

SUSTAINABLE DEVELOPMENT, INTERNATIONAL TRADE AND THE DOHA AGENDA FOR DEVELOPMENT*

Ved P. Nanda**

This article revisits the core concept of sustainable development in a historical context, focusing on the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro (Rio Summit),¹ the 2002 World Summit on Sustainable Development (Johannesburg Summit),² and subsequent developments. It will also provide a review of various highlights of the World Trade Organization's Doha Round of multilateral trade negotiations, especially the Doha Development Agenda, the Monterrey Consensus, and recent developments.³

I. SUSTAINABLE DEVELOPMENT

As a concept, sustainable development remains imprecise. Although the concept is vague, it is nevertheless widely endorsed by national and international decisionmakers, nongovernmental organizations (NGOs), and scholars.⁴ Thus, it continues to shape

*This article is an adapted and updated version of my presentation on Feb. 24, 2005, at the Chapman Law Review symposium entitled "International Law Confronts the Global Economy." I will provide a bird's eye view of the subject of my session, "International Trade, Multilateralism, and Sustainable Development."

**Vice Provost, John Evans University Professor, Thompson G. Marsh Professor of Law and Director, International Legal Studies Program, The University of Denver.

¹ For general information on the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, please visit <http://www.ciesin.org/TG/PI/TREATY/unced.html> (last visited May 1, 2005). For a collection of documents resulting from the conference, please visit <http://www.ciesin.org/datasets/unced/unced.html> (last visited May 1, 2005).

² For information on the Johannesburg Summit, please visit <http://www.un.org/events/wssd/> (last visited May 1, 2005).

³ For briefing on the World Trade Organization's (WTO) Doha Round see the International Institute for Sustainable Development's Doha Round Briefing Series at http://www.iisd.org/trade/wto/doha_briefing.asp (last visited May 1, 2005).

⁴ See, e.g., WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, ENVIRONMENTAL PROTECTION AND SUSTAINABLE DEVELOPMENT: LEGAL PRINCIPLES AND RECOMMENDATIONS (1987); Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 GEO. INT'L ENVTL. L. REV. 21, 22-26 (2003); George W. Pring, *Sustainable Development: Historic*

not only international, regional, and bilateral agreements, especially on environmental issues, but also legal and policy decisions on the national level. It would be an accurate assessment to state that sustainable development has emerged as an international paradigm for the new millennium in reconciling and integrating the goals of economic development, social development, and environmental protection, goals that can often be at odds with one another.

The genesis of sustainable development may be traced as far back as 2,000 years, as suggested by Judge Weeramantry in his 1997 separate opinion in the *Gabcikovo-Nagymaros* case.⁵ However, its current incarnation can perhaps be dated to 1980 when the idea of sustainable development was introduced in the World Conservation Strategy,⁶ a joint product of the International Union for the Conservation of Nature (IUCN),⁷ World Wildlife Fund,⁸ and the United Nations Environment Programme (UNEP),⁹ with IUCN in the lead. This was followed in 1986 by the report of a group of legal experts which enumerated twenty-two legal principles for environmental protection and sustainable development.¹⁰ These included, among others, an international responsibility to prevent environmental harm, the right to an environmental impact assessment, a fundamental human right to "an environment adequate for . . . health and well-being," an intergenerational equity, and the overall conservation and sustainable use of natural resources.¹¹ It was initially envisaged that these

Perspectives and Challenges for the 21st Century, in UNITED NATIONS DEVELOPMENT PROGRAMME AND UNITED NATIONS REVOLVING FUND FOR NATURAL RESOURCES EXPLORATION: PROCEEDINGS OF THE WORKSHOP ON THE SUSTAINABLE DEVELOPMENT OF NON-RENEWABLE RESOURCES TOWARDS THE 21ST CENTURY 13-29 (1999).

⁵ *Gabcikovo-Nagymaros Project*, 1997 I.C.J. 7, 97-110 (separate opinion of Judge Weeramantry), available at http://www.icj-cij.org/icjwww/idocket/ihs/ihsjudgement/ihs_i_judgment_970925_frame.htm. There is voluminous literature on sustainable development, including its history. See also VED P. NANDA & GEORGE W. PRING, INTERNATIONAL ENVIRONMENTAL LAW & POLICY FOR THE 21ST CENTURY 22-27, 90-119 (2003); Marong, *supra* note 4, at 22-26; Pring, *supra* note 4, at 13-29; Phillippe Sands, *International Law in the Field of Sustainable Development*, 1994 BRIT. Y.B. INT'L L. 303 (1995); RETHINKING SUSTAINABLE DEVELOPMENT, 590 ANNALS (SPECIAL ISSUE) (Nov. 2003); Ved P. Nanda, *International Environmental Challenges: "Sustainable Development" and "Environmental Terrorism,"* 3 TOURO J. TRANSNAT'L L. 1 (1992).

⁶ INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES, WORLD CONSERVATION STRATEGY (1980).

⁷ For general information on IUCN see <http://www.iucn.org/> (last visited May 1, 2005).

⁸ For general information on the World Wildlife Fund see <http://www.worldwildlife.org/> (last visited May 1, 2005).

⁹ For general information on UNEP see <http://www.unep.org/> (last visited May 1, 2005).

¹⁰ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *supra* note 4.

¹¹ *Id.* at 9-14.

principles would constitute the foundation of a proposed Convention on Environmental Protection and Sustainable Development, but that did not come to pass.¹² As will be discussed later, these principles did find a place in the 1992 Rio Declaration on Environment and Development (Rio Declaration).¹³

In 1987, the World Commission on Environment and Development, chaired by Gro Harlem Brundtland, then Prime Minister of Norway and now Director-General of the World Health Organization, released its influential report entitled "Our Common Future," which gave high visibility to sustainable development.¹⁴ The report, popularly known as the Brundtland Report, described sustainable development as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs."¹⁵ However, the report failed to provide normative content to sustainable development and did not provide any guidance on how to operationalize the concept.

Two years later, the Governing Council of UNEP elaborated the meaning of sustainable development, emphasizing international cooperation, national and international equity, a supportive international economic environment, rational use of natural resources, and incorporation of environmental concerns in development planning as conditions to achieve the goal of sustainable development.¹⁶ The next important event, the one that catapulted the concept of sustainable development into prominence on the world stage, was the 1992 Rio Summit. The conference's mandate was contained in a 1990 United Nations General Assembly resolution which called upon UNCED to "elaborate strategies" for the promotion of "environmentally sound and sustainable development in all countries."¹⁷

By focusing the world's attention on the goal of achieving sustainable development, UNCED successfully enhanced international awareness and called for a concerted effort by both

¹² *Id.* at 2.

¹³ Rio Declaration on Environment and Development, United Nations Conference on Environment and Development (UNCED), U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex 1, at 3 (1992) [hereinafter Rio Declaration].

¹⁴ See OUR COMMON FUTURE: THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (Gro Brundtland ed., 1987).

¹⁵ *Id.* at 43.

¹⁶ See Report of the Governing Council on the Work of its Fifteenth Session, United Nations Environment Programme, U.N. GAOR, 44th Sess., Supp. No. 25, 12th mtg. at 153, U.N. Doc A44/25 (1989).

¹⁷ United Nations Conference on Environment and Development, U.N. GAOR, 85th mtg., at 152-53, U.N. Doc. A/RES/44/228 (1990).

developed and developing countries.¹⁸ The conference established two treaties: the Framework Convention on Climate Change¹⁹ and the Convention on Biological Diversity.²⁰ In addition, the conference established the nonbinding Forest Principles,²¹ the Rio Declaration²² and the Agenda 21 Plan of Implementation.²³ The following is a discussion of the Rio Declaration Principles and Agenda 21 and how they have given meaning to sustainable development.

II. DEVELOPMENTS AT THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

Negotiations preceding UNCED revealed a deep North-South divide on the goals of the conference leaving no hope that an agreement for a binding convention on environmental protection and sustainable development could be reached.²⁴ The focus of developed countries was primarily on the environment—less stringent environmental standards and increased financial and technical assistance from developed countries in order to meet environmental and developmental needs.²⁵ The focus of developing countries was on the right to development.²⁶ Consequently, the stage was set for acrimonious debates on the principles UNCED should adopt. After considerable debate and concessions, negotiators struck a compromise and eventually adopted, by consensus, the Rio Declaration and its Twenty-Seven Principles.²⁷

A. Rio Declaration on Environment and Development

The Principles of the Rio Declaration reflect a new paradigm of sustainable development. Its title clearly links the

¹⁸ *Id.* at 152.

¹⁹ United Nations Framework Convention on Climate Change, UNCED, May 9, 1992, S. Treaty Doc. No. 102-38, *reprinted in* 31 I.L.M. 849, *available at* <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

²⁰ Convention on Biological Diversity, UNCED, June 5, 1992, *reprinted in* 31 I.L.M. 818, *available at* <http://www.biodiv.org/doc/legal/cbd-en.pdf>.

²¹ Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests, UNCED, U.N. Doc. A/CONF.151/26 (Vol. III), Annex 3 (1992).

²² Rio Declaration, *supra* note 13.

²³ Agenda 21, U.N. Conference on Environment and Development, U.N. Doc. A/Conf. 151/26/Rev.1 (Vol. I), Annex 2 (1992) [hereinafter Agenda 21].

²⁴ *See, e.g.,* Gaetan Verhoosel, *Beyond the Unsustainable Rhetoric of Sustainable Development: Transferring Environmentally Sound Technologies*, 11 GEO. INT'L ENV'T'L. L. REV. 49 (1998) (discussing the history of the North-South divide); Marong, *supra* note 4, at 22-26.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Rio Declaration, *supra* note 13.

environment with development, not emphasizing the former over the latter—a goal sought by developing countries.²⁸ Principle Two reiterates Principle Twenty-One of the Stockholm Declaration on the Environment, adopted at the conclusion of the Stockholm Conference on the Human Environment in 1972, the very first U.N. conference on the environment.²⁹ It prescribes the no-harm rule under which a state is duty bound not to cause environmental damage outside its borders.³⁰ Principle Two also recognizes that a sovereign retains the right to use its natural resources pursuant to its own environmental policies.³¹ Principle Four explicitly links environmental protection to the development process: “In order to achieve sustainable development, environmental protections shall constitute an integral part of the development process and cannot be considered in isolation from it.”³²

The Rio Declaration also unequivocally recognizes the “right to development” and the principle of intergenerational equity by stating that this right “must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”³³ While exhorting states to cooperate “to conserve, protect and restore the health and integrity of the Earth’s ecosystem,” it recognizes that States possess “common but differentiated responsibilities” in view of their “different contributions to global environmental degradation.”³⁴ In Principle Six, the Rio Declaration gives “special priority” to the “needs of developing countries, particularly the least developed and those most environmentally vulnerable.”³⁵

Of special note is the proclamation in the Rio Declaration that “[h]uman beings are at the centre of concerns for sustainable

²⁸ *Id.*

²⁹ See United Nations Conference on the Human Environment, Stockholm Declaration, June 16, 1972, U.N. Doc. A/CONF.48/14 (1972), princ. 21, *reprinted in* 11 I.L.M. 1416 (1972) [hereinafter Stockholm Declaration]; Rio Declaration, *supra* note 13, princ. 2.

³⁰ Rio Declaration, *supra* note 13, princ. 2.

³¹ *Id.*

³² *Id.* princ. 4.

³³ *Id.* princ. 3.

³⁴ *Id.* princ. 7. The entire principle reads as follows:

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

Id.

³⁵ *Id.* princ. 6.

development. They are entitled to a healthy and productive life in harmony with nature.”³⁶ Professor Robert Araujo aptly interprets this Principle to mean that “human beings are of paramount significance but not of isolated importance, and their welfare must take into account the preservation of the natural environment on which mankind is dependent.”³⁷ In elaborating his thesis, Professor Araujo relies on natural law principles to focus on the three-fold relationship of the common good, solidarity and subsidiarity.³⁸ Equally noteworthy in this context are Principles Four, linking environment and development, and Five, which calls on “all states and all people [to] cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”³⁹

In addition to the Principles discussed above, a number of other Rio Declaration Principles exemplify how the Rio Declaration laid the foundation for the 2002 World Summit on Sustainable Development by clarifying the meaning of sustainable development. Principle Eight declares “States should reduce and eliminate unsustainable patterns of production and consumption.”⁴⁰ Principle Fifteen calls for wide application of the “precautionary approach,” which maintains that “[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”⁴¹ Principle Sixteen adopts the “polluter-pays principle,” which underscores the importance of applying free market principles to address environmental problems.⁴² Principle Seventeen calls upon nations to undertake “environmental impact assessment as a national instrument . . . for proposed activities that are likely to have a significant

³⁶ *Id.* princ. 1.

³⁷ Robert J. Araujo, *Rio+10 and the World Summit on Sustainable Development: Why Human Beings are at the Center of Concerns*, 2 GEO. J. L. & PUB. POL’Y 201, 211 (2004).

³⁸ *Id.* at 211-45.

³⁹ Rio Declaration, *supra* note 13, princs. 4, 5.

⁴⁰ *Id.* princ. 8.

⁴¹ *Id.* princ. 15. The rationale is that once environmental damage has occurred, it may be irreparable, as in the case of species extinction, ocean pollution, waste of non-renewable resources, or nuclear fallout. However, even if such damage was reparable, advance prevention is usually less costly than allowing the harm to occur and/or to find its cure. The burden of proof under this principle shifts to the party causing the harm, thereby resolving the problem of scientific uncertainty. Questionable risks, substances, or activities are to be prevented until proved safe by their development proponents rather than permitted until proved harmful by their opponents.

⁴² See *id.* princ. 16. See generally Sanford E. Gaines, *The Polluter-Pays Principle: From Economic Equity to Environmental Ethos*, 26 TEXAS INT’L L.J. 463 (1991).

adverse impact on the environment and are subject to a decision of a competent national authority.”⁴³ Finally, Principles Eighteen and Nineteen adopt widely accepted notification and consultation principles.⁴⁴

What is striking about the Principles discussed above is the emphasis on international cooperation and public participation throughout.⁴⁵ For example, there is a call for cooperation as an essential element “to decrease the disparities in standards of living” and similarly “to conserve, protect and restore the health and integrity of the Earth’s ecosystem.”⁴⁶ In addition, several other Principles emphasize the importance of public participation in the process of sustainable development, especially by women, youth, and indigenous people and local communities.⁴⁷ By emphasizing cooperation and participation, the Rio Declaration manages to take a much more human-centered approach, one that its predecessor, the Stockholm Declaration, lacked.⁴⁸

Finally, the delegates at UNCED were particularly concerned with the linkage of international trade with sustainable development.⁴⁹ Principle Twelve calls for the states to “cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation.”⁵⁰ This was in response to the fear that developed countries might use environmental concerns as an excuse to take protectionist measures and close

⁴³ Rio Declaration, *supra* note 13, princ. 17.

⁴⁴ Principle Eighteen reads: “States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.” *Id.* princ. 18. Principle Nineteen reads: “States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect and shall consult with those States at an early stage and in good faith.” *Id.* princ. 19.

⁴⁵ *See, e.g.*, Rio Declaration, *supra* note 13, princs. 5, 7, 9, 12, 14.

⁴⁶ *Id.* princs. 5, 7.

⁴⁷ *See, e.g.*, princs. 10, 20, 21, 23.

⁴⁸ The goal of the Stockholm Declaration was to “defend and improve the human environment for present and future generations,” along with the “fundamental goals of peace and of worldwide economic and social development.” Stockholm Declaration, *supra* note 29, para. 6. Moreover, Principle One of the Stockholm Declaration recognized an individual right to a quality environment and linked this right to a responsibility on the part of the individual “to protect and improve the environment for present and future generations.” *Id.* princ. 1. As already noted, the environment-development linkage and integration was the focus at the Rio Conference, with priority to development and deference to the developing states’ concerns. *See* M. Strong, *Beyond Rio: Prospects and Portents*, 4 *COLO. J. INT’L ENVTL. L. & POL’Y* 21, 24-25 (1993) (Maurice Strong was Secretary-General of both the Stockholm and Rio Conferences).

⁴⁹ Stockholm Declaration, *supra* note 29, at pmb1.

⁵⁰ *Id.* princ. 12.

their markets to developing countries' products. Principle Twelve continues:

Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.⁵¹

B. Agenda 21⁵²

Agenda 21 is the blueprint for action—the “action plan” for implementation of the two conventions and the non-binding Principles of the Rio Declaration.⁵³ This plan further attempts to clarify the meaning of sustainable development and to provide content for the concept.⁵⁴ A detailed 500-page document, Agenda 21 also prescribes numerous policies, programs, and processes for international organizations and government officials to follow in order to implement the recommendations and declarations of the Rio Summit.⁵⁵ Today, over 2,500 actions cover a wide range of programs.⁵⁶

Agenda 21's forty chapters are divided into four sections. Section One covers social and economic dimensions, and includes recommendations on sustainable development, consumption patterns, poverty, and integration of environment and development in decisionmaking.⁵⁷ Section Two covers conservation and management of resources for development, and includes chapters on the protection of the atmosphere, land resources, combating deforestation, desertification, and drought, agricultural development, biological diversity, protection of the oceans and of freshwater resources, management of toxic chemicals, and hazardous, solid and radioactive wastes.⁵⁸ Section Three includes ways to increase the participation of major groups in sustainable development efforts, including women, youth, indigenous peoples, NGOs, trade unions, and business and industry.⁵⁹ Finally, Section Four focuses on means

⁵¹ *Id.*

⁵² Agenda 21, *supra* note 23.

⁵³ *See supra* Part II.A.

⁵⁴ *See* United Nations Department of Economic and Social Affairs (UNDESA), *Agenda 21*, available at <http://www.un.org/esa/sustdev/documents/agenda21/index.htm> (last visited May 1, 2005).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Agenda 21, *supra* note 23, sec. 1.

⁵⁸ *Id.* sec. 2.

⁵⁹ *Id.* sec. 3.

2005] *Sustainable Development, Int'l Trade & The Doha Agenda* 60

of implementation, including chapters on technology transfer, financial resources and mechanisms, international institutional arrangements, and international legal instruments and mechanisms.⁶⁰

Agenda 21 calls for an effective legal and regulatory framework and urges action on five fronts: (1) make laws and regulations more effective; (2) establish improved judicial and administrative procedures; (3) create legal reference and support services; (4) establish cooperative training networks for lawyers; and (5) develop effective regional, national, and local programs for implementing Agenda 21.⁶¹ It also specifically addresses international legal instruments and mechanisms within four priority areas.⁶² The first area calls for review and assessment of previous performance and priorities “for future lawmaking on sustainable development.”⁶³ The second area concerns “[i]mplementation mechanisms” and calls for the establishment of “efficient and practical reporting systems on the effective, full and prompt implementation of international legal instruments.”⁶⁴ The third area addresses “[e]ffective participation in international lawmaking,” especially for developing countries.⁶⁵ The fourth area calls for avoidance and settlement of disputes and for effective dispute resolution techniques.⁶⁶

C. The Commission on Sustainable Development

The U.N. General Assembly established the Commission on Sustainable Development (CSD) to assist in the implementation of the Rio Summit’s recommendations and decisions.⁶⁷ The CSD is headquartered in New York and is composed of rotating elected representatives from fifty-three States.⁶⁸ The CSD was created to act as a central forum to review progress made in the implementation of Agenda 21 and to “advance global dialogue and foster partnerships for sustainable development.”⁶⁹

The mandate of the CSD is to first review progress in the

⁶⁰ *Id.* sec. 4.

⁶¹ *Id.* sec. 2, chs. 8.11-8.22.

⁶² *Id.* sec. 4, ch. 39.

⁶³ *Id.* sec. 4, chs. 39.5-39.7.

⁶⁴ *Id.* sec. 4, ch. 39.8.

⁶⁵ *Id.* sec. 4, ch. 39.9.

⁶⁶ *Id.* sec. 4, ch. 39.10.

⁶⁷ Report of the United Nations Conference on Environment and Development, G.A. Res. 190, U.N. GAOR, 47th Sess., 93d plen. mtg., U.N. Doc. A/RES/47/190 (1992).

⁶⁸ See UNDESA, *About the Commission On Sustainable Development (CSD)*, available at http://www.un.org/esa/sustdev/csd/about_csd.htm (last visited May 1, 2005).

⁶⁹ Programme for the Further Implementation of Agenda 21, G.A. Res. 2, U.N. GAOR, 19th Special Sess., Annex 1, Agenda Item 8, para. 16, U.N. Doc. A/RES/S-19/2 (1997).

implementation of recommendations and commitments arising out of UNCED.⁷⁰ Second, the CSD is to elaborate policy guidance and options for activities in pursuance of the goals of Agenda 21.⁷¹ Finally, the CSD is to promote dialogue and build partnerships among governments, the international community and groups that have a significant role to play in bringing about sustainable development.⁷² In particular, the CSD is to include indigenous peoples, women, youth, NGOs, scientists, labor, farmers, industry and business, and local authorities.⁷³

III. WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT

The World Summit on Sustainable Development (Johannesburg Summit) met in Johannesburg from August 26 to September 4, 2002, attracting a large gathering of heads of state and other government officials, representatives of international organizations and leaders of civil society.⁷⁴ The U.N. General Assembly convened the Summit ten years after the Rio Summit “to reinvigorate the global commitment to sustainable development” and to “focus on the identification of accomplishments and areas where further efforts are needed to implement Agenda 21.”⁷⁵ By all accounts, during the ten years following the Rio Summit, environmental degradations had worsened, poverty had deepened, and progress in implementing sustainable development had been disappointing.⁷⁶

That the implementation of sustainable development had been disappointing was no secret. In June 1997, at a Special Session of the U.N. General Assembly just five years after the Rio Summit, it was noted that progress had been slow in several critical areas, including “the areas of finance and technology transfer, technical assistance and capacity-building.”⁷⁷ The Special Session went further and identified three areas in need of attention: “[i]ntegration of economic, social, and environmental

⁷⁰ Institutional Arrangements to Follow Up the United Nations Conference on Environment and Development, G.A. Res. 191, U.N. GAOR, 47th Sess., Agenda Item 79, para. 3, U.N. Doc. A/RES/47/191 (1993).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* See also UNDESA, *Mandate of the Commission on Sustainable Development*, available at http://www.un.org/esa/sustdev/csd/csd_mandate.htm (last visited May 1, 2005).

⁷⁴ See *supra* note 2.

⁷⁵ See Ten-Year Review of Progress Achieved in the Implementation of the Outcome of the United Nations Conference on Environment and Development, G.A. Res. 199, U.N. GAOR, 55th Sess., Agenda Item 95, paras. 1, 3; U.N. Doc. A/RES/55/99 (2001) (citation omitted).

⁷⁶ See, e.g., *The Johannesburg Summit Test: What Will Change?*, Sept. 2005, available at http://www.johannesburgsummit.org/html/whats_new/feature_story41.html.

⁷⁷ Programme for the Further Implementation of Agenda 21, *supra* note 69, para. 17.

objectives,” “[s]ectors and issues,” and “[m]eans of implementation.”⁷⁸ To further integration, the General Assembly established the goals of eradicating poverty, changing production and consumption patterns, making trade and environment mutually supportive, and health and sustainable human settlements.⁷⁹ Freshwater, oceans and seas, forests, energy, transport, atmosphere, toxic chemicals, hazardous and radioactive wastes, land and sustainable agriculture, desertification and drought, and biodiversity and natural disasters were specifically targeted under the heading “Sectors and issues.”⁸⁰ Among the means of implementation were financial resources and mechanisms, transfer of environmentally sound technologies, capacity-building, education and awareness, and information and tools for measuring progress were particularly noted.⁸¹ The Special Session made recommendations about the CSD’s program of work for the period 1998-2002, particularly emphasizing poverty reduction and consumption and production patterns.⁸²

At the Johannesburg Summit, heads of state reaffirmed their commitment to achieving sustainable development and adopted two documents: the Johannesburg Declaration on Sustainable Development⁸³ and the Plan of Implementation.⁸⁴ However, unlike the Rio Summit, no legally binding instrument was produced and few significant targets and timetables were set. The Johannesburg Declaration did emphasize multilateralism, stating, “To achieve our goals of sustainable development, we need more effective, democratic and accountable international and multilateral institutions.”⁸⁵ In addition, three especially noteworthy statements were made: two in the Johannesburg Declaration and one in the Plan of Implementation. The first statement recognized “a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development—economic development, social development and environmental

⁷⁸ *Id.* paras. 23-115.

⁷⁹ *Id.* paras. 27-32.

⁸⁰ *Id.* paras. 34-75.

⁸¹ *Id.* paras. 76-115.

⁸² *Id.* at app.

⁸³ The Johannesburg Declaration on Sustainable Development, Sept. 4, 2002 [hereinafter Johannesburg Declaration], available at http://www.johannesburgsummit.org/html/documents/summit_docs/1009wssd_pol_declaration.htm.

⁸⁴ World Summit on Sustainable Development Plan of Implementation, Sept. 23, 2002 [hereinafter Plan of Implementation], available at http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm.

⁸⁵ Johannesburg Declaration, *supra* note 83, para. 31.

protection—at local, national, regional and global levels.”⁸⁶ The second statement declared a commitment “to build a humane, equitable and caring global society cognizant of the need for human dignity for all.”⁸⁷ In the final statement of importance, there was an acknowledgement of “the importance of ethics for sustainable development,” and a “need to consider ethics in the implementation of Agenda 21.”⁸⁸

The Johannesburg Summit recognized “that poverty eradication, changing consumption and production patterns, and protecting and managing the natural resource base for economic and social development are overarching objectives of, and essential requirements for sustainable development.”⁸⁹ The Plan of Implementation, divided in ten sections, focused on several critical goals for implementing Agenda 21. Some of these had been previously set forth in prior instruments, including Agenda 21 itself,⁹⁰ the U.N. Millennium Declaration,⁹¹ the Doha Development Agenda,⁹² and the Monterrey Consensus.⁹³ These were categorized under broad headings: poverty eradication,⁹⁴ changing unsustainable patterns of consumption and production,⁹⁵ protecting and managing the natural resource base of economic and social development,⁹⁶ sustainable development in a globalizing world,⁹⁷ health and sustainable development,⁹⁸ means of implementation,⁹⁹ and institutional framework for sustainable development.¹⁰⁰ Special provisions are contained for

⁸⁶ *Id.* para. 5.

⁸⁷ *Id.* para. 2.

⁸⁸ Plan of Implementation, *supra* note 84, para. 5. The focus of the Johannesburg Summit on equity and ethics is important, and there have been recent efforts to incorporate these values into the processes of sustainable development and environmental policy. To illustrate, Juan Maldonado, former Minister of the Environment of Colombia, followed a similar call by U.N. Secretary-General Kofi Annan by promoting a text on ethics for sustainable development at the G-77 meeting in Bali that was a Prep-Com preceding the Johannesburg Summit. See Juan Mayr Maldonado, *Ethical Considerations for Sustainable Development*, 20 PACE ENVTL. L. REV. 663, 671-74 (2003).

⁸⁹ Johannesburg Declaration, *supra* note 83, para. 11.

⁹⁰ See Agenda 21, *supra* note 23.

⁹¹ United Nations Millennium Declaration, G.A. Res. 2, U.N. GAOR, 55th Sess., Agenda Item 60, U.N. Doc. A/RES/55/2 (2000).

⁹² World Trade Organization, *Ministerial Declaration*, 4th Sess., WTO Doc. WT/MIN(01)/DEC/1 (2001), available at http://www.wto.org/english/tratop_e/dda_e/dda_e.htm.

⁹³ UNITED NATIONS, REPORT OF THE INTERNATIONAL CONFERENCE ON FINANCING FOR DEVELOPMENT, U.N. Doc. A/CONF.198/11, U.N. Sales No. E.02.II.A.7 (2002), available at <http://www.un.org/esa/ffd/aconf198-11.doc>.

⁹⁴ Plan of Implementation, *supra* note 84, paras. 6-12.

⁹⁵ *Id.* paras. 13-22.

⁹⁶ *Id.* paras. 23-44.

⁹⁷ *Id.* para. 45.

⁹⁸ *Id.* paras. 46-50.

⁹⁹ *Id.* paras. 75-119.

¹⁰⁰ *Id.* paras. 120-153.

sustainable development of small island developing states,¹⁰¹ Africa,¹⁰² Latin America and the Caribbean,¹⁰³ Asia and the Pacific,¹⁰⁴ the West Asia region,¹⁰⁵ and the Economic Commission for Europe region.¹⁰⁶

A few key commitments, targets, and timetables provided for in each of the above sections will be highlighted here:

Poverty Eradication. A sampling of the goals under this section include: (a) to “[h]alve, by the year 2015, the proportion of the world’s people whose income is less than \$1 a day and the proportion of people who suffer from hunger;”¹⁰⁷ (b) to “achieve a significant improvement in the lives of at least 100 million slum dwellers;”¹⁰⁸ and (c) to “[e]stablish a world solidarity fund to eradicate poverty and to promote social and human development in the developing countries.”¹⁰⁹

Water and Sanitation. The goal is to “halve by the year 2015, the proportion of people who are unable to reach or to afford safe drinking water . . . and the proportion of people without access to basic sanitation.”¹¹⁰

Sustainable Production and Consumption. The general goal of this section is to “[e]ncourage and promote the development of a 10-year framework of programmes . . . to accelerate the shift towards sustainable consumption and production.”¹¹¹

Energy. The overall goal is to diversify energy supply and substantially increase the global share of renewable energy sources.¹¹² In order to achieve this goal the plan calls for, among other things, an effort to “[i]mprove access to reliable, affordable, economically viable, socially acceptable and environmentally sound energy services and resources;”¹¹³ and to “remov[e] market distortions, including restructuring taxation and phasing out harmful subsidies, where they exist.”¹¹⁴

Chemicals. There are numerous provisions pertaining to the area of chemicals and in particular hazardous wastes. A few of

¹⁰¹ *Id.* paras. 52-55.

¹⁰² *Id.* paras. 56-65.

¹⁰³ *Id.* paras. 67-68.

¹⁰⁴ *Id.* paras. 69-70.

¹⁰⁵ *Id.* paras. 71-72.

¹⁰⁶ *Id.* paras. 73-74.

¹⁰⁷ *Id.* para. 6(a).

¹⁰⁸ *Id.* para. 10.

¹⁰⁹ *Id.* para. 6(b).

¹¹⁰ *Id.* para. 24.

¹¹¹ *Id.* para. 14.

¹¹² *Id.* para. 19.

¹¹³ *Id.* para. 8(a).

¹¹⁴ *Id.* para. 19(p).

those provisions call for the need to (a) “renew the commitment, as advanced by Agenda 21, to sound management of chemicals . . . and of hazardous wastes;” (b) aim by 2020 to use and produce chemicals so that they do not result in “significant adverse effects on human health and the environment;”¹¹⁵ (c) “[p]romote the ratification and implementation of relevant international instruments on chemicals and hazardous waste,” including both the Rotterdam and Stockholm Conventions;¹¹⁶ (d) by 2005, “[f]urther develop a strategic approach to international chemicals management, based on the Bahia Declaration and Priorities for Action beyond 2000;”¹¹⁷ and (e) “[e]ncourage countries to implement the new globally harmonized system for the classification and labelling of chemicals” so the system is “fully operational by 2008.”¹¹⁸

Protection and Management of the Natural Resource Base. There are two major areas of focus under this section:

Water. The idea is to “[d]evelop integrated water resources management and water efficiency plans by 2005.”¹¹⁹

Oceans and Fisheries. The goal is to encourage by 2010 the application of “the ecosystem approach” for the sustainable development of the oceans,¹²⁰ and take specific actions to achieve sustainable fisheries, including “maintain[ing] or restor[ing] [depleted fish] stocks to levels that can produce the maximum sustainable yield . . . on an urgent basis and where possible not later than 2015.”¹²¹

Atmosphere. In order to “[e]nhance cooperation at the international, regional and national levels to reduce air pollution,”¹²² this section calls for, among others things, an effort to (a) “[f]acilitate implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer by ensuring adequate replenishment of its fund by 2003/2005,”¹²³ and (b) to “[i]mprove access by developing countries to affordable, accessible, cost-effective, safe and environmentally sound alternatives to ozone-depleting substances by 2010, and assist them in complying with the phase-out schedule under the Montreal Protocol.”¹²⁴

¹¹⁵ *Id.* para. 22.

¹¹⁶ *Id.* para. 22(a).

¹¹⁷ *Id.* para. 22(b).

¹¹⁸ *Id.* para. 22(c).

¹¹⁹ *Id.* para. 25.

¹²⁰ *Id.* para. 29(d).

¹²¹ *Id.* para. 30(a).

¹²² *Id.* para. 37.

¹²³ *Id.* para. 37(b).

¹²⁴ *Id.* para. 37(d).

Biodiversity. The overall goal is to significantly reduce biodiversity loss by 2010¹²⁵ and “to reverse the current trend in natural resource degradation as soon as possible.”¹²⁶

Forests. The goal is to “[a]ccelerate implementation of the IPF/IFF proposals for action by countries and by the Collaborative Partnership on Forests, and intensify efforts on reporting to the United Nations Forum on Forests to contribute to an assessment of progress in 2005.”¹²⁷

Corporate Responsibility and Accountability. For sustainable development, there is a need to “[a]ctively promote corporate responsibility and accountability . . . through the full development and effective implementation of intergovernmental agreements and measures, international initiatives and public-private partnerships, and appropriate national regulations.”¹²⁸

Health. While there are a number of goals relating to health, some of the more pertinent include the enhancement of “health education with the objective of achieving improved health literacy on a global basis by 2010;”¹²⁹ “to reduce, by the year 2015, mortality rates for infants and children under 5 by two thirds, and maternal mortality rates by three quarters, of the prevailing rate in 2000;”¹³⁰ and to reduce “HIV prevalence among young men and women aged 15-24 by 25 per cent in the most affected countries by 2005 and globally by 2010, as well as combat malaria, tuberculosis and other diseases.”¹³¹

Means of Implementation. There are a number of mechanisms of goal implementation including to “[u]rge the developed countries . . . to make concrete efforts towards the target of 0.7 per cent of GNP as ODA to developing countries;”¹³² to ensure “that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling;”¹³³ to “[r]ecommend to the United Nations General Assembly that it consider adopting a decade of education for sustainable development, starting in 2005;”¹³⁴ and to aim “at substantial improvements in market access, [and at] reductions . . . with a view to phasing out all forms of export subsidies, and substantial reductions in trade-distorting domestic

¹²⁵ *Id.* para. 42.

¹²⁶ *Id.* para. 23.

¹²⁷ *Id.* para. 43(g).

¹²⁸ *Id.* para. 45.

¹²⁹ *Id.* para. 47(e).

¹³⁰ *Id.* para. 47(f).

¹³¹ *Id.* para. 48.

¹³² *Id.* para. 79(a).

¹³³ *Id.* para. 109(a).

¹³⁴ *Id.* para. 117(d).

support, while agreeing that the provisions for special and differential treatment for developing countries shall be an integral part of [WTO Doha] negotiations.”¹³⁵

Institutional Framework for Sustainable Development. The goals include the “[i]ntegration of the economic, social and environmental dimensions of sustainable development in a balanced manner;”¹³⁶ to “[e]nhance the integration of sustainable development goals” into the work programs of relevant U.N. agencies;¹³⁷ and to enhance the role of the Commission on Sustainable Development.¹³⁸

Other. On a cross-cutting issue, the plan intends to effectively prepare, manage, and mitigate natural disasters and conflicts.¹³⁹

In addition, the Plan of Implementation pays special attention to Africa.¹⁴⁰ To illustrate, it undertakes a commitment to support “access [to energy] for at least 35 per cent of the African population within 20 years, especially in rural areas,”¹⁴¹ to develop “food security” strategies for Africa by 2005,¹⁴² to “[d]evelop and implement integrated river basin and watershed management strategies and plans for all major water bodies,”¹⁴³ and to promote “equitable access to health-care services . . . [and make] available necessary drugs and technology . . . [for] HIV/AIDS, malaria and tuberculosis,” among other diseases.¹⁴⁴

Another special feature of the Johannesburg Summit was the promotion of public-private partnerships for sustainable development between governments, businesses, and NGOs that are specifically linked to implementation of the agreed commitments in the Plan of Implementation and Agenda 21.¹⁴⁵ According to the chairman of the Johannesburg Summit Preparatory Committee, they are “focused on deliverables [that] would contribute in translating political commitments into action.”¹⁴⁶ Although these partnerships are not seen as a substitute for government responsibilities and commitments,

¹³⁵ *Id.* para. 86(c).

¹³⁶ *Id.* para. 121(b).

¹³⁷ *Id.* para. 122(a).

¹³⁸ *Id.* paras. 127-32.

¹³⁹ *Id.* paras. 35(g), 59, 99(e), 119.

¹⁴⁰ *Id.* paras. 56-65.

¹⁴¹ *Id.* paras. 56(j)(i).

¹⁴² *Id.* para. 61.

¹⁴³ *Id.* para. 60(b).

¹⁴⁴ *Id.* para. 58(a)-(b).

¹⁴⁵ Linkages, *Background Information on Type II Outcomes: Explanatory Note by the Chairman of the World Summit on Sustainable Development Preparatory Committee*, available at <http://www.iisd.ca/wssd/partnerships.html> (last visited May 1, 2005).

¹⁴⁶ *Id.*

critics charge that they take the focus away from government agreements and

provide an opportunity for multinationals to continue with business as usual and wrap their operations in the flag of the U.N. and sustainability to inoculate themselves against criticism. . . . When it comes to issues like climate change, it's clear that partnerships are incapable of making the necessary global connections. Commitments and leadership from governments are the only solution.¹⁴⁷

IV. SUBSEQUENT DEVELOPMENTS

As the designated U.N. body to take the lead on reviewing progress toward realizing the commitments and meeting the targets agreed to in Agenda 21 and the Johannesburg Summit, the CSD reported in February of 2004 that the state of progress in implementing the Johannesburg Plan of Implementation is "moderately encouraging in certain areas."¹⁴⁸ As less than two years had lapsed since the Johannesburg Summit, the CSD report noted that implementation of the Plan "must be measured mostly in terms of process, although at national and local levels experience is richer and lessons are beginning to emerge."¹⁴⁹

The Report covered the progress toward poverty eradication,¹⁵⁰ protection and management of the natural resource base,¹⁵¹ changing unsustainable patterns of consumption and production,¹⁵² means of implementation,¹⁵³ and international, regional, and national strategies for sustainable development.¹⁵⁴ It concluded that one of the most challenging areas remains managing the global commons.¹⁵⁵ More specifically, the report found faster progress in reducing risks to the marine environment from shipping than in reforming fishery subsidies.¹⁵⁶ On the other hand, it found progress has been slow

¹⁴⁷ Nathaniel Wyeth, *Final Thoughts on the WSSD*, available at <http://www.sierraclub.org/ssc/wssd/article.html> (last visited May 1, 2005). For further critique of the WSSD, see the critique prepared by my co-author, George Pring, *The 2002 Johannesburg World Summit on Sustainable Development*, in VED NANDA & GEORGE PRING, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY FOR THE 21ST CENTURY* 110-119 (2003).

¹⁴⁸ *Overview of Progress Towards Sustainable Development: A Review of the Implementation of Agenda 21, the Programme for the Further Implantation of Agenda 21 and the Johannesburg Plan of Implementation*, U.N. ECOSOC, Commission on Sustainable Development, 12th Sess., Agenda Item 3, at 31, U.N. Doc. E/CN.17/2004/2 (2004).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 4-10.

¹⁵¹ *Id.* at 10-18.

¹⁵² *Id.* at 18-21.

¹⁵³ *Id.* at 22-29.

¹⁵⁴ *Id.* at 30-31.

¹⁵⁵ *Id.* at 31.

¹⁵⁶ *Id.*

in addressing climate change, slowing deforestation, biodiversity loss, and reform of developed countries' agricultural policies.¹⁵⁷ It also found progress related to corporate social responsibility that has also resulted in the increased availability of anti-retroviral drugs to the developing countries.¹⁵⁸ Poor countries have also received some debt relief.¹⁵⁹ At the regional level, however, the report found a mixed picture, with the biggest challenges in sub-Saharan Africa and most progress in poverty reduction in East Asia and to a lesser extent in South Asia.¹⁶⁰ Latin America and the Caribbean have made little progress.¹⁶¹

The report noted that the developed countries have shown global leadership toward sustainable development "far below their potential."¹⁶² Official development assistance has remained far below international targets, markets have remained quite protectionist regarding "exports of particular interest to developing countries . . . [and much more needs to be done] to make consumption and production patterns more sustainable" in the developed countries.¹⁶³ On climate change, the report said that the developed countries' efforts to "develop and transfer cleaner energy technologies will be crucial to addressing climate change."¹⁶⁴

The following year, in preparation for the CSD's thirteenth session in April 2005 in New York, its Division for Sustainable Development provided an update entitled *Partnerships for Sustainable Development*.¹⁶⁵ "A total of 300 partnerships had been registered with the CSD Secretariat as of February 15, 2005. Two-thirds of these partnerships (209) were registered around the time of the WSSD [Johannesburg Summit], and 91 partnerships have registered since the Summit."¹⁶⁶ According to the report, "a majority (98%) of registered partnerships have provided information on funding. Based on the information reported, 78% of registered partnerships (235) have funding and

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 31-32.

¹⁵⁹ *Id.* at 32.

¹⁶⁰ *Id.* at 32-33.

¹⁶¹ *Id.*

¹⁶² *Id.* at 33.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Partnerships for Sustainable Development – Update, U.N. Department of Economic and Social Affairs, 13th Sess., Doc. DESA/DSD/2005/1 (2005) [hereinafter CSD Partnerships Report].

¹⁶⁶ *Id.* at 2. Since the January 2004 U.N. Secretary-General's report on such partnerships, 34 new partnerships have registered with the CSD Secretariat. See Partnerships for Sustainable Development: Report of the Secretary-General, U.N. Doc. E/CN.17/2004/16 (2004). Currently, according to the 2005 report, 25 activities to initiate partnerships are also registered. CSD Partnerships Report, *supra* note 165, at 2.

20% (59) have yet to secure funding.”¹⁶⁷ The sources of funding are varied with “72% reported having funding from Governments, 36% are receiving funding from intergovernmental organizations (including U.N. system organizations)[.] and 20% are receiving funding from private sector donors.”¹⁶⁸ The level of funding, of course, varies, with four partnerships funded for over \$100 million and eight partnerships between \$10 million and \$100 million. Fifty-six partnerships are less than \$1 million.¹⁶⁹ 68% of all registered partnerships are currently seeking additional funding and the amount ranges from \$100,000 to \$82 million.¹⁷⁰

A review of the report gives a snapshot of the efforts being put forth in existing partnerships in the area of water, sanitation, and/or human settlements, which is the focus of the current CSD policy session. The report gives special attention to these areas, outlining the trends in geographic coverage, timeframe, partner involvement, major groups involved, size, and resources of the partnerships.¹⁷¹ Data in the report indicates that 60% are global and most (40%) were initiated in 2002.¹⁷² The great majority (86%) have major group involvement as well as involvement of governments (82%), the U.N. system (59%), other intergovernmental organizations (55%) and other organizations, such as academic institutions (42%).¹⁷³ When major groups’ numbers are disaggregated, the greatest numbers of partnerships are with NGO partners, while somewhat lower numbers are with scientific and technological partners, local authorities, and business and industry.¹⁷⁴ The average number of partners within water, sanitation and human settlements partnerships is seventeen.¹⁷⁵

Most of these partnerships working in water, sanitation, and human settlements areas are also engaged in cross-cutting issues, many having a primary or secondary theme of protecting and managing the natural resource base, education, institutional framework for sustainable development, means of implementation, sustainable development for Africa, poverty eradication or sustainable development in a globalizing world.¹⁷⁶

¹⁶⁷ CSD Partnerships Report, *supra* note 165, at 8.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 9.

¹⁷¹ *Id.* at 10.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

For example, the report notes that partnerships working on the cross-cutting themes of water, sanitation, and human settlements and of poverty eradication have undertaken target activities ranging from providing water services for agricultural and industrial projects and income generation to capacity-building projects for local institutions in poor areas, which can help to improve the quality of life in their communities.¹⁷⁷

The report highlights the data compiled on a wide range of efforts in this focus area. Indications are that implementation mechanisms most often employed in this area include educational components in their plans, materializing in the form of information dissemination to raise awareness and instruction to school children and communities in basic sanitation and hygiene.¹⁷⁸ In the human settlement partnerships, regional centers are often used as information clearinghouses on sustainable urbanization efforts while others might use a model of networks organized around regional conferences or city-to-city cooperation.¹⁷⁹ 55% of these partnerships are engaged in technology transfer, “such as the construction of rainwater harvesting tanks on rooftops of schools to provide clean drinking water to children in communities with acute water shortage.”¹⁸⁰

In summary, as the data on partnerships shows, new partnerships are being launched and progress is slowly being made as these partnerships continue to grow. Although the amount of money is not huge, collaboration across all levels has increased. These partnerships continue to add value to the implementation of sustainable development goals and commitments as they share “skills, resources and expertise, and . . . develop innovative solutions to global concerns.”¹⁸¹

V. APPRAISAL: SUSTAINABLE DEVELOPMENT TODAY

In an interview conducted fifteen years after the publication of *Our Common Future*, Dr. Brundtland responded to the question on how she views “sustainable development” today.¹⁸² She responded:

The phrase sustainable development embodies the concept of a development path that meets people’s needs in a way that the social,

¹⁷⁷ *Id.* § at 11.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 12.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 13.

¹⁸² Hans Christian Bugge & Lawrence Watters, *A Perspective on Sustainable Development After Johannesburg on the Fifteenth Anniversary of Our Common Future: An Interview with Gro Harlem Brundtland*, 15 GEO. INT’L ENVTL. L. REV. 359, 363 (2003).

2005] *Sustainable Development, Int'l Trade & The Doha Agenda* 72

economic and environmental stock on which that development depends is not depleted in the process. The concept is as valid today as it was when it was first conceived.¹⁸³

Notwithstanding Brundtland's reaffirmation, the developments at the Rio Summit, Agenda 21, and the Johannesburg Summit commitments and Plan of Implementation, critics still consider the concept a fuzzy one. According to one such critic, "[m]any analysts have come to regard it as an insubstantial and clichéd platitude unworthy of further interests or research, and perhaps even more significantly, theorizing of the idea seems to have reached something of an impasse."¹⁸⁴

Criticism has also been leveled at the parties' commitment to reach the goals of sustainable development. For example, at the Johannesburg Summit there was no consensus on targets for the use of renewable energy. Also, few new promises beside those on sanitation and the marine environment were made at Johannesburg; and many of those that were made were considerably vague, such as the aim for a significant reduction in biodiversity loss and the promotion of clean fossil fuels.

Despite these criticisms, this author agrees with Professor Fernando's statement that "[t]o reject the concept is to tacitly accept unsustainability and is an admission of our failure 'to address the key conceptual and methodological challenges'" to providing a coherent framework so we might realize the goals of sustainable development.¹⁸⁵ Among several attempts to provide such a framework comes a social justice-centered perspective in rethinking sustainable development linking "inequality, capitalism, and sustainable development" in a more "direct and concrete" fashion.¹⁸⁶

The International Law Association conducted a ten-year study to identify principles, norms, and rules of international law to provide a normative framework for sustainable development and suggested two sets of principles toward that end.¹⁸⁷ The

¹⁸³ *Id.* at 363.

¹⁸⁴ Jude L. Fernando, THE POWER OF UNSUSTAINABLE DEVELOPMENT: WHAT IS TO BE DONE?, 590 ANNALS 6, 7 (2003) (quoting Julian Agyeman et al., *Joined-Up Thinking: Bringing Together Sustainability, Environmental Justice and Equity*, in JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD (Julian Agyeman et al. eds., 2002)).

¹⁸⁵ Fernando, *supra* note 184, at 7 (quoting IAN DRUMMOND & TERRY MARSDEN, THE CONDITION OF SUSTAINABILITY 2 (1999)).

¹⁸⁶ *Id.*

¹⁸⁷ International Law Association, *Committee on Legal Aspects of Sustainable Development, Searching for the Contours of International Law in the Field of Sustainable Development* 6 (2002), available at <http://www.ila-hq.org/pdf/Sustainable%20Development/Sustainable%20Development%20Final%20Report%202002.pdf>.

ILA's general principles include (1) the observance of the rule of law in international relations; (2) the duty to cooperate toward global sustainable development; (3) the observance of human rights; and (4) the principle of integration.¹⁸⁸ Specific principles include (1) sovereignty over natural resources and the duty to protect the domestic as well as transboundary environment; (2) the sustainable use of natural resources; (3) intergenerational equity; (4) intragenerational equity; (5) common but differentiated responsibility; (6) common heritage of humankind; (7) the precautionary principle; (8) public participation and access to information; and (9) good governance and democratic accountability.¹⁸⁹

Among others, Dr. Graham Mayeda reinterprets sustainable development through the principle of common but differentiated responsibilities and the precautionary principle, while rejecting intergenerational equity as "incoherent both from an ethical and a legal standpoint."¹⁹⁰ Alhaji Marong offers the precautionary principle, the environmental impact assessment principle and public participation in decision-making as the "three principles relevant to the question of how legal regimes could contribute to the realization of sustainable development."¹⁹¹

Despite criticisms, it must be acknowledged that sustainable development has become a central element of international discourse. As the above analysis of the current status of sustainable development indicates, sustainable development has assumed a prominent role on the international agenda. Whether and how it can be achieved will depend upon the political will and concerted international efforts by the developed as well as developing countries, international organizations, and civil society. As these parties continue to work together to find a solution, the concept and confines of sustainable development will continue to grow. What can be said from the current status of sustainable development is neither the concept itself or its ultimate purpose will be disappearing from that worldview anytime soon.

¹⁸⁸ *Id.* at 6-7.

¹⁸⁹ *Id.* at 8-10.

¹⁹⁰ Graham Mayeda, *Where Should Johannesburg Take Us? Ethical and Legal Approaches to Sustainable Development in the Context of International Environmental Law*, 15 COLO. J. INT'L ENVTL. L. & POL'Y 29, 30 (2004).

¹⁹¹ Marong, *supra* note 4, at 64.