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Seminar on the Law of Sustainable Development—Argentina

CONDUCTED AT THE LINCOLN CENTER
BUENOS AIRES, ARGENTINA
APRIL 19, 1995

Introduction - Dr. Pedro Tarak

Dr. Tarak is the Executive Director of the Fundación Ambiente y Recursos Naturales (FARN).

We all know that the object of this seminar is to explore the shape of a framework law for realizing the new constitutional right in Argentina to a healthy environment. Based on our experiences here and those in the United States and other countries, I would like to introduce three issues for us to consider as we proceed.

I. Can We Move Beyond the Stockholm Era?

The United States and many developed countries responded to the environmental crisis in the early 1970s. I refer to this period as the Stockholm Era, honoring the United Nations Conference on Human Environment that took place in Stockholm in 1972. During that time, we concentrated mainly on protecting the environment, only one facet of the Earth and our use of it.

Internationally, we have moved beyond the Stockholm Era. In 1992, at a global reunion for the environment and development in the City of Rio de Janeiro, there was a rebirth of ideas. I will call this new stage the Rio Era. Increasingly, the focus is sustainable development, on all those actions affecting the Earth and its resources. Today, we speak more about the integration of environmental and economic strategies.

During this twenty-year period, we witnessed a significant response to environmental problems in many countries, both developed and developing. Some countries, however, have not responded to these challenges in a comprehensive fashion. Argentina has taken a few steps over the last few years that fall into the category of institutional responses to problems affecting segments of the environment. At the national level, it has yet to establish a clear legal framework for environmental protection.

What we have learned about maintaining a healthy environment has grown out of the Stockholm Era. This raises several questions for countries that have yet to develop a legal framework regarding these matters. If we are in the Rio Era, what can countries do in response to the challenges of achieving sustainable development? Can the same strategies be applied today that were utilized ten or fifteen years ago? Do we have to create new mechanisms for implementation? What are the ends we now pursue? Are we prepared to embrace sustainable development as our principal objective?

It must be remembered that it is one thing to establish a goal and another thing to reach that goal. The strategies we choose depend greatly on where we want to be. The strategies developed in the Rio Era will be very different than those of the Stockholm Era. It would be helpful to understand what has happened in the countries that embraced the Stockholm decree, to evaluate their successes and failures. It would be very important and beneficial to learn from the experiences of the United States and other developed countries.

II. What are the Consequences of the Strategies Used During the Stockholm Era and are Developing Countries Prepared to Embrace Them?

During the Stockholm Era, developed countries implemented political, judicial, and administrative strategies that continue to have momentum. During that period, the majority of the developed countries defined how they were going to produce clean air, clean water and clean rivers, each as separate objectives. They aimed at a clear overall objective: a

healthy environment. Once that environmental framework was defined, they decided how to limit human activities in order to achieve those focused objectives.

In the United States, such a process was followed. Over time, an administrative structure was put into place, sufficiently detailed to accomplish these objectives. Although the objectives were clear, they could not be achieved within the desired time frame. This also happened in the countries in the European Economic Community, which established environmental objectives and then gradually developed mechanisms for achieving them in conjunction with the community's member states.

Within many developing countries, this gradual and collaborative process did not occur with the same force, but it is not an unfamiliar process. For example, Argentina is working within the Montreal Protocol,¹ where there exists a process for determining how to protect the ozone layer and what restrictions on human activities are necessary to achieve this objective. We had a similar experience working with the Convention for Climatic Changes.²

Today, we are familiar with the process of determining what kind of environment we envision and how we want to preserve the health of endangered species or specific ecosystems. We do not, however, have the institutional commitment of developed countries to single issue strategies, and have not experienced or evaluated the consequences of those strategies.

III. What New Strategies are Needed in the Rio Era?

The main concern of Stockholm Era legislation was to incorporate the prevailing notions of ecological science into legislation. These notions accommodated a narrow focus on each separate aspect of the ecosystem. In the Rio Era, with its much broader focus, we need to develop a fundamentally

1. Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, *reprinted in* 26 I.L.M. 1541 (1987).

2. *See 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).

different logical base. This logic must adopt an intellectual focus on how to do things which would generate different responses based on each place or circumstance involved. This describes a more flexible and resilient system.

There are at least five influences that must be incorporated into this new logic:

1. The still powerful ecological "imperative" of the Stockholm Era. How is it to be maintained and modified given the broader focus of the Rio Era?
2. The new understanding of the value of diversity, not only biological diversity, but also cultural, economic, political and judicial. This new understanding drives us toward the broader focus of the Rio Era and challenges the strategies developed in an earlier time.
3. The essential challenge of embracing "complexity." We do not know how to manage complexities, and therefore tend to simplify them. We do not value complexities and have failed to find the proper legal conduit that would further their understanding. A good example is tropical forests. We get overwhelmed by tropical forests because we do not comprehend their fascinating makeup. They are too complex for us. Thus, we simplify them and reduce them to pine forests, fields to raise cattle, and fields to raise crops because the one thing we understand is the production and marketing of wood, animals and grain. Will we do the same with the fishing industry because we do not understand its complexity? Will we continue to have separate systems: one for the ocean and another for the land; a special system for marine life and another system for wetlands or erosion control?
4. The need for long-term perspective. How will we incorporate into our daily decisions the rights of the generations to follow? This is of utmost importance since today we are suffering the consequences of decisions made decades ago. Will we continue to perpetuate that pattern or can we learn to think about and accommodate long term effects?
5. The final issue is the influence of local, regional and national differences. What is appropriate as a strategy in a city in the north-west region of Argentina is not necessarily the answer to what would be done legally, politically or administratively in the south. Similarly, the strategies adopted by Argentina will not necessarily be the correct strategy for our neighbors, the United States or any other country.

These are the influences that will shape our new response in the Rio Era: the momentum of the existing system, environmental integrity, the value of diversity, the importance of embracing complexity, the need to plan for the long-term and the importance of allowing different approaches in different contexts. As we proceed to explore the development of a framework law for Argentina in the Rio Era, it is important to keep these issues in mind and determine how we are going to respond to them.