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Reflecting on Measured Deliberations

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Earth Negotiations Bulletin (*ENB*) Vol. 27, No. 51, at 22–23 (25 June 2012); *O Globo, Rio+20 Especial*, 21 June 2012, at 1 and 3.
3 General Assembly, Report of the United Nations Conference on Environment and Development, Rio de Janeiro 3–14 June 1992, A/CONF. 151/26, Annex I.
4 Article 11 of the Treaty on the Functioning of the European Union.
5 This "ecological imperative" has been stressed by the representatives of the scientific community as well as by the "Elders" of sustainability; see *ENB*, *supra*, note 2, at 19.
6 World Summit on Sustainable Development (WSSD), Johannesburg, 26 August–4 September 2002, A/CONF./199/20, Resolution 1, Annex, para. 16.
7 See, *e.g.*, Stone, C. 2004. "Common but differentiated responsibilities in International Law". *Am. J. Int'l L.* 98: 276; Harris, P.G. 1999. "Common but differentiated responsibility: The Kyoto Protocol and United States Policy" *N.Y.U. Envt'l L.J.* 7(1): 27–48.
8 See *ENB* Vol. 27 No. 24, at 11 (30 March 2012); *ENB* Vol. 27, No. 46, at 1 and 2 (18 June 2012); see also Chee Yoke Ling. 2012. "'Common but differentiated responsibilities' under threat". *Third World Network* (*TWN*), 8 June 2012, available at www.twnside.org.sg/title2/sdc2012/sdc2012.120606.htm.
9 See, *e.g.*, Bortscheller, M.J. 2010. "Equitable but Ineffective: How The Principle of Common but Differentiated Responsibilities Hobbles the Global Fight Against Climate Change". *Sustainable Development & Policy* 10: 49.
10 FCCC/CP/2011/Add. 1, Decisions 1/CP.17 and 2/CP.17, Durban, 11 December 2011; see Aguilar, S. 2012. "Long Negotiations Produce a Climate Roadmap". *Environmental Policy and Law* (*EPL*) 42(1): 15–19, at 15, 17.
11 Of 25 June 1998, ILM 38 (1999), 515.
12 UNEP/GCSS/XI/5, part A, 26 February 2010.
13 Johannesburg Plan of Implementation, WSSD, 26 August–4 September 2002, Resolution 2, Annex, A/CONF./199/20.
14 See Bothe, M., Marauhn, T., Rehbinder, E., Böhringer, A.M. and Horst, J. 2011. "Clean Development Mechanism – Proposal for an Appeals Process". *EPL* 41(1): 14–18.
15 See Shelton, D. 2011. "Looking Past Rio+20 – Options for Environmental Governance". *EPL* 41(6): 251–56, at 251, 255.
16 *ENB*, *supra*, note 2, at l; *O Globo, Rio+20 Especial*, 23 June 2012, at 4.
17 See *ENB*, *supra*, note 2; *O Globo*, *supra*, note 2.
18 *Supra*, note 13.
19 Prieur, M. 2011. "Urgent necessity of recognising the non-regression principle". In: *A economia verde no contexto do desenvolvimento sustentavel.* Fundaçao Getulio Vargas, Direito RIO; Prieur, M. and Sozzo, G. 2012. *The Principle of Non-regression in International and Comparative Law*. Brylant-Larcier.
20 *Supra*, note 13, para. 168 and, with respect to particular fields of sustainability policies, paras 26[g], 31[g], 33[a], 37[g], 44[f], 45[f], 105[e], 108, 109[e] and 125.
21 See generally, *e.g.*, Mullerat, R. 2010. *International Corporate Social Responsibility: The Role of Corporations in the Economic Order of the 21st century.* Alphen: Kluwer Law International; Trebulle, F.-G. and Uzan, O. 2011. *Responsabilité sociale des enterprises: Regards croisés Droit et Gestion*. Études Juridiques vol. 42. Paris: Économica.
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23 See *ENB*, *supra*, note 2, at 12; and *ENB* Vol. 27, No. 48, at 2 (20 June 2012).
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35 UNEP. 2011. *Towards a Green Economy. Pathways to Sustainable Development and Poverty Eradication*, at 16–20, available at http://www.unep.org/greeneconomy/greeneconomyreport/tabid/29846/default.aspx; UNEP Governing Council/Global Ministerial Environment Forum, Nairobi, 20–22 February 2012, Proceedings, UNEP/GCSS/XII/14, Annex III Part B.
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38 The UNEP World Congress on Justice, Governance and Law for Environmental Sustainability, held 17–20 June 2012, will be covered elsewhere in this issue.
39 17 June 2012, www.cidce.org/rio.

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Reflecting on Measured Deliberations

by Nicholas A. Robinson*

"Environmental law is essential for the protection of natural resources and ecosystems and reflects our best hope for the future of our planet". This declaration, made by participants at the Rio+20 World Congress on Justice, Governance and Law for Environmental Sustainability, reflects the maturing of environmental law around the world. Usually implicitly, but often explicitly, the deliberations at Rio+20 in June 2012 addressed the dual needs for more effective implementation of existing environmental norms and enacting further laws to stem global degradation of the environment. Rio+20 recommended that, in the autumn of 2012, the United Nations General Assembly (UNGA) act to restructure international systems of governance for environmental sustainability. Rio+20 highlighted the growing vigour of national and local sustainability initiatives worldwide. This essay recounts the environmental law deliberations at Rio+20 and explores the issues that the UNGA will debate.

Environmental Law Matters for Sustainable Development

Human society structures its laws, customs and legally sanctioned institutions to order relations among people and between people and nature. Today this realm of law is in flux as never before. Worldwide, environmental quality is deteriorating, as the UN Environment Programme (UNEP) reports this year in its 5th *Global Environment Outlook GEO-5: Environment for the future we want* (GEO-5).[1] Legal[2] and scientific[3] commentators have called for nations to improve global governance of how humans are affecting the Earth. UNEP itself has acknowledged that,

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notwithstanding the effective work of the multinational environmental organisations, environmental law is still inadequate to manage all the forces that are driving global environmental degradation.[4] Although international institutions have yet to fully mobilise effective cooperation among nations to sustain Earth's environmental systems, many national and local governments *are* taking action locally. Environmental law is the system through which these national regimes evolve from initial formulation to strength, and it is the means inter-governmentally to build synergies across regions and treaty organisations to foster the environmental sustainability upon which all socio-economic systems depend.

Integrating the Local and Global

The United Nations Rio+20 Conference, and associated meetings in June 2012 in Brazil, were robust demonstrations of how much is being done to arrest degradation and build capacity for sustainability, in particular by actors other than international agencies. Measured by the 40 years since the 1972 UN Conference on the Human Environment (Stockholm) and the 1992 UN Conference on Environment and Development (The Earth Summit, Rio), the world has made huge progress. The pace of international governmental progress had stalled by the 2002 World Summit on Sustainable Development (WSSD, Johannesburg), even while scientists reported that environmental degradation had become more acute worldwide. Rio+20 provided a point to take stock again, to measure what more must be undertaken to sustain human socio-economic wellbeing and nature's ecological systems.

Rio+20 was the catalyst for assembling leaders from the many innovative actions worldwide, all building momentum towards a behavioural paradigm shift away from unbridled exploitation of nature. Rio+20 facilitated networking of these initiatives, collectively aimed at designing pathways for human society to live with and within nature. Law both enables and underpins these national and local efforts; unfortunately, law can also perpetuate the "dead hand of the past", and delay reforms. When examined through the lens of environmental law, Rio+20 reveals two parallel benchmarks. On one level, intergovernmental deliberations made small, but measurable, steps towards the reforms needed to make sustainability realistic. On another level, national and local innovations were imaginative, dramatic and, if scaled up across nations, could be game-changing. How can the local and global be integrated, and measured? What legal measures should do so? Rio+20 implicitly left the answers to these inquiries "up in the air". This essay probes these two perspectives.

When the UNGA convenes its 67th Session,[5] it will continue the deliberations from Rio+20. What the General Assembly does will spell out the future of the UN Commission on Sustainable Development (CSD), whose creation was a major accomplishment of the 1992 Earth Summit, as well as the fate of UNEP. While much attention will be devoted to these intergovernmental policy issues, their resolution will not produce environmental sustainability. It is the national and local levels of government that actually protect the environment… or fail to do so.

Reforms in international environmental governance depend on building the capacity of national laws for environmental sustainability. The gap at Rio+20 between the insipid diplomatic deliberations, and the exciting national or local innovations, appeared often as a chasm. The governments at Rio+20 passed to the UNGA the challenge of bridging this gap. In 1992, governments had agreed on a set of environmental sustainability prescriptions in *Agenda 21*,[6] adopted at the Rio Earth Summit. *Agenda 21* made clear that international governance, alone, cannot produce national programmes, and while the governments at Rio+20 reaffirmed *Agenda 21* and endorsed many "thematic areas" for follow-up, they made scant mention of how intergovernmental cooperation should do so.[7] Nonetheless, foreign ministries gradually are coming to understand that their diplomats should bring to deliberations like Rio+20 common objectives: to encourage reforms to build national capabilities for environmental sustainability, and national capacities for cooperation. Whether from developed or developing nations, few governmental foreign policies at Rio+20 openly acknowledged that, as they invest domestically in building environmental sustainability, their individual national dedications of scarce human and financial resources are squandered. No single State can succeed in isolation.

All Earth's natural systems are interconnected. As René Dubos put it in 1972, "think globally and act locally". The 1972 Stockholm Conference recognised this in declaring the principle that no nation could harm the environment of another nation or the areas beyond national jurisdiction that are shared by all.[8] There is "only one Earth"[9] and "now that mankind is in the process of completing the colonization of the planet, learning to manage it intelligently is an urgent imperative. Man must accept responsibility for the stewardship of the earth".[10] It is through laws that governments, and people, establish norms and adopt stewardship practices.[11] As GEO-5 reveals, the "imperative" of 1972, repeated in 1992, has become ever more apparent in 2012. Human laws managing Earth must become congruent, with all due deliberate and measurable speed.

Since 1992 when the Rio Earth Summit adopted *Agenda 21*,[12] national legislatures, environmental ministries and courts have implemented and applied congruent programmes for environmental sustainability worldwide. The Principles of the UN *Rio Declaration on Environment and Development* have been incorporated into national constitutions and laws. At national levels, patterns building toward environmental sustainability have emerged.[13] Foreign Ministries are often blind to their nation's own domestic legal developments, but they need to become ecologically literate, if only to ensure that their nation does not harm the environment of another nation or the Earth's shared global systems. Few foreign ministries employ environmental law specialists, so their deliberations leading up to Rio+20 did not reflect their own

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national laws. Ecological security is a more immediate need than military security, but governments at Rio+20 did not treat environmental sustainability on a par with national military defence.

The Rio+20 outcome document, entitled "The Future We Want", acknowledged that more effective intergovernmental cooperation was urgently needed. Their rhetoric impressed urgency on their institutional and governance recommendations, but they broke no new ground diplomatically when taking note of Earth's

Courtesy: UN

deteriorating environment. For example, as to the overarching challenges of climate change, governments stated the following:

> *We reaffirm that climate change is one of the greatest challenges of our time, and we express profound alarm that emissions of greenhouse gases continue to rise globally. We are deeply concerned that all countries, particularly developing countries, are vulnerable to the adverse impacts of climate change, and are already experiencing increased impacts, including persistent drought and extreme weather events, sea-level rise, coastal erosion and ocean acidification, further threatening food security and efforts to eradicate poverty and achieve sustainable development. In this regard we emphasize that adaptation to climate change represents an immediate and urgent global priority.*[14]

Notwithstanding the limited scope of their decision making at Rio+20, the UN Member States did decide that the time has come for the United Nations to revisit what reforms in legal governance are necessary to sustain Earth's environmental quality. When the UNGA 67th Session begins, governments will be challenged collectively to reassess what more each must do to safeguard its own environment, and equally to explore how to leverage these national actions into much greater global effectiveness.

The Many Facets of Rio+20

How did Rio+20 set up this challenge? When all UN Member States convened again in Rio de Janeiro two decades after the 1992 Earth Summit, the city provided government delegates and other participants alike with a graphic reminder of why Earth is worth saving. Rio offers a landscape of immeasurable beauty. Its bays and mountains and beaches are each distinct and offer entrancing vistas. Rio boasts the largest forest within any city, and a superb Botanical Garden. While delegates were meeting in windowless conference rooms, they could not avoid reflecting on Rio's natural beauty. Slow vehicular traffic from the centre of Rio to the outskirts at RioCentro, the official Rio+20 Conference venue, ensured that there was ample opportunity to admire the City's seascapes and landscapes and neighbourhoods. What could not be immediately seen hovered in the minds of everyone: irreversible loss of species, rising sea levels, melting glaciers, desertification, the needs of Earth's growing human population, and other climate change impacts.

What is seen varies from person to person. How one assesses the many meetings held in Rio de Janeiro between 15 and 22 June 2012 depends entirely on one's vantage point. No single perspective can be said to capture the Rio+20 "event". A brief review of the Rio+20 events illustrates this reality. Rio+20 assembled the mosaic of interests that depend on and care about the Earth, from all corners of the planet. Whatever their differences, the theme of law was woven into each, implicitly or explicitly. Rio+20 meant a great deal for environmental law.

More than 40,000 persons concerned with the environmental fate of the Earth met in Rio. Four thousand of them were journalists, many gathered at RioCentro where the CSD convened for three days of deliberations. Some reporters focused on the inadequacy of the incremental decision making by government delegations in the CSD.[15] As Rio+20 ended, many echoed the same theme: "a meeting wraps up under a shroud of withering criticism".[16] These accounts expected more action than what was agreed in the 49-page official "soft-law" document adopted by the Conference.[17] The Conference referred the reorganisation of the CSD and any restructuring of UNEP to the autumn 2012 Session of the UNGA in New York. The daily deliberations were reported by the International Institute for Sustainable Development.[18]

Others reported on the 2,500 "side-events" or meetings on topics of planetary environmental issues and sustainable development. Five hundred of these meetings were convened by governments and intergovernmental organisations, and the balance by non-governmental organisations (NGOs). Cities and local authorities have an expanding network of local programmes and laws to cope

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with the impacts of climate change and to build resilient sustainability. The NGOs included the business community, such as the World Business Council for Sustainable Development (WBCSD). The WBCSD sponsored a supplement to the *International Herald Tribune*, in which WBCSD President Peter Bakker observed that the "hard-won" progress, since the 1992 Earth Summit, "has been overwhelmed by the sheer amount of fossil fuels, materials, water and waste flowing through the world economy…We cannot afford this slow pace, which struggles to keep up with current growth".[19] With the exception of the banks and financial institutions, whose unsustainably greedy and often fraudulent practices had brought on the Great Recession of 2008 which cast a pall over the Rio+20 event, many multinational companies came to Rio to showcase genuine innovations for enhancing sustainability. The business interests at Rio were well ahead of governments in their deeds and words.

UNEP and the CSD have promoted the "green economy", to encourage innovative technology that fosters economic development without damaging the environment. The Outcome Document from Rio+20 endorsed efforts to facilitate a transition to a green economy, and many of the side-events at Rio+20 showcased alternative ways to generate electricity and build sustainable employment.[20] Unfortunately, in the preparatory committee negotiations leading up to Rio+20, many developing nations took a dim view of the "green economy". Their tepid acceptance grew out of their awareness that the same technologically advanced States that promoted these innovations had made little to no effort to ensure that they would be transferred to, or used by, developing economies. For twenty years, the "Green Funds" and other sustainable development finance agreement systems have remained largely unimplemented. Developing nations opposed endorsing new technologies that would help rich nations and not meet their needs. Virtually none of the "green technology" advocates addressed what laws and governance would be needed to ensure that their technology could become universally used.

Perhaps the most significant business-related initiative at Rio+20 was the efforts of some 30 insurance companies to work with the UNEP Secretariat, governments and civil society to expand the availability of casualty insurance to help cope with the effects of climate change and natural disasters. Through UNEP's Finance Initiative, Global Insurance Principles have been elaborated over the previous six years. Munich Re's Chief Executive Officer, Nikolaus von Bomhard, who chairs the UNEP Finance Initiative Group, articulated the insurance sector's role: "The insurance industry plays a vital role in developing our economy and society. By managing and carrying risks, our industry protects the welfare of society and fosters innovation".[21] Expansion of insurance regimes across the world will, of course, require national legislation and administrative regulatory systems for insurance systems. Without insurance, the financing to recover from climate-induced catastrophic events will be problematic at best, and lacking at worst. Currently only a few nations, mostly developed States, have regulated insurance sectors. Unfortunately, the preoccupation with recovery from the 2008 recession and the sovereign debt and current crises in the Eurozone precluded States giving adequate attention to legal developments for expanding insurance systems at Rio.

Despite limited intergovernmental decision making, there was a great deal of energising innovation toward a more sustainable future in the Rio side-events. Michael Northrop, of the Rockefeller Brothers Fund, posted a blog from Rio+20 putting a positive face on the non-CSD outcomes; he cited the following outcomes:

- *Eight development banks committed to grant and lend $175 billion for sustainable low carbon transportation by 2020;*
- *Large corporations, including Unilever, Tesco, and J&J, as part of an innovative business alliance, called the Consumer Goods Forum, committed to end deforestation in their beef, soy, paper, and palm oil supply chains by 2020;*
- *The United Arab Emirates committed $350 million to the newly established International Renewable Energy Agency for a finance facility that IRENA will use to develop renewable energy projects;*
- *Microsoft committed to making all of its business operations carbon neutral by 2013;*
- *Cities inside Mayor Bloomberg's C40 have committed to a gigaton of carbon emission reductions;*
- *These cities also committed to establishing a monitoring mechanism and publishing an annual report card;*
- *A group headed by Richard Branson called the Carbon War Room committed to helping Aruba wean itself from fossil fuels by 2020;*

Courtesy: EU

- *Norway committed to spend $140 million over five years in Ethiopia and Kenya to finance clean energy development;*
- *The UK will now mandate GHG emissions reporting by the 1800 largest companies on the London stock exchange; and*
- *Philips will increase the energy efficiency of its electric products by 50 percent by 2015.*[22]

However positive these developments may turn out to be, from the vantage point of ecologists and earth systems

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scientists, Rio+20 was a far cry from the accomplishments and expectations of the 1992 Earth Summit in Rio. In 1992, treaties on biological diversity and climate change were signed, and progress noted for also concluding the 1994 UN Convention to Combat Desertification. No such actions took place to coincide with Rio+20. Scientists who study Earth's systems were clear in their view that Rio+20 accomplished too little, too late. The venerable scientific journal *Nature* published its weekly edition on 7 June 2012 with the cover theme: "Second Chance for the Planet – Can the Rio Earth Summit Reverse Twenty Years of Failure?"[23] The issue included symposia by scientists outlining how governments had failed to implement and demonstrably advance the goals of the biodiversity and climate conventions. *Nature*'s editors complained that governments had "perfected the art of incremental negotiation and refined circular motion". What Rio+20 needed were "cheap, scalable, and politically viable solutions".[24]

If governments were short on agreement about such reforms,[25] the many Rio+20 side-events were rich in their contributions.[26] These contributions indicate that the UNGA can frame realistic new "sustainable development goals" (SDGs) to provide measurable milestones to attain the goals articulated in the UN Millennium Development Goals. The Conference recommended that such SDGS be employed. It is precisely such concrete and measurable steps that make progressive development of an international public law for environmental sustainability possible.

There were well organised meetings of organisations and individuals concerned with the health of the world's oceans.[27] They had been meeting for years, and many of their recommendations were agreed to prior to official governmental delegations coming to Rio de Janeiro and were included in the official declaration of the Conference. On the other hand, the meetings of indigenous peoples in Rio concluded that their voices were – once again – being ignored by governments. After Rio, many commentators have sought to assess how participants evaluated the meeting and these 2,500 side-events,[28] but the level of generality of these surveys of what happened at Rio+20 leaves much unsaid. Many commentators and even non-governmental participants did not understand the limited scope of the deliberations. Rio+20 was not a true "Summit" meeting.[29] No decisions by heads of State for new treaty agreements, or for creating a new international environmental organisation were planned; no new treaty negotiations had been held before Rio+20. Within the context of the Conference, and managing the rising expectations of those outside the governments, the Brazilian host government was very effective in negotiating with all UN Member States to consolidate the rambling 250 page "zero draft" text, which it had received in Rio from the preparatory meetings in New York, into the relatively slim 49-page agreement that could be adopted by consensus as an outcome document, entitled "The Future We Want". Against the background of inter-governmental indecision on this and many other fronts, Brazil's accomplishment at Rio+20 deserves to be noted.

To discern the measurable consequences possible after Rio+20, it is instructive to focus on a specific theme that cuts across all aspects of Rio+20, environmental law. Law provides a distinctive and essential, even unique, perspective through which to assess Rio+20, because it is law that provides the framework for realising the actions that Rio+20 contemplates. Specialists in environmental law take the long view. The progressive development of public international law, now involving more than 190 nations, is unavoidably gradual. This is not to say that rapid legal change is impossible. Deliberate and focused law reform is a hallmark of progressive human societies. The very field of environmental law did not exist before the 1972 Stockholm Conference. For example, the Commission on Environmental Law (CEL) of the International Union for Conservation of Nature (IUCN) took the lead in developing proposals for both the 1973 Convention on International Trade in Endangered Species (CITES), the UN 1982 World Charter for Nature and the 1992 Convention on Biological Diversity (CBD). More than 800 environmental treaties and multilateral environmental agreements (MEAs) are now in force. Yet the scientific agenda for environmental law reform shows much more to do; for example, there is virtually no global system for soil conservation, for coping with the nitrogen cascade, or sustaining marine phytoplankton. Without laws addressing these, and others of Earth's natural systems, human socio-economic activity cannot be sustained.

Enhancing national environmental law and elaborating the norms of international environmental law were the focus of the four "side-events" that were attended by the some 250 environmental law professors and other legal specialists who came for Rio+20. A congruence of views emerged as a consensus from these four distinct conclaves. Each independently called for much stronger adherence to an environmental right. Sustaining the environment is the most fundamental obligation of government and society. The Earth's environment provides the basis for the pillars of social and economic and cultural advancement; "environmental protection" is not itself another pillar, as the Johannesburg World Summit on Sustainable Development in its 2002 Declaration had advanced. Instead, environment is the ground supporting all pillars. The right to the environment was universally acknowledged by legal experts. On the other hand, governments uncritically and, as if by rote, reaffirmed references to the "environmental pillar".[30]

Because sustaining the environment is a prerequisite for human rights, once environmental norms are established, there can be no regression and weakening of these norms. The governments in the Rio+20 statement implicitly accepted this position, "reaffirming" previously accepted environmental sustainability norms 59 times. Like human rights norms, it was acknowledged that environmental rights and standards are often violated, but the failure to observe the right cannot annul this fundamental *grundnorm*. Professor Michel Prieur and others acknowledged that a Principle of Non-Regression has come into existence in the realm of environmental sustainability. Endorsed by the European Parliament,[31] and

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acknowledged by the judges and other participants of the UNEP World Congress on Justice, Governance and Law for Environmental Sustainability,[32] the Principle of Non-Regression provides that once a law establishes a regime for effective environmental protection, there can be no diminution in those safeguards established; the principle acknowledges that environmental protection measures are continuously to be made more effective, and it has an anti-backsliding effect. While legal specialists in Rio stressed that States were obliged to adhere to this Principle of Non-Regression, the governments, in their Rio+20 outcome document, did not expressly mention this principle or any other principles beyond reaffirming the text of the 1992 Rio Declaration. Since 1992, many national constitutions now include the right to the environment, and many new principles, such as the Principle of Resilience,[33] have been refined. While not denying these legal developments, the governmental delegates at Rio+20 simply rested on past decisions about principles and fundamental rights.

Environmental law experts at Rio+20 recalled the effectiveness of the 1992 Declaration of Rio de Janeiro on Environment and Development, whose principles had been incorporated into many national constitutions and laws, and also new treaties such as the Aarhus Convention, based on Rio Principle 10. The legal experts noted, with regret, that Rio+20 would advance no new or refined principles; States could only reiterate past agreements about such norms.

Environmental Law Deliberations

The first of the four environmental law conferences, "The Rio+20 World Meeting of Environmental Jurists", met in the Botanical Garden, having been organised by the *Centre International de Droit Comparé de l'Environnement* (CIDCE, Limoges), the Program on Law and Environment (PDMA) of the *Fundaçao Getulio Vargas, Direito Rio* (Rio de Janeiro), and the Environmental Law Institute (ELI, Washington, DC). Led by Michel Prieur, this well organised conference met from 14–17 July, to hear and consider more than 50 papers.[34] For example, Jay Pendergrass, of the ELI, delivered a paper on the growing effectiveness of environmental courts in applying and enforcing environmental laws, which is a theme that the other conferences also examined. The meeting also received proposals from three preparatory gatherings, on issues such as "Non-Regression in Environmental Policy and Law", distributed by CIDCE.

Following this initial conference, and overlapping with its deliberations in part, was the 16th annual International Conference on 16 June 2012 of the Institute of Law for a Green Planet (*Planeta Verde)* of Brazil,[35] held in the Supreme Court of the State of Rio de Janeiro. This one-day conference was followed by the UNEP World Congress on Justice, Governance and Law for Environmental Sustainability, which convened on 17 June and concluded on 20 June also in the Chamber of the Supreme Court of the State of Rio de Janeiro, and which also met 18–19 June at a conference centre at Managatiba, south of Rio de Janeiro. The London *Guardian* followed the UNEP World Congress,[36] as did the IISD.[37]

The *Planeta Verde* conference, entitled the *Coloquio Judicial Rio+20 de Direito Ambiental,* convened in Rio for the first time, usually being held in Sao Paulo each year. It met in the Chambers of the Supreme Court of Rio de Janeiro. John Cruden, the President of the ELI, announced their plans to establish an on-going capacity-building programme of continuing judicial education on environmental law and court procedure, to strengthen the judiciary worldwide. Sheila Abed, IUCN CEL Chair, made an effective call for strengthening environmental law. Scholars such as Branca Martins Da Cruz, Eckard Rehbinder, Ben Boer, John Bonine and Nicholas Robinson addressed the conference, as did Professor Robert Percival, who also led the convening of the 10th annual Colloquium of the IUCN Academy of Environmental Law at the University of Maryland, 2–5 July, 2012, where a panel also assessed the Rio+20 events.[38] Percival employed comparative law to focus on how environmental law was increasingly congruent across nations and at local levels of government. The lecturers reflected a theme that globalisation of environmental norms does not depend on international law, nor wait for it to become more effective. John Scanlon from CITES, Bralio Dias from the CBD, Claudia de Windt from the Organization of American States (OAS), Ken Markowitz from the International Network for Environmental Compliance and Enforcement (INECE), and Lalanath De Silva from the World Resources Institute's Open Access Initiative, all examined how environmental law benefits from robust enforcement.

One theme to emerge from the deliberations at the *Planeta Verde* conference is the emergence over the past decade of more than 400 environmental national and sub-national courts and tribunals, whose practices have been evaluated in scholarly symposia.[39] Presentations by Justice Antonio Herman Benjamin (Brazil), Chief Justice Ricardo Lorenzetti (Argentina), Hon. Scott Fulton (US EPA General Counsel) and Justice Syed Mansoor Ali Shah (Pakistan) were essentially insightful comparative law commentaries on how courts apply environmental law in different settings. The emergence of national judicial practice illustrated how Rio Principle 10 is being observed as a standard legal norm in many nations.

Planeta Verde's conference concluded with careful presentations by Michel Prieur and Cletus Spring, of the OAS, on the importance and nature of the Principle of Non-Regression. It was noted that as vested interests seek to weaken environmental protection rules, and legislators may be induced to follow the lead of such short-term or private interests, the need for courts to apply the Principle of Non-Regression becomes important for the effectiveness of environmental law.

UNEP's World Congress

Following this one-day event, the World Congress on Justice, Governance and Law for Environmental Sustainability (see pages 204–5, 218–18 and 233 in this issue – Editors) organised by UNEP convened. This Congress was made possible through of the co-sponsorship and invaluable organisational support of the Association of Judges of the State of Rio de Janeiro, the Tribunal Superior

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(Supreme Court) of the State of Rio de Janeiro, the Federal *Ministerio Publico*, and the Getulio Vargas Foundation. It enjoyed support also from the Asian Development Bank (ADB), the International organisation of fiscal auditors and *cours de comptes,* the CITES Secretariat, the South Pacific Regional Environment Programme, the World Bank, INECE and IUCN.[40] Several auditors-general and *cours de comptes* participated through their Working Group on Environmental Auditing.[41] Brazil's *cours de comptes* have been auditing and reporting the value of losses of national environmental patrimony as a result of environmental degradation. INECE engaged a number of prosecutors and attorneys general to participate. IUCN CEL was represented by its current Chair, Sheila Abed, and two past Chairs, Parvez Hassan and Nicholas Robinson. CITES Executive Director, John Scanlon, made effective presentations on how CITES collaborated with national criminal law prosecutors to enforce national laws to protect endangered species and preclude trade in these species.

UNEP Executive Director Achim Steiner opened the World Congress. He noted the alarming negative trends detailed in UNEP's GEO-5 Report. Earth and its governments were in a period of "transformation". He acknowledged that as the environment was degraded,

Clearance in the Amazon, where a substantial portion of deforestation is attributed to cattle ranching and large-scale soybean production Courtesy: UNEP

human interests were affected, and that this left space for the evolving concept of environmental justice. He observed that his generation of humans was the "transformative generation". For Steiner, Rio+20 was an "inflection point" in the history of UNEP and the world. Either nations sided with fundamental rights or the Earth's environmental problems would become much worse. In such a pivotal period, he said, "judges are the last resort". He anticipated the roles of the courts, as well as the roles of auditors-general, growing. He also pointedly observed that UNEP lacked a mandate adequate to the tasks it faced. He called for action to enhance environmental governance through the UN system.

Most of the presentations in a set of six concurrent sessions during the UNEP World Congress were presented by judges. UNEP indicated that reports of each session would be issued. The closing plenary featured a detailed lecture on national court decisions involving and recognising the right to the environment, delivered by the UN High Commissioner for Human Rights, Navathenem Pillay. Her paper examined how courts in allowing environmental rights claims had repeatedly eliminated barriers to access to courts, such as narrow concepts of *locus standi*, throughout Asia, South America, and Africa. She noted that observing environmental rights requires judicial oversight of "procedural" rights, such as public participation and transparency in environmental decision making, as well as explicating the scope of "substantive" aspects of the right to the environment. The shared and common environmental rights, she explained, take precedence over narrower private property or personal interests. While the balancing of interests is always contextual, environmental sustainability is so fundamental to life that it invariably becomes a neutral norm that guides judicial decision making.

Many of Pillay's observations echoed those made by individual judges at the opening session, such as Benjamin's exploration of how a more profound code of ethics must guide environmental decision making. Nearly 200 jurists found that they shared common conceptions of environmental adjudication, during the two days of deliberations at the UNEP World Congress. Many of the judges agreed with Benjamin that a maxim for environmental judicial decision making was *in dubio pro natura*, or when doubt exists, sustaining nature is to be given the benefit of the doubt. Courts, when balancing equities or applying statutes, should ensure that ecological integrity be sustained when all else is equal. Pillay's remarks were not news to the courts, but were perhaps surprising to international civil servants and diplomats who do not follow the individual rulings of courts in different nations.

Bindu Lohani, Vice President of the ADB, addressed the plenary of the World Congress. He noted the ADB's long-standing contributions to building capacity in environmental law, including the programmes for law schools on teaching and research in environmental law in Asia and the Pacific.[42] He described the Asian Judges Network on the Environment, which ADB is facilitating. These initiatives are part of ADB's Strategy 2020, which commits ADB to strengthening "the legal, regulatory and enforcement capacities of public institutions on environmental considerations".[43] ADB Senior Counsel, Kala Mulqueeny, was an active participant in the UNEP World Congress, having organised a number of the ADB's programmes for courts and the rule of law.

Lohani's theme of support for judicial capacity building was reflected in the Declaration that was issued at the end of the UNEP World Congress. This Declaration expressly called upon States to support exchanges of judicial personnel to strengthen court capacity and strengthen the rule of law. In doing so, the statement reflected wide support for capacity building among international organisations such as the World Bank, ADB, IUCN, INECE and others. From one perspective, this UNEP World Congress was a resumption of UNEP's past activities to cooperate with high courts and supreme courts around the world, following its World Summit in Johannesburg in 2002. Prior

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to 2002, UNEP had held symposia for courts in developing nations, and co-sponsored, with IUCN, symposia for courts in developed nations. Needs assessments were undertaken to determine how to strengthen judicial practice with respect to enforcing environmental law.[44] UNEP had not implemented the recommendations from that 2002 Conference. In convening this World Congress, UNEP sought to highlight the need for a stronger international governance system, and a strengthened role for UNEP, as well as to once again engage in a dialogue with judges about environmental law.

UNEP's World Congress was a measured success. Judges from several regions were facilitated to confer together. A consensus clearly emerged in all sessions that the courts in developing nations wish to exchange best practices and judicial experience with respect to environmental law. The final Declaration was agreed after the conclusion of the Rio+20 Statement, and so did not have the hoped-for effect of helping guide national delegations at Rio+20 in their deliberations.[45] Unless UNEP or another organisation such as ELI prepares a way to follow up on the World Congress, it is unlikely that this UNEP World Congress Declaration in Rio will be any more effective than was the Statement from the 2002 UNEP Symposium of Supreme Court and High Court Justices adopted in Johannesburg.

UNEP had laid out its objectives for the Congress in two preparatory meetings, one in Kuala Lumpur,

The world's food system faces increasingly complex and interconnected challenges Courtesy: UNEP

Malaysia,[46] and another in Buenos Aires, Argentina.[47] In contrast to the 2002 meeting, which saw judicial symposia convened in all regions, these two preliminary sessions were not representative of all regions. This made it more difficult to arrive at a consensus in Rio. In contrast to the several years of judicial symposia in all regions that preceded the 2002 UNEP World Judges Symposium in Johannesburg, UNEP gave itself a little more than one year to organise the 2012 World Congress, and the brevity of preparation limited the outcomes. The Congress also lacked participants from Eurasia and from China and Japan. Participation from Africa was very limited, which is surprising given that UNEP's headquarters are located in Africa. The "Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability"[48] was prepared by a number of the participants to serve as the outcome document of the UNEP World Congress. It was not formally voted upon by participants; instead it was presented at the closing session, without opportunity for amendment or vote.[49]

Notwithstanding these limitations, the Congress Declaration is an important text. A thoughtful seven-page statement by South American judges on supplemental issues that they would have included in the Declaration was read at the World Congress before the closing session, but was neither mentioned nor released at the Closing Session. Summaries of working group deliberations at the World Congress were to have been appended to the document, but as of the preparation of this article, these also had not been released. The outcome document has some useful recommendations.

Key findings and recommendations from the UNEP World Congress include the following:

- *Without adherence to the rule of law, without open, just and dependable legal orders the outcomes of Rio+20 will remain unimplemented.*
- *An independent Judiciary and judicial process is vital for the implementation, development and enforcement of environmental law, and members of the Judiciary, as well as those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance with, and the implementation and enforcement of, international and national environmental law.*
- ***Environmental law is essential for the protection of natural resources and ecosystems and reflects our best hope for the future of our planet***.
- *Environmental litigation often transcends national jurisdictions. We need more effective national and international dispute settlement systems for resolving conflicts.*
- *Environmental sustainability cannot be achieved without good quality data, monitoring, auditing and accounting for performance.*
- *Environmental and sustainability auditing ensures transparency, access to information, accountability, and efficient use of public finances, while protecting the environment for future generations.*
- *Judges, public prosecutors and auditors have the responsibility to emphasize the necessity of law to achieve sustainable development and can help make institutions effective.*
- *Scientific information and knowledge is a central foundation of effective compliance with and enforcement of environmental obligations.*
- *States should cooperate to build and support the capacity of courts and tribunals as well as prosecutors, auditors and other related stakeholders at national, sub-regional and regional levels to implement environmental law, and to facilitate exchanges of best practices in order to*

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achieve environmental sustainability by encouraging relevant institutions, such as judicial institutes, to provide continued education.[50]

Although each of these statements are essential for securing observance of the rule of law and making environmental norms effective, the last of these recommendations is essential. It coincides with a recommendation of the Rio+20 Outcome Document that environmental education, in all aspects, needs to be urgently advanced.[51] It is essential that universities, law faculties, bar associations, judicial institutes and others renew their work to advance continuing judicial education on access to justice and environmental court remedies. The ELI and the IUCN CEL have provided such programmes in the past. The need to do so in the near future is pressing. ELI launched a global project to do so in 1991 which is still on-going.

Other statements and recommendations in the Declaration addressed the need for more effective environmental governance including the following:

The existing international governance institutions to protect the global environment should be strengthened. We must create modern institutional structures capable of building networks and improved sharing of decision-making. There is an urgent need to give consideration to transforming UNEP to effectively lead and advance the global policy and law-making agenda for the environment within the framework of sustainable development.[52]

Certainly in the case of strengthening environmental law, especially in developing nations, UNEP needs to be strengthened. In the past, through its Montevideo Action Plans and its support for environmental law programmes such as PAEDELIA, the network of environmental law professors in African Law Schools, or the support for law professors from developing nations to participate in the IUCN Academy of Environmental Law Colloquia, UNEP played a major role in shaping environmental law. Past UNEP leaders, such as Mustapha Tolba, were the catalyst for the development of a number of MEAs. Klaus Töpfer also supported environmental law as a priority. UNEP has been a leader in convening regional symposia of judges to exchange best practices and collaborate on national judicial remedies and court procedures. UNEP has largely discontinued its support for these programmes, despite requests from developing country experts to continue them. For this reason alone, States should examine how to strengthen UNEP to fulfil these on-going needs. The need to support developing countries in their work to build up environmental law has not ended, and UNEP should continue its support for such efforts.

In supporting judicial decision making itself, the Declaration made three sets of findings that fully reflected the consensus among all the working groups at the World Congress:[53]

1. *Meeting environmental objectives is part of a dynamic and integrated process in which economic, social and environmental objectives are closely intertwined.*
2. *We recognize that environmental laws and policies adopted to achieve these objectives should be non-regressive.*
3. *Environmental sustainability can only be achieved in the context of fair, effective and transparent national governance arrangements and rule of law, predicated on:*
   - *(a) fair, clear and implementable environmental laws;*
   - *(b) public participation in decision-making, and access to justice and information, in accordance with Principle 10 of the Rio Declaration, including exploring the potential value of borrowing provisions from the Aarhus Convention in this regard;*
   - *(c) accountability and integrity of institutions and decision-makers, including through the active engagement of environmental auditing and enforcement;*
   - *(d) clear and coordinated mandates and roles;*
   - *(e) accessible, fair, impartial, timely and responsive dispute resolution mechanisms, including developing specialized expertise in environmental adjudication, and innovative environmental procedures and remedies;*
   - *(f) recognition of the relationship between human rights and the environment; and*
   - *(g) specific criteria for the interpretation of environmental law.*

The rule of law is a predicate to realising effective environmental laws. The World Congress Declaration expressly noted that "[e]nvironmental sustainability can only be achieved if there exist effective legal regimes, coupled with effective implementation and accessible legal procedures, including on *locus standi* and collective access to justice, and a supporting legal and institutional framework and applicable principles from all world legal traditions". Justice, including participatory decision making and the protection of vulnerable groups from disproportionate negative environmental impacts must be seen as an intrinsic element of environmental sustainability.[54]

For follow-up, the UNEP World Congress Statement also recommended the following:

With UNEPs leadership, an international institutional network should be established, with the engagement of the World Congress partners and other relevant organizations, and ***under the guidance of selected Chief Justices, Heads of Jurisdiction, Attorneys General, Chief Prosecutors, Auditors General, eminent legal scholars and other eminent members of the law and enforcement community.***

This international institutional network may promote the achievement of:

- *(a) continued engagement of Chief Justices, Attorneys General, Heads of Jurisdiction, Chief Prosecutors and Auditors General, the institutions they represent and other components of the legal and enforcement chain, including through networks at the international and regional levels;* ➽

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(b) quality information and data exchange and discussion among the legal and auditing communities at large;
(c) continued development and implementation of environmental law at all levels, and encouraging the further expansion of environmental jurisprudence;
(d) improved education, capacity building, technology transfer and technical assistance, including with the aim of strengthening effective national environmental governance; and
(e) adequate engagement by respective national governments for the set objectives.

UNEP may contribute to ensure necessary funding for capacity building and information exchange for strengthened capacities.[55]

What is critical to the capacity building of the courts is that the judges should guide and direct the process, not UNEP or civil servants outside the judiciary. This is how national judicial institutes are organised from Brazil to India, and within countries like the USA from the Administrative Office of the federal courts to the NYS Judicial Institute. It is important for judicial expertise and independence that the courts guide the capacity building. The participants at the UNEP World Congress made this amply clear in their working groups and final Declaration. Notwithstanding the need for follow-up, it is difficult to see how UNEP can respond in the near future because its leadership will be engaged in the renegotiation of UNEP's own structure and mandates, as the Rio+20 outcome document makes evident.

From a legal perspective, the UNEP World Congress amply demonstrated the need for all national governments to involve the judiciary in their approaches to sustainable development. The progressive approach of those concerned with strengthening the courts can be contrasted with the static, and somewhat confused, gradual approach set forth in the Rio+20 outcome document.

"The Future We Want"

While Rio+20 produced scant new international soft law, the environmental law deliberations did explore a rich tapestry of new sustainability laws and programmes at national and local levels. These emergent regimes are learning from each other and building networks. It may be that the emergence of these reforms regionally will provide the foundation for a new international consensus on sustainability in the future.

Environmental sustainability at the international level depends upon (a) creating a clear centre for sustainability decision making and coordination, in the UN system; (b) a way to link with and build upon the many national and local sustainability efforts; and (c) a reliable funding infrastructure, especially for developing nations. The Rio+20 outcome document launched three different negotiation paths for dealing with the structure of a successor system to the CSD, a revised mandate of UNEP, and a means to generate needed funding, especially for facilitating capacity building in developing nations. The UNGA will have to fashion a way to integrate these Rio+20 recommendations and clarify them.[56] If the three negotiating tracks are not integrated, inconsistent and inadequate decisions may well emerge.

Even if there had been a goal to design a new environmental sustainability regime internationally, which is doubtful, the time between the deliberations at Rio+20 in June and those at UNGA between September and December, 2012, is too brief for States to negotiate major new agreements on global environmental governance. The General Assembly can refine the broad recommendations from Rio+20, and launch the next wave of negotiations. Rio+20 was unclear about how those negotiations should be integrated.

Even when a new governance system is designed, it will be up to the "new" policy-making procedures that come into existence to carry on those negotiations. The national and local non-governmental and business innovators who came to Rio+20 will need to make a case to their national governments about why this new UN mechanism must be made to work, to build capacity for environmental sustainability and to foster capabilities for cooperation. Rio+20 lacked confidence to make the sort of decisions that the 1992 Earth Summit made. There is not time to wait another 20 years. Rio+20 implicitly recognised this reality in providing a one-year timeframe in which the General Assembly is to oversee the negotiation of a new legal framework for sustainability governance.

Coon Creek Watershed in southwest Wisconsin, once one of the most heavily eroded regions in the United States, is now an impressive and integrated farmland mosaic thanks to advances in soil and farmland restoration Courtesy: UNEP

Rio+20 agreed on sweepingly broad recommendations about the new environmental governance systems that they wish the UNGA to launch. For example, in paragraph 248 of the outcome document, the following is recommended to address roles that had been consigned to the CSD:

We resolve to establish an inclusive and transparent intergovernmental process on sustainable development

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goals that is open to all stakeholders, with a view to developing global sustainable development goals to be agreed by the General Assembly. An open working group shall be constituted no later than at the opening of the sixty-seventh session of the Assembly and shall comprise 30 representatives, nominated by Member States from the five United Nations regional groups, with the aim of achieving fair, equitable and balanced geographic representation. At the outset, this open working group will decide on its methods of work, including developing modalities to ensure the full involvement of relevant stakeholders and expertise from civil society, the scientific community and the United Nations system in its work, in order to provide a diversity of perspectives and experience. It will submit a report, to the sixty-eighth session of the Assembly, containing a proposal for sustainable development goals for consideration and appropriate action.

It is unclear how this negotiation will treat the functions now under the Commission on Sustainable Development.[57] A similar lack of clarity concerns reconsidering UNEP's forty-year-old roles. Rio+20 did endorse some continuing role for UNEP, but said little about new roles for the Programme. Paragraph 88 of the outcome document provides that:

We are committed to strengthening the role of the United Nations Environment Programme (UNEP) as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system and serves as an authoritative advocate for the global environment. We reaffirm resolution 2997 (XXVII) of 15 December 1972 which established UNEP and other relevant resolutions that reinforce its mandate, as well as the 1997 Nairobi Declaration on the Role and Mandate of UNEP and the 2000 Malmö Ministerial Declaration.

It is possible to remake UNEP, either as an enhanced "programme" under the UN or as a new environmental organisation, perhaps on the model of the UN Industrial Development Organization (UNIDO), or in a more elaborate restructuring. Rio+20 outlined five objectives for the 67th Session of the UNGA to consider for strengthening UNEP:

(a) Establish universal membership in the Governing Council of UNEP, as well as other measures to strengthen its governance as well its responsiveness and accountability to Member States;
(b) Have secure, stable, adequate and increased financial resources from the regular budget of the United Nations and voluntary contributions to fulfill its mandate;
(c) Enhance the voice of UNEP and its ability to fulfill its coordination mandate within the United Nations system by strengthening UNEP engagement in key United Nations coordination bodies and empowering UNEP to lead efforts to formulate United Nations system-wide strategies on the environment;
(d) Promote a strong science-policy interface, building on existing international instruments, assessments, panels and information networks, including the Global Environment Outlook, as one of the processes aimed at bringing together information and assessment to support informed decision-making;
(e) Disseminate and share evidence-based environmental information and raise public awareness on critical as well as emerging environmental issues.

The General Assembly will need to parse how the new committee of 30 States will define its year-long agenda, when the General Assembly itself is to restructure UNEP during the 67th Session. Rio+20 recommended, perhaps improvidently, that the fate of international governance be bifurcated. The overlapping roles of the UN Development Programme and UNEP need to be clarified. The implication of the 1992 UN Conference on "Environment and Development" was that these two realms needed to be merged. To avoid duplication of costs and conflicting mandates, perhaps the time has come for the General Assembly to constitute a single Sustainable Development Programme, merging both UNDP and UNEP, governed by a board that assumes also the roles of the CSD.

The as-yet-to-be-conceived UN architecture will need to be well connected to national agencies responsible for environmental sustainability. In order to address, if not bridge, the gap between the national and local and the inter-regional and international, networks of sustainability agents are needed. Moreover, roles for national capacity building and funding need to be examined also. Rio+20 requested that the General Assembly address the "Means of Implementation". In paragraph 252, the Rio+20 outcome document placed the burden more on national governments than on the international agencies: "We reaffirm that developing countries need additional resources for sustainable development. We recognize the need for significant mobilization of resources from a variety of sources and the effective use of financing, in order to promote sustainable development. We acknowledge that good governance and the rule of law at the national and international levels are essential for sustained, inclusive and equitable economic growth, sustainable development and the eradication of poverty…."

In order to finance sustainability reforms – whether technologically reforming the green economy or legally strengthening the rule of law – Rio+20 requested that the General Assembly tackle the problem of unfulfilled pledges by governments. Paragraph 255 of the outcome document provided that: "We agree to establish an intergovernmental process under the auspices of the General Assembly, with technical support from the United Nations system and in open and broad consultation with relevant international and regional financial institutions and other relevant stakeholders. The process will assess financing needs, consider the effectiveness, consistency and synergies of existing instruments and frameworks, and evaluate additional initiatives, with a view to preparing a report proposing options on an effective sustainable development

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financing strategy to facilitate the mobilization of resources". Rio+20 decided that "[a]n intergovernmental committee, comprising 30 experts nominated by regional groups, with equitable geographical representation, will implement this process, concluding its work by 2014".

These brief excerpts from the Rio+20 outcome document illustrate that the next wave of negotiations in the UNGA on environmental sustainability will be problematic at best. Rio+20 laid out some issues,[58] and ignored others. The UN Secretariat (presumably the UN Department of Economic and Social Affairs under the Secretary General), rather than UNEP, was mandated to create a registry of the many voluntary undertakings for sustainability.[59] So the exciting national and local innovations may not be linked to the on-going mandate of UNEP. How will relevant stakeholders have a say in making the new UNEP more effective?

The Next Negotiations

Rio+20 opens a new door to examining how governance for environmental sustainability can be advanced. The events at Rio+20 made clear that the "action" is at national and sub-national levels. As these mature, they can inform and support regional and inter-regional cooperation among State and non-State actors. Rio+20 also makes clear that the nations do not have another 20 years to push the problems of international environmental governance to the next generation. They require action now.

Fortunately, the environmental law community in each nation is not waiting for the diplomats. Significant legal reform is moving ahead, as Rio+20 events document. Tomorrow's environmental sustainability constitution is being crafted in each nation today. If Rio+20 made anything clear, it is that comparative environmental law is an energetic and vital movement, framing a kind of global sustainability law through congruent actions in many different legal traditions. The environmental law deliberations at Rio+20 made clear that this movement has an internal motivation and is not dependent on the UN system. It will continue, because it must, regardless of the outcomes of the next wave of UN negotiations.

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Notes

1 UNEP. 2012. *Global Environment Outlook GEO-5: Environment for the future we want*. Nairobi: UNEP; available at http://www.unep.org/geo/geo5.asp.

2 See Robinson, N.A. 2002. "Befogged Vision: International Environmental Governance a Decade After Rio". *William & Mary Environmental Law and Policy Review* 27(2): 299–364, noting the universal call among legal scholars for establishment of a world environmental organisation, but the lack of government agreement to do so.

3 Biermann, F. *et al*. 2012. "Navigating the Anthropocene: Improving Earth System Governance". *Science* 335(6074): 1306–7.

4 See, *e.g*., UNEP Division of Environmental Law and Conventions Issues Brief series on the environmental dimension of the institutional framework for sustainable development (IFSD), at http://uncsd.iisd.org/news/unep-launches-issues-brief-series-on-ifsd/. UNEP also commissioned a study by Rose, G.L. 2011. "Gaps in the Implementation of Environmental Law at the National, Regional and Global Level", for its first preparatory meeting (Kuala Lumpur, Malaysia) of the World Congress on Justice, Governance and Law for Environmental Sustainability, available online at http://www.unep.org/delc/Portals/24151/FormatedGapsEL.pdf.

5 [See p. 206, this issue. Editors].

6 See the annotated edition, Robinson, N.A. (Ed.) 1993. *AGENDA 21: Earth's Action Plan*. New York: Oceana Publications.

7 Rio+20 Outcome Document, "The Future We Want". UN Doc. A/CONF.216/L1 (reissued for technical reasons on 22 July 2012), a soft-law policy declaration adopted by consensus, with 283 paragraphs. See Part V. Framework for action and follow-up, Subpart A "Thematic areas and cross-sectoral issues". Available at http://www.uncsd2012.org/content/documents/727The%20Future%20We%20Want%2019%20June%201230pm.pdf.

8 Principle 21 of the Declaration of Stockholm on the Human Environment (1972); reiterated as Principle 2 in the Rio Declaration on Environment and Development (1992). The Principle is universally accepted to be a general principle of law binding on all nations.

9 Ward, B. and Dubos, R. 1972. *Only One Earth: The care and maintenance of a small planet*. New York: Norton (UN Report on the Human Environment, prepared for the Stockholm Conference on the Human Environment).

10 *Ibid.*, Introduction, p. xxiii, Ballentine edition (1973).

11 This was also the message of the World Commission on Environment and Development (or "Brundtland Commission"), whose report *Our Common Future* (1987, Oxford University Press) laid the foundation for the UN General Assembly to convene the 1992 Rio Earth Summit. The Report famously noted that the Earth is one but the world is not. Individual sovereign States need to conform their national practices to the realities of the scientifically confirmed realities of the biosphere and Earth's natural cycles and systems.

12 *Supra*, note 6.

13 See, *e.g*., the treatise on national legal practice, Burleson, E., Lye, L.H. and Robinson N.A. (Eds) 2012. *Comparative Environmental Law & Regulation*. Eagan MN: Thomson Reuters/West.

14 *Supra*, note 7, para. 190. In para. 191, States noted as follows:

> *We underscore that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, with a view to accelerating the reduction of global greenhouse gas emissions. We recall that UNFCCC provides that Parties should protect the climate system for the benefit of present and future generations of humankind on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities*.

15 Romero, S. and Broder, J.M. 2012. "Progress on the Sidelines as Rio Conference Ends". *NY Times*, at 8, col. 4 (24 June 2012).

16 *Ibid.*, headline, col. 5.

17 *Supra*, note 7.

18 See www.iisd.org.

19 Bakker, P. 2012. "Sustainability as a Logistic Challenge". *International Herald Tribune* (Advertizing Supplement, "Strategies for Sustainability"), at 19, col. 1 (20 June 2012). See also the IISD report on business contributions to Rio+20, www.iisd.ca/download/pdf/sd/ymbvol202num1e.pdf.

20 See UNEP's press release on the "go-ahead" that Rio+20 gave to the green economy, at www.unep.org/newscentre/Default.aspx?DocumentID=2688&ArticleID=9183.

21 See press release, *ibid*.

22 Northrop, M. 2012. "To Understand Rio+20, Put on Your 3D Glasses". Posted 06/27/2012, 11:57 am.

23 *Nature* 486(7401): 5–152.

24 *Ibid*., "Back to Earth", at 5: "The world has a surfeit of pledges, commitments and treaties. What it needs from the second Earth summit in Rio is firm leadership and a viable plan for success".

25 The Pew Charitable Trusts noted:"It would be a mistake to call Rio a failure, but for a once-in-a-decade meeting with so much at stake, it was a far cry from a success". See also *supra*, note 15.

26 The UN Secretariat for the CSD recorded some 700 voluntary commitments for environmental sustainability, see www.uncsd2012.org/allcommitments.html. The environmental law organisation, Natural Resources Defense Council (NRDC), has prepared a web-based system to track the implementation of these and other commitments, at www.cloudofcommitments.org.

27 *Supra*, note 7, paras 158–177. Small Island Developing States (SIDS) issues appear as paras 178–80. On background and parallel deliberations, see, *e.g*., "A Blueprint for Ocean and Coastal Sustainability", available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/interagency_blue_paper_ocean_rioPlus20.pdf.

28 See, *e.g*., Ira Feldman, president and senior counsel of Greentrack Strategies, "Rio+20 Wrap Up – The Summary of Summaries", 11 July, 2012, at www.greentrack.com.

29 The UN General Assembly decided to hold the CSD session in Brazil. See UNGA Res. A/RES/64/236 (24 December 2009).

30 See, *e.g*., *supra*, note 7, Part IV. Institutional Framework for Sustainable Development, Subpart C "Environmental pillar in the context of sustainable development".

31 Resolution of the European Parliament, 29 September, 2011.

32 Available at http://www.unep.org/rio20/Portals/24180/Rio20_Declaration_on_Justice_Gov_n_Law_4_Env_Sustainability.pdf.

33 See the Resilience Institute at Stockholm University.

34 Information available at www.cidce.org and www.fgv.br/direitorio. See also the report, "Lia Demange: Messages from World Environmental Jurists", at http://greenlaw.blogs.law.pace.edu (20 June, 2012).

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35 See www.planetaverde.org.

36 See Stanley Johnson, at http://www.guardian.co.uk/environment/blog/2012/jun/19/rio-20-summit-supreme-courts?INTCMP=SRCH and www.guardian.co.uk/law/2012/jun/22/human-rights-rio-20-earth-summit; and also on the issue of strengthening UNEP at www.guardian.co.uk/environment/2012/jun/21/rio-20-world-environment-organisation?INTCMP=SRCH.

37 See www.iisd.ca/uncsd/rio20/unepwc/19june.html and www.iisd.ca/uncsd/rio20/unepwc/20june.html and also the summary report at www.iisd.ca/uncsd/rio20/unepwc/.

38 See "Global Environmental Law at a Crossroads", at www.law.umaryland.edu/iucnael2012 and www.iucnael.org.

39 "Environmental Courts and Tribunals: Improving Access to Justice and Protection of the Environment Around the World". *Pace Environmental Law Review* 29(2), at http://digitalcommons.pace.edu/pelr/vol29/iss2/) and the symposium in the *Journal of Court Innovation* 3(1), at www.courts.state.ny.us/court-innovation/Winter-2010/JCI_Winter10a.pdf.

40 *Supra*, note 32, footnote 2:

The World Congress on Justice, Governance and Law for Environmental Sustainability was co-hosted by: Association of Magistrates and Judges in the State of Rio de Janeiro (Associação dos Magistrados do Estado do Rio de Janeiro – AMAERJ); Fundação Getulio Vargas; and Ministério Público do Estado do Rio de Janeiro. It was organized with the following partners: Asian Development Bank (ADB); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); International Criminal Police Organization (Interpol); International Organization of Supreme Audit Institutions – Working Group on Environmental Auditing (INTOSAI - WGEA); Organization of American States (OAS); South Pacific Regional Environment Program (SPREP); World Bank; International Network for Environmental Compliance and Enforcement (INECE); Environmental Law Commission of the International Union for the Conservation of Nature (IUCN); and Law for a Green Planet Institute.

Coastal sand dunes buffer the coastline against wave damage and protect the land from saltwater intrusion Courtesy: UNEP

41 International Organization of Supreme Audit Institutions' Working Group on Environmental Auditing; see www.environmental-auditing.org.

42 Craig, D., Robinson, N.A. and Koh, K.-L. (Eds) 2002. *Capacity Building for Environmental Law in the Asian and Pacific Region: Approaches and Resources*. (2 volumes). Manila: Asian Development Bank.

43 "Environmental Governance and the Courts in Asia: An Asian Judges Network on the Environment". ADB Land and Policy Reform Brief 1 (June 2012), Publication ARM124712; see www.adb.org.

44 *Supra*, note 39, *PELR* 29(2), Robinson, N.A. 2012. "Ensuring Access to Justice through Environmental Courts", at 363, copies of which were provided to judges attending the UNEP World Congress.

45 The IISD News from the Congress was "World Congress Forwards Declaration on Justice for Environmental Sustainability to Rio+20". See http://uncsd.iisd.org/news/world-congress-forwards-declaration-on-justice-for-environmental-sustainability-to-rio20/.

46 "Kuala Lumpur Statement", prepared by the UNEP Secretariat, at para. 4:

The Kuala Lumpur Statement sets out the insights and views expressed at the first preparatory meeting by the participants on the themes of justice, governance and law for environmental sustainability and forms an initial contribution to the World Congress. It is not a negotiated document but rather the broad perspectives and thinking of the participants that does not necessarily represent country positions or consensus on all issues.

47 "Buenos Aires Statement", prepared by a committee of the participants, and issued at the Second Preparatory Meeting for the World Congress on Justice, Governance and Law for Environmental Sustainability, 23–24 April 2012, Buenos Aires, Argentina. The Statement notes that "It is not a negotiated document but rather a reflection of the broad perspectives and thinking of the participants that does not necessarily represent country positions or consensus on all issues" (footnote).

48 *Supra*, note 32.

49 *Ibid*., footnote 1:

This declaration attempts to capture the wide range of views of participants at the World Congress on Justice, Governance and Law for Environmental Sustainability. It does not represent a formally negotiated outcome nor does it necessarily capture all individual views or represent country or institutional positions, or consensus on all issues.

50 *Ibid*., Section I [emphasis added].

51 *Supra*, note 7, paras 277–280. See, *e.g*., para. 277:

We emphasize the need for enhanced capacity building for sustainable development and, in this regard, we call for strengthening of technical and scientific cooperation, including North-South, South-South and triangular cooperation. We reiterate the importance of human resource development, including training, exchange of experiences and expertise, knowledge transfer and technical assistance for capacity building, which involves strengthening institutional capacity, including planning, management and monitoring capacities.

52 *Supra*, note 32, Section I.

53 *Ibid*., Section II.

54 *Ibid*., Section II.

55 *Ibid*., Section III [emphasis added].

56 Rio+20 confirmed that the UN General Assembly would have the lead role in making their decisions about a new international framework for sustainability. *Supra*, note 7, paras 80 and 81:

80. We reaffirm the role and authority of the General Assembly on global matters of concern to the international community, as set out in the Charter.

81. We further reaffirm the central position of the General Assembly as the chief deliberative, policy-making and representative organ of the United Nations. In this regard, we call for the General Assembly to further integrate sustainable development as a key element of the overarching framework for United Nations activities and adequately address sustainable development in its agenda setting, including through periodic high-level dialogues.

57 The relationship of this new forum to the UN Economic and Social Council also remains to be clarified. It may become like the Human Rights Council, with oversight by the UN General Assembly. *Ibid*., paras 82 and 83:

82. We reaffirm that the Economic and Social Council is a principal body for policy review, policy dialogue and recommendations on issues of economic and social development and for the follow-up to the Millennium Development Goals and is a central mechanism for the coordination of the United Nations system and supervision of the Council's subsidiary bodies, in particular its functional commissions, and for promoting the implementation of Agenda 21 by strengthening system-wide coherence and coordination. We also reaffirm the major role the Council plays in the overall coordination of funds, programmes and specialized agencies, ensuring coherence among them and avoiding duplication of mandates and activities.

83. We commit to strengthen ECOSOC within its Charter mandate, as a principal organ in the integrated and coordinated follow-up of the outcomes of all major UN Conferences and summits in the economic, social, environmental and related fields, and recognize its key role in achieving a balanced integration of the three dimensions of sustainable development. We look forward to the Review of the Implementation of General Assembly resolution 61/16 on the Strengthening of ECOSOC.

58 *Ibid*., paras 78 and 79:

78.We underscore the need to strengthen UN system-wide coherence and coordination, while ensuring appropriate accountability to Member States, by, inter alia*, enhancing coherence in reporting and reinforcing cooperative efforts under existing inter-agency mechanisms and strategies to advance the integration of the three dimensions of sustainable development within the United Nations system, including through exchange of information among its agencies, funds and programmes, and also with the international financial institutions and other relevant organizations such as the World Trade Organization (WTO), within their respective mandates.*

79. We emphasize the need for an improved and more effective institutional framework for sustainable development which should: be guided by the specific functions required and mandates involved; address the shortcomings of the current system; take into account all relevant implications; promote synergies and coherence; seek to avoid duplication and eliminate unnecessary overlaps within the UN system; and, reduce administrative burdens and build on existing arrangements.

59 *Ibid*., Part VI. Means of Implementation, Subpart E "Registry of commitments", at para. 283:

We welcome the commitments voluntarily entered into at Rio+20 and throughout 2012 by all stakeholders and their networks to implement concrete policies, plans, programmes, projects and actions to promote sustainable development and poverty eradication. We invite the Secretary-General to compile these commitments and facilitate access to other registries that have compiled commitments, in an internet-based registry. The registry should make information about the commitments fully transparent and accessible to the public, and it should be periodically updated.

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