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IUCN's Proposed Covenant on Environment & Development

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**“Colloquium:
The Rio Environmental Law Treaties”
IUCN’s Proposed Covenant on
Environment & Development**

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Most nations today confront multiple challenges to the environmental quality which underpins and nourishes their socio-economic development. The goal of the 1992 Rio de Janeiro United Nations Conference on Environment and Development (UNCED)¹ was to establish an action plan, *Agenda 21*,² by which these challenges could be effectively met. UNCED recommended concerted national and international measures to combat global trends in pollution and the exhaustion of natural resources. The need for such measures, including legal steps to promote environmentally sustainable development, have long been recognized. Former

* Professor of Law, Pace University School of Law; as Deputy Chair of IUCN’s Commission on Environmental Law, Professor Robinson participated in drafting IUCN’s proposed Covenant on Environment & Development. This article is based on the author’s luncheon address to the *Pace Environmental Law Review* Colloquium on *The Rio Environmental Treaties*, held September 24, 1994.

1. See generally THE COMM’N ON ENVTL. LAW OF THE WORLD CONSERVATION UNION & THE INT’L UNION FOR THE CONSERVATION OF NATURE AND NATURAL RESOURCES, AGENDA 21 AND THE UNCED PROCEEDINGS (Nicholas A. Robinson et al. eds., 1992) [hereinafter UNCED].

2. *Agenda 21*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (1992), reprinted in AGENDA 21: EARTH’S ACTION PLAN (Nicholas A. Robinson ed., 1993) [hereinafter *Agenda 21*].

Secretary-General Perez de Cuellar stated that "[t]he Charter of the United Nations governs relations between States. The Universal Declaration of Human Rights pertains to relations between the State and the individual. The time has come to devise a covenant regulating relations between humankind and nature."³

The International Union for the Conservation of Nature and Natural Resources (IUCN) arrived at the same conclusion as Secretary-General de Cuellar. IUCN's Commission on Environmental Law designed a new treaty to serve as an umbrella agreement to govern the interactions of nations with the Earth's natural systems. The first drafts were adapted from the U.N.'s World Charter for Nature,⁴ which IUCN had also helped draft into treaty format.⁵ By the time the U.N. had convened its Preparatory Committee for UNCED in 1990, the Commission had concluded that a legal mandate was required to integrate the protection of the environment with socio-economic development. The IUCN Draft International Covenant On Environment and Development (draft Covenant), the text of which is printed as an appendix to this article, restates and refines the relationship between society and nature. The draft Covenant was the product of extensive study and negotiation. It was proposed as a basic framework treaty, to integrate the Rio Treaties on Biological Diversity⁶ and Climate Change⁷ and the post-Rio Treaties on

3. *Report of the Secretary-General on the Work of the Organization*, U.N. GAOR, 45th Sess., Supp. No. 1, at 11, U.N. Doc. A/45/1 (1991).

4. *World Charter for Nature*, G.A. Res. 37/7, U.N. GAOR, 37th Sess., Supp. No. 51, at 17 U.N. Doc. A/37/51 (1982), *reprinted in* 22 I.L.M. 455 (1982) [hereinafter *Charter*].

5. See W.E. BURHENNE & W. IRWIN, *THE WORLD CHARTER FOR NATURE* (2d ed. 1986).

6. *Convention on Biological Diversity of the United Nations Conference on the Environment and Development, open for signature*, June 5, 1992, U.N. Doc. DPI/1307, *reprinted in* 31 I.L.M. 818 (1992) [hereinafter *Biological Diversity*].

7. *Framework Convention On Climate Change*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26, *reprinted in* 31 I.L.M. 849 (1992) [hereinafter *Climate Change*].

Desertification⁸ and Highly Migratory and Straddling Fish Stocks,⁹ along with other global and regional treaties.¹⁰

Although future negotiations will probably result in revisions of the draft treaty,¹¹ it nevertheless is a valuable model of how international environmental law should be integrated and made more effective. A prior version of the draft Covenant was published as part of the official deliberations of UNCED's Third Preparatory Committee.¹² Even a cursory comparison of this earlier version to IUCN's present draft suggests that diplomatic negotiators will probably have an equal opportunity to modify the present draft as they had with the previously published version. The present IUCN draft Covenant reflects a mature, well researched and negotiated foundation on which these future negotiations can be based.

This article examines the genesis and scope of the IUCN draft Covenant. It (a) describes IUCN's interest and experience in preparing the proposed draft Covenant; (b) analyzes the roles the draft Covenant can serve; and (c) identifies some illustrative precedents for the Articles of the draft Covenant.

8. *Intergovernmental Negotiating Committee for the Elaboration of an International Convention to Combat Desertification; U.N. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification*, U.N. Doc. A/AC.241/15/Rev. 7 (1994), reprinted in 33 I.L.M. 1328 (1994).

9. *Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, Aug. 23, 1994, U.N. GAOR, 4th Sess., U.N. Doc. A/CONF.164/22 (1994).

10. See, e.g., 1 *SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT* (Alexandre Charles Kiss ed., 1983); 2 *SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT* (Iwona Rummel-Bulska & Seth Osafo eds., 1991).

11. See, e.g., *International Union for the Conservation of Nature Draft International Covenant on Environment and Development*, art. 46 [hereinafter *Covenant*] (the text of which is printed as an appendix to this article) (on financial aid to developing countries, which embodies a U.N. General Assembly target that has never been universally realized). Even at Rio, the financial objectives were the most contentious. See annotations on the financial paragraphs of each chapter of Agenda 21 in, *Agenda 21*, *supra* note 2.

12. Its draft appeared as U.N. Doc. A/CONF.151/PC/WG.III/4, reprinted in UNCED, *supra* note 1, at vol. 5, p. 1721.

I. IUCN's Interests in the Covenant

IUCN was founded in 1948 by an international intergovernmental organization (United Nations Educational, Scientific and Cultural Organization, or UNESCO), and by a non-governmental organization (the Swiss League For The Protection of Nature). One of its purposes was to develop new treaties to conserve nature and natural resources. While it was unusual in 1948 to create IUCN as a partnership of such seemingly diverse authorities, today the need for such collaboration is an integral part of *Agenda 21*'s recommendations. IUCN has grown to have a majority of its members in the southern hemisphere. Over sixty states, ninety-five ministries, and 500 non-governmental organizations (NGO's) of all sorts (from university units, to professional societies, to citizen movements) today comprise IUCN. It is the largest world-wide partnership committed to building what UNCED calls "sustainable development."¹³ Headquartered in Switzerland, it is governed by a General Assembly which meets every three years, and is the only organization in which States and NGO's sit together and vote, bicamerally, to govern a world-wide organization.

IUCN has five expert commissions of volunteers who do much of its work: The Species Survival Commission (which, for instance, prepares and publishes the IUCN Red Data books), the Commission on Parks & Protected Areas (which among its tasks prepares the U.N. Secretary General's List of the World's Parks), the Commission on Environmental Law, the Ecology Commission and the Planning Commission. The Environmental Law Commission assists nations in preparing statutes and treaties and undertakes studies and publishes the results. For example, the Environmental Law Commission prepared and published the annotated paperback edition of *Agenda 21*,¹⁴ which was the 27th scholarly publication since 1972.

IUCN's Environmental Law Commission, with its secretariat in Bonn, Germany, began the draft Covenant well

13. *Agenda 21*, *supra* note 2, at p. 3, ¶ 1.6.

14. *See Agenda 21*, *supra* note 2.

before the U.N. General Assembly launched the U.N. Preparatory Committee for the Conference on Environment and Development. After the Third Preparatory Committee Meeting, when the draft appeared as an official U.N. document, the IUCN consulted and included the responses of the delegates to UNCED's Preparation Committee Meeting.

In addition to preparing several treaties, the IUCN assisted many states in preparing their own national legislation. For example, IUCN's Environmental Law Commission initiated and actively participated in negotiating the 1973 Convention on International Trade In Endangered Species.¹⁵ IUCN prepared the first draft of a Biological Diversity Treaty in 1986, stimulating the Food and Agricultural Organization (FAO) and the United Nations Environment Programme (UNEP) to take the need for such a treaty seriously. In addition, IUCN actively participated in negotiating the resulting Rio Convention on Biological Diversity.¹⁶ Furthermore, IUCN is expressly given a role under the terms of the UNESCO Convention on Protection of the World's Cultural and Natural Heritage.¹⁷ IUCN, therefore, has a strong tradition of establishing international environmental law, including significant service in preparing the draft Covenant. It works inconspicuously and constructively with States to build the legal framework for what we today term "sustainable development."

IUCN decided to prepare this draft because International Public Law has no unifying umbrella agreement to facilitate integrating environment and development. UNCED's *Agenda 21* called for the further development of legal measures by which environment and developmental needs could be better integrated. UNCED's two Rio treaties (on Biological Diversity and Climate Change) did not provide such inte-

15. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243, *reprinted in* 12 I.L.M. 1085 (1973).

16. *See supra* note 6 and accompanying text.

17. Convention for the Protection of the World Cultural and Natural Heritage, Nov. 16, 1972, art. 8, ¶ 3, 27 U.S.T. 37, 1037 U.N.T.S. 151, *reprinted in* 11 I.L.M. 1358 (1972) [hereinafter UNESCO Heritage Convention].

gration; instead, they elaborated new regimes for two critical natural resource sectors. The same is true for the two post-Rio treaties on desertification, and straddling and migratory fish stocks. IUCN's Law Commission agreed with many UNCED delegates that, although a new umbrella treaty was needed, it could not be realized as part of the already overcrowded UNCED Agenda. Thus, IUCN began as both a preparation for and a follow-up to UNCED, to prepare this draft Covenant.

The first steps for drafting the covenant were taken in the 1980s. In 1983, the United Nations World Commission on Environment and Development (known as the "Bruntland Commission" after its chair, Norway's Prime Minister Gro Harlem Bruntland), established an Experts Group on Environmental Law which recommended that the United Nations prepare a new universal convention on environmental protection and sustainable development.¹⁸ The World Commission itself, in 1986, recommended the preparation of both a Universal Declaration and a Convention on environmental protection and sustainable development.¹⁹ Then, in 1988, in response to the many "soft law" instruments which already existed, the IUCN General Assembly meeting in San Jose, Costa Rica, requested that IUCN's Commission on Environ-

18. The Environmental Law Experts are referenced in the *Report of the U.N. World Commission On Environment and Development*, U.N. GAOR, 42d Sess., U.N. Doc. A/42/427 (1987), reprinted in *OUR COMMON FUTURE* (1987). Their full recommendations are published in *ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT: LEGAL PRINCIPLES AND RECOMMENDATIONS* (Johann Lamers ed., 1987). The experts have proposed as follows:

It is recommended that a new legally-binding universal Convention be prepared under United Nations Auspices.

- (a) The Convention should consolidate existing and establish new legal principles, and set out the associated rights and responsibilities of States individually and collectively for securing environmental protection and sustainable development to the year 2000 and beyond.
- (b) The Convention should also include effective measures for protecting those rights and for fulfilling those responsibilities.

Id. at 15.

19. See *OUR COMMON FUTURE*, *supra* note 18, at 333.

mental Law continue preparing an international convention on environmental protection and sustainable development.²⁰

A formal Working Group of IUCN's Commission on Environmental Law was established in November 1989 under the chairmanship of Dr. Wolfgang E. Burhenne, the Commission's Chair. The Group included international law specialists, governmental lawyers, judges, academics and private practitioners, all acting in their personal capacities. Many of these individuals had actively participated in the 1972 U.N. Stockholm Conference on the Human Environment, the IUCN Working Group on the World Charter for Nature, and in the Bruntland Commission's Experts Group on Environmental Law. The Draft Covenant on Environmental Conservation and Sustainable Use of Natural Resources, a document which contained eighty-eight provisions, was the basis of discussion at this first Working Group. The many comments and suggestions made were incorporated into the next draft.

In March, 1991, Dr. Parvez Hassan, Chair of the IUCN Commission on Environmental Law, convened the Working Group's second meeting and deputized Professor Nicholas A. Robinson to conduct the meeting. Many of the Bruntland Commission's Legal Experts became members of the Working Group. This meeting examined the concerns of developing countries and elaborated Articles concerning the transboundary movement of hazardous waste and the environmental degradation caused by commercial enterprises including transnational corporations. The IUCN Working Group then sought the active advice of the delegates to the UNCED Preparatory Committee. It was this version that Iceland requested be distributed in all U.N. official languages to the UNCED Preparatory Committee as a model study draft.

With the benefit of reactions from delegates to UNCED, the IUCN Working Group's third meeting, chaired by Dr.

20. The drafting history is partially recorded in Parvez Hassan, *The IUCN Draft International Covenant on Environment and Development: Background and Prospects*, in *A LAW FOR THE ENVIRONMENT: ESSAYS IN HONOUR OF WOLFGANG E. BURHENNE* 39-42 (Alexandre Kiss & Francoise Burhenne-Guilmin eds., 1994).

Hassan, occurred in the aftermath of UNCED. A thorough and concerted effort was made to incorporate the consensus of *Agenda 21* into the draft Covenant. The IUCN Working Group decided to expand its membership to include experts who had significantly contributed to the UNCED process. Drafting, debate and redrafting actively continued.

Dr. Hassan convened a further Drafting Committee session in April, 1993, to continue the work of integrating the ideas of UNCED into the draft Covenant. This meeting further restructured the draft Covenant to include a section on "Fundamental Principles," designed to address such *Agenda 21* priorities as the right to development, eradication of poverty, demographic trends, wasteful consumption patterns, and international financing mechanisms. The meeting also proposed that the treaty be entitled the Draft Covenant on Environment and Development.

Dr. Hassan chaired the fourth meeting of a further expanded Working Group in Bonn, Germany, in September, 1993. In light of the fundamental moral elements of the draft Covenant, the members of the IUCN Ethics Working Group, organized by IUCN's Commission on Planning, were invited to attend. Since biological diversity was also a major concern of the Covenant Working Group, Dr. George Rabb, the Chair of the IUCN Species Survival Commission, also participated by invitation and actively contributed.

The articles of the draft Covenant were still further tested and refined. Geo-political and regional issues emerged in the same manner as they had done in other international fora such as UNCED, and a deliberative approach was adopted to find a common ground in international law. The participants were sensitive both to the concerns of the developing countries and to the scientific realities of Earth's natural systems. The Working Group met the challenge to restate *Agenda 21's* "sustainable development" policies²¹ in the form of draft legal principles and rules. The draft Covenant was sent to other specialists for their critique.

21. *Agenda 21*, *supra* note 2, at ¶ 1.3.

The Working Group met again in December, 1993, and in April, 1994, to incorporate the comments made by the full Working Group and others into the text. In addition, the draft Covenant was the subject of a two day workshop at the IUCN General Assembly meeting in Buenos Aires in January, 1994. In Buenos Aires, the response to the draft Covenant was favorable, and constructive suggestions by religious and ethical leaders regarding general principles of international law were offered. Following the presentation of this article at the Pace Environmental Law Review Colloquium in September, 1994, a small group of specialists on international liability met in New York City to edit, resolve drafting issues, and refine the provisions. The final draft text was presented to the United Nations Congress on Public International Law in March of 1995 at U.N. headquarters in New York.

II. The Draft Covenant's Roles

As the history of IUCN's drafting suggests, the draft Covenant on Environment and Development serves several roles. These perceived roles are the justification for the labors of lawyers and diplomats from around the world, and for legal specialists in civil law, common law, Islamic law and socialist law traditions, working together to prepare this text. There are ten basic reasons for developing this draft Covenant.

First, there is no "hard law" consolidation of the many declaratory "soft law" resolutions on international environmental protection or development. Neither the U.N. General Assembly's Declaration on the Right to Development,²² nor its Resolution adopting the World Charter for Nature,²³ are contained in treaties. The famous "Principle 21" from the U.N. Stockholm Conference on the Human Environment²⁴

22. G.A. Res. 41/128, U.N. GAOR, 9th Sess., Supp. No. 53, at 186, U.N. Doc. A/41/53 (1986).

23. See *Charter*, *supra* note 4.

24. *Stockholm Declaration on the Human Environment*, U.N. Doc. A/CONF. 48/14/Rev. 1 (June 16, 1972), reprinted in 11 I.L.M. 1417 (1972) [hereinafter *Stockholm Declaration*].

appears in only one multilateral treaty, the Rio Biological Diversity Convention.

It is time to reaffirm the principles and duties of these widely supported soft law statements and distill them into a clear treaty. UNCED's Declaration of Rio de Janeiro on Environment and Development²⁵ need not be repeated in more soft law texts. Mere repetition of soft law principles, by itself, does not result in the realization of those principles. The particularly critical right of developing states to develop needs to be transformed into a juridical context. The energies expended in preparing repetitive resolutions should be focused into one treaty; and when ratified, those energies should be directed into regional and national measures for implementing the treaty undertakings. IUCN agreed with the basic premise that UNCED made in its *Agenda 21* Action Plan: if the deteriorating trends are to be reversed, it is urgent to stop talking about action and to start doing it.

There are two types of "soft law" recodified in the draft Covenant. First are the well accepted legal principles, such as The Stockholm Conference's Principle 21.²⁶ These are unexceptional and unobjectionable. Second are the very volatile and still tentatively accepted principles, such as the duty to restrain consumption of resources through avoiding waste, or the duty to promote a thoughtful demographic regime to manage population demand *vis à vis* the available resources. Indeed, Article 46 of the draft Covenant goes beyond the consensus at Rio which had failed to quantify and provide additional international resources. IUCN's Commission on Environmental Law anticipated that as States debate the draft Covenant, the first soft law category will be accepted as "hard law" and be the basis for the draft Covenant, while the continued form of the second category of soft law remains problematic.

Second, the Civil Law tradition highly values a codified set of principles to guide conduct. This approach is shared by

25. Rio Declaration on Environment and Development, U.N. Doc. A/CONF. 151/5 (1992) [hereinafter Rio Declaration].

26. See *Stockholm Declaration*, *supra* note 24, at art. 11(2).

socialist traditions and theocratic traditions alike. IUCN published an analysis of the *Islamic Principles of Environmental Protection*²⁷ based on the *Koran*, and was guided by these principles in preparing the draft Covenant. In addition, other ethical and religious specialists were consulted, such as representatives of the Buddhist tradition, who contributed guidance at an IUCN Law Commission seminar on the draft Covenant in Buenos Aires in January, 1994. These common values of the diverse traditions are reflected in the general principles of the draft Covenant. Until States can agree on a set of shared basic principles to guide their laws, there will always be some confusion and disagreement. The draft Covenant seeks to promote consensus on these fundamental principles.

Third, just as agriculture, industry, fisheries management, trade and other economic ventures, as well as early conservation and natural resource use, were once deemed to be separate and independent sectors, it is clear from UNCED's *Agenda 21* that all these sectors are interrelated. Each aspect of sustainable development needs to be guided by the same basic rules. The draft Covenant harmonizes and assembles these rules in one place for all to share.

Fourth, many States have not signed or ratified all the environmental treaties, and some states still have gaps in their own national legislation related to implementing such agreements. States need a framework to integrate their national legal and administrative systems, whether for internal or international use. Otherwise the result is a balkanization of environmental agencies which compete for budgets, contest "turf control" and oppose some forms of development rather than giving support to sustainable development. In response, many developmental interests attempt to circumvent environmental controls.

The draft Covenant by itself cannot solve all these disputes, but it can steer the competing agencies into a common

27. See Abou Bakr Ahmed Ba Kader et al., *Basic Paper on the Islamic Principles for the Conservation of the Natural Environment*, IUCN Env'tl. Pol'y & L. Paper 20 (1984); Abou Bakr Ahmed Ba Kader et al., *Environmental Protection in Islam*, IUCN Env'tl. Pol'y & L. Paper 20/A (2d ed. 1993).

framework, and help them to recognize their interdependency. Law can serve as a guide. The draft Covenant's articles may tend to curb such disaggregating trends that appear in all regions.

Fifth, in addition to building a set of common legal goals for all States, the draft Covenant fills some missing gaps. For instance, the duty to undertake Environmental Impact Assessment (EIA) (Article 37 of the draft Covenant) is not stated as a treaty obligation for most activities. In addition, the Espoo Convention²⁸ of the U.N. Economic Commission for Europe (ECE) applies only to transboundary impacts in the ECE region. Soil conservation (Article 18 of the draft Covenant) is a well recognized environmental science, but is not addressed in any treaty. States should not ignore their duty to manage soil until they lose so much of it that they must adhere to the Rio Desertification Treaty. Moreover, all States are parties to the Vienna Convention to Protect the Stratospheric Ozone,²⁹ and depend on this atmospheric ozone layer to shield against harmful ultraviolet solar radiation. Even States who are not yet ready to ratify the specific undertakings of the Vienna Convention and Montreal Protocol,³⁰ should acknowledge a legal duty to protect the ozone layer.

Sixth, by establishing such a common set of rules, the draft Covenant levels the playing field for international trade. It clarifies what is and what is not appropriate environmental protection. For example, non-tariff trade barriers could be discerned more clearly, and disputes over possible non-tariff trade barriers could be minimized.

Seventh, the draft Covenant can be a guide for parties who seek to revise their other treaties or prepare supplementary protocols. These disparate existing agreements can be

28. Convention on Environmental Impact Assessment in a Transboundary Context, Feb. 25, 1991, 30 I.L.M. 802 [hereinafter Transboundary EIA].

29. See Vienna Convention on Protection of the Ozone Layer, *opened for signature* Mar. 22, 1985, T.I.A.S. No. 11097, 26 I.L.M. 1516 (1987) [hereinafter Vienna Convention].

30. *Protocol on Substances That Deplete the Ozone Layer*, Sept. 16, 1987, Hein's No. KAV 2369, 26 I.L.M. 1541 (1987), *amended by* London Amendments, June 29, 1990, Hein's No. KAV 2825, 30 I.L.M. 537 (1991) [hereinafter *Montreal Protocol*].

harmonized incrementally over time, and become mutually reinforcing. The EIA process in every sectoral treaty does not have to be repeated; once it is completed here, it can be incorporated by reference into other legal instruments. Any inconsistencies that might inadvertently arise in different negotiation sessions can be avoided. This also saves scarce diplomatic and legislative time and money.

Eighth, the draft Covenant provides an environmental code for inter-governmental agencies, such as UNESCO, the World Bank, FAO, and others to use. The many regional and global inter-governmental bodies should avoid duplicative or inconsistent approaches to the same sustainable development issues that the States have addressed.

Ninth, and quite fundamentally, the draft Covenant is a teaching tool. Law is most successful when it educates, identifies the path of enlightened self-interest, and induces persons or States to voluntarily follow that path. The draft Covenant, by relying on principles of international cooperation, instead of coercion, illuminates the way.

Tenth is the most basic rationale, and the fundamental reason for nine years of preparation and now for worldwide debate: to revise and adopt the draft Covenant on Environment and Development. Without considering both development and environment, most, if not all, nations cannot cope with the growing burden of water and air pollution, depleted natural resource stocks, meeting the needs of growing human populations, and solving related problems. The U.N. World Commission on Environment and Development (Brundtland Commission) made this clear in *Our Common Future*.³¹ UNCED did so even more emphatically at the Earth Summit Meetings in 1992 in Rio de Janeiro.

In the post-Rio period, a visible diplomatic process is needed to strengthen the implementation of *Agenda 21* at all levels. The high profile of the U.N. Commission on Sustainable Development must be maintained in order to rapidly integrate and advance the interests of both the environment and development. If the developed States seem to have lost this

31. See *supra* note 18.

perspective following Rio, debate over the draft Covenant can revive attention to the urgent global challenges of *Agenda 21*. This draft Covenant obliges the world's political leaders to focus on the priorities it sets out in its Articles. Is this proposal a realistic effort? How can it not be?

There are those who say that the world does not need another treaty. There are those who want more soft law, an "Earth Charter" as Maurice Strong had urged at Rio, and subsequently through the Earth Council and the "Green Cross," two post-Rio new non-governmental organizations. Such advocates often have not looked at the large number of treaties that do exist, or asked how best to integrate them.

Some may argue that the world needs implementation of *Agenda 21*'s prescriptions for action, not more treaties. Yet, in Chapters 38 and 39 of *Agenda 21*, UNCED expressly calls for more establishing law like the draft Covenant in order to guide and accelerate sustainable development. The draft Covenant is, in fact, one of the measures that UNCED proposes for implementing *Agenda 21*. Law is essential for implementing global, regional, and national policy on environment and development. UNCED emphasized the need to integrate "environment and development issues at national, sub-regional, regional and international levels,"³² including: (a) elaborating the balance between environmental and developmental concerns; (b) clarifying the relationships between the various existing treaties; and (c) ensuring national participation in both developing and implementing these legal measures, with particular focus on developing countries.³³ Rather than competing with *Agenda 21*, the UNCED consensus supports the creation of the draft Covenant.

Some may doubt that IUCN can find a consensus among States today in support of the draft Covenant. IUCN faced the same objection in 1986 to its "new" idea of a biological diversity treaty. In fact, IUCN has wide support among States for this draft Covenant, especially among the developing nations. Some states, perhaps even the United States,

32. *Agenda 21*, *supra* note 2, at ¶ 38.7.

33. *Id.* at ¶ 39.1.

will oppose the draft Covenant for a time. It took the United States three decades to ratify the Convention against Genocide.³⁴ This opposition, if it emerges, is not likely to stop the draft Covenant from going forward into formal negotiations, conclusion and ratifications. The objectives of the draft Covenant can be widely realized without universal participation. The draft Covenant may induce a positive and consistent State practice which can ripen into customary law for states that do not quickly become parties.

The draft Covenant on Environment and Development offers support for sustainable development in many sectors. The draft Covenant furthers the environmental protection articles (Part XII) of the U.N. Law of the Sea Convention,³⁵ and "updates" these Articles by integrating such duties to new undertakings, unconceived of at the time the U.N. Conference on the Law of the Sea in 1982, such as how loss of the stratospheric ozone layer affects marine phytoplankton. The draft Covenant also encourages emergency preparedness and the avoidance of harm rather than allowing damage to occur and afterwards paying for compensation. Specific duties and priorities set forth in the draft Covenant make it more likely that sustainable development can proceed.

In short, this draft Covenant does precisely what Dr. Emil Salim of Indonesia urged in his May 1990 address to The South-East Asia and Pacific Ocean Law Conference (SEAPOL) in Bali, Indonesia. Dr. Salim said: "We believe that pursuit of sustainable development is the only viable way to ensure that mankind will prevail now and in the future. That pursuit must be properly institutionalized, among others, through legal and legislative impacts."³⁶

34. Convention on the Prevention and Punishment of the Crime of Genocide, entered into force Jan. 12, 1951, 78 U.N.T.S. 277, entered into force for U.S. Feb. 23, 1989. See generally Weissbrodt, *U.S. Ratification of the Human Rights Conventions*, 63 MINN. L. REV. 35 (1978).

35. *United Nations Convention on the Law of the Sea*, U.N. Doc. A/CONF. 62/122, reprinted in 21 I.L.M. 1261 (1982) [hereinafter CLOS].

36. INTERNATIONAL CONFERENCE ON THE IMPLEMENTATION OF THE LAW OF THE SEA CONVENTION IN THE 1990'S: MARINE PROTECTION AND OTHER ISSUES (Sukhothai Thammathirat ed., 1990).

III. The Precedents for the Draft Covenant

IUCN's draft Covenant on Environment and Development is structured in nine key "Parts", and includes an opening article stating its objectives and several standard "Final Clauses." All of the seventy-two proposed articles serve the draft Covenant's central objective, "to achieve environmental conservation and sustainable development by establishing integrated rights and obligations."³⁷ The following survey of the precedents which support the draft Covenant illuminates how its objective may be realized.

Part II of the draft Covenant states the "Fundamental Principles" on which its specific obligations are based. Five of these articles essentially restate well accepted general principles of international law,³⁸ and four are basic precepts arrived at through consensus at UNCED.³⁹ The World Charter for Nature⁴⁰ provides a more detailed version of sustainability principles that were derived by re-evaluating international law in light of contemporary environmental scientific knowledge. For instance, while "[r]espect for all life forms"⁴¹ finds express treaty precedent in both the Rio Biological Diversity Treaty⁴² and the Berne Convention on European Wildlife,⁴³ this principle is one found in every major religion. It is a genuine general principle of international law, so universally adopted that it questioned only now when mankind's unprecedented tampering with the Earth's hydrologic cycle, stratospheric ozone shield, or other actions cause the rapid extinction of species. These unnatural trends demand a restatement and reaffirmation of the principle in a treaty. A familiar situation is addressed when the draft Cov-

37. Covenant, art. 1.

38. Covenant, arts. 2, 3, 4, 6, 7.

39. Covenant, arts. 4, 8-10; *see also* UNCED, *supra* note 1.

40. *Charter*, *supra* note 4.

41. Covenant, art. 2.

42. *Biological Diversity*, *supra* note 6.

43. Convention on the Conservation of European Wildlife and Natural Habitats, Sept. 19, 1979, Preamble, Europ. T.S. No. 104.

enant states that the environment "is a common concern of humanity."⁴⁴

The Articles on "Intergenerational Equity,"⁴⁵ Prevention,⁴⁶ and Precaution⁴⁷ are all related, and find support in Principle 21 of the Stockholm Declaration.⁴⁸ While ensuring that no State will use its environment or resources so as to harm another State, the rule for precaution as stated in Article 3(3) of the Rio Climate Change Convention⁴⁹ is evident and well acknowledged, as is the rule for prevention found in Article 194(2) of the U.N. Law of the Sea Convention⁵⁰ or Article 3 of the Rio Biological Diversity Treaty. Even more basic is the duty of parents to provide for their descendants, and the human right of future generations to find that their ability to satisfy their needs has not been compromised by past generations. Paragraph 11 of the Vienna Declaration of Human Rights,⁵¹ restates this duty, as does Principle 3 of the Rio Declaration on Environment and Development.⁵²

The *Agenda 21* principles which articulate the right to develop, the eradication of poverty, the avoidance of wasteful consumption, and the recognition that peace, development, environmental protection and respect for human rights are interdependent,⁵³ and are grounded in the right to life itself.⁵⁴ Since these principles permeate most of *Agenda 21*, the Agenda itself is perhaps the best authority for these principles.

Part III of the draft Covenant sets forth general obligations. These are divided into rather conventional duties of

44. Covenant, art. 3.

45. Covenant, art. 5.

46. Covenant, art. 6.

47. Covenant, art. 7.

48. *Stockholm*, *supra* note 24, at princ. 21.

49. *Climate Change*, *supra* note 7.

50. *Biological Diversity*, *supra* note 6.

51. *Report of the World Conference on Human Rights*, U.N. GAOR, 48th Sess., at 24, U.N. Doc. A/CONF.157/24 (Part I) (1993).

52. UNCED, *supra* note 1, at vol. IV.

53. Covenant, arts. 4, 8-10.

54. See *The Universal Declaration of Human Rights*, G.A. Res. 217A (111), art. 3, 25, U.N. Doc. A/810, 21, 112 (1948); *International Covenant on Civil and Political Rights*, Dec. 19, 1966, art. 6, ¶ 1, 999 U.N.T.S. 171, 6 I.L.M. 368 (1966).

States,⁵⁵ including Principle 21 of the Stockholm Declaration on the duty to cooperate as governed by the United Nations Charter itself. Less conventional is the Article on Persons.⁵⁶ One of *Agenda 21*'s most important consensus elements is to prescribe cooperation and stewardship obligations for individuals.⁵⁷ Just as international human rights place the individual as the subject of international law, so too do the general principles of law governing environment and development. The draft Covenant incorporates these soft law elements from *Agenda 21* into a treaty standard by which to gauge human conduct. The other general obligations of Part III elaborate the basic objective of the draft Covenant⁵⁸ and restate the basic tenet of environmental protection that when states remediate an environmental harm or threat, they must not transform or transfer the harm into another form.⁵⁹

Among the most effective provisions of the draft Covenant are those set forth in Part IV, "relating to natural systems and resources."⁶⁰ These Articles integrate environmental scientific knowledge with social and economic actions. Whether it is the State's duty to respond to emergencies such as a Chernobyl-type accident⁶¹ or to protect the stratospheric ozone,⁶² or to stabilize anthropogenic interference with the Earth's climate system,⁶³ or to maintain water quality systems,⁶⁴ the draft Covenant carefully restates already widely acknowledged duties. The draft Covenant's Articles on Soil,⁶⁵ Natural Systems,⁶⁶ and Biological Diversity⁶⁷

55. Covenant, art. 11.

56. Covenant, art. 12.

57. *Agenda 21*, *supra* note 2, at chs. 23-32.

58. Covenant, art. 13.

59. Covenant, art. 14. *See also* LOS, *supra* note 35, at art. 195; Rio Declaration, *supra* note 25, at princ. 7.

60. Covenant, pt. IV.

61. Covenant, art. 15; *see also* CHERNOBYL LAW AND COMMUNICATION: TRANSBOUNDARY NUCLEAR AIR POLLUTION (Phillipe Sands ed., 1988).

62. Vienna Convention, *supra* note 29; *Montreal Protocol*, *supra* note 30.

63. Covenant, art. 17.

64. Covenant, art. 19.

65. Covenant, art. 18.

66. Covenant, art. 20.

67. Covenant, art. 21.

are more innovative and progressive. Similarly, the Articles on Biological Diversity or on cultural and national heritage⁶⁸ integrate existing treaties on those topics,⁶⁹ and put them in the context of inter-sectoral duties. No treaty today reflects the teachings of soils science. It is anomalous for States to prescribe remediation for desertification according to the Rio Treaty on Desertification and yet posit no rule to prevent the desertification from developing.

The structure of the draft Covenant is similar to that of the U.N. World Charter for Nature where principles are stated first and are followed by specific duties derived therefrom. Part V of the draft Covenant sets forth obligations relating to human processes and activities. Here technology assessment,⁷⁰ pollution prevention and abatement,⁷¹ waste minimization,⁷² and the integration of alien or modified organisms⁷³ each reflect customary state practice and treaty law as it has developed since the 1972 U.N. Conference on the Human Environment.

Part VI of the draft Covenant is primarily derived from UNCED. The Articles on "Demographic Policies" and on "Consumption Patterns" reflect the UNCED agreement to balance *Agenda 21's* Chapter 5, "Changing Consumption Patterns," and Chapter 4, "Demographic Dynamics and Sustainability." This was *the* essential North-South consensus balance agreed to at UNCED. The 1994 Cairo Conference on Population⁷⁴ elaborated the former in its Declaration and Action Plan. Further elaboration of the latter is found primarily in emerging state practice, such as the green packaging

68. Covenant, art. 22.

69. *Biological Diversity*, *supra* note 6; UNESCO Heritage Convention, *supra* note 17.

70. Covenant, art. 23.

71. Covenant, art. 24.

72. Covenant, art. 25.

73. Covenant, art. 26.

74. *Report of the International Conference on Population and Development*, U.N. International Conference on Population and Development, U.N. Doc. A/CONF.171/13 (1994).

rules of Germany⁷⁵ or electricity demand-side management reforms of several states in the United States.⁷⁶

Part VI also contains the more problematic articles covering "Eradication of Poverty,"⁷⁷ "Trade and Environment,"⁷⁸ and "Economic Activities of Foreign Origin."⁷⁹ These proposed Articles were drafted to help diplomats use specific terms rather than the general expressions of consensus in their negotiations of issues that had already been arrived at in UNCED and were included in *Agenda 21*.⁸⁰ Greater clarity of the core legal obligations is required to move these UNCED expressions of consensus from soft law to hard law. Drafting these articles presented, perhaps, the most difficult challenge in preparing the draft Covenant. Their expression represents largely uncharted territory, although the 1994 Cairo Population Conference Programme of Action⁸¹ offers some guidance on state practice, as do the 1994 agreement establishing the World Trade Organization⁸² and other recent developments under The General Agreement on Tariffs and Trade,⁸³ as well as the Environmental Side Agreement for the North American Free Trade Agreement.⁸⁴

Although these progressive and newly defined articles lack established formulas for expressing their obligations, the duties to protect the environment in times of armed conflict

75. Ordinance on the Avoidance of Packaging Waste, 19910612 BGBI. I 1410, *amended by* 19931026 BGBI. I 1782 (1991), *reprinted in* BETTE K. FISHBEIN, GERMANY, GARBAGE AND THE GREEN DOT 207 (Sharon L. Azimi ed., 1994).

76. *See* RICHARD OTTINGER, ET AL., *THE ENVIRONMENTAL COSTS OF ELECTRICITY* (1991).

77. Covenant, art. 29.

78. Covenant, art. 30.

79. Covenant, art. 31.

80. *See, e.g., Agenda 21, supra* note 2, at chs. 4, 5 (on consumption and demographics).

81. *See supra* note 74.

82. Agreement Establishing the World Trade Organization, 33 I.L.M. 1144 (Apr. 15, 1994).

83. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. (5), (6), 55 U.N.T.S. 187; *United States Restrictions on Imports of Tuna*, GATT Doc. DS29/R (June 1994) (panel report), *reprinted in* 33 I.L.M. 839 (1994).

84. North American Agreement on Environmental Cooperation, Sept. 13, 1993, *reprinted in* NAFTA TEXT (1994).

are very clear.⁸⁵ These duties are precisely defined by the Additional Protocol I (1977) to the Red Cross 1949 Geneva Convention⁸⁶ and the U.N. 1976 Environmental Modification Treaty.⁸⁷ The 1954 Hague Cultural Property Convention⁸⁸ defines the protection of culture and nature, which are obligatory in time of armed conflict. Although the International Committee of the Red Cross and IUCN have proposed practical measures by which States can implement these obligations,⁸⁹ few have done so. Here the draft Covenant's problems arise not from the need to draft new written texts, but from the persistent failure of States to take the required political steps to give effect to the rules that they understand and adapt.

In Part VII, the draft Covenant returns to more conventional and well settled legal norms. Most of these duties are based on ample precedents and reflect substantial state practice; some are reflective of custom. The duties with respect to transboundary environmental effects,⁹⁰ including prior notification and environmental impact assessment, are well established.⁹¹ Duties for the management of shared resources⁹² have a rich and accepted legal foundation.⁹³

85. See Covenant, art. 32.

86. Additional Protocol I to the Geneva Convention of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, art. 55, Hein's No. KAV 2377, 1125 U.N.T.S. 3, reprinted in 16 I.L.M. 1391 (1977).

87. See Convention on the Prohibition of Military or Other Use of Environment Modification Techniques, Dec. 10, 1976, 31 U.S.T. 333, 1108 U.N.T.S. 151, reprinted in 16 I.L.M. 88 (1977).

88. See Convention on the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240.

89. See the ICRC *Guidelines For Military Manuals* and Instructions on the Protection of the Environment in Times of Armed Conflict (see annex to U.S. DOC. A/48/269 (1994)); IUCN *Consultation on Protection of the Environment in Times of Armed Conflict* (1990), reprinted in 22 ENVTL. POL'Y & L. 63 (1992).

90. Covenant, art. 33.

91. See, e.g., *Corfu Channel* (U.K. v. Alb.), 1949 I.C.J. 22 (Apr. 9); Transboundary EIA, *supra* note 28.

92. Covenant, art. 34.

93. See, e.g., The 1909 U.S.-Canada Boundary Waters Agreement, Jan. 11, 1909, U.S.-U.K., T.S. No. 548; The Great Lakes Water Quality Agreement, Preamble, Nov. 22, 1978, U.S.-Can., 30 U.S.T. 1383.

The draft Covenant again encounters difficulty when it restates the legal duties for "implementation and cooperation." These Articles, stated in Part III do not reflect the same kind of preliminary consensus encountered in Part VI. Rather, they are consensus norms that were agreed to at UNCED because they are in fact widely used and accepted *within* States around the world. What was new at UNCED is their inclusion in an international soft law context in addition to their status as national legislation. Not all States have enacted such laws. The draft Covenant would require each State to promulgate comparable legislation for sustainable development.

Most nations already have enacted legislation which enumerates duties to prepare national action plans;⁹⁴ to undertake regional land use plans and other physical planning;⁹⁵ to enact and routinely employ environmental impact assessment;⁹⁶ to establish environmental standards and routine controls for pollution control or natural resource management;⁹⁷ to collect environmental data and information to ascertain clearly the facts about environmental conditions;⁹⁸ and to cooperate on scientific and technical matters.⁹⁹ Other treaties often also provide authority supporting such legislative duties.

Even if States acknowledge the need for such national environmental laws, the draft Covenant in Part VIII effectively provides what each nation, individually cannot achieve. Missing from these national laws and the sectoral treaties on specific topics is a coordinating procedure. UNCED, like the Bruntland Commission before it, identified and confirmed the need to integrate and harmonize these various legal systems around the world. All States should have common national legal procedures and means by which to observe the treaty obligations of the draft Covenant. Just as

94. Covenant, art. 35.

95. Covenant, art. 36.

96. Covenant, art. 37.

97. Covenant, art. 38.

98. Covenant, art. 39.

99. Covenant, art. 40.

the World Charter for Nature¹⁰⁰ set out guidance for national implementation of its principles, so UNCED in *Agenda 21* recognized the importance of not leaving it for the States to take the next step to establish and integrate their legal implementation machinery.

Although to diplomatic and national political leaders, Part VIII may appear to be an undistinguished part of the draft Covenant, it is nonetheless probably the most important section because it induces the States to integrate environmental concerns with development. It is here that the draft Covenant's objectives must be achieved, or not at all.

Corollaries which arise out of this existing state legislative and administrative practice can be used to promote effectiveness. The remainder of the Articles in Part VIII, concerning the development and transfer of technology,¹⁰¹ the fair and equitable sharing of the benefits of biotechnologies,¹⁰² the exchange of information and knowledge¹⁰³ and the furthering of education, training and public awareness,¹⁰⁴ all state important duties which make implementation more efficient.

Similarly unless all nations allocate adequate national financial resources for observance and implementation,¹⁰⁵ the individual States cannot succeed in meeting the legal obligations of attaining sustainable development. *Agenda 21* expressly emphasized the far reaching significance of this seemingly self-evident rule.¹⁰⁶

It will be more problematic for diplomats to restate the proposed Article on International Financial Resources¹⁰⁷ in any future negotiations of this draft Covenant. This Article is similar to Part VI because it relates to obligations concerning global issues. It appears in the "implementation and coopera-

100. *Charter, supra* note 4.

101. Covenant, art. 41.

102. Covenant, art. 42.

103. Covenant, art. 43.

104. Covenant, art. 44.

105. Covenant, art. 45.

106. *Agenda 21, supra* note 2, ¶¶ 34.22, 34.23, 34.29.

107. Covenant, art. 46.

tion" Part because it logically belongs there. It should be noted, however, that no treaty obligation now fixes the duty of nations to target 0.7% of their gross national product for official development assistance.¹⁰⁸ Many nations do, in fact, make major voluntary financial contributions toward development. However, this sum has not kept pace with increases in population growth, global pollution, or natural resource depletion.

UNCED heatedly debated the need for more than merely incremental increases in each State's developmental aid. However, as reflected in the financial paragraphs in each Chapter of *Agenda 21*, consensus was difficult to achieve and little new financial support was forthcoming.

Nonetheless, if the U.N. target of 0.7%¹⁰⁹ is not to be regarded hypocritically, serious efforts are needed to translate the fragile *Agenda 21* consensus on financial duties into a legal context. At least, diplomats can now negotiate the more precise terms of this legal and moral obligation to cooperate in establishing the conditions for "sustainable development," and can try to attain an acceptable restatement of such a duty. Of course, a range of treaty precedents for this obligation already exists, including the terms establishing the World Bank,¹¹⁰ the Global Environmental Facility¹¹¹ and the undertakings noted in *Agenda 21*.¹¹² It should be possible for a draft Covenant on Environment and Development to state this legal duty with specificity. IUCN offers this first draft towards that end.

Part IX on "Responsibility and Liability" is a very useful melding of well settled, public international law obligations

108. Covenant, art. 46, pt. 2.

109. *Id.*

110. Articles of Agreement of the International Bank for Reconstruction and Development, Dec. 27, 1945, 60 Stat. 1440, 2 U.N.T.S. 134.

111. See *Instrument for the Establishment of the Restructured Global Environment Facility*, U.N. Development Programme, 2d Sess., U.N. Doc. DP/1994/9 (1994); *Documents Concerning the Establishment of the Global Environment Facility*, World Bank Res. 91-5 (Apr. 1991). See also the relevant sections on the GEF in Climate Change, *supra* note 7 and Biological Diversity, *supra* note 6.

112. *Agenda 21*, *supra* note 2, at art. 10.

with reasonably clear private international and comparative law duties. State responsibility¹¹³ and liability¹¹⁴ are well restated. The obligations of cessation, restitution and compensation¹¹⁵ are also accepted. The problem with this part is its application. No actual or potential "wrong-doer" ever wants a clearly stated rule and some politicians will resist this restatement because they fear that their future conduct may be judged by it.

Regrettably, there is no universally agreed forum today where judgment for acts which violate international law and damage the environment can be had. The International Court of Justice and its environmental chamber, or the Permanent Court of International Arbitration could take on these tasks, but States routinely have not made the political decisions to assign them this responsibility.

It is all the more important, therefore, for this draft Covenant to clearly state the agreed rules of responsibility and liability. Whenever courts must decide, or *ad hoc* arbitral panels are convened, or a *compromise* sends a matter to an international tribunal, Part IX of this draft Covenant can provide parties with a neutral rule to apply.

Seen in this light, the draft Covenant's Part IX is extremely important in providing a mechanism for the peaceful settlement of disputes over environmental and natural resource claims. Articles on agreed exemptions from liability,¹¹⁶ the duty of States to provide civil remedies to victims of environmental wrongs¹¹⁷ and that such recourse be non-discriminatory,¹¹⁸ complete Part IX.

All the Articles in the draft Covenant must be read together with the other treaties already in force that concern the same subjects. The purpose of Part X is to provide general rules of interpretation and application for a harmonious integration of the obligations set forth in the various treaties.

113. Covenant, art. 47.

114. Covenant, arts. 48, 50.

115. Covenant, art. 49.

116. Covenant, arts. 51, 54.

117. Covenant, art. 52.

118. Covenant, art. 53.

The Vienna Convention on the Law of Treaties¹¹⁹ is the foundation for this Part. The Articles on the Parties' participation in these related treaties,¹²⁰ about permitting the more stringent rules to apply,¹²¹ the application to the commons,¹²² and relations with non-parties¹²³ provide rules for construing related duties in the specific context of environment and development. They provide the framework to expressly guide the harmonization of all the varied and still growing number of treaties that pertain to sustainable development.

The Articles on national reporting,¹²⁴ compliance, and dispute avoidance¹²⁵ or settlement,¹²⁶ offer practical steps by which unilateral disagreements concerning the application of these rules of interpretation may be clarified and peacefully resolved.

Finally, the draft Covenant on Environment and Development contemplates the need for a forum where changes to the draft Covenant can be considered. No single United Nations organ, except perhaps the General Assembly itself, has the full oversight of the matters set forth in the draft Covenant. Thus, a provision has been made for a limited conference of parties to periodically review the work of this self-implementary draft Covenant.¹²⁷ There are ample precedents for such a review conference.¹²⁸ While it may be more progressive to structure a new specialized international agency for sustainable development, or merge the U.N. Development Programme (UNDP) with the UNEP, there is as yet no consensus among States to take this step. States need

119. Vienna Convention on the Law of Treaties, Between States and International Organizations or Between International Organizations, Mar. 21, 1986, U.N. Doc. A/CONF.129/5, Hein's No. KAV 2425, 25 I.L.M. 543 (1986) [hereinafter *Law of Treaties*].

120. Covenant, art. 56.

121. Covenant, art. 57.

122. Covenant, art. 58.

123. Covenant, art. 59.

124. Covenant, art. 60.

125. Covenant, art. 61.

126. Covenant, art. 62.

127. Covenant, art. 63.

128. See, e.g., *Law of Treaties*, *supra* note 119; see also *Climate Change*, *supra* note 7, at art. 7.

time to independently harmonize their national endeavors under an umbrella agreement such as the draft Covenant, before they can define the roles they wish such an agency to serve.

The final clauses of Part XI contain standard elements of international law. Twenty-one States must ratify this draft Covenant before it enters into force,¹²⁹ although a larger or lesser number of States could be selected. It has been proposed that the United Nations Secretary General be the Depositary for the draft Covenant,¹³⁰ although the European Union or any State could be assigned this responsibility.

IV. Conclusions

IUCN has prepared its draft Covenant on Environment and Development as a model text. Its reception awaits the debates in the U.N. Commission on Sustainable Development, in the U.N. Environment Programme's Governing Council, and elsewhere. States must resolve whether or not they wish to translate the soft law of *Agenda 21* on sustainable development into a hard law treaty, and if so, how.

Just as the first fifty years of multilateral cooperation through the U.N. largely addressed an agenda of international peace-keeping, human rights and disarmament, so the next 50 years of State cooperation will work to integrate environment and development and make progress toward attaining sustainable development. If it does nothing else, at least the terms of the draft Covenant provide an inventory for this future agenda, which is essential to the well being of Earth and the life it sustains.

129. Covenant, art. 68.

130. Covenant, art. 71.

Appendix

First scholarly publication of the IUCN Draft International Covenant on Environment and Development.

DRAFT INTERNATIONAL COVENANT ON ENVIRONMENT AND DEVELOPMENT

PREAMBLE

The Parties to this Covenant:

Recognizing the unity of the biosphere, a unique and indivisible ecosystem, and the interdependence of all its components;

Conscious that humanity is a part of nature and that all life depends on the functioning of natural systems which ensure the supply of energy and nutrients;

Convinced that living in harmony with nature is a prerequisite for sustainable development, because civilization is rooted in nature, which shapes human culture and inspires artistic and scientific achievement;

Sharing the belief that humanity stands at a decisive point in history, which calls for a global partnership to achieve sustainable development;

Mindful of the increasing degradation of the global environment and deterioration and depletion of natural resources, owing to excessive consumption, rising population pressures, pollution, poverty, and armed conflict;

Recognizing the need to integrate environmental and developmental policies and laws in order to fulfill basic human needs, improve the quality of life, and ensure a more secure future for all;

Aware that the respect for human rights and fundamental freedoms contributes to sustainable development;

Conscious that the right to development must be fulfilled so as to meet the developmental and environmental needs of present and future generations in a sustainable and equitable manner;

Recognizing that inter-generational and intra-generational responsibility, as well as solidarity and cooperation among

the peoples of the Earth, are necessary to overcome the obstacles to sustainable development;

Acknowledging that addressing the particular situation and needs of developing countries, especially those of the least developed and of the most environmentally vulnerable, is a high priority, and that developed countries bear a special responsibility in the pursuit of sustainable development;

Affirming the essential duty of all to respect and preserve the environment;

Considering that the existing and future international and national policies and laws on environment and development need an integrated legal framework to provide individuals, States, and other entities, with ecological and ethical guidance, as recommended by the United Nations Conference on Environment and Development assembled in Rio de Janeiro in June 1992;

AGREE as follows:

I. OBJECTIVE

ARTICLE 1

Objective

The objective of this Covenant is to achieve environmental conservation and sustainable development by establishing integrated rights and obligations.

II. FUNDAMENTAL PRINCIPLES

In their actions to achieve the objective of this Covenant and to implement its provisions, the Parties shall be guided, *inter alia*, by the following fundamental principles:

ARTICLE 2

Respect for All Life Forms

Nature as a whole warrants respect; every form of life is unique and is to be safeguarded independent of its value to humanity.

ARTICLE 3

Common Concern of Humanity

The global environment is a common concern of humanity.

ARTICLE 4

Interdependent Values

Peace, development, environmental protection and respect for human rights and fundamental freedoms are interdependent.

ARTICLE 5

Inter-Generational Equity

The freedom of action of each generation in regard to the environment is qualified by the needs of future generations.

ARTICLE 6

Prevention

Protection of the environment is best achieved by preventing environmental harm rather than by attempting to remedy or compensate for such harm.

ARTICLE 7

Precaution

Lack of scientific certainty is no reason to postpone action to avoid potentially significant or irreversible harm to the environment.

ARTICLE 8

Right to Development

The exercise of the right to development entails the obligation to meet the developmental and environmental needs of humanity in a sustainable and equitable manner.

ARTICLE 9

Eradication of Poverty

The eradication of poverty, an indispensable requirement for sustainable development, necessitates a global partnership.

ARTICLE 10

Consumption Patterns and Demographic Policies

The elimination of unsustainable patterns of production and consumption and the promotion of appropriate demographic policies are necessary to enhance the quality of life for all humanity and reduce disparities in standards of living.

III. GENERAL OBLIGATIONS

ARTICLE 11

States

1. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to utilize their resources to meet their environmental and sustainable developmental needs, and the obligations:

- (a) to protect and preserve the environment within the limits of their national jurisdiction; and
- (b) to ensure that activities within their jurisdiction or control do not cause potential or actual harm to the environment of other States or of areas beyond the limits of national jurisdiction.

2. States have, in accordance with the Charter of the United Nations and principles of international law, the right to protect the environment under their jurisdiction from significant harm caused by activities outside their national jurisdiction. If such harm has occurred, they are entitled to appropriate remedies.

3. Parties shall endeavor to avoid wasteful use of natural resources and, in particular, shall take measures to ensure the sustainable use of renewable resources.

4. Parties shall co-operate, in the implementation of this Covenant, in good faith with each other and with competent

international organizations, and shall provide non-governmental organizations and indigenous peoples with the appropriate opportunities to participate in decision-making processes.

5. Parties who are members of international organizations undertake to pursue within such organizations policies that are consistent with the provisions of this Covenant.

6. Parties shall apply the principle that the costs of preventing, controlling and reducing potential or actual harm to the environment are to be borne by the originator.

ARTICLE 12

Persons

1. Parties undertake to achieve progressively the full realization of the right of everyone to an environment and a level of development adequate for their health, well-being and dignity.

2. All persons have a duty to protect and preserve the environment.

3. All persons, without being required to prove an interest, have the right to seek, receive, and disseminate information on activities or measures adversely affecting or likely to affect the environment and the right to participate in relevant decision-making processes.

4. All persons have the right to effective access to judicial and administrative proceedings, including for redress and remedy, in enforcing their rights under this Covenant.

5. Parties shall respect and ensure the rights and the fulfillment of the duties recognized in this Article and shall devote special attention to the satisfaction of basic human needs, in particular the provision of potable water.

6. Parties shall develop or improve mechanisms to facilitate the involvement of indigenous peoples and local communities in environmental decision-making at all levels and shall take measures to enable them to pursue sustainable traditional practices.

ARTICLE 13

Integrating Environment and Development

1. Parties shall pursue sustainable development policies aimed at the eradication of poverty, the general improvement of economic, social and cultural conditions, the conservation of biological diversity, and the maintenance of essential ecological processes and life-support systems.
2. Parties shall ensure that environmental conservation is treated as an integral part of the planning and implementation of activities at all stages and at all levels, giving full and equal consideration to environmental, economic, social and cultural factors. To this end, Parties shall:
 - (a) conduct regular national reviews of environmental and developmental policies and plans;
 - (b) enact effective laws and regulations which use, where appropriate, economic instruments; and
 - (c) establish or strengthen institutional structures and procedures to fully integrate environmental and developmental issues in all spheres of decision-making.

ARTICLE 14

Transfer or Transformation of Environmental Harm

Parties shall not transfer, directly or indirectly, harm or hazards from one area to another or transform one type of environmental harm into another.

ARTICLE 15

Prevention of and Response to Emergencies

1. Each Party shall, without delay and by the most expeditious means available, notify potentially affected States and competent international organizations of any emergency originating within its jurisdiction or control, or of which it has knowledge, that may cause harm to the environment.
2. A Party within whose jurisdiction or control an emergency originates shall immediately take all practicable measures necessitated by the circumstances, in cooperation with

potentially affected States, and where appropriate, competent international organizations, to prevent, mitigate and eliminate harmful effects of the emergency.

3. Parties shall develop joint contingency plans for responding to emergencies, in co-operation, where appropriate, with other States and competent international organizations.

IV. OBLIGATIONS RELATING TO NATURAL SYSTEMS AND RESOURCES

ARTICLE 16

Stratospheric Ozone

Parties shall take all appropriate measures to prevent the depletion of stratospheric ozone. To that end, Parties shall restrict human activities which modify or are likely to modify the stratospheric ozone layer in ways that adversely affect human health and the environment.

ARTICLE 17

Global Climate

Parties shall take all appropriate measures to achieve the stabilization of concentrations of greenhouse gases in the atmosphere at a level that prevents dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production, essential ecological processes, and biological diversity are not threatened, and to enable economic development to proceed in a sustainable manner.

ARTICLE 18

Soil

Parties shall ensure the conservation and where necessary the regeneration of soils for all living systems by taking effective measures to prevent soil erosion, to combat desertification, to safeguard the processes of organic decomposition and to promote the continuing fertility of soils.

ARTICLE 19

Water

Parties shall take all appropriate measures to maintain and restore the quality of water, including atmospheric, marine, ground and surface fresh water, to meet basic human needs and as an essential component of aquatic systems. They shall, in particular, establish standards to safeguard the supply and quality of sources of drinking water and to maintain the capacity of aquatic systems to support life.

ARTICLE 20

Natural Systems

1. Parties shall take appropriate measures to conserve and, where necessary and possible, restore natural systems which support life on Earth in all its diversity, including biological diversity, and to maintain and restore the ecological functions of these systems as an essential basis for sustainable development, including inter alia,

- (a) forests as climate regulators and as natural means to control erosion and floods;
- (b) freshwater wetlands and floodplains as recharge areas for groundwaters, floodwater buffers, filters and oxidizing areas for contaminants;
- (c) marine ecosystems, in particular coastal ecosystems including barrier islands, estuaries, mangroves, sea grass beds, coral reefs and mudflats as natural defenses against coastal erosion and essential habitats for the support of fisheries.

2. Parties shall, within their jurisdiction, manage natural systems as single ecological units. In particular they shall,

- (a) manage aquatic systems as entire units covering the full extent of the catchment area, and
- (b) manage coastal systems as entire units covering both aquatic and terrestrial components.

ARTICLE 21

Biological Diversity

1. Parties shall take all appropriate measures to conserve biological diversity, including species diversity, genetic diversity within species, and ecosystem diversity, especially through in situ conservation. To this end, Parties shall:

- (a) integrate conservation of biological diversity into their physical planning systems;
- (b) establish a system of protected areas, where appropriate with buffer zones and inter-connected corridors; and
- (c) prohibit the taking or destruction of endangered species, protect their habitats, and develop recovery plans for such species.

2. States shall regulate or manage biological resources with a view to ensuring their conservation, sustainable use, and where necessary and possible, restoration. To this end, Parties shall:

- (a) develop and implement conservation and management plans for harvested biological resources;
- (b) prevent a decrease in the size of harvested populations below the level necessary to ensure stable recruitment;
- (c) safeguard and restore habitats essential to the continued existence of the species or populations concerned;
- (d) preserve and restore ecological relationships between harvested and dependant or associated species or populations; and
- (e) prevent or minimize incidental taking of non-target species and prohibit indiscriminate means of taking.

ARTICLE 22

Cultural and Natural Heritage

Parties shall take all appropriate measures to conserve or rehabilitate cultural and natural monuments, and areas, including Antarctica, of outstanding scientific, cultural, spiritual, or aesthetic significance and to prevent all deliber-

ate measures and acts which might harm or threaten such monuments or areas.

V. OBLIGATIONS RELATING TO PROCESSES AND ACTIVITIES

ARTICLE 23

Prevention of Harm

Parties shall identify and evaluate substances, technologies, processes and categories of activities which have or are likely to have significant adverse effects on the environment. They shall systematically survey, regulate or manage them with a view to preventing any significant environmental harm.

ARTICLE 24

Pollution

Parties shall take, individually or jointly as appropriate, all measures that are necessary to prevent, reduce, and control pollution of any part of the environment, in particular from radioactive, toxic, and other hazardous substances. For this purpose, they shall use the best practicable means at their disposal and shall endeavor to harmonize their policies.

ARTICLE 25

Waste

1. Parties shall ensure that the generation of waste be reduced to a minimum and that waste be disposed of in an environmentally sound manner, to the fullest extent possible in the source Party.
2. Parties shall prohibit the transboundary movement of radioactive, toxic, or other hazardous waste where there has been no prior informed consent of the transit and receiving States and to or through States where such transboundary movement has been prohibited. Under no circumstances shall there be any export of such waste where the exporting Party has reason to believe that it will not be managed or disposed of in an environmentally sound manner. If a transboundary movement cannot be completed in compliance with

these requirements, the exporting Party shall ensure that such waste is taken back if alternative environmentally sound arrangements cannot be made.

ARTICLE 26

Introduction of Alien or Modified Organisms

1. Parties shall prohibit the intentional introduction into the environment of alien or modified organisms which are likely to have adverse effects on other organisms or the environment. They shall also take the appropriate measures to prevent accidental introduction or escape of such organisms.
2. Parties shall regulate and manage the risks associated with the development, use and release of modified organisms resulting from biotechnologies which are likely to have adverse effects on other organisms or the environment.
3. Parties shall take all appropriate measures to control and, to the extent possible, eradicate introduced alien or modified organisms when such organisms have or are likely to have a significant adverse effect on other organisms or the environment.

VI. OBLIGATIONS RELATING TO GLOBAL ISSUES

ARTICLE 27

Demographic Policies

Parties shall develop or strengthen demographic policies in order to achieve sustainable development. To this end, Parties shall:

- (a) conduct studies to estimate the size of the human population their environment is capable of supporting and develop programmes relating to population growth at corresponding levels;
- (b) co-operate to alleviate the stress on natural support systems caused by major population flows;
- (c) co-operate as requested to provide a necessary infrastructure on a priority basis for areas with rapid population growth; and
- (d) provide to their populations full information on the options concerning family planning.

ARTICLE 28

Consumption Patterns

Parties shall seek to develop strategies to reduce or eliminate unsustainable patterns of consumption. Such strategies shall be designed, in particular, to meet the basic needs of the poor and to reduce use of non-renewable resources in the production process. To this end, Parties shall:

- (a) collect and disseminate information on consumption patterns and develop or improve methodologies for analysis;
- (b) ensure that all raw materials and energy are used as efficiently as possible in all products and processes;
- (c) require recycling of used materials to the fullest extent possible;
- (d) promote product designs that increase reuse and recycling and as far as possible eliminate waste; and
- (e) facilitate the role and participation of consumer organizations in promoting more sustainable consumption patterns.

ARTICLE 29

Eradication of Poverty

Parties, with the assistance of and in cooperation with other States and international organizations as appropriate, shall seek to take measures which will, directly or indirectly, contribute to the eradication of poverty, including measures to:

- (a) enable all individuals to achieve sustainable livelihoods;
- (b) promote food security and, where appropriate, food self-sufficiency in the context of sustainable agriculture;
- (c) rehabilitate degraded resources, to the extent practicable, and promote sustainable use of resources for basic human needs;
- (d) provide potable water and sanitation; and
- (e) provide education.

ARTICLE 30

Trade and Environment

1. Parties shall co-operate to establish and maintain an international economic system that equitably meets the developmental and environmental needs of present and future generations. To this end, Parties shall endeavor to ensure that:

- (a) trade does not lead to the wasteful use of natural resources nor interfere with their conservation or sustainable use;
- (b) trade measures addressing transboundary or global environmental problems are based, as far as possible, on international consensus;
- (c) trade measures for environmental purposes do not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade;
- (d) unilateral trade measures by importing Parties in response to activities which are harmful or potentially harmful to the environment outside the jurisdiction of such Parties are avoided as far as possible or occur only after consultation with affected States and are implemented in a transparent manner; and
- (e) prices of commodities and raw materials reflect the full direct and indirect social and environmental costs of their extraction, production, transport, marketing, and, where appropriate, ultimate disposal.

2. As regards biological resources, products and derivatives, Parties shall endeavor to ensure that:

- (a) trade is based on management plans for the sustainable harvesting of such resources and does not endanger any species or ecosystem; and
- (b) Parties, whose biological resources cannot be exported due to prohibitions imposed by a multilateral environmental agreement, shall receive appropriate compensation for losses suffered due to non-compliance by any other party to agreement.

ARTICLE 31

Economic Activities of Foreign Origin

1. Parties shall require, from all economic entities and in regard to activities of foreign origin conducted within their jurisdiction, information on:

- (a) potential or actual harm to the environment resulting from their activities;
- (b) the relevant environmental legal requirements and standards applicable in the State of origin;
- (c) the techniques in use in the State of origin to comply with such requirements and standards; and
- (d) reasonably available data and information concerning the state-of-the-art techniques to prevent environmental harm.

2. The State of origin shall, upon request of the host Party:

- (a) provide it with all relevant information on applicable environmental requirements and standards within the limits of its jurisdiction; and
- (b) enter into consultations with the host Party to enable the host Party to take appropriate measures regarding such activities.

3. The Party of origin shall ensure that, in the absence of equally strict or higher environmental standards in the host Party or express agreement by the host Party to the contrary, it shall cause its nationals to apply the relevant standards of the State of origin.

ARTICLE 32

Military and Hostile Activities

1. Parties shall protect the environment during periods of armed conflict. In particular, Parties shall:

- (a) observe, outside areas of armed conflict, all international environmental rules by which they are bound in times of peace;

- (b) take care to protect the environment against avoidable harm in areas of armed conflict;
- (c) not employ or threaten to employ methods or means of warfare which are intended or may be expected to cause widespread, long-term, or severe harm to the environment and ensure that such means and methods of warfare are not developed, produced, tested, or transferred; and
- (d) not use the destruction or modification of the environment as a means of warfare or reprisal.

2. Parties shall co-operate to further develop and implement rules and measures to protect the environment during international armed conflict and establish rules and measures to protect the environment during non-international armed conflict.

3. All Parties involved in armed conflicts shall take the necessary measures to protect natural and cultural sites of special interest, in particular sites designated for protection under applicable international treaties, as well as potentially dangerous installations, from being subject to attack as a result of armed conflict, insurgency, terrorism, or sabotage. Military personnel shall be instructed as to the existence and location of such sites and installations.

4. Parties shall take measures to ensure that persons are held responsible for the deliberate and intentional use of means or methods of warfare which cause widespread, long-term, or severe harm to the environment.

5. Parties shall ensure that military personnel, aircraft, vessels and other equipment and installations are not exempted in times of peace from rules, standards, and measures for environmental protection.

VII. TRANSBOUNDARY ISSUES

ARTICLE 33

Transboundary Environmental Effects

Parties shall take appropriate measures to prevent transboundary environmental harm. When a proposed activity may generate such harm, Parties shall:

- (a) ensure that an environmental impact assessment is undertaken, as provided in Article 37;
- (b) give prior and timely notification, along with relevant information, to potentially affected States, and consult in good faith with those States at an early stage; and
- (c) grant potentially affected persons in other States access to, as well as due process in, administrative and judicial proceedings, without discrimination on the basis of residence or nationality.

ARTICLE 34

Transboundary Natural Resources

Parties shall co-operate in the conservation, management and restoration of natural resources which occur in areas under the jurisdiction of more than one State, or fully or partly in areas beyond the limits of national jurisdiction. To this end:

- (a) Parties sharing the same natural system shall manage that system as a single ecological unit notwithstanding national boundaries. They shall co-operate on the basis of equity and reciprocity, in particular through bilateral and multilateral agreements, in order to develop harmonized policies and strategies covering the entire system and the ecosystems it contains. With regard to aquatic systems, such agreements shall cover the entire catchment area, including the adjoining marine environment.
- (b) Parties sharing the same species or population, whether migratory or not, shall treat such species or population as a single biological unit. They shall co-operate, in particular through bilateral and multilateral agreements, in order to maintain the species or population concerned in a favorable conservation status. In the case of a harvested species or population, all the range Parties of that species or population shall co-operate in the development and implementation of a joint management plan to ensure the sustainable use of that resource and the equitable sharing of the benefits deriving from that use.

VIII. IMPLEMENTATION AND COOPERATION

ARTICLE 35

National Action Plans

Parties shall establish action plans, with targets and timetables, and update them as necessary, to meet the objectives of this Covenant.

ARTICLE 36

Physical Planning

1. Parties shall establish and implement integrated physical planning systems, including provisions for infrastructure and town and country planning, with a view to integrating conservation of the environment, including biological diversity, into social and economic development.
2. In such planning, Parties shall take into account natural systems, in particular drainage basins, coastal areas and their adjacent waters, and any other areas constituting identifiable ecological units.
3. Parties shall take into account the natural characteristics and ecological constraints of areas when allocating them for agricultural, grazing, forestry, or other use.

ARTICLE 37

Environmental Impact Assessment

1. Parties shall establish or strengthen environmental impact assessment procedures to ensure that all activities which are likely to have a significant adverse effect on the environment are evaluated before approval.
2. The assessment shall include evaluation of:
 - (a) cumulative, long-term, indirect, long-distance, and transboundary effects,
 - (b) the possible alternative actions, including not conducting the proposed activity, and
 - (c) measures to avert or minimize the potential adverse effects.

3. Parties shall designate appropriate national authorities to ensure that environmental impact assessments are effective and conducted under procedures accessible to concerned States, international organizations, persons and non-governmental organizations. Parties shall also ensure that the authority deciding on approval takes into consideration all observations made during the environmental impact assessment process and makes its final decision public.

4. Parties shall conduct periodic reviews both to determine whether activities approved by them are carried out in compliance with the conditions set out in the approval and to evaluate the effectiveness of the prescribed mitigation measures. The results of such reviews shall be made public.

5. Parties shall take appropriate measures to ensure that before they adopt policies, programmes, and plans that are likely to have a significant adverse effect on the environment, the environmental consequences of such actions are duly taken into account.

ARTICLE 38

Environmental Standards and Controls

1. Parties shall co-operate to formulate, develop, and strengthen international rules, standards and recommended practices on issues of common concern for the protection and preservation of the environment and sustainable use of natural resources, taking into account the need for flexible means of implementation based on their respective capabilities.

2. Parties shall adopt, strengthen and implement specific national standards, including emission, quality, product, and process standards, designed to prevent or abate harm to the environment or to restore or enhance environmental quality.

ARTICLE 39

Monitoring of Environmental Quality

1. Parties shall conduct scientific research and establish, strengthen, and implement scientific monitoring programmes for the collection of environmental data and information to determine, *inter alia*,

- (a) the condition of all components of the environment, including changes in the status of natural resources; and
- (b) the effects, especially the cumulative or synergistic effects, of particular substances, activities, or combinations thereof on the environment.

2. To this end and as appropriate, Parties shall co-operate with each other and with competent inter-national organizations.

ARTICLE 40

Scientific and Technical Cooperation

1. Parties shall promote scientific and technical cooperation in the field of environmental conservation and sustainable use of natural resources, in particular with developing countries. In promoting such cooperation, special attention should be given to the development and strengthening of national capacities, through the development of human resources, legislation and institutions.

2. Parties shall:

- (a) co-operate to establish comparable or standardized research techniques, harmonize international methods to measure environmental parameters, promoting widespread and effective participation of all States in establishing such international methodologies;
- (b) exchange, on a regular basis, appropriate scientific, technical and legal data, information and experience, in particular concerning the status of biological resources; and
- (c) inform each other on their environmental conservation measures and endeavor to coordinate such measures.

ARTICLE 41

Development and Transfer of Technology

Parties shall encourage and strengthen cooperation for the development and use, as well as access to and transfer of, environmentally sound technologies on mutually agreed terms, with a view to accelerating the transition to sustainable de-

velopment, in particular by establishing joint research programmes and joint ventures.

ARTICLE 42

Sharing Benefits of Biotechnology

Parties shall provide for the fair and equitable sharing of benefits arising out of biotechnologies based upon genetic resources with States providing access to such genetic resources on mutually agreed terms.

ARTICLE 43

Information and Knowledge

1. Parties shall facilitate the exchange of publicly available information relevant to the conservation and sustainable use of natural resources, taking into account the special needs of developing countries.
2. Parties shall require that access to indigenous knowledge be subject to the prior informed consent of the concerned communities and to specific regulations recognizing their rights to, and the appropriate economic value of, such knowledge.

ARTICLE 44

Education, Training and Public Awareness

1. Parties shall disseminate environmental knowledge by providing to their public and, in particular, to indigenous peoples and local communities, information, educational materials, and opportunities for environmental training and education.
2. Parties shall co-operate with each other, and where appropriate with competent international and national organizations, to promote environmental education, training, capacity-building, and public awareness.

ARTICLE 45

National Financial Resources

1. Parties undertake to provide, in accordance with their capabilities, financial support and incentives for those national activities aimed at achieving the objectives of this Covenant.
2. Parties shall pursue innovative ways of generating new public and private financial resources for sustainable development, including the use of economic instruments, regulatory fees and taxes, and reallocation of resources at present committed to military purposes.

ARTICLE 46

International Financial Resources

1. Parties shall co-operate in establishing, maintaining, and strengthening ways and means of providing new and additional financial resources, particularly to developing countries for
 - (a) environmentally sound development programmes and projects;
 - (b) measures directed towards solving major environmental problems of global concern, and for the implementation measures of this Covenant where it would entail special or abnormal burdens, owing, in particular, to the lack of sufficient financial resources, expertise or technical capacity; and
 - (c) making available, under favorable conditions, the transfer of environmentally sound technologies.
2. Parties, taking into account their respective capabilities and specific national and regional developmental priorities, objectives and circumstances, shall endeavor to augment their aid programmes to reach the United Nations General Assembly target of 0.7% of Gross National Product for Official Development Assistance or such other agreed figure as may be established.
3. Parties shall consider ways and means of providing relief to debtor developing countries, including by way of cancellations, rescheduling or conversion of debts to investments, pro-

vided that such relief is limited to enable the debtor developing countries to further their sustainable development.

4. Parties providing financial resources shall conduct an environmental impact assessment, in cooperation with the recipient State, for the activities to be carried out with the resources provided.

IX. RESPONSIBILITY AND LIABILITY

ARTICLE 47

State Responsibility

Each State Party is responsible under international law for the breach of its obligations under this Covenant or of other rules of international law concerning the environment.

ARTICLE 48

State Liability

Each State Party is liable for significant harm to the environment of other States or of areas beyond the limits of national jurisdiction, as well as for injury to persons resulting therefrom, caused by acts or omissions of its organs or by activities under its jurisdiction or control.

ARTICLE 49

Cessation, Restitution and Compensation

1. Each State Party shall cease activities causing significant harm to the environment and shall, as far as practicable, re-establish the situation that would have existed if the harm had not occurred. Where that is not possible, the State Party of the origin of the harm shall provide compensation or other remedy for the harm. In particular, Parties shall co-operate to develop and improve means to remedy the harm, including measures for rehabilitation, restoration or reinstatement of habitats of particular conservation concern.

2. Where a State Party suffers such harm caused in part by its own negligence or that of persons under its jurisdiction or control, the extent of any redress or the level of any compen-

sation due may be reduced to the extent that the harm is caused by negligence of that Party or persons under its jurisdiction or control.

ARTICLE 50

Consequences of Failure to Prevent Harm

Each State Party may be held responsible for significant harm to the environment resulting from its failure to carry out the obligations of prevention contained in this Covenant, in respect to its activities or those of its nationals.

ARTICLE 51

Exemptions

The State Party of origin of the harm shall not be responsible or liable if the harm,

- (a) is directly due to an act of armed conflict or a hostile activity where the requirements under Article 32 of this Covenant are met, except an armed conflict initiated by the State Party of origin in violation of international law;
- (b) is directly due to a natural phenomenon of an exceptional and inevitable character; or
- (c) is caused wholly by an act or omission of a third party.

ARTICLE 52

Civil Remedies

1. Parties shall ensure the availability of effective civil remedies that provide for cessation of harmful activities as well as for compensation to victims of environmental harm irrespective of the nationality or the domicile of the victims.
2. Parties that do not provide such remedies shall ensure that compensation is paid for the damage caused by their acts or omissions or by activities of persons under their jurisdiction or control.
3. In cases of significant environmental harm, if an effective remedy is not provided in accordance with paragraph 1, the State Party of nationality of the victim shall espouse the vic-

tim's claim by presenting it to the State Party of origin of the harm. The State Party of origin shall not require the exhaustion of local remedies as a pre-condition for presentation of such claim.

ARTICLE 53

Recourse under Domestic Law and Non-Discrimination

1. Each State Party of origin shall ensure that any person in another State Party who is adversely affected by trans-boundary environmental harm has the right of access to administrative and judicial procedures equal to that afforded nationals or residents of the State Party of origin in cases of domestic environmental harm.
2. Each State Party shall ensure that adversely affected persons have a right of recourse for violations of environmental regulations by that Party or any person or entity associated with that Party.

ARTICLE 54

Immunity from Jurisdiction

Parties may not claim sovereign immunity in respect of proceedings instituted under this Covenant.

ARTICLE 55

Environmental Harm in Areas Beyond National Jurisdiction

The provisions of Articles 47 to 54 may be invoked by any affected person for harm to the environment of areas beyond national jurisdiction.

X. APPLICATION AND COMPLIANCE

ARTICLE 56

Other Treaties

Parties shall endeavor to become and remain party to treaties relating to the subject matter of this Covenant and shall implement them.

ARTICLE 57

More Stringent Measures

1. The provisions of this Covenant shall not affect the right of Parties individually or jointly to adopt and implement more stringent measures than those required under this Covenant.
2. The provisions of this Covenant shall not prejudice any stricter obligation which Parties have entered into or may enter into under existing or future treaties.

ARTICLE 58

Areas Beyond the Limits of National Jurisdiction

In areas beyond the limits of national jurisdiction, Parties shall observe the provisions of the present Covenant to the full extent of their competence.

ARTICLE 59

Relations with Non-Parties

Parties shall be bound by the provisions of this Covenant in their relations with non-Parties.

ARTICLE 60

Reporting

1. Parties undertake to submit periodic reports on the measures they have adopted, progress made, and difficulties encountered in implementing their obligations under this Covenant.
2. All reports shall be submitted to the Secretary-General of the United Nations who shall transmit them to the UN Economic and Social Council for consideration and recommendation.

ARTICLE 61

Compliance and Dispute Avoidance

In the framework of environmental treaties to which they are party or by other means, Parties shall maintain or promote

the establishment of procedures and institutional mechanisms to assist and encourage States to comply fully with their obligations and to avoid environmental disputes. Such procedures and mechanisms should improve and strengthen reporting requirements, and be simple, transparent, and non-confrontational.

ARTICLE 62

Settlement of Disputes

1. Parties shall settle disputes concerning the interpretation or application of this Covenant by peaceful means, such as by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or by any other peaceful means of their own choice.
2. If parties to a dispute do not reach agreement on a solution or on a dispute settlement arrangement within one year following the notification by one party to another that a dispute exists, the dispute shall, at the request of one of the parties, be submitted to either an arbitral tribunal, including the Permanent Court of Arbitration, or to judicial settlement, including by the International Court of Justice and the International Tribunal for the Law of the Sea as appropriate.

ARTICLE 63

Review Conference

After the entry into force of this Covenant, the Depositary shall convene every five years a conference of Parties to it in order to review its implementation. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State or regional economic integration organization not party to this Covenant may be represented at the Review Conference as observers. The International Union for Conservation of Nature and Natural Resources and the International Council of Scientific Unions may also be represented as observers. Any non-governmental organization accredited to the UN Economic and Social Council and qualified in matters covered by this Covenant, may be repre-

sented at a session of the Review Conference as an observer in accordance with the rules of procedure the Review Conference may adopt.

XI. FINAL CLAUSES

ARTICLE 64

Amendment

1. Any Party may propose amendments to this Covenant. The text of any such proposed amendment shall be submitted to the Depositary who shall transmit it, within six months, to all the Parties.
2. At the request of one-third of the Parties, the Depositary shall call a special conference to consider the proposed amendment. The Parties shall make every effort to reach agreement on any proposed amendment by consensus. If all efforts at reaching a consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a two-thirds majority vote of the Parties to this Covenant who are present and voting at the special conference. The adopted amendment shall be communicated by the Depositary, who shall circulate it to all Parties for ratification, acceptance or approval. For purposes of this Article "present and voting" means Parties present and casting an affirmative or negative vote.
3. Instruments of ratification, acceptance or approval in respect of an amendment shall be deposited with the Depositary. An amendment shall enter into force for those States accepting it on the ninetieth day after the date of receipt by the Depositary of an instrument of ratification, acceptance or approval by at least two-thirds of the Parties. An amendment shall enter into force for any other Party on the ninetieth day following the date on which that Party deposits its instrument of ratification, acceptance or approval of the said amendment with the Depositary.

ARTICLE 65

Signature

1. This Covenant shall be open for signature at _____ by all States and any regional economic integration organization from _____ until _____.
2. For purposes of this Covenant, "regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Covenant and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

ARTICLE 66

Ratification, Acceptance or Approval

1. This Covenant shall be subject to ratification, acceptance or approval by States and by regional economic integration organizations. Instruments of ratification, acceptance, or approval, shall be deposited with the Depositary.
2. Any regional economic integration organization which becomes party to this Covenant without any of its member States being party shall be bound by all the obligations under this Covenant. In the case of such organizations, one or more of whose member States is party to this Covenant, the organization and its member States shall decide on their respective responsibilities for the performance of their obligations under this Covenant. In such cases, the organization and the member States shall not be entitled to exercise rights under this Covenant concurrently.
3. In their instruments of ratification, acceptance or approval, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Covenant. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

ARTICLE 67

Accession

1. This Covenant shall be open for accession by States and by regional economic integration organizations from the date on which this Covenant is closed for signature. The instruments of accession shall be deposited with the Depositary.
2. In their instruments of accession, regional economic integration organizations shall declare the extent of their competence with respect to the matters governed by this Covenant. These organizations shall also inform the Depositary of any relevant modification in the extent of their competence.

ARTICLE 68

Entry into Force

1. This Covenant shall enter into force on the ninetieth day after the deposit of the twenty-first instrument of ratification, acceptance, approval, or accession.
2. For each State or regional economic integration organization that ratifies, accepts, or approves, this Covenant or accedes thereto after the deposit of the twenty-first instrument of ratification, acceptance, approval, or accession, this Covenant shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organization of its instrument of ratification, acceptance, approval, or accession.
3. For the purposes of paragraph 1 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

ARTICLE 69

Reservations

No reservations may be made to this Covenant.

ARTICLE 70

Withdrawals

1. At any time after two years from the date on which this Covenant has entered into force for a Party, that Party may withdraw from this Covenant by giving written notification to the Depositary.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

ARTICLE 71

Depositary

1. The [Secretary-General of the United Nations or ____] shall be the Depositary of this Covenant.
2. In addition to its functions, the Depositary shall
 - (a) establish a schedule for the submission, consideration, and dissemination of the periodic reports submitted under Article 60;
 - (b) report to all Parties, as well as to competent international organizations, on issues of a general nature that have arisen with respect to the implementation of this Covenant; and
 - (c) convene necessary conferences of Parties in accordance with this Covenant.

ARTICLE 72

Authentic Texts

The original of this Covenant, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Covenant.