

**THE UNITED NATIONS AND ENVIRONMENT:  
AN OVERVIEW OF AGENDA-SETTING,  
LAW-MAKING AND MONITORING ROLES**

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## INTRODUCTION

The United Nations organization has been at the forefront in setting an agenda and making new international law on environmental protection from the 1970's through the 1990's, beginning with the Stockholm Conference on the Human Environment in 1972.

Discussions in the General Assembly, the work of the UN International Law Commission and certain decisions of the International Court of Justice, as well as publication of UN reports such as the influential Brundtland Commission study, *Our Common Future*, that coined the phrase "sustainable development" show how the UN has served as a "talkshop" for ideas and a crucible for creation of new law.

Through the mechanism of multilateral conferences, the UN stimulated soft law declarations of principles that subsequently became customary international law and were included in texts of new treaties and protocols on global environmental issues such as the law of the sea, the ozone layer, climate change, biodiversity and biotechnology.

This explosion of new international law-making by governments reflects also an increased level of participation by non-governmental organizations who helped focus worldwide attention on the Rio Conference on Environment and Development in 1992 (UNCED) and its action plan, Agenda 21; subsequent 5- and 10-year review meetings and documents such as the 2002 Johannesburg Plan of Implementation.

The Earth Summit led to the creation in 1993 of a new UN body, the Commission on Sustainable Development, to monitor the implementation of Agenda 21, and the World Summit on Sustainable Development in Johannesburg in 2002.

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The role of the private sector in partnership with governments and NGOs was recognized as essential in the formulation and implementation of the Millennium Development Goals adopted in 2005 which included environmental and public health objectives such as provisions of clean water and sanitation for the majority of the earth's population by the target date of 2015.

Future success in achieving economic, social and environmental sustainability depends on even greater partnerships and cooperation, sharing of expertise and best practices, and formulation of aspirational goals with achievable targets and timetables and adequate incentives to encourage compliance with regulations and enforcement of laws.

Additional traction can be achieved through adapting model treaties and draft reports on specific ecosystems or environmental management models to regional conditions and unique characteristics of specific natural resources. For example, the 1997 UN Convention on the Non-Navigable Uses of International Watercourses and the new work of the International Law Commission in 2005 in articulating an agreement on transboundary natural resources, in this case groundwater, offer a blueprint for regional agreements on cooperative management of this essential shared resource, grounded in principles of international law, science and best practices. A case study of a subject such as conservation and sustainable use of biodiversity serves as a good example of how scientific experts, government officials, non-governmental organizations and other actors from civil society, including local governments and the private sector, can contribute to a workable formulation to address multiple uses of natural resources and protection of that resource from pollution and destruction.

## **I. HISTORY OF UN LAW-MAKING ON THE ENVIRONMENT:**

### **ACCORDING TO PROFESSOR DAVID BEDERMAN, THE EARLY DEBATES WERE:**

“Focused on pollution and transboundary harms as being the only things worthy of regulation in international environmental law...” [referring to the “do no harm” principle, which was “intimately related to notions of State sovereignty: one nation should not use its territory to harm the interests of another nation in its territory”...the “polluter pays” principle, “an explicit recognition that environmental contamination was a type of “externality” that one nation could impose on another. The purpose of international law was thus to remove that artificial and unfair burdening. In this way, the international environment was seen as the ultimate international common space, a true global commons. After reports of nuclear fall-out or acid rain or a shrinking ozone layer, no country could hope to insulate itself from the effects of environmental degradation.”...

“By the 1980’s, it was realized that other environmental risks and values had to be addressed. One of these was the proper way to plan human activities that had an effect on the

environment. This gave rise to a procedural approach of mandating appropriate environmental impact assessment before certain activities were allowed to proceed.....A contentious issue today is how to factor-in uncertainty in this process.....A number of international environmental instruments promote the use of the "precautionary principle" (or its less rigorous counterpart, the "precautionary approach"), which requires that, when in doubt, protective concerns should prevail and permission for the activity should be denied." ...All of this enriched the central principled debate in international environmental law in the 1990's and today: the relationship between economic development and environmental protection. How far is international law prepared to go in sacrificing economic growth for a cleaner environment? The two have attempted to be reconciled in the notion of "sustainable development", the idea of managing economic growth in a way that is consistent with long-term environmental health." (Ch. 12, "International Environmental Law," pp. 130-140, at pp. 130-131).

Other principles of international environmental law and policy developed through the UN addressed procedural obligations, such as the duty to consult and to notify other states of planned activities that may affect the environment. Finally being debated at the COP-8 to the CBD (after several decades of drafting at the ILC) is the subject of liability and compensation for environmental damage.

There is interest in voluntary standards, such as those set by the ISO, concerning quality standards for health, sanitation and environmental management techniques and equipment. On the governance level, various permitting schemes utilized in domestic law are being considered for applicability to regional and international uses of scarce natural resources or to set requirements for remediation of pollution in return for licenses to build or develop an area.

Outside of the United Nations proper, environmental issues involved with or affected by trade and human rights practices are now mainstreamed at the World Trade Organization and some regional agreements such as NAFTA, although more remains to be done to reconcile the conflicting aims.

## **II. CURRENT STRUCTURE OF WORK ON ENVIRONMENT AND DEVELOPMENT WITHIN THE UN SYSTEM:**

The General Assembly is the major UN organ acting on environmental matters, although the Economic and Social Council (ECOSOC) coordinates and refers issues to the General Assembly in this area. The Security Council generally deals with "high politics" rather than environmental protection or social and economic sustainability. (See Tinker, "Environmental Security in the United Nations: Not a Matter for the Security Council," 59 *Tennessee Law Review* 787 (Summer 1992). However, the Security Council did hold Iraq liable for environmental damage caused by acts of war in Kuwait as one of the terms of the peace agreement following the Gulf War in 1991. (Security Council Resolution N° 687, Mar. 2, 1991).

Regarding UN specialized agencies, UNEP, created in 1972, considers itself to be “the environmental conscience of the system” ([www.unep.org](http://www.unep.org)). “UNEP is a major force in developing environmental law and promoting sustainable development, and it has proved a ‘remarkably effective centerpiece’ of UN environmental efforts”, according to Professor Nanda (p. 122). “Parallel to UNEP is the much larger UN Development Programme (UNDP), originally viewed as an environmental deprecator for funding destructive projects, but more recently ‘greening’ to integrate environmental and sustainable development considerations in its planning.” (Id., pp. 122-123). UNDP is much larger and better funded than UNEP, and has established a role in eradication of poverty as one of its goals.

Many other UN specialized agencies have adopted environmental law and policy agendas, including FAO, ILO, WHO, UNESCO, WMO, IMO, IAEA, and UNCTAD, as well as regional economic commissions of the UN system.

Following the Rio Conference on Environment and Development in 1992, a new body was created at the United Nations to review, monitor and implement principles enunciated in Agenda 21, the action plan adopted in Rio. Named the Commission on Sustainable Development (CSD), and consisting of 53 member states on three-year rotating terms with geographical balance, this body was established as a functional commission of ECOSOC and meets annually in New York at UN Headquarters. The CSD became a workshop for increased participation by NGOs, where modalities adopted therein became more accepted practice for other United Nations meetings, including the practice of permitting formal statements from “major groups” created in Agenda 21 to acknowledge a full spectrum of non-governmental stakeholders and equal participation in panels and interactive dialogue sessions, a far cry from the “observer” role of NGOs exiled to corridors during exclusively closed-door sessions of governments that formerly characterized formal U.N. meetings. The major groups include women, youth, scientists, farmers, local governments, business and technology, and others.

The fourteenth session of the UN Commission on Sustainable Development (CSD-14) will meet at UN Headquarters in New York from 1-12 May 2006. As the first year of the second implementation cycle, CSD-14 will review progress in the following areas: Energy for Sustainable Development; Industrial Development; Air pollution/ Atmosphere; and Climate Change. [www.un.org/esa/sustdev/csd.htm](http://www.un.org/esa/sustdev/csd.htm)

The major judicial body in the UN system is the International Court of Justice (ICJ or World Court), which in 1993 created a seven-member standing Chamber for Environmental Matters, an underutilized option for dispute resolution between or among nations. The full Court issues relatively few opinions, and has addressed environmental issues in even fewer.

One interesting example is the following:

“Principles of international environmental law and international or transboundary water law were recognized as a basis for cooperative management of a river basin area by the International Court of Justice in the case concerning the Gabcikovo-Nagymaros Dam Project

between Slovakia and Hungary. The Court addressed Hungary's contention that changed circumstances (subsequent understanding of the harmful effects of dams on freshwater ecosystems and species) obviated their prior treaty obligations to Czechoslovakia (to which Slovakia succeeded) regarding a joint project to construct a dam on the Danube River, a project that altered the course of the river and otherwise affected wetlands. The Court upheld the treaty, and ordered the two states to jointly manage the project as originally contemplated, recognizing "both the obligation of sustainability and the obligation of protection of the environment." This case has been interpreted as an example of international case law affecting transboundary groundwater. In a famous separate opinion upholding Hungary's environmental protection claims in this case, Vice President Weeramantry provided a moral, ethical, and religious justification for sustainable development and the protection of water and wetlands that has become frequently quoted by governments and nongovernmental organizations alike, recognizing sustainable development as an integral part of modern international law. It remains to be seen what new cases involving joint management of water resources will arise and in which tribunals." Antonio BENJAMIN, Claudia LIMA MARQUES and Catherine TINKER, "The Water Giant Awakes: An Overview of Water Law in Brazil," 83 *Texas Law Review* 2185 (June 2005).

The Millennium Development Goals (MDGs) are formulated specifically to recognize that full participation by civil society and the private sector along with governments and international organizations will be necessary to achieve the goals set for the year 2015, listed at <[www.un.org/millennium](http://www.un.org/millennium) goals>. Two of the MDGs are related to environment and development, Goals 7 and 8, as follows:

- Goal 7: Ensure environmental sustainability. Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources; Reduce by half the proportion of people without sustainable access to safe drinking water; Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020
- Goal 8: Develop a global partnership for development. Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory includes a commitment to good governance, development and poverty reduction - nationally and internationally; address the least developed countries' special needs. This includes tariff- and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries; cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction; Address the special needs of landlocked and small island developing States; Deal comprehensively with developing countries' debt problems through national and international measures to make debt sustainable in the long term; In cooperation with the developing countries, develop decent and productive work for youth; In cooperation with pharmaceutical companies, provide

access to affordable essential drugs in developing countries; In cooperation with the private sector, make available the benefits of new technologies - especially information and communications technologies.

A review of progress towards meeting these goals by the General Assembly in September, 2005, may provide an opportunity to assess the seriousness with which the member states of the UN take these aspirational goals and intend to implement them within the timetable.

### **III. THE FUTURE: INCREASED PARTICIPATION BY CIVIL SOCIETY AND PUBLIC-PRIVATE PARTNERSHIPS IN LAW-MAKING AND MONITORING**

At the C.S.D. meetings and during the Conferences of the Parties to various multilateral treaties and protocols on environmental protection and sustainable development, NGOs and other elements of civil society participate in interactive dialogue and discussions and offer comments on presentations, are represented on panels, ask questions, serve as resource persons, and share expertise in specific issues and lessons learned.

There is an increased emphasis at Conferences of the Parties to international environmental treaties and protocols and at the CSD on the role of science, cooperation and partnerships with the private sector, and a significant level of participation of NGOs and other elements of civil society in the work of the UN in debating and formulating language in documents, negotiating the final text of declarations and treaties, and presenting side events designed to share expertise and best practices as well as visions for future agenda items and means of implementation. Secretariats to the various environmental treaties are also welcoming expertise from civil society, and working together to streamline the reporting requirements under related treaties, such as the UN Convention on Biological Diversity and the Ramsar Convention on Wetlands.

This new level of joint cooperation among all actors, state and non-state, offers the opportunity for meaningful action and motivation of political will around the globe to achieve the goals embodied in the documents of international environmental law, principles that evolved through countless UN meetings and sessions, came into being as soft law and binding treaty law, and now are monitored and implemented increasingly through the partnerships fostered by the UN organization serving as a focus for the multiplicity of topics and entities involved.

As in the past, new ideas and best practices will shape the future agenda and programmes of work at the United Nations. Aspirational in nature, these documents, action plans, and legal instruments create obligations for governments and facilitate participation in monitoring and implementation by civil society representatives.

Nevertheless, the UN is not the only forum available to address issues of environmental protection, development and sustainability. As Professors NANDA and PRING noted:

“There is no central international authority on environmental issues. Sovereign states have been willing to give some, but by no means controlling, authority to the UN and other entities. There is no international law-making body, no central enforcement authority, and international courts are few and their environmental rulings rare. In lieu of conventional law-making approaches, international environmental law is increasingly being “made” by this host of entities-IGOs, NGOs, international financial organizations (IFOs), international conferences, think-tanks, even private-sector corporations and their associations and trade groups.” p. 121.

In conclusion, despite the multiplicity of for a and sources of international environmental lawmaking, it is important to remember the significant coordinating role played by the UN system in setting the agenda, making new law, and monitoring its implementation. The challenge is to continue the UN’s relevant activities in developing specific tools such as indicators of biodiversity to measure compliance with laws and policies promoted through the UN system, build consensus and awareness, and form meaningful partnerships. This is the future role of the UN in environment and development, a reflection of the links all nations on the planet share regarding protection and sustainable use of natural resources, ecosystems, genes and species.

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