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From Stockholm to New York, via Rio and Johannesburg: Has the Environment Lost its Way on the Global Agenda?

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Abstract

This Article will examine the response of the international community to the compelling evidence on the environmental crisis facing our Planet. It will analyze the place of the environment in the international agenda from the early 1970s, when an international environmental agenda emerged, to the 2005 World Summit, where Heads of State and Government gathered to renew their commitment to the international agenda for the twenty-first century agreed at the Millennium Summit. More specifically, the Article will examine the “comprehensive” international environmental agenda that has emerged within the U.N.

FROM STOCKHOLM TO NEW YORK, VIA RIO AND JOHANNESBURG: HAS THE ENVIRONMENT LOST ITS WAY ON THE GLOBAL AGENDA?

*Paolo Galizzi**

In the streets of a crowded city, in the aisles of a giant supermarket, or on the floor of a gleaming electronics factory, the biological state of Earth's rivers, forests, and mountains may seem a remote concern. Yet, despite the breakneck pace of technological change many of us have seen in our lifetimes, we each depend far more than we may realize on the web of life of which we are a part. The food and fresh water that keep us alive, the wood that gives us shelter and furniture, even the climate and the air we breathe: all are products of the living systems of the planet. As forests and savanna made way for farms, as rivers were diverted to irrigate fields, and as new technology enabled fishing vessels to haul ever greater harvests from the oceans, the recent changes made to natural systems have helped not just to feed a rapidly growing human population but to improve the lives of billions. In the midst of this unprecedented period of spending Earth's natural bounty, however, it is time to check the accounts. That is what this assessment has done, and it is a sobering statement with much more red than black on the balance sheet.¹

INTRODUCTION

Over thirty years ago, the United Nations ("U.N."), concerned about the scale and consequences of the degradation of

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1. MILLENNIUM ECOSYSTEM ASSESSMENT, *LIVING BEYOND OUR MEANS: NATURAL ASSETS AND HUMAN WELL-BEING* 5 (2005), available at <http://www.millenniumassessment.org/proxy/document.429.aspx>.

our planet and its resources, decided for the first time in its history² to convene an international conference on the environment.³ The General Assembly, in the resolution that paved the way for the United Nations Conference on the Human Environment (“UNCHE”), or the Stockholm Conference, as it has become more commonly known, noted that technological and scientific developments were having a profound impact on the relationship between man and the environment, on the quality of the ecosystem, and on the condition of humankind, and that the international community needed to respond to the challenges posed by such changes.⁴ The purpose of the Stockholm Conference was to give the U.N. and the international community the opportunity to consider comprehensively “the problems of the human environment.”⁵

Many international environmental meetings, conferences, and debates have taken place since Stockholm, yet, overall, the state of our Planet has hardly, if at all, improved. Over the past thirty years, old environmental problems have worsened and new environmental threats and challenges have emerged. Studies, both new and old, increasingly provide incontrovertible⁶ evi-

2. While the Stockholm Conference is considered the beginning of modern international environmental law, international cooperation on the environment predates it. Treaties on environmental issues already existed at the beginning of the twentieth century and, throughout the years, disputes between States relating to the environment were settled by international judicial bodies. *See, e.g.*, PATRICIA BIRNIE & ALAN BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* (2d ed. 2002); DAVID HUNTER, JAMES SALZMAN & DURWOOD ZELKE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* ch. 4 (2d ed. 2002); PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* ch. 2 (2d ed. 2003); VED P. NANDA & GEORGE PRING, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY FOR THE 21ST CENTURY* (2003).

3. *See* Problems of the Human Environment, G.A. Res. 2398, U.N. GAOR, 23d Sess., Supp. No. 18, U.N. Doc. A/7218 (Dec. 3, 1968) (deciding to convene The United Nations Conference on the Human Environment (“UNCHE”).

4. *Id.* In particular, the General Assembly, observing that “the continuing and accelerating impairment of the quality of the human environment caused by such factors as air and water pollution, erosion and other forms of soil deterioration, waste, noise, and the secondary effects of biocides, which are accentuated by rapidly increasing population and accelerating urbanization,” was “[c]oncerned about the consequent effects on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries” and “[c]onvinced that increased attention to the problems of the human environment is essential for sound economic and social development.”

5. *Id.*

6. There are, however, skeptical views of the scientific evidence on the environmental decline of our Planet, and some argue that environmental conditions have actually improved over the past years. *See, e.g.*, BJØRN LOMBERG, *THE SKEPTICAL ENVIRON-*

dence that environmental problems are threatening the very existence of our Planet, and the species inhabiting it, including our own.⁷ Coverage of environmental problems rarely leaves the daily news agenda. Global warming⁸ is arguably the environmental problem that receives the most attention in the media⁹

MENTALIST 2001). *But see* Allen Hammond & Emily Matthews, *Faulty Scholarship: Lomborg and Earth's Living Systems*, 53 CASE. W. RES. L. REV. 353, 353 (2002) (arguing that "[e]xtraordinary claims demand an extraordinary level of documentation and supporting analysis on the part of those who put them forward, and warrant healthy skepticism on the part of those who would review or pronounce judgment on those claims. Both are missing from Bjørn Lomborg's book, *The Skeptical Environmentalist*, and from the largely laudatory outpouring of media attention it has generated.").

7. *See, e.g.*, U.N. ENV'T PROGRAMME, GEO YEAR BOOK 2006 (2006), <http://www.unep.org/geo/yearbook/yb2006/> (last visited Sept. 15, 2006); THE WORLDWATCH INSTITUTE, STATE OF THE WORLD 2006 (2006), <http://www.worldwatch.org/node/3866> (last visited Sept. 15, 2006).

8. *See, e.g.*, Kelly Levin & Jonathan Pershing, *Climate Science 2005: Major New Discoveries*, WRI ISSUE BRIEF (World Resource Inst., Washington, D.C.), Mar. 2006, http://climate.wri.org/pubs_pdf.cfm?PubID=4175 (last visited Sept. 15, 2006). The World Resources Institute reviewed the 2005 scientific findings on climate change and concluded that "[t]he findings reported in the peer-reviewed journals last year point to an unavoidable conclusion: The physical consequences of climate change are no longer theoretical; they are real, they are here, and they can be quantified." *Id.* at 1.

The global scientific consensus is most clearly expressed by reports of the Intergovernmental Panel on Climate Change ("IPCC") created in 1988 by the World Meteorological Organization and the United Nations Environmental Programme to evaluate the state of climate science based on peer-reviewed and published scientific literature. *See* About IPCC, <http://www.ipcc.ch/about/about.htm> (last visited Mar. 17, 2006); *see also* CLIMATE CHANGE 2001: IMPACTS, ADAPTATION, AND VULNERABILITY 21 (James J. McCarthy et al., eds., 2001), *available at* www.grida.no/climate/ipcc_tar/wg2/index.htm (stating that "human activities . . . are modifying the concentration of atmospheric constituents . . . that absorb or scatter radiant energy . . . [M]ost of the observed warming over the last fifty years is likely to have been due to the increase in greenhouse gas concentrations."); THE REGIONAL IMPACTS OF CLIMATE CHANGE: AN ASSESSMENT OF VULNERABILITY (Robert T. Watson et al. eds., 1998), *available at* <http://www.grida.no/climate/ipcc/regional/index.htm>. All of the major scientific bodies in the U.S. have also joined the global consensus on climate change. *See, e.g.*, NATIONAL ACADEMY OF SCIENCES COMMITTEE ON THE SCIENCE OF CLIMATE CHANGE, CLIMATE CHANGE SCIENCE: AN ANALYSIS OF SOME KEY QUESTIONS 12 (2001), *available at* <http://newton.nap.edu/books/0309075742/html/> (reporting that "[g]reenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability.").

9. *See, e.g.*, Carl Zimmer, *Sweating It*, N.Y. TIMES, Mar. 12, 2006, § 7 (Book Review), at 8 (reviewing TIM FLANNERY, *THE WEATHER MAKERS: HOW MAN IS CHANGING THE CLIMATE AND WHAT IT MEANS FOR LIFE ON EARTH* (2006); ELIZABETH KOLBERT, *FIELD NOTES FROM A CATASTROPHE: MAN, NATURE, AND CLIMATE CHANGE* (2006)); *Australia May Be Face of Warming*, CNN, Mar. 14, 2006, <http://www.cnn.com/2006/TECH/science/03/>

and among public opinion and has even been the subject of a blockbuster Hollywood movie.¹⁰ Climate change is, however, not the only ecological threat to our Planet. Other environmental issues, such as desertification, loss of biological diversity, deforestation, and access to water resources, just to name a few, are also cause for serious concern.¹¹

In the Millennium Ecosystem Assessment (“MA”),¹² one of the most comprehensive assessments of the state of the Planet, over 1,300 experts from ninety-five countries concluded that human activities are endangering the Earth’s capacity to sustain current and future generations.¹³ The MA contains a stark message and calls for strong leadership and actions to address and

14/australia.warming.ap/index.html (last visited Mar. 17, 2006); *Climate Change and Politics*, ECONOMIST, Feb. 3, 2005.

10. See *THE DAY AFTER TOMORROW* (Twentieth Century Fox 2004).

11. Marine biodiversity, for example, is seriously under threat. See, e.g., John Charles Kunich, *Losing Nemo: The Mass Extinction Now Threatening the World’s Ocean Hotspot*, 30 COLUM. J. ENVTL. L. 1 (2005).

12. See <http://www.millenniumassessment.org> for a complete overview of the Millennium Ecosystem Assessment (“MA”), including a complete list, and copies of, the various reports it produced.

13. See MILLENNIUM ECOSYSTEM ASSESSMENT, *supra* note 1, at 3. The Statement of the Board of the MA identified ten key messages and conclusions that can be drawn from the assessment:

1. Everyone in the world depends on nature and ecosystem services to provide the conditions for a decent, healthy, and secure life.
2. Humans have made unprecedented changes to ecosystems in recent decades to meet growing demands for food, fresh water, fiber, and energy.
3. These changes have helped to improve the lives of billions, but at the same time they weakened nature’s ability to deliver other key services such as purification of air and water, protection from disasters, and the provision of medicines.
4. Among the outstanding problems identified by this assessment are the dire state of many of the world’s fish stocks; the intense vulnerability of the 2 billion people living in dry regions to the loss of ecosystem services, including water supply; and the growing threat to ecosystems from climate change and nutrient pollution.
5. Human activities have taken the planet to the edge of a massive wave of species extinctions, further threatening our own well-being.
6. The loss of services derived from ecosystems is a significant barrier to the achievement of the Millennium Development Goals to reduce poverty, hunger, and disease.
7. The pressures on ecosystems will increase globally in coming decades unless human attitudes and actions change.
8. Measures to conserve natural resources are more likely to succeed if local communities are given ownership of them, share the benefits, and are involved in decisions.
9. Even today’s technology and knowledge can reduce considerably the human impact on ecosystems. They are unlikely to be deployed fully, however, until ecosystem services cease to be perceived as free and limitless, and their full value is taken into account.
10. Better protection of natural assets will require coordinated efforts across all sections of governments, businesses, and international institutions. The

prevent the most serious consequences of environmental degradation.¹⁴

According to the U.N. Secretary General's High-Level Panel on Threats, Challenges and Change,¹⁵ environmental degradation¹⁶ is among the most serious threats to the world's stability

productivity of ecosystems depends on policy choices on investment, trade, subsidy, taxation, and regulation, among others.

14. *See id.* at 23 ("Better conservation policies may be of limited value, however, unless governments, businesses, and communities take natural systems into account in a wide range of other decisions. This requires big changes in the way many institutions work, for instance by recognizing the influence that taxation and investment can have to either protect or damage ecosystems through different incentives. Aid programs for developing countries seldom give priority to protection or restoration of natural services. Recipient governments, donor nations, and lending institutions could do far more to direct funds at supporting those services in a way that would bring long-term benefits. International negotiations on issues such as trade rules can have far-reaching impacts on the pressure put on natural systems. If their ambitions to increase overall prosperity are to be realized, they need to be coordinated much more closely with other conventions and treaties aimed at protecting the natural environment. Meaningful steps to address climate change also underpin all other measures. The uncontrolled warming of the atmosphere will jeopardize many of the benefits provided to people by nature. Equally, further neglect of natural systems will accelerate that warming. One of the key barriers to more-effective behavior to protect natural assets is ignorance about the services they deliver. The approach taken by the Millennium Ecosystem Assessment, already being used in a number of studies at a local and regional scale, could provide a useful tool to enable decision-makers to understand far better the full consequences of their actions. The overriding conclusion of this assessment is that it lies within the power of human societies to ease the strains we are putting on the natural services of the planet, while continuing to use them to bring better living standards to all. Achieving this, however, will require radical changes in the way nature is treated at every level of decision-making. Resilience and abundance can no longer be confused with indestructibility and infinite supply. The warning signs are there for all of us to see. The future lies in our hands.").

15. *See* High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, U.N. Doc. A/59/565 (Dec. 2, 2004) [hereinafter HIGH-LEVEL PANEL ON THREATS REPORT], available at <http://www.un.org/secureworld/>.

16. *See id.* ¶¶ 53-54 ("Environmental degradation has enhanced the destructive potential of natural disasters and in some cases hastened their occurrence. The dramatic increase in major disasters witnessed in the last 50 years provides worrying evidence of this trend. More than two billion people were affected by such disasters in the last decade, and in the same period the economic toll surpassed that of the previous four decades combined. If climate change produces more acute flooding, heat waves, droughts and storms, this pace may accelerate. Rarely are environmental concerns factored into security, development or humanitarian strategies. Nor is there coherence in environmental protection efforts at the global level. Most attempts to create governance structures to tackle the problems of global environmental degradation have not effectively addressed climate change, deforestation and desertification. Regional and global multilateral treaties on the environment are undermined by inadequate implementation and enforcement by the Member States.").

and security,¹⁷ and requires decisive action to avoid potentially devastating conflicts.¹⁸ A study, commissioned by the Pentagon and released in October 2003, has also raised concerns about the implications of environmental degradation, in particular of climate change, for U.S. national security.¹⁹

The list of studies and warnings produced by the scientific community on the gravity of environmental problems appears endless, but rather crucially, in spite of the topicality of the concerns about jeopardizing this environmental legacy, many still bury their heads in the sand.²⁰

This Article will examine the response of the international community to the compelling evidence on the environmental crisis facing our Planet. It will analyze the place of the environment in the international agenda from the early 1970s, when an international environmental agenda emerged, to the 2005 World Summit, where Heads of State and Government gathered to renew their commitment to the international agenda for the twenty-first century agreed at the Millennium Summit. More specifically, the Article will examine the “comprehensive” international environmental agenda that has emerged within the U.N.

The choice to focus on the U.N. for the purpose of this Arti-

17. *See id.* at 12. The Report identifies six clusters of threats “with which the world must be concerned now and in the decades ahead: war between States; violence within States, including civil wars, large-scale human rights abuses and genocide; poverty, infectious disease and environmental degradation; nuclear, radiological, chemical and biological weapons; terrorism; and transnational organized crime.”

18. *See id.*

19. *See* PETER SCHWARTZ & DOUG RANDALL, ENVTL. DEF., AN ABRUPT CLIMATE CHANGE SCENARIO AND ITS IMPLICATIONS FOR UNITED STATES NATIONAL SECURITY 2 (2003), available at http://www.environmentaldefense.org/documents/3566_AbruptClimateChange.pdf. Although the authors recognize that the scenario they present is not the most likely, they believe it to be plausible: “an abrupt climate change scenario could potentially de-stabilize the geo-political environment, leading to skirmishes, battles, and even war due to resource constraints such as: 1) Food shortages due to decreases in net global agricultural production; 2) Decreased availability and quality of fresh water in key regions due to shifted precipitation patters, causing more frequent floods and droughts; 3) Disrupted access to energy supplies due to extensive sea ice and storminess.

20. *See, e.g.*, Jonathan Amos, *Study Highlights Global Decline*, BBC News, Mar. 30, 2005, <http://news.bbc.co.uk/2/hi/science/nature/4391835.stm> (last visited Sept. 15, 2006) (quoting Professor Sir John Lawton, former Executive Director of the U.K.’s Natural Environment Research Council, on the Millennium Assessment: “There will undoubtedly be gainsayers, as there are with the IPCC; but I put them in the same box as the flat-Earthers and the people who believe smoking doesn’t cause cancer.”).

cle is justified for several reasons. Global environmental issues have obviously been addressed in other international fora.²¹ However, despite its shortcomings, the U.N. still remains the most widely representative global organization and provides a platform where all Member States of the international community can present their views and participate in setting the (environmental) agenda for international cooperation. More specifically, the conferences and summits reviewed in this Article represent milestones where the international community's views on a comprehensive international environmental agenda can best be assessed. In most cases, States were represented at the highest political level, usually by their Heads of State or Government.²² All in all, the principal documents adopted unanimously by the various U.N. conferences and summits discussed below represent the shared and common consensus of the entire membership of the international community on environmental issues.

The first significant collective environmental initiative convened under the auspices of the U.N. is the Stockholm Conference. In 1972, at Stockholm, the international community, presented with evidence of the Earth's degradation, rose to the challenge it faced and adopted a set of bold and comprehensive measures to address environmental decline.²³ The first part of this Article summarizes the main debates and achievements of the Stockholm Conference. The Article goes on to examine the evolution of the international environmental agenda, and assesses its development in the other two landmark U.N. "environ-

21. Over the past thirty years there has been a proliferation of international environmental treaties addressing and regulating general or individual environmental issues, media, or species. Most treaties have developed their own institutions and a more issue/media/species specific agenda. Within the broader international environmental agenda, for example, there are more specific agendas on biodiversity, climate change, and ozone depletion. These agendas are also often subdivided into still more specialized ones: for example, the biodiversity agenda can be broken down into an agenda for wetlands conservation and sustainable use, the conservation of cultural and natural heritage, whaling and so on. For a selection of the key international environmental treaties, see PHILIPPE SANDS & PAOLO GALIZZI, *DOCUMENTS IN INTERNATIONAL ENVIRONMENTAL LAW*, (Cambridge Univ. Press 2d ed., 2005).

22. See, e.g., *infra* note 168 and accompanying text.

23. See The Secretary General, *Report of the Secretary-General on the Millennium Summit, We the Peoples: The Role of the United Nations in the 21st Century* ¶¶ 259-60, U.N. Doc. A/54/2000 [hereinafter *We the Peoples*], available at <http://www.un.org/millennium/sg/report/full.htm>.

mental” conferences: the 1992 Rio Conference on Environment and Development (“UNCED”)²⁴ and the 2002 Johannesburg World Summit on Sustainable Development (“WSSD”).²⁵ It continues with an investigation of the environment’s role in the global agenda for the twenty-first century, as agreed upon by Heads of State and Government at the 2000 Millennium Summit²⁶ and more recently at the 2005 World Summit,²⁷ both held in New York at the U.N. Headquarters.

Our Planet is under considerable environmental stress and its survival, at least in its current form, is at stake. The environment should feature among the top priorities for the international community in the twenty-first century. However, closer scrutiny of the most recent U.N. gatherings suggests that this is not the case. In its journey from the Stockholm Conference in 1972 to the 2005 World Summit in New York, via Rio and Johannesburg, has the environment lost its way on the global agenda?

I. STOCKHOLM: CENTER STAGE FOR THE ENVIRONMENT

The complex relationship between humankind and the environment has attracted attention for centuries.²⁸ International rules for the management and protection of natural resources have, however, only emerged in the past century. Examples of international cooperation on the environment can be found throughout the twentieth century:²⁹ from treaties for the protec-

24. See United Nations Conference on Environment and Development (“UNCED”), June 3-14, 1992, *Report of the United Nations Conference on Environment and Development*, Vols. I-III, U.N. Doc. A/Conf.151.26.Rev.1 (June 25, 1993), available at http://www.un.org/esa/sustdev/documents/docs_unced.htm.

25. See World Summit on Sustainable Development (“WSSD”), Aug. 26–Sept. 4, 2002, *Report of the World Summit on Sustainable Development*, U.N. Doc. A/Conf.199/20, available at <http://www.johannesburgsummit.org/>.

26. See United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 Millennium (Sept. 18, 2000), available at <http://www.un.org/millennium/summit.htm>.

27. See 2005 World Summit Outcome, G.A. Res. 60/1, U.N. Doc. A/RES/60/1 (Oct. 24, 2005), available at <http://www.un.org/summit2005/>.

28. See ROLAND BECHMANN, *TREES AND MAN: THE FOREST IN THE MIDDLE AGES* (1990); J. DONALD HUGHES, *PAN’S TRAVAIL: ENVIRONMENTAL PROBLEMS OF THE ANCIENT GREEKS AND ROMANS* (1993); Ronald J. Rychlak, *People as Part of Nature: Reviewing the Law of the Mother*, 13 STAN. ENVTL. L.J. 451, 456 (1994) (reviewing LAW OF THE MOTHER: PROTECTING INDIGENOUS PEOPLE IN PROTECTED AREAS (Elizabeth Kemp ed., 1993)).

29. See, e.g., BIRNIE & BOYLE, *supra* note 2 (reviewing the evolution of international environmental law).

tion of particular species³⁰ to treaties concerning the use of a watercourse.³¹ After the creations of the U.N. and notwithstanding the lack of a specific environmental mandate in the U.N. Charter,³² the U.N. and its specialized agencies began in earnest to deal with environmental concerns³³ in the context of economic and social issues.³⁴ The first international treaties adopted after the creation of the U.N. regulated specific environmental problems, media, and species.³⁵ Despite these initiatives, however, there was neither a coherent strategy nor a comprehensive set of international norms on the environment. In addition, no international institution had been established to promote and coordinate global efforts on the environment.

The fortune and importance of the environment on the international plane was soon to change. In the early 1960s,³⁶ environmentalism emerged on the national scene, prompted by the release of scientific evidence on the Planet's decline.³⁷ Realizing that national measures to deal with environmental degradation would not be sufficient to reverse the Earth's decline, environmentalists called on their governments and on the international community to take steps to formulate a coherent and

30. See, e.g., The Convention for the Protection of Birds Useful to Agriculture, Mar. 19, 1902, 30 Martens Nouveau Recueil (ser. 2) 686.

31. See, e.g., The Treaty Relating to the Boundary Waters and Questions Arising Along the Boundary Between Canada and the United States, U.S.-Can., Jan. 11, 1909, 36 Stat. 2448.

32. The environment is not mentioned in the U.N. Charter, nor is it mentioned in the agreements setting up the international institutions that were created after the Second World War to promote a new international architecture, the International Bank for Reconstruction and Development ("IBRD") and the International Monetary Fund ("IMF").

33. SANDS, *supra* note 2, at 31.

34. See NANDA & PRINC, *supra* note 2, at 122-23.

35. See, e.g., Convention on Third Party Liability in the Field of Nuclear Energy, July 29, 1960, 956 U.N.T.S. 251; Antarctic Treaty, Dec. 1, 1959, 12 U.S.T. 794, 1961 U.N.T.S. 72; International Convention for the Protection of Birds, Oct. 8, 1950, 1968 U.N.T.S. 187; International Convention for the Regulation of Whaling, Dec. 2, 1946, 62 Stat. 1716, 1953 U.N.T.S. 74.

36. Rachel Carson published her famous book, *Silent Spring*, in 1962. The book was one of the most influential and is credited by many for having created the modern environmental movement. See RACHEL CARSON, *SILENT SPRING* (2002).

37. See, e.g., RODERICK F. NASH, *AMERICAN ENVIRONMENTALISM: READINGS IN CONSERVATION* (1989); RAMACHANDRA GUHA, *ENVIRONMENTALISM: A GLOBAL HISTORY* (1999).

comprehensive international environmental strategy.³⁸ The U.N. answered these calls by convening an international conference on the human environment, the Stockholm Conference,³⁹ which became the first U.N. gathering to put the environment center-stage on the global agenda.⁴⁰

The Economic and Social Council ("ECOSOC") felt that an international conference was needed to discuss urgent and intensified actions at the national and international level to limit and prevent environmental degradation.⁴¹ The General Assembly agreed to ECOSOC's request and decided that the proposed Conference would "[P]rovide a framework for comprehensive consideration within the U.N. of the problems of the human environment in order to focus the attention of Governments and public opinion on the importance and urgency of this question and also to identify those aspects of it that can only or best be solved through international co-operation and agreement."⁴²

Delegates from 113 States (nearly all the members of the international community at the time)⁴³ attended the United Nations Conference on the Human Environment. The delegates argued about the state of the environment and the need to take urgent action(s) to prevent its further degradation.⁴⁴ The lively and sometimes heated discussions at the UNCHE reflected different views on the environment among the members of the in-

38. See, e.g., Wayland Kennet, *The Stockholm Conference on the Human Environment*, 48 INT'L AFF. 33 (1972).

39. On the Stockholm Conference, see *supra* note 2 and accompanying text. See also KENNET, *supra* note 38, at 34; Louis B. SOHN, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT'L L. J. 423 (1973).

40. See E. Thomas Sullivan, *The Stockholm Conference: A Step Toward Global Environmental Cooperation and Involvement*, 6 IND. L. REV. 267 (1972-1973).

41. See ECOSOC Res. 1346 (XVL), UN Doc. E/Res/1346/XVL (July 30, 1968).

42. G.A. Res. 2398 (XXIII), ¶ 13, UN Doc. A/Res/2398/23 (Dec. 3, 1968).

43. The Soviet Union, its Eastern European allies, and Cuba did not participate in the Conference because the then Democratic Republic of Germany had in practice not been invited. The Secretary-General of the Conference, however, noted that:

[T]he high level of participation of the Conference was most encouraging; it was greatly hoped that the reasons for the absence of some countries which had played such an important role in the preparatory process—reasons which were not related to environmental issues—would soon be resolved, and that those countries would be actively involved in dealing with the tasks presented by the problems of the human environment.

United Nations Conference on the Human Environment, REPORT OF THE UN CONFERENCE ON THE HUMAN ENVIRONMENT, ¶ 33, UN Doc. A/CONF.48/14/ at 2-65 CORR. 1 (1972).

44. *Id.* ¶¶ 33-43.

ternational community. Delegates from the developing world were particularly concerned about the relationship between environmental protection and development, an issue that still remains crucial and contentious within the international (environmental) agenda.⁴⁵ Developing countries' delegates stressed that development and poverty eradication were the priorities for their countries and peoples.⁴⁶ In their view, progress in protecting the human environment needed to be linked to the reduction of the gap between poor and rich countries.⁴⁷ Developing countries, however, did not want to repeat the mistakes made by developed countries. Instead, they wanted to promote development strategies which integrally incorporated environmental considerations and used resources more effectively.⁴⁸ Developed

45. For a discussion about developing countries' views on the environmental agenda and on development, see R.P. Anand, *Development and the Environment: The Case of the Developing Countries*, 20 *INDIAN J. INT'L L.* 1, 10 (1980); William L. Andreen, *Environmental Law and International Assistance: The Challenge of Strengthening Environmental Law in the Developing World*, 25 *COLUM. J. ENVTL. L.* 17, 19-20 (2000); Joao Augusto de Arujo Castro, *Environment and Development: The Case of the Developing Countries*, 26 *INT'L ORG.* 401 (1972); Alden L. Doud, *International Environmental Developments: Perceptions of Developing and Developed Countries*, 12 *NAT. RESOURCES J.* 520 (1972); Mark A. Drumbl, *Northern Economic Obligation, Southern Moral Entitlement and International Environmental Governance*, 27 *COLUM. J. ENVTL. L.* 363 (2002); Alex Geisinger, *Sustainable Development and the Domination of Nature: Spreading the Seed of The Western Ideology of Nature*, 27 *B.C. ENVTL. AFF. L. REV.* 43 (1999-2000); John Ntambirweki, *The Developing Countries in the Evolution of an International Environmental Law*, 14 *HASTINGS INT'L & COMP. L. REV.* 905 (1990-1991); Timothy E. Wirth, *Environmental Policy and International Cooperation: A Framework for the 21st Century—Despair or Determination?*, 35 *STAN. J. INT'L L.* 221 (1999).

46. The Indian Prime Minister Indira Ghandi summed up these feelings with her famous comments:

We do not wish to impoverish the environment any further and yet we cannot forget the grim poverty of large numbers of people. Are not poverty and need the greatest polluters? How can we speak to those who live in villages and in slums about keeping the oceans, the rivers, and the air clean when their own lives are contaminated at the source? The environment cannot be improved in conditions of poverty. Nor can poverty be eradicated without the use of science and technology.

See Ntambirweki, *supra* note 45, at 906 (reprinting statements of Indian Prime Minister Indira Ghandi).

47. See REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 43, ch. VII, ¶ 44 (reporting statements of speakers from developing nations that little progress could be made in improving human environment until gap between poor and rich countries was substantially narrowed); see also Andreen, *supra* note 45, at 20 (observing Stockholm Declaration's recognition that "growth and environmental protection [are] not only compatible but actually linked together"); Ntambirweki, *supra* note 45, at 905-08 (discussing developing nations' view that environmental protection may only be achieved consequent to and in conjunction with economic development).

48. See REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note

countries, while understanding the concerns of the developing world, wanted to adopt strong measures aimed at seriously addressing environmental degradation.⁴⁹ Finally, the UNCHE's participants achieved a consensus on the first truly universally shared environmental agenda.

The three key documents adopted at the UNCHE reflected the main tenets of that agenda: a Declaration on the Human Environment ("Stockholm Declaration") setting out key principles to guide States' actions on the environment; an Action Plan containing recommendations for concrete and specific environmental actions and measures; and a Resolution on Financial and Institutional Arrangements.⁵⁰

The first document, the Stockholm Declaration, endorsed by all the States attending the UNCHE,⁵¹ reflects a "common outlook and common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment."⁵² In the Stockholm Declaration, States agreed that the protection and improvement of the human envi-

43, ch. VII, ¶ 44 (reporting statements of speakers from developing countries that "environmental considerations would have to be incorporated into national development strategies in order to avoid the mistakes made by developed countries in their development, to utilize human and natural resources more efficiently, and to enhance the quality of life of their peoples").

49. For example, witness the remarks of Swedish Prime Minister Olof Palme: The Earth's resources are limited and our environment is vulnerable to the forces set in motion by technical and economic development. The amounts of air and water are restricted and so are sources of energy. Supplies of raw materials are exhaustible. Uncontrolled pollution of the seas and the atmosphere may permanently upset the processes upon which human life depends. The pressure on our limited resources is accentuated by population growth. Food production cannot feed the growing number of the world's inhabitants. What is ultimately at stake is the survival of mankind on our limited planet. See Ntambirweki, *supra* note 45, at 905-06 (reprinting statements of Swedish Prime Minister Olof Palme).

50. See REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 43. The General Assembly adopted several resolutions to implement the decisions of the Conference. See *eg.* G.A. Res. 2994 (XXVII), U.N. Doc. A/Res/2994 (XXVII) (Dec. 15, 1972); G.A. Res. 2995 (XXVII), U.N. Doc. A/Res/2995 (XXVII) (Dec. 15, 1972); G.A. Res. 2996 (XXVII), U.N. Doc. A/Res/2996 (XXVII) (Dec. 15, 1972).

51. Although not legally binding, the Declaration contains provisions which have now become rules of customary law. See SANDS, *supra* note 2.

52. See REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 43, ch. I, pmb. ("The United Nations Conference on the Human Environment, . . . Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment").

ronment was a "major issue" and emphasized the "urgent desire of the people of the whole world and the duty of all Governments" to take action to prevent further environmental degradation.⁵³ Human beings, the Declaration observes, are capable of transforming their surroundings, with potential benefits as well as possibly incalculable, harmful consequences.⁵⁴ The Stockholm Declaration stresses the growing evidence of man-made harm:

[D]angerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies, harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.⁵⁵

International cooperation and action could no longer be postponed. At Stockholm, States accepted that more care had to be given to the protection of the environment:

A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes.⁵⁶

Among the Stockholm Declaration's⁵⁷ twenty-six Principles, three are particularly relevant from a legal point of view⁵⁸ and set the regulatory foundation and framework for international cooperation on the environment:⁵⁹ Principle 21 recognizes

53. *See id.* ¶ 2.

54. *See id.* ¶ 3.

55. *See id.*

56. *See id.* ¶ 6.

57. For a more detailed analysis of the Stockholm Declaration, see generally SOHN, *supra* note 39.

58. *See SANDS, supra* note 2, at 38 (calling Stockholm Declaration Principles 21-24 most relevant principles of Stockholm Declaration from legal perspective).

59. *See G.A. Res. 2996 (XXVII), U.N. Doc. A/Res/2996 (XXVII) (Dec. 15, 1972) ("The General Assembly, Recalling principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment concerning the international respon-*

States' sovereignty over their natural resources, coupled with their responsibility not to cause environmental damage;⁶⁰ Principles 22⁶¹ and 24⁶² call for the development of international liability rules for environmental damage and more generally for international cooperation on the environment.⁶³

The second document adopted at Stockholm, the Action Plan contains 109 recommendations adopted by consensus. The Action Plan identifies specific environmental actions to address environmental issues and divides them into three categories: a global environmental assessment program ("Earthwatch"); environmental management activities; and international measures to support the national and international actions of assessment and management.⁶⁴

sibility of States in regard to the environment, *Bearing in mind* that those principles lay down the basic rules governing this matter").

60. See REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, *supra* note 43, ch. I, princ. 21 ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction").

61. *Id.* at princ. 22. ("States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.").

62. *Id.* at princ. 24. ("International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing. Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.").

63. An examination of these legal principles is beyond the scope of this Article. For an analysis of these principles, see, for example, *supra* note 2.

64. For example, Recommendation 1 argued that "[t]he planning, improvement and management of rural and urban settlements demand an approach, at all levels, which embraces all aspects of the human environment, both natural and Man-Made." Recommendation 8 asked that "regional institutions take stock of the requirements of their regions for various environmental skills and of the facilities available to meet those requirements in order to facilitate the provision of appropriate training within regions." Recommendation 9 called for "the World Health Organization [to] increase its efforts to support Governments in planning for improving water supply and sewerage services through Its community water supply programme, taking account, as far as possible, of the framework of total environment programmes for communities." For a list and the detailed content of the 109 recommendations, see United Nations Environment Programme, *Recommendations for Action at the International Level*, <http://www.unep.org/Documents.multilingual/Default.asp?DocumentID=97&ArticleID=1506&l=en> (last visited Mar. 17, 2006).

At Stockholm, finally, States decided to establish a new institution, the United Nations Environment Programme ("UNEP")⁶⁵ to serve as a focal point within the U.N. system for the promotion and coordination of the international environmental agenda.⁶⁶

By the end of the Stockholm Conference, environmental problems were firmly recognized as falling "within the competence of the United Nations system."⁶⁷ The environment was now a "new and important area for international cooperation."⁶⁸ The international community had accepted the need for "prompt and effective implementation by Governments and the international community of measures designed to safeguard and enhance the environment for the benefit of present and future generations of man."⁶⁹

The Stockholm Conference put the environment center stage in the international domain: the environment was firmly rooted in the international agenda; UNEP was set up to exclu-

65. The UNEP is based in Nairobi, Kenya. The Programme is headed by an Executive Director and governed by a Governing Council composed of fifty-eight members elected by the General Assembly. For an overview of UNEP and for more information, see <http://www.unep.org>.

66. In the General Assembly resolution establishing UNEP, the Governing Council was specifically mandated, *inter alia*:

- (a) To promote international co-operation in the field of the environment and to recommend, as appropriate, policies to this end; (b) To provide general policy guidance for the direction and coordination of environmental programmes within the United Nations system; (c) To receive and review the periodic reports of the Executive Director of UNEP on the implementation of environmental programmes within the United Nations system; (d) To keep under review the world environmental situation in order to ensure that emerging environmental problems of wide international significance should receive appropriate and adequate consideration by Governments; (e) To promote the contribution of the relevant international scientific and other professional communities to the acquisition, assessment and exchange of environmental knowledge and information and, as appropriate, to the technical aspects of the formulation and implementation of environmental programmes within the United Nations system; (f) To maintain under continuing review the impact of national and international environmental policies and measures on developing countries, as well as the problem of additional costs that might be incurred by developing countries in the implementation of environmental programmes and projects, to ensure that such programmes and projects shall be compatible with the development plans and priorities of those countries.

See G.A. Res. 2997 (XXVII), U.N. Doc. A/8730 (Dec. 15, 1972).

67. *Id.*

68. *Id.*

69. *Id.*

sively and specifically focus on environmental issues; and an Action Plan and general legal principles were agreed upon to guide States' actions on the environment.⁷⁰ At Stockholm, the international community rose to the environmental challenges it faced and took concrete steps to address the Earth's growing environmental stress.

The importance of the Stockholm Conference cannot be overstated. Stockholm gave the U.N. and the international community the "environmental" mandate that was not originally and explicitly found in the U.N. Charter. The recognition of the environment among the crucial issues facing the international community stimulated a series of initiatives to concretely address environmental degradation.

After its conclusion, the spirit of the Stockholm Conference provided the impetus for developments and initiatives at the national, regional, and international level. For example, at the national level, environmental ministries were created in most countries to implement environmental laws and policies.⁷¹ At the regional level, the then European Economic Community launched its first environmental program, which formed the basis for what is arguably one of the most advanced environmental legal systems in the world today.⁷² At the international level, a number of important environmental treaties were adopted.⁷³ The environment became an item for regular debate within the General Assembly, which in 1982 adopted the World Charter for Nature, possibly one of the most ecological international documents adopted within the U.N.⁷⁴

70. *See id.*

71. *See* PETER A. SAM, INTERNATIONAL ENVIRONMENTAL CONSULTING PRACTICE: HOW AND WHERE TO TAKE ADVANTAGE OF GLOBAL OPPORTUNITIES 33 (1998).

72. For an overview of EC environmental law, see PETER G.G. DAVIES, EUROPEAN UNION ENVIRONMENTAL LAW (2004); PHILIPPE SANDS & PAOLO GALIZZI, DOCUMENTS IN EUROPEAN COMMUNITY ENVIRONMENTAL LAW 63 (2006).

73. *See, e.g.*, Convention on International Trade in Endangered Species, Mar. 3, 1973, 12 I.L.M. 1085 [hereinafter CITES]; International Convention for Prevention of Pollution from Ships, Nov. 2, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), Feb. 17, 1978, art. 1, Annex I, 1340 U.N.T.S. 61; Convention on the Prevention of Marine Pollution from Land-Based Sources, June 4, 1974, 1546 U.N.T.S. 119; Convention for the Protection of the Mediterranean Sea Against Pollution, Feb. 16, 1976, 15 I.L.M. 285; Convention on the Conservation of Migratory Species and Wild Animals, June 23, 1979, 19 I.L.M. 15; *see also* Andronico O. Adede, *The Treaty System From Stockholm (1972) to Rio de Janeiro (1992)*, 13 PACE ENVTL. L. REV. 33 (1995).

74. The General Assembly adopted the World Charter for Nature in 1982 with a

The pressure on our Planet and its resources, however, did not relent. On the contrary, new global environmental threats emerged, including the depletion of the ozone layer; loss of biological diversity; desertification; and global warming. The measures agreed at Stockholm and in national, regional and global programs adopted to implement the Conference's outcome had to be reviewed and strengthened.

Ten years after Stockholm, UNEP convened a special session of its Governing Council to commemorate the Conference's tenth anniversary. The special session emphasized the validity of the principles agreed at Stockholm, the shortcomings in the implementation of the Stockholm agenda, and the failure to seriously tackle environmental degradation. The Governing Council adopted the Nairobi Declaration, urgently calling for the adoption of renewed international efforts and measures.

In the Nairobi Declaration, the "world community of states . . . solemnly requests Governments and people to build on the progress so far achieved, but expresses its serious concern about the present state of the environment worldwide, and recognizes the urgent necessity of intensifying the efforts at the global, regional, and national levels to protect and improve it."⁷⁵

In the Nairobi Declaration, the "world community of states" reasserted that "the principles of the Stockholm Declaration are

resolution by a vote of 111 in favor with one vote against (the United States) and eighteen abstentions. The Charter was a deeply ecological instrument but unfortunately did not have a significant impact after its adoption. The Charter laid out general:

[P]rinciples of conservation by which all human conduct affecting nature is to be guided and judged. . . . 1. Nature shall be respected and its essential processes shall not be impaired. 2. The genetic viability on the earth shall not be compromised; the population levels of all life forms, wild and domesticated, must be at least sufficient for their survival, and to this end necessary habitats shall be safeguarded. 3. All areas of the earth, both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to the habitats of rare or endangered species. 4. Ecosystems and organisms, as well as the land, marine and atmospheric resources that are utilized by man, shall be managed to achieve and maintain optimum sustainable productivity, but not in such a way as to endanger the integrity of those other ecosystems or species with which they coexist. 5. Nature shall be secured against degradation caused by warfare or other hostile activities.

World Charter for Nature, G.A. Res. 37/7, UN Doc. A/Res/37/7 (Oct. 28, 1982).

75. UNEP, NAIROBI DECLARATION (1982), <http://www.unep.org/dpdl/Law/PDF/NairobiDeclaration1982.pdf> (last visited Sept. 15, 2006).

as valid today as they were in 1972.”⁷⁶ The Declaration noted that the Stockholm Action Plan had, regrettably, only been partially implemented: “the results cannot be considered as satisfactory . . . [it] has not had sufficient impact on the international community as a whole.”⁷⁷ The Nairobi Declaration urged “all Governments and people of the world to discharge their historical responsibility, collectively and individually, to ensure that our small planet is passed over to future generations in a condition which guarantees a life of human dignity for all.”⁷⁸

The conclusions of UNEP’s Governing Council were endorsed by the General Assembly⁷⁹ and a special commission was established to consider the “Environmental Perspectives for the Year 2000 and Beyond.”⁸⁰ The special commission, known as the World Commission on Environment and Development (“WCED”), was chaired by Gro Harlem Brundtland, Prime Minister of Norway.⁸¹

The WCED produced a landmark report entitled “Our Common Future,” or the “Brundtland Report,” which was destined to have a lasting influence on the international environmental agenda.⁸² The Brundtland Report examined the many problems and challenges facing the world, made recommendations and proposed specific actions.⁸³ The Brundtland Report, in particular, stressed the inextricable connection between environment and development and introduced the concept of sustainable development:

Humanity has the ability to make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs. The concept of sustainable development does imply

76. *Id.* ¶ 1.

77. *Id.* ¶ 2.

78. *Id.* ¶ 10.

79. G.A. Res. 37/219, UN Doc. A/Res/37/219 (Nov. 20, 1982).

80. G.A. Res. 38/161, UN Doc. A/Res/38/161 (Dec. 19, 1983). The resolution recommended that the Commission’s work focuses on “[proposing] long term environmental strategies for achieving sustainable development to the year 2000 and beyond.”

81. *See* Development and International Economic Co-Operation [OECD]: Environmental, REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE, U.N. Doc A/43/427 (Aug. 4, 1987), available at http://www.are.admin.ch/imperia/md/content/are/nachhaltigeentwicklung/brundtland_bericht.pdf.

82. *See id.*

83. *See* SANDS, *supra* note 2, at 48-50.

limits—not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities.⁸⁴

Environment and development were now inseparably linked in the international agenda. The General Assembly welcomed the Brundtland Report⁸⁵ and decided that the time had come for the international community to convene a second international conference to simultaneously examine environmental and developmental challenges and agree upon a new agenda for the twenty-first century.

II. RIO: CO-STARRING ENVIRONMENT AND DEVELOPMENT

In the resolution⁸⁶ convening the United Nations Conference on Environment and Development (“UNCED”),⁸⁷ the General Assembly expressed alarm about the continuing degradation of the environment and called for increased international co-operation to effectively deal with new and old environmental problems.

The General Assembly was “deeply concerned by the continuing deterioration of the state of the environment and the serious degradation of the global life-support systems, as well as by trends that, if allowed to continue, could disrupt the global ecological balance, jeopardize the life-sustaining qualities of the Earth and lead to an ecological catastrophe.” Recognizing “. . . that decisive, urgent and global action is vital to protecting the

84. *Id.* ¶ 27.

85. Report of the World Commission on Environment and Development, G.A. Res. 42/187, UN Doc. A/Res/42/187 (Dec. 11, 1987). The General Assembly, in a separate resolution, adopted the Environmental Perspective for the Year 2000 and Beyond. See G.A. Res. 42/186, UN Doc. A/Res/42/186 (Dec. 11, 1987).

86. See G.A. Res. 44/228, ¶ 1, U.N. Doc. A/Res/44/228 (Dec. 22, 1989); G.A. Res. 43/196 ¶¶ 1-2, UN Doc. A/Res/43/196 (Dec. 20, 1988).

87. On the Rio Summit see BIRNIE & BOYLE, *supra* note 2; HUNTER ET. AL. *supra* note 2; SANDS, *supra* note 2; NANDA & PRING, *supra* note 2; see also THE ENVIRONMENT AFTER RIO: INTERNATIONAL LAW AND ECONOMICS, Luigi Campiglio et al. eds., 1994; Lee A. Kimball & William Boyd, *International Institutional Arrangements for Environment and Development: a Post-Rio Assessment*, 1 R. EUR. COMMUN. INT’L ENV’T L. 295 (1992); Marc Pallamaerts, *International Environmental Law from Stockholm to Rio: Back to the Future*, 1 R. EUR. COMMUN. INT’L ENV’T L. 254 (1992); NICHOLAS A. ROBINSON, *AGENDA 21 AND THE UNCED PROCEEDINGS* (1993); Peter H. Sand, *International Environmental Law After Rio*, 4 EUR. J. INT’L L. 377 (1993); UNCED website, <http://www.un.org/geninfo/bp/enviro.html> (last visited Mar. 17, 2006).

ecological balance of the Earth," the General Assembly decided to "convene the United Nations Conference on Environment and Development, which shall be of two weeks' duration and shall have the highest possible level of participation, to coincide with World Environment Day, on 5 June 1992."⁸⁸

The General Assembly laid out an ambitious program for the conference, which was to address "environmental issues in the development context,"⁸⁹ and called for adequate and effective responses to the challenges facing our Planet.⁹⁰

The Earth Summit was attended by delegates from 176 States, including 103 Heads of State or Government.⁹¹ States came to Rio with different views and objectives. The developed world, in particular, wanted the Summit to re-energize the international community's environmental agenda, while the developing world wanted to put development and economic growth on the center stage.⁹² Following lengthy discussions, a new international "environmental" agenda emerged: an agenda for sustainable development. "Environment" and "development" were now on par on the global stage, reflecting a compromise and a new consensus between developed and developing countries.

88. G.A. Res. 44/228, *supra* note 876.

89. *Id.*

90. *Id.*

91. Peter H. Sand, *UNCED and the Development of International Environmental Law*, 8 J. NAT. RESOURCES & ENVTL. L. 209 (1992-1993). Sand compared the Rio Conference "in terms of diplomatic history . . . to major multilateral peace conferences, such as the 1815 Vienna Congress or the 1919 Versailles Conference. The peace and security perspective may indeed not be far-fetched: in his opening statement to the UNCED Preparatory Committee in March 1990, the Secretary General had already pointed out that "in this case, the security of our planet and our species is at risk. Surely this must be seen as the ultimate security risk which calls for the ultimate security alliance." *Id.* at 209 (citation omitted).

92. There are obviously different views among both developed and developing countries on environment and development. The general perception that environmental concerns are championed by the developed world and that the developing world is principally preoccupied by development holds true. There are, however, developing countries which are strongly behind calls for action on international environmental problems, such as the small island states represented in the climate change regime under the Alliance of Small Island States ("AOSIS"), or African countries facing desertification and drought. Equally, developed countries are not always at the forefront of international environmental efforts. For example, in recent years the United States has not endorsed the two most significant global environmental treaties: the Kyoto Protocol to the Climate Change Convention and the Convention on Biological Diversity. See Pierre Klein, *The Effects of US Predominance on the Elaboration of Treaty Regimes and on the Evolution of the Law of Treaties*, in UNITED STATES HEGEMONY AND THE FOUNDATIONS OF INTERNATIONAL LAW 363 (Michael Byers & Gerog Nolte eds., 2003).

The Rio Summit produced five documents setting out the international agenda for sustainable development for the twenty-first century: the Rio Declaration on Environment and Development, a non-legally binding document containing key principles to guide international action;⁹³ Agenda 21, an ambitious plan of measures and actions to concretely promote sustainable development;⁹⁴ the United Nations Framework Convention on Climate Change,⁹⁵ and the Convention on Biological Diversity,⁹⁶ two legally binding treaties dealing, respectively, with global warming and biodiversity; and, finally, a “Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests,” better known as the Rio Forest Principles.⁹⁷

The Rio Declaration identifies the fundamental principles underpinning the newly agreed agenda for sustainable develop-

93. See United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, Annex I, U.N. Doc. A/Conf.151/26 (Vol. I) (Aug. 12, 1992), available at [HTTP://WWW.UN.ORG/DOCUMENTS/GA/CONF151/ACONF15126-1ANNEX1.HTM](http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm).

94. The Preamble of Agenda 21 states that:

Agenda 21 addresses the pressing problems of today and also aims at preparing the world for the challenges of the next century. It reflects a global consensus and political commitment at the highest level on development and environment cooperation. Its successful implementation is first and foremost the responsibility of Governments. National strategies, plans, policies and processes are crucial in achieving this. International cooperation should support and supplement such national efforts. In this context, the United Nations system has a key role to play. Other international, regional and sub-regional organizations are also called upon to contribute to this effort. The broadest public participation and the active involvement of the non-governmental organizations and other groups should also be encouraged.

United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Agenda 21*, ¶ 1.3, available at <http://www.un.org/esa/sustdev/documents/agenda21/english/Agenda21.pdf> [hereinafter *Agenda 21*]. *Agenda 21* is divided in four sections (for a total of forty chapters): section I (Social and economic dimensions), section II (Conservation and management of resources for development), section III (Strengthening the role of major groups) and section IV (Means of implementation). *Id.*

95. United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

96. Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter Convention on Biological Diversity].

97. U.N. Conference on Environment and Development, June 3-14, 1992, *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, U.N. Doc. A/CONF.151/26/VOL. III/ANNEX III [hereinafter *Forests Principles*], available at <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm>.

ment.⁹⁸ Principles 3 and 4, read together, represent the core compromise reached at Rio between environmental concerns and development.⁹⁹ Principle 3 affirms that "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations,"¹⁰⁰ while Principle 4 reiterates that "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."¹⁰¹

The Rio Declaration includes several legal principles. For example, Principle 2 reproduces almost verbatim Principle 21 of the Stockholm Declaration, with a minor addition: Principle 2 adds two words, "and developmental," to the original Stockholm formulation of the principle recognizing States' sovereignty over their natural resources and the obligation not to cause environmental damage.¹⁰² The new formulation, known as Principle 21/Principle 2, reflects the equal status of environment and development at Rio:¹⁰³ the principle now specifically recognizes that States' exploitation of their resources can be carried out according to their environmental "and developmental" policies.¹⁰⁴ Other more controversial legal principles are also included in the Rio Declaration: the precautionary principle,¹⁰⁵ the princi-

98. See Pallamaerts, *supra* note 87, at 254; see also John Batt & David C. Short, *The Jurisprudence of the 1992 Rio Declaration on Environment and Development: A Law, Science, and Policy Explication of Certain Aspects of the United Nations Conference on Environment and Development*, 8 J. NAT. RESOURCES & ENVTL. L. 229 (1992-1993).

99. See SANDS, *supra* note 2, at 55.

100. U.N. Conference on Environment and Development, June 3-14, 1992, *Rio Declaration on Environment and Development*, princ. 1, U.N. Doc. A/CONF.151/5/Rev.1 [hereinafter Rio Declaration].

101. *Id.* princ. 4.

102. Compare *id.* princ. 2, with Stockholm Declaration, *supra* note 43, princ. 21.

103. There are different views on the importance and significance of this addition. Pallamaerts offers a critical view. See Pallamaerts, *supra* note 87, at 256-57. Sands, however, feels that "the additional words merely affirm that states are entitled to pursue their own environmental policies." SANDS, *supra* note 2, at 55.

104. See Rio Declaration, *supra* note 100, princ. 2 ("States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.") (emphasis added).

105. See *id.* princ. 15 ("In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be

ple of common but differentiated responsibility;¹⁰⁶ environmental impact assessment;¹⁰⁷ the polluter pays principle;¹⁰⁸ and the principle of public participation.¹⁰⁹

The second document adopted at Rio, Agenda 21,¹¹⁰ represents a global partnership for sustainable development and reflects a "global consensus and political commitment at the highest level of development and environment cooperation."¹¹¹ Agenda 21 is divided into four sections: social and economic dimensions (section I);¹¹² conservation and management of resources for development (section II);¹¹³ strengthening the role of major groups (section III);¹¹⁴ and means of implementation (section IV).¹¹⁵ Agenda 21 identifies program areas and specifies actions, objectives, activities, and means of implementation to concretely promote sustainable development.¹¹⁶ The key en-

used as a reason for postponing cost-effective measures to prevent environmental degradation.").

106. *See id.* princ. 7 ("States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.").

107. *See id.* princ. 17 ("Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.").

108. *See id.* princ. 16 ("National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.").

109. *See id.* princ. 10 ("Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.").

110. *Agenda 21, supra* note 94.

111. *Id.* pmbl., ¶ 1.3.

112. *Id.* chs. 2-8.

113. *Id.* chs. 9-22.

114. *Id.* chs. 23-32.

115. *Id.* chs. 33-40.

116. *See id.* pmbl., ¶ 1.6.

vironmental issues which Agenda 21 views as necessary to secure sustainable development include: protection of the atmosphere;¹¹⁷ an integrated approach to the planning and management of land resources;¹¹⁸ combating deforestation;¹¹⁹ managing fragile ecosystems through combating desertification and drought,¹²⁰ and sustainable mountain development;¹²¹ promoting sustainable agriculture and rural development;¹²² conservation of biological diversity;¹²³ environmentally sound management of biotechnology;¹²⁴ protection of the oceans, seas (including enclosed and semi-enclosed seas), and coastal areas, and protection, rational use and development of their living resources;¹²⁵ protection of the quality and supply of freshwater resources;¹²⁶ and environmentally sound management of toxic chemicals,¹²⁷ hazardous wastes,¹²⁸ solid waste and sewage,¹²⁹ and radioactive wastes.¹³⁰

The Earth Summit's environmental achievements also included the adoption of two legally binding conventions on global warming and biological diversity. Agreement, however, could not be reached on a legally binding treaty on forests¹³¹ and on the establishment of strong(er) international institutions.¹³²

The Rio Conference is largely¹³³ considered a success.¹³⁴ En-

117. *Id.* ch. 9.

118. *Id.* ch. 10.

119. *Id.* ch. 11.

120. *Id.* ch. 12.

121. *Id.* ch. 13.

122. *Id.* ch. 14.

123. *Id.* ch. 15.

124. *Id.* ch. 16.

125. *Id.* ch. 17.

126. *Id.* ch. 18.

127. *Id.* ch. 19.

128. *Id.* ch. 20.

129. *Id.* ch. 21.

130. *Id.* ch. 22.

131. The "Forest Principles" are not legally binding. See *supra* note 98.

132. A Commission on Sustainable Development ("CSD") was set up to monitor the implementation of Agenda 21. See U.N. Department of Economic and Social Affairs, Division for Sustainable Development Home Page, <http://www.un.org/esa/sustdev/csd/review.htm> (last visited Apr. 5, 2006).

133. For a critical view of the Rio Summit, see Marc Pallemmaerts, *International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process*, 15 J.L. & COM. 623 (1996). Pallemmaerts argues that the Summit did represent a "challenge to the legitimacy, perhaps even to the very existence, of international envi-

vironment and development played an equal role, reflecting a fair compromise consensus between developed and developing countries' needs and priorities. The international sustainable development agenda recognized that development and the environment were inextricably connected and mutually supportive.¹³⁵ Environmental measures had to go hand in hand with development and poverty eradication efforts. By the same token, development had to be sustainable and fully integrate environmental considerations.

Twenty years after Stockholm, the international community had reaffirmed its commitment to environmental protection at the highest political level. The 1992 Earth Summit agreed upon an ambitious agenda for sustainable development, an agenda in which the environment featured prominently. Agenda 21, an ambitious and concrete plan of action, identified measures to deal effectively with the most pressing environmental problems of modern times and to promote sustainable development.¹³⁶ Legally binding treaties addressed two major global environmental issues: climate change and biodiversity.¹³⁷ The Rio Declaration reiterated existing legal principles and recognized the emergence of new legal rules and principles to guide States' actions on environment and development. International environmental actions, however, were not to be pursued in isolation from developmental policies. At Rio, environment and development became mutually supporting partners within the agenda for sustainable development. Humanity stood

[A]t a defining moment in history. We are confronted with a perpetuation of disparities between and within nations, a worsening poverty, hunger, ill health and illiteracy, and the

ronmental law as an autonomous body of rules of international law 'aimed at protecting the biosphere from major deterioration which could endanger its present or future functioning.' . . . In the pursuit of this new end, does the international law of sustainable development not, in the final analysis, risk becoming reduced to a recast, indeed, even to a mere appendage to another branch of international law: international development law tout court?" *Id.* at 674-75 (citation omitted).

134. See Ranees Khooshie Lal Panjabi, *From Stockholm to Rio: A Comparison of the Declaratory Principles of International Environmental Law*, 21 *DENV. J. INT'L L. & POL'Y* 215, 275-76 (1993); see also David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, Or Vice Versa?* 29 *GA. L. REV.* 599, 608-10 (1995).

135. See *Agenda 21*, *supra* note 94, ¶ 1.1.

136. See *id.*

137. See UNFCCC, *supra* note 95; see also Convention on Biological Diversity, *supra* note 96.

continuing deterioration of the ecosystem on which we depend for our well-being. However, integration of environment and development concerns and greater attention to them will lead to the fulfillment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can—in a global partnership for sustainable development.¹³⁸

The greatest challenge for the international community was the implementation of the Earth Summit's agreements. The success of the ambitious measures adopted at Rio and, ultimately, the improvement of the global environment, depended upon the effective compliance with the Rio's commitments. Learning from previous experiences, when promises had largely been ignored and failed to produce the desired results, the Rio Conference established a body to monitor the effective implementation of the commitments made. The Commission on Sustainable Development ("CSD") was specifically set up to, *inter alia*, monitor and report on the implementation of Agenda 21.¹³⁹ In addition, five years after the Rio Conference, a special session of the U.N. General Assembly would review the implementation of the commitments made at UNCED.¹⁴⁰ At the 1997 Earth Summit+5,¹⁴¹ "heads of State or Government and other heads of delegations, together with . . . partners from international institutions and non-governmental organizations" were "to review progress achieved over the five years that have passed since the U.N. Conference on Environment and Development and to re-energize . . . commitment to further action on goals and objectives set out by the Earth Summit."¹⁴² The assessment of the implementation of the UNCED agenda was, however, bleak: some progress had

138. *Agenda 21*, *supra* note 94, ¶ 1.1.

139. *Id.* ¶ 38.11.

140. After Rio, important developments took place within specific treaty regimes. For example, the Kyoto Protocol to the Climate Change Convention set specific targets and a timetable for reducing greenhouse gases responsible for global warming. A Protocol on biosafety was adopted in the context of the Biodiversity Convention. For a review of the post UNCED events, see *supra* note 2.

141. See Special Session of the General Assembly to Review and Appraise the Implementation of Agenda 21, June 23-27, 1997, U.N. Doc. A/RES/S-19/2, available at <http://www.un.org/esa/earthsummit/>.

142. Programme for the Further Implementation of Agenda 21, G.A. Res. 19/2, U.N. GAOR, 19th Spec. Sess., 11th plen. Mtg., U.N. Doc. A/Res/S-19/2, ¶ 1 (Sept. 19, 1997), available at <http://www.un.org/documents/ga/res/spec/aress19-2.htm>.

been made, but the overall picture was not encouraging. The state of the environment had actually worsened since Rio:

Five years after the United Nations Conference on Environment and Development, the state of the global environment has continued to deteriorate, as noted in the Global Environment Outlook of the United Nations Environment Programme, and significant environmental problems remain deeply embedded in the socio-economic fabric of countries in all regions. Some progress has been made in terms of institutional development, international consensus-building, public participation and private sector actions and, as a result, a number of countries have succeeded in curbing pollution and slowing the rate of resource degradation. Overall, however, trends are worsening.¹⁴³

The principles contained in the Rio Declaration, Agenda 21, and the global partnership for sustainable development were still, five years after Rio, the correct answer for the promotion of sustainable development and better environmental conditions. However, there was a need for full and rapid implementation of

143. *Id.* ¶ 9. The resolution further notes that:

Many polluting emissions, notably of toxic substances, greenhouse gases and waste volumes are continuing to increase although in some industrialized countries emissions are decreasing. Marginal progress has been made in addressing unsustainable production and consumption patterns. Insufficient progress has also been identified in the field of environmentally sound management and adequate control of transboundary movements of hazardous and radioactive wastes. Many countries undergoing rapid economic growth and urbanization are also experiencing increasing levels of air and water pollution, with accumulating impacts on human health. Acid rain and transboundary air pollution, once considered a problem only in the industrialized countries, are increasingly becoming a problem in many developing regions. In many poorer regions of the world, persistent poverty is contributing to accelerated degradation of natural resources and desertification has spread. In countries seriously affected by drought and/or desertification, especially those in Africa, their agricultural productivity, among other things, is uncertain and continues to decline, thereby hampering their efforts to achieve sustainable development. Inadequate and unsafe water supplies are affecting an increasing number of people worldwide, aggravating problems of ill health and food insecurity among the poor. Conditions in natural habitats and fragile ecosystems, including mountain ecosystems, are still deteriorating in all regions of the world, resulting in diminishing biological diversity. At the global level, renewable resources, in particular fresh water, forests, topsoil and marine fish stocks, continue to be used at rates beyond their viable rates of regeneration; without improved management, this situation is clearly unsustainable.

Id.

the commitments made at Rio. The international community had been “long on promises, but short” on delivering on them:

The United Nations Conference on Environment and Development was a landmark event. At that Conference, we launched a new global partnership for sustainable development—a partnership that respects the indivisibility of environmental protection and the development process. It is founded on a global consensus and political commitment at the highest level. Agenda 21, adopted at Rio de Janeiro, addresses the pressing environment and development problems of today and also aims at preparing the world for the challenges of the next century in order to attain the long-term goals of sustainable development. . . .

Our focus at this special session has been to accelerate the implementation of Agenda 21 in a comprehensive manner and not to renegotiate its provisions or to be selective in its implementation. We reaffirm that Agenda 21 remains the fundamental programme of action for achieving sustainable development. We reaffirm all the principles contained in the Rio Declaration on Environment and Development and the Forest Principles. We are convinced that the achievement of sustainable development requires the integration of its economic, environmental and social components. We recommit to working together—in the spirit of global partnership—to reinforce our joint efforts to meet equitably the needs of present and future generations.¹⁴⁴

The five-year review of the implementation of the Rio commitments was not encouraging. The international community's

144. *Id.* ¶¶ 2-3. The resolution acknowledged “that a number of positive results have been achieved, but we are deeply concerned that the overall trends with respect to sustainable development are worse today than they were in 1992. We emphasize that the implementation of Agenda 21 in a comprehensive manner remains vitally important and is more urgent now than ever.” *Id.* Furthermore, the resolution noted that:

[T]ime is of the essence in meeting the challenges of sustainable development as set out in the Rio Declaration and Agenda 21. To this end, we recommit ourselves to the global partnership established at the United Nations Conference on Environment and Development and to the continuous dialogue and action inspired by the need to achieve a more efficient and equitable world economy, as a means to provide a supportive international climate for achieving environment and development goals. We therefore, pledge to continue to work together, in good faith and in the spirit of partnership, to accelerate the implementation of Agenda 21. We invite everyone throughout the world to join us in our common cause.

Id. ¶ 5.

actions had again fallen far short of what was needed to halt and reverse environmental degradation.

The twentieth century was coming to an end and the Planet was very different from that handed to us by previous generations. The twentieth century had seen terrible conflicts, devastation, successes and failures, amazing changes, and progress. Many people had now better lives, but even more people were not sharing the benefits of economic and technological progress. The environment, in particular, was now in far worse shape than it had been at the beginning of the century. Humanity was entering a new millennium and this historic moment provided a perfect opportunity for the international community to reflect on its achievements and the challenges it faced, and to set forth an agenda to make the twenty-first century and the new millennium better than those they followed.

III. *NEW YORK (ACT I): SHARING THE STAGE AT THE MILLENNIUM SUMMIT*

The new millennium offered a historic opportunity to redefine the international agenda for the twenty-first century and to promote greater prosperity and a better future for humankind. In his report, "Renewing the United Nations: A Programme for Reform,"¹⁴⁵ the U.N. Secretary-General proposed to convene a summit on the occasion of the new millennium. Kofi Annan argued that the "opportunity provided by the advent of the new century and the millennium [should] be used to designate the session of the General Assembly to be held in the year 2000 a 'Millennium Assembly,' with a summit segment devoted to a review of the role of the United Nations vis-à-vis the prospects and challenges of the future. The high-level segment of the Millennium Assembly could be called the 'Millennium Summit.'"¹⁴⁶ The Secretary-General's proposal was endorsed by the General Assembly.¹⁴⁷ The General Assembly agreed that "the year 2000 constitutes a unique and symbolically compelling moment to ar-

145. The Secretary-General, *Report of the Secretary-General on Renewing the United Nations: A Programme for Reform, delivered to the General Assembly*, U.N. Doc. A/51/950 (July 14, 1997), available at <http://www.un.org/reform/pdfs/1997%20renewing%20the%20un-prog%20for%20reform.pdf>.

146. *Id.* add. ¶ 1.

147. The Millennium Summit was convened by General Assembly Resolution 53/202 adopted on December 17, 1998. See G.A. Res. 53/202, U.N. Doc. A/Res/53/202

ticulate and affirm an animating vision for the United Nations in the new era."¹⁴⁸

In another Report, the Secretary-General suggested "The United Nations in the twenty-first century" as the overall theme for the forthcoming summit. The general theme was to be divided into four sub-topics: a) Peace and security, including disarmament; b) Development, including poverty eradication; c) Human rights; and, d) Strengthening the U.N.¹⁴⁹

To assist the summit participants and to contribute to the identification of the main items for international cooperation in the new millennium, the Secretary-General produced the Millennium Report, *We the Peoples: The Role of the United Nations in the 21st century*,¹⁵⁰ setting out a vision and agenda for the twenty-first century. In the report, Kofi Annan argued that the international community should focus on promoting:

- (1) Freedom from want (the Development Agenda);¹⁵¹
- (2) Freedom from fear (the Security Agenda);¹⁵²
- (3) A sustainable future (the Environmental Agenda);¹⁵³
and
- (4) Renewing the U.N.¹⁵⁴

Freedom from want, freedom from fear, and the need to renew the U.N. clearly fell within the U.N.'s competence as outlined in its Charter and naturally featured among the priorities for international cooperation in the 21st century.¹⁵⁵ The environment, however, was not included among the tasks of the U.N. in the Charter. The Secretary-General rightly felt that the Charter's omission of a specific environmental mandate was now a historical relic. When the Charter was adopted, the present scale

(Feb. 12, 1999), available at <http://daccessdds.un.org/doc/UNDOC/GEN/N99/765/13/PDF/N9976513.pdf?OpenElement>.

148. *Id.* at 1.

149. See The Secretary-General, *Report of the Secretary-General on the Thematic Framework for the Millennium Summit Report, delivered to the General Assembly*, U.N. Doc. A/53/948 (May 10, 1999), available at http://www.un.org/millennium/documents/a_53_948.htm.

150. See generally *We the Peoples*, *supra* note 23.

151. See *id.* ch. III.

152. See *id.* ch. IV.

153. See *id.* ch. V.

154. See *id.* ch. VI.

155. See *id.* chs. III, IV, VI.

of the Planet's degradation could not have been foreseen.¹⁵⁶ Furthermore, the environment had over the years been the subject of increasing international cooperation. The extent of the environmental decline and the threats that it posed fully justified the recognition of the environment as one of the priorities for action in the new millennium. The environment, according to the Secretary-General, played a fundamental role for the well being of humankind and provided life-sustaining services.¹⁵⁷ The Secretary-General's report called for urgent and strong actions to provide the "freedom of future generations to sustain their lives on this planet" and observed that the international community's responses to environmental challenges had been "too few, too little, too late."¹⁵⁸ Climate change,¹⁵⁹ the water crisis,¹⁶⁰ de-

156. *See id.* at 55.

The founders of the United Nations set out, in the words of the Charter, to promote social progress and better standards of life in larger freedom — above all, freedom from want and freedom from fear. In 1945, they could not have anticipated, however, the urgent need we face today to realize yet a third: the freedom of future generations to sustain their lives on this planet. We are failing to provide that freedom. On the contrary, we have been plundering our children's future heritage to pay for environmentally unsustainable practices in the present.

Id.

157. *See id.* at 55.

The natural environment performs for us, free of charge, basic services without which our species could not survive. The ozone layer screens out ultraviolet rays from the sun that harm people, animals and plants. Ecosystems help purify the air we breathe and the water we drink. They convert wastes into resources and reduce atmospheric carbon levels that would otherwise contribute to global warming. Biodiversity provides a bountiful store of medicines and food products, and it maintains genetic variety that reduces vulnerability to pests and diseases. But we are degrading, and in some cases destroying, the ability of the environment to continue providing these life-sustaining services for us.

Id.

158. *See id.* at 56 ("[W]e must face up to an inescapable reality: the challenges of sustainability simply overwhelm the adequacy of our responses. With some honorable exceptions, our responses are too few, too little and too late.").

159. *See id.* at 57-60. On coping with climate change, the Secretary General called [U]pon the Millennium Summit to promote the adoption and implementation of the Kyoto Protocol. Specifically, I urge those States whose ratifications are needed to bring it into effect to take the necessary action in time for entry into force by 2002, as a fitting celebration of our progress since Stockholm in 1972 and Rio in 1992.

Id.

160. *See id.* at 60-61. On confronting the water crisis, the Secretary General urged, "[T]he Summit to adopt the target of reducing by half, between now and 2015, the

fending the soil,¹⁶¹ preserving forests, fisheries and biodiversity,¹⁶² and building a new ethic of global stewardship were the main issue on the environmental agenda proposed by the Secretary-General.¹⁶³

Regretting the scarce attention being paid to the environment in the preparation for the Millennium Summit,¹⁶⁴ the Secretary-General pleaded with international leaders to provide vision and leadership “if we are to bequeath a livable Earth to our children—and theirs.”¹⁶⁵ This strong environmental message for world leaders gathering in New York was reiterated in a final plea: the Secretary-General asked that “no effort should be spared to free our fellow men and women, and above all our children and grandchildren, from the danger of living on a planet irredeemably spoilt by human activities, and whose resources can no longer provide for their needs”¹⁶⁶

The Secretary-General’s Millennium Report boded well for the Planet. The Millennium Summit fueled expectations of a new beginning for the environment and for international cooperation more generally: “The Millennium might have been no more than an accident of the calendar. But you, the Governments and peoples of the world, have chosen to make it more than that—an occasion for all humanity to celebrate, and to reflect.”¹⁶⁷

proportion of people who lack sustainable access to adequate sources of affordable and safe water.” *Id.* at 61.

161. *See id.* at 61-62.

162. *See id.* at 62-63.

163. *See id.* at 62-65. The Secretary General noted that “the ecological crises we confront have many causes. They include poverty, negligence and greed—and above all, failures of governance.” *Id.* He recommended four priorities to build a new global stewardship: major efforts in public education; repositioning of environmental issues in the policy making process; governments’ creation and enforcement of regulations and promotion of environment friendly incentives for markets; and, promotion of sound and scientific information as a basis for environmental policy. *See id.*

164. *See id.* at 56 (“[E]nvironmental issues were never seriously considered in nearly 18 months during which the General Assembly debated which subjects to include in the Summit’s agenda makes it plain how little priority is accorded to these extraordinary serious challenges for all humankind.”).

165. *See id.* at 56.

166. *Id.* I.C. VII, ¶ 366.

167. H.E. Kofi Annan, U.N. Secretary-General, Statement to the General Assembly on the Occasion of the Presentation of his Report: We the Peoples: the Role of the United Nations in the 21st Century (Apr. 3, 2000), <http://www.un.org/millennium/sg/report/state.htm> (last visited Apr. 11, 2006).

The Summit formally opened at the U.N. Headquarters in September 2000 and was attended by the highest level of representation of any previous international gathering.¹⁶⁸ In the words of its co-chairs,

[T]he Summit presents an opportunity of truly historic dimension to guide the agenda of the United Nations and to shape the actions of the international community for years to come. In a changing world subject to an ever more rapid pace of globalization . . . it is essential that the United Nations lives up to its natural role as a universal and indispensable organization.¹⁶⁹

At the Summit's conclusion, the Millennium Declaration was unanimously adopted. The Declaration sets out the international community's agenda for the twenty-first century and includes the environment among its main priorities.¹⁷⁰

In the Millennium Declaration, the international community renewed its commitment to the values and principles of the U.N. and its Charter:¹⁷¹

1. freedom,¹⁷²

168. One hundred three Heads of State and eighty-nine Heads of Government attended the Summit. A full list of participants is available at the U.N.'s website, at <http://www.un.org/millennium/participants.htm> (last visited Apr. 11, 2006).

169. Press Release, President Tarja Halonen of the Republic of Finland and President Sam Nujoma of the Republic of Namibia, Statement on Behalf of the Co-Chairs of the United Nations Millennium Summit (Sept. 5, 2000), http://www.un.org/millennium/co_chairs.htm (last visited Apr. 11, 2006).

170. United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., U.N. Doc. A/Res/55/2 (Sept. 18, 2000).

171. *See id.* ¶¶ 1-3

1. We, heads of State and Government, have gathered at United Nations Headquarters in New York from 6 to 8 September 2000, at the dawn of a new millennium, to reaffirm our faith in the Organization and its Charter as indispensable foundations of a more peaceful, prosperous and just world. 2. We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs. 3. We reaffirm our commitment to the purposes and principles of the Charter of the United Nations, which have proved timeless and universal. Indeed, their relevance and capacity to inspire have increased, as nations and peoples have become increasingly interconnected and interdependent.

172. *See id.* ¶ 6 ("Freedom. Men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Democratic and participatory governance based on the will of the people best assures these rights.")

2. equality,¹⁷³
3. solidarity,¹⁷⁴
4. tolerance,¹⁷⁵
5. respect for nature, and
6. shared responsibility.¹⁷⁶

The inclusion of “respect for nature” is of significant importance and demonstrates the prominent role accorded to the environment in the global agenda. “Respect for nature” requires, according to the Millennium Declaration, prudent management of species and resources in compliance with the principle of sustainable development.¹⁷⁷ It demands preservation of the same species and resources for future generations.¹⁷⁸ It finally requires changes in unsustainable patterns of production and consumption:

Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.¹⁷⁹

The Millennium Declaration’s definition echoes and reaffirms the environmental message found in the Stockholm and Rio Declarations. Placing “respect for nature” among the fundamental values for the twenty-first century (alongside freedom,

173. *See id.* (“Equality. No individual and no nation must be denied the opportunity to benefit from development. The equal rights and opportunities of women and men must be assured.”).

174. *See id.* (“Solidarity. Global challenges must be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.”).

175. *See id.* (“Tolerance. Human beings must respect one another, in all their diversity of belief, culture and language. Differences within and between societies should be neither feared nor repressed, but cherished as a precious asset of humanity. A culture of peace and dialogue among all civilizations should be actively promoted.”).

176. *See id.* (“Shared responsibility. Responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally. As the most universal and most representative organization in the world, the United Nations must play the central role.”).

177. *See id.*

178. *See id.*

179. *Id.* ¶ 6.

equality, solidarity, tolerance, and shared responsibility), is a clear indication of strong support for the environment by the international community as a whole.

The central role of the environment in the global agenda is further emphasized in the Declaration: the protection of “our common environment”¹⁸⁰ is specifically identified as one of the key objectives for international cooperation in the twenty-first century alongside peace, security, and disarmament;¹⁸¹ development and poverty eradication;¹⁸² human rights, democracy and good governance;¹⁸³ protecting the vulnerable;¹⁸⁴ meeting the special needs of Africa;¹⁸⁵ and, strengthening the U.N.¹⁸⁶

In the Millennium Declaration, the international community reiterated its commitment to sustainable development and to the Rio agreements.¹⁸⁷ The Declaration stresses that no effort should be spared to preserve the Earth’s integrity¹⁸⁸ and calls for a new ethic of conservation and stewardship for the environment in dealing with climate change, biodiversity, desertification, forests, water resources and natural disasters.¹⁸⁹

The international agenda that emerged at the Millennium

180. *See id.* ¶¶ 21-23.

181. *Id.* ¶¶ 8-10.

182. *Id.* ¶¶ 11-20.

183. *Id.* ¶¶ 24-25.

184. *Id.* ¶ 26.

185. *Id.* ¶¶ 27-28.

186. *Id.* ¶¶ 29-32.

187. *See id.* ¶ 22 (“We reaffirm our support for the principles of sustainable development, including those set out in Agenda 21, agreed upon at the United Nations Conference on Environment and Development.”).

188. *See id.* ¶ 21 (“We must spare no effort to free all humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoilt by human activities, and whose resources would no longer be sufficient for their needs.”).

189. *See id.* ¶ 23 (“We resolve therefore to adopt in all our environmental actions a new ethic of conservation and stewardship and, as first steps, we resolve: To make every effort to ensure the entry into force of the Kyoto Protocol, preferably by the tenth anniversary of the United Nations Conference on Environment and Development in 2002, and to embark on the required reduction in emissions of greenhouse gases; To intensify our collective efforts for the management, conservation and sustainable development of all types of forests; To press for the full implementation of the Convention on Biological Diversity and the Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa; To stop the unsustainable exploitation of water resources by developing water management strategies at the regional, national and local levels, which promote both equitable access and adequate supplies; To intensify cooperation to reduce the number and effects of natural and man-made disasters; To ensure free access to information on the human genome sequence.”).

Summit was certainly encouraging for those concerned about the state of the Planet. Respect for nature was one of the fundamental values agreed upon by the international community. A renewed consensus on specific environmental objectives¹⁹⁰ demonstrated a commitment to strong actions to prevent further ecological decline. After the Millennium Summit, the prominence of the environment for the international community was further emphasized by the inclusion of “environmental sustainability”¹⁹¹ among the Millennium Development Goals (“MDGs”),¹⁹² the set of goals produced by the U.N. Secretariat and other agencies to measure the implementation of the developmental commitments made at the Millennium Summit.¹⁹³

The Millennium Declaration was “greener” than expected

190. See *id.* ¶¶ 6, 23 (noting the need to respect nature and adopt in all our environmental actions a new ethic of conservation and stewardship).

191. See United Nations Environment Programme, *UNEP and the Millennium Development Goals, Goal #7: Ensure Environmental Sustainability*, <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=448&ArticleID=4894&l=en> (last visited Apr. 11, 2006). Specific targets and indicators have been identified to monitor the implementation of the goals. The targets and indicators for Millennium Development Goal (“MDG”) #7 are:

Target 9: Integrate the principles of sustainable development into country policies and programs and reverse the loss of environmental resource. (*Indicators:* 25. Proportion of land covered by forest (FAO). 26. Ratio of area protected to maintain biological diversity to surface area (UNEP, WCMC). 27. Energy use (Kg oil equivalent per \$1000 GDP (IEA, World Bank). 28. Carbon dioxide emission per capita (UNFCCC, UNSD) and consumption of ozone depleting CFCs (ODP tons) (UNEP, Ozone Secretariat). 29. Proportion of population using solid fuels (WHO)).

Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water and sanitation. (*Indicators:* 30. Proportion of population with sustainable access to an improved water source, urban and rural (UNICEF, WHO). 31. Proportion of population with sustainable access to improved sanitation, urban and rural (UNICEF, WHO)).

Target 11: By 2020, to have achieved a significant improvement in the life of at least 100 million slum dwellers. (*Indicators:* 32. Proportion of households with access to secure tenure (UN, HABITAT)). See *id.*

192. See United Nations, *U.N. Millennium Development Goals*, <http://www.un.org/millenniumgoals/> (last visited Apr. 11, 2006) (The eight MDGs are: *Goal 1:* Eradicate extreme poverty and hunger. *Goal 2:* Achieve universal primary education. *Goal 3:* Promote gender equality and empower women. *Goal 4:* Reduce child mortality. *Goal 5:* Improve maternal health. *Goal 6:* Combat HIV/AIDS, malaria and other diseases. *Goal 7:* Ensure environmental sustainability. *Goal 8:* Develop a global partnership for development.).

193. See United Nations, *Monitoring progress towards the achievement of the Millennium Development Goals*, http://unstats.un.org/unsd/mi/mi_highlights.asp (last visited Apr. 5, 2006) (noting the process that led to the elaboration of the MDGs).

at the outset of the Summit. The environment was firmly a part of the global agenda for the New Millennium, on par with other fundamental areas for international cooperation. At the dawn of the New Millennium, the environment was still very much on the global stage.

IV. JOHANNESBURG: THE ENVIRONMENT A SUPPORTING ACT

Two years after the Millennium Summit, the international community gathered in Johannesburg for the World Summit on Sustainable Development (“WSSD”) to elaborate the commitments on environmental cooperation made in New York and to assess the state of the implementation of the Rio agenda, ten years after the Earth Summit.¹⁹⁴ This was to be the second review of the implementation of the Rio agreements. As noted earlier, at the 1997 Earth Summit+5, the first review of the implementation of the Rio’s agreements found that promises had not been kept.¹⁹⁵ Five years later, the situation was not much improved¹⁹⁶ as noted in a report prepared by the Secretary-General.¹⁹⁷ To address the implementation gap, the report identified specific actions to concretely promote sustainable development and to produce measurable results.¹⁹⁸

Controversy marred the WSSD before it even began, with strong disagreement about the Summit’s agenda emerging in the international community.¹⁹⁹ Concerned about the prospects

194. The Summit was convened by a resolution of the U.N. General Assembly. See Ten-Year Review of Progress Achieved in the Implementation of the Outcome of the United Nations Conference on Environment and Development, G.A. Res. 55/199, U.N. GAOR, 55th Sess., 87th plen. mtg., U.N. Doc. A/RES/55/199 (Dec. 20, 2000), available at http://www.un.org/esa/sustdev/sids/res_55_199.htm.

195. See *supra* notes 143-44 and corresponding text.

196. See COMMISSION ON SUSTAINABLE DEVELOPMENT ACTING AS THE PREPARATORY COMMITTEE FOR THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, *Report of the Secretary-General on Implementing Agenda 21, delivered to the Economic and Social Council*, U.N. Doc. E/CN.17/2002/PC.2/7 (2002).

197. See *id.* at 4.

198. See *id.* The ten-point plan for action included: (1) make globalization work for sustainable development; (2) eradicate poverty and improve livelihoods; (3) change unsustainable patterns of production and consumption; (4) improve health; (5) provide access to energy; (6) manage ecosystems and biodiversity; (7) improve freshwater supply management; (8) provide financial resources; (9) support sustainable development in Africa; and (10) strengthen international governance.

199. See generally Georgetown University Symposium, *The Road from Johannesburg*, 15 *Geo. Int’l Envtl. L. Rev.* 809, 833-53 (2003) (discussing and debating several contro-

for the forthcoming WSSD,²⁰⁰ the Secretary-General reminded world leaders that “the state of the world’s environment” was still fragile and that “developed countries in particular ha[d] not gone far enough in fulfilling the promises they made in Rio — either to protect their own environment or to help the developing world defeat poverty.”²⁰¹ The Secretary-General felt that the Johannesburg Summit provided the opportunity to restore the momentum and the hopes of the Earth Summit.²⁰² He reminded world leaders of promises they had made only two years earlier, at the Millennium Summit, where they had agreed to tackle global poverty and to “free future generations from the threat of living on a planet irredeemably spoilt by human activities.”²⁰³ To refocus the summit’s agenda, the Secretary-General identified five specific areas where the WSSD could produce specific and concrete results (the so-called “WEHAB agenda”): (1) water and sanitation; (2) energy; (3) agricultural productivity; (4) biodiversity and ecosystem management; and (5) health.²⁰⁴

After difficult and tense negotiations on the Summit’s agenda,²⁰⁵ a final consensus was reached among the participants and the Summit opened in Johannesburg on August 26th, 2002.²⁰⁶ The tension surrounding the summit’s agenda had not completely disappeared and differences remained on the future direction of the sustainable development agenda. Heated discussions and divergent views were often heard at the Summit. The perceived conflict between environment and development reemerged with stronger and sometimes polarized views. Developing countries wanted (sustainable) development to be the

versies, including government and partnerships, financing sustainable development, and corporate accountability).

200. Nane Annan, Address at the American Museum of Natural History’s Annual Environmental Lecture: The Secretary-General, Towards a Sustainable Future (May 14, 2002), http://www.johannesburgsummit.org/html/media_info/speeches/sg_speech_amnh.pdf (last visited Mar. 17, 2006).

201. *Id.*

202. *Id.*

203. *Id.*

204. *See id.*

205. *See* Tony Karon, *Earth Summit Founders, But There’s Hope*, TIME, Sept. 3, 2002, <http://www.time.com/time/world/article/0,8599,347026,00.html> (last visited Sept. 16, 2006) (discussing negotiation difficulties and eventual agreement).

206. *See generally Report of the Commission on Sustainable Development Acting as the Preparatory Committee for the World Summit on Sustainable Development*, U.N. Doc. A/CONF. 199/4 (2002).

central theme of the Summit: they felt that the international community's primary concern should be development and poverty eradication and environmental measures should be pursued to achieve such goals.²⁰⁷ Environmentalists and some developed countries, on the other hand, were concerned that the role of the environment in the sustainable development agenda was being further diluted to the point of having little or no significance. Furthermore, divisions among developed countries did not help in presenting a united "environmental" front. To put it mildly, the environment did not have a very good summit at Johannesburg.²⁰⁸

While the Summit was originally convened to promote sustainable development, including its environmental aspect,²⁰⁹ it arguably ended up focusing mainly on development and only marginally addressing environmental issues.²¹⁰ The WSSD has been widely criticized for its failure to make any significant progress in promoting the environmental agenda.²¹¹ Johannesburg was supposed to reenergize the international environmental agenda and improve the role of environmental issues within the context of the sustainable development agenda, but achieved neither.²¹²

207. See Karon, *supra* note 205 (noting developing countries' objectives).

208. See George (Rock) Pring, *The 2002 Johannesburg World Summit on Sustainable Development: International Environmental Law Collides with Reality, Turning Jo'Burg into "Joke'Burg,"* 30 DENV. J. INT'L L. & POL'Y 410, 416 (2002) (declaring that the "[U.S.] delegation's position at Johannesburg was negative and reactionary on virtually every issue").

209. See Georgetown University Symposium, *supra* note 199, at 815.

210. See SANDS, *supra* note 2, at 66.

211. For different, generally critical perspectives on the WSSD, see, for example, Ken Conca, *Environmental Governance After Johannesburg: From Stalled Legalization to Environmental Human Rights?*, 1 J. INT'L L. & INT'L REL. 121 (2005); Tim Eichenberg & Mitchell Shapson, *The Promise of Johannesburg: Fisheries and the World Summit on Sustainable Development*, 34 GOLDEN GATE U. L. REV. 587 (2004); Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 GEO. INT'L ENVTL. L. REV. 21 (2003); Greham Mayeda, *Where Should Johannesburg Take Us? Ethical and Legal Approaches to Sustainable Development in the Context of International Environmental Law*, 15 COLO. J. INT'L ENVTL. L. & POL'Y 29 (2004); Harry M. Osofsky, *Defining Sustainable Development After Earth Summit 2002*, 26 LOY. L.A. INT'L & COMP. L. REV. 111 (2003); Charlotte Streck, *The World Summit on Sustainable Development: Partnerships as New Tools in Environmental Governance*, 13 INT'L ENVTL. L. Y.B. 63, 65 (2002); Larry A. Swatuk, *Rio Minus Ten: The Political Economy of Environmental Degradation*, 14 EUR. J. DEV. RES. 264 (2002).

212. See Nicholas A. Robinson, *Befogged Vision: International Environmental Governance a Decade After Rio*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 299, 300 (2002) (observ-

Johannesburg arguably betrayed the spirit of Stockholm and Rio. Development appeared to have overtaken the environment on the international agenda. Sustainable development now seemed more like “development tout-court” with insufficient consideration paid to its environmental dimensions.

An analysis of the Johannesburg Declaration on Sustainable Development (“Johannesburg Declaration”)²¹³ and the Plan of Implementation of the World Summit on Sustainable Development (“Plan of Implementation”),²¹⁴ the two documents adopted at the Conference, provides ample support for the critical views on the summit’s (lack of) environmental “achievements”.

The Johannesburg Declaration contains very weak environmental language and hardly mentions specific environmental objectives. Recognizing that the “global environment continues to suffer,”²¹⁵ the Declaration reiterates the commitment to Agenda 21 and the Rio Declaration.²¹⁶ The commitment is to the sustainable development agenda, however, rather than to an environmental one.²¹⁷ The few references to the environment are, in fact, almost always to be understood in the context of sustainable development: “We the representatives of the people of the world . . . reaffirm our commitment to sustainable development” and “assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development — economic development, social development and environmental protection — at the local, national, regional and global levels.”²¹⁸

The Johannesburg Declaration recognizes the contribution of the historical Stockholm and Rio Conferences and, particu-

ing that one of the biggest failures of the WSSD was to “to respond in any significant way to [the] challenges” of improving the system of international environmental governance); *see also* Pring, *supra* note 208 (providing a very critical view of the WSSD).

213. Johannesburg Declaration on Sustainable Development, Sept. 4, 2002 [hereinafter Johannesburg Declaration], *available at* http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm (last visited Apr. 4, 2006).

214. Plan of Implementation of the World Summit on Sustainable Development [hereinafter Plan of Implementation], *available at* http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf (last visited Apr. 4, 2006).

215. Johannesburg Declaration, *supra* note 213, ¶ 13.

216. *See id.* ¶ 8.

217. *See SANDS, supra* note 2, at 66.

218. Johannesburg Declaration, *supra* note 213, ¶¶ 3, 5.

larly, UNCED's role in shaping the "new" agenda for sustainable development.²¹⁹ Interestingly, the Johannesburg Declaration also recalls the International Conference on Financing for Development ("Monterrey") and the Doha Ministerial Conference, which, it asserts, "defined for the world a comprehensive vision for the future of humanity."²²⁰ Environmental concerns though were almost absent from Monterrey²²¹ and Doha.²²² The Johannesburg Declaration's reference to these two summits and their "crucial" role in shaping the "world's vision for humanity's future" may reveal the drafters' view of the environment's place in such a future — marginal at best, nonexistent at worst. The Johannesburg Declaration mainly emphasizes developmental objectives²²³ and, generally, environmental goals are mentioned only when relevant to economic and social development.²²⁴

219. *See id.* ¶ 8.

220. *See id.* ¶ 9.

221. *See* REPORT OF THE INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT, Monterrey, Mex., Mar. 18-22, 2002, ch. I, resolution 1, annex, U.N. Doc. A/CONF.198/11 (2002).

222. The Doha Ministerial Declaration launched a new round of trade negotiations (the "Doha Development Round"). The environment is only mentioned in paragraphs thirty-one to thirty-three. World Trade Org. ("WTO"), Ministerial Declaration of 14 November 2001, ¶¶ 31-33, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002) [hereinafter Doha Ministerial Declaration].

223. Johannesburg Declaration, *supra* note 213, ¶ 11 ("We recognize that poverty eradication, changing consumption and production patterns and protecting and managing the natural resource base for economic and social development are overarching objectives of and essential requirements for sustainable development.").

224. Relevant provisions of the Johannesburg Declaration state:

We welcome the focus of the Johannesburg Summit on the indivisibility of human dignity and are resolved, through decisions on targets, timetables and partnerships, to speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of biodiversity. At the same time, we will work together to help one another gain access to financial resources, benefit from the opening of markets, ensure capacity-building, use modern technology to bring about development and make sure that there is technology transfer, human resource development, education and training to banish underdevelopment forever. *Id.* ¶ 18 . . . We reaffirm our pledge to place particular focus on, and give priority attention to, the fight against the worldwide conditions that pose severe threats to the sustainable development of our people, which include: chronic hunger; malnutrition; foreign occupation; armed conflict; illicit drug problems; organized crime; corruption; natural disasters; illicit arms trafficking; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia; and endemic, communicable and chronic diseases, in particular HIV/AIDS, malaria and tuberculosis. *Id.* ¶ 18-19.

The Plan of Implementation is hardly more encouraging from an environmental point of view. Again, the environment seems to be relevant only in the context of development. For example, the Plan of Implementation indicates that measures to protect and manage natural resources are essentially viewed as a base of economic and social development.²²⁵ The required measures include actions to achieve the MDG on safe drinking water;²²⁶ protect the oceans and seas²²⁷ and achieve sustainable fisheries;²²⁸ improve disaster management and risk assessment;²²⁹ thwart climate change;²³⁰ prevent desertification;²³¹ and maintain biodiversity.²³²

The World Summit on Sustainable Development failed to produce a strong and renewed environmental consensus in the international community. At Johannesburg, the environment was treated as a sideshow and focus was mostly placed on development and poverty eradication.²³³ As observed above, there are hardly any truly “ecological” or environmental references in the documents adopted at the Summit. Most references are, in any event, purely related to the environment as a tool to promote economic and social development.²³⁴

The Millennium Summit’s strong commitments to environmental protection suffered a setback at Johannesburg. The environment was now simply a supporting act on the “new” international agenda for sustainable development.

V. NEW YORK (ACT II): THE ENVIRONMENT UPSTAGED

A chance to reaffirm the importance of the environment within the global agenda was not far away. World leaders would

225. See Plan of Implementation, *supra* note 214, ch. III, ¶¶ 14-23 and ch. IV, ¶¶ 24-46.

226. See *id.* ¶ 25.

227. See *id.* ¶ 30.

228. See *id.* ¶ 31.

229. See *id.* ¶ 37.

230. See *id.* ¶ 38.

231. See *id.* ¶ 41.

232. See *id.* ¶ 44.

233. See Johannesburg Declaration, *supra* note 213, ¶¶ 11-30.

234. One of the “achievements” of the WSSD was the creation of Partnerships for Sustainable Development, voluntary initiatives to implement Agenda 21. See U.N. Dep’t of Int’l Econ. & Soc. Affairs, Div. for Sustainable Dev., P’ships for Sustainable Dev., <http://www.un.org/esa/sustdev/partnerships/partnerships.htm> (last visited Mar. 17, 2006).

soon gather in New York for the 2005 World Summit to monitor the progress in the implementation of the Millennium Declaration.²³⁵ According to the U.N. Secretary-General, the 2005 World Summit would be an

[E]vent of decisive importance . . . [that] will comprehensively review the implementation of the Millennium Declaration and the integrated follow-up to the major United Nations conferences and summits in the economic, social and related fields. It will, however, be more than that: it will provide us with a unique opportunity to inject new energy into the pursuit of the vision embodied in the Millennium Declaration.²³⁶

The 2005 World Summit was to focus on an achievable set of proposals in the area of development, security, human rights and reform of the United Nations, which were outlined in the Secretary-General's March 2005 report, *IN LARGER FREEDOM: TOWARDS DEVELOPMENT, SECURITY AND HUMAN RIGHTS FOR ALL* ("*In Larger Freedom*").²³⁷ Noting the sometimes dramatic events and changes that had occurred since the adoption of the Millennium Declaration in September 2000,²³⁸ the Secretary-General argued that:

We will not enjoy development without security, we will not

235. See THE SECRETARY-GENERAL, *Report of the Secretary-General on the Modalities, Format and Organization of the High-Level Plenary Meeting of the Sixtieth Session of the General Assembly*, ¶ 4, delivered to the General Assembly, U.N. Doc. A/59/545 (Nov. 1, 2004), <http://www.un-ngls.org/MDG/A.59.545-modalities-millennium+5.doc> (last visited Sept. 16, 2006).

236. *Id.* ¶ 4.

237. The Secretary-General, *IN LARGER FREEDOM: TOWARDS DEVELOPMENT, SECURITY AND HUMAN RIGHTS FOR ALL*, delivered to the General Assembly, U.N. Doc. A/59/2005 (Mar. 21, 2005) [hereinafter *In Larger Freedom*], available at www.un.org/largerfreedom.

238. The Secretary General's report states:

Much has happened since the adoption of the Millennium Declaration to compel such an approach. Small networks of non-State actors — terrorists — have, since the horrendous attacks of 11 September 2001, made even the most powerful States feel vulnerable. At the same time, many States have begun to feel that the sheer imbalance of power in the world is a source of instability. Divisions between major powers on key issues have revealed a lack of consensus about goals and methods. Meanwhile, over 40 countries have been scarred by violent conflict. Today, the number of internally displaced people stands at roughly 25 million, nearly one third of whom are beyond the reach of United Nations assistance, in addition to the global refugee population of 11 to 12 million, and some of them have been the victims of war crimes and crimes against humanity.

Id. ¶ 8.

enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed. In this new millennium, the work of the United Nations must move our world closer to the day when all people have the freedom to choose the kind of lives they would like to live, the access to the resources that would make those choices meaningful and the security to ensure that they can be enjoyed in peace.²³⁹

The Secretary-General believed that the 2005 World Summit should concentrate on a selected number of areas — “highest priorities” — where progress was “vital and achievable.”²⁴⁰ There was a curious omission in *In Larger Freedom* — the environment was not included among the four “highest priorities” to be discussed at the 2005 World Summit.²⁴¹ This absence was in sharp contrast to Kofi Annan’s report produced five years earlier in preparation for the Millennium Summit, *We the Peoples*, which included the environment among such priorities.²⁴²

The environment was not completely forgotten at the 2005 World Summit. It was simply to be discussed in the context of the development agenda. More specifically, *In Larger Freedom*, highlighted three environmental issues that required “particularly urgent action” at the Summit: (1) desertification; (2) biodiversity; and (3) climate change.²⁴³ The fate of the environment had been sealed — it was not to be a leading actor on the 2005 World Summit stage.

World leaders representing every Member State of the U.N. attended the 2005 World Summit.²⁴⁴ In the Summit’s Outcome Document, Heads of State and Government renewed their commitment to the values and principles of the U.N. and its Charter²⁴⁵ and agreed to

239. *Id.* ¶ 17.

240. The Secretary-General “resisted the temptation to include all areas in which progress is important and desirable” and stated that “[m]any other issues will need to be advanced in other forums and on other occasions.” *Id.* ¶ 5.

241. *See id.* ¶¶ 12, 16, 21.

242. *See We the Peoples, supra* note 23, at 16; *see also We the Peoples: Key Proposals*, <http://www.un.org/millennium/sg/report/key.htm> (last visited Sept. 16, 2006).

243. *See IN LARGER FREEDOM, supra* note 237, ¶¶ 57-60.

244. *See The 2005 World Summit: An Overview*, <http://www.un.org/ga/documents/overview2005summit.pdf> (last visited Sept. 16, 2006).

245. 2005 World Summit Outcome, G.A. Res. 60/1, U.N. GAOR, 60th Sess., 8th plen. mtg., U.N. Doc. A/RES/60/1 (Oct. 24, 2005) [hereinafter Outcome Document],

[C]reate a more peaceful, prosperous and democratic world and to undertake concrete measures to continue finding ways to implement the outcome of the Millennium Summit and the other major United Nations conferences and summits so as to provide multilateral solutions to problems in the four following areas:

- Development
- Peace and collective security
- Human rights and the rule of law
- Strengthening of the United Nations.²⁴⁶

Not surprisingly, following *In Larger Freedom*, the international community did not include environmental protection among the four areas for which new measures need to be identified to “create a more peaceful, prosperous and democratic world.”²⁴⁷ This omission is particularly alarming considering that, only five years earlier, at the Millennium Summit world leaders specifically referred to environmental protection as one of the key objectives on the international agenda for the twenty-first century.²⁴⁸

The Outcome Document reaffirms the commitments made in the Millennium Declaration and arguably indirectly reaffirms the central role of the environment for the international

available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/487/60/PDF/N0548760.pdf?OpenElement>.

1. We, Heads of State and Government, have gathered at United Nations Headquarters in New York from 14 to 16 September 2005.

2. We reaffirm our faith in the United Nations and our commitment to the purposes and principles of the Charter of the United Nations and international law, which are indispensable foundations of a more peaceful, prosperous and just world, and reiterate our determination to foster strict respect for them.

3. We reaffirm the United Nations Millennium Declaration, which we adopted at the dawn of the twenty-first century. We recognize the valuable role of the major United Nations conferences and summits in the economic, social and related fields, including the Millennium Summit, in mobilizing the international community at the local, national, regional and global levels and in guiding the work of the United Nations.

Id. ¶¶ 1-3.

246. *Id.* ¶ 16.

247. *Id.*

248. See Millennium Declaration, *supra* note 170, ¶¶ 21-23. The other two “key objectives” listed in the Millennium Declaration, but not included among the four areas listed in the Outcome Document, are protecting the vulnerable and meeting the special needs of Africa. *Id.* ¶¶ 26-27.

community.²⁴⁹ It is, however, shortsighted and regrettable that the environment could not be singled out and classified as one of the “highest priorities” in either *In Larger Freedom* or, more significantly, in the Outcome Document. This unfortunate omission arguably spells serious consequences for international environmental cooperation and, more generally, for the protection of the environment. For example, one could infer that environmental degradation is not as serious as many claim and therefore does not require utmost and urgent attention. Furthermore, resources and efforts to deal with environmental problems might be redirected to deal with one of the “highest priorities” identified in the Outcome Document, at the environment’s expense. Likewise, the adoption of stricter international environmental regulation may become more difficult and face stronger opposition. Those resisting further environmental regulation could argue that the international community should focus instead on the four “highest priorities” identified by the Summit: development; peace and collective security; human rights and the rule of law; and strengthening the United Nations.

In fairness, the environment is not entirely missing from the Outcome Document. The main “commitments” to environmental protection, however, are included in “Chapter II: Development.”²⁵⁰ A few other references are also found throughout the Outcome Document. For example, “Chapter I: Values and Principles” includes respect for nature among the fundamental values for the international community.²⁵¹ Environmental protec-

249. Outcome Document, *supra* note 245, ¶ 3. Another reference is found, for example, in paragraph 169, where the Outcome Document recognizes:

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

Id. ¶ 169.

250. *See id.* ¶¶ 48-55.

251. *See id.* ¶ 4 (“We reaffirm that our common fundamental values, including freedom, equality, solidarity, tolerance, respect for all human rights, respect for nature and shared responsibility, are essential to international relations.”).

tion is also mentioned as a pillar of sustainable development: “We reaffirm that development is a central goal in itself and that sustainable development in its economic, social and environmental aspects constitutes a key element of the overarching framework of United Nations activities.”²⁵²

As indicated above, the one specific paragraph devoted to the environmental agenda in the Outcome Document is now found in Chapter II — “Development.”²⁵³ This may well suggest a subordination of the environmental agenda. Chapter II is first and foremost concerned with development and poverty eradication, one of the four highest priorities for the international community in the Outcome Document:

We strongly reiterate our determination to ensure the timely and full realization of the development goals and objectives agreed at the major United Nations conferences and summits, including those agreed at the Millennium Summit that are described as the Millennium Development Goals, which have helped to galvanize efforts towards poverty eradication. We emphasize the vital role played by the major United Nations conferences and summits in the economic, social and related fields in shaping a broad development vision and in identifying commonly agreed objectives, which have contributed to improving human life in different parts of the world. We reaffirm our commitment to eradicate poverty and promote sustained economic growth, sustainable development and global prosperity for all.²⁵⁴

A closer examination of Chapter II provides further evidence that the environment was marginalized and simply incorporated into the development agenda. Chapter II enumerates nineteen issues crucial to the promotion of development. Sustainable development (managing and protecting our common environment) is merely listed among those issues:

252. *Id.* ¶ 10. One could argue that the emphasis on the achievement of the MDGs, which includes the goal of environmental sustainability, is an indication of the 2005 World Summit’s commitment to environmental protection. MDG7 is, to put it mildly, not the most prominent among the eight MDGs. It is also one of most unlikely goals to be met by 2015. For a grim assessment of the progress made towards meeting MDG7, see U.N. Dep’t of Econ. & Soc. Aff., *PROGRESS TOWARDS THE MILLENNIUM DEVELOPMENT GOALS, 1990-2005*, available at http://unstats.un.org/unsd/mi/goals_2005/Goal_7_2005.doc (last visited Mar. 17, 2006).

253. See Outcome Document, *supra* note 245, ¶ 48.

254. *Id.* ¶ 17.

- Global partnership for development (paragraphs 20-23)
- Financing for development (paragraph 23)
- Domestic resources mobilization (paragraph 24)
- Investment (paragraph 25)
- Debt (paragraph 26)
- Trade (paragraphs 27-32)
- Commodities (paragraph 33)
- Quick-impact initiatives (paragraph 34)
- Systemic issues and global decision-making (paragraphs 35-39)
- South-South cooperation (paragraphs 40-42)
- Education (paragraphs 43-45)
- Rural and agricultural development (paragraph 46)
- Employment (paragraph 47)
- *Sustainable development: managing and protecting our common environment* (paragraphs 48-56)
- HIV/AIDS, malaria, tuberculosis and other health issues (paragraph 57)
- Gender equality and empowerment of women (paragraphs 58-59)
- Science and technology for development (paragraph 60)
- Migration and development (paragraphs 61-63)
- Countries with special needs (paragraphs 64-67)
- Meeting the special needs of Africa (paragraph 68).²⁵⁵

The specific paragraphs on the environment are lost among the other issues mentioned in Chapter II.²⁵⁶ Moreover, the Outcome Document clearly indicates that the commitment to the protection of the environment is strictly in the context of sustainable development:

We reaffirm our commitment to achieve the goal of sustainable development, including through the implementation of Agenda 21 and the Johannesburg Plan of Implementation. To this end, we commit ourselves to undertaking concrete actions and measures at all levels and to enhancing international cooperation, taking into account the Rio principles. These efforts will also promote the integration of the three components of sustainable development—economic development, social development and environmental protection—as interdependent and mutually reinforcing pillars. Poverty

255. *Id.* ¶¶ 20-68.

256. It may also be interesting to note that the word environment is only used twenty times in the Outcome Document, while there are 196 references to development and twenty-nine to sustainable development. *See id.* ¶¶ 48, 60(a), 169.

eradication, changing unsustainable patterns of production and consumption and protecting and managing the natural resource base of economic and social development are overarching objectives of and essential requirements for sustainable development.²⁵⁷

The Outcome Document recognizes the threats of climate change. The recognition of the Framework Convention on Climate Change as the “appropriate framework for addressing future action on climate change at the global level”²⁵⁸ rather than endorsing the Kyoto Protocol is, however, regrettable.²⁵⁹ Notwithstanding its weaknesses, the 1997 Kyoto Protocol, unlike the 1992 Framework Convention, at least sets binding targets and a timetable for reducing selected greenhouse gases and is arguably a more effective instrument in dealing with global warming.²⁶⁰

On a more positive note, the Outcome Document, identifies several environmental issues where further action “through practical international cooperation” is required, and endorses the international treaties and resolutions adopted, *inter alia*, on energy, desertification, biological diversity, natural disaster management and warning system, water resources, conservation and sustainable management of all types of forests, sound management of chemicals and hazardous wastes, and marine pollu-

257. *Id.* ¶ 48.

258. *Id.* ¶¶ 50-51.

259. *See* Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22 (1998) [hereinafter Kyoto Protocol], available at <http://unfccc.int/resource/docs/cop3/07a01.pdf>; List of Annex I Parties to the Convention, http://unfccc.int/parties_and_observers/parties/annex_i/items/2774.php (last visited Sept. 16, 2006) (indicating that the United States and Australia have not yet ratified the Kyoto Protocol); *see also* Press Release, President Announces Clear Skies & Global Climate Change Initiatives, Office of the White House Press Secretary (Feb. 14, 2002), <http://www.whitehouse.gov/news/releases/2002/02/20020214-5.html> (last visited Sept. 16, 2006) (President George W. Bush stated in regards to the Kyoto Protocol, “I will not commit our nation to an unsound international treaty that will throw millions of our citizens out of work.”); Transcript of the Prime Minister the Hon. John Howard M.P. Joint Press Conference with The Right Hon. Helen Clark M.P. Prime Minister of New Zealand (Feb. 15, 2002), <http://www.pm.gov.au/news/interviews/2002/interview1511.htm> (last visited Sept. 16, 2006) (Prime Minister Howard stated, “Our view is that it would not be in Australia’s interests to ratify the Kyoto Protocol. . .”).

260. *See* Kyoto Protocol, *supra* note 259, art. 3(1) (“The Parties included . . . shall . . . ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases . . . do not exceed their assigned amounts . . . with a view to reducing their overall emission of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.”).

tion.²⁶¹

The 2005 Summit should, however, have given the environment a more prominent role. Considering the serious evidence on the state of our Planet, environmental protection, in its own right, should have been included as one of the “highest priorities” for further, urgent, and increased international cooperation in the Outcome Document. The 2005 World Summit rightly identified four priority areas where international cooperation and actions are needed to create a peaceful, secure, and more prosperous world: (1) development; (2) peace and collective security; (3) human rights and the rule of law; and (4) strengthening the U.N.²⁶² It seems, however, that world leaders forgot the prerequisite for development to occur, peace and security to be guaranteed, human rights to be protected and enjoyed, the rule of law to be established, and the U.N. to be strengthened — the environment. The inclusion of the environment simply as an item within the development agenda reflects the lack of political support at the global stage for a strong and effective international environmental agenda. This has resulted in the absence of strong initiatives to aggressively and urgently address the environmental threats and challenges the world is facing.

In the face of mounting evidence of the gravity of the Earth’s condition, world leaders failed to set a bold and visionary agenda at the 2005 World Summit. Such failure, as mentioned earlier, is shortsighted and disturbing evidence of the perilous state of international cooperation on the protection and preservation of the environment at the beginning of the 21st century.

Sadly, the environment had finally been upstaged in New York.

CONCLUSION

Although our Planet is not well at the beginning of the twenty-first century, the health of the international environmental agenda is probably in an even worse state. Countless authoritative reports provide compelling evidence about the decline of the environment and the increasingly worrying environmental threats facing humankind and the other species living on Earth.

261. See Outcome Document, *supra* note 245, ¶¶ 55-56.

262. See *id.* ¶ 16.

Recent environmental disasters have had devastating consequences and produced dramatic evidence to substantiate the findings of such reports. For example, the tsunami that hit South Asia killed over 230,000 people in the first twenty-four hours, destroyed over 430,000 houses, displaced about five million people, and cost about U.S.\$10 billion in damages.²⁶³ Hurricane Katrina is estimated to have killed over 1,400 and caused approximately seventy-five billion U.S. dollars in damages.²⁶⁴

Given these experiences, the environment should be found among the “highest priorities” for the international community. One would expect strong leadership and support for measures to halt and reverse environmental degradation. A closer review of the international environmental agenda that has emerged after the most recent global gatherings, however, finds the contrary to be true. The environment is a secondary, if not marginal, concern for the international community in the twenty-first century.

The outlook for international environmental cooperation was very encouraging at Stockholm — the first U.N. gathering to examine the state of the human environment produced an ambitious Plan of Action, a Declaration containing specific principles to guide States’ activities on the environment (including two fundamental legal rules),²⁶⁵ and set up an institution to promote and coordinate international efforts on the environment.²⁶⁶ The environment’s first appearance on the global stage was, arguably, a resounding success. Stockholm’s good intentions, however, failed to be fully implemented and the state of the environment continued to worsen. Twenty years later, a new global conference was convened to address and remedy these failings.

At Rio, the environment shared the stage with development.²⁶⁷ Developing countries found a stronger voice and rightly felt that development, their overriding priority, should be included on the international agenda on an equal footing with the environment. “Environment” and “development” were now

263. See About U.N. Office of the Special Envoy for Tsunami Recovery, <http://www.tsunamispecialenvoy.org/about/default.asp> (last visited Sept. 16, 2006).

264. See Phillip Inman, *Hurricane Warning of \$100 Billion Loss*, *GUARDIAN*, July 3, 2006 at 25.

265. See *supra* notes 59-64 and accompanying text.

266. See *supra* notes 66-67 and accompanying text.

267. See *supra* notes 93-98 or 134-36 or 103-05 and accompanying text.

co-stars in a new show — the international agenda for sustainable development. Rio produced some important results: two legally binding agreements that addressed global environmental threats — the climate change and biodiversity conventions — were opened for signature;²⁶⁸ the Rio Declaration was adopted and included new fundamental legal environmental principles, such as the precautionary principle and the polluter pays principle;²⁶⁹ and finally, Agenda 21, an ambitious and comprehensive plan for environmentally sustainable development, was approved.²⁷⁰ At Rio, however, signs emerged that future of the environment was uncertain. Developing countries voiced strong concerns about the legitimacy of the environmental agenda and resisted requests to set up stronger international environmental institutions.²⁷¹ Furthermore, developing countries successfully opposed the adoption of a legally binding agreement on forests.²⁷² Finally, principles that better reflected developing countries' priorities and interests were incorporated in the Rio Declaration, including the principle of common but differentiated responsibility and the principle of sustainable development.²⁷³

In the meantime, divisions on environmental issues appeared in the developed world. A strain in a previously united front emerged. For example, the United States reluctantly joined the consensus on climate change, but remained opposed to important aspects of the Rio Agenda, including the convention on biological diversity, the precautionary principle, and the principle of common but differentiated responsibility.²⁷⁴

268. See *supra* note 97 and accompanying text.

269. See *supra* notes 106-10 and accompanying text.

270. See *supra* notes 111-31 and accompanying text.

271. See Panjabi, *supra* note 134; *supra* notes 133, 145 and accompanying text.

272. See *supra* notes 98, 132 and accompanying text.

273. See *supra* note 45; see also Paolo Galizzi, *International Law and the Protection of the Environment: "Shared Universal" Rules or "Unethical" Imposition of a Western Agenda?*, 8 ORDINE INTERNAZIONALE E VALORI ETICI [INT'L ORD. & ETHICAL VALUES] 327 (2003); Lavanya Rajamani, *From Stockholm to Johannesburg: The Anatomy of Dissonance in the International Environmental Dialogue*, 12 RECIEL 23 (2003); C. Russell H. Shearer, *International Environmental Law and Development in Developing Nations: Agenda Setting, Articulation, and Institutional Participation*, 7 TUL. ENVTL. L.J. 391 (1994).

274. On the United States' role in international environmental law and policy, see, for example, Jutta Brunnée, *The United States and International Environmental Law: Living with an Elephant*, 15 EUR. J. INT'L L. 617 (2004); Paul E. Hagen, *The Green Diplomacy Gap*, 28 ENVTL. F. 257 (2000); Cyril Kormos et al., *U.S. Participation in International Environmental Law and Policy*, 13 GEO. INT'L ENVTL. L. REV. 661 (2001); Barton H. Thompson,

Still, overall, the environment's journey from Stockholm to Rio had been positive. The environment and development were accorded equal weight on the new international agenda for sustainable development, rightly reflecting the need to protect our Planet while working toward the eradication of poverty and the appalling inequalities existing in the international community.

Five years later, the review of the Earth Summit emphasized that the Rio Agenda had pointed in the right direction for successful international cooperation on the environment, but also stressed that, yet again, the international community had largely failed to follow through on its promises.²⁷⁵

A new millennium loomed on the horizon and, with it, the opportunity to make the twenty-first century one of hope and shared prosperity. Full of expectations, the environment traveled to New York for the Millennium Summit where it received an encouraging endorsement — it was given a place on the main stage. The Millennium Declaration not only included “respect for nature” among the fundamental values for international cooperation in the new century, it also specifically identified the protection of the environment as one of the key objectives for international cooperation for the new millennium.²⁷⁶ The hopes that the new millennium had started well for the environment were, however, short-lived. Soon after the conclusion of the Millennium Summit, the U.N. and the international community embarked on an ambitious and laudable project to concretely promote development and eradicate extreme poverty by the year 2015.²⁷⁷

The Millennium Development Goals identified concrete targets to measure the achievements of the objectives set out in the Millennium Declaration. One specific goal was devoted to ensure “environmental sustainability.”²⁷⁸ It was soon apparent, however, that MDG 7 would be a poor relative compared to the other goals. Development and poverty eradication began to take center stage in the international arena. At the WTO Doha Min-

Jr., *Conservative Environmental Thought: The Bush Administration and Environmental Policy*, 32 *ECOLOGY L.Q.* 307 (2005).

275. U.N. GAOR, 19th Special Sess., 1st plen. mtg. at 2, U.N. Doc. A/S-19/PV.1 (June 23, 1997).

276. See Millennium Declaration, *supra* note 170, ¶ 6.

277. See *id.* ¶ 19.

278. See *supra* note 193.

isterial Conference in 2001 and at the 2002 Monterrey Conference on Financing for Development, the environment was confined to exile. In other words, the environment was not invited to travel to Doha and Monterrey. Two years after the Millennium Summit and ten years after the Rio Conference, the environment traveled to Johannesburg for the WSSD.²⁷⁹ The WSSD, which built on Stockholm's legacy and the Rio commitments, was supposed to reenergize the international environmental agenda within the context of sustainable development. Needless to say, the WSSD failed to bring new life to the environmental agenda.

The next opportunity for the environment to be given a new lease on life within the international agenda was not far away. The five-year review of the Millennium Declaration would soon be staged in New York. The Secretary-General issued invitations to the 2005 World Summit in his report, *In Larger Freedom*.²⁸⁰ Development, security, and human rights were all invited to be on the main stage, but the environment was not. Convinced that this was simply a minor mistake and an omission in good faith, rather than a deliberate snub, the environment traveled to New York. After all, it had received a full invitation to the Millennium Summit five years earlier. The Millennium Declaration could prove that the environment had a right to be on the main stage. A disappointment, however, was in store for the environment. The environment did not share the main stage at the 2005 World Summit in New York. The environment was simply on stage in a supporting role for development. Faced with global warming, deforestation, loss of biological diversity, drought and desertification, water scarcity, and other environmental concerns, world leaders somehow believed that discussing these "sustainable development" issues simply within the context of development was adequate to convey the urgency and importance of environmental threats for the survival of our Planet.

In its long journey from Stockholm to New York, via Rio and Johannesburg, the environment has finally lost its way to the main stage and been wrongly relegated to a secondary role in the global arena. Strong and determined leadership is needed

279. See *supra* note 195 and accompanying text.

280. See *In Larger Freedom*, *supra* note 237, ¶ 3.

within the international community to restore the environment to center stage. The lack of commitment to the environment is reflected in the failure to agree upon specific and effective measures to address the most compelling environmental problems facing the Planet, such as global warming.

It is beyond the scope of this Article to make detailed proposals to reenergize the international environmental agenda.²⁸¹ In many ways, the reports and documents produced over the past thirty years at the various summits examined above have already identified the main problems and some of the possible solutions. Many prominent voices have made powerful and compelling proposals for this purpose.²⁸² Time has come for such views to be discussed in a new global conference, to be convened to reaffirm the centrality of the environment in the global agenda. This conference should be symbolically held at Stockholm where the environment started its journey on the international arena and where a renewed "green" spirit can again be

281. International environmental legitimacy, governance, weakness of institutions and norms, have been correctly identified as some of the key issues limiting the effectiveness of international action on the environment. Different solutions have been proposed to address those challenges. *See, e.g.* REFORMING INTERNATIONAL ENVIRONMENTAL GOVERNANCE: FROM INSTITUTIONAL LIMITS TO INNOVATIVE REFORMS (Chambers W. Bradnee & Jessica F. Green eds., 2005); A WORLD ENVIRONMENT ORGANIZATION: SOLUTION OR THREAT FOR EFFECTIVE INTERNATIONAL ENVIRONMENTAL GOVERNANCE? (F. Biermann & S. Bauer eds., 2005, Steven Bernstein, *Legitimacy in Global Environmental Governance*, 1 J. INT'L L. & INT'L REL. 139 (2004-2005); Daniel Bodansky, *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?*, 93 AM. J. INT'L L. 596 (1999); Bharat H. Desai, *Mapping the Future of International Environmental Governance*, 13 Y.B. INT'L ENVTL. L. 43, 51 (2002); David M. Driesen, *Thirty Years of International Environmental Law: A Retrospective and a Plea for Reinvigoration*, 30 SYRACUSE J. INT'L L. & COM. 353 (2003); Karen Tyler Farr, *A New Global Environmental Organization*, 28 GA. J. INT'L & COMP. L. 293 (2000); Susan M. Hinde, *The International Environmental Court: Its Broad Jurisdiction as a Possible Fatal Flaw*, 32 HOFSTRA L. REV. 727 (2003); Alexandra Knight, *Global Environmental Threats: Can the Security Council Protect Our Earth*, 80 N.Y.U. L. REV. 1549 (2005); Rajendra Ramlogan, *The Environment and International Law: Rethinking the Traditional Approach*, 3 VT. J. ENVTL. L. 4 (2001-2002); Philippe Roch & Franz Xaver Perrez, *International Environmental Governance: The Strive Towards a Comprehensive, Coherent, Effective and Efficient International Environmental Regime*, 16 COLO. J. INT'L ENVTL. L. & POL'Y 1 (2005); John K. Setear, *Learning to Live with Losing: International Environmental Law in the New Millennium*, 20 VA. ENVTL. L.J. 139 (2001); James Gustave Speth, *International Environmental Law: Can It Deal with the Big Issues?*, 28 VT. L. REV. 779 (2004).

282. *See, e.g.*, JAMES GUSTAVE SPETH, *RED SKY AT MORNING: AMERICA AND THE CRISIS OF THE GLOBAL ENVIRONMENT* (2004). For a review of Speth's book, see Yvette Livengood, *Learning from Red Sky at Morning: America and the Crisis of the Global Environment: How "Jazz" and Other Innovations Can Save Our Sick Planet*, 82 DENV. U. L. REV. 135 (2004).

found. The conference should amend the U.N. Charter to specifically include an environmental mandate. Furthermore, this new global environmental conference should, *inter alia*, dispel the negative myths surrounding environmentalism and contribute to a new and better understanding of the opportunities (including economic ones) that environmental protection offers. New and bold forms of international cooperation and concrete environmental measures for development and poverty eradication should be identified. The establishment of a stronger voice for the environment in the international arena should feature prominently among the Conference's main objectives: an international environmental organization should take over the administrative responsibilities of UNEP and of existing international environmental treaty-based institutions to better coordinate the international environmental agenda. This newly created international environmental organization should be based at the very core of the U.N. system to signify the centrality of the environment in international affairs and to allow daily interaction with key international players. The new proposed conference should agree upon a set of concrete, achievable and measurable environmental targets with a specific timetable —the Millennium Environmental Goals (MEGs), in order to focus attention and international actions on the environment in the same manner as the current Millennium Development Goals (MDGs).

The proposed new conference on international environmental cooperation could set in motion a revival for the environment on the global stage. At the conference, the world community should gather to renew its commitment to protecting our Planet. Conferences alone, however, are not going to solve the environmental problems our Planet is facing, unless they are followed by the effective implementation of the commitments and agreements made. Many ideas have been, will be, and can still be put forward. There is a strong and urgent need to breed new life into the environmental agenda at the international level and new ideas and efforts are required. Many ideas will be visionary and ambitious and some may even appear to be, at first, unrealistic. The continued engagement with the issues at stake and the alarming evidence of environmental deterioration warrants a consideration of different voices. Better and stronger international cooperation is key to achieving a re-fielding of the envi-

ronment on the main stage of the international agenda. The devastating tsunamis and hurricanes in this new millennium are reminders of the attention that our Planet deserves. Both the environment and humankind have embarked on a long-winded journey. A new and much longer journey may be required than the one that began in Stockholm and temporarily ended in New York, via Rio and Johannesburg. Yet, it will be a necessary journey all the same and *the environment* must be on board to redeem the vision for the protection and conservation of this amazing and beautiful Planet we all call home. The journey to save the environment may have only just begun.