

# COMMENTS

## A Call to Restructure Existing International Environmental Law in Light of Africa's Renaissance: The United Nations Convention to Combat Desertification and the New Partnership for Africa's Development (NEPAD)

*Leslie C. Clark\**

### I. INTRODUCTION

*"Most basic human needs are linked to the environment."<sup>1</sup>*

The field of international environmental law, a relatively young legal discipline, addresses issues of global environmental preservation within the context of sustainable development.<sup>2</sup> Within the corpus of international environmental law, desertification and land degradation have become significant concerns. Although the risk of increased land degradation and desertification affects lands all over the world,<sup>3</sup> the

---

\* J.D. Candidate 2004, Seattle University School of Law; M.U.R.P., University of New Orleans, 1998; B.A., Duke University, 1995. The author would like to thank Professor Carmen Gonzalez for her suggestion to review the desertification issue and the members of the Seattle University Law Review for their helpful comments. Without the encouragement and constant support of Chad Clark, the author would not have had the endurance to be where she is today. Thank you.

1. UNITED NATIONS ENVIRONMENT PROGRAMME, AFRICA ENVIRONMENT OUTLOOK: PAST, PRESENT AND FUTURE PERSPECTIVES 316, U.N. Sales No. 02.III.D.20 (2002) [hereinafter AFRICA ENVIRONMENT OUTLOOK].

2. LAKSHMAN GURUSWAMY & BRENT HENDRICKS, INTERNATIONAL ENVIRONMENTAL LAW IN A NUTSHELL 1 (1997).

3. *Summary of the Third Conference of the Parties to the Convention to Combat Desertification*, 36 DESERTIFICATION CONTROL BULL. 1, 2 (2000) [hereinafter *Summary of the Third Conference*]. In 1999, the U.N. Environment Project Executive Director Klaus Toepfer clarified that desertification affected both developing and industrialized nations due to association with global issues such as climate change, biodiversity, famine, and poverty. See *id.*

continent of Africa has long been identified as the world's region most vulnerable to the problems associated with desertification.<sup>4</sup> For example, the Sahel region struggled against land degradation and desertification significantly before global awareness of the problem had been raised.<sup>5</sup> Furthermore, nearly every nation in Africa must deal with the risk of desertification.<sup>6</sup> Regional organizations throughout Africa have identified desertification as a major challenge to regional sustained development.<sup>7</sup>

Although the problems associated with desertification in Africa are not new issues for the twenty-first century, there are compelling reasons to re-review the status of combating desertification and land degradation in Africa at this time.<sup>8</sup> Throughout the African continent, nations have recently united in efforts to reduce poverty levels and to create a stage for stable economic growth.<sup>9</sup> Deemed "Africa's Renaissance,"<sup>10</sup> these shared visions have resulted in an

---

4. The centrality of Africa in the problem of desertification is exemplified by the very title of the U.N. desertification treaty: "United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa." United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, U.N. Doc. A/AC.241/15/Rev.7, reprinted in 33 I.L.M. 1328 (1994) [hereinafter *Desertification Convention*] (emphasis added).

5. William C. Burns, *The International Convention to Combat Desertification: Drawing A Line in the Sand?*, 16 MICH. J. INT'L L. 831, 849 (1995). One of the earliest warning signs of the consequences of drought and desertification was the shrinking of Lake Chad in Central Africa during a drought in the 1960s. See *id.* The lake and its wetlands shrank by approximately two-thirds during the drought, preventing crop irrigation and indirectly causing thousands of deaths. See *id.*

6. *Summary of the Third Conference*, *supra* note 3, at 3. Nearly eighty percent of African nations had submitted national desertification reports. See *id.*

7. The United Nations maintains a list of African nongovernmental organizations involved in efforts to prevent desertification. See Secretariat of the United Nations Convention to Combat Desertification, *UNCCD Database of Accredited NGOs*, at [http://www.unccd.int/ngo/accreditationDB/results.php?country\[0\]=002&numRows=all&sort=country](http://www.unccd.int/ngo/accreditationDB/results.php?country[0]=002&numRows=all&sort=country) (last visited Nov. 2, 2003).

8. According to the United Nations, "Desertification has its greatest impact in Africa. Two thirds of the continent is desert or drylands. . . . The region is afflicted by frequent and severe droughts. Many African countries are landlocked, have widespread poverty, need external assistance, and depend heavily on natural resources for subsistence." Secretariat of the United Nations Convention to Combat Desertification, *Fact Sheet 11: Combating Desertification in Africa*, at <http://www.unccd.int/publicinfo/factsheets/fs11-eng.html> (last visited Oct. 11, 2003).

9. See NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT, Oct. 2001, art. 1, para. 1, at <http://www.avmedia.at/nepad/indexgb.html> (last visited Mar. 16, 2003) [hereinafter *NEPAD Document*]. The first paragraph of the New Partnership for Africa's Development (NEPAD) positioning document sets out goals of both poverty eradication and active participation in the world economy. See *id.*

10. The phrase "African Renaissance" was first drawn from a speech given by South Africa's Nelson Mandela and refers to a focus on African self-determination, success, and independence. See, e.g., *Mandela: African Renaissance*, VOICE OF AMERICA, May 19, 1997, at <http://afgen.com/mandela2.html> (last visited Nov. 2, 2003).

embracing of the United Nation's Millennium Development Goals,<sup>11</sup> formation of the African Union,<sup>12</sup> development of Senegal's Omega Plan,<sup>13</sup> leadership roles at the World Summit on Sustainable Development in Johannesburg, South Africa,<sup>14</sup> and, significantly, in formation of the New Partnership for Africa's Development ("NEPAD").<sup>15</sup> These recent efforts indicate a commitment among African nations to address common African problems together.<sup>16</sup>

Alongside the recent focus on reinvention and self-determination in Africa, one of Africa's ongoing challenges remains addressing the threats to its important and delicate ecosystems.<sup>17</sup> Although the recent African Renaissance movement is still too nascent to formally evaluate its effectiveness, evidence already exists that the strong focus placed on economic development cannot co-exist with a commitment to preserving and protecting Africa's land resources.<sup>18</sup>

In an effort to address these competing issues of economic development and land resource protection, Part II of this Comment defines key terms and identifies causes of desertification. Then, the

The term has been increasingly used in Africa, both as a source of inspiration and as a guidepost for critics. See generally *AfricanAvenir, African Renaissance*, at <http://www.africanavenir.org> (last visited Nov. 1, 2003).

11. See United Nations, *United Nations Millennium Development Goals*, at <http://www.un.org/millenniumgoals> (last visited Mar. 18, 2003) (seeking to accomplish by 2015 the following: "(1) eradicate extreme poverty and hunger; (2) achieve universal primary education; (3) promote gender equality and empower women; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria and other diseases; (7) ensure environmental sustainability; and (8) develop a global partnership for development").

12. See generally African Union, *African Union in a Nutshell*, at <http://www.african-union.org/home/Welcome.htm> (last visited Nov. 2, 2003). The Organization for African Unity declared that it would be reestablished as the African Union. See *id.* The purpose of the reformation was, in part, to develop the African economy with emphases on continental integration and promotion of peace, security, and stability. See *id.*

13. See The Intelligence Network, *Senegal's "Plan Omega,"* at <http://www.intellnet.org/news/2001/02/13/2507-1.html> (Feb. 11, 2001). Senegal's President Abdoulaye Wade presented his "Omega Plan" in early 2001. The plan focused on a common continental vision for Africa and condemned short-term aid programs as exacerbating nations' debt loads. See *id.*

14. See *Political Declaration Adopted at Earth Summit in South Africa*, XINHUA NEWS AGENCY, Sept. 4, 2002, available at 2002 WL 26754539. The World Summit on Sustainable Development commenced August 19, 2002, and represented the ten-year follow-up to the groundbreaking U.N. Conference on Environment and Development. See *id.*

15. See NEPAD Document, *supra* note 9.

16. See, e.g., *Diplomats Get Senegal's Omega Plan for Africa*, PANAFRICAN NEWS AGENCY, Mar. 9, 2001, available at <http://fr.allafrica.com/stories/200103090152.html> (last visited Nov. 12, 2002) (noting that Senegal's Omega Plan represented a means of achieving African unity).

17. See AFRICA ENVIRONMENT OUTLOOK, *supra* note 1, at xvii-xix.

18. See Wildlife and Environment Society ("WESSA"), *The Environment and NEPAD*, at [http://www.ifg.org/wssd/enviro\\_nepad.org](http://www.ifg.org/wssd/enviro_nepad.org) (July 11, 2002). WESSA raises concerns that African development processes will fail to adequately preserve vital natural resources. See *id.*

Comment reflects on past efforts to address the problem of desertification in Africa. The 1977 United Nations Conference on Desertification (“UNCOD”)<sup>19</sup> is introduced in Part III as the initial global attempt to address the issues surrounding land degradation and desertification. Largely due to the ineffectiveness of UNCOD,<sup>20</sup> the United Nations called for a subsequent multilateral agreement with binding provisions. Thus, in Part IV, this Comment reviews in depth the resultant 1994 *United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* (“UNCCD”)<sup>21</sup> and discusses UNCCD’s continued efforts throughout Africa.

Next, Part V reviews the immediate land degradation and desertification challenges Africa faces and the causes of those challenges in the early twenty-first century. Concurrent with these challenges, there is renewed energy and excitement throughout Africa to produce permanent economic stability. With the reformation of the Organization of African Unity into the African Union,<sup>22</sup> a stage was created for multilateral state cooperation in addressing the common challenges faced throughout Africa.<sup>23</sup> As discussed in Part VI, the NEPAD has primarily occupied this stage since its formation in 2001.

However, NEPAD, with its primary focus on economic development for the purpose of poverty eradication, cannot provide the necessary platform for environmental protection in Africa. Part VII suggests that there must be recognition that land degradation and desertification do not occur in an environmental vacuum; social and political pressures effect how land is used, and poverty influences the immediate actions of those most restrained by it.<sup>24</sup>

Therefore, in Part VIII, this Comment concludes that past efforts and current energy generated by NEPAD are not enough to adequately address the specific and devastating problem of desertification in Africa. This Comment urges that the existing 1994

---

19. Report of the United Nations Conference on Desertification, U.N. Doc. A/CONF.74/36 (1977) [hereinafter UNCOD].

20. Burns, *supra* note 5, at 854.

21. Desertification Convention, *supra* note 4.

22. See African Union, *supra* note 12.

23. See AFRICA ENVIRONMENT OUTLOOK, *supra* note 1, at xviii–xix. Numerous continental challenges include climate variability, loss of biodiversity, pollution of coastal and marine habitats, deforestation, availability of clean freshwater, and degradation of soil and vegetation resources. See *id.*

24. See generally Peter Hazell, *Strategies for the Sustainable Development of Dryland Areas*, THE GLOBAL DRYLANDS PARTNERSHIP (Sept. 2001), at <http://www.undp.org/seed/unso/globalpartnership/docs%20/Strategies-C.doc> (last visited Oct. 17, 2002).

UNCCD must be updated to require environmental impact disclosure, recognize current conditions, and provide means for enforcement at the local level. The update must be forged to give not only African governments the incentive and focus to address the issue but also to pledge to the African peoples that poverty, land degradation, and desertification need not continue indefinitely. This pledge must be made in concert with the empowerment of local communities to achieve the “bottom-up” approach that previous efforts have promised.<sup>25</sup>

In summary, this Comment warns that recent, continent-wide economic development strategies have threatened the ability of Africa to combat desertification. Therefore, the existing desertification treaty, UNCCD, must be amended to ensure its ability to effectuate environmental protection.

## II. KEY TERMS AND CAUSES OF DESERTIFICATION

One of the ongoing problems with addressing the issue of desertification is defining the problem itself.<sup>26</sup> Prior to the 1992 Earth Summit, the term “desertification” had been used variably with other terms including desertization, desert-encroachment, aridization, aridification, and zerotization.<sup>27</sup> An early 1990s definition utilized by the United Nations described desertification as the “diminution or destruction of the biological potential of land, which can ultimately lead to desert-like conditions.”<sup>28</sup> Subsequently, the United Nations updated the definition<sup>29</sup> to include the key aspect of human agency by declaring, “[D]esertification is land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities.”<sup>30</sup>

---

25. Kyle W. Danish, *International Environmental Law and the “Bottom-Up” Approach: A Review of the Desertification Convention*, 3 *IND. J. GLOB. LEG. STUD.* 133, 176 (1995).

26. See Leena Ninan, *Fighting Against Ourselves: Efforts to Combat Desertification & Land Degradation*, 10 *CURRENTS: INT’L TRADE L.J.* 65, 65 (2001).

27. M.B.K. Darkoh, *News from UNEP: UNEP and Caring for Land Resources*, 36 *DESERTIFICATION CONTROL BULL.* 107, 110 (2000).

28. MONIQUE MAINGUET, *DESERTIFICATION: NATURAL BACKGROUND AND HUMAN MISMANAGEMENT* 3 (2d ed. 1994), quoted in Ninan, *supra* note 26, at 65 n.4.

29. See Alastair Iles, *The Desertification Convention: A Deeper Focus on Social Aspects of Environmental Degradation?*, 36 *HARVARD INT’L L.J.* 207, 207-08 (1995). The terms “desertification” and “land degradation” are often used in tandem. Professor Iles makes the following distinction: “Desertification is . . . the conversion of useable drylands into land that cannot support agriculture or habitation,” and land degradation is the “reduction or loss of the biological or economic productivity and complexity of lands.” *Id.*

30. Desertification Convention, *supra* note 4, art. 1, para. a. This definition was negotiated by international participants at the U.N. Conference on Environment and Development in Rio de Janeiro, Brazil, in June 1992. See *id.*

Although implied by its name, desertification is not simply the geographic spreading of desert areas. Instead, desertification refers to the deterioration of healthy drylands<sup>31</sup> into lands that no longer support human habitation or agricultural productivity.<sup>32</sup> To further complicate the issue, desertification is viewed differently from the biological science and social science perspectives. The biological science consideration of land degradation involves both reversible and irreversible changes, while social science presumes that land degradation refers only to irreversible damage.<sup>33</sup> For the purposes of this Comment, the social science view is employed because of its consistency with the Action Programme concept of the UNCCD.<sup>34</sup>

In addition to the various definitions of "desertification," there are various theories to explain both direct and indirect causes of desertification.<sup>35</sup> When the problem first caught global attention, the leading theory was that desertification was primarily caused by the climate and related to pre-existing natural conditions.<sup>36</sup> However, by the early 1990s, there was a general recognition that land degradation and desertification were not only caused by natural conditions and phenomena but also exacerbated by human activities on the earth.<sup>37</sup> Overcultivation, overgrazing, salinization of soils, and deforestation<sup>38</sup> are now considered to be among the primary causes of land degradation.<sup>39</sup> In general, when these activities occur in the world's

---

31. See Phillip Dobie, *Poverty and the Drylands*, The Global Drylands Partnership, Sept. 2001, at <http://www.undp.org/seed/unso/globalpartnership/docs%20/Poverty-Challene.doc> (last visited Oct. 17, 2002). Phillip Dobie, Director of the United Nation's Development Programme's Office to Combat Desertification and Drought, describes drylands based on the relative aridity of a region and notes that there are three main categories of drylands (arid, semi-arid, and dry sub-humid) as well as smaller, lesser populated categories including hyper-arid desert and cold drylands. *Id.*

32. See Iles, *supra* note 29, at 208.

33. Anne Mette Lykke, *Refining the Ecological Aspects of Disequilibrium Theories for Africa's Pastoral Drylands*, 36 DESERTIFICATION CONTROL BULL. 23, 25 (2000).

34. The United Nations focuses on social and group-empowering solutions to the desertification crisis. See discussion of the UNCCD Action Programmes *infra* Part VII.

35. See generally, Ninan, *supra* note 26.

36. See *id.*

37. See Desertification Convention, *supra* note 4, pmb1.

38. See *id.* The Convention's preamble notes: "[D]esertification is caused by complex interactions among physical, biological, political, social, cultural and economic factors." *Id.*

39. See Desertification, *Land Degradation: Highlights from GEO-2000*, 36 DESERTIFICATION CONTROL BULL. 118, 119-20 (2000) [hereinafter *Desertification, Land Degradation*]. Multiple factors that cause land degradation throughout the world include soil erosion, compaction, and nutrient loss, salinization, overgrazing, deforestation, and poor land management. See *id.*

sensitive dryland areas, the degraded land no longer supports human life.<sup>40</sup>

Desertification and poverty are caught together in a downward spiral. Approximately forty percent of the world's land has been classified as drylands,<sup>41</sup> and approximately thirty-eight percent of the world's population (approximately 2.3 billion people) live in these areas.<sup>42</sup> The over-intensive agricultural and livestock practices that contribute to desertification are engaged in by those whose goals are not to degrade their environment but to provide sustenance for themselves and their families.<sup>43</sup>

### III. 1977 PLAN OF ACTION TO COMBAT DESERTIFICATION

The first major effort to address the problem of desertification on a global scale occurred with the 1977 UNCOD,<sup>44</sup> which developed the Plan of Action to Combat Desertification ("PACD"). Discussion of UNCOD in this Comment is divided into two sections: Section A covers development of the Plan, while section B analyzes its results. This first attempt to address the global problem of desertification served to identify common causes and articulate goals for combating the conversion of productive lands into areas incapable of supporting local populations.

#### A. *Development of the Plan of Action to Combat Desertification (PACD)*

Although international recognition of the problem of desertification had begun at least twenty-five years before UNCOD,<sup>45</sup> it was the devastating drought conditions in Africa's Sahel region during the late 1960s that created the final impetus for a global discussion on the problem of desertification.<sup>46</sup>

The Sahel drought began in 1968 and affected agricultural productivity from Mauritania in western Africa to Ethiopia in eastern Africa.<sup>47</sup> Studies conducted between 1968 and 1972 indicated that

---

40. See Dobie, *supra* note 31. Degraded land prevents agricultural production, thereby causing the inhabitants to fall into greater poverty or to migrate in search of better conditions. See *id.*

41. See *id.*

42. See *id.*

43. See Ninan, *supra* note 26, at 67 (suggesting that the overgrazing and overcultivation of lands is a response to increased population and land scarcity pressures).

44. See *id.* at 71. However, the problem of desertification had been recognized at least as early as the 1950s, as indicated by the U.N. Arid Zone Program that was in effect from 1952 to 1962. See *id.*

45. See UNCOD, *supra* note 19.

46. See Danish, *supra* note 25, at 142.

47. See UNCOD, *supra* note 19.

approximately 250,000 of the region's inhabitants died from drought-related famine and disease.<sup>48</sup> In addition to the human loss, poverty was exacerbated in the affected nations by the widespread loss of cattle and other domestic animals.<sup>49</sup> In 1974, responding to conditions in the Sahel, the U.N. General Assembly called for the convening of the UNCOD.<sup>50</sup>

UNCOD took place in September 1977 in Nairobi, Kenya,<sup>51</sup> and included representatives from approximately ninety-five nations, fifty U.N. offices, eight intergovernmental organizations, and sixty-five non-governmental organizations.<sup>52</sup> The Conference attendees produced the non-binding PACD,<sup>53</sup> which ambitiously targeted the year 2000 for full implementation of the PACD programs.<sup>54</sup> The PACD was structured around twenty-eight recommendations and encouraged affected nations to "study and monitor desertification, develop national action plans for combating desertification, create insurance funds to compensate people during times of drought, and strengthen scientific and technological research."<sup>55</sup>

### B. Limited Success of the PACD

Although the PACD appeared to be "an innovative" approach to addressing the problem of desertification,<sup>56</sup> local knowledge and resources were underutilized assets in attempts to implement the PACD.<sup>57</sup> For example, the PACD envisioned that local organizations would participate in the development of national plans and that only appropriate technologies would be introduced to communities.<sup>58</sup> However, the PACD also required the application of technical expertise in the development of water management plans and

---

48. Burns, *supra* note 5, at 849.

49. *Id.*

50. G.A. Res. 3337, U.N. GAOR 2d Comm., 29th Sess., Supp. No. 31, at 64, U.N. Doc. A/9631 (1975), *cited in* Burns, *supra* note 5, at 850.

51. *See* Burns, *supra* note 5, at 850.

52. Darkoh, *supra* note 27, at 108.

53. *See* UNCOD, *supra* note 19, art. 1, para. 1.

54. *See id.* art. 2, para. 9.

55. DAVID HUNTER ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 1113 (2d ed. 2002).

56. *See* UNCOD, *supra* note 19, art. 3, para. 12. PACD states that, "To be successful, the effort to combat desertification must be seen as an integral element in [a] larger effort of social and economic advancement." *See id.*

57. HUNTER, *supra* note 55, at 1113.

58. *See* UNCOD, *supra* note 19, art. 4, para. 79 (discussing national programmes), and art. 4, paras. 32(g)(iii), 89(b)(ii)(10) (encouraging the use of appropriate technology in eliminating water-borne disease and agriculture).



irrigation schemes.<sup>59</sup> As a result, local buy-in to the PACD was limited, and few nations completed the anti-desertification plans that were called for by PACD. For example, although Africa's Sahelian crisis had prompted UNCOD, only twenty African nations submitted national plans.<sup>60</sup>

In retrospect, UNCOD fulfilled an important objective of raising global awareness of the problem of desertification.<sup>61</sup> After the Conference, the U.N. Environment Program initiated a program of collecting and distributing updates on achievements in combating desertification.<sup>62</sup> Despite causing an increased global awareness, UNCOD is generally regarded as having been ineffective in adequately dealing with the problems of desertification.<sup>63</sup> Throughout the world, governments failed to address the underlying social causes of desertification such as the overgrazing of livestock, overly intensive agricultural practices, and deforestation associated with subsistence living.<sup>64</sup> As a non-binding agreement, UNCOD created no obligations for states to act in compliance with its objectives of reducing worldwide desertification trends. Therefore, it is likely that the inattention given to the program by states held few consequences for the world's leaders.

UNCOD also fell short of initial expectations in Africa.<sup>65</sup> One of the reasons for the lack of PACD's success in Africa was a relative absence of governmental commitment to oversight and follow-up of implemented programs.<sup>66</sup> Some programs, such as the Trans-Saharan Green Belt project, prematurely attempted to address the problem of desertification on a multi-national level.<sup>67</sup> Failure of such programs under the PACD, accompanied by an increase in absolute numbers of those worldwide living in the shadow of desertification,<sup>68</sup> led to a recognized need for a binding agreement that would provide authority

---

59. See *id.* art. 4, para. 43(a).

60. A. Buonajuti, *External Evaluation of the Plan of Action to Combat Desertification*, 20 DESERTIFICATION CONTROL BULL. 30, 31 (1991), quoted in Danish, *supra* note 25, at 145.

61. See Danish, *supra* note 25, at 148.

62. See *Summary of the Third Conference*, *supra* note 3, at ii.

63. Burns, *supra* note 5, at 854.

64. See R. S. Odingo, *Implementation of the Plan of Action to Combat Desertification (PACD) 1978-1981*, 21 DESERTIFICATION CONTROL BULL. 6, 6-14 (1992).

65. Michael Bernard Kwesi Darkoh, *Desertification: The Scourge of Africa*, at <http://victoria.tc.ca/environment/CLIMATE/tiempo/8.apr/africa.html> (last visited Sept. 7, 2003).

66. See *id.*

67. The Trans-Saharan Green Belt project planners intended to reclaim Sahelian lands by reforestation along the northern edge of the Sahara, but the program has been criticized as unrealistically broad in scope. See Odingo, *supra* note 64.

68. See Dobie, *supra* note 31.

for implementation and enforcement. As a result,<sup>69</sup> the 1994 UNCCD convened in June 1994.

#### IV. UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION IN THOSE COUNTRIES EXPERIENCING SERIOUS DROUGHT AND/OR DESERTIFICATION, PARTICULARLY IN AFRICA

As a response to the ongoing problem of desertification following UNCOD, interested states again formed an international agreement to combat the problem; UNCCD was opened for signature in October 1994. Discussion of the treaty is divided into four sections as follows: historical development, significant elements, responses, and analysis.

##### A. *Development of the UNCCD Treaty*

By the early 1990s, the world's attention had focused on the need to protect and stabilize the environment through cooperative policies and guidelines.<sup>70</sup> In response, the United Nations Conference on Environment and Development, commonly known as the Earth Summit, was held in Rio de Janeiro, Brazil, in June 1992.<sup>71</sup> Participants at the Earth Summit proclaimed several environmental priorities including a focus on all levels of citizen participation in environmental initiatives and elimination of unsustainable patterns of development.<sup>72</sup>

In addition, the Earth Summit also identified the problem of desertification as a priority issue,<sup>73</sup> and several nations most affected by desertification requested that an intergovernmental committee organize a convention on desertification, with special attention placed on Africa.<sup>74</sup> The resulting "Intergovernmental Negotiating Committee"<sup>75</sup> included representatives from Africa<sup>76</sup> and convened for

---

69. See Odingo, *supra* note 64.

70. See GURUSWAMY & HENDRICKS, *supra* note 2, at 10–14.

71. See *id.* at 12.

72. AFRICA ENVIRONMENT OUTLOOK, *supra* note 1, at 18–19.

73. See Agenda 21, U.N. Conference on Environment and Development, paras. 12.1–12.63, U.N. Doc. A/CONF. 151/26 (1992), available at <http://www.un.org/esa/sustdev/agenda21text.htm>.

74. See HUNTER, *supra* note 55, at 1114.

75. See Earth Negotiations Bulletin, *A Brief History of the INCD*, at <http://www.iisd.ca/linkages/vol04/0412001e.html> (last visited Mar. 18, 2003).

76. See generally *Summary of the First Session of the INC for the Elaboration of an International Convention to Combat Desertification*, U.N. Intergovernmental Negotiating Comm., 1st Sess., U.N. Doc. A/48/226 (1993) (listing the participants in and initial decisions of the negotiating committee).

the first time in Nairobi, Kenya, in May 1993.<sup>77</sup> By the Committee's fourth meeting in Geneva, Switzerland, it had produced a draft text for the planned desertification convention that included draft regional plans for Africa, Asia, and Central and South America.<sup>78</sup>

With the draft text in place, the negotiating committee concluded negotiations in June 1994<sup>79</sup> on the main document with its four annexes relating to regional implementation plans.<sup>80</sup> UNCCD was opened for signature on October 15, 1994,<sup>81</sup> with the requirement that fifty nations ratify the agreement before it could take effect. The fiftieth nation ratified the agreement on September 17, 1996, and UNCCD became effective ninety days later on December 26, 1996.<sup>82</sup> As of March 2003, 186 nations had ratified UNCCD.<sup>83</sup>

### B. Components of the UNCCD Treaty

The ratified UNCCD is divided into a six-part main document and four annexes.<sup>84</sup> At the outset, the preamble establishes the findings and purposes of UNCCD and incorporates themes and priorities discussed at the 1992 Earth Summit.<sup>85</sup> Specifically, the preamble notes that UNCCD's "center of concern" is the people in affected or threatened areas.<sup>86</sup> Taken together, the 25 findings expressed in the preamble blend priorities of valuing the human environment, protecting and reclaiming the physical environment, and accomplishing global sustainable economic development.<sup>87</sup> In other words, UNCCD does not solely respond to concerns of the physical

77. Burns, *supra* note 5, at 855.

78. *Id.* at 856.

79. See Danish, *supra* note 25, at 149.

80. See Desertification Convention, *supra* note 4, Annexes 1–4. The Desertification Convention adopted four annexes: Annex I–Regional Implementation for Africa; Annex II–Regional Implementation Annex for Asia; Annex III–Regional Implementation Annex for Latin America and the Caribbean; and Annex IV–Regional Implementation Annex for the Northern Mediterranean. See *id.*

81. Danish, *supra* note 25, at 149.

82. See Secretariat of the United Nations Convention to Combat Desertification, *Status of Ratification and Entry into Force*, at <http://www.unccd.int/convention/ratif/doeif.php> (last visited Mar. 18, 2003). The African nation of Chad represented the fiftieth ratifying nation on September 27, 1996. See *id.*

83. See *id.* The United States ratified the treaty on November 17, 2000, becoming the 171st nation to do so. The ratification entered into force on February 15, 2001. *Id.*

84. See Desertification Convention, *supra* note 4. The document is divided into six parts: Part I–Introduction; Part II–General Provisions; Part III–Action Programmes, Scientific and Technical Cooperation and Supporting Measures; Part IV–Institutions; Part V–Procedures; and Part VI–Final Provisions; and the four regional annexes discussed *supra* note 80.

85. See Desertification Convention, *supra* note 4, pmb1.

86. See *id.*

87. See *id.*

environment and the problems of global land degradation. Instead, it attempts to address these challenges in the context of the social, economic, and cultural settings in which they occur.

Next, UNCCD's Part I defines key terms within the document. The definitions clarify that the goals of preventing desertification and land degradation are closely interrelated. Notably, UNCCD defines "combating desertification" as:

[I]nclud[ing] activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at:

- (i) prevention and/or reduction of land degradation;
- (ii) rehabilitation of partly degraded land; and
- (iii) reclamation of desertified land.<sup>88</sup>

The body of the ratified UNCCD commits its Parties to "adopt[ing] an integrated approach" to addressing the problems of desertification and drought.<sup>89</sup> The integrated approach includes not only participation and coordination at sub-regional, regional, and international levels<sup>90</sup> but also differentiates between the general obligations of all Parties and the additional obligations of both "affected country Parties" and "developed country Parties."<sup>91</sup>

While the main UNCCD document sets forth the basic understandings and obligations of all ratifying Parties (including affected country Parties and developed country Parties), it is Annex I, the Regional Implementation Annex for Africa, which contains specific findings about conditions in Africa and guidelines for combating desertification and mitigating against drought on that continent.<sup>92</sup> Annex I identifies the particular conditions in Africa that render the continent exceptionally subject to land degradation and desertification and associated economic depression.<sup>93</sup> Some of the factors listed include the high proportion of arid, semi-arid, and dry sub-humid areas; the significant number of countries already

---

88. *Id.* art. 1, para. b.

89. *Id.* art. 4, para. 2a.

90. *Id.* art. 3, para. 3b.

91. *Id.* arts. 5-6. The treaty defines "affected countries" as "countries whose lands include, in whole or in part, affected areas"; "affected areas" are defined as "arid, semi-arid, and/or dry sub-humid areas affected or threatened by desertification"; and "Developed country Parties" are not specifically defined, but include "regional economic integration organizations constituted by developed countries." *Id.* art. 1, paras. h, i, k.

92. *See id.* Annex I, arts. 1, 2.

93. *See id.* Annex I, art. 3.

experiencing desertification; and the widespread poverty in many of Africa's affected countries.<sup>94</sup>

Throughout the document, "Action Programmes"<sup>95</sup> serve as the primary means of implementing the goals of UNCCD.<sup>96</sup> Article 5 of UNCCD establishes that each affected country Party shall create an "enabling environment" by either strengthening existing legislation or by "enacting new laws and establishing long-term policies and action programmes."<sup>97</sup> Action programmes are then further subdivided into provisions for national and subregional/regional action programmes in Articles 10 and 11, respectively.<sup>98</sup>

UNCCD places the most emphasis on requirements for "National Action Programmes."<sup>99</sup> In addition to the broad nature of the stated purpose for the national action programmes,<sup>100</sup> the specific provisions of the national action programmes are also far-reaching and ambitious. The provisions require that a government's action programmes develop long-term strategies to combat desertification and mitigate the effects of drought while still allowing for flexibility in response to individual economic and environmental conditions.<sup>101</sup> Furthermore, the programmes require not only fostering collaboration at all levels of government but also cultivating participation among local populations, including farmers and other "resource users."<sup>102</sup> This broad approach has been praised for its participatory, "bottom-up" approach.<sup>103</sup>

In addition to Article 10's general requirements for all national action programmes, Annex I of UNCCD provides particular requirements applying to African country Parties.<sup>104</sup> Annex I, Article 8 sets forth additional provisions for national action programmes in

94. *See id.* Other factors listed in Annex I consider the large number of landlocked countries, difficult socio-economic conditions including external indebtedness and political instability, heavy reliance of populations on natural resources for subsistence, insufficient institutional and legal frameworks, and the central role of combating desertification already present in national development priorities of affected African nations. *Id.*

95. This Comment retains the official English language document's spelling of "programme" and "programmes."

96. *See id.* art. 9, para. 1.

97. *See id.* art. 5, para. e.

98. *See id.* arts. 10, 11.

99. *See id.* art. 10.

100. *See id.* art. 10, para. 1. "The purpose of National Action Programmes is to identify the factors contributing to desertification and practical measures necessary to combat desertification and mitigate the effects of drought." *Id.*

101. *See id.* art. 10, para. 2.

102. *See id.*

103. *See generally* Danish, *supra* note 25, at 172.

104. *See* Desertification Convention, *supra* note 4, Annex I, art. 7.



rainfall.<sup>115</sup> The Early Warning System technology received funding through Party contributions to UNCCD.<sup>116</sup>

Development of national action programmes and availability of relevant technology have produced tangible improvements in land quality in some African communities.<sup>117</sup> For example, in Wa, Ghana (West Africa), a nongovernmental organization (“NGO”) acting under the authority of UNCCD recognized the need for diversification of agricultural products to reduce the rural area’s sensitivity to periodic drought.<sup>118</sup> The NGO utilized traditional values of sharing and solidarity and involved the participation of local women.<sup>119</sup> The project’s greatest successes included diversification of crops, development of a revolving loan program for local economic development, education through drama presentations about sustainable agricultural and livestock practices, and empowerment of women.<sup>120</sup>

Nevertheless, these success stories exist against a backdrop of increasing poverty and deteriorating land quality throughout the continent of Africa.<sup>121</sup>

#### *D. Analysis of the UNCCD Treaty*

Despite the success stories from places such as Wa, Ghana, the positive affects of the treaty struggle to overcome the increasing strains on much of Africa’s delicate dryland areas.<sup>122</sup> Civil war and other forms of political instability, famine, and continuing population growth outpace the scope of both the treaty and individual national action programmes. In addition, the hailed “bottom-up” approach of

---

115. *See id.* at 29. The technology, “Early Warning System,” predicts future drought conditions and aids governments in predicting required levels of food and shelter needs. *Id.*

116. *See id.*

117. *See* Racine Kane, *Involving Gender in Desertification Control-Suntaa-Nuntaa Agroforestry Project in Wa, Ghana*, 36 DESERTIFICATION CONTROL BULL. 87, 87 (2000). The U.N. Environment Programme developed the “Saving the Drylands” certificate awards to create an incentive for documenting successful attempts to stem the problem of desertification. *See Submitting Success Stories to UNEP*, 36 DESERTIFICATION CONTROL BULL. 129, 129 (2000).

118. *See* Kane, *supra* note 117, at 87.

119. *See id.*

120. *See id.*

121. *See* AFRICA ENVIRONMENT OUTLOOK, *supra* note 1, at 269–70 (discussing human vulnerability in areas subject to desertification).

122. *See generally* Ian Burton, *Vulnerability and Adaptation to Climate Change in the Drylands*, The Global Drylands Partnership, Aug. 2001, at <http://www.undp.org/seed/unso/globalpartnership/docs%20/Vulnerability%20Challenges.doc> (last visited Oct. 17, 2002).

the UNCCD<sup>123</sup> has not met with widespread success because the Treaty attempts to address problems at the local level that may only effectively be resolved at a national or regional level.<sup>124</sup>

The Treaty's approach has also limited its ability to successfully retard land degradation in Africa. For example, UNCCD and other related programs<sup>125</sup> have simultaneously created an overdependence on foreign aid and generated insufficient financial resources to maintain basic programs in African nations.<sup>126</sup> For example, increased reliance on international food aid and agricultural subsidies actually lengthens the recovery time for those regions most affected by drought and famine.<sup>127</sup> Second, despite the budgetary estimates that running the UNCCD program would cost \$10 to \$22 billion annually, the United Nation's financing arm for UNCCD only held a \$2 billion budget as of the year 2000.<sup>128</sup>

#### V. STATUS OF DESERTIFICATION AND LAND DEGRADATION CHALLENGES IN AFRICA

Meanwhile, more than ten years after Rio's Earth Summit and six years after the ratification of UNCCD, Africa's environmental and economic conditions have worsened rather than improved.<sup>129</sup> The problems associated with ongoing drought and soil degradation exacerbate each other because drought increases soil degradation, and degraded soil worsens the effects of and handicaps the recovery from drought.<sup>130</sup> In many African nations these issues of poverty and food security remain closely linked,<sup>131</sup> and food security issues are compounded by the drought conditions and desertification that Africa continues to face.<sup>132</sup> At the August 2002 World Summit on

---

123. Danish, *supra* note 25, at 173-74. Kyle Danish suggests that the participatory approach of the Desertification Convention would lead to greater success resulting from cooperation among rural populations, nongovernmental organizations, and governments. *Id.*

124. See Burton, *supra* note 122.

125. See generally Secretariat of the United Nations Convention to Combat Desertification, at <http://www.unccd.int> (last visited Oct. 11, 2003) (listing anti-desertification programs associated with the United Nations).

126. See HUNTER, *supra* note 55, at 1121.

127. See HILARY FRENCH, VANISHING BORDERS: PROTECTING THE PLANET IN THE AGE OF GLOBALIZATION 64-65 (2000) (discussing the role of agricultural export subsidies in reduced land productivity and negative social consequences).

128. See HUNTER, *supra* note 55, at 1121.

129. See *Nigeria's President Obasanjo Says Africa Worse Now Than Ten Years Ago*, THE GUARDIAN (Lagos, Nigeria), Sept. 3, 2002, available at 2002 WL 26568236 (last visited Mar. 19, 2003) [hereinafter *Nigeria's President Obasanjo*].

130. *Desertification, Land Degradation*, *supra* note 39, at 120.

131. See FRENCH, *supra* note 127, at 64-65.

132. See *Region Reels Under Its Food Shortages*, AFRICA NEWS, Aug. 22, 2002, LEXIS, News Library, MWP File [hereinafter *Region Reels*].



Sustainable Development, Nigerian President Olusegun Obasanjo declared bleakly that current conditions in Africa “present a picture far more gloomy today than in 1992.”<sup>133</sup>

President Obasanjo’s statement is backed up statistically throughout much of the African continent. Since 2001, Southern Africa has experienced a rapid increase in famine and poverty rates resulting from severe environmental conditions,<sup>134</sup> and the famine levels in six Southern African nations (Zambia, Zimbabwe, Malawi, Mozambique, Swaziland, and Lesotho) have steadily increased since March 2001.<sup>135</sup> As of September 2002, an estimated 14.4 million people in these six nations were in need of immediate food aid.<sup>136</sup> As frequently occurs throughout Africa, Southern Africa’s worsening poverty and famine have been tied to both climatic conditions (drought) and policy-based constraints such as market access.<sup>137</sup>

Researchers project that Africa will only be able to feed forty percent of its population by 2025.<sup>138</sup> With a projected population of 1.27 billion by 2025 (an increase of fifty-five percent from 2001), approximately 508 million Africans would require imported food aid for survival unless food security issues are addressed.<sup>139</sup>

In view of the ongoing consequences of land degradation, famine, and poverty, Africa has recognized the immediate need for new and revitalized approaches to achieving sustainable development.<sup>140</sup> This recognition, coupled with a desire to increase the continent’s self-reliance, has contributed to new energy placed on reorganization and creation of African entities that are designed to alleviate poverty and increase sustainable economic development. Significant outgrowths of this “African Renaissance”<sup>141</sup> include the reformation of the Organization of African Unity into the African Union,<sup>142</sup> broad support of Senegal’s Omega Plan,<sup>143</sup> a leadership role at the 2002 World Summit on Sustainable Development in Johannesburg, South

---

133. See *Nigeria’s President Obasanjo*, *supra* note 129.

134. See *Region Reels*, *supra* note 132.

135. See *id.*

136. See U.N. Integrated Regional Information Networks, *More Than 14 Million at Risk from Hunger*, at [www.allafrica.com/stories/200209161233.html](http://www.allafrica.com/stories/200209161233.html) (Sept. 16, 2002).

137. See *id.*

138. See *Desertification, Land Degradation*, *supra* note 39, at 120.

139. See Institut national d’etudes demographiques (National Institute of Demographic Studies), at <http://www.ined.fr/englishversion/figures/world/tableaux2001/afriaust01A.htm> (last visited Mar. 19, 2003). The Institut forecasts that the population of Africa will reach 1,268,000,000 by the year 2025. Population figures for Africa in 2001 were 818,000,000. *Id.*

140. See *Diplomats Get Senegal’s Omega Plan for Africa*, *supra* note 16.

141. See *Mandela: African Renaissance*, *supra* note 10.

142. See *African Union*, *supra* note 12.

143. See *Diplomats Get Senegal’s Omega Plan for Africa*, *supra* note 16.

Africa,<sup>144</sup> and formation of the New Partnership for Africa's Development. These efforts reflect a consistent and increasingly unified approach among African states in alleviating the region's widespread hunger and poverty.

## VI. NEW PARTNERSHIP FOR AFRICA'S DEVELOPMENT (NEPAD)

### A. Context and Background

The formation of NEPAD stemmed from the development goals established during the decade following the United Nations Conference on Environment and Development.<sup>145</sup> Following the implementation of UNCCD, Africa incorporated the interrelated issues of the environment and development throughout many of its self-determination milestones marked in the 1990s and early twenty-first century.<sup>146</sup>

The most significant events and movements during this period included the 1992 Earth Summit and its Agenda 21, Senegal's Omega Plan, the United Nation's Millennium Development Goal, and the 2002 World Summit on Sustainable Development. An introduction to each of these significant plans and actions provides an understanding of the context out of which NEPAD formed.

The United Nations Conference on Environment and Development represents the first key event regarding the future of Africa's environment in the decade preceding NEPAD's formation.<sup>147</sup> Held in Rio de Janeiro, Brazil, nearly every nation participated in this historic conference, which focused the world's attention on the need for development to occur sustainably.<sup>148</sup> In part, the Earth Summit was held to address some of the unresolved issues from the first major international environmental conference, the Stockholm Convention of 1972.<sup>149</sup>

---

144. See *Political Declaration Adopted at Earth Summit in South Africa*, *supra* note 14.

145. See GURUSWAMY & HENDRICKS, *supra* note 2, at 10-14.

146. See, e.g., NEPAD Document, *supra* note 9.

147. See generally United Nations Division for Sustainable Development, at <http://www.un.org/esa/sustdev/index.html> (last visited Mar. 19, 2003).

148. See Shanna Halpern, *The United Nations Conference on Environment and Development: Process and Documentation*, at <http://www.ciesin.org/docs/010-585/unced-intro1.html> (last visited Mar. 19, 2003). Approximately 178 nations were represented; 100 heads of state attended. *Id.*

149. See GURUSWAMY & HENDRICKS, *supra* note 2, at 11. Subsequent to the Stockholm Declaration, the Brundtland Commission recommended that another international conference be held. *Id.* In response, the United Nations organized the Earth Summit and tasked it with further developing international environmental law. *Id.*

In response, the Earth Summit's Rio Declaration articulated that the purposes of sustainable development included both preservation and restoration of the physical environment as well as economic development and economic independence of the world's developing nations.<sup>150</sup> This articulation represented a backing off from the strict environmental-preservation-at-all-costs approach resulting from the Stockholm Convention and Declaration, and it can be viewed both positively and negatively.<sup>151</sup> Some believe that the stringent goals of the Stockholm Declaration manifest a fundamental difference in perspectives between the developed and the developing world.<sup>152</sup> However, by the 1992 convention, the Earth's ecosystem had already become jeopardized, and a strong commitment to environmental preservation and protection was the proper approach to realize any kind of assurance that sustainable development would be possible.

Nations attending the 1992 Earth Summit adopted recommendations for the environment and economic development as "Agenda 21."<sup>153</sup> Agenda 21 provides the framework for subsequent multilateral environmental agreements. Its principles incorporate standards for responsible economic development including utilization of the "precautionary approach" in which states should not allow scientific uncertainty to be utilized to postpone "cost-effective measures to prevent environmental degradation."<sup>154</sup>

In September 2000, the United Nations developed the eight "Millennium Development Goals."<sup>155</sup> The seventh goal seeks to "ensure environmental sustainability."<sup>156</sup> Specifically, the goal aims to incorporate sustainable development principles into countries' national plans, provide access to safe drinking water, and help the world's population living in urban slums.<sup>157</sup> As of March 2003, all 191 U.N. member states had pledged to meet the eight goals by 2015.<sup>158</sup>

---

150. *See id.* at 13–14.

151. *See id.*

152. *See* C. Russell Shearer, *International Law and Development in Developing Nations: Agenda Setting, Articulation, and Institutional Participation*, 7 TUL. ENVTL. L.J. 391, 422 (1994). At the same time that developing nations hesitate to fund corrective programs for environmental problems that they did not create, developed nations also refuse to implement the "polluter pays principle" to fund necessary remediation programs. *Id.*

153. *Agenda 21*, *supra* note 73.

154. *See Rio Declaration on Environment and Development*, U.N. Conference on Environment and Development, U.N. GAOR, 46th Sess., princ. 15, U.N. Doc. A/CONF.151/26 (1992), *reprinted* in 31 I.L.M. 874, 875.

155. *See* United Nations Millennium Development Goals, *supra* note 11.

156. *See id.*

157. *Id.* The full text of the seventh goal reads as follows: "Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental

Concurrent with the increased international recognition of the need for responsible development compatible with environmental protection,<sup>159</sup> Africa began its quest for greater self-determination. Senegal's Omega Plan became one of the first prototypes for continent-wide improvement.<sup>160</sup> Introduced by Senegal's President Abdoulaye Wade in January 2001, the Omega Plan acknowledges that the aid model has failed because receiving nations remain constantly unable to repay the debt.<sup>161</sup> Therefore, the Omega Plan envisions investment in intrastate developments such as roads, railways, ports, and airports throughout Africa.<sup>162</sup> President Wade noted that his Omega Plan calls for cooperation and unity among all African nations at the national, sub-regional, and continental level.<sup>163</sup> In other words, because the continent faces similar challenges, the Omega Plan suggests that the continent's nations together face these challenges.<sup>164</sup> The Omega Plan received immediate acclaim among African nations<sup>165</sup> and contributed to efforts to direct international focus on African issues during the World Summit on Sustainable Development ("WSSD").

Africa took a leadership role in hosting the WSSD in Johannesburg, South Africa, in August 2002.<sup>166</sup> The WSSD represented over 190 countries, attracted approximately 21,000 delegates,<sup>167</sup> and clearly showed the worsening economic disparity between the developed nations of the Northern Hemisphere as compared to those nations of the Southern Hemisphere.<sup>168</sup> Critics noted that while carrying out the goals of sustainable development could be achieved by comparatively wealthier countries, it was the developing nations who most needed the benefits promised by sustainable development (namely, a means to achieving net economic

---

resources. Reduce by half the proportion of people without access to sustainable drinking water. Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020." *Id.*

158. *Id.*

159. See generally *Agenda 21*, *supra* note 73, at ch. 12.

160. See Senegal's "Plan Omega," *supra* note 13.

161. See Abdoulaye Wade, OMEGA Plan for Africa, para. 5 (May 2001) (unpublished manuscript presented at a conference in Algiers), at <http://www.sarpn.org.za/NEPAD/Omega.pdf> (last visited Mar. 19, 2003).

162. See *id.*, sec. 2.1.1., para. 30.

163. See Senegal's "Plan Omega," *supra* note 13.

164. See *id.*

165. See *Diplomats Get Senegal's Omega Plan for Africa*, *supra* note 16.

166. See *id.*

167. See *Political Declaration Adopted at Earth Summit in South Africa*, *supra* note 14.

168. See Africa InfoServe, *Controversy Reigns High at the World Summit*, at <http://www.africafiles.org/article.asp?ID=559> (Sept. 2, 2002).

growth) and remained in the weakest position to implement national programs for sustainable development.<sup>169</sup> However, representatives uniformly agreed that addressing climate change and land degradation was essential to achieving sustainability and seen as “an investment in our future and an assurance for future generations.”<sup>170</sup> Finally, the WSSD provided the first significant for a newly formed continent-wide agreement formed in 2001: New Partnership for Africa’s Development.

### *B. Overview of the NEPAD Positioning Document*

NEPAD now represents what was temporarily termed the New African Initiative and was originally formed as a merging of South Africa’s Millennium Partnership for the African Recovery Programme and Senegal’s Omega Plan.<sup>171</sup> The two prior initiatives merged as an attempt to produce a continent-wide focus on the African rebirth that the continent’s leaders had envisioned with the turn of the millennium.<sup>172</sup> Participating nations completed the merger of the two plans and presented the resulting document to an Organization of African Unity Summit for approval in July 2001. Three months later, NEPAD’s Heads of State and Government Implementation Committee finalized the policy directions of the coalition; NEPAD was officially formed on October 23, 2001.<sup>173</sup>

Significantly, nations from across Africa participated in NEPAD’s formation and early leadership. Algeria, Egypt, Nigeria, Senegal, and South Africa are credited with founding NEPAD; an additional ten countries form the steering committee.<sup>174</sup> These fifteen nations represent all of Africa’s major subregions including North Africa, West Africa, East Africa, South Africa, and the islands of the Western Indian Ocean.

In addition to representing a broad coalition of African states, NEPAD also exemplifies a unique approach to solving Africa’s obstacles through its 57-page, 207-paragraph positioning document.<sup>175</sup> NEPAD pledges “to eradicate poverty and to place [African]

---

169. *See id.*

170. *See id.* (quoting Minister Jaume Palou of Spain).

171. *See NEPAD: Questing the Forgotten Component*, THIS DAY (Lagos, Nigeria), Aug. 1, 2002, available at <http://www.allafrica.com/stories/200208010062.html>.

172. *See id.*

173. *See* South Africa: The Official Gateway, *NEPAD Lays Out Vision for Africa*, at [http://www.safrika.info/doing\\_business/economy/development/nepad.htm](http://www.safrika.info/doing_business/economy/development/nepad.htm) (last visited Nov. 11, 2002).

174. *See id.* The ten additional nations are Botswana, Cameroon, Ethiopia, Gabon, Mali, Mauritius, Mozambique, Rwanda, Sao Tome and Principe, and Tunisia. *Id.*

175. *See* NEPAD Document, *supra* note 9.

countries, both individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic.”<sup>176</sup> The unique NEPAD approach recognizes the role Africa plays in “global stability”<sup>177</sup> and asserts that NEPAD forms an African plan for renaissance by and for Africa. Participation from the “North” (developed nations) is secondary to the focus on African self-determination.<sup>178</sup> “NEPAD is first a partnership of Africa, and then a partnership with someone else. [Africans] own the initiative.”<sup>179</sup>

NEPAD’s goals and policies are collected into ten key initiatives: (1) Peace, Security, and Political Governance; (2) Economic and Corporate Governance; (3) Bridging the Infrastructure Gap; (4) Human Resource Development; (5) Agriculture, (6) Environment; (7) Culture; (8) Science and Technology Platforms; (9) Capital Flows; and (10) Market Access.<sup>180</sup> Recurring themes throughout all ten initiatives include recognition of Africa’s past contributions to globalization through its supply of natural, cultural, and human resources, as well as the challenges Africa faces due to an uncertain future resulting from steadily increasing poverty and disparity between Africa and “developed” nations.<sup>181</sup>

Since NEPAD’s formation in 2001, it has aggressively pursued international recognition and support. In April 2002, potential private investors and international organizations met with African leaders in Dakar, Senegal, to discuss the financing of NEPAD.<sup>182</sup> The conference reiterated that previous international aid and loan programs had principally failed in Africa; instead, the NEPAD model called for the attraction of foreign capital through improved governance, free market regulations, and the large regional market size.<sup>183</sup> While requesting extended debt relief, NEPAD also attempts to address the investor perception that Africa is a high-risk financial environment.<sup>184</sup> In order to achieve its anticipated programs, NEPAD

---

176. *Id.* art. 1, para. 1.

177. *Id.* para. 2.

178. *See, e.g., id.* art. 3, para. 48 (proclaiming that, in its global dealings, Africa will act on behalf of its peoples’ wishes).

179. *See* South Africa: The Official Gateway, *supra* note 173 (quoting Mozambican President Joaquim Alberto Chissano).

180. NEPAD Document, *supra* note 9, at iii–iv.

181. *See id.* art. 3.

182. *See Conference on the Financing of NEPAD*, NEPAD, Dakar, Senegal, Apr. 15–17, 2002, at [www.nepadsn.org/nepad\\_conf\\_april.ppt](http://www.nepadsn.org/nepad_conf_april.ppt) (last visited Oct. 5, 2002).

183. *See id.*

184. *See NEPAD Calls for “Massive Investment” in Africa*, AGENCE FRANCE PRESSE, June 20, 2002, available at 2002 WL 2435445.

estimates that approximately \$64 billion in foreign investment must be brought into the continent.<sup>185</sup>

Since its formation, NEPAD has received phenomenally widespread support and acceptance throughout Africa and the world.<sup>186</sup> With his nation charged with hosting the NEPAD Secretariat, South African President Thabo Meki declared that NEPAD would succeed because it “do[es] not belong to the elite, but [is a] product[] of our people and [will] benefit in a practical way, the poor of our continent. . . .”<sup>187</sup> Leaders around the world have applauded this approach.<sup>188</sup> Within the continent, approximately forty nations have become member states of the partnership.<sup>189</sup> Beyond Africa, nations have pledged nearly universal support for NEPAD.<sup>190</sup>

The G8 nations (composed of the world’s highly industrialized nations: Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States) discussed NEPAD at its June 2002 meeting.<sup>191</sup> The meeting resulted not only in support from the G8, but also the creation of a special task force assigned to work directly with NEPAD’s Steering Committee and Secretariat.<sup>192</sup> This task force has been joined by the European Commission, the International Monetary Fund, and the International Finance Corporation in announcing support of NEPAD.<sup>193</sup>

In addition to seeking and receiving the G8 endorsement, NEPAD also presented its positioning document to the U.N. General Assembly in New York in October 2002. After discussion of the merits and potential hurdles associated with NEPAD, the Assembly formally extended support through adoption of the “United Nations Declaration on the New Partnership for Africa’s Development.”<sup>194</sup> Although U.N. Secretary General Kofi Annan observed that NEPAD’s viability rested primarily with continued commitment from

---

185. *See id.*

186. *See, e.g.,* Thabo Mbeki, *Africa on the March as UN Endorses NEPAD*, BUSINESS DAY (Johannesburg), Sept. 20, 2002, at <http://www.allafrica.com/stories/200209200529.html> (discussing the support offered to NEPAD by the United Nations during the U.N. General Assembly’s day-long focus on Africa’s future).

187. *See* Anthony Stoppard, *South Africa Seeks to End Conflicts, Poverty*, INTER PRESS SERVICE, Nov. 1, 2001, available at LEXIS, News Library, Inpres File.

188. *See* Mbeki, *supra* note 186.

189. *See generally*, NEPAD website, at <http://www.nepad.org> (last visited Mar. 18, 2003).

190. *See* Mbeki, *supra* note 186.

191. *See NEPAD Calls for “Massive Investment” in Africa*, *supra* note 184.

192. *See* Stoppard, *supra* note 187.

193. *See id.*

194. *See* Mbeki, *supra* note 186.

Africa's governments and peoples, the U.N. declaration also urged donor countries to assist in implementation.<sup>195</sup>

### C. NEPAD's Environment Initiative

The sixth initiative set forth in the NEPAD positioning document, the "Environment Initiative,"<sup>196</sup> emphasizes that a "healthy

---

195. *See id.*

196. NEPAD Document, *supra* note 9, art. 5(B), paras. 138–142. The Environment Initiative states:

138. It has been recognised that a healthy and productive environment is a prerequisite for the *New Partnership for Africa's Development*. It is further recognized that the range of issues necessary to nurture this environmental base is vast and complex, and that a systematic combination of initiatives is necessary in order to develop a coherent environmental programme. This will necessitate that choices be made, and particular issues be prioritized for initial interventions.

139. It is also recognised that a core objective of the Environment Initiative must be held in combating poverty and contributing to socio-economic development in Africa. It has been demonstrated in other parts of the world that measures taken to achieve a healthy environmental base can contribute greatly to employment, social and economic empowerment, and reduction of poverty.

140. It should be mentioned, here, that Africa will host the World Summit on Sustainable Development in September 2002, and that environmental management form the basis of the Summit. In this regard, we propose that the event put particular emphasis on the deliberations on this theme in the *New Partnership for Africa's Development*.

141. The Environment Initiative has targeted eight sub-themes for priority interventions:

**Combating Desertification.** Initial interventions are envisaged to rehabilitate degraded land and to address the factors that led to such degradation. Many of these steps will need to be labour intensive, along the lines of "public works programmes," thereby contributing to the social development needs of the continent. The initial interventions will serve as best practices or prototypes for future interventions in this area;

**Wetland Conservation.** This involves implementation of African best practices on wetland conservation, where social and ecological benefits are derived from private sector investment in this area;

**Invasive Alien Species.** Partnerships are sought to prevent and control invasive alien species. These partnerships are critical for both the preservation of the eco systems and economic well-being. Major labour-intensive initiatives are possible;

**Coastal Management.** In protecting and utilising coastal resources to optimal effect, best practices are again suggested from which a broader programme can be drawn up;



and productive environment” is a prerequisite to NEPAD’s overall success.<sup>197</sup> However, the Environment Initiative also states that its core objective is to combat poverty and contribute to “socio-economic development in Africa.”<sup>198</sup> In other words, the Initiative implies that when protection of the environment conflicts with opportunities for economic development, the latter will be given priority.

The Environment Initiative includes a set of eight sub-themes for priority intervention; the first sub-theme listed is “Combating Desertification.”<sup>199</sup> This sub-theme states in full,

Initial interventions are envisaged to rehabilitate degraded land and to address the factors that led to such degradation. Many of these steps will need to be labour intensive, along the lines of “public works programmes,” thereby contributing to the social development needs of the continent. The initial interventions will serve as best practices or prototypes for future interventions in this area.<sup>200</sup>

Although the “Combating Desertification” sub-theme references no immediate action plans or other means of acting on this “priority intervention,” the overall Environment Initiative states confidently that it has a distinct advantage in its ability to not only implement projects within short timeframes but also offer good returns on investments for needed “social and ecological bases.”<sup>201</sup>

Global Warming. The initial focus will be on monitoring and regulating the impact of climate change. Labour-intensive work is essential and critical to integrated fire management practices;

Cross-border Conservation Areas. This sub-theme seeks to build on the emerging initiatives, seeking partnerships across countries to boost conservation and tourism, and, therefore, create jobs;

Environmental Governance. This relates to the securing of institutional, legal, planning, training and capacity-building requirements that underpin all of the above;

Financing. A carefully structured and fair system for financing is required.

142. The Environment Initiative has a distinct advantage in that many of the projects can start within relatively short time frames, and they also offer exceptionally good returns on investment in terms of creating the social and ecological base upon which the *New Partnership for Africa’s Development* can thrive.

*Id.*

197. *Id.* para. 138.

198. *Id.* para. 139.

199. *Id.* para. 141.

200. *Id.*

201. *Id.* para. 142.

In October 2002, the NEPAD Secretariat appointed its first advisor for NEPAD's Environment and Tourism Division.<sup>202</sup> Among the advisor's initial tasks is the development of an implementation strategy for the Environment Initiative.<sup>203</sup> To that end, the Environment and Tourism Division commenced a scoping study of all ongoing projects in Africa that relate to the Environment Initiative, including those projects tied to combating desertification and the UNCCD.<sup>204</sup> The advisor noted that, ultimately, NEPAD will adopt an implementation strategy that incorporates the efforts of UNCCD and other U.N. agencies, including the U.N. Development Programme and the U.N. Environment Programme.<sup>205</sup>

Despite the far-reaching support of NEPAD, serious concerns have arisen concerning the ability of the New Partnership to realize its broad and potentially conflicting key initiatives.<sup>206</sup> Critics' primary concern with NEPAD is that it will ultimately fail for the same reasons that international aid programs have failed in Africa.<sup>207</sup> NEPAD, in its positioning document, has rejected the previous model of long-term foreign aid and debt to Africa.<sup>208</sup> In its place, NEPAD—as its very name suggests—has called for a series of partnerships, partnerships to be formed first among Africa's major subregions and then between Africa and the industrialized countries of the North.<sup>209</sup> NEPAD would establish the partnerships based on a self-imposed African paradigm shift recognizing and valuing resources (natural and human), then utilizing these resource bases to form relationships with developed nations on an equal footing.<sup>210</sup>

In practice, however, NEPAD has not yet demonstrated that its "long-term investment" approach distinguishes it from the former foreign aid model.<sup>211</sup> For example, as early as September 2002, NEPAD had already contacted the World Bank for financial and technical assistance.<sup>212</sup> This positioning implies that NEPAD would

---

202. E-mail from Hespina Rukato, NEPAD Environment and Tourism Advisor, to Leslie Clark (Oct. 14, 2002) (on file with author).

203. *Id.*

204. *Id.*

205. *Id.*

206. See Wildlife and Environment Society, *supra* note 18.

207. See *id.*

208. See NEPAD Document, *supra* note 9, art. 1, paras. 3, 5, 7.

209. See *id.* para. 7.

210. See *id.* para. 8.

211. See Nelson Banya, *NEPAD Will Not Benefit Africans*, THE HERALD (Harare, Zimbabwe), Sept. 26, 2002, available at <http://www.allafrica.com/stories/200209260466.html>.

212. See World Bank Group, *Annual Regional Consultation of UN Agencies Working in Africa, World Bank Support for the New Partnership for Africa's Development (NEPAD)*, at <http://>

willingly accept conditions placed upon funds received, replicating the donor-donee relationship that NEPAD has professed to reject.<sup>213</sup> If NEPAD acts only to repackage prior plans, it is unlikely to achieve any of its ambitious objectives to bring about real change in Africa.

In addition to concerns about the effectiveness of NEPAD, critics also question the identity of the program's actual beneficiaries.<sup>214</sup> UNCCD has been praised for its bottom-up approach in that it seeks to encourage local participation in the development and implementation of national action programmes.<sup>215</sup> Implying that it values a similar bottom-up approach, NEPAD confidently claims that it is a programme by and for Africa.<sup>216</sup> However, the positioning document on which NEPAD is based is also widely recognized to be a product exclusively of African leaders.<sup>217</sup> Indeed, one year after adoption by the African Union, critics noted that many Africans remained unaware of the program or of the commitment African leaders have pledged to their communities, nations, and continent.<sup>218</sup>

Finally, African observers remain concerned that funding received for NEPAD projects will fall into mismanagement.<sup>219</sup> Africa's ongoing history of political unrest and instability not only reinforces internal doubts concerning leadership, but also causes outside funding to go elsewhere.<sup>220</sup> Because NEPAD initially seeks to obtain approximately \$64 billion in pledged support, the faith and

---

Inweb18.worldbank.org/afr/afr.nsf/0/C74393F870EE20E985256C38004F5087?OpenDocument (Sept. 10, 2002). Although the World Bank announced that its role would be to support NEPAD's aims of African self-sufficiency, the Bank moved forward with plans for AIDS, education, and health programs before NEPAD had even declared a designated lead agency. See *id.*

213. See Banya, *supra* note 211.

214. See *id.*

215. See Danish, *supra* note 25, at 176.

216. NEPAD Document, *supra* note 7, art. 1, para. 7.

217. See Banya, *supra* note 211.

218. See generally Chama Nsabika, *NEPAD Is Not New, Says Aka*, THE POST (Lusaka), May 2, 2002, at <http://www.allafrica.com/stories/200205020144.html>. However, African leaders continue to recommend dispersion of the NEPAD goals to African stakeholders including "business associations, academic bodies, and other relevant civil society institutions." See *NEPAD at the Centre of AU Attention*, AGENCIA DE INFORMACAO DE MOCAMBIQUE (Maputo), at <http://www.allafrica.com/stories/200307090548.html> (Aug. 9, 2003).

219. See Africa InfoServe, *supra* note 168 (suggesting that South Africa's and Swaziland's leaders have spent \$50 million and \$35 million for new personal jets, respectively).

220. See Ofeibe Quist-Arcton, *Powell Promises U.S. Support but Says Africa Must Help Itself*, at <http://www.allafrica.com/stories/200105290190.htm> (last visited Mar. 19, 2003). U.S. Secretary of State Colin Powell noted that "money is a coward," and private investment will not be attracted to Africa as long as its economy is seen as unstable. *Id.*

confidence of the African citizens and the countries of the North are vital.

These concerns relating to NEPAD in general become increasingly acute when applied to NEPAD's Environment Initiative. This initiative is weak. Unlike the detailed policies and implementation strategies set forth in NEPAD's development-related initiatives (including the infrastructure, capital flows, and market access initiatives),<sup>221</sup> the Environment Initiative consists of just five paragraphs.<sup>222</sup> The Environment Initiative contains broad statements about protection of the environment but does not present any requirements specific enough for immediate application.<sup>223</sup> Indeed, NEPAD sets out "action" elements in six of its ten key initiatives.<sup>224</sup> However, the initiatives with action elements are all tied directly to economic development, while the Environment Initiative is joined by the Peace/Security Initiative, Agriculture, and Culture without the clarification of an immediate action plan.<sup>225</sup> In addition, the Environment Initiative sets out its eight "priority intervention" areas but offers no projection as to how to achieve the necessary interventions or how to engage in balancing tests when the competing objectives conflict.<sup>226</sup>

During its first twelve months, NEPAD demonstrated that its priority remains setting the stage for economic development. Efforts placed on environmental preservation continued to be de-emphasized. For example, in October 2002, NEPAD named Southern Africa's Zambezi River basin as a NEPAD project.<sup>227</sup> The basin, with a population of approximately 38 million dispersed throughout Angola, Botswana, Namibia, Malawi, Mozambique, Tanzania, Zambia, and Zimbabwe, represents a crucial source of agricultural, energy, and mineral wealth in the region.<sup>228</sup> Beyond the basin's significant population, the basin's rich soil diversity also supports a wide range of agricultural products.<sup>229</sup> Despite the seeming necessity of avoiding land degradation in the region, NEPAD representatives have primarily promoted the economic opportunities associated with

---

221. See NEPAD Document, *supra* note 9, art. 5, paras. 99–131, 147–155, 156–173.

222. See *id.* paras. 138–142.

223. See *id.*

224. See *id.* art. 5.

225. See *id.*

226. See *id.* para. 141.

227. See Antonio Bonifacio, *Mozambique: Zambezi Basin Declared a NEPAD Project*, SARDC-SADC TODAY, Oct. 31, 2002, available at <http://www.africafiles.org/article.asp?ID=701>.

228. See *id.*

229. See *id.*

declaration as a NEPAD project.<sup>230</sup> It is unlikely that NEPAD will be able to successfully balance its vying initiatives for infrastructure development, sustained economic growth, and preservation of the natural resources and environment upon which the NEPAD positioning document acknowledges dependence.<sup>231</sup>

## VII. A CALL FOR REORGANIZATION AND GREATER ENFORCEMENT OF UNCCD

In the early twenty-first century, Africa has caught the world's attention through the advertisement of a new Africa-first model that seeks private investment rather than traditional foreign aid.<sup>232</sup> While NEPAD and the African Union predict only positive outcomes for this approach, the negative aspects include an opening of Africa's economies to foreign industry dollars without the safeguards found in the environmental regulation of the North.<sup>233</sup> This transition is problematic because it would allow growth in industry and manufacturing and completion of capital improvement programs without the protection of clean air and water environmental regulations that similar programs would be subject to in the United States. Africa should not allow its environment to be polluted nor its land degraded to accommodate the short-term economic benefits that would be generated from the establishment of foreign business in Africa through partnerships resulting from the NEPAD vision.

In view of the weaknesses and obstacles that NEPAD faces, NEPAD alone cannot succeed in simultaneously effectuating economic development, eradicating poverty, and combating desertification. The earliest NEPAD efforts have been placed primarily on economic development in Africa through identification of roads, railways, and airports to be constructed or improved.<sup>234</sup> Therefore, while NEPAD's Environment Initiative claims that environmental protection is critical to NEPAD's success, NEPAD's first twelve months demonstrated that its desire to attract foreign dollars to an expanded market takes priority over a long-term effort toward addressing desertification and land degradation.<sup>235</sup>

Because the NEPAD positioning document is extremely broad, attempting to cover all significant development issues faced by an

---

230. *See id.*

231. *See* NEPAD Document, *supra* note 9, art. 5, para. 138.

232. *See id.* art. 1, para. 8.

233. *See* FRENCH, *supra* note 127, at 64–65.

234. *See* Bonifacio, *supra* note 227.

235. *See id.*

entire continent,<sup>236</sup> its Environment Initiative should not promise more than it can realistically accomplish. The complexity of African land degradation issues suggests that lasting success in combating desertification can only be achieved through the efforts of an initiative with an environmental focus.

Despite the suggestion that NEPAD abandon its goal to combat desertification, NEPAD's economic and self-determination thrusts need not be viewed as mutually exclusive with UNCCD's aims. Rather, there are significant opportunities to reconcile the two. Harnessing the energy associated with Africa's renaissance and directing efforts toward an African review of UNCCD will jumpstart this reconciliation. To that end, NEPAD's Environment Initiative's listing of the "combating desertification" priority should be removed, and the Environment Initiative should be reworked to instead lend support to the efforts of UNCCD.

The following sections outline recommendations for amending UNCCD in light of NEPAD's challenges. However, these sections acknowledge that the limitations of these basic suggestions would not immediately resolve the highly complex issues surrounding desertification in Africa.

#### A. UNCCD at a Crossroads

UNCCD holds the mechanisms for Africa to develop and implement programs that effectively reduce the continent's rate of land degradation and desertification.<sup>237</sup> However, as discussed above, the treaty's effectiveness has been retarded by weaknesses in its language and approach. One of these weaknesses is the heavy reliance on national action programmes. The structure of the national action programmes renders their success dependent on continued State support since the programs are overseen by State officials with funding administered by the State.<sup>238</sup> As evidenced by recent civil unrest in the Ivory Coast, political upheaval can prevent a state from supporting environmental initiatives such as the national action programmes.<sup>239</sup>

In addition to reliance on vulnerable national action programmes, another weakness of UNCCD is the lack of enforcement provisions

---

236. See NEPAD Document, *supra* note 9, art. 1, para. 1.

237. See generally discussion *supra* Part IV.

238. Desertification Convention, *supra* note 4, art. 20, para. 3.

239. Political upheaval in the Ivory Coast began in late 2002 with a successful army coup. See Ofeiba Quist-Arcton, *African Development Bank Pulls Staff out of Ivory Coast*, at <http://www.allafrica.com/stories/200302120002.html> (Feb. 12, 2003). Since the overthrow of the government, the African Development Bank has been forced to relocate outside the Ivory Coast due to instability. *Id.*

available to affected Parties.<sup>240</sup> Because the treaty language does not define a clear means of penalizing non-complying parties, there are few consequences for a state that elects to ignore its duties under the treaty.

Beyond the lack of enforcement provisions, the treaty also enables parties to withdraw without penalty. According to Article 38, paragraphs 1 and 2, any party wishing to withdraw from the treaty need only submit a request in writing to UNCCD's Depository.<sup>241</sup> The party's wish to withdraw will be honored, and the party will be free from obligation to the treaty one year after receipt of the request for withdrawal.<sup>242</sup> Although no member parties had exercised the right to withdraw as of January 2003, the ease with which the treaty allows withdrawal serves to undermine nations' convictions regarding the necessity of treaty compliance.<sup>243</sup>

While UNCCD represents the logical baseline for improving strategies in Africa to combat desertification, its weaknesses have limited its ability to effect lasting change that will stabilize the increasing rate of land degradation in Africa. Instead, it is Africa's Renaissance—as manifested in the NEPAD positioning document—that will provide the impetus for restructuring UNCCD to more effectively protect Africa's drylands and their populations from increased desertification and land degradation.

### *B. Amending UNCCD in Light of NEPAD*

Using NEPAD's approach as an example, UNCCD should be amended in three ways. First, Africa's self-proclaimed renaissance announces a continent-wide encouragement of economic development and foreign investment.<sup>244</sup> In response, UNCCD's Annex I (specifically relating to Africa) should be restructured with protective environmental safeguards. Specifically, the treaty should acknowledge that Africa is in a period of self-envisioned change that will attract foreign investment. Therefore, Africa will require identification of potential environmental impacts associated with (1) projects financed by foreign money, and (2) projects undertaken directly by foreign

---

240. Desertification Convention, *supra* note 4, art. 28. The Convention provides for negotiation in the event of dispute between Parties; however, no other means of enforcement are specified. *Id.*

241. *See id.* art. 38, para. 1.

242. *See id.* para. 2.

243. *See id.* paras. 1–2.

244. *See* NEPAD Document, *supra* note 9, art. 5.

investors.<sup>245</sup> The environmental impacts of projects should be assessed and disclosed to local communities prior to commencement so that the local population may become empowered with access to information. This process should initially be modeled after the United States' National Environmental Policy Act<sup>246</sup> but tailored as necessary for implementation in Africa.

Second, UNCCD should be amended to require that funding be channeled directly into communities most affected by desertification to fund immediate relief, education programs, and alternative agricultural technologies. This amendment would recognize that individuals facing extreme poverty and starvation cannot be successfully engaged in long-term goals to combat local desertification.

Finally, the UNCCD treaty should be amended to incorporate strong enforcement provisions. As the treaty is currently written, an "affected country Party" has few means of recourse should a "developed country Party" elect to disregard obligations under Article I and Annex I.<sup>247</sup> Moreover, the treaty provides no options for an individual or local community to seek enforcement against private actors.<sup>248</sup> Finally, the treaty provides no barrier against a member party withdrawing from the treaty.<sup>249</sup> Therefore, language should be added and amended to give the treaty more authority and to give individuals and local communities better means of enforcement.

### C. *The Limitations of an Amended UNCCD*

Despite these suggestions, amendments requiring disclosure of environmental impacts and providing enforcement mechanisms could not result in total success. The suggestion that any amendment of UNCCD could eradicate the long-established problem of land

---

245. Despite the advantages associated with disclosing potential environmental impacts, stricter environmental laws could also create disincentives for foreign investors. Africa's leaders do not want to discourage foreign investment in Africa. See Abdoulaye Wade, *How to Finance NEPAD through Private Initiatives*, THE EAST AFRICAN STANDARD (Nairobi), Sept. 27, 2002, available at <http://www.allafrica.com/stories/200209270028.html>. Nevertheless, environmental protection should be emphasized, while still allowing African nations to realize economic growth. Studies have indicated that the two goals need not be mutually exclusive. See, e.g., Peter Hazell, *Strategies for the Sustainable Development of Dryland Areas*, THE GLOBAL DRYLANDS PARTNERSHIP (Sept. 2001), at <http://www.undp.org/seed/unso/globalpartnership/docs%20/Strategies-C.doc> (last visited Oct. 17, 2003).

246. National Environmental Policy Act, 42 U.S.C §§ 4321–4370e (2002).

247. Desertification Convention, *supra* note 4, art. I, Annex I.

248. The Desertification Convention contains no provisions for enforcement at a local level. *Id.* Settlement of disputes between *parties* is to occur peaceably through negotiation or other means. See *id.* art. 28, para. 1.

249. See *id.* art. 38, para. 1.



degradation is an oversimplification for a number of reasons. First, not all of the states within Africa belong to UNCCD nor support NEPAD. Therefore, amendment of the treaty would not provide any benefit to those states that remain outside the scope of the treaty and of NEPAD. Second, UNCCD was written using vague, unenforceable language to facilitate the ratification of and compliance with the treaty. Amendments to the treaty that make it more expensive for foreign investors to initiate projects in Africa could have the undesired consequence of driving away the beneficial foreign dollars that would end up at the local level and be used to help impoverished communities. Without a minimum of foreign investment in Africa, it seems unlikely that African nations will find the funding to eradicate poverty or protect the environment.

Finally, the problems surrounding desertification are so multifaceted and complex that inertia weighs down any effort to reverse the problems. A simple treaty amendment could not overcome all of these obstacles. However, in spite of some potential drawbacks associated with the amendment of UNCCD, benefits resulting from the proposed amendment would outweigh negative outcomes.

#### VIII. CONCLUSION

Issues of international environmental law are extraordinarily complex. Although the field is widely recognized to have first stood on its own as a legal discipline over thirty years ago at the 1972 Stockholm Convention, the youthful nature of the field belies the complex scientific, political, and economic factors that international environmental law must constantly balance.

Desertification and land degradation have emerged as two primary concerns of international environmental law. Recognized as an important issue as early as 1952, desertification and its impact on the world's poorest nations came to the forefront with extended serious droughts in Africa's Sahel during the late 1960s and early 1970s. As a result, the United Nations organized 1977's Plan of Action to Combat Desertification.<sup>250</sup>

However, in large part due to the Plan's non-binding nature, concerns about desertification had intensified by the 1992 U.N. Convention on Environment and Development held in Rio de Janeiro, Brazil.<sup>251</sup> As a result, an international negotiating committee arising

---

250. See UNCOD, *supra* note 19.

251. United Nations Conference on Environment and Development attendees from developing nations pushed for an international agreement dealing with the global issue of desertification. See BURNS, *supra* note 4, at 854.

out of the Earth Summit ultimately constructed what was adopted in 1994 as the U.N. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. UNCCD's strongest elements place emphasis on "action programmes" at the national, subregional, and regional levels. The program has been moderately successful in Africa with the development and implementation of seventeen "National Action Programmes," ongoing scientific research into the causes and effects of land degradation, and some international support.<sup>252</sup>

Ironically, the continued efforts of UNCCD have come under recent threat by the international energy directed toward what has been termed "Africa's Renaissance." The continent's advertised rebirth began in the late 1990s with the national visions of Senegal's Omega Plan and South Africa's Millennium Development Partnership. These plans marked a new African tenor in their confident proclamations that Africa recognized and valued its human and natural assets. Furthermore, the two plans called for long-term investment in building Africa's infrastructure so as to create a stage for better competition in the world economy.

From these plans grew a continent-wide trend for reinvention and self-determination. In 2001, the Organization of African Unity reorganized itself as the African Union with two key objectives: sustainability and economic growth. These efforts ultimately culminated in the development and adoption of the New Partnership for Africa's Development.

The international community has offered widespread support and praise of NEPAD and the African Renaissance. The highly industrialized nations composing the G8 announced support of NEPAD in 2002 and formed a task force designed to help NEPAD initiate its objectives. Furthermore, the U.N. General Assembly elected to uphold NEPAD's key initiatives through the adoption of a U.N. declaration in October 2002.

Despite the presence of NEPAD's Environment Initiative, NEPAD does not provide a strong foundation for environmental protection. The continent-wide issues of desertification and land degradation provide a lens through which NEPAD's environmental ineffectiveness can be viewed. While NEPAD's proponents have periodically referenced the need to address land degradation in Africa, the early projects NEPAD has selected focus on development of

---

252. The website of the Secretariat of the U.N. Convention to Combat Desertification maintains a list of programs considered to be successful, at <http://www.unccd.int/publicinfo/localcommunities/stories.php> (last visited Oct. 11, 2003).

infrastructure including the construction of roads, railways, and airports.<sup>253</sup> Not only are such projects costly, drawing funds away from would-be environmental projects, but development of infrastructure such as roads potentially increases the exposure of sensitive drylands to increased degradation and desertification.

However, the binding nature of UNCCD and the enthusiasm propelling NEPAD need not be mutually exclusive. NEPAD has claimed that it will work with the UNCCD office in Germany to review existing projects and select new ones. NEPAD should drop its priority identification of “combating desertification” and find a means of supporting UNCCD. The international community—bound by ratification of UNCCD—has the duty to work together with Africa’s leadership to uphold the treaty. In addition, UNCCD’s ratifying Parties must recognize that the crossroads to which Africa has come requires participation in the updating of UNCCD to ensure that the health of Africa’s environment will not be sacrificed in the drive to develop.

---

253. See NEPAD Calls for “Massive Investment” in Africa, *supra* note 184. Identified projects include new airports in Benin, Burkina Faso, and Senegal, and a railway link between Liberia and the Ivory Coast. *Id.*