



International Environmental Law-making and Diplomacy Review 2004

Marko Berglund (editor)

UNIVERSITY OF JOENSUU - UNEP COURSE SERIES 1

University of Joensuu
Joensuu 2005

University of Joensuu - UNEP Course Series 1

Publisher	University of Joensuu Department of Law P.O. Box 111, FI-80101 JOENSUU, FINLAND
Editor	Marko Berglund
Editorial Board	Tuomas Kuokkanen, Elizabeth Maruma Mrema, Akpezi Ogbuigwe
Contact	Joensuu University Library/Sales of Publications P.O. Box 107, FI-80101 JOENSUU, FINLAND Tel. +358-13-251 2652, +358-13-251 4509 Fax +358-13-251 2691 E-mail: joepub@joensuu.fi http://www.joensuu.fi/library
	United Nations Environment Programme (UNEP) Division of Environmental Policy Implementation (DEPI) P.O. Box 30552, 00100 Nairobi, Kenya E-mail: env.edu@unep.org Website: www.unep.org/training
Exchanges	Joensuu University Library/Exchanges P.O. Box 107, FI-80101 JOENSUU, FINLAND Tel. +358-13-251 2677 Fax +358-13-251 2691 E-mail: vaihdot@joensuu.fi
ISSN	1795-6706
ISBN	952-458-664-9
Cover Design	Leea Wasenius
Layout	Erja Koponen
	Joensuun yliopistopaino Joensuu 2005

Contents

FOREWORD	v
PREFACE	vi
ABBREVIATIONS.....	ix
PART I	
INTERNATIONAL ENVIRONMENTAL DIPLOMACY AND GOVERNANCE	1
INTERNATIONAL ENVIRONMENTAL DIPLOMACY	3
<i>Shafqat Kakakbel</i>	
THE CONCEPT OF SUSTAINABLE DEVELOPMENT: FROM THEORY TO PRACTICE	19
<i>Donald Kaniaru</i>	
SUSTAINABLE DEVELOPMENT GOVERNANCE CHALLENGES IN THE NEW MILLENNIUM	31
<i>Johannah Bernstein</i>	
PART II	
INTERNATIONAL ENVIRONMENTAL LAW-MAKING AND REGIMES.....	51
THE TREATY-MAKING PROCESS AND BASIC CONCEPTS OF TREATY LAW	53
<i>Päivi Kaukoranta</i>	
AN INTRODUCTION TO THE SOURCES, PRINCIPLES AND REGIMES OF INTERNATIONAL ENVIRONMENTAL LAW	61
<i>Marc Pallemmaerts</i>	
MULTILATERAL ENVIRONMENTAL NEGOTIATION.....	73
<i>Brook Boyer</i>	
GLOBAL AND REGIONAL ENVIRONMENTAL ISSUES AND DYNAMICS	81
<i>Frits Schlingemann</i>	
INTERNATIONAL LEGAL REGIMES FOR THE ENVIRONMENTALLY SOUND MANAGEMENT OF HAZARDOUS CHEMICALS AND WASTE: A PRACTITIONER'S PERSPECTIVE	89
<i>Sachiko Kuwabara-Yamamoto</i>	

THE ROLE OF NGOs AND NATIONAL PARLIAMENTS IN INTERNATIONAL ENVIRONMENTAL LAW-MAKING.....	103
<i>Heidi Hautala</i>	
THE NEGOTIATIONS ON THE RELATIONSHIP BETWEEN WTO RULES AND MEAS: THE STORY SO FAR	109
<i>Tuula Varis</i>	
PART III	
COMPLIANCE.....	115
INTRODUCTION TO THE DISCUSSION ON COMPLIANCE	117
<i>Patrick Széll</i>	
IMPLEMENTATION, COMPLIANCE AND ENFORCEMENT OF MEAS: UNEP'S ROLE.....	125
<i>Elizabeth Maruma Mrema</i>	
ANNEX: GUIDELINES ON COMPLIANCE WITH AND ENFORCEMENT OF MULTILATERAL ENVIRONMENTAL AGREEMENTS	136
PART IV	
SPECIAL THEME: WATER	151
WORLD WATER RESOURCES AND PROBLEMS	153
<i>Esko Kuusisto</i>	
INTERNATIONAL LAW AND WATER.....	167
<i>Tuomas Kuokkanen</i>	
INTEGRATED WATER RESOURCES MANAGEMENT: INTERNATIONAL FRESHWATER AGREEMENTS AND NATIONAL WATER POLICY AND LAW REFORMS.....	179
<i>Niels Ipsen and Marko Berglund</i>	
WATER CO-OPERATION BETWEEN FINLAND AND RUSSIA ON THE LOCAL AND REGIONAL LEVEL.....	189
<i>Anna-Liisa Tanskanen</i>	
PART V	
INTERACTIVE EXERCISE	
INTERNATIONAL ENVIRONMENTAL LAW AND GOVERNANCE: WHERE NEXT?	197
FUNDAMENTAL ENVIRONMENTAL RIGHTS	199
<i>Ed Couzens</i>	
CLUSTERING OF MEAS	207
<i>Kong Xiangwen</i>	
DOES THE WORLD NEED A SUPER-COP? INTEGRATED GLOBAL DECISION-MAKING FOR SUSTAINABLE DEVELOPMENT	211
<i>Cam Carruthers</i>	

Foreword

The articles in the present Review are based on lectures given during the first University of Joensuu – UNEP Course on International Environmental Law-making and Diplomacy, which was held from 22 August to 3 September 2004 in Joensuu, Finland. The Course was a concrete outcome of the co-operation between the University of Joensuu and UNEP to advance the implementation of local, regional and global objectives agreed at the 2002 World Summit on Sustainable Development and enhance the capacities of future negotiators in international negotiations.

The aim of the Course was to convey key tools and experiences in the area of international environmental law-making to present and future negotiators of multilateral environmental agreements. In addition, the Course served as a forum for fostering North-South co-operation and for taking stock of recent developments in the negotiation and implementation of multilateral environmental agreements and diplomatic practices in the field.

The Course is intended to be an annual event designed for experienced government officials engaged in international environmental negotiations. In addition, other stakeholders such as representatives of non-governmental organizations and the private sector may apply and be selected to attend the Course. Researchers and academics in the field are also eligible. Altogether 36 participants from 28 countries, with an equal distribution from the North and South, participated in the first Course.

We would like to express our gratitude to all of those who contributed to the successful outcome of the first Course. It gives us great pleasure to recognize that the lectures and presentations given during the Course are now recorded in this Review. We are grateful that the authors were willing to take on an extra burden after the Course and transfer their presentations into article form thereby making the Review such a useful resource. In addition, we would like to thank Marko Berglund for skilful editing of the Review and the Editorial Board for providing guidance in the editing work.

Professor Perttu Vartiainen
Rector of the University of Joensuu

Dr. Klaus Töpfer
Executive Director of UNEP

Preface

The current Review seeks to provide practical guidance, professional perspective and historical background to practitioners, stakeholders and researchers working in the area of international environmental law-making and diplomacy. The Review highlights dominating doctrines, approaches and techniques in the field, including sustainable development, regime-building, governance, synergy, compliance and the role of NGOs. Moreover, the inaugural volume focuses on water as a specific theme.

The lectures of the first University of Joensuu – UNEP Course, from which the articles in the present Review emanate, were delivered by experienced hands-on diplomats, government officials and members of academia.¹ One of the main purposes of the Course was to take advantage of the practical experiences of experts working in the field of international environmental law-making and diplomacy. Consequently, the articles in this Review and the different approaches taken by the authors reflect the lecturers' and resource persons' diverse professional backgrounds.

Marko Berglund edited the Review and helped prepare some of the articles by writing draft versions based on the lectures and presentations given by the speakers. General editing tasks included checking the style and content of the submissions and providing research assistance by checking, adding and editing references and footnotes. All Internet references were valid as of 15 March 2005.

The present Review is divided into five sections. Part I addresses general issues relating to international environmental diplomacy and governance. Shafqat Kakakhel's article presents an overview of developments in international environmental diplomacy and addresses current challenges in the field. Donald Kaniaru focuses on the concept of sustainable development in more detail and shows how it is being applied in practice. Johannah Bernstein presents the current challenges of sustainable development governance and possible ways forward.

¹ Information on the University of Joensuu – UNEP Course on International Environmental Law-making and Diplomacy is available at www.joensuu.fi/unep/envlaw.

Part II addresses in more detail international environmental law-making and specific regimes. By way of introduction, Päivi Kaukoranta presents international law-making and the treaty-making process. Marc Pallemarts develops this theme further by focusing specifically on the sources, principles and regimes of international environmental law. Brook Boyer addresses the different stages of multilateral environmental negotiations and brings forward organizational structures and other related issues. Frits Schlingemann identifies global and regional dynamics of international environmental law and conventions, as well as of international environmental institutions, and presents an example of the work of UNEP/Regional Office for Europe. Sachiko Kuwabara-Yamamoto provides another example of a specific international environmental regime. Heidi Hautala's article addresses the role of national parliaments and non-governmental organizations in international environmental law-making. Tuula Varis reminds us of the need to take into consideration outside regimes and influences, in this case international trade law and the WTO, which affect international environmental regimes.

Part III deals with compliance with multilateral environmental agreements (MEAs). Patrick Széll introduces the topic and gives an overview of present compliance structures including drafting skills required for such tasks. Elizabeth Maruma Mrema presents UNEP's role in non-compliance procedures and UNEP's Guidelines on Compliance with and Enforcement of MEAs.

Part IV addresses the special theme of the first Course: Water. Esko Kuusisto gives a general overview of the state of current freshwater resources, problems and future challenges. Tuomas Kuokkanen maps the development of international law related to freshwater resources. Niels Ipsen and Marko Berglund focus on current international freshwater agreements and integrated water resources management. Anna-Liisa Tanskanen provides an example of water co-operation arrangements between Finland and Russia on the local and regional level.

Part V brings forward the interactive nature of the Course. The three papers presented in this part are based on an exercise conducted during the Course. Ed Couzens explores the topic of human rights and the environment. Kong Xiangwen addresses the issue of finding synergies between MEAs and dividing them into clusters of agreements. Cam Carruthers develops the idea of a Super Conference of the Parties to co-ordinate and bring together the work undertaken under different MEAs.

Overall, the articles in the present Review represent various aspects of the broad and complex field of international environmental law-making and diplomacy. As an attempt to draw general conclusions out of the articles, one can highlight the following points. First, in many areas the management of environmental problems requires close co-operation between international policy-makers and scientific experts. This is the case, for instance, in relation to the sound management of hazardous chemicals and waste. Second, modern environmental conventions appear to be dynamic regimes rather than static agreements. Third, the management of environmental issues might need specific techniques and tailor-made solutions. Compliance mechanisms and procedures are

good examples to this effect. Fourth, the effective management of environmental issues requires co-operation with other sectors, such as the trade sector. Fifth, the emergence of separate environmental rules and techniques does not mean that general international law is not relevant. On the contrary, in order to avoid unnecessary fragmentation, it is important in the environmental sector to be conscious of general international law issues, such as treaty-making aspects under treaty law.

Tuomas Kuokkanen

Professor of International Environmental Law
Department of Law
University of Joensuu

Elizabeth Maruma Mrema

Senior Legal Officer
Division of Environmental Policy
Implementation, UNEP

Abbreviations

ABS	Access and Benefit-sharing
ASEAN	Association of Southeast Asian States
BAT	Best Available Techniques
BEP	Best Environmental Practice
CBD	Convention on Biological Diversity
CDM	Clean Development Mechanism
CEIT	Countries with Economies in Transition
CEP	Caspian Environment Programme
CIS	Commonwealth of Independent States
CITES	Convention on International Trade in Endangered Species of Wild Flora and Fauna
CLRTAP	Convention on Long-range Transboundary Air Pollution
COP	Conference of Parties
CSD	Commission on Sustainable Development
CSO	Civil society organization
CTESS	Committee on Trade and Environment Special Session
EC	European Community
ECOSOC	United Nations Economic and Social Council
ESM	Environmentally Sound Management
EU	European Union
FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
GC/GMEF	Governing Council/Global Ministerial Environment Forum
GEF	Global Environment Facility
IAEA	International Atomic Energy Organization
IC	Implementation Committee
ICJ	International Court of Justice
IGO	Intergovernmental organization
ILO	International Labour Organization
IMO	International Maritime Organization
IUCN	International Union for the Conservation of Nature
IWRM	Integrated Water Resources Management
MCP	Multilateral Consultative Process
MDG	Millennium Development Goal
MEA	Multilateral environmental agreement
MOP	Meeting of Parties

MOU	Memorandum of Understanding
NGO	Non-governmental organization
NIP	National Implementation Plan
OECD	Organization for Economic Co-operation and Development
OJ	Official Journal
PCIJ	Permanent Court of International Justice
PIC	Prior Informed Consent
POP	Persistent Organic Pollutant
REIO	Regional Economic Integration Organization
SADC	Southern African Development Community
SAICM	Strategic Approach to International Chemicals Management
SAP	Strategic Action Programme
SBI	Subsidiary Body for Implementation
SBSTA	Subsidiary Body for Scientific and Technological Advice
TDA	Transboundary Diagnostic Analysis
TEAP	Technical and Economic Assessment Panel
TRFS	Terrestrial Renewable Freshwater Supply
TRIPS	Trade-related Aspects of Intellectual Property Rights
UNCED	United Nations Conference on Environment and Development
UNCHE	United Nations Conference on the Human Environment
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNEP/ROE	United Nations Environment Programme/Regional Office for Europe
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNRIAA	United Nations Reports of International Arbitral Awards
UNU	United Nations University
WCED	World Commission on Environment and Development
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WPS	Water Policy and Strategy
WSSD	World Summit on Sustainable Development
WTO	World Trade Organization

PART I

**INTERNATIONAL ENVIRONMENTAL
DIPLOMACY AND GOVERNANCE**

INTERNATIONAL ENVIRONMENTAL DIPLOMACY¹

*Shafqat Kakakhel*²

Introduction

Narrowly defined, environmental diplomacy is comprised of negotiations among government representatives with the aim of agreeing legally binding treaties or agreements, or non-binding plans of action or guidelines for addressing environmental issues, requiring action both within national boundaries and across frontiers, by either a group of countries or by all countries concerned with those issues. A broader definition would refer to all relevant factors and actors such as socio-economic drivers, science and technology, or civil society and the media, which have decisively impacted on how the international community has viewed the relationship between human actions and the ability of our planet to sustain life.

Environmental diplomacy is a newcomer in international relations as diplomacy has historically focused on issues of war and peace. It has emerged and evolved as a logical corollary of the global consequences of industrial civilization. The 19th century Industrial Revolution was facilitated by advances in the application of science and technology which enabled the more efficient utilization of ever-growing quantities of both locally and distantly situated natural resources. These resources were used in the production of goods which were considered useful either for improving the quality of life during peace time or for causing greater destruction in times of armed conflicts. The introduction of steamships, the invention of electricity, the discovery of oil, the construction of railways and cars, the triumph of medical science over treating diseases and epidemics and the control of weather conditions led to greater prosperity, longer life spans and an unprecedented increase in population. These and other scientific advances also made the two World Wars of the 20th century far more destructive than their predecessors. Industrialization also led to the destruction of flora and fauna and the generation of waste and pollution, threatening human health.

¹ This paper is based on a lecture given by the author on 23 August 2004.

² United Nations Assistant Secretary General and Deputy Executive Director, United Nations Environment Programme.

During the past two centuries, industrialization has been seen as the indispensable prerequisite of - indeed synonymous with - progress. The Industrial Revolution has spawned, and is sustained by, a culture of materialism and consumerism viewed as being essential for human wellbeing. However, since the second half of the 20th century, growing numbers of individuals, groups, governments, and lately, industry, have begun to reduce the negative effects of industrial civilization through cleaner and more resource efficient production processes that create larger quantities of goods but generate declining volumes of waste and pollution. We have also seen a growing recognition that durable solutions to environmental problems, especially those of a trans-boundary nature, require not only actions within national boundaries but also co-operation among countries.

The 1950s and 1960s witnessed not only a spectacularly speedy recovery from the destruction wrought by the Second World War but they also saw the emergence of domestic action and regional and international co-operation in addressing local, trans-boundary, and global environmental issues. In the US and Western Europe, campaigns by concerned citizens led to the enactment of laws and regulations aimed at avoiding or mitigating the health hazards posed by air and water pollution, strip mining, highway construction, noise pollution, the canalization of dams and streams, the clear cutting of forests, hazardous waste dumps, nuclear power plants, exposure to toxic chemicals, oil spills and suburban sprawl. Successes achieved in a domestic context encouraged the revival and strengthening of pre-war efforts to negotiate agreements on international co-operation to deal with environmental threats which could only be countered through joint efforts by several or most countries. The 1960s saw a rapid increase in the number of regional and global environmental agreements which were focused for the most part on the protection of wildlife and migratory species and the prevention and control of marine pollution. The UN Conference on the Human Environment in June 1972 in Stockholm was truly a watershed event with regard to the evolution of the global environmental agenda. The resulting declaration stipulated action within national boundaries as well as increasing regional and global co-operation to address the ever growing threats to the environment.

Milestones in international environmental diplomacy

I shall briefly refer to the Stockholm Conference and five significant developments since, namely: the publication of *Our Common Future*, the report of the UN Commission headed by Gro Harlem Brundtland, in 1987;³ the UN Conference on Environment and Development (UNCED), also known as the Earth Summit, in 1992; the special session of the UN General Assembly known as Rio+5, in 1997; the special session of

³ WCED, *Our Common Future*, *infra* note 9.

the UN General Assembly, known as the Millennium Assembly, in September 2000; the World Summit on Sustainable Development held in Johannesburg, in August - September 2002.

Stockholm - 1972

The UN Conference on the Human Environment in Stockholm in June 1972 highlighted the international community's recognition that the protection and improvement of the human environment was a global objective, whose realization would require action within countries as well as regional and international co-operation. The Conference initiated a process of high level debate among representatives of governments and non-governmental organizations (NGOs) and other non-state actors, on the negative ecological impacts of human actions and population growth, and how the international community could act in concert to avoid and mitigate them. Stockholm also brought to the fore, points on which global consensus could be achieved, but also areas where rich and poor countries sharply disagreed on the genesis of the problems and the methods for addressing them.

In 1971, Maurice Strong, Secretary General of the conference, convened meetings in Geneva between economists and senior officials from developed and developing countries, which helped clarify the issues to be addressed by the Stockholm Conference.⁴ Participants agreed that most serious environmental problems in poor countries resulted from extreme poverty and lack of economic development. They also agreed that developed countries must provide financial and technical resources to developing countries to enable them to achieve the linked objectives of socio-economic development and environmental protection.

The Stockholm Conference was attended by representatives of 113 countries as well as scores of inter-governmental and non-governmental organizations. At the Conference, the participants seemed to have different agendas. Developed countries paid lip service to the protection of the global environment but appeared unenthusiastic about providing financial support to developing countries. Developing countries were willing to concede the importance of environmental protection but insisted that rich nations must lead, both with regard to domestic action and in assisting them to achieve economic development which would generate the resources needed for taking better care of the environment. The environmental organizations assembled in Stockholm carried out a spirited campaign demanding serious efforts within countries and co-operation among states to counteract environmental threats.

⁴ The meetings in Founex are discussed in Maurice Strong, *Where on Earth Are We Going?* (Alfred Knopf, 2000) at 124-125, and in Mustafa Tolba and Iwona Rummerl-Bulska, *Global Environmental Diplomacy* (MIT Press, 1998) at 2.

Eventually the negotiators managed to hammer out compromise texts. Two documents, a short, eight-page paper comprising a proclamation and a set of 26 principles,⁵ and a longer Action Plan containing 109 recommendations on addressing environmental challenges represent the results of the Stockholm Conference.⁶ The Stockholm Declaration proclaimed that ‘protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world.’⁷ It stressed the inextricable nexus between environment and development and called for the narrowing of the gap between rich and poor countries. The Action Plan addressed major environmental issues and suggested action by governments and the UN system to deal with them.

The UN General Assembly considered the outcomes of the Stockholm Conference in December 1972. It adopted a resolution establishing the United Nations Environment Programme (UNEP) with a mandate to promote international co-operation in the field of the environment, review world environmental threats in order to facilitate their intergovernmental consideration and to promote the acquisition, assessment and exchange of environmental knowledge and information, as well as facilitate and co-ordinate the implementation of environmental activities of the UN system.⁸

The post-Stockholm years witnessed the establishment of environmental ministries and agencies – as well as increasing budgets for these – in most developed countries and in a growing number of developing ones; the enactment of environmental laws, especially in industrialized countries; a proliferation of global and regional environmental treaties; the strengthening of existing academic and scientific research and policy centres dealing with environmental and developmental issues, and the establishment of new ones. New processes and networks were also set up for the comprehensive assessment of global environmental issues such as climate change, the ozone layer, effects of atomic radiation, biodiversity, solid and hazardous waste, marine and inland water pollution caused by shipping as well as land based activities, conservation of wildlife, prohibition of trade in endangered species of flora and fauna, etc.

UNEP played a significant role in catalyzing and facilitating most if not all of these developments. It vigorously campaigned for the integration of environmental imperatives in national and global initiatives addressing the challenges of peace and development. Its role was especially crucial in respect of the assessment of environmental

⁵ Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1503.

⁶ United Nations Conference on the Human Environment, www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1492.

⁷ Principle 2, Stockholm Declaration, *supra* note 5.

⁸ Institutional and Financial Arrangements for International Environmental Co-operation, GA Res. 2997 (XXVII), 15 December 1972.

threats, the articulation of policy responses, the negotiation of multilateral agreements and the development of environmental law.

Despite these positive developments, the overall state of the global environment continued to deteriorate. Poverty and malnutrition as well as political and social unrest and problems of governance grew unabatedly in developing countries. Studies and assessment of climate change highlighted the serious threats posed by burgeoning emissions of greenhouse gases. Forests, oceans and other ecosystems faced increased depletion and degradation. The loss of fisheries and plant and animal species accelerated. Developed countries failed to provide significant support to developing countries for socio-economic development or for meeting the commitments agreed in Stockholm.

At the end of the 1970s and the beginning of the 1980s, environmental movements in the US and Europe grew both in size and impact. The emergence of Green Parties in many countries lent a new legitimacy and authority to environmental activism and served to highlight the mismatch between ecological deterioration and the local and global efforts to arrest and reverse it.

The Brundtland Commission

In 1983, the UN Secretary-General requested Gro Harlem Brundtland to head a commission to review environmental and developmental issues. The Commission undertook an exhaustive examination of critical environmental and developmental issues such as growth in the world economy, technology, globalization and inter-dependence and the impacts of economic growth in terms of resource depletion and pollution and degradation. It also reviewed the quantum, quality and impact of international efforts in addressing these issues and considered measures for enhanced co-operation.

In 1987 the Brundtland Commission's report *Our Common Future*⁹ referred to a clear demonstration of the widespread feeling of frustration and inadequacy in the international community about our own inability to address the vital global issues and deal effectively with them. It declared that 'a new development path was required, one that sustained human progress not just in a few places for a few years but for the entire planet into the distant future'¹⁰ and used the term sustainable development which was defined as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'¹¹ The report called for renewed and greater efforts to eliminate widespread poverty which it asserted was 'no longer

⁹ World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987) UN Doc. A/42/47 (1987)(The Brundtland Report).

¹⁰ *Ibid.*, at 4.

¹¹ *Ibid.*, at 43.

inevitable'¹² and referred to the need for 'not only a new era of economic growth for nations in which the majority are poor, but an assurance that those poor get their fair share of the resources required to sustain that growth.'¹³

Our Common Future contains a thorough review of the correlation between population, energy, industry, food security, agriculture and forestry, human settlements, international economic relations and decision support systems, and environment and development, as well as of the quality and quantum of international co-operation. It offers recommendations for addressing environmental protection gaps and developmental needs, as well as a set of principles to inspire and shape action by the international community. The report emphasized the importance of international co-operation, urging 'new dimensions of multilateralism' to achieve sustainable human progress. In response to *Our Common Future*, in December 1989 the UN General Assembly decided to convene the UN Conference on Environment and Development in June 1992 in Rio de Janeiro, in order 'to elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote environmentally sound development in all countries.'¹⁴

The Earth Summit (1992)

The UN Conference on Environment and Development (UNCED), also known as the Earth Summit was held in Rio in June 1992 in the optimistic atmosphere accompanying the end of the Cold War. It was preceded by a worldwide official and scientific preparatory process during which virtually every environment and development issue was comprehensively analyzed by experts and negotiated by representatives of Governments and other stakeholders. Attended by over 10 000 delegates, including 116 heads of state and 1400 NGOs, and covered by 9000 journalists, UNCED was at the time the largest meeting in the history of the UN.

The UNCED preparatory process and the negotiations during the Summit were marked by a North-South polarization. While the former called for greater efforts by developing countries to address environmental threats, the latter placed a higher priority on development than environment, insisting that developed countries agree to provide new and additional financial resources and technology transfer as a condition for developing countries' acceptance of environmental commitments. Notwithstanding the protracted and often acrimonious negotiations of the Rio Summit, consensus was

¹² *Ibid.*, at 8.

¹³ *Ibid.*

¹⁴ Section I, Article 3, GA Res. 44/228, 22 December 1989, www.un.org/documents/ga/res/44/a44r228.htm.

eventually reached by the Rio negotiators on the Rio Declaration,¹⁵ a short document comprising 27 principles, and on Agenda 21,¹⁶ a 279-page Action Plan. The Summit also witnessed the signing of the historic Framework Convention on Climate Change¹⁷ and the Convention on Biodiversity¹⁸ and approved a statement of principles for the sustainable management of forests.¹⁹

The Rio Declaration affirmed states' responsibility to 'ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction',²⁰ stressed that 'environmental protection shall constitute an integral part of the development process',²¹ emphasized the importance of co-operation²² and the 'special needs of developing countries.'²³ The Declaration also called for 'a global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystems' adding that states have 'common but differentiated responsibilities'²⁴ and recommended 'the reduction and elimination of unsustainable patterns of consumption and production.'²⁵ It supported the participation of citizens in environmental decision making as well as access to relevant information and justice²⁶ and recommended the application of the precautionary approach for environmental protection.²⁷

¹⁵ Declaration of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. I), www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

¹⁶ United Nations Conference on Environment and Development, *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, www.un.org/esa/sustdev/documents/agenda21/index.htm.

¹⁷ United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 31 *International Legal Materials* (1992) 849, unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.

¹⁸ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, www.biodiv.org/doc/legal/cbd-en.pdf.

¹⁹ Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. III), www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

²⁰ Principle 2, Rio Declaration, *supra* note 15.

²¹ Principle 4, Rio Declaration, *ibid.*

²² Principle 5, Rio Declaration, *ibid.*

²³ Principle 6, Rio Declaration, *ibid.*

²⁴ Principle 7, Rio Declaration, *ibid.*

²⁵ Principle 8, Rio Declaration, *ibid.*

²⁶ Principle 10, Rio Declaration, *ibid.*

²⁷ Principle 15, Rio Declaration, *ibid.*

Agenda 21 addressed all major sectoral and cross-sectoral environmental and developmental challenges. Its 40 chapters are divided into four sections entitled Social and Economic Dimension, Conservation and Management of Resources for Development, Strengthening the Role of Major Groups and Means of Implementation. The environmental issues addressed included: atmosphere; land resources; deforestation; fragile ecosystems; agriculture; biodiversity; biotechnology; seas and coasts; fresh water; chemicals; and hazardous, solid, and radioactive wastes. Agenda 21 called for action by all stakeholders within and across national boundaries to address environmental threats in the framework of sustainable development, embracing sustained economic development based on equity, enhancement of the social wellbeing of people, and protection of the environment. It called for integrated policies and action in all these interdependent and mutually reinforcing areas. Agenda 21 spelt out the mandates, roles and responsibilities of UN agencies and bodies, including the United Nations Development Programme (UNDP) and UNEP. It also recommended the establishment of the Commission on Sustainable Development as a high-level forum for discussing, monitoring and expediting the implementation of Agenda 21 through dialogue which would synthesize economic, social and environmental imperatives while promoting enhanced international co-operation and improved decision-making.

Rio+5 (1997)

In 1997, the UN General Assembly organized a special session in New York, popularly known as Rio+5, to review the progress in the implementation of the Rio outcomes, and to agree on measures to set aside the obstacles impeding full implementation. The Commission on Sustainable Development's session during the same year served as a preparatory meeting for Rio+5. The Special Session's outcome is contained in a document entitled Programme of Action for the Further Implementation of Agenda 21.²⁸

The deliberations of the Rio+5 meeting were characterized by the evident widening of the North-South divide. Developing countries did not mince words in castigating developed countries for the continued, in fact accelerated, degradation of the global environment. They also accused developed countries of not fulfilling the Rio commitments either in terms of facilitating the creation of a global context enabling the improvement of developing countries' developmental prospects through resolution of the problems of debt, aid and trade, and technological transfers, or by providing new and additional financial resources for supporting the efforts of developing countries for dealing with global environmental issues. Perhaps more seriously, there was neither the enthusiasm among developed or developing countries to propose any significant new initiatives or drastic solutions in response to the deteriorating trends, nor the willingness for the give and take without which diplomacy cannot work.

²⁸ Programme for the Further Implementation of Agenda 21, GA Res. S/19-2, 28 June 1997, www.un.org/documents/ga/res/spec/aress19-2.htm.

The Millennium Summit (2000)

In September 2000, the General Assembly held the Millennium Summit to address the serious issues facing humankind in the new millennium. The six fundamental values identified by world leaders as being ‘essential to international relations in the twenty first century’ included ‘respect for nature.’²⁹ The Declaration called for the prudent management of all living species and natural resources in a sustainable manner, and for change in the unsustainable patterns of consumption and production.

Section IV of the Millennium Declaration, entitled Protecting Our Common Environment, laid down several goals and targets which have since been called the Millennium Development Goals (MDGs). Goal 7: Ensure Environmental Sustainability, calls for the integration of the principles of sustainable development into national policies and programmes and for the reversal of the loss of environmental resources. The specific targets set by the Summit include reducing by half the proportion of people without access to safe drinking water by 2015 and achieving significant improvement in the lives of at least 100 million slum dwellers by 2020.

Malmö Declaration (2000)

A Special Session of the UNEP Governing Council was held in Malmö in May 2000. After prolonged negotiations it adopted a statement known as the Malmö Ministerial Declaration³⁰ as input on the environmental perspective of sustainable development challenges, to be considered by the WSSD. Bringing these significant points to the fore, the Declaration:

- (i) stated the ‘urgent need for reinvigorated international co-operation based on common concerns and a spirit of international partnership and solidarity’;³¹
- (ii) called for the ‘mobilization of domestic and international resources, including development assistance, far beyond current levels’;³²
- (iii) emphasized ‘the central importance of environmental compliance, enforcement and liability . . . the precautionary approach . . . as well as capacity-building’;³³
- (iv) identified threats resulting from urbanization and development of mega cities, climate change, freshwater crisis, depletion of biological resources, drought and desertification, and deforestation, environmental emergencies and health hazardous posed by chemicals and pollution as issues that need to be addressed.³⁴

²⁹ Article 6, United Nations Millennium Declaration, GA Res. 55/2, 8 September 2000.

³⁰ Malmö Ministerial Declaration, 31 May 2000 (hereinafter Malmö Declaration), www.unep.org/malmo/malmo_ministerial.htm.

³¹ Article 1, *ibid.*

³² Article 2, *ibid.*

³³ Article 3, *ibid.*

³⁴ Article 5, *ibid.*

The Declaration took cognizance of the pressures exerted by globalization but also of the potential positive roles of business and civil society. Moreover, one of the most significant recommendations of the Malmö conference was its call for the WSSD to 'review the requirements for a greatly strengthened institutional structure for international environmental governance based on an assessment of future needs for an institutional architecture that has the capacity to effectively address wide-ranging environmental threats in a globalizing world.'³⁵ Heeding this call, in 2001 the Governing Council of UNEP set up a high-level group to address issues of international environmental governance. The Working Group's negotiated a set of proposals which were subsequently endorsed by the World Summit on Sustainable Development.

The World Summit on Sustainable Development (2002)

The World Summit on Sustainable Development (WSSD) in Johannesburg in August-September 2002 is the most recent development in the global quest for sustainable development. The WSSD aimed to review the implementation of the outcomes of UNCED with a view to reinvigorating, at the highest political level, the global commitment to sustainable development. However, the WSSD, also called Rio+10, Earth Summit+10 or the Johannesburg Summit, was held in a global context far less optimistic than that of UNCED. The signs observed during Rio+5 that the post-Cold War euphoria had begun to subside were replaced by evidence of what Martin Khor, a leading spokesman for the developing world, called 'a crisis atmosphere.' Secretary-General Kofi Annan's special personal efforts to energize and focus the preparatory process, including his so called WEHAB initiative proposing that the Summit give priority attention to the problems of Water, Energy, Health and Agriculture, and Biodiversity, alongside a series of regional preparatory meetings, helped in arresting widespread scepticism in the developing countries towards the Summit. The venue of the Conference was also helpful. Eventually over thirty thousand representatives of state and non-state sectors attended, making the WSSD the largest UN meeting in history.

Negotiations during the preparatory process of the WSSD and the Summit itself were indeed tortuous. The Conference's proceedings once again highlighted the differences between developed and developing countries as well as the fissures within the Organization for Economic Co-operation and Development (OECD). Developing countries recalled the North-South compact or deal forged in Rio: developing countries had agreed to integrate the objective of environmental sustainability in their overall developmental process in return for substantial new and additional transfers of financial resources, technology, scientific and technical know-how and a more equitable global context resulting from the resolution of problems of debt repayment, development assistance and better access for their products into the rich countries markets. They lamented the failure of the North to respect the Rio compact. Spokesmen from devel-

³⁵ Article 24, *ibid.*

oping countries also underlined gaps in the Rio outcomes in regard to the actions of transnational corporations and implementation mechanisms, which had resulted in the accelerated deterioration and degradation of the global environment and the increase in absolute poverty to a level where it afflicts more than one third of the world population. Furthermore, developing country governments and NGOs called for structural change in the global economic agenda based on the environment-development nexus the revival of North-South dialogue and a strengthened North-South partnership based on just and durable solutions relating to the debt owed by the South to and barriers such as colossal agricultural subsidies in rich countries, which impede exports from developing countries.

Notwithstanding the positive developments since Rio, the Johannesburg delegates acknowledged that all environmental and socio-economic indicators had registered several fold deterioration. Nearly all the developed countries also accepted not having kept the Rio promises and made assurances that they would try harder in future to comply with their commitments.

The outcomes of the intergovernmental negotiations in Johannesburg are recorded in a short four and a half page political declaration³⁶ and a 70-page Plan of Implementation.³⁷ The Declaration contains a renewed commitment to poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development, and identifies these as ‘overarching objectives’ which are ‘essential prerequisites’ of sustainable development. The Declaration referred to the rich-poor divide within countries and the ever-increasing gap between developed and developing countries. It also mentioned the continued degradation of the global environment and specifically noted loss of biodiversity, depletion of fish stocks, accelerated desertification adverse effects of climate change, more frequent and destructive natural disasters and air, water and marine pollution. The Declaration reaffirms the commitment to multilateralism and the role of the UN in strengthening it. The Plan of Implementation reiterates Agenda 21 and in places supplements it. The most significant feature is the time-bound targets for achieving a set of goals some of which had been agreed at the Millennium Summit. These included reducing by half the proportion of people living without water and sanitation by 2015; restoring fisheries to their maximum sustainable yields by 2015; reducing biodiversity losses by 2010; and ensuring the use and production of chemicals in ways that do not harm health by 2020. Furthermore, all countries are to have strategies in place for integrated water resource management by 2005.

³⁶ World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, 4 September 2002, www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm.

³⁷ World Summit on Sustainable Development, *Johannesburg Plan of Implementation*, www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm.

A significant and initially controversial departure from UNCED was that the WSSD served as “midwife” for roughly 280 partnership initiatives, providing for collaboration among governments of developed and developing countries, multilateral organizations within and outside the UN, and civil society, including the business sector, with the aim of jointly addressing sustainable development issues such as cleaner fuels and vehicles, fresh water, renewable energy, etc.

Current Environmental Challenges and Responses

Three years after the WSSD, how do we see the environmental challenges facing us and threatening the next generation? An objective review of the development, over the last five decades, relevant to the evolution of the global environmental agenda and diplomacy reveals a mixed picture of significant successes and disappointing failures. Positive signals can be seen in the face of an overall degradation of the environment.

Universal recognition of the importance of the environment is indicated by a greater appreciation of the need for operationalizing the acknowledged nexus between environment and development. The definition of environment is no longer confined to the biosphere but also encompasses socio-economic driving forces. Sustainable development is recognized as the overarching goal comprising economic growth, social justice and environmental protection.

Ministries and Departments of Environment and/or Environmental Protection Agencies have been established in virtually each and every country. UNCED and WSSD stimulated the preparation or revision of national environmental protection and sustainable development strategies and plans. Environmental legislation in response to local concerns as well as in pursuance of commitments under multilateral agreements has witnessed unprecedented development. Schools, universities and scientific institutions are setting up environmental courses and greening the activities and syllabuses of professional studies. There is greater recognition of the responsibilities of the legislature and the judiciary as well as the roles of industry, the scientific community, civil society at large and the media in promoting environmental protection and sustainable development.

Our knowledge of environmental threats and the socio-economic forces driving them has grown enormously and at present we have reasonably reliable and comprehensive assessments of the scale and magnitude of all relevant aspects relating to issues of climate change, biodiversity and the ecosystems, freshwater and oceans, air and land pollution, chemicals, hazardous wastes, etc. Science and technology have made unprecedented strides in enhancing the efficiency of fossil fuels and other raw materials, thereby reducing the threats linked to the depletion of resources, adverse climate impacts and deadly waste and pollution. Significant successes have been achieved in developing renewable clean energy and in finding answers to various issues of the urban agenda.

The importance of regional co-operation in achieving environmental and sustainable development objectives is evidenced by the proliferation, in all regions, of political, institutional, financial and legal arrangements, for safeguarding and improving shared assets and countering common, transboundary challenges. At the global level, the need for co-operation and partnerships is accepted, as is the especially serious nature and scale of environmental threats in the developing world. Governments have negotiated over 500 multilateral environmental agreements, plans of action or guidelines and/or have initiated processes for evolving strategic approaches to address all major issues, ranging from climate stability, the protection of the ozone layer, the preservation and sustainable utilization of biodiversity and chemicals, to the protection of animal and plant species, wetlands and wildernesses. It is now widely acknowledged that neither governments nor any other stakeholder acting alone can ensure the protection of the environment or achieve sustainable development and that only effective and concerted action by all stakeholders will reduce the growing threats to the health of our planet.

Global environmental governance has grown exponentially. Apart from UNEP, the principal environmental organization of the UN system, the Department of Economics and Social Affairs of the UNHQ, UNDP, the Regional Economic and Social Commissions and virtually every UN agency - from the International Maritime Organization (IMO) and the World Meteorological Organization (WMO) to the World Health Organization (WHO), the International Labour Organization (ILO), the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), the Food and Agricultural Organization (FAO), the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) - have embarked on or stepped up pro-environment activities. The proliferation of MEAs has led to a fragmentation of the global environmental agenda. The Commission on Sustainable Development (CSD), the United Nations Economic and Social Council (ECOSOC) and the General Assembly regularly deliberate this global agenda.

The number of transnational corporations claiming commitment to sustainable development or engagement in pro-environment activities or agreeing to report on the environmental effects of their activities is growing by the day. All media organs have increased their coverage of environmental issues and improved its quality. However, the litany of negative environmental trends exacerbated by failures on the part of nearly all stakeholders in international community to take positive action is far longer.

With the exception of the success of efforts to protect the ozone layer, each and every global environmental threat has grown in scale and magnitude. Despite growing and incontrovertible scientific corroboration of the threats posed by climate change resulting from emissions of greenhouse gases, the escalating loss of biodiversity and the vulnerability of all ecosystems, especially oceans and forests, and the adverse impacts of agricultural, industrial and household chemicals for human health, there has been negligible progress in effectively dealing with these issues.

While issues on the domestic agenda of developed countries', such as air and water quality, have been dealt with quite well, the trends in most developing countries in respect of the same set of problems show rapid deterioration. Developing countries lack either the policy framework, governance structures or human, financial, technical and technological resources to translate their oft-reiterated commitment to sustainable development into tangible actions. The only redeeming features are the increasingly vocal and effective civil society structures.

Regional co-operation structures are also far more successful in developed countries than in the developing world. The same is the case in regard to the effectiveness of multilateral environmental agreements or plans of action. In terms of global co-operation, the gap between the Rio commitments and promises and the situation on the ground is becoming wider and wider. The Rio compact or deal exists largely only on paper. The Global Environment Facility and the Multilateral Fund for the phasing out of ozone depleting substances are the only sources of funding available for meeting the incremental costs incurred by developing countries in implementing MEAs. In any case, most MEAs are devoid of effective mechanisms for compliance and enforcement. Moreover, the favourable global economic order considered necessary for enabling developing countries to eradicate poverty and protect the environment is nowhere in sight.

The global environmental governance structure is also plagued by insufficient political will manifested by the lack of authority, effective co-ordination and adequate resources that would enable UNEP, CSD, UNDP and other multilateral agencies to respond to environmental challenges. The MEA secretariats are geographically dispersed and lack resources to implement the global agreements.

Recommendations

First, the two principal and intertwined challenges that will have to be addressed are what Maurice Strong often describes as a recession in political will to achieve sustainable development, and the lack of trust between developing and developed countries and, consequently, a genuine, functioning partnership in the face of growing threats to our biosphere. The lack of political will is evidenced by the inability of politicians everywhere to place long-term sustainability above short-term electoral exigencies. It is also reflected in inadequate assistance to developing countries through environmentally integrated development co-operation, comprising the transfer of financial and technological resources as well as the removal of trade distorting subsidies and other tariff and non-tariff measures. Efforts are, therefore, called to arrest and reverse the recession in political levels.

Second, the environmental governance structure of the UN needs to be revitalized through better functioning governing bodies, inter-agency coherence, and provision of sufficient authority and resources. The Bretton Woods institutions as well as other

lending institutions need to exert greater efforts to gear their activities towards the achievement of sustainable development.

Third, the private sector should invest more in research and development activities for developing cleaner production processes, renewable energy sources, energy efficient transport and pollution abatement systems, as well as agree to more transparent reporting and the independent evaluation and monitoring of their activities. Governments in both developing and developed countries would need to redouble efforts to promote sustainable development through necessary policy changes, efficient, transparent and accountable institutions, and the full participation of industry and civil society.

Fourth, the underlying causes of environmental degradation, such as population growth, poverty and underdevelopment, inadequate technologies and market failures due prices which do not take into account environmental impacts, will have to be addressed.

Fifth, concerted efforts would need to be made to achieve a rapid and sustained transition to sustainable patterns of consumption, through green labelling and enlisting the support of consumers with the help of rigorous public awareness campaigns.

Last, Professor James Gustav Speth has urged that there is the need for the most fundamental transition of all – a transition in culture and consciousness and an environmental revolution for achieving the creation of a world society that is environmentally sustainable, economically equitable and peaceful. Speth has noted that there must also be a deeper change, a different way of seeing ourselves in relation to the planet on which we live. For this, he adds aptly, we would need an international movement of citizens and scientists, one capable of dramatically advancing the political and personal changes needed.³⁸

³⁸ Gus Speth, *Red Sky at Morning: America and the Crisis of the Global Environment* (Yale, 2004).

THE CONCEPT OF SUSTAINABLE DEVELOPMENT: FROM THEORY TO PRACTICE¹

Donald Kaniaru²

Introductory Remarks

The concept of sustainable development and its translation into concrete actions must obviously be of concern to all countries, whether developed or developing. There can be no debate about whether it should be more of a concern to one group of countries rather than to the other. This concern, however, must still be perceived in historical terms. Developed countries reached their current level of development at a considerable cost and not always sensitive to the rate at which resources within their reach were used. Resources, both renewable and non-renewable, were used voraciously and that previous industrial development may have used up more than its fair share of global common resources. Indeed, that pattern of development may also have produced more than its fair share of wastes, dumping these in so-called global common sinks. Thus, it is in order to ask the following questions: when, by whom and how was the risk of global warming created? How did we deplete the global ozone layer that protects us all from damaging ultra violet rays? The purpose of raising such questions and concerns is not to point an accusing finger, far from it. This would, in fact, clearly be counter-productive. On the other hand, I cannot argue that developing countries now pursue development patterns similar to those of the past, ignoring the grave consequences that would surely result for all of us. I believe it was Mahatma Gandhi who said 'If India should aspire to the same pattern of development as Britain, there will need to be the resources of thousands of Britains.' What I am suggesting, therefore, is that the concept of sustainable development is now able to provide a common agenda for both developed and developing countries. Indeed, it provides the only feasible basis for assured

¹ This paper is based on a lecture given by the author on 24 August 2004.

² Special Senior Legal Advisor to the Executive Director, United Nations Environment Programme; former Director, Division of Environmental Policy Implementation, United Nations Environment Programme.

common development. This pattern has been concisely encapsulated in the international debate on development by the phrase: Common agenda with differentiated responsibilities. The alternative, i.e. the patterns of development of traditional Western societies, could, if followed and emulated now by developing countries, only result in mutually assured under-development, perhaps even mutual destruction.

Sustainable development has thus given rise to a new pattern of internationalism. This pattern in turn gave rise to new impetus in the field of international environmental law. The two, sustainable development and international environmental law, have created a symbiosis. In the United Nations Environment Programme (UNEP), prior to the full development of the concept of sustainable development, the international environmental law programme was embryonic. With the consolidation of the sustainable development, it has grown and is still growing to new levels of importance.³

The concept offers different connotations depending on the expertise of the speaker: whether it is law, economics, sociology, ecology, politics, and so on. Many academics have given it much attention in the form of philosophical analysis and criticism. Every learned presentation begins with the definition offered in *Our Common Future*: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'⁴

This broad understanding denotes development, equity, fairness, and growth in a world of so many poor across the globe. Estimates of people living in poverty range from between one-quarter and one-third of the global population of seven billion, the worst affected regions being in the developing world. In such a situation it is quite a challenge to realize sustainable development at the local, national, regional and global levels. However, the phrase still underlines all the right words and intentions. The Brundtland Report further acknowledged that

In essence, sustainable development, addressed in its broadest context of social, economic and environmental spheres, is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.

As Hunter, Salzman and Zaelke comment, 'The Brundtland Commission did not invent the term sustainable development, but it popularized the term and placed it squarely in the centre of international policy-making.'⁵ They add that partly because of its brilliant ambiguity the concept has received nearly universal acceptance among every sector of international society.

³ Observation by Naigzy Gebremedhin, former UNEP senior staff member.

⁴ World Commission on Environment and Development (WCED), *Our Common Future* (Oxford University Press, 1987), UN Doc. A/42/47 (1987)(The Brundtland Report).

⁵ David Hunter, James Salzman and Durwood Zaelke, *International Environmental Law and Policy* (2nd ed., University Casebook Series: New York Foundation Press, 2002) at 180.

The concept itself and principles arising from it, having been endorsed by heads of state and government during the United Nations Conference on Environment and Development (UNCED) and thereafter in all major global and regional parleys, have become rallying points for all who address environment and development issues and efforts at their integration in decision-making, planning, development and management processes abound. UNCED additionally gave the concept political legitimacy⁶ and unrivalled momentum through the 27 Principles of the Rio Declaration,⁷ with no less than ten of them expressly mentioning sustainable development, Agenda 21,⁸ the Declaration's companion blueprint document, the Forest Principles,⁹ the Convention on Biological Diversity,¹⁰ and United Nations Framework Convention on Climate Change.¹¹

Some 17 years since the Brundtland Report defined the concept, however imprecisely, it is time to be pragmatic rather than theoretical or academic in approach in our dialogue, and I have assumed this posture in my remarks herein. Where, then, does this broadly undefined concept come from, and where does it find expression after 1987 – 1992? The following quick review will focus on selected milestones before 1987 and after 1992. It is recognized that in articulating the concept of sustainable development, each commentator in this area could place different emphasis on and draw attention to different nuances in the selected references.

⁶ Elizabeth Dowdeswell, 'Preface', *UNEP's New Way Forward: Environmental Law and Sustainable Development* (UNEP, 1995), at x.

⁷ Declaration of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. I), www.un.org/documents/ga/conf151/aconf15126-1annex1.htm.

⁸ *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, www.un.org/esa/sustdev/documents/agenda21/index.htm.

⁹ Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, Rio de Janeiro, 3-14 June 1992, UN Doc. A/CONF.151/26 (Vol. III), www.un.org/documents/ga/conf151/aconf15126-3annex3.htm.

¹⁰ Convention on Biological Diversity, Rio de Janeiro, 5 June 1992, in force 29 December 1993, 31 *International Legal Materials* (1992) 822, www.biodiv.org/doc/legal/cbd-en.pdf.

¹¹ United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force 21 March 1994, 31 *International Legal Materials* (1992) 849, unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf.

Before 1987 – selected milestones:

Although the Stockholm Declaration¹² did not expressly mention the term sustainable development, in at least one third of its 26 Principles it anticipated or implied the concept, in a visionary way, thus generally promoting future action on the subject. In value and vision, many academics applaud the Stockholm Declaration over the Rio Declaration. A series of expert discussions elaborating on relationships between the environment and development culminated in the Founex Report,¹³ which sought to reconcile environment and development. In the 1974 Cocoyoc Declaration,¹⁴ UNEP and the United Nations Conference on Trade and Development (UNCTAD) focused on poverty alleviation and held a series of regional meetings on consumption patterns. The point to be made here, however, is that the Cocoyoc outcomes were not followed up; a fate that has tended to befall many recommendations of global and regional fora.

As noted by HE Judge Christopher G. Weeramantry, Vice-President of the International Court of Justice (ICJ), sustainable development is not a new concept. This position was made clear in his keynote address, *Sustainable Development: An Ancient Concept Recently Revived*, given at the Regional Symposium on the Role of the Judiciary in Promoting the Rule of Law in the area of Sustainable Development, held in Colombo in July 1997, to which UNEP had invited him. In September 1997, barely two months later, in the *Gabcikovo-Nagymaros* case,¹⁵ in a Separate Opinion the Judge stated that ‘sustainable development is thus not merely a principle of modern international law. It is one of the most ancient of ideas in human heritage. Fortified by the rich insights that can be gained from millennia of human experience, it has an important part to play in the service of international law.’¹⁶ The Judge reviewed various dimensions of the appreciation of the concept already thousands of years ago in Africa, in Australia among the Aborigines, in Asia and Sri Lanka, as well as among North American Indians. He observed, quite rightly, that ‘the human family has learnt to live in harmony with the environment for thousands of years and has achieved this in a very successful manner. If we fail to look at the past for its traditional wisdom in facing our environmental problems, we may be depriving ourselves of this very important source of wisdom.’

¹² Declaration of the United Nations Conference on the Human Environment, Stockholm, 16 June 1972, www.unep.org/Documents/Default.asp?DocumentID=97&ArticleID=1503.

¹³ *The Founex Report on Development and Environment* (1971), www.southcentre.org/publications/conundrum/conundrum-04.htm#P266_67285.

¹⁴ The Cocoyoc Declaration, Cocoyoc, Mexico, www.southcentre.org/publications/conundrum/conundrum-06.htm#P719_166711.

¹⁵ *Gabcikovo-Nagymaros Project (Hungary/Slovakia)*, ICJ Reports (1997) 7, Separate opinion of Vice-President Weeramantry at 88, www.icj-cij.org/icjwww/idocket/ihs/ihsjudgement/ihs_ijudgment_970925_frame.htm.

¹⁶ Cited in Hunter, Salzman, and Zaelke, *International Environmental Law*, *supra* note 5, at 346.

In Mostafa K. Tolba's *Sustainable Development Constraints and Opportunities*,¹⁷ which contains his statements from the period 1982 – 1986, the interlinkage of 'environment and development', 'environmentally sound development' and 'sustainable development' emerge. His preface, dated February 1987, noted that 'taken together the main thread binding all my statements presented...is the fact that long-term development can only be achieved through sound environmental management, that is, sustainable development.' Commenting on the relationship between the environment and development since the 1960s, he noted that past practices and beliefs had changed dramatically: 'It is now clear that without environmental protection, it is not possible to have sustained development, and without development, it is not possible to have a high quality of our environment and an improved quality of life for all the world's citizens. Thus, what we need is sustainable development, that is, development that can be sustainable over the long-term by explicitly considering the various environmental factors on which the very process of development is based.'

Some milestones after 1992

Today, literature on sustainable development is prolific and each of us could provide an ample list. A few sources are mentioned below. Chapter one of Mostafa K. Tolba's, *A Commitment to the Future – Sustainable Development and Environmental Protection*,¹⁸ focuses on the compatibility between environment and development. The author recalls the *Founex Report*, the Stockholm Declaration 1972, *Choosing the Options*¹⁹ and the International Development Strategy for the 3rd UN Development Decade.²⁰

Several global and regional conferences – within and without the United Nations system – have taken place since 1992. These include the 1994 Barbados Global Conference on the Sustainable Development of Small Island Developing States; the 1994 Cairo United Nations International Conference on Population and Development, the 1995 Copenhagen World Summit on Social Development. Also noteworthy are the five and ten year reviews of UNCED by the 1997 19th UN General Assembly Special Session and by the 2002 World Summit on Sustainable Development (WSSD), respectively. In both these reviews of Agenda 21, concern on the lack of progress in the implementation of the Rio blueprint was conspicuous. Indeed, at WSSD new emphasis was predictably placed on implementation.

¹⁷ Mostafa K. Tolba, *Sustainable Development Constraints and Opportunities* (Butterworths: London, 1987).

¹⁸ Mostafa K. Tolba, *A Commitment to the Future – Sustainable Development and Environmental Protection* (UNEP, 1992).

¹⁹ United Nations Environment Programme, *Choosing the Options: Alternative Lifestyles and Development Patterns* (UNEP, 1980).

²⁰ International Development Strategy for the Third United Nations Development Decade, GA Res. 35/56, 5 December 1980, www.un.org/documents/ga/res/35/a35r56e.pdf.

A few leading authors and publicists of academic books and publications also deserve mention: these include previously cited Hunter, Salzman and Durwood as well as Philippe Sands, prolific author of, for example, *Environmental Protection in the 21st Century: Sustainable Development and International Law*.²¹ A few key publications by institutions and organizations can also be singled out: UNEP's three *Global Environment Outlook* (GEO) reports;²² *UNEP's New Way Forward*;²³ and IUCN's 1995 International Covenant on Environment and Development, revised in 2003, which is an umbrella global instrument on sustainable development.

The ICJ also provided some legal clarification of the principle of sustainable development through the Separate Opinion of Vice-President Weeramantry.²⁴ Moreover, judicial sensitization has been addressed at regional, sub-regional and global symposia on the Role of the Judiciary in Promoting the Rule of Law in the Area of Sustainable Development, which have taken place in virtually all regions.²⁵

It should be noted that earlier global and regional conferences and efforts mostly involved only the executive branch of governments; to some extent parliaments were involved in voting resources for global and regional parleys and ratifying conventions and involvement in the governing bodies of intergovernmental organizations. It was not until late 1996 that the judiciary at the regional and global levels became deliberately sensitized to environmental matters – primarily to the credit of UNEP. Since this period a lot of national judicial activity has taken place in many countries and in all regions, followed by the extensive sharing of law reports and guidelines for use by the judiciary and legal practitioners at the national level.

In Practice: Sustainable Development Applied

The levels of discussion and negotiation of the concept of sustainable development have been myriad. The concept has been addressed globally in academic circles, by diplomats at conferences and other intergovernmental fora and within global and regional non-governmental organizations (NGOs); at the national level it has been addressed in integrating decision-making, in institutional review and restructuring and in law-making and application. The high watermark, however, was the overwhelming global

²¹ Philippe Sands, 'Environmental Protection in the 21st Century: Sustainable Development and International Law', in Richard L. Revesz, Phillippe Sands and Richard B. Stewart (eds), *Environmental Law, the Economy and Sustainable Development: the United States, the European Union and the International Community* (Cambridge University Press, 2000).

²² See www.unep.org/Geo/index.htm.

²³ Dowdeswell, *New Way Forward*, *supra* note 6.

²⁴ *Gabcikovo-Nagymaros Project*, *supra* note 15.

²⁵ See the section on 'Judicial Input' below.

endorsement in Rio by over 100 heads of state and government of the sustainable development menu, and its subsequent reinforcement in various fora and instruments, both binding and non-binding. These are summarized below.

Global treaties and negotiations

Sustainable development principles find expression in the preamble(s) and in the operative articles of numerous global, regional and subregional conventions, treaties and protocols. In some instruments, reference is made in the preamble to the entire Rio Declaration without specifying a particular aspect of the Declaration. For example, Recital 2 of the Preamble of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade²⁶ recalls ‘the pertinent provisions of the Rio Declaration.’ In other treaties, sustainable development principles are not only recognized in preambles but in one or more articles. Examples of this may be found in Articles 2 and 3 of the United Nations Framework Convention on Climate Change,²⁷ in the Preamble and Articles 1 and 10 of the Convention on Biological Diversity,²⁸ and in the Preamble and Article 9(1) of the United Nations Convention to Combat Desertification.²⁹

As mentioned above, no less than ten principles are themselves integral to sustainable development, and these find, individually or severally, express reference and endorsement in many treaties. These include the polluter pays principle; the precautionary principle or approach; international co-operation; inter-generational equity, etc., all adding to due recognition and endorsement of the broader principle of sustainable development.

Regional treaties

The Rio Principles are also applied in legally-binding regional instruments including in the Preamble of the North America Free Trade Agreement,³⁰ in Article 2 of the Treaty on European Union,³¹ and in the African Union’s 2003 African Convention on

²⁶ Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam, 11 September 1998, in force 24 February 2004, 38 *International Legal Materials* (1999) 1, www.pic.int/en/ViewPage.asp?id=104.

²⁷ Climate Change Convention, *supra* note 11.

²⁸ Biodiversity Convention, *supra* note 10.

²⁹ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, Paris, 17 June 1994, in force 26 December 1996, 33 *International Legal Materials* (1994) 1309, www.unccd.int/convention/menu.php.

³⁰ North American Free Trade Agreement, 8 and 17 December 1992, Washington D.C., 11 and 17 December 1992, Ottawa, 14 and 17 December 1992, Mexico City, in force 1 January 1994, 32 *International Legal Materials* (1993) 1480, www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=78.

³¹ Consolidated Version of the Treaty on European Union, *OJ* 2002 No. C325, www.europa.eu.int/eur-lex/lex/en/treaties/index.htm.

the Conservation of Nature and Natural Resources,³² which updated the 1968 Algiers Convention³³ on the same subject, making the revised convention the most comprehensive regional biodiversity convention.

There has also been the elaboration of specific instruments based on specific Rio Principles. For example, Principle 10 has been developed in the Aarhus Convention.³⁴ Although this instrument is essentially designed for the United Nations Economic Commission for Europe (UNECE) region, per Article 19(3), it is also open to states outside the UNECE region, and an informed expert, Professor Marc Pallemmaerts is firmly of the opinion that states from other regions can currently be accommodated straightforwardly through accession. Two states, Uganda and Mexico, may be among the first from outside the UNECE region to become parties.

Principle 10 is, however, widely applied elsewhere through strategy and policy documents by the Inter-American Development Bank, for example, as well as across all regions through other legally-binding regional and subregional conventions. Upon adoption, the Convention was shared with regional commissions by UNECE's Executive Secretary as well as by UNEP's Executive Director whose unit, Infoterra, was fully involved in the discussions leading to the Convention as well as during its negotiation. In fact, in 1999 the Executive Director brought the Convention to the attention of the Governing Council which was not enthusiastic about moving in the direction of a global convention on Principle 10. It did, however, encourage UNEP to review the practice of different countries and regions. This led to a report to the Council in 2001. UNEP also invited the Director of UNECE, Kaj Bärlund, former Finnish Minister of the Environment, to the Southeast Asia Judges Symposium held in Manila in 1999, to discuss the instrument, which the meeting subsequently embraced and commended. In Africa, the Southern Africa Development Community (SADC), with financing by Ireland, studied the Aarhus approach during the Aarhus negotiations themselves, and thereafter in Gaborone in December 1998. At the national level, about 38 African states have incorporated Principle 10 in national statutes or constitutional provisions.³⁵

³² African Convention on the Conservation of Nature and Natural Resources (Revised Version), Maputo, 11 July 2003, not yet in force, www.africa-union.org/home/Welcome.htm.

³³ African Convention on the Conservation of Nature and Natural Resources, Algiers, 15 September 1968, in force 16 June 1969, 1001 *United Nations Treaty Series* 4, www.africa-union.org/home/Welcome.htm.

³⁴ Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters, Aarhus, 25 June 1998, in force 30 October 2001, 38 *International Legal Materials* (1999) 517, www.unece.org/env/pp/documents/cep43e.pdf.

³⁵ See UNEP-PADELIA, *Compendium of Environmental Laws of African Countries*, www.unep.org/padelia/publications/laws.html; and UNEP-PADELIA, *Compendium of Environmental Provisions in African Constitutions* (forthcoming).

Judicial input

In the *Gabcikovo-Nagymaros* case,³⁶ the ICJ lost an opportunity to elaborate on and apply the principle of sustainable development; it only mentioned the matter in paragraph 140. However, the Vice-President of the Court, Christopher Weeramantry, took the opportunity to elaborate on the content of the principle in a Separate Opinion. This is bound to open new avenues and horizons for regional and national jurisdictions to expound the principle judicially.

There have been no less than ten judicial symposia - one global and the rest regional - in which judges have taken up or will take up the challenge of applying the set of sustainable development principles. Africa led the way with the first symposium being held in Mombasa, Kenya. Further symposia have been held in South Asia, South-east Asia, Australia and other regions. The symposia were first spearheaded by UNEP. Other organizations, independently or with UNEP, have since then carried out or have planned symposia with a focus on environmental law in the context of sustainable development and on the role and rule of law.³⁷ Regional courts have played a role in applying the principle of sustainable development as well. Discernible judicial efforts can also be seen at the national level in all regions in countries such as India, Pakistan, the Philippines, Australia, New Zealand, Uganda, Malawi, South Africa, Canada, Italy, etc. Judicial handbooks as well as casebooks and reports are available from or are under preparation by UNEP, and Uganda and other countries. These include: *Judges Handbook on Environmental Law*,³⁸ *Compendium of Judicial Decisions on Matters Related to Environment*,³⁹ volumes I & II of *Reports of Global Judges Symposium on Sustainable Development and the Role of Law*.⁴⁰ National publications include: *Casebook on Environmental Law in Uganda* as well as *Handbook on the Practice of Environmental Law in Uganda*, Volume I, both published in 2003.

³⁶ *Gabcikovo-Nagymaros Project*, *supra* note 15.

³⁷ Symposia have been held in Mombasa in 1996; in Colombo in 1997; in Manila in 1999; in Mexico in 2000; in Johannesburg in 2002 with a follow-up in London the same year; in Kuwait in 2002; in Kiev in 2003; in Nairobi in 2003; in Cairo in 2004; and in Washington D.C. in 2004.

³⁸ UNEP, *Judges Handbook on Environmental Law*, (forthcoming).

³⁹ UNEP/UNDP, *Compendium of Judicial Decisions on Matters Related to Environment*, International Decisions: Volume I (1998); National Decisions: Volume I (1998), Volumes II-III (2001), www.unep.org/padelia/publications/judicial.html.

⁴⁰ UNEP, *Reports of Global Judges Symposium on Sustainable Development and the Role of Law*, Volumes I-II (UNEP, 2002).

Application at the national level

Policy instruments are widespread, and include national Agenda 21 documents, derived from the UNCED Agenda 21, and National Action Plans and Sustainable Development strategies as in the United Kingdom and Canada, to name but a few countries. Policy dialogue vis-à-vis policy action, or inaction, is often taken up by the media and NGOs to put pressure on governments to take action to ratify or accede to conventions, or to institute administrative and legal measures, for example. Institutional reviews and restructuring also take place as a means of implementing law and policy.

Many national constitutions such as those in Uganda and South Africa, or in the draft constitution of Kenya, include legal provisions surrounding sustainable development principles. Specific statutes are also often found in framework legislation in developing countries. Examples include the Ugandan National Environment Act;⁴¹ the South African National Environment Management Act;⁴² and the Kenyan Environmental Management and Co-ordination Act, No 8, of 1999, which came into effect in 2000. In the case of Kenya, sustainable development is defined similarly to Uganda, but Section 3 of the Act pools together several principles into one sustainable development principle. The six that shall guide the High Court in exercising jurisdiction conferred upon under subsection (5) are:

- a) the principle of public participation in the development of policies, plans and processes for the management of the environment;
- b) *the cultural and social principles traditionally applied by any community in Kenya for the management of the environment or natural resources in so far as the same are relevant and are not repugnant to justice and morality or inconsistent with any written law;*
- c) the principle of international co-operation in the management of environmental resources shared by two or more states;
- d) the principles of intergenerational and intragenerational equity;
- e) the polluter-pays principle; and
- f) the precautionary principle.⁴³

Many other framework laws with which UNEP has provided assistance have followed this trend.

⁴¹ Chapter 153, National Environment Act, *Republic of Uganda: Environmental Legislation of Uganda*, Volume I 5-1.

⁴² South African National Environmental Management Act 107 of 1998, www.polity.org.za/html/govdocs/legislation/1998/act98-107.html.

⁴³ Section 3(5), Kenyan Environmental Management and Co-ordination Act, No. 8 of 1999 (emphasis added).

Application by international institutions

The goals of sustainable development have been accepted and championed in the programmes and efforts of both the UN and non-UN organizations within their respective global, regional and national mandates, where they are primary players. Within the UN family these include the UN and organs such as the United Nations Development Programme (UNDP), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD), etc. UN specialized agencies to take up this challenge include the Food and Agricultural Organization (FAO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), The World Bank Group, regional development banks, and UN Regional Economic and Social Commissions. Non-UN organizations which have taken up this challenge include the IUCN and regional organizations like the European Union and the African Union.⁴⁴

Conclusion

The content and definition of sustainable development is not closed and will not close in the foreseeable future. The principle and concept can be said to be vague; 'brilliantly vague.' This permits the definition and application of sustainable development to be tailored to specific situations and circumstances. At the local level the state of knowledge, experience and resources will always be key, and local cultural and social values should be integrated into sustainable development legislation. Further insight can be gained from local experience of centuries of sustainable living in tough desert environments, for example. Vagueness in interpretation will therefore remain a positive attribute of the concept, giving it life in different situations and circumstances.

The concept has been widely embraced and championed worldwide and its application or implementation should be monitored and experiences should be shared. Despite their best endeavours, no country can claim to be a role model and an ideal example of sustainable development in practice. None can claim total harmony in the integration and application of sustainable development in development, planning and decision-making. In fact, no society has yet reached its apex in its understanding and application of the concept despite the fact that aspirations to concretize the concept abound and are held by many. In this regard all have a contribution to make to translate these sentiments into action.

⁴⁴ Formerly the Organization of African Unity.

At the 6th UNEP Global Training Programme on Environmental Policy and Law, held in Nairobi in November 2003, Professor Alexander Kiss presented 'legal tools implementing the policies adopted for enhancing sustainable development.' These are international conventions; constitutional rules; framework laws; laws concerning basic services such as water and sanitation, energy, transport, health care, town and country planning, etc.; laws concerning specific environmental sectors such as water, sea, air and biodiversity and specific sources of environmental deterioration such as polluting substances, wastes, nuclear material, etc.; regulations adopted at different levels – national, regional, subregional – following the principle of subsidiarity, and implementing of such laws or framing economic instruments; and judicial decisions.

Work at the national level should heed the sound advice given by such an experienced environmental lawyer as Professor Kiss. These challenge and opportunities should be addressed; each of the over thirty countries represented at the UNEP – University of Joensuu Course has a golden chance of playing their full part in actualising sustainable development.

SUSTAINABLE DEVELOPMENT GOVERNANCE CHALLENGES IN THE NEW MILLENNIUM¹

Johannah Bernstein²

Sustainable Development Governance Challenges

Effective sustainable development governance at all levels is key to the realization of the goals of sustainable development. Creating governance systems to address the multiple challenges of sustainable development constitutes one of the most pressing issues in the period following the World Summit on Sustainable Development (WSSD). Indeed, confronting the new generation of global sustainable development problems gives rise to new challenges for forging global co-operation and co-ordination at all levels and between a number of sectors.

Sustainable development governance architecture, loosely defined, is the complex web of institutions, legal regimes and other arrangements that define policy agendas, norms and rules with respect to the three pillars of sustainable development. It is interesting to note at the outset how the terminology has changed. At the Third Summit Preparatory Committee of the WSSD (PrepCom 3) Vice-Chairs Ambassadors Ositadinma Anaedu and Lars-Goran Engfeldt explicitly used the term sustainable development governance. By contrast, Chapter XI of the Johannesburg Plan of Implementation³ avoids the term and instead makes reference to ‘strengthening the international framework for sustainable development.’

¹ This paper was drawn from a discussion paper which the author prepared for the Ministry of Foreign Affairs of Finland as part of an ongoing project on sustainable development governance and from a paper which the author and Desiree McGraw prepared for Environment Canada. It was provided as background material for a lecture entitled ‘The Art and Governance of Sustainable Development Negotiations’, held by the author on 2 September 2004. For the full briefing book given to participants as well as the Ministry of Foreign Affairs discussion paper, see www.joensuu.fi/unep/envlaw/index.html.

² Environmental Law and Policy Consulting, Brussels, Belgium.

³ World Summit on Sustainable Development (WSSD), *Johannesburg Plan of Implementation*, www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm (hereinafter Johannesburg Plan).

In all its myriad forms, there is no question that the sustainable development governance architecture must be strengthened at all levels. However, reform measures are just as diverse and far-reaching as the scope of sustainable development challenges itself. At PrepCom 3, Vice-Chairs Anaedu and Engfeldt identified the actions that would be required to strengthen sustainable development governance at the international level. These included integrating the three dimensions of sustainable development; ensuring coherence and consistency in policy formulation; promoting transparency and participation; strengthening policy formulation and co-ordination; integrating sustainable development priorities into macroeconomic policies; reforming structures and processes of international finance and trade institutions; and promoting fair and equitable participation in the World Trade Organization (WTO). Set against this backdrop, it becomes clear that international environmental governance reform is but one necessary albeit important piece in the overall sustainable development governance challenge.

In their 2001 position paper, the Third World Network asserted that the integration of sustainable development has been largely inadequate. First, the integration of environmental concerns in development has not occurred as anticipated. Second, the development dimension has not been properly integrated in the substantive work of the Commission on Sustainable Development (CSD) or in the implementation of multilateral environmental agreements (MEAs). The Third World Network asserted that unless we deal with the development dimension, the environment will not be adequately protected nor will natural resources be managed sustainably. Moreover, there is a need to ensure that WTO agreements and the Bretton Woods institutions are supportive of sustainable development

As agreed at the 11th Session of the Commission on Sustainable Development (CSD-11), the CSD now functions on the basis of two-year Implementation Cycles, each cycle focusing on a key thematic cluster of issues. The first year of each cycle – the Review year – will evaluate progress made in implementing sustainable development commitments made in Agenda 21,⁴ the Programme for the Further Implementation of Agenda 21,⁵ the Johannesburg Plan of Implementation, and relevant CSD sessions, and will focus on identifying obstacles and constraints. The second year – the Policy year – will decide on measures to speed up implementation and mobilize action to overcome obstacles and constraints, and build on lessons learned. While it is clearly too early to assess the effectiveness of the CSD's new organization of work it is, however, useful to revisit some of the key priorities and concerns that were raised by Ministers at the High-Level Segment of CSD-11 regarding the long-term role of the CSD.

⁴ *Agenda 21: Environment and Development Agenda*, UN Doc. A/CONF.151/26, www.un.org/esa/sustdev/documents/agenda21/index.htm.

⁵ Programme for the Further Implementation of Agenda 21, GA Res. S/19-2, 28 June 1997, www.un.org/documents/ga/res/spec/aress19-2.htm.

Key points are summarized accordingly: the unique role and mandate of the CSD as the only high-level UN body to facilitate accelerated implementation of sustainable development should be re-affirmed; the CSD is well-placed as a forum for co-ordination and integration and should add value to the implementing organs and agencies of the UN system; there is a mutual benefit from an improved, action-oriented CSD work programme and better integration at the country level; the CSD should be used as the global forum to exchange knowledge and experiences as well as best practice as regards the assessment of progress, emerging issues, opportunities and threats; the high-level segment of the CSD is important to ensure government leadership and commitment at the highest level, as well as to set the political tone for the substantive sessions. The high-level segments should be interactive and focused, leading to action-oriented recommendations that would enhance implementation; increased attention should be directed at the regional level as well, with support for the concept of Regional Implementation Forums, in which partnerships can be developed to deliver the WSSD and Millennium Development Goal (MDG) outcomes; the engagement of civil society in the CSD should be strengthened with particular attention directed towards ensuring a better balance of major groups from both the North and the South; the CSD should improve its co-ordination with UN agencies, the Bretton Woods institutions and the WTO, to ensure the strengthening of synergies among these bodies.

ECOSOC's evolving role in light of the key reform recommendations outlined above has been addressed in a number of important processes. For example, in December 2003, the UN General Assembly's Second Committee adopted a draft resolution that specifically calls upon ECOSOC to enhance its interactions through regular exchanges with the Bretton Woods institutions, WTO and UNCTAD on matters related to the Monterrey follow-up.

More recently, in Resolution 57/270⁶ the UN General Assembly identified a number of key functions to be undertaken by ECOSOC in regard to the integrated and co-ordinated implementation and follow-up of the global summits. These include the following: ECOSOC should continue to strengthen its role as the central mechanism for system-wide co-ordination and to promote co-ordinated follow-up to the outcomes of major UN conferences in the economic, social and related fields; an open-ended ad hoc working group was established to address issues related to the work of the inter-governmental bodies in the follow-up to major conferences and to assess how to ensure a well co-ordinated and integrated examination of the key issues addressed by these conferences; the functional commissions should enhance their role as the main forums for expert follow-up and review of the major conferences and summits.

⁶ Integrated and co-ordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic and social fields, GA Res. 57/270A, 20 December 2003 and GA Res. 57/270B, 23 June 2003.

International Environmental Governance Challenges and Weaknesses

There is a growing consensus that current approaches to international environmental governance are inadequate. While international action has focused primarily on trans-boundary issues, there is a critical need to evolve institutions towards a coherent and integrated framework that addresses individual challenges in the context of the global ecosystem.

The existing machinery remains terribly fragmented and often has vague mandates, inadequate resources and marginal political support. This growing lack of coherence and co-ordination among international agreements and institutions now poses a major impediment to global sustainable development. Moreover, the growing number of environmental institutions, issues and agreements are themselves placing stress on current systems and on our ability to manage them. This increase also threatens to reduce the participation of developing countries, which are not always equipped to participate in the development and implementation of international environmental policy.

The International Environmental Governance (IEG) process of the United Nations Environment Programme's (UNEP) highlights the extent to which the system of international environmental governance fails to address and respond to new and emerging global environmental threats. The institutional weaknesses have been well documented. Key problems include fragmentation, lack of coherence, weak enforcement, duplication and overlap, failed collective action, deficient expertise and authority, lack of adaptability and flexibility, limitations of consensus-based decision-making, inadequate dispute settlement mechanisms, and ineffective compliance monitoring and reporting.

While the number and range of international environmental institutions has grown steadily in the last 25 years, the focus must be directed to the challenges of implementation, compliance and enforcement, all of which remain underdeveloped. Of course the basic premise for charting a new course for strengthening the international institutional machinery is that existing institutions do not adequately address current and future needs.

Responsiveness of Global Governance to Sustainable Development

The realization of global sustainable development goals and principles will require not only renewed political support and the increased commitment of key global actors, but the strengthening of global institutions as well. In their final report published in February 2004,⁷ the International Labour Organization (ILO) World Commission on the Social Dimension of Globalization identified fundamental problems with the current structure and processes of global governance, which in turn have contributed to the uneven social and economic impacts of globalization.

The Commission argues that the most critical problem is the vast inequality in the economic power of nations, which translates into imbalanced playing fields in the global governance arena creating a built-in tendency for the process of global governance to be dominated by the interests of the most powerful states. The Commission asserts that these inequalities are reflected in the democratic deficits that currently characterize global governance and which are most evident in the case of the UN Security Council and the Bretton Woods institutions. Moreover, developing countries face a wide range of handicaps in making their influence felt in global governance, particularly in light of the increasing technical complexity and multiplicity of multilateral negotiations. The Commission further asserts that these problems are compounded by the low democratic accountability and transparency in the process of global governance, whereby the positions taken by governments in international arenas are rarely scrutinized by national parliaments. The final problem highlighted by the Commission is the lack of coherence in global decision-making whereby negotiations on global governance take place in highly compartmentalized sectors such as trade, finance, health, social affairs or development assistance, with processes often working at cross purposes.

Given the expanding sustainable development agenda and the fragmented approach to international action, the international community must consider whether the existing institutional machinery can respond sufficiently to the global challenges of the new millennium. The United Nations Secretary-General has raised a number of important questions regarding the broader UN reform challenge and the need to ensure that international institutions can deliver on key sustainable development commitments, namely will it be sufficient to exhort states and individuals to forge stronger international solidarity and responsibility, or will a radical reform of the international institutional architecture also be needed? Another central challenge that the Secretary-General has raised is how to move the reform agenda beyond the useful but managerial changes

⁷ World Commission on the Social Dimensions of Globalization, *A Fair Globalization: Creating Opportunities for All* (ILO: Geneva, 2004), www.ilo.org/public/english/faithglobalization/report/index.htm.

being made, and how to bring to the fore some of the more fundamental questions that pertain to the way in which decisions are made, and indeed the adequacy or efficiency of the key decision-making bodies.

In the Globalization and Governance chapter of the Millennium Report,⁸ UN Secretary-General Kofi Annan outlined the key political challenges that must be addressed together with the institutional reforms needed to ensure the transition from an international to a global world. The United Nations must play a stronger role in ensuring that globalization provides benefits for all member states and in brokering among states the differences in power, culture, size and interest, serving as the forum where the cause of common humanity is advanced. Stronger systems of global governance must be grounded in a robust international legal order which, together with the principles and practices of multilateralism, are needed to define the ground rules of an emerging global civilization. Decision-making structures through which governance is exercised internationally must reflect the broad realities of our time. This relates in particular to the reforms needed to ensure that the Security Council and key economic forums better represent the needs of a globalized world. Better governance means greater participation, coupled with accountability. Therefore the international public domain, including the UN, must be opened up further to the participation of non-state actors. The more integrated global context also demands a new degree of policy coherence, while important gaps must be filled. The international financial architecture and the multilateral trade regime require strengthening. However, greater consistency must be achieved among macroeconomic trade, aid and financial and environmental policies to ensure the common aim of expanding the benefits of globalization.

The Intergovernmental Commitments for Reform

Key WSSD recommendations for sustainable development governance reform

Chapter XI of the Johannesburg Plan of Implementation⁹ sends a clear message that strengthened international institutional frameworks are essential for the full operationalization of MEAs, and more broadly, the realization of sustainable development. At the outset, it is particularly important to note that Section C calls upon the General Assembly to adopt sustainable development as a key element of the framework for UN activities, especially for achieving the Millennium Development Goals (MDGs).

⁸ Millennium Report of the Secretary-General of the United Nations, *We the Peoples: the Role of the United Nations in the 21st Century*, (UN, 2000), www.un.org/millennium/sg/report/index.html.

⁹ WSSD, *Johannesburg Plan*, *supra* note 3.

Section A of Chapter XI sets out the key objectives to be considered in strengthening international institutions on sustainable development. The principal way in which sustainable development commitments can be strengthened is through the increased integration of Agenda 21 and WSSD outcomes into the policies, work programmes and operational guidelines of relevant United Nations agencies, programmes and funds, as well as of the international financial and trade institutions.¹⁰ Chapter XI calls for the General Assembly to adopt the concept of sustainable development as the overarching framework for UN activities.

The economic, social and environmental dimensions should be integrated in a balanced manner.¹¹ It is interesting to note that the Johannesburg Declaration on Sustainable Development acknowledges the collective responsibility of the international community to ‘advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development – economic development, social development and environmental protection.’¹² Moreover, the need for particular attention to be given to strengthening the social dimension of sustainable development is specifically highlighted.¹³ Integration is also addressed in terms of the enhanced co-operation that is called for between the UN system and the international financial institutions.

The strengthening of coherence, co-ordination and monitoring is called for.¹⁴ In this respect the mandates and functions of the various bodies within the international governance architecture will have to be realigned with better linkages defined among them. In particular, this will involve closer relationships between the United Nations and the Bretton Woods institutions with respect to economic, financial and monetary issues that impact on the political, social and environmental fields for which the UN is the primary forum.

While the importance of the rule of law is highlighted as an objective to guide governance reform, it is silent as to scope and substance of this principle.¹⁵ The rule of law is generally understood as a principle that relates to the scope of the authority of governance systems. The rule of law is part of a system of checks and balances to prevent the arbitrary, unlimited, or discretionary exercise of power or authority. It requires the authority and power of governance systems to be limited to those spheres, issues and actions that are specified by law. The rule of law also requires decision-making processes to be grounded in a fair, non-discriminatory and objective rule-based system, and to be

¹⁰ Paragraph 139(a), *ibid.*

¹¹ Paragraph 139(b), *ibid.*

¹² Paragraph 5, World Summit on Sustainable Development *Johannesburg Declaration on Sustainable Development*, 4 September 2002, www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm

¹³ Chapter XI, WSSD, *Johannesburg Plan*, *supra* note 3.

¹⁴ Paragraph 130(d), *ibid.*

¹⁵ Paragraph 139(e), *ibid.*

accompanied by an impartial system of enforcement. An important principle related to the rule of law is accountability, which requires governance systems to be answerable and responsible to the constituents that they serve.

Reference is made to the importance of increasing effectiveness and efficiency through limiting overlap and duplication of activities of international organizations within the United Nations and in relation to other bodies such as the Bretton Woods institutions.¹⁶ Effectiveness and efficiency are also dependent on the achievement of greater integration and co-ordination of the economic, social and environmental dimensions of sustainable development. Finally, these principles relate to such objectives as flexibility and adaptability, which enable international environmental governance systems to respond to unforeseen events and new scientific discoveries.

The enhancing of participation and the effective involvement of civil society and other key stakeholders in the implementation of Agenda 21, as well as promoting transparency and broad public participation is called for.¹⁷ In his 2002 report on Strengthening the United Nations,¹⁸ the Secretary-General called for the establishment of a high-level panel that would assess how best to engage civil society in the United Nations. A major objective of the Panel's work will be to develop a new mode of working as a foundation for how the UN evolves in its relations with civil society and other non-government actors. Moreover, the strengthening of sustainable development at all levels, in particular in developing countries, is called for.¹⁹

Section B of Chapter XI outlines a range of measures that should be undertaken by the international community to strengthen the institutional framework for sustainable development at the international level. Some of the key recommendations include enhanced integration of sustainable development goals into the policies, programmes and operational guidelines of all the UN agencies and the Bretton Woods institutions; strengthened collaboration within and between the UN and the international financial institutions; improved integration of the three pillars of sustainable development; promotion of corporate responsibility and accountability; implementation of the Monterrey Consensus at all levels; and promotion of good governance within the international finance and trade institutions.

¹⁶ Paragraph 139(f), *ibid.*

¹⁷ Paragraph 139(g), *ibid.*

¹⁸ *Strengthening of the United Nations*, *infra* note 26.

¹⁹ Paragraph 139(h), *Johannesburg Plan*, *supra* note 3.

UN Millennium Declaration recommendations for governance reform

One of the central messages of the UN Millennium Declaration²⁰ was the importance of ensuring that globalization becomes a positive force for all of the world's people. Section I: Values and Principles, notes that developing countries and countries with economies in transition face special difficulties in responding to the globalization challenge. As a result, the international community is called upon to forge broad and sustained efforts to create a 'shared future, based on our common humanity in all its diversity' in order to ensure that globalization be made fully inclusive and equitable. This challenge requires the development of policies and measures at the global level which better respond to the needs of developing countries and which are formulated with their effective participation.

As regards the global governance challenge, Section VIII: Strengthening the United Nations, contains a number of important recommendations for advancing the international institutional reform agenda. These are highlighted as follows: reaffirm and enhance the effectiveness of the central position of the General Assembly as the chief deliberative, policy-making and representative organ of the UN; intensify comprehensive reform of the Security Council; continue strengthening the position of ECOSOC, to help fulfil the role ascribed to it in the Charter; strengthen the International Court of Justice to ensure justice and the rule of law in international affairs; encourage regular consultations and co-ordination among the principal UN organs; ensure timely and predictable funding of the UN; ensure greater policy coherence and better co-ordination between the UN and the Bretton Woods institutions and the WTO; and enhance participation of non-state actors to contribute to the realization of the UN's goals and programmes.

UNEP Reform Process

In its 13 January 2004 report to the 8th Special Session of the Governing Council/ Global Ministerial Environment Forum (GC/GMEF), UNEP outlined a summary of actions proposed or taken on international environmental governance in light of decision SS.VII/I and the Open-Ended Groups' recommendations.²¹ These issues were addressed by the 8th Special Session of the GC/GMEF, which took place from 29-31 March 2004 in Jeju, the Republic of Korea.²²

²⁰ United Nations Millennium Declaration, GA Res. 55/2, 8 September 2000.

²¹ See also *International Environmental Governance*, UNEP/GCSS.VII/2, 27 December 2001, www.unep.org/GC/GCSS-VII/.

²² For the Notification and Working Documents of the 8th Special Session see www.unep.org/GC/GCSS-VIII/working_docs.asp.

Key arguments in support of universal membership of the Governing Council include the following: universal membership is fundamental to ensure that UNEP benefits from structures that are fully open, transparent and participatory for all member states; and universal membership legitimizes the results of the decision-making process and empowers UNEP with the necessary level of authority and means to implement its functions as the global environmental authority. Member states opposed to universal membership argue that universal composition already exists within the UNEP Governing Council and has been working adequately. The only restriction is that non-members of the GC cannot participate in its voting sessions. Universal membership would also result in an important increase in UNEP's costs and would complicate decision-making processes within UNEP. The 8th Special Session of the GC/GMEF was unable to advance any consensus on the issue, in light of the variety and divergence of views. Instead, the GC simply called for the transmission of further views to the UN Secretary-General as input for his report to the UN General Assembly on this issue.

During negotiations, the EU's proposal for the establishment of an intergovernmental panel on global environmental change was objected to by the US, Japan and the G-77.²³ Member states opted for a simpler exploratory approach that will evaluate UNEP's polling of a broad range of official and scientific sources. The final decision of the 8th Special Session of the GC/GMEF requests the Executive Director to continue efforts to seek an increase in funding from all sources. During general debate, the EU called for the utilization of the indicative scale of contributions, noting the positive outcome of the pilot phase. The US and Japan have decided not to use the scale and stress instead the voluntary nature of contributions.

Among its key MEA activities, UNEP is facilitating pilot projects in four countries to test information management and harmonization concepts in the context of national reporting to the five global biodiversity-related conventions. Furthermore, in developing countries, UNEP is advancing capacity-building efforts to implement MEAs. To this end, UNEP is holding a series of regional training workshops on compliance with and enforcement of MEAs to review and test a manual it has developed on the UNEP Guidelines on Compliance and Enforcement of MEAs, which were adopted in 2002.²⁴ Moreover, UNEP is launching a major project on achieving synergies between conventions in Africa. The 8th Special Session of the GC/GMEF requested the Executive Director to continue to promote the recommendations of the GC/GMEF regarding the co-ordination and effectiveness of MEAs.

²³ See *International environmental governance: Synthesis of responses on strengthening the scientific base of the United Nations Environment Programme*, UNEP/GCSS.VIII/5/Add.3, www.unep.org/gc/gcss-viii/working_docs.asp.

²⁴ See the article by Elizabeth Maruma Mrema in the present review.

In response to UNEP IEG and WSSD decisions to revitalize the Environmental Management Group (EMG),²⁵ the Group has agreed that it should become an instrument for members to share views or concerns on issues of common interest, review progress, identify obstacles, set policy directions and convey views and recommendations to intergovernmental forums. As one of its immediate areas of focus, the EMG has undertaken a UN system-wide consultation on the implementation of the water agenda.

Global Governance Reform Processes

The UN Secretary-General's September 2002 report, *Strengthening of the United Nations: An Agenda for Further Change*,²⁶ marked the second stage of reform proposals since taking office in 1997. In the report, the Secretary-General asserted that if member states do indeed want a stronger United Nations, change in the intergovernmental organs will be a necessity. A few of his suggested reforms are summarized below.

The Secretary General indicated that the next stage of reform is based on the priorities laid out in the Millennium Declaration, including precise, time-bound development goals. They now serve as a common policy framework for the entire UN system. It is important that the United Nations General Assembly (UNGA) continue its own reform efforts to further rationalize its agenda. At present, it considers too many overlapping items and with a frequency that is ineffective. The Secretary-General called for duplicative items to be combined and for closely related issues to be clustered into a single discussion, leading to outcomes of greater policy relevance and impact. He also suggested that the UNGA should clarify its responsibilities vis-à-vis ECOSOC in relation to the follow-up of conferences, enabling the UNGA to build on and add value to the work of ECOSOC and its functional commissions. The growing role of the United Nations in forging consensus on globally important social and economic issues calls for a corresponding strengthening of the role played by ECOSOC. One of the most promising innovations has been ECOSOC's annual dialogue with the Bretton Woods institutions. However, the agenda and format of these dialogues must be more focused and the meetings better prepared.

Despite efforts of the Open-ended Working Group on Security Council reform, no formula has yet been developed that would allow an increase in Council membership. According to the Secretary-General, the perceived shortcomings in the Council's credibility in light of its size and composition contribute to a slow and steady erosion of its authority, which in turn has grave implications for international peace and security.

²⁵ See *Overview of progress on international environmental governance: Report of the work of the Environmental Management Group*, UNEP/GCSS.VIII/5/Add.2, www.unep.org/gc/gcss-viii/working_docs.asp.

²⁶ *Strengthening of the United Nations: An Agenda for Further Change*, UN Doc. A/57/387 (2002), www.un.org/reform/keydocs.html.

A reform process that consisted only of an increase in membership would be unlikely to strengthen the Council.

The Secretary-General called for the establishment of a high-level panel that would assess how best to engage civil society in the United Nations. A major objective of the Panel's work will be to develop a new mode of working as a foundation for how the UN evolves its relations with civil society and other non-government actors. In 2003, the Panel undertook consultations on key issues related to civil society engagement within the UN. Regional meetings have been undertaken and a set of papers has been commissioned as well. The Panel prepared its final report to the Secretary-General in April 2004. It contains recommendations designed to enhance the performance of the UN and addresses, in particular, the modalities for engaging the full weight of global civil society in the normative, policy-making work of the UN and other multilateral processes.

In November 2003, the Secretary-General established a high-level panel to provide a new assessment of the future challenges to international peace and security, to identify the contribution of collective action and to recommend the changes necessary to ensure effective collective action. The Panel's work will be directed to the field of peace and security but the Panel will extend its analysis and recommendations to other issues and institutions where they have a direct bearing on future threats to peace and security.

In response to the Monterrey Consensus,²⁷ the Bretton Woods institutions have publicly pledged to support the call for democratic governance reform of the international financial institutions. As a result, formal discussions have been carried out within the governing Boards of the World Bank and the IMF. In considering the issue, Bank staff produced a report – prepared for consideration by the joint IMF-World Bank ministerial steering committee at its 2003 spring meeting – that suggested ways in which a small increase of a few percentage points in the votes of developing countries could be achieved and suggested the creation of a new Executive Board seat that would be assigned to sub-Saharan African countries. In spite of the modesty of the proposals, the US Bank Director not only rejected them, but also sought to put an end to any further discussion on the issue.

²⁷ Monterrey Consensus, International Conference on Financing for Development, Monterrey, 21-22 March 2002, A/CONF.198/11, www.un.org/esa/ffd/Monterrey-Consensus-excepts-aconf198_11.pdf.

Options for Reform

Options for Strengthening Existing Institutions

The Government of France has established an intergovernmental working group in New York to examine the possible upgrading of UNEP into a specialized agency, the United Nations Environment Organization (UNEO). The group will present an interim report to the UN Secretary-General prior to the preparation of the IEG report to be submitted to the General Assembly. By 2005, it will have prepared proposals with clear goals in the form of a non-paper to be co-sponsored by the group's members. The working group will consider three courses of action for the UNEO in the context of improving international environmental governance: (i) enhancing implementation and enforcement, including building UNEO's horizontal mobilization capacity and strengthening the observance mechanisms by giving UNEO a specific monitoring and reporting role; (ii) building the institutional capacity of developing countries, including co-ordinating capacity-building action and assistance in mobilising financing for environmental projects; and (iii) rationalizing the existing system of MEAs, including giving UNEO a driving role in the convention alignment process and making UNEO a driving force for the integration of environmental concerns in other UN and non-UN bodies.

The South Centre report *For a Strong and Democratic United Nations: A South Perspective on Reform*²⁸ was presented at the Forum on the Future of the United Nations, which was convened in March 1995 in Vienna under the chairmanship of the UN Secretary-General. The South Centre asserted that in a new era of democracy and pluralism, the UN must lead and be seen to lead in the practice of democracy in all of its organs and processes. To that end, it recommended that the Security Council be composed of fully accountable members, all appointed on the basis of a democratic formula established by the General Assembly.

The South Centre further called for reforms to ensure that the Security Council act transparently, with constant and close reporting to and in consultation with the General Assembly. It also called for reforms to ensure that all member states apply the principles of democratic revenue-raising and governance as regards their UN contributions. The South Centre was very concerned about the need to empower the UN to deal with macroeconomic issues and to exercise genuine multilateral responsibility for macroeconomic co-ordination under the existing but unused mandates enshrined within the UN Charter.

²⁸ The South Centre, *For a Strong and Democratic United Nations: A South Perspective on UN Reform*, (Imprimerie Ideale: Geneva, 1996) www.southcentre.org/publications/unreform/toc.htm.

To that end, the South Centre recommended that the key provision in the UN Charter should be activated to enable the UN to exert policy leadership in macroeconomic and social policy issues, bringing all specialized agencies, including the Bretton Woods institutions, under its policy direction. It also calls for a major and comprehensive process of reform of the Bretton Woods institutions and the establishment of an effective mechanism within the UN to develop a framework of international review and regulation of transnational corporations. The South Centre also called for ECOSOC to be authorized to perform economic security functions and to design mechanisms to facilitate well-focused policy dialogue. Moreover, the South Centre called for the rebuilding of the intellectual capacity of the UN and its key organs to undertake high-quality creative analytical and policy-oriented work in the economic and social development arenas.

Options for Strengthening Linkages Between IEG, SDG and Global Governance Institutions

The 1994 UN reform report by Sir Brian Urquhart and the late Erskine Childers expressed concern about the erosion of the intellectual leadership of the UN Secretary-General in the areas of macroeconomic and development issues.²⁹ They recommended the establishment of a new post of Deputy Secretary-General for International Co-operation and Sustainable Development to be responsible for all UN economic and social policy research, analysis, policy development and programming. The South Centre's position, outlined above, was very much aligned with the concerns raised by Urquhart and Childers regarding the need to empower the UN to deal with macroeconomic issues, and to exercise genuine multilateral responsibility for macroeconomic co-ordination under the existing but unused mandates enshrined within the UN Charter.

The 2004 World Commission on the Social Dimensions of Globalization³⁰ asserted that policy co-ordination and coherence is a critical challenge for the multilateral system. To that end, it called for greater leadership on harmonising and balancing social and economic policy to achieve larger goals. Among other suggestions, it recommended further consideration of the proposal for the establishment of an economic and social security council with similar status to the Security Council as well as further consideration for the creation of a global council at the highest political level to provide leadership on global governance issues.

²⁹ Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (Dag Hammarsköld Foundation: Uppsala, 1994).

³⁰ World Commission on the Social Dimensions of Globalization, *A Fair Globalization*, *supra* note 7.

In its 2003 report entitled *International Sustainable Development Governance*,³¹ the United Nations University argued in favour of clustering MEAs as an important step towards ensuring greater linkages between the key environmental regimes. UNU maintained that the first step in clustering is the creation of structures for the co-ordination between MEAs, such as joint meetings of convention bodies and secretariats, joint implementation of common activities, a common communications network, etc. Such cohesive arrangements might then develop into a more formal structure of co-ordination. Clustering needs political incentives in order to promote a continuous process and a structure of co-ordination. Catalysts such as UNEP need thus to attain a clear political mandate and an established authority in relation to those who will be subject to and take part in clustering efforts.

Options for New Institutions

The Potsdam Institute has suggested that UNEP, CSD, GEF, the secretariats of the major environmental conventions, and possibly UNDP, should be fused into a new World Environment and Development Organization (WEDO).³² As one of its aims, the WEDO would give urgent tasks of environmental and developmental policy more weight among national governments, international organizations and the private sector. WEDO would also enable the international community to substantially improve the institutional setting for negotiating new agreements and programmes for action, and for implementing existing ones.

Urquhart and Childers felt that in an age of expanding democracy within UN member states, it was important for the UN itself to become increasingly democratic.³³ They recommended the establishment of a World People's Assembly that would enable the citizens of member states to have their own representatives in a specific organ of the UN. It would not be intended to abridge or confuse the UN's intergovernmental processes but, instead, complement the work of the national government delegations in the existing intergovernmental machinery. Specifically, the functions of the proposed People's Assembly would include: expressing citizens' views on international problems; influencing the development of intergovernmental policy formulation; monitoring the management and financing of the UN; and enhancing the collective accountability of UN member states.

³¹ United Nations University/Institute of Advanced Studies (UNU/IAS), *International Sustainable Development Governance. The Question of Reform: Key Issues and Proposals* (UNU, 2002), www.ias.unu.edu/binaries/ISDGFinalReport.pdf.

³² The Potsdam Institute, *Institutional Reform of International Environmental Policy: Advancing the Debate on a World Environment Organization* (Potsdam Institute, 2000).

³³ Childers and Urquhart, *Renewing the United Nations*, *supra* note 29.

The Commission on Global Governance, also known as the Carlsson Commission, has proposed that an Economic Security Council be established to provide leadership and to promote consensus on international economic issues and sustainable development.³⁴ It would play a role in assessing the overall state of the world's economy and in securing coherence and consistency in the policy goals of the international economic institutions as well. The Commission has argued that the establishment of an Economic Council as a new principal organ of the UN would be a first step towards the realization of sustainable development. Its objectives would be to integrate the work of all the UN bodies engaged in economic issues, to promote the harmonization of the fiscal, monetary and trade policies of all member states and to encourage international co-operation on technology transfer, financial flows and the functioning of commodity markets. The Independent Working Group on the Future of the United Nations not only endorses the concept of an Economic Council but also recommends the establishment of a corollary Social Council that would integrate all UN activities relating to social development such as environmental protection, education and health care.

The Independent Working Group on the Future of the United Nations has recommended that in order to integrate the UN's work on economic and social policy, the proposed Economic and Social Councils would have to meet once a year at the highest political level in the form of a Global Alliance for Sustainable Development. The proposed Global Alliance would provide an authoritative forum to promote consensus on global issues and develop the parameters for common action. Unlike the existing UN Commission on Sustainable Development, the Global Alliance is envisaged as a body that brings together two principal organs empowered with the same degree of authority as the Security Council.

Recommendations for the transformation of the Trusteeship Council have been debated since 1989 and have been reaffirmed by the Commission on Global Governance, the Royal Institute for International Affairs and, more recently, the United Nations University (UNU). The various proposals call for the transformation of the Trusteeship Council into a forum through which member states would exercise their collective trusteeship for the integrity of the global environment and common areas such as the oceans, the atmosphere and outer space. At the same time, it would serve to link civil society and the United Nations in addressing these points of global concern.

In *International Sustainable Development Governance*,³⁵ the United Nations University suggested that the sustainable development focus of the General Assembly has to be strengthened, possibly through the creation of a new committee. UNU has also recommended the establishment of a special ministerial commission to consider the possible need for changes in the UN Charter and the constituent instruments of the UN special-

³⁴ Commission on Global Governance, *Our Global Neighbourhood* (Oxford University Press, 1995).

³⁵ UNU/IAS, *International Sustainable Development Governance*, *supra* note 31.

ized agencies, and to examine how the weaknesses of the fragmented UN system can best be corrected while preserving its advantages, so as to initiate major improvements in the capacity of the system to serve the global community in the 21st Century.

It is important that proponents of increased participation set realistic targets. One possible realistic model of participation may be that of the Organization of Economic Co-operation and Development, which has business and trade union advisory committees that interact with governmental committees and can make recommendations. Establishing a formal role for committees will be helpful in both the MEA context and in relation to some of the broader linked environmental processes.

A Standing Committee on the Environment and Development could be created, which as one of its tasks would incorporate in the Security Council issues of environment and development that could undermine international peace and security.³⁶ Moreover, an independent body could be established endowed with universally accepted ethical and intellectual authority and charged with identifying and assessing risks of global change.³⁷

Options for Enhancing Democratic Principles

An important guiding principle in global sustainable development governance reform is the fair and equitable distribution of bargaining power to ensure that the influence and voice of the world's poor is heard and reflected in the decisions of international environmental governance processes. To this end, the imbalances in the structures of global governance must be remedied with new efforts to create a more inclusive system. These could include: development of dispute settlement mechanisms that guarantee access to legal aid for developing countries; appointment of an international ombudsman to respond to grievances and investigate injustices; and establishment of an equivalent to the OECD for developing countries to support them with policy research to formulate and defend their positions.

Global governance systems must take decisions on the basis of a rule-based system that is accompanied by a fair and impartial system of enforcement, to ensure that concerned parties adhere to the rules and regulations and that action will be taken against parties for violation of the rules and regulations. Legitimacy implies that governance structures and systems are lawful and credible, and that they conform to recognized principles or accepted rules or standards. The principle of legitimacy is equated to the rule of law. Legitimacy is thus grounded in the following principles: equitable representa-

³⁶ Felix Dodds, 'Reforming the International Institutions', *Earth Summit 2002: A New Deal* (2nd ed., Earthscan: 2001).

³⁷ World Resources Institute, *World Resources 2002-2004: Decisions for the Earth: Balance, Voice and Power* (World Resources Institute: Washington, 2003), pubs.wri.org/pubs_pdf.cfm?PubID=3764.

tion and decision-making processes that do not discriminate against developing countries; effective mechanisms that enable contributions by non-state actors; transparent decision-making processes; access to information; and recourse to administrative and judicial remedies.

Institutional accountability is a key priority in the reform of international environmental governance systems. Considerable work is required to identify modes for independent regulation, monitoring and assessment, which will be crucial in enhancing the accountability and transparency of all international institutions. Decision-making must be made more transparent and independent evaluations of international policies can be a first step towards increased accountability.

Action by governments alone will not solve the problems underlying the global failure to implement sustainable development. In order to transcend political conflicts and vested interests, multi-stakeholder participation and partnerships must be established and developed in decision-making and implementation. Effective international environmental institutions must foster public participation in sustainable development policy and in regulatory and planning processes, including co-operation with local governments, indigenous groups, community-based organizations and other stakeholders. More effective and systematic mechanisms are needed to ensure enhanced civil society involvement generally, especially for those groups who are underrepresented in the formal structures. Key indicators to measure the quality and scope of participation include: relationship between the institution and the stakeholders in policy formulation; level of engagement of stakeholders; and gender sensitiveness in the participation process.

Effective international environmental institutions should ensure that citizens have access to information regarding laws, policies and activities as well as the status of environmental, social and economic conditions. Effective international environmental institutions should provide transparent, non-discriminatory and fair administrative and judicial arrangements for enforcement, rights of review, appeal and remedies.

Four main tracks are necessary to bridge the North/South knowledge divide: strengthen the data and scientific foundations of the South; strengthen the scientific community in the South; promote more research on the South among Northern scientists; and broaden the groups with the ability of generating scientific knowledge. Moreover, a more sustainable balance between corporate interests and interests represented by the inter-state system should be promoted. Some examples are the creation of corporate and civil society advisory bodies to the Conferences of the Parties of MEAs, establishing other joint standard-setting bodies, and agreements to joint investigation and enforcement arrangements. The principle of common but differentiated responsibility recognizes the basic responsibility of developed countries in causing environmental crises with their unsustainable patterns of consumption and production. At the same time, these countries and especially their big corporations have stripped the world's resources for their benefit and economic growth. In this way, an equitable framework is neces-

sary for the transition to sustainable development, with the developed world taking the larger share of adjustment.

Global environmental governance systems must ensure the provision of visionary leadership that inspires nation states to overcome their preoccupation with narrow national interests and to recognize that national security is indivisible from global security and requires sustained commitments to long-term ecological and human security. An effective global governance system must provide or enable a transformational leadership function, that is, leadership that is capable of bringing about fundamental change through action that is perceived as legitimate. This can involve key individuals, but it also relates to collective leadership through decision-making groups or organizations.

Adequate financial resources must be made available to all international environmental institutions that are working to further progress in sustainable development to ensure that they carry out their mandates. It is also essential to provide resources for developing and transitional countries to effectively prepare, participate and follow up processes.

