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Alberto Szekely

Career Ambassador to the Mexican Foreign Service.

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The Promise of the Brundtland Report: Honored or Betrayed?

*Ambassador Alberto Székely**

In preparation for this event, I fetched and opened last week my old copy of the Brundtland Report and, literally, some of its yellowed pages were beginning to tear off, which was understandable not only because it is already 20 years old, but also because, in the late eighties, I took it constantly off the shelf since, for many of us, it was like our Bluebook, our gospel, our window to OUR COMMON FUTURE even when, at the time of its drafting, our conscience about the globality of environmental phenomena was still in its infancy. Reading it now I see how conservative it was, but conservative in the eighties context, which is pretty liberal by today's standards. I always felt proud of that little book, both because of its inherent importance at the time and also because it contains a minute contribution from me, having participated in the international legal experts group, invited by the World Commission on Environment and Development, to draft the "Legal Principles for Environmental Protection and Sustainable Development" which were appended to the Report, a privileged opportunity that enriched me forever, and not only with the luck of having met someone who would become my great friend like Stephen McCaffrey, but others of such caliber as well, like Andronico Adede, Francoise Burhenne, Alexander Kiss, Robert Stein and Johan Lammers.

Reading the Report two decades later is astonishing because it is inevitable to confess that most of its recommendations were, in the end, disdained by the world community, which explains in large measure why we have a more distinct COMMON FUTURE than the one hoped for and envisaged by the members of the World Commission that drafted it. More astonishing is to realize that it took the international community not more than 5 years to trash it, despite the great

* Ambassador Székely was a member of the Brundtland Commission's Experts Group on Environmental Law. He was described in a Press Release by the International Tribunal for the Law of the Sea as follows:

Ambassador Alberto Székely, a national of Mexico, is currently serving as Career Ambassador to the Mexican Foreign Service. He is also Adviser to the Mexican Minister of Foreign Affairs for Special International Legal Issues; Environmental and Natural Resources Arbitrator at the Permanent Court of International Arbitration at The Hague and Research Director at the International Transboundary Resources Center, University of New Mexico Law School. Ambassador Székely has enjoyed a distinguished career in both academic and diplomatic fields, including work as an International Law Professor and Research fellow at the University of Mexico Law School, Arizona State University College of Law and the School of Advanced International Studies, Johns Hopkins University. In addition Ambassador Székely was, among others, Legal Adviser and Member of the Mexican Delegation to the Third United Nations Conference on the Law of the Sea, Alternate Representative of Mexico to the United Nations in Geneva and a Member of the United Nations International Law Commission. He is also the author of numerous books and articles on international legal issues.

ITLOS/Press 60 (Nov. 16, 2001).

effort and resources that were invested to produce it, and involving some of the brightest human minds.

The mounting disastrous consequences of having disregarded and put in the drawer the Brundtland Report, consequences that will accumulate over the next few decades, as is being heralded by the calamities the World is already suffering as a result of having tampered with the planet's climate, will surely lead, in the next half century, to a very very radical reading of what we did to our environment and to the commons during the last century and a half. Anyone belonging to the "future generation" that we have so selfishly ignored, that becomes interested in reviewing in, let us say, the year 2050, the history and consequences of our acts, will most likely judge us and condemn us as genocidal, for having departed from the path we had chosen in the post-war era, and for having detoured toward neglect and degradation of the "environment" for the sake of new gods, such as "the market."

How are they likely to see us then?

Well, they will probably say that even when the first paragraph of the Brundtland Report reads: "A global agenda for change—this was what the World Commission on Environment and Development was asked to formulate. It was an urgent call by the General Assembly of the United Nations," that sense of urgency was incomprehensibly lost on the way to the 1992 Rio Summit on Environment and Development.

They will probably see that all of a sudden, the rapid pace of hard but successful multilateral negotiations that took the United Nations to father that golden era of progressive development and codification of international law, that took place between the fifties and the eighties, of which the proliferation of environmental conventions was very much a part during the 16 years that followed the 1972 Stockholm Conference on the Human Environment, came to an abrupt halt and, with that, the contribution of at least 3 generations of distinguished diplomats, that left an unprecedented legacy for world governance during those four decades.

They will most probably realize that the wildly competitive world that was created first by so-called "neoliberalism" and, then, by "globalization," evidently had a profound effect in international relations in more ways than one, and that it particularly impacted international law, perhaps irreversibly as can be seen even now by the current state of world affairs, by the resurgence of the nightmare of genocide in various parts of the planet, the proliferation of war, terrorism and nuclear weapons, the scourge of drugs and weapon smuggling, by the overt defiance of U.N. Security Council resolutions, the disobedience of International Court of Justice decisions, the growing irrelevance of the General Assembly and the gradual vanishing of the United Nations, from its days of achievement in power-balance, to its current decay of accommodation and submission to a uni-polarized World.

They will see that by the mid-nineties, it was not difficult to come to the realization that the adoption of the 1982 U.N. Convention on the Law of the Sea, that brought the rule of law to more than two thirds of the World's surface, the appearance of the 1987 Brundtland Report, mandated by the U.N. General

Assembly, that called for action to spare the planet from the massive calamities that afflict us today, together with the 1986 decision of the International Court of Justice Decision in the Mining of Harbours (Military and Paramilitary Activities) Case between Nicaragua and the United States, that made a last cry for compliance with international law, were the last three death rattles of that great post-war institution, that in its days of glory had given humankind the gifts of human rights, decolonization, denuclearization, and disarmament.

It will not be too difficult also for them to realize that after the fall of the Berlin Wall and all its incalculable universal consequences, for any country to be able to effectively participate in the fiery international competition brought about by the new world economic order, it became tempting and even imperative to rid oneself, as soon as possible, of any and all possible restrictions in the limits of international behaviour, especially if they resulted from international treaties. It did not take many too long to begin regretting having participated in international conventions that imposed precisely such limits, and to start sabotaging or at least shying away from participating in negotiations that would lead to the adoption of new ones. Talk about the Kyoto Protocol! De-regulation is what it was called in the domestic legal level, to dismantle those limiting environmental laws that with great pains were achieved by the pressure of mobilized societies, but that constituted hindrances to the generation of wealth at all costs . . . and to the sacred market forces.

It will be evident to them that the international mentality regarding natural resources suffered an acute turn-around as well.

The protectionism of the South, so eloquently reflected and expressed in the 1962 U.N. General Assembly Resolution on Permanent Sovereignty over Natural Resources and even in Principle 21 of the 1972 Stockholm Conference Declaration, gave way to the rush to compete, with all too welcoming open arms, by allowing the unhindered advent of foreign investment, disguised under the robes of free trade, to make it possible to finally exploit resources that did no good by just being there, overthrowing in the process protectionist legalisms such as the Calvo Clause, that were exchanged for eager membership in NAFTA, APIC and MIGA treaties that not only guaranteed investment, but exempted the investor from the application of national law in the capital importing countries. The façade or camouflage to cover-up all that in the eyes of World opinion, was the great manipulation perpetrated with the Report's concept of "sustainable development," that triumphed in Rio in the hands of a new generation of much less scrupulous diplomats.

They will surely be dismayed to see that even at the beginning of this new century there were so many among us, and so powerful, resisting the admission that we had perpetrated an environmental crime of such a portentous dimensions, even when they knew well that by then humans had been responsible for losing, by the year 2005, 13 million hectares of the world's forests annually due to deforestation, translating in biodiversity and habitat loss, in the altering of the timing of animal migrations and plant flowerings, the shifting of species toward

the poles and to higher altitudes; that the oceans, which had absorbed about half of the carbon dioxide emitted by humans in the previous 200 years, could do the job no longer, intensifying coastal erosion and raising ocean acidity.

That in its Vital Signs Report for 2007-2008, the Worldwatch Institute had alerted that in 2006 the world was using 3.9 billion tons of oil, that concentrations of carbon dioxide had reached 380 parts per million, that more wood was removed from forests in 2005 than ever before, that consumption of energy and many other critical resources was consistently breaking records, disrupting climate and undermining life in the planet, erasing the habitat of numerous species of flora and fauna, inducing the displacement of millions of humans, glacial retreat and worldwide sea level rise that threaten to sink low-lying coasts and islands, increasing the recurrence and intensity of hurricanes and threatening to cause, precisely by the year 2050, the extinction of between 18 and 35% of animal and plant species. That all alerts and yellow lights had been brightly turned on to warn, to no avail, that the window to prevent catastrophe was dangerously closing.

They will probably be forgiving in some degree with the U.N., for still having given us the Intergovernmental Panel on Climate Change, even when its reports did not see a much better fate than the one experienced by the one produced under Mrs. Brundtland.

In the negotiations leading to the Rio Summit, all interest in a convention for the protection of the world's forests was lost, and the Conference produced a shameful "Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests." The Convention on Biodiversity was derailed and, instead of providing for a legal regime for the protection of living species and organisms, it became a vehicle to secure the developed countries access to them in the South. Not to speak of the Framework Convention on Climate Change, so ineffectual and irrelevant that the countries of the world had to soon rush back to the negotiating table, to at least make it look like they were beginning to take the problem seriously . . . at least some of them. But worse of all, was that the proud product of the Conference was the so-called "Agenda 21" and the Rio Declaration (which was a step back from the achievements of the Stockholm Declaration 20 years earlier), that is, nothing that could mean binding the countries of the world to obligations of any sort. A sad balance if we remember that one of the most important recommendations of the Brundtland Report was for the General Assembly to "commit itself to prepare a universal Declaration and later a Convention on Environmental Protection and Sustainable Development" that could be adopted in the next three to five years. If we couple that with the irrelevance into which UNEP has fallen, and for which the Report had such numerous and ambitious proposals, it is not hard to conclude that its promise was betrayed.

I obviously did not have to wait till the year 2050 to say all of the above, but historians will eventually see with greater clarity, what observers of our day, of

more acute intelligence and capable of authentic critical independent analysis, such as Belgian Professor Marc Pallemarts, brings to our attention in Philippe Sands' book on the Greening of International Law (Earthscan, London, 1993), when he uncovers and reveals to us the great deceit or, as he calls it, "slippage" behind the concept of "sustainable development," the "buzzword" of the Rio documents (popularized largely by the Brundtland Report, meaning "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"), but that diplomats at Rio picked up and manipulated to make it really mean "sustainable growth," a regressive concept that explains why it has been so useful to Governments to sprinkle their speeches with green language, around the concept of "sustainable development," in whose name the environment has been victimized.

In the year 2000 I was invited to participate, at this Law School, in a symposium on "Biotechnology and International Law." The first 2 pages of my paper then dealt with some of the matters about which I have spoken here today more at length, 7 years later. I said then that the change of course experienced at Rio provoked nature to come back with a vengeance. I was wrong. It has been the blindness of our leaders that has come back to us with a vengeance. Let those speaking about us in the year 2050 say that there were some that did their best to make it different.

