Id.* Appendix.

¹⁷⁵ Commission on Sustainable Development—Report on the Ninth Session (May 5, 2000 and April 16–27, 2001), ESC Off. Rec., 2001, Supp. No. 9, U.N. Doc. E/2001/29, E/CN.17/2001/19, at 1–31 (2001), <http://www.un.org/esa/sustdev/csd/ecn172001-19e.htm>.

cycles” with a “review session” the first year and a “policy session” the second year.¹⁷⁶ Each two-year cycle is devoted to a thematic cluster of issues, with the first year spent reviewing progress made in implementing sustainable development and identifying obstacles and the second year, planning measures to speed up implementation.¹⁷⁷

The CSD has received increasing criticism for its lack of effectiveness.¹⁷⁸ “[T]here has been growing concern [whether] the CSD has succeeded in fulfilling its mandate and further advanced the sustainable development agenda. Some observers have even argued that the CSD is a ‘talk shop’ and a waste of time and money.”¹⁷⁹ An independent 2005 study gave the CSD a “low score” on elaborating policy guidance and options for future initiatives and only a “medium score” on reviewing and monitoring progress on the implementation of Agenda 21, concluding that member states’ positions and interests have a major impact on the low degree of accomplishment.¹⁸⁰ The Executive Director of UNEP, summarizing a 2008 report, stated that negative environmental “change was occurring at an unprecedented rate and . . . humanity had yet to turn the corner to sustainable development; all indicators were pointing to a worsening situation affecting both developed and developing countries...[and] the threshold of sustained action was yet to be crossed.”¹⁸¹

4.4.2 UNEP Reforms for the New Century

During the 1990s, UNEP pursued its mandate as the principal UN body in the environmental field. Toward the end of the decade and into the beginning of the new millennium, however, it underwent a number of evolutionary changes leading to greater focus and efficiency. These changes were spurred by a lack of adequate resources, questions about UNEP’s role following the establishment of the CSD, and concerns about UNEP’s management and institutional structure. Responding to this, the UNEP Governing Council’s 1997 “Nairobi Declaration”¹⁸² revised UNEP’s mandate by identifying the following tasks, among others:

- assessing environmental trends, providing policy advice and early warnings on environmental threats, and catalyzing and promoting international cooperation and action based on the available scientific and technical capabilities;

¹⁷⁶ IISD, *supra* note 144.

¹⁷⁷ UNDSO, *supra* note 144 (showing the thematic issues for each two-year cycle from 2004-2017).

¹⁷⁸ Stine Madland Kaasa, *The Commission on Sustainable Development: A Study of Institutional Design, Distribution of Capabilities and Entrepreneurial Leadership* (Fridtjof Nansen Institute, May 2005), <http://www.fni.no/doc&pdf/FNI-R0505.pdf>.

¹⁷⁹ *Id.* at 1 (citations omitted).

¹⁸⁰ *Id.* at 56, abstract preceding page i.

¹⁸¹ UNEP, *Proceedings of the Governing Council/Global Ministerial Environment Forum at its Tenth Special Session*, UNEP/GCSS.X/10, ¶ 38 (10 Mar. 2008), http://www.unep.org/gc/gcss-x/proceedings_docs.asp.

¹⁸² UNEP Governing Council Decision 19/1, Annex of Feb. 7, 1997, endorsed by a special session of the UN General Assembly in June 1997, http://www.unep.org/resources/gov/prev_docs/97_GC19_proceedings.pdf.

- furthering the development of international environmental law to promote sustainable development, “including the development of coherent interlinkages among existing international environmental conventions;”
- advancing the implementation of agreed international norms and policies, monitoring and fostering compliance with environmental principles and international agreements, and stimulating cooperative action to respond to emerging environmental challenges;
- strengthening its role in the coordination of the UN system’s environmental activities; and providing policy and advisory services to governments and other institutions in key areas of institution-building.

Subsequently, the UNEP Governing Council adopted the 2000 Malmö Declaration,¹⁸³ identifying major environmental challenges of the 21st century and pointing out ways for the international community to address them. In that Declaration, the Council recognized the growing trends of environmental degradation that threaten sustainability, notwithstanding the international community’s commitment to halt them. It noted the discrepancy between commitment and action, and stressed “that the root causes of global environmental degradation are embedded in social and economic problems such as pervasive poverty, unsustainable production and consumption patterns, inequity in distribution of wealth, and the debt burden.”¹⁸⁴ The Council also emphasized that, to combat environmental degradation, full participation of all actors in society would be required; that actions should be timely taken to implement the political and legal commitment entered into by the international community; and that the outcomes of such actions should be aimed at reversing the present trends of environmental degradation.

UNEP responded to both the Nairobi and Malmö Declarations by developing a functional approach rather than continuing the fragmented, sectoral approaches it had traditionally followed. In his report on the organization’s proposed program of work for the Biennium 2002-2003, the UNEP Executive Director explained the agency’s new seven-part, “functional” focus:

The functions of environmental assessment and early warning, environmental policy development, policy implementation, regional cooperation and representation, building mutual support, coherence and greater effectiveness among conventions and communications and public information remain at the core of UNEP’s programme planning and delivery. Together with the subprogramme on technology, industry and economics, these functions form the seven-subprogramme structure of UNEP’s programme of work.¹⁸⁵

¹⁸³ UNEP Governing Council decision SS.VI/1, Annex (2000), http://www.unep.org/malmo/malmo_ministerial.htm.

¹⁸⁴ *Id.*

¹⁸⁵ UNEP Governing Council/Global Ministerial Environment Forum, Report of the Executive Director, Programme, The Environment Fund and Administrative and Other Budgetary Matters, UNEP/GC. 21/16,

Two of UNEP's areas of functional focus—environmental assessment and environmental conventions/international law—merit special attention. Regarding environmental assessment, UNEP is further enhancing and strengthening its capabilities and output. It has produced four impressive reports on the state of the global environment - Global Environmental Outlook 1 (GEO-1)(1997),¹⁸⁶ GEO-2000 (1999),¹⁸⁷ GEO-3 (2002),¹⁸⁸ and GEO-4 (2007)¹⁸⁹ - and is now working on GEO-5, scheduled for publication in 2012.¹⁹⁰ Thus far, the four GEOs have detailed dire assessments of the state of negative environmental change, the lack of progress toward sustainable development, and the need for prompt action. Other significant environmental assessment developments include the formal integration of the World Conservation Monitoring Center into UNEP,¹⁹¹ enhancement of UNEP's early warning capability through its Global Resource Information Database Centers,¹⁹² and the work of the reformed INFOTERRA, the global environmental information exchange network.¹⁹³

Regarding environmental conventions and international law, UNEP is developing linkages among the various environmental treaty governing bodies and promoting their effective implementation. Its work on regional seas conventions and action plans exemplify its capacity to unite the focus of agencies and conventions. Moreover, the UNEP is strengthening linkages between the regional seas conventions and the chemicals-related conventions (particularly the Basel Convention on Hazardous Wastes, the Rotterdam Convention on Prior Informed Consent, and the Persistent Organic Pollutants (POPs) Convention (see Chapter 11)) and the biologic conventions (the Convention on Biological Diversity, CITES, the Convention on Migratory Species of Wild Animals, and conventions and programs on marine mammals, fisheries, and coral reef ecosystems (see Chapter 7)).¹⁹⁴

UNEP's program for the development of environmental law for the first decade of the 21st century¹⁹⁵ has focused on three areas: effectiveness of environmental law,¹⁹⁶

Oct. 2, 2000, ¶ 68. See also G.A. Res. 56/6, U.N. Doc. A/56/6/ (Sect. 12) (Apr. 17, 2001), <http://www.un.org/documents/ga/docs/56/a566s12.pdf>

¹⁸⁶ UNEP, GEO-1: GLOBAL STATE OF THE ENVIRONMENT REPORT 1997, <http://www.unep.org/geo/geo1/ch/toc.htm>.

¹⁸⁷ UNEP, OVERVIEW GEO-2000: GLOBAL ENVIRONMENT OUTLOOK, <http://www.unep.org/geo/GEO2000.asp>.

¹⁸⁸ UNEP, GEO-3, <http://www.unep.org/geo/GEO3.asp>.

¹⁸⁹ UNEP, GEO-4: ENVIRONMENT FOR DEVELOPMENT, <http://www.unep.org/geo/GEO4.asp>.

¹⁹⁰ UNEP GEO-5 ENVIRONMENT FOR DEVELOPMENT, <http://www.unep.org/geo/Index.asp>.

¹⁹¹ UNEP WORLD CONSERVATION MONITORING CENTRE, <http://www.unep-wcmc.org/>.

¹⁹² UNEP DEWA/GRID-GENEVA, <http://www.grid.unep.ch/>.

¹⁹³ UNEP-INFOTERRA: THE GLOBAL ENVIRONMENTAL INFORMATION EXCHANGE NETWORK, <http://www.unep.org/infoterra/>.

¹⁹⁴ UNEP Governing Council/Global Ministerial Environment Forum, Report of the Third Global Meeting of Regional Seas Conventions and Action Plans, UNEP/GC. 21/Inf/14, Annex, Jan. 21, 2001, ¶¶ 79–136, <http://www.unep.org/GC/GC21/Documents/gc-21-INF-14/E-21-INF-14.PDF>.

¹⁹⁵ UNEP Governing Council/Global Ministerial Environment Forum, Report of the Meeting of Senior Government Officials Expert in Environmental Law to Prepare a Programme for the Development and Period Review of Environmental Law for the First Decade of the Twenty-First Century, UNEP/GC.21/INF/3,

conservation and management,¹⁹⁷ and relationship with other fields. Effectiveness comprises nine subheadings: implementation, compliance, and enforcement; capacity-building; prevention and mitigation of environmental damage; avoidance and settlement of international environment disputes; strengthening and development of international environmental law; harmonization and coordination; public participation and access to information; information technology; and innovative approaches to environmental law.¹⁹⁸ Conservation and management covers eight areas: freshwater resources; coastal and marine ecosystems; soils; forests; biological diversity; pollution prevention and control; production and consumption patterns; and environmental emergencies and natural disasters.¹⁹⁹ Relationship with other fields includes trade, security and the environment, and military activities and the environment.

UNEP is working to develop international environmental law by:

- encouraging international action to address gaps and weaknesses in existing international environmental law
- responding to new environmental challenges
- promoting and providing legal advisory services for the development or strengthening of regional and global multilateral environmental agreements
- assisting governments, particularly those of developing countries and countries with economies in transition, in the developing of legal instruments
- developing and promoting the development of soft law instruments, such as codes of conduct and guidelines²⁰⁰

The list of focus areas, functions, and tasks under UNEP's authority is staggering. As the body responsible for achieving these objectives, UNEP clearly requires a tremendous amount of support from the UN system and the political will and support of member states. As with the CSD, however, political support for UNEP waxes and wanes. Nevertheless, UNEP enjoys a generally positive image with the public in general and civil society and NGOs, and has not been the object of large-scale criticism as have other UN agencies.²⁰¹

4.4.3 The 2002 Johannesburg World Summit on Sustainable Development²⁰²

Dec. 15, 2000. The document contains the report of the meeting of those experts, UNEP/Env't Law/4/4, Oct. 31, 2000, <http://www.unep.org/gc/gc21/Documents/gc-21-INF-03/K0000295.E.PDF>.

¹⁹⁶ UNEP/Env'tLaw 4/4, *supra* note 195, Annex I, § I, ¶¶ 1–9. See also UNEP ENVIRONMENT FOR DEVELOPMENT, *Montevideo Program*, http://www.unep.org/law/About_prog/montevideo_prog.asp.

¹⁹⁷ UNEP/Env'tLaw 4/4, *supra* note 195, § II., ¶¶ 10–17.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ UNEP, *Development of International Environmental Law*, http://www.unep.org/Law/Programme_work/Devt_international_law/index.asp.

²⁰¹ Socio-Ecological Union, *Enhancing Civil Society Engagement in the Work of UNEP* § 2.1(Draft IV, Oct. 23, 2001).

²⁰² This section is based on George (Rock) Pring, *The 2002 Johannesburg World Summit on Sustainable Development: International Environmental Law Collides with Reality, Turning Jo'burg into "Joke'Burg,"* 32 DEN. J. OF INT'L L. & POL'Y 101 (2003).

“Betrayal,”²⁰³ “disaster,”²⁰⁴ “failure”²⁰⁵ were but some of the negative assessments of the 2002 United Nations World Summit on Sustainable Development (WSSD, “Earth Summit,” or “Rio+10”), held in Johannesburg, South Africa.²⁰⁶ Even its UN promoters damned it with faint praise—for example UNEP Executive Director Klaus Toepfer admitted that “Johannesburg is less visionary and more workmanlike [than Rio] . . .,”²⁰⁷ and UN Secretary-General Kofi Annan conceded, “We have to be careful not to expect conferences like this to produce miracles. . . . This is just a beginning. . . .”²⁰⁸

A more accurate assessment of the 2002 Earth Summit lies between these extremes of acid and apologetics. At Johannesburg, the expanding field of international environmental law (IEL) ran into the hard reality of the world’s existing economic order, and the economic order did not give much. What resulted was indeed a wasted opportunity for expanding IEL, but at least it avoided rolling back 30 years of progress, as at times it seemed it might. The US government and some other nations effectively worked against virtually all positive change at Johannesburg, and even sought rollbacks in existing law.²⁰⁹ The best view of the Summit is: it did not permanently give up serious ground; it exposed the naysayers to intense worldwide scrutiny; and the possibilities for progress in IEL remain open in the years to come.

World leaders started Rio+10 with good intentions. The UN General Assembly resolution authorizing the conference envisioned a “summit . . . to reinvigorate the global commitment to sustainable development” and to “focus on the identification of accomplishments and areas where further efforts are needed” to carry out the pledges

²⁰³ Friends of the Earth International, *Friends of the Earth International Challenges UN Governments “Don’t Let Big Business Rule the World” - Summit Wasted - the Time for Action is Now* (Nov. 13, 2002), <http://www.foei.org/en/media/archive/2002/1113.html?searchterm=United+Nations+World+Summit+on+Sustainable+Development+betrayal>.

²⁰⁴ Bill Rodgers, *Greenpeace Hangs Banner on Rio’s Christ Statue in Protest of Johannesburg Summit*, WorldNewsSite.com (Sept. 6, 2002) <http://worldnewssite.com/News/2002/September/2002-09-06-4-Greenpeace.html>.

²⁰⁵ Heinrich Böll Foundation, *What Are the Outcomes of the World Summit?* (2002) (comment of Worldwatch Institute representative) <http://www.worldsummit2002.org/guide/wssdoutcome.htm>.

²⁰⁶ A valuable range of views and research tools on the Earth Summit can still be found on the web, including <http://www.johannesburgsummit.org> (the official UN web site); <http://www.worldsummit2002.org> (the Heinrich Böll Foundation); <http://www.iisd.org/> (the International Institute for Sustainable Development), <http://www.earthsummit2002.org/> (Stakeholder Forum Earth Summit 2002), and other websites footnoted herein.

²⁰⁷ James Dao, *Protesters Interrupt Powell Speech as UN Talks End*, N.Y. TIMES, Sept. 5, 2002, <http://www.nytimes.com/2002/09/05/world/protesters-interrupt-powell-speech-as-un-talks-end.html>.

²⁰⁸ John Sullivan, *World Summit Adopts Development Plan, Political Declaration as Meeting Concludes*, 33 ENV’T REP. (BNA) 1909 (Sept. 6, 2002).

²⁰⁹ See, e.g., Rachel Swarns, *World Development Forum Begins with a Rebuke*, N.Y. TIMES, Aug. 27, 2002, <http://www.nytimes.com/2002/08/27/world/world-development-forum-begins-with-a-rebuke.html>; Rachel Swarns, *U.S. Summit Scapegoat: Nation Is Blamed for Opposing Deal, But It’s Not Alone*, N.Y. TIMES, Aug. 31, 2002; and web sites *supra* note 206.

made at the 1992 Rio Conference.²¹⁰ As 2002 loomed, “it was hardly a secret—or even a point in dispute—that progress in implementing sustainable development has been extremely disappointing since the 1992 Earth Summit, with poverty deepening and environmental degradation worsening.”²¹¹ In response, the UN specifically planned the forum to “reinvigorate” the process of implementing Agenda 21 and the Rio Declaration.²¹²

However, a funny thing happened on the way to that forum—en route, the UN’s vision was taken hostage by *both* the South and the North. The South reconceived Johannesburg in its own image. The South worked to make it a development rather than an environment summit, one that would focus on poverty alleviation and wealth redistribution for the betterment of the poorer nations.²¹³ Meanwhile, elements of the North, particularly the US and some other nations, sought to avoid the developmental focus by insisting the agenda produce no new multilateral goals, no new treaties, no mandatory agreements, no legal principles of substance, and no fixed targets, percentages, or timetables for accomplishing Agenda 21’s ten-year-old promises. The US excuse for this negative stance was to assert that it would take “concrete programs” not “deadlines and targets” to get results,²¹⁴ but its approach was widely viewed as complete obstructionism and provoked “a relentless storm of criticism.”²¹⁵ This US retreat from multilateralism, cooperation, and international law, while more obvious during President George W. Bush’s Administration,²¹⁶ was not an altogether new posture for the US. Of the 16 major global IEL treaties that entered into force from 1979-2002, the US had joined only half.²¹⁷ Even after Obama took office, critics still complain that the US has not acted quickly enough on the issue of climate change and other international issues.²¹⁸

²¹⁰ *Ten-Year Review of Progress Achieved in the Implementation of the Outcome of the UN Conference on Environment and Development*, G.A. Res. 55/199, at §§ 1, 3, U.N. Doc. A/55/582/Add. 1 (Dec. 20, 2000), http://www.un.org/esa/sustdev/sids/res_55_199.htm.

²¹¹ United Nations, *The Johannesburg Summit Test: What Will Change?*, http://www.johannesburgsummit.org/html/whats_new/feature_story41.html.

²¹² G.A. Res. 55/199, *supra* note 210, at § 1 and 13th Preamble.

²¹³ Heinrich Böll Foundation, *The Jo’burg Memo—Fairness in a Fragile World— Memorandum for the World Summit on Sustainable Development 6*, http://www.boell-afghanistan.org/downloads/Joburg_Memo_engl_.pdf.

²¹⁴ See Rachel L. Swarns, *U.S. Shows Off Aid Projects at U.N. Development Meeting*, N.Y. TIMES, Aug. 30, 2002, <http://www.nytimes.com/2002/08/30/world/us-shows-off-aid-projects-at-un-development-meeting.html>.

²¹⁵ *Id.*

²¹⁶ Examples include abandoning the treaties on global warming and ballistic missile defense; rejecting agreements on banning germ warfare, creating an international criminal court, curtailing strategic nuclear weapons, banning all nuclear tests, biological weapons, land mines, and small arms; and threatening withdrawal from others such as the UN’s landmark family planning agreement. See Bill Nichols, *Critics decry Bush stand on treaties*, USA TODAY, July 26, 2001, <http://www.usatoday.com/news/washington/july01/2001-07-27-bush-treaties-usat.htm>; Thom Shanker, *White House Says the U.S. Is Not a Loner, Just Choosy*, N.Y. TIMES, July 31, 2001, <http://www.nytimes.com/2001/07/31/world/white-house-says-the-us-is-not-a-loner-just-choosy.html>; James Dao, *U.S. May Abandon Support of U.N. Population Accord*, N.Y. TIMES, Nov. 2, 2002, <http://www.nytimes.com/2002/11/02/international/asia/02ABOR.html>.

²¹⁷ See J. W. Anderson, *U.S. Has No Role in U.N. Treaty Process; Senate Reluctant to Ratify*, RESOURCES 12 (Summer 2002) www.rf.org/RFF/Documents/RFF-Resources-148-treatyprocess.pdf. The US had not become a party to 1979 Bonn Convention on Conservation of Migratory Species, 1982 Convention on the Law of the Sea, 1989 Basel Convention on Transboundary Movements of Hazardous Waste and Their

The Preparatory Committee negotiations for Johannesburg focused on “whether or not the rich nations of the world would come up with the cash to pay for the implementation of the Rio agreements” and broke down without final resolution.²¹⁹ This left the sponsors and delegates searching for a face-saving solution, and one was found by making a virtue of necessity - given the US opposition to goals, targets, and timetables. In an Orwellian turn of doublespeak, the delegates began calling those progressive steps “Type 1 deliverables” (“Type I outcomes”) and denigrating them (since they were not going to happen). In their place, delegates began emphasizing “Type 2 deliverables” (“Type II outcomes”), defined as “action-oriented coalitions focused on deliverables.”²²⁰ Without admitting it, the conference was defaulting back to the former, failed system of uncoordinated “foreign aid” projects.²²¹ The UN sponsors themselves conceded this switch “marked a major departure from previous UN conferences . . . that could have a major effect on the way the international community approaches problem solving in the future.”²²² US Johannesburg delegate John Turner, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, attempted to justify the change: “I think goals are important, but they’re only lofty rhetoric without the commitment of resources.”²²³ However, critics condemned it as a ruse to divert attention from the reluctance of wealthy nations to reduce trade subsidies and commit new resources, pointing out that most of the money would come from already existing programs.²²⁴

One environmental leader at Johannesburg pinpointed the problems with this shift:

Some of the partnerships that were showcased in Johannesburg may not be so bad. Some are steps in the right direction, and involve good NGO’s doing quality work on the ground. . . . But many dangers exist with making partnerships the centerpiece of a once-every-ten-years Earth Summit. First

Disposal, 1992 Convention on Biological Diversity, 1997 Kyoto Protocol to the Climate Change Convention, 1997 Convention on Non-navigational Uses of International Watercourses, 1998 Rotterdam Convention on Prior Informed Consent for Hazardous Chemicals and Pesticides, or the 2001 Stockholm Convention on Persistent Organic Pollutants. It has become a party to the 1972 London Convention on Prevention of Marine Pollution, 1973/78 MARPOL Convention for Prevention of Pollution from Ships, 1973 Convention on International Trade in Endangered Species, 1979 Convention on Long-Range Transboundary Air Pollution, 1985 Vienna Convention for the Protection of the Ozone Layer, 1987 Montreal Protocol to the same, 1992 Framework Convention on Climate Change, and 1994 Convention to Combat Desertification. See *id.* at 15.

²¹⁸ See David Jenkins, *Measuring Obama’s Environmental Record, Republicans for Environmental Protection*, (2010) <http://repamerica.org/opinions/op-eds/135B.html>.

²¹⁹ GREENPEACE, *Rich Countries Refuse to Pay Their Environmental and Social Debt* (June 7, 2002) http://archive.greenpeace.org/earthsummit/news_june7b.html.

²²⁰ LINKAGES, *Background Information on Type II Outcomes*, <http://www.iisd.ca/wssd/partnerships.html>.

²²¹ Such “partnerships” have been sponsored or encouraged by the UN for nearly 20 years. See Eric J. Lyman, *State Department Proposes Partnerships to Address Environmental, Health Issues*, 33 *Env’t Rep. (BNA)* 1913 (Sept. 6, 2002).

²²² See United Nations, *The Johannesburg Summit Test*, *supra* note 211.

²²³ Swarns, *World Development Forum Begins with a Rebuke*, *supra* note 209.

²²⁴ See Swarns, *U.S. Shows Off*, *supra* note 214.

among them: in the absence of any accountability or guidelines for partnerships . . . they provide an opportunity for multinationals [business entities] to continue with business as usual and wrap their operations in the flag of the UN and sustainability to inoculate themselves against criticism. The bigger threat, though, is the way that partnerships take the focus away from governmental agreements at the WSSD, and distract media and public scrutiny from the abject failures in that area. When it comes to issues like climate change, it's clear that partnerships are incapable of making the necessary global corrections. Commitments and leadership from governments are the only solution.²²⁵

The US delegation at Johannesburg rejected progressive initiatives on virtually every issue, from renewable energy, safe drinking water, sanitation, trade, and foreign aid to women's reproductive health, agricultural subsidies, and human rights. However, it was not alone. On renewable energy, Saudi Arabia, Canada, Japan, and Australia joined the US in opposing deadlines for a 10 to 15 percent conversion from fossil fuels to solar, wind, and other renewables; the European Union joined it in opposing elimination of agricultural subsidies that make it next to impossible for poor countries to export to the US and EU; developing countries joined it in watering down a commitment to reduce the threat of dangerous chemicals; and Australia joined it in initially refusing to support a timeline for reducing the number of people who lack adequate sanitation.²²⁶

So, what accomplishments can Johannesburg claim? Of the customary "Type 1 deliverables" (policy), there were two, but neither one produced substantive change. First, delegates produced a pious "Political Declaration"²²⁷ (e.g., "We commit ourselves to build a humane, equitable and caring global society . . ."²²⁸), which avoided setting any standards or making any real commitments. Second, despite Agenda 21's existence and nonfulfillment, they drafted a new "Plan of Implementation"²²⁹ (only 54 pages, compared to the detailed Agenda 21, which is almost ten times that long). The good news is that Rio and progeny survived, with the statement that the delegates "strongly reaffirm our commitment to the Rio principles, the full implementation of Agenda 21 . . . the United Nations Millennium Declaration and . . . the outcomes of the major United Nations conferences and international agreements since 1992."²³⁰

The major "commitments"²³¹ in the Plan of Implementation included:

²²⁵ Steven Sanderson, *The Future of Conservation*, 81 FOREIGN AFFAIRS 162, 164, 171 (2002).

²²⁶ Swarns, *U.S. Summit Scapegoat*, *supra* note 209.

²²⁷ The Johannesburg Declaration on Sustainable Development (Sept. 4, 2002)
http://www.un.org/jsummit/html/documents/summit_docs/0409_l6rev2_pol_decl.pdf.

²²⁸ *Id.* ¶ 2.

²²⁹ World Summit on Sustainable Development Plan of Implementation (revised, Sept. 23, 2002)
http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm.

²³⁰ *Id.* ¶ 1.

²³¹ While there are many vague, contentless "commitments" in the Plan, this list contains the ones the UN thought serious enough to be mentioned in its 3-page *Highlights of Commitments and Implementation Initiatives*, initially posted on the official UN Johannesburg web site and revised on Sept. 12, 2002 (copy with

- Water and sanitation—to cut in half the proportion of the world’s people who are without access to basic sanitation²³² and safe drinking water by 2015;²³³
- Energy—to increase access to modern energy services,²³⁴ increase energy efficiency,²³⁵ and renewable energy use,²³⁶ phase out energy subsidies where appropriate,²³⁷ and support access to energy for at least 35 per-cent of the African population by 2022;²³⁸
- Health—to aim to achieve use and production of chemicals that lead to minimization of significant adverse effects on human health and environment by 2020,²³⁹ enhance cooperation to reduce air pollution,²⁴⁰ and improve developing countries’ access to environmentally sound alternatives to ozone-depleting chemicals by 2010.²⁴¹
- Agriculture—to call on the Global Environmental Facility (GEF) to consider inclusion of desertification as a new focal area for funding²⁴² and develop food security strategies for Africa by 2005;²⁴³
- Biodiversity—to significantly reduce biodiversity loss by 2010,²⁴⁴ reverse the current trend in natural resource degradation as soon as possible,²⁴⁵ restore fisheries to their maximum sustainable yields by 2015,²⁴⁶ establish representative marine protected areas by 2012,²⁴⁷ undertake initiatives to reduce land-based ocean pollution by 2004;²⁴⁸
- Crosscutting issues—to recognize that opening up access to markets is a key to development,²⁴⁹ support phase out of export subsidies,²⁵⁰ establish a ten-year program on sustainable consumption and production,²⁵¹ promote corporate

author), but then removed and replaced by a much more face-saving 7-page *Key Outcomes of the Summit in October*,

http://www.johannesburgsummit.org/html/documents/summit_docs/2009_keyoutcomes_commitments.doc.

See also John Sullivan, “Plan of Implementation” Seeks to Aid Poor, Spur Growth Without Harming Environment, 33 Env’t Rep. (BNA) 1909 (Sept. 6, 2002).

²³² WSSD Plan of Implementation, *supra* note 229, ¶ 7.

²³³ *Id.*

²³⁴ *Id.* ¶ 8.

²³⁵ *Id.* ¶ 19(d).

²³⁶ *Id.*

²³⁷ *Id.* ¶¶ 19(p), (q).

²³⁸ *Id.* ¶ 56(j)(i).

²³⁹ *Id.* ¶ 22.

²⁴⁰ *Id.* ¶ 37.

²⁴¹ *Id.* ¶ 37(d).

²⁴² *Id.* ¶ 39(f).

²⁴³ *Id.* ¶ 61.

²⁴⁴ *Id.* ¶ 42.

²⁴⁵ *Id.* ¶ 23.

²⁴⁶ *Id.* ¶ 30(a).

²⁴⁷ *Id.* ¶ 31(c).

²⁴⁸ *Id.* ¶ 52(e).

²⁴⁹ *Id.* ¶¶ 6(i), 41(e).

²⁵⁰ *Id.* ¶ 86(c).

²⁵¹ *Id.* ¶ 14.

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responsibility and accountability,²⁵² and improve natural disaster preparedness and response.²⁵³

This list is less impressive than it seems for three reasons. First, these are the same type of generalized promises that the same countries made ten years previously in Agenda 21 but never funded or implemented. Second, only two appear to be new promises, sanitation and marine reserves, the rest being existing commitments already made in previous post-Rio UN conferences.²⁵⁴ Lastly, a number of the old promises that are included are subtly and not so subtly diluted, delayed, or denied. Examples of the latter include making it only an “aim” to eliminate dangerous chemicals by 2020 (contrary to the thrust of current chemical treaties; see chapter 11),²⁵⁵ backing off to just “a significant reduction” in loss of biodiversity (undercutting the 1992 Convention on Biological Diversity),²⁵⁶ and promoting “clean” fossil fuels (despite the Climate Change treaty regime).²⁵⁷

As one disgusted environmental NGO put it: “We could go on, but the list of weasel words and lost promises is nearly endless. Do not believe Government spin doctors who claim success for the Summit. It is by any objective test a failure.”²⁵⁸ Another NGO evaluated the summit’s performance in ten different categories (maximum 10 points each) and gave it a failing score of only 22 points out of a possible 100.²⁵⁹

Is the environmentalists’ assessment overly harsh? Perhaps, but even the UN sponsors were tepid in their assessment:

[T]here were no silver bullet solutions to aid the fight against poverty and a continually deteriorating natural environment. . . . Johannesburg did not produce a particularly dramatic outcome—there were no agreements that will lead to new treaties. . . . However, important new targets were established [citing the four targets for sanitation access, chemical safety, fish stocks maintenance, and biodiversity loss reduction].²⁶⁰

Certainly, Johannesburg was a sad conclusion for the first international sustainable development conference of the 21st century. The forthcoming “Rio+20,” the 2012 UN Conference on Sustainable Development, symbolically to be held again in Rio de Janeiro will tell whether the outcome at Johannesburg represents the wave of the future of

²⁵² *Id.* ¶¶ 45.ter, 122(f).

²⁵³ *Id.* ¶¶ 35(g), 59, 99(e), 119.noviens.

²⁵⁴ Friends of the Earth, *Earth Summit: Betrayal*, (Sept. 3, 2002) http://www.foe.co.uk/resource/press_releases/0904wrap.html.

²⁵⁵ WSSD Plan of Implementation, *supra* note 229, ¶ 22.

²⁵⁶ *Id.* ¶ 42.

²⁵⁷ *Id.* ¶ 19(e).

²⁵⁸ Friends of the Earth, *supra* note 254.

²⁵⁹ Friends of the Earth, *Earth Summit End of Term Report*, http://www.foe.co.uk/resource/press_releases/0902scor.html.

²⁶⁰ *The Johannesburg Summit Test*, *supra* note 211.

international environmental law or only an embarrassing temporary dip in our progress toward ensuring a safe, healthy environment, society, and economy for the world in the years ahead.

4.4.4. “Rio+20” - The Return to Rio

As this book goes to press, the world is gearing up for another international environmental summit, scheduled for June 20-22, 2012, to mark the 20th anniversary of the 1992 Rio Conference. Symbolically, UNGA has called for this UN Conference on Sustainable Development (UNCSD or “Rio+20”) to be held again in Rio de Janeiro, Brazil.²⁶¹ The UNGA resolution calls for the conference to be held “at the highest possible level, including Heads of State and Government or other representatives.”²⁶² The “objective” of the conference is “to secure renewed political commitment for sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges.”²⁶³ Rio+20 is to have two “themes”: (1) “a green economy in the context of sustainable development and poverty eradication” and (2) the institutional framework for sustainable development.”²⁶⁴

Is there hope for a different and more productive outcome than at Rio+10 in Johannesburg? Possibly, since UNGA wants the conference to “result in a focused political document,”²⁶⁵ perhaps suggesting a return to the “Type 1” deliverables - actual substantive policy negotiated and agreed on between states - that was significantly lacking at Rio+10. If this “focused political document” really tackles the transition to a global “green economy” and promotes reform of the “institutional framework” responsible for sustainable development, Rio+20 could be a success.

This...could feasibly restructure everything ranging from the UN Environmental Program (UNEP) and the UN Development Program to the 500 different multilateral environmental treaties and agreements currently in place. ...Given the rising trends of global temperature, hunger, water scarcity, and biodiversity loss, the existing mishmash of eco-governance is clearly failing to deliver. RIO+20 is a precious chance for decision-makers to take stock of where the world went wrong in the last 20 years and plan intelligently for the next 20. Hopefully RIO+20 will deliver a jolt of political will to the global environmental agenda, as well as a smart plan to get the planet back on track.²⁶⁶

²⁶¹ G.A. Res. 64/236, U.N. GAOR, 64th Sess., U.N. Doc A/RES/64/236, ¶ 20 (Mar. 31, 2010) <http://www.uncsd2012.org/rio20>.

²⁶² *Id.*

²⁶³ *Id.* ¶ 20(a).

²⁶⁴ *Id.*

²⁶⁵ *Id.* ¶ 20(b).

²⁶⁶ Jim Thomas, *Will Rio+20 Squander Green Legacy of the Original Earth Summit?*, THE GUARDIAN, Mar. 31, 2011, <http://www.guardian.co.uk/environment/2011/mar/31/rio-20-earth-summit>.

However, criticism and pessimism were already mounting during the preparatory process.

Far from cooking up a plan to save the Earth, what may come out of the summit could instead be a deal to surrender the living world to a small cabal of bankers and engineers - one that will dump the promise of the first Rio summit along the way. Tensions are already rising between northern countries and southern countries over the poorly defined concept of a global “Green Economy” that will be the centerpiece of the summit.

What is a global green economy? ...[S]uspicion is running high that the proposed prescriptions for a “green economy” are more likely to deliver a greenwash economy or the same old, same old “greed” economy. ...The key words to focus on here are “markets” and “technology.” . . . [Some] would like to steer the RIO+20 summit away from addressing the root causes of our ecological crises. They would like the emphasis to be on a “forward-looking” effort to establish new financial arrangements based on so-called “ecosystem services” while liberating funds for iconic “green technologies.”²⁶⁷

It is true that UNEP has sponsored two study reports as background for Rio+20 that are highly economic in approach - “Green Economy Report” (GER)²⁶⁸ and “The Economics of Ecosystems and Biodiversity” (TEEB).²⁶⁹ The studies make an economic case that the environment can be precisely valued based on the “services” that it provides humans, such as nitrogen cycling, carbon sequestration, water purification, etc. The theory of this approach is that, once a value is set on the services provided by a rain forest, river, or mountain, then those values can be capitalized and traded to raise money for environmental protection and conservation. Also, new eco-friendly technologies can be developed to enhance the value of these services and generate income. The “most vocal” supporters of this monetizing or commoditizing approach to nature are “Fortune 500 companies and G8 diplomats.”²⁷⁰

Will this monetization approach to a “green economy” be used to replace and discard Rio’s paradigm of “sustainable development”? Will it divert attention from sustainable development’s focus on protecting the environment, society, and human rights, eliminating poverty, and creating intragenerational and intergenerational equity? Will it focus government and business leaders excessively on “technology cures” instead of precaution and prevention principles? Is it just a ruse to allow business-as-usual utilization of the environment?

²⁶⁷ *Id.*

²⁶⁸ UNEP, *Green Economy Report*,

<http://www.unep.org/greeneconomy/GreenEconomyReport/tabid/1375/Default.aspx>.

²⁶⁹ UNEP et al., *The Economics of Ecosystems and Biodiversity (TEEB)* <http://www.teebweb.org/>.

²⁷⁰ Thomas, *supra* note 266.

Only time - and Rio+20 - will tell.

4.5 International Environmental Law, Multilateral Environmental Agreements, and International Environmental Governance

We have already briefly noted that UNEP has been actively engaged in the development and promotion of environmental law, and the negotiation, adoption, and strengthening of global and regional multilateral environmental agreements (MEAs) since the early 1980s (see Chapter 4.2.4 and 4.4.4). Here we discuss these contributions further, and also study international environmental governance, one of the two themes selected for UNCSD and a topic of great interest and concern at present.

4.5.1 UNEP and International Environmental Law²⁷¹

When the United Nations General Assembly established UNEP in December 1972,²⁷² it delegated authority to its Executive Director to promote “international cooperation in the field of environment”²⁷³ and “perform such other functions as may be entrusted to him by the Governing Council.”²⁷⁴ Drawing on this authority, UNEP initiated its program for the development of international law. Almost 20 years later, Agenda 21,²⁷⁵ adopted at the Rio Summit, in its chapter 38 underscored the role of UNEP in the further development and implementation of international environmental law, as well as provision of technical, legal, and institutional advice to Governments in establishing and enhancing their national legal and institutional frameworks, and this role was subsequently affirmed as part of UNEP’s mandate by the UNEP Governing Council in its 1997 Nairobi Declaration²⁷⁶ and the 2000 Malmö Declaration.²⁷⁷

Guided by its Governing Council, UNEP has continued to perform these functions - contributing to the development of globally and regionally binding legal instruments as well as soft law instruments, such as guidelines, principles, standards, and codes of

Comment [TM2]: I think I would make this section name a little more specific...like International Environmental Law at the UNEP

²⁷¹ The UNEP has an excellent series of websites describing its work in the field of international environmental law. See *Programme of Work*, UNEP, http://www.unep.org/law/Programme_work/index.asp; *Development of International Environmental Law*, UNEP, www.unep.org/law/Programme_work/Devt_international_law/index.asp; *Division of Environmental Law and Conventions*, UNEP, <http://www.unep.org/delc/EnvironmentalLaw/tabid/54403/Default.aspx>; *Publications*, UNEP, http://www.unep.org/law/Publications_multimedia/index.asp.

²⁷² G.A. Res. 2997, 27 U.N. GAOR Supp. (No. 30) at 43, U.N. Doc. A/8730 (1972), pt. II, ¶ 2(e) <http://www.un-documents.net/a27r2997.htm>.

²⁷³ *Id.* pt. II, ¶ 2e.

²⁷⁴ *Id.* ¶ 2(j).

²⁷⁵ Agenda 21 is a plan of action for sustainable development adopted by UNCED on June 14, 1992. Its text appears in U.N. Doc. A/CONF.151-26 (3 vols. 1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

²⁷⁶ See Nairobi Declaration *supra* note 182. The “Nairobi Declaration” revised UNEP’s mandate, identifying as one of its specific tasks furthering the development of international environmental law to promote sustainable development.

²⁷⁷ See Malmö Declaration *supra* note 183. The Malmö Declaration identified major environmental challenges of the 21st Century as well as ways for the world community to address them.

conduct, and administering the secretariats of several MEAs in biodiversity cluster and chemicals and hazardous waste cluster. It has also undertaken several other related activities, such as (1) training judges, (2) promoting environmental law education, (3) promoting compliance with, implementation, and enforcement of environmental law, including MEAs, by states, (4) preparing studies on environmental law issues, and (5) advising states in the development of national environmental legislation.

UNEP's environmental law activities began in 1982 with a series of 10-year programs (Montevideo Programs)²⁷⁸ adopted by its Governing Council for the development and periodic review of environmental law, which have provided frameworks for the UNEP agenda. The latest such program is Montevideo IV,²⁷⁹ with a broad strategy for charting UNEP's activities in the field of environmental law for the decade commencing in 2010. The following discussion presents the range and scope of these activities.

Montevideo Program I

The Governing Council of UNEP adopted Montevideo Program I on May 31, 1982,²⁸⁰ for the decade of the 1980s. Three major subject areas of environmental law were selected for the development of agreements or guidelines and principles. Eight other subject areas with specific objectives were also identified. The three major areas were 1) marine pollution from land-based sources, 2) protection of the stratospheric ozone layer, and 3) toxic and hazardous wastes (see Chapter 4.2.4). UNEP was successful in accomplishing the goals set for all these subjects. The outcome for the first subject area was the adoption of the 1985 Montreal Guidelines for the Protection of the Marine Environment against Pollution from Land-Based Sources,²⁸¹ which subsequently formed the basis of several international and regional MEAs and plans of action for the development of national environmental laws.

On the second major subject area, UNEP succeeded initially in the negotiation and adoption of the 1985 Vienna Convention for the Protection of the Ozone Layer (see

²⁷⁸ UNEP, *Division of Environmental Law and Conventions, Montevideo Programme*, <http://www.unep.org/delc/MontevideoProgramme/tabid/54416/Default.aspx>.

²⁷⁹ Proceedings of the Governing Council/Global Ministerial Environment Forum at its twenty-fifth session, document UNEP/GC.25/17, Decision 25/11: Environmental Law (I) -- Fourth Programme for the Development and Periodic Review of Environmental Law, February 25, 2009; Report of the Meeting of Senior Government Officials Expert in Environmental Law to Prepare a Fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo IV), document UNEP/Env.Law/MTV4/IG/2/2, October 22, 2008; Governing Council of the United Nations Environment Programme, Report by the Executive Director: Fourth Programme for the Development and Periodic Review of Environmental Law, document UNEP/GC.25/11, October 28, 2008 -- Environmental Law, document UNEP/GC.25/17.

²⁸⁰ Programme for the Development and Periodic Review of Environmental Law, Decision 10/21 of the Governing Council of UNEP, May 31, 1982, *reprinted in* UNEP, Report of the Governing Council (session of a special character and tenth session), 37 U.N. GAOR Supp. (No. 25), Annex I at 108, U.N. Doc. A/37/25 (1982), http://www.unep.org/resources/gov/prev_docs/82_05_GC10_%20special_character_report_of_the_GC_10_1982.pdf.

²⁸¹ Adopted by UNEP Governing Council Decision 13/18, section 2, May 24, 1985.

Chapter 9.2.7) and subsequently the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (see Chapter 9.2.8). On the third subject, toxic and hazardous wastes, a UNEP working group developed the Cairo Guidelines during the years 1982-1987,²⁸² which formed the basis for the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (see Chapter 11.2). Also, on other topics considered by UNEP during the decade, such as biological diversity and climate change, framework conventions were adopted at the 1992 UN Rio Conference -- the Framework Convention on Climate Change (Chapter 9.3.4), and the Convention on Biological Diversity (Chapter 12.7.1).

Montevideo Program II

The UNEP Governing Council, by its Decision 17/25 of May 21, 1993, adopted the Program for the Development and Periodic Review of International Law for the 1990s (Montevideo Program II), which provided the strategy for UNEP activities in the field of international law. As in the preparation for Montevideo Program I, UNEP had organized meetings of senior government officials expert in environmental law during 1991-1992 to design the program, which was largely based upon the requirements contained in Agenda 21, as well as the relevant concepts and principles of the Rio Declaration. The Program consisted of 18 program areas and a few additional subjects listed for possible consideration during the decade.²⁸³ It is worth noting that in contrast to Montevideo I, the focus in Montevideo II was not on developing new principles and norms in a few selected areas but instead on 18 diverse program areas UNEP was to pursue within the general framework of established principles or agreements. In its decision the Governing Council requested the Executive Director to prepare and disseminate analytical reports, organize intergovernmental meetings, and contribute to capacity-building in the field of environmental law as part of the implementation of the program.

The areas selected spanned a wide range and scope. They were: (1) enhancing the capacity of states to participate effectively in the development and implementation of environmental law; (2) implementation of international legal instruments in the field of the environment; (3) adequacy of existing environmental instruments; (4) dispute avoidance and settlement; (5) legal and administrative mechanisms for the prevention and redress of pollution and other environmental damage; (6) environmental impact assessment; (7) environmental awareness, education, information, and public participation; (8) concepts or principles significant for the future of international environmental law; (9) protection of the stratospheric ozone layer; (10) transboundary air pollution control; (11) conservation management and sustainable development of soils and forests; (12) transport, handling, and disposal of hazardous wastes; (13) international trade in potentially harmful chemicals; (14) environmental protection and integrated management, development, and

²⁸² The Cairo Guidelines were approved by UNEP Governing Council Decision 14/30, June 17, 1987.

²⁸³ See the UNEP Governing Council Decision 17/25, Programme for the Development and Periodic Review of Environmental Law, May 25, 1993. The program is contained in Annex at 60, Programme for the Development and Periodic Review of Environmental Law: Programme Areas, Objectives, Strategies and Activities http://www.unep.org/download_file.multilingual.asp?FileID=13.

use of inland water resources; (15) marine pollution from land-based sources; (16) management of coastal areas; (17) protection of the marine environment and the law of the sea; and (18) international cooperation in environmental emergencies.

The additional subjects for possible consideration were: (1) environmental protection of areas beyond the limits of national jurisdiction; (2) use and management of biotechnology, including the question of intellectual and property rights with respect to genetic resources; (3) liability and compensation or restitution for environmental damage; (4) environment and trade; (5) examination of the environmental implications of international agreements on subjects which do not relate directly to the environment; (6) environmental problems of human settlements, including their growth; and (7) transfer of appropriate technology and technical cooperation.

Two years after the adoption of Montevideo Programme II, the UNEP Governing Council decided in May 1995 to request the Executive Director to (1) prepare a position paper for international environmental law aiming at sustainable development, which should explore compliance/implementation mechanisms, dispute avoidance/settlement procedures and new concepts and principles, with reference to existing international legal instruments, and guidelines, and (2) prepare a study on the need for and feasibility of new international legal instruments aiming at sustainable development.²⁸⁴

On February 7, 1997, the UNEP Governing Council considered the Executive Director's Report on the mid-term review of the Program, which was undertaken by environmental law experts UNEP had convened.²⁸⁵ It commended UNEP for the actions it had undertaken toward implementation of the Program.²⁸⁶ It took note of the position paper UNEP had prepared on international environmental law aiming at sustainable development²⁸⁷ as well as of the preliminary study UNEP had prepared on the need for and feasibility of new international environmental instruments aiming at sustainable development, and requested the Executive Director "to continue the work of identifying ways of better implementing existing and future international instruments aiming at sustainable and the need for and feasibility of such new instruments."²⁸⁸

Montevideo Program III

We have already briefly noted Montevideo Program III, the Programme for the Development and Periodic Review of Environmental Law For the First Decade of the Twenty-first Century, which was adopted by the UNEP Governing Council Decision 21/23 of February 9, 2001, and which provided the broad strategy for UNEP's activities for that period.²⁸⁹ (See Chapter 4.4.4). The environmental law experts who prepared the report

²⁸⁴ UNEP Governing Council Decision 18/9, May 26, 1995.

²⁸⁵ UNEP Governing Council Decision 19/20, February 7, 1997.

²⁸⁶ *Id.* op. para. 1.

²⁸⁷ *Id.* op. para. 2.

²⁸⁸ *Id.* op. para. 3.

²⁸⁹ UNEP Governing Council Decision 21/23 of February 9, 2001. See UNEP Governing Council/Global Ministerial Environment Forum, 21st Sess., Nairobi, Feb. 5–9, 2001, Provisional Agenda item 4(a), Note by

adopted as the Montevideo Program III “generally felt that emphasis should be laid more on implementing existing laws rather than creating new ones,” and noted that “public participation could play a key role in ensuring that laws were enforced.”²⁹⁰ The experts organized their report under three broad headings -- effectiveness of environmental law,²⁹¹ conservation and management,²⁹² and relationship with other fields -- comprising 20 program areas.²⁹³

The strategy proposed to strengthen and further develop international environmental law was through encouragement of international action “to address gaps and weaknesses in existing international environmental law and to respond to new environmental challenges.”²⁹⁴ Under effectiveness of environmental law, specific action includes reviewing the existing application of the 1972 Stockholm Principles and the 1992 Rio Principles, assisting governments in the development of bilateral, regional, and global legal instruments in the environmental field, and strengthening collaboration within the UN system, as well as with other intergovernmental bodies.²⁹⁵

Effectiveness is furthered, the experts found, by innovative approaches to environmental law. This calls for assessing state practice “in utilizing tools such as eco-labeling, certification, pollution fees, natural resources taxes and emissions trading” and assisting in the use of such tools; promoting the development and assessing the effectiveness of “voluntary codes of conduct and comparable initiatives that promote environmentally and socially responsible corporate and institutional behavior, to complement domestic law and international agreements;” and encouraging the development of law and policy “for reducing the debt burdens of developing countries in ways that benefit the environment.”²⁹⁶

To effectively prevent and mitigate environmental damage, the experts called for the promotion of state efforts “to develop and adopt minimum international standards at high levels of protection and best practice standards,” and support of states’ development of processes and procedures for victims and potential victims of environmentally harmful activities so as to “[e]nsure appropriate access to justice” and “[p]rovide appropriate redress, including the possibility of compensation, *inter alia*, through insurance and compensation funds.”²⁹⁷

the Secretariat: Policy Issues: State of the Environment—Report of the Meeting of Senior Government Officials Expert in Environmental Law to Prepare a Programme for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century, UNEP/GC.21/INF/3, 15 Dec. 2000 [hereinafter Secretariat’s Note], <http://www.unep.org/gc/gc21/Documents/gc-21-INF-03/K0000295.E.PDF>. The Secretariat’s Note contains the experts’ report (Nairobi, Oct. 23–27, 2000), UNEP/Env’T. Law/4/4, Oct. 31, 2000.

²⁹⁰ Secretariat’s Note, *supra* note 289, at 4.

²⁹¹ *Id.* at 5–11.

²⁹² *Id.* at 11–16.

²⁹³ *Id.* at 16–18.

²⁹⁴ *Id.* at 8.

²⁹⁵ *Id.* at 8–9.

²⁹⁶ *Id.* at 11.

²⁹⁷ *Id.* at 7.

The experts' proposed strategy to achieve effective implementation of, compliance with, and enforcement of environmental law, included "the widest possible participation in multilateral environmental agreements" and the suggested action included provision of assistance to developing countries in establishing and strengthening domestic law to improve enforcement of international environmental obligations and to develop national and regional environmental action plans or strategies, including establishment of model laws, promoting the use of financial mechanisms, technology transfer, and economic incentives and disincentives, including effective civil liability mechanisms.²⁹⁸ The proposed strategy for capacity-building was to provide: "appropriate technical assistance, education and training to those concerned, based on assessment of needs," and the suggested action included assisting "the development and strengthening of domestic environmental legislation, regulations, procedures and institutions," the production and dissemination of environmental law publications, and promotion of the teaching of domestic, international and comparative environmental law in universities and law schools.²⁹⁹

The first review of the Program was submitted by the Executive Director to the 23rd Session of the UNEP Governing Council held in Nairobi from February 21 to 25, 2005.³⁰⁰ The Executive Director reported that in each of the 20 program areas UNEP had carried out significant activities, while devoting special attention to two areas: 1) "substantive work in the development and application of principles, regulations, and procedures of international and national environmental law in specific thematic subject areas," and 2) "the adoption of appropriate mechanisms for improving the delivery of the objectives and outcomes established in relation to those thematic subject areas."³⁰¹ He especially noted four achievements as deserving special mention: 1) UNEP's legal advice and support leading to the development and entry into force of a number of global and regional environmental agreements, including the 2001 Stockholm Convention on Persistent Organic Pollutants, and two regional agreements -- the 2001 ASEAN Agreement on Transboundary Haze Pollution and the 2003 African Convention on the Conservation of Nature and Natural Resources; 2) UNEP's launching of the Global Judges Program, including the 2002 Global Judges Symposium; 3) UNEP's initiation and support of the development of the Guidelines for the Enforcement of and Compliance with MEAs; and 4) UNEP's launching of its environmental law website and the joint UNEP-Food and Agriculture Organization-World Conservation Union database ECOLEX on the internet.³⁰²

²⁹⁸ *Id.* at 5-6.

²⁹⁹ *Id.* at 6.

³⁰⁰ Report of the Executive Director, UNEP Governing Council, State of the Environment and Contribution of the United Nations Environment Program to Addressing Substantive Environmental Challenges, Addendum: Implementation of the Program for the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-First Century (Montevideo Program III), document UNEP/gc.23/3/Add.3, November 4, 2004.

³⁰¹ *Id.* at 3.

³⁰² *Id.* at 3-4.

The report on the final review of the Program was presented at the 25th Session of the UNEP Governing Council held in Nairobi from February 16 to 20, 2009.³⁰³ The report noted that the issue of implementation of the existing internationally agreed environmental goals and objectives as contained in Agenda 21, the Johannesburg Plan of Implementation, the UN Millennium Declaration, the 2005 World Summit Outcome, and MEAs had been receiving increased attention since 2001. The report further noted that UNEP was responsive in supporting governments, especially developing countries and countries with economies in transition to facilitate compliance with and enforcement of MEAs, and also in providing legal and technical assistance.³⁰⁴ UNEP had also initiated the preparation of a compilation of internationally agreed environmental goals and objectives.³⁰⁵

In addition, UNEP had continued its support for strengthening the regulatory and institutional capacity of developing countries and countries with economies in transition to develop and implement environmental law. UNEP's activities also included 1) preparing and widely disseminating publications on environmental law and strengthen the teaching of environmental law in universities, 2) raising awareness among judges through the Judges Program on environmental policies and law, and 3) conducting training programs on environmental law.³⁰⁶

The report noted UNEP achievements during the decade. These included the preparation of the Draft Guidelines for the Development of National Legislation on Liability and Compensation for Environmental Damage,³⁰⁷ which reflect the Polluter-Pays Principle as a central conceptual principle, and the Draft Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters,³⁰⁸ both of which were adopted by the Governing Council at its Eleventh Special Session in February 2010.³⁰⁹ The latter guidelines implemented Principle 10 of the 1992 Rio Declaration, which reads:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate

³⁰³ UNEP Governing Council, Note by the Executive Director, Fourth Program for the Development and Periodic Review of Environmental Law, Addendum: Report on the Review of the Third Program for the Development and Periodic Review of Environmental Law, document UNEP/gc.25/INF/15/Add.1, February 13, 2009, <http://www.unep.org/gc/gc25/info-docs.asp> [hereinafter Report on the Review of Montevideo Program III].

³⁰⁴ *Id.* at 3-4.

³⁰⁵ *Id.* at 4.

³⁰⁶ *Id.* at 4-6.

³⁰⁷ *Id.* at 7.

³⁰⁸ *Id.* at 8-10.

³⁰⁹ UNEP, Guidelines for the Development of Domestic Legislation on Liability, Response Action and Compensation for Damage Caused by Activities Dangerous to the Environment, Document UNEP/GCSS/XI/11, Annex I, Decision GCSS XI/5 B, Annex, February 24-26, 2010; UNEP, Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters, document UNEP/GCSS/XI/11, Annex I, Decision GCSS XI/5 A, Annex, February 24-26, 2010.

access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.³¹⁰

UNEP's support of the Strategic Approach to International Chemicals Management process, which "constitutes an overarching policy framework for the management of chemicals that support, among other things, strengthening the existing multilateral environmental agreements in field of chemicals and wastes" was another milestone.³¹¹ Also noteworthy were other achievements, including the Ad-hoc Joint Working Group on Enhancing Cooperation and Coordination among the Basel, Rotterdam and Stockholm Conventions established by the Conferences of the Parties to these conventions,³¹² and the UN General Assembly's adoption in December 2007 of the Non-Legally Binding Instrument on all Types of Forests.³¹³ The number of global and regional conventions and protocols in the field of environment adopted during the period 2001-2008, was indeed impressive -- 35 in all.³¹⁴

Regarding relationship with other fields, UNEP's activities included studies on linkages between the legal regimes in the field of human rights and the environment, as well as on legal issues relating to trade and the environment, security and the environment, and military activities and the environment.³¹⁵

Montevideo IV

The Governing Council, in its Decision 25/11, adopted the Fourth Program for the Development and Periodic Review of Environmental Law.³¹⁶ Montevideo IV comprises the following 27 program areas:

(a) Effectiveness of environmental law:

³¹⁰ UNCED, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.I (Vol. I), Annex I, at 3 (1992), *reprinted in* 31 I.L.M. 874 (1992).

³¹¹ Report on the Review of Montevideo Program III, *supra* note 303, at 8 ¶ 33.

³¹² *Id.* at 9 ¶ 38.

³¹³ *Id.* at 13 ¶ 61.

³¹⁴ *Id.* Annex at 17-18.

³¹⁵ *Id.* at 15-16.

³¹⁶ Proceedings of the Governing Council/Global Ministerial Environment Forum at its twenty-fifth session: UNEP/GC.25/17, <http://www.unep.org/gc/gc25/working-docs.asp>. For the text of the program, see UNEP Governing Council, Policy Issues: State of the Environment, Report by the Executive Director: Fourth Program for the Development and Periodic Review of Environmental Law, document UNEP/gc.25/11, October 28, 2008, <http://www.unep.org/gc/gc25/working-docs.asp> [hereinafter Montevideo Program IV]. See also UNEP, Report of the Meeting of Senior Government Officials Expert in Environmental Law to Prepare a Fourth Program for the Development and Periodic Review of Environmental Law (Montevideo Program IV), Nairobi, September 29-October 3, 2008, document UNEP/Env.Law/MTV4/IG/2/2, October 22, 2008, http://www.pnuma.org/gobernanza/documentos/Meeting_Report_Montevideo1V.pdf.

- (i) Implementation, compliance and enforcement;
 - (ii) Capacity-building;
 - (iii) Prevention, mitigation and compensation of environmental damage;
 - (iv) Avoidance and settlement of international disputes relating to the environment;
 - (v) Strengthening and development of international environmental law;
 - (vi) Harmonization, coordination and synergies;
 - (vii) Public participation and access to information;(viii) Information technology;
 - (ix) Other means to increase the effectiveness of environmental law;
 - (x) Governance;
- (b) Conservation, management and sustainable use of natural resources:
- (i) Fresh, coastal and marine water and ecosystems;
 - (ii) Aquatic living resources, including marine living resources;
 - (iii) Soils;
 - (iv) Forests;
 - (v) Biological diversity;
 - (vi) Sustainable production and consumption patterns;
- (c) Challenges for environmental law:
- (i) Climate change;
 - (ii) Poverty;
 - (iii) Access to drinking water and sanitation;
 - (iv) Ecosystem conservation and protection;
 - (v) Environmental emergencies and natural disasters;
 - (vi) Pollution prevention and control;
 - (vii) New technologies;
- (d) Relationships with other fields:
- (i) Human rights and the environment;
 - (ii) Trade and the environment;
 - (iii) Environment and security;
 - (iv) Environment and military activities.³¹⁷

³¹⁷ Montevideo Program IV, *supra* note 316, at 4-5.

Montevideo Program IV is a continuation of the work begun in Montevideo Program III. However, the selection of program areas shows some differences. Under “effectiveness of environmental law,” the program area “avoidance and settlement of international environmental disputes” in Montevideo Program III is changed in Montevideo Program IV to read “avoidance and settlement of international disputes relating to the environment,” which was apparently done to sharpen the focus of inquiry. “Harmonization and coordination” is recast as “harmonization, coordination and synergies,” and two program areas -- “other means to increase the effectiveness of environmental law” and “governance” -- replace “innovative approaches to environmental law.” The “conservation and management” area in Montevideo Program III is given a new heading, “conservation, management and sustainable use of natural resources,” in Montevideo Program IV, and the program area “fresh, coastal and marine water and ecosystems” in Montevideo Program IV combines two program areas -- “freshwater resources” and “coastal and marine ecosystems” under the prior “conservation and management area” of Montevideo Program III; it also adds another program area under “fresh, coastal and marine water and ecosystems” heading.

Montevideo Program IV adds another heading, “challenges for environmental law,” and new program areas are added under this heading: “climate change,” “poverty,” “access to drinking water and sanitation,” “ecosystem conservation and protection,” and “new technologies.” The Program also adds under this heading “pollution prevention and control” as well as “environmental emergencies and natural disasters,” which were formerly under the “conservation and management” heading in Montevideo Program III. “Production and consumption patterns” in Montevideo Program III is recast as “sustainable consumption and production patterns.” Under “relationship with other fields,” “human rights and the environment” is a new heading in Montevideo Program IV.

4.5.2 UNEP and Multilateral Environmental Agreements

International treaties and other instruments related to the environment have grown both in number and scope since the 1972 Stockholm Conference. UNEP has played a significant role in the development of multilateral environmental agreements (MEAs) and, as of the beginning of 2012 they number more than 1,100,³¹⁸ with over 600 registered with the United Nations – 61 related to atmosphere, 155 to biodiversity, 179 to chemicals and wastes, 46 to land, and 197 to water.³¹⁹

³¹⁸ University of Oregon IEA Database Project, <http://iea.uoregon.edu/page.php?file=home.htm&query=static>. The database lists international environmental treaties, conventions, and other agreements comprising over 1,100 multilaterals, 1,500 bilaterals, and 250 “other,” which includes environmental agreements between governments and international organizations or non-state actors, rather than two or more governments. *Id.*

³¹⁹ UNEP Governing Council, Discussion Paper by the Executive Director, Background Paper for the Ministerial Consultations – Global Environment Outlook and Emerging Issues: Setting Effective Global Environmental Goals, document UNEP/GCSS.XII/13, January 5, 2012, at 2 ¶ 3, http://www.unep.org/gc/gcss-xii/docs/working_docs.asp [hereinafter Discussion Paper by the Executive Director].

While earlier agreements were restricted in scope to specific subject areas — such as selected chemicals, certain species of marine wildlife, and quarantine procedures for plants and animals — and their focus was regional, new clusters of such agreements have emerged since 1972. To illustrate, as of 2003, about seventy percent of the agreements developed since 1972 were regional in scope (especially the treaties and protocols related to the regional seas) and bio-diversity-related. However, since 1992 there has been exponential growth in both regional and global agreements, as well as development in new environmental realms.³²⁰ While biodiversity continues to be an important subject area for the development of MEAs, new categories of MEAs have emerged, designed for the protection and safety of, among other things, the atmosphere, endangered species, chemicals and wastes, land, and oceans, seas, and waters.³²¹

Among UNEP's activities in the creation of new MEAs, in 2012 it has been engaged in preparation of a global legally-binding instrument on mercury.³²² The plan is to complete the negotiation process by the 27th regular session of the UNEP Governing Council in February 2013.³²³ UNEP has also undertaken activities designed to implement the Strategic Approach to International Chemicals Management Efforts,³²⁴ which include addressing risks posed to human health and the environment from exposure to lead and cadmium and reducing their human-caused uses in key products and industry

It should be noted that many of the latest developments have been in the form of Amendments or Protocols to existing MEAs. Of special note, however, remain the energy/atmosphere related conventions, such as the 1995 Vienna Convention for the Protection of the Ozone Layer and its Montreal Protocol and the 1992 UN Framework Convention on Climate Change and the Kyoto Protocol (see Chapter 9), and biodiversity related MEAs (see Chapter 12).

An especially noteworthy feature of the post-1972 agreements is their common institutional components — a secretariat, a bureau, advisory bodies, and financial and clearinghouse mechanisms. Their decision-making bodies are Conferences and Meetings of the Parties (COPs and MOPs), with subsidiary bodies on scientific, technical or financial issues, or focused on progress in implementation. It is promising that there has been some closer collaboration in the programs of work between and among the various

³²⁰ *Id.*

³²¹ UNEP Programme Work, http://www.unep.org/law/Programme_work/Devt_international_law/index.asp.

³²² UNEP Governing Council, Report of the Executive Director: Chemicals Management, Including Mercury, document UNEP/GC.26/5/Rev.1, January 25, 2011, <http://www.unep.org/gc/gc26/working-docs.asp>.

³²³ UNEP Governing Council, Report of the Executive Director: Chemicals Management, Including Mercury, Addendum – Outcome of the Second Session of the Intergovernmental Negotiating Committee to Prepare a Global Legally-Binding Instrument on Mercury, document UNEP/GC.26/5/Rev.1/Add.1, February 4, 2011, <http://www.unep.org/gc/gc26/working-docs.asp>.

³²⁴ UNEP Governing Council, Report of the Executive Director: Chemicals Management, Including Mercury, § III.B. Other United Nations Environment Programme Activities Relating to Lead and Cadmium, document UNEP/GC.26/5/Rev.1, January 25, 2011, <http://www.unep.org/gc/gc26/working-docs.asp>.

conventions, although, as will be discussed later, much more needs to be done to promote further collaboration and effectiveness. Also, NGOs have played a more active role as advisors or observers in the deliberations of many agreements.

The number of MEAs and their scope are indeed impressive. However, in December 2001 the then-UNEP Executive Director made several critical observations. He reported that “the agreements lack coherence with respect to a number of important new environmental policy issues such as the precautionary approach and scientific uncertainty, intergenerational and intra-generational equity, the life-cycle economy, common but differentiated responsibilities, and sustainable development.”³²⁵ He noted the lack of adequate coordination among existing MEAs as a major obstacle to implementation of these agreements and to effective international environmental governance.³²⁶ Several problem areas include too many MEAs; secretariats for conventions are located in different places — Montreal, Geneva and Bonn — as are the venues for conferences of parties and of their subsidiary bodies; and the large number of meetings causes difficulties in participation, much less implementation, especially for developing countries.³²⁷ Also, the burdensome national reports required by MEAs are frequently either submitted late or not at all.³²⁸ Lack of sufficient finances, uncertainty of appropriate technology transfer, and inadequate alternative dispute resolution mechanisms are among other major causes of ineffective implementation and monitoring.

In his 2001 report the Executive Director had suggested grouping a number of MEAs in order to promote efficiency and effectiveness, which could be done by clustering those that are related or overlapping at the sectoral level -- for example, by grouping together biodiversity-related conventions -- or at least clustering the meetings of conferences of parties and their subsidiary bodies. Or they could be clustered together at a functional level, for example, by grouping trade and finance related issues, or on a regional level.³²⁹ Also, their secretariats could work together and their financial arrangements could also be coordinated.³³⁰

Since 2001, UNEP has taken several initiatives in response to the criticism so as to remedy the situation.³³¹ In March 2012, while the UNEP Governing Council

³²⁵ UNEP Governing Council/Global Ministerial Environment Forum, Seventh Special Session, Cartagena, Colombia, Feb. 13–15, 2002, International Environmental Governance, Report of the Executive Director, UNEP/GCSS.VII/2, ¶ 51, Dec. 27, 2001 [hereinafter Executive Director’s 2001 Report].

³²⁶ See generally *id.*, ¶¶ 135-139. See also Konrad von Moltke, *On Clustering International Environmental Agreements* (International Institute for Sustainable Development), June 2001, http://www.iisd.org/pdf/trade_clustering_meas.pdf.

³²⁷ Executive Director’s 2001 Report, *supra* note 325, ¶ 136. In 2010, there were more meetings than days in the year. A world organisation for an equitable green economy, <http://www.scidev.net/en/science-and-innovation-policy/science-at-rio-20/opinions/a-world-organisation-for-an-equitable-green-economy.html>.

³²⁸ Executive Director’s 2001 Report, *supra* note 325, ¶ 137.

³²⁹ *Id.* at ¶ 136.

³³⁰ See generally Konrad von Moltke, *supra* note 326.

³³¹ To illustrate, at the eleventh special session of the UNEP Governing Council/Global Ministerial Environment Forum held in Bali from February 24-26, 2010, the ministers and heads of delegation of the Global Ministerial Environment Forum adopted the “Nusa Dua Declaration,” where they welcomed

acknowledged the progress made thus far and recognized “the importance of enhancing synergies, including at the national and regional levels, among the biodiversity-related conventions,” it encouraged “the conferences of the parties to these conventions to strengthen efforts further in that regard,”³³² it asked the Executive Director to undertake activities “to improve the effectiveness of and cooperation among multilateral environmental agreements,”³³³ and to “[explore] the opportunities for further synergies in the administrative functions of the multilateral environmental agreement secretariats administered by the United Nations Environment Programme and to provide advice on such opportunities to the governing bodies of those [MEAs].”³³⁴ The Governing Council also requested the Executive Director to “facilitate and support an inclusive, country-driven consultative process on the challenges to and options for further enhancing cooperation and coordination in the chemicals and wastes cluster in the long term.”³³⁵

In the President’s summary of the discussions by ministers and heads of delegation at the twelfth special session of the Governing Council/Global Ministerial Environment Forum of the United Nations Environment Program, he said that reform of the system may include “enhanced synergies within multilateral environment agreement clusters to increase their effectiveness and efficiency,”³³⁶ as such synergies “afford an opportunity to realize the more efficient of resources and to tackle environmental issues more effectively at the national and international levels and in delivering on the ground, among other things.”³³⁷

the activities undertaken by the United Nations Environment Programme and the secretariats of the multilateral environmental agreements, at the behest of the parties to those agreements, in particular the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and the Stockholm Convention on Persistent Organic Pollutants, to enhance cooperation and coordination between the three conventions and to support Governments in their efforts to implement, comply with and enforce the multilateral environmental agreements.

Decisions adopted by the Governing Council/Global Ministerial environment Forum at its eleventh special session, Bali, February 24-26, 2010, GCSS.xi/9: Nusa Dua Declaration, sec. C. international environmental governance and sustainable development, para. 10, document UNEP/GCSS.xi/11, annex I, http://www.uncsd2012.org/files/interagency/UNEP_GCSS_XI_REPORT240610.pdf.

They also welcomed “the outcome of the simultaneous extraordinary meetings of the conferences of the parties to the Basel, Rotterdam and Stockholm Conventions,” and appreciated “the consultative process on financing options for chemicals and wastes . . .” *Id.* para. 11.

³³² UNEP, Decisions adopted by the Governing Council / Global Ministerial Environment Forum at its twelfth special session, advance copy, Decision No. SS.XII/3: International Environmental Governance, op. para. 1.
³³³ *Id.* op. para. 2.

³³⁴ *Id.* op. para. 3.

³³⁵ *Id.* Decision No. SS.XII/5: Enhancing Cooperation and Coordination within the Chemicals and Wastes Cluster, op. para. 3, available at http://www.unep.org/gc/gcss-XII/docs/Decisions_summary_advance.pdf.

³³⁶ UNEP, President’s summary of the discussions by ministers and heads of delegation at the twelfth special session of the Governing Council/Global Ministerial Environment forum of the United Nations Environment Programme, (Advance Copy), at para. 41, March 8, 2012, http://www.unep.org/gc/gcss-xii/docs/Decisions_summary_advance.pdf [hereinafter President’s Summary].

³³⁷ *Id.* para. 42.

Multilateral environmental agreements require sustained funding. The Global Environment Facility, established in 1991 as a pilot program in the World Bank to promote environmentally sound and sustainable development, is a critical financial mechanism for several MEAs.³³⁸ The World Bank, the United Nations Development Program, and the United Nations Environment Program initially became the GEF's implementing agencies and now the GEF partnership includes seven more agencies. It has allocated \$9 billion, which is supplemented by over \$40 billion in co-financing for more than 2,600 projects in over 165 countries. In implementation of MEAs its focal areas are climate change, biodiversity, international waters, ozone-depleting substances, persistent organic pollutants, land degradation, and multi-focal, out of which it has had considerable impact in achieving progress toward achieving global environmental benefits.³³⁹ As of June 30, 2009, GEF funding for biodiversity focal area amounted to nearly \$ 2.79 billion, and for climate change \$ 2.74 billion.³⁴⁰ The GEF is underfunded and funding levels need to rise substantially in order to address the increasingly urgent problems.³⁴¹

4.5.3 UNEP and International Environmental Governance

As noted earlier, UNEP continues to provide environmental assessment, monitoring, and information for decision-makers and continues to serve as a global policy-making forum. UNEP's establishment of an annual Governing Council/Global Ministerial Environment Forum with universal participation at the ministerial level, which is aimed at promoting policy coherence on environmental issues, was a major development. Also, the UN General Assembly established the Environment Management Group to promote inter-agency cooperation within the UN system and to ensure closer cooperation and participation of multilateral environmental agreements with UN agencies.

Institutional developments have indeed been impressive since the 1972 Stockholm Conference.³⁴² Between 1972 and 1982, many new national environmental laws were adopted and over 100 countries established ministries or departments of the environment.³⁴³ By the year 2000, the Organization of African Unity (now the African Union) and over 50 governments throughout the world had recognized a healthy environment as a fundamental human right in their national constitutions or through special legislation.³⁴⁴

³³⁸ Global Environment Facility, <http://www.thegef.org/gef/>.

³³⁹ GEF, Evaluation Office, Progress Toward Impact -- 4th Overall Performance Study of the GEF, Executive Version, at 26-29, 2010, http://www.thegef.org/gef/sites/thegef.org/files/documents/OPS4-Executive%20Version_ENGLISH_1.pdf.

³⁴⁰ *Id.* at 10.

³⁴¹ This was recommendation no. 1 of the 4th Overall Performance Study of the GEF, released in March 2010, *id.* at 16.

³⁴² UNEP, GLOBAL ENVIRONMENTAL OUTLOOK, GEO 3, chapter 1, *Integrating Environment and Development 1972-2002*, at 4-5, <http://www.unep.org/geo/GEO3/english/pdfs/chapter1.pdf>.

³⁴³ *Id.* at 5.

³⁴⁴ *Id.* at 4.

For several years, however, there has been recognition that the prevailing environmental organizational structure does not allow for effective international environmental governance and there have been many suggestions for reform and for strengthening it. To illustrate, in 2001, the then-UNEP Executive Director noted several such suggestions, including: the mandates and functioning of the CSD, UNEP, and GEF need to be strengthened; the participation of environmental NGOs needs to be enhanced; the UNEP Governing Council/Global Ministerial Environment Forum and Environmental Management Group need to be utilized and their role enhanced for setting broad policy guidelines for environmental action on the international level; and improved coordination and synergies among the various environment-related organizations and between WTO and these organizations need to be developed.³⁴⁵

A major push for reform came following the September 14-16, 2005 World Summit of Heads of State and Government at the United Nations Headquarters in New York. In a resolution adopted by the United Nations General Assembly, entitled “2005 World Summit Outcome,” the Heads of State and Government supported the achievement of “stronger system-wide coherence within the United Nations system” by implementing, among other measures:

Environmental activities

Recognizing the need for more efficient environmental activities in the United Nations system, with enhanced coordination, improved policy advice and guidance, strengthened scientific knowledge, assessment and cooperation, better treaty compliance, while respecting the legal autonomy of the treaties, and better integration of environmental activities in the broader sustainable development framework at the operational level, including through capacity-building, we agree to explore the possibility of a more coherent institutional framework to address this need, including a more integrated structure, building on existing institutions and internationally agreed instruments, as well as the treaty bodies and the specialized agencies.³⁴⁶

Several gaps in the current system of international environmental governance have been identified, including the following:

- (a) Lack of an authoritative voice to guide environmental policy effectively at the global level;
- (b) Lack of coherence among global environmental policies and programs;
- (c) High degree of financial fragmentation;

³⁴⁵ See generally Executive Director’s 2001 Report, *supra* note 325, at ¶¶ 129–134.

³⁴⁶ U.N. General Assembly, Resolution adopted by the General Assembly, 60/1. 2005 World Summit Outcome, U.N. Doc. A/RES/60/1, October 24, 2005, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

- (d) Lack of coherence in the governance and administration of multilateral environmental agreements;
- (e) Lack of a central monitoring, review and accountability system for commitments made under multilateral environmental agreements;
- (f) Lack of sufficient, secure and predictable funding;
- (g) Implementation gap experienced at the country level.³⁴⁷

In response, informal consultations under the auspices of the UN General Assembly led to a recommendation to the Governing Council of UNEP to “take stock and debate the course of action . . . to find a political compromise . . . which allow[s] improving the current system.”³⁴⁸ Following consultations under the UNEP Governing Council and further discussions by a selected group of environmental ministers, six key objectives of the international environmental governance system and their underlying functions were presented at the Governing Council’s special session in February 2010:

- Creating a strong, credible and coherent science base
- Developing a global authoritative and responsive voice for environmental sustainability
- Achieving coherence within the United Nations system
- Securing sufficient, predictable and coherent funding
- Ensuring a responsive and cohesive approach to meeting country needs
- Facilitating the transition towards a global green economy³⁴⁹

Following further consultation and debate, the preparatory committee for the United Nations Conference on Sustainable Development (UNCSD) was presented with five options for the broader institutional reform of international environmental governance:

³⁴⁷ UNEP Governing Council, Discussion Paper Presented by the Executive Director: Background Paper for the Ministerial Consultations: International Environmental Governance in “The Future We Want,” document UNEP/GCSS.XII/13/Add.2, January 24, 2012, at 2, ¶ 2, <http://www.unep.org/gc/gcss-xii/docs/download.asp?ID=3553> [hereinafter January 2012 Background Paper].

³⁴⁸ *Id.* ¶ 4.

³⁴⁹ *Id.* at 3, ¶ 5. See also UNEP Governing Council, Report of the Executive Director: International Environmental Governance, document UNEP/GC.26/3, December 20, 2010, http://www.unep.org/gc/gc26/cow_details-docs.asp?DocID=UNEP/GC.26/3&CatID=10; UNEP Governing Council, Report of the Executive Director: International Environmental Governance, document UNEP/GCSS.xii/3, December 16, 2011, <http://www.unep.org/gc/gcss-xii/docs/download.asp?ID=3346> (identifying the incremental changes in the set of options for international environmental governance reform).

- (a) Enhancing UNEP;
- (b) Establishing a new umbrella organization for sustainable development;
- (c) Establishing a specialized agency such as a world environment organization;
- (d) Reforming the United Nations Economic and Social Council and the United Nations Commission on Sustainable Development;
- (e) Enhancing institutional reforms and streamlining existing structures.³⁵⁰

Further consultations with governments, civil society, and UN bodies led to the inclusion of several options in the January 10, 2010 Zero Draft of the proposed outcome document for the UNCSD (Rio+20), to be held in Rio de Janeiro from June 20-22, 2012. Among the suggested reforms regarding the Commission on Sustainable Development (CSD) and UNEP are: a proposal to strengthen the CSD or transform it into a sustainable development council,³⁵¹ and another proposal to strengthen the capacity of UNEP by establishing universal membership for its Governing Council and significantly increasing its financial base or to establish a United Nations specialized agency that would operate on an equal footing with other UN specialized agencies “with universal membership of its governing council, based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions.”³⁵²

Subsequently, at the special session of the Governing Council held in Nairobi from February 20-22, 2012, environment ministers discussed this topic and the president of the Governing Council summarized their discussions as follows:

The strengthening of the environmental component of the institutional framework for sustainable development found broad support among the ministers and other heads of delegation. Many expressed support for the establishment of a specialized agency for the environment. Others expressed support for strengthening UNEP but suggested that changing UNEP to a specialized agency could weaken it.³⁵³

The president further stated that there was general agreement at the meeting that the UNCSD must make a clear decision on both the institutional framework for sustainable development and on international environmental governance.³⁵⁴ He noted that current shortcomings need to be addressed in an overall reform of the system, which should include:

³⁵⁰ January 2012 Background Paper, *supra* note 347, ¶ 6.

³⁵¹ *Id.* ¶ 49.

³⁵² *Id.* ¶ 51.

³⁵³ *Id.* ¶ 37.

³⁵⁴ *Id.* ¶ 38.

an anchor organization with universal membership; improving the science-policy interface; providing guidance to and coordinating multilateral environmental agreements; enhanced synergies within multilateral environmental agreement clusters to increase their effectiveness and efficiency; and the development of a United Nations system-wide strategy for the environment that sets priorities, decides on the division of labour and assigns roles to relevant actors . . . , and links private investment and public policy. The establishment of a system of assessed contributions for the international environmental governance anchor institution would increase the total volume of available resources.³⁵⁵

In the Outcome Document of the UNCSD the Heads of State and Government and high-level representatives invited the UN General Assembly to adopt a resolution strengthening and upgrading UNEP by establishing universal membership in the UNEP Governing Council, ensuring a more secure budget, and giving it broader powers to initiate scientific research and to “lead efforts to formulate United Nations system-wide strategies on the environment.”³⁵⁶ They also decided to establish a “high-level” forum to coordinate global sustainable development and subsequently replace the Commission on Sustainable Development, although the forum’s format and organizational aspects have yet to be determined.³⁵⁷

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³⁵⁵ President's Summary, *supra* note 336, ¶ 41.

³⁵⁶ Rio+20, Outcome of the Conference -- The Future We Want, Rio de Janeiro, Brazil, June 20-22, 2012, ¶ 88, UN Doc. A/CONF.216/L.1, June 19, 2012, https://rio20.un.org/sites/rio20.un.org/files/a-conf.216-1_english.pdf.pdf.

³⁵⁷ Id. ¶¶ 84-86.

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