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THE 2002 JOHANNESBURG WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: INTERNATIONAL ENVIRONMENTAL LAW COLLIDES WITH REALITY, TURNING JO'BURG INTO "JOKE'BURG"

GEORGE (ROCK) PRING*

"Betrayal,"¹ "disaster,"² "shameful, disgraceful, and for American citizens . . . an embarrassment"³ are but some of the negative assessments of the recent United Nations World Summit on Sustainable Development (WSSD a.k.a. "Earth Summit" or "Rio+10"), held August 26-September 4, 2002, in Johannesburg, South Africa.⁴ Even its UN promoters damn it with faint praise, for example UN Environment Programme Executive Director Klaus Toepfer's statement that "Johannesburg is less visionary and more workmanlike [than Rio] . . .,"⁵ and UN Secretary-General Kofi Annan's apologetic (and historically inaccurate), "We have to be careful not to expect conferences like this to produce miracles This is just a beginning"⁶

The more accurate assessment of the 2002 Earth Summit lies between these extremes of acid and apologetics. At Jo'burg, the expanding field of International

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1. Friends of the Earth International, <http://www.rio-plus-10.org> (last visited Mar. 5, 2003) [hereinafter Friends of the Earth].

2. Greenpeace International, http://www.greenpeace.org/features/details?features_id=25094 (last visited Mar. 5, 2003).

3. Sierra Club, <http://www.sierraclub.org/ssc/wssd/article.html> (last visited Mar. 5, 2002); see Carl Pope, *Alone in the World: Bush Ends an Era of Environmental Treaties*, SIERRA, Jan./Feb. 2003, at 6, available at <http://www.sierraclub.org/sierra/200301/ways.asp> (last visited Mar. 5, 2003).

4. See NANDA & PRING, *supra* Introductory Note, at 110. A valuable range of views and research tools on the Earth Summit can be found on the web, including <http://www.johannesburgsummit.org> (the official UN website); <http://www.epa.gov/international/WSSD> (the official USA website); <http://www.iied.org/wssd> (the International Institute for Environment and Development); <http://www.worldsummit.org.za> (the WSSD Civil Society Global Forum); <http://www.worldsummit2002.org> (the Heinrich Böll Foundation); <http://wssd.info> (the International Institute for Sustainable Development), and other websites footnoted herein (last visited Mar. 5, 2003).

5. James Dao, *Protesters Interrupt Powell Speech as UN Talks End*, N.Y. TIMES, Sept. 5, 2002 at A10.

6. John Sullivan, *World Summit Adopts Development Plan, Political Declaration as Meeting Concludes*, 33 ENV'T REP. (BNA) 1909 (Sept. 6, 2002).

Environmental Law (IEL) ran headlong into the hard reality of the world's existing economic order, and the economic order did not give . . . much. What resulted was indeed a shamefully wasted opportunity for expanding IEL, but at least it avoided rolling back thirty years of progress, as at times it seemed it might. The US Government and some other nations worked against virtually all positive change at Jo'burg, sought rollbacks in existing law, and were very effective.⁷ The best view of the Summit is, if it did not move IEL forward, at least it did not give up serious ground, did flush the nay-sayers out of the political backrooms and expose them to intense worldwide scrutiny, and did not foreclose possibilities for progress in IEL in the years to come.

It started out well-intentioned enough. The UN General Assembly resolution authorizing the Johannesburg Conference envisioned a "summit . . . to reinvigorate the global commitment to sustainable development," to "focus on the identification of accomplishments and areas where further efforts are needed," to carry out the pledges made ten years earlier at the UN Conference on Environment and Development in Rio de Janeiro, Brazil (UNCED or "Rio Conference").⁸ Thus, as originally envisioned, the Johannesburg Conference was to carry on the tradition of precedent-setting UN environment and development conferences begun with the 1972 UN Conference on the Human Environment in Stockholm Sweden (UNCHE or "Stockholm Conference") and the 1992 Rio Conference.

The now-legendary 1972 Stockholm Conference was the "dawn" of IEL, the largest and best-attended international conference on any topic to that point.⁹ It produced a consensus declaration of twenty-six "principles" governing international environmental protection,¹⁰ notably groundbreaking ones like the human "right" to a quality environment,¹¹ the "responsibility to protect and improve the environment,"¹² and the famous no-harm rule against significant transboundary environmental pollution or damage.¹³ A number of these Stockholm Principles have become accepted as legally binding over the years.¹⁴

The "North-South" environment-vs.-development split, which has become such a fixture of IEL today, first manifested itself in the leadup to this conference, as the developing nations (the "South") served notice that the environmental protection standards of the developed, industrialized world (the "North") should not be imposed so as to block needed economic development of the poorer

7. See, e.g., Rachel Swarns, *World Development Forum Begins with a Rebuke*, N.Y. TIMES, Aug. 27, 2002 at A7; Rachel Swarns, *U.S. Is Not the Only Nation Resisting a Strong Pact at the Summit Meeting on Global Warming*, N.Y. TIMES, Aug. 31, 2002 at A4; and websites *supra* notes 1-4.

8. G.A. Res. 9848, U.N. GAOR, 55th Sess., at ¶¶ 1, 3, U.N. Doc. A/RES/55/199 (Dec. 20, 2000), available at http://www.johannesburgsummit.org/web_pages/resolution.htm (last visited Mar. 5, 2002).

9. See NANDA & PRING, *supra* Introductory Note, at 80.

10. Stockholm Declaration of the UN Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14/Rev. 1 at 3 (1973); U.N. Doc. A/CONF.48/14 at 2-65 and Corr. 1 (1972); 11 I.L.M. 1416 (1972).

11. *Id.* at Prin. 1.

12. *Id.*

13. *Id.* at Prin. 21.

14. NANDA & PRING, *supra* Introductory Note, at 80.

nations.¹⁵ The split was assuaged with a few references in the Stockholm Principles (such as “economic and social development is essential”)¹⁶, but the North kept Stockholm’s overall focus on environmental protection.

When the UN began planning a second global environmental conference, in recognition of the twentieth anniversary of Stockholm, it was clear the South would not to be so easily appeased. Diplomatic disaster was averted by the expedient of inventing a new legal paradigm – “sustainable development” – that promises to merge the twin aspirations of protecting the environment while pursuing the development of the South.¹⁷ While still largely undefined, the term’s best-known formulation is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” environmentally, socially, and economically.¹⁸ (Thus, development interests won the all-important noun, and all other interests – environment, society, culture, governance, human rights, etc. – had to be content with being relegated to the adjective.) With this new vision, the 1992 Rio Conference was a blockbuster success in terms of IEL “deliverables,” producing a new declaration of principles,¹⁹ a 500-plus-page Agenda 21 plan for implementing them,²⁰ two new global treaties for climate change²¹ and biodiversity protection,²² and non-binding principles for the world’s forests.²³ The Rio Principles introduced many notable new concepts of IEL, including the “right to development,”²⁴ “common but differentiated responsibilities,”²⁵ reduction and elimination of “unsustainable patterns of production and consumption,”²⁶ “public participation” in environmental decision-

15. George (Rock) Pring, James Otto & Koh Naito, *Trends in International Environmental Law Affecting the Minerals Industry*, 17 J. ENERGY & NAT. RES. LAW 39, 45 (1999).

16. Stockholm Declaration, Prin. 8, *supra* note 10; *also see* Principles 9, 10, 11, 12 and 23.

17. For more detailed history of the term, *see* NANDA & PRING, *supra* Introductory Note at ch. 2; George (Rock) Pring, *Sustainable Development: Historical Perspectives and Challenges for the 21st Century*, PROCEEDINGS OF THE WORKSHOP ON THE SUSTAINABLE DEVELOPMENT OF NON-RENEWABLE RESOURCES TOWARDS THE 21ST CENTURY 13 (UN Development Programme & UN Revolving Fund for Natural Resources Exploration 1998). A very comprehensive treatise on the subject is STUMBLING TOWARD SUSTAINABILITY (John C. Dembach ed., 2002).

18. UN WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (BRUNDTLAND COMMISSION), OUR COMMON FUTURE 43 (1987).

19. Rio Declaration on Environment and Development, June 13, 1992, U.N. Doc. A/CONF.151/26 (vol. I) (1992); 31 I.L.M. 874 (1992).

20. AGENDA 21, June 13, 1992, U.N. Doc. A/CONF. 151/26 (vols. I-III) (1992); a copy with an excellent historical and critical analysis can be found in IV AGENDA 21 & THE UNCED PROCEEDINGS (Nicholas A. Robinson *et al.* eds., 1993).

21. UN Framework Convention on Climate Change, May 9, 1992, entered into force March 21, 1994, U.N. Doc. A/CONF.151/26, 31 I.L.M. 849 (1992).

22. Convention on Biological Diversity, June 5, 1992, entered into force Dec. 29, 1993, 31 I.L.M. 818 (1992).

23. Nonlegally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, June 13, 1992, U.N.Doc. A/CONF. 151/26 (Vol. III); 31 I.L.M. 881 (1992).

24. Rio Declaration, Prin. 3, *supra* note 19.

25. *Id.* at Prin. 7.

26. *Id.* at Prin. 8.

making,²⁷ trade-environment linkage,²⁸ the "precautionary" principle for dealing with scientific uncertainty,²⁹ the "polluter-pays" principle,³⁰ promotion of "environmental impact assessment,"³¹ protection of "indigenous people" and "local communities,"³² and a reaffirmation of the no-transboundary-harm rule.³³ Half of its principles contained the norm "sustainable development."

Rio was a "watershed in mainstreaming environmental concerns."³⁴ It succeeded in crystallizing progressive IEL norms, created a new body of international law treaties, launched new supranational structures and processes, set up machinery for multilateral environmental decisionmaking, and encouraged national-level sustainable development planning. However, in the years following, most of this momentum was neutralized by economic globalization, governmental inertia, and inadequate funding, with little to show for the Rio rhetoric.³⁵

So, as Rio's tenth anniversary loomed, "it was hardly a secret – or even a point in dispute – that progress in implementing sustainable development has been extremely disappointing since the 1992 Earth Summit, with poverty deepening and environmental degradation worsening."³⁶ In response, the UN specifically created the Johannesburg Summit to "reinvigorate" the process of implementing Agenda 21 and the Rio Declaration.³⁷

But a funny thing happened on the way to that forum – en route, the UN's vision was taken hostage by both the South and the North. The South reconceived Johannesburg in its own image – to be a development rather than an environmental summit, one that would focus on poverty alleviation and wealth redistribution to their betterment.³⁸ Meanwhile, elements of the North – particularly the USA under the George W. Bush Administration and some other nations – sought desperately to avoid that fiscal focus by insisting the agenda produce no new multilateral goals, no new IEL treaties, mandatory agreements, or even legal principles of substance, and no fixed targets, percentages, or timetables for accomplishing Agenda 21's ten-year-old promises. The US excuse for this stand was to assert that it would take "concrete projects" not "paper agreements" to get results,³⁹ but its approach was widely viewed as complete obstructionism and provoked "a relentless storm of

27. *Id.* at Prin. 10.

28. *Id.* at Prin. 12.

29. *Id.* at Prin. 15.

30. *Id.* at Prin. 16.

31. *Id.* at Prin. 17.

32. *Id.* at Prin. 22.

33. *Id.* at Prin. 2.

34. Heinrich Böll Foundation, *The Jo'burg Memo – Fairness in a Fragile World – Memorandum for the World Summit on Sustainable Development* 10, available at http://www.worldsummit2002.org/publications/memo_en_without.pdf (last visited Mar. 5, 2003) [hereinafter *The Jo'burg Memo*].

35. *See id.* at 6, 10.

36. United Nations, *The Johannesburg Summit Test: What Will Change?*, at http://www.johannesburgsummit.org/html/whats_new/feature_story41.html (last visited Nov. 11, 2002) [hereinafter *The Johannesburg Summit Test*].

37. G.A. Res. 9848, *supra* note 8, at ¶ 1 and 13th Preamble.

38. *See The Jo'burg Memo*, *supra* note 34, at 6.

39. Alexandra Zavis, *Progress reported in eco-summit talks*, DENV. POST, Sept. 2, 2002 at 8A.

criticism.”⁴⁰ It is disheartening to see the world’s only superpower turn its back on multilateralism, cooperation, and international law, as the Bush Administration has since entering office.⁴¹ However, in IEL, this is not a new posture for the USA – of the sixteen major, global IEL treaties that have entered into force in the last three decades, the US has joined only half.⁴²

Not surprisingly, pre-Johannesburg negotiations on “whether or not the rich nations of the world would come up with the cash to pay for the implementation of the Rio agreements,” broke down without final resolution,⁴³ leaving the delegates scrambling on how to put a good face on the summit with only months to go. The face-saving solution was of the “if-you-can’t-lick-’em-join-’em” variety, given the USA’s stonewalling against negotiated global treaties, principles, targets, and timetables. In a fit of doublespeak that would have made Orwell blush, the delegates began calling these progressive steps “Type 1 deliverables” (“Type I outcomes”) and denigrating them (since they were not going to happen). To replace them, suddenly the focus was on creating “Type 2 deliverables” (“Type II outcomes”) – so-called “concrete partnerships aimed at practical implementation of Agenda 21,”⁴⁴ also described as “commitments and action-oriented coalitions” of individual countries, private sector companies, or non-governmental organizations (NGOs) or groups of them “focused on deliverables [that] would contribute in translating political commitments into actions.”⁴⁵

40. Rachel L. Swarns, *U.S. Shows Off Aid Projects at U.N. Development Meeting*, N.Y. TIMES, Aug. 30, 2002 at A6.

41. Examples include abandoning the treaties on global warming and ballistic missile defense; rejecting agreements on banning germ warfare, creating an international criminal court, curtailing strategic nuclear weapons, banning all nuclear tests, biological weapons, land mines, and small arms; and threatening withdrawal from others such as the UN’s landmark family planning agreement. See Bill Nichols, *Critics decry Bush stand on treaties*, USA TODAY, July 26, 2001; *Issues that trouble White House*, USA TODAY, July 26, 2001; Thom Shanker, *White House Says the U.S. Is Not a Loner, Just Choosy*, N.Y. TIMES, July 31, 2001 at A1; James Dao, *U.S. May Abandon Support of U.N. Population Accord*, N.Y. TIMES, Nov. 2, 2002 at A6; Pope, *supra* note 3.

42. See J.W. Anderson, *U.S. Has No Role in U.N. Treaty Process; Senate Reluctant to Ratify*, RESOURCES 12 (Summer 2002). The US has not become a party to 1979 Bonn Convention on Conservation of Migratory Species, 1982 Convention on the Law of the Sea, 1989 Basel Convention on Transboundary Movements of Hazardous Waste and Their Disposal, 1992 Convention on Biological Diversity, 1997 Kyoto Protocol to the Climate Change Convention, 1997 Convention on Non-navigational Uses of International Watercourses, 1998 Rotterdam Convention on Prior Informed Consent for Hazardous Chemicals and Pesticides, or the 2001 Stockholm Convention on Persistent Organic Pollutants. It has become a party to the 1972 London Convention on Prevention of Marine Pollution, 1973/78 MARPOL Convention for Prevention of Pollution from Ships, 1973 Convention on International Trade in Endangered Species, 1979 Convention on Long-Range Transboundary Air Pollution, 1985 Vienna Convention for the Protection of the Ozone Layer, 1987 Montreal Protocol to the same, 1992 Framework Convention on Climate Change, and 1994 Convention to Combat Desertification. See *id.* at 15.

43. Greenpeace, *Rich Countries Refuse to Pay Their Environmental and Social Debt*, at http://archive.greenpeace.org/earthsummit/news_june7b.html (last visited Mar. 5, 2003).

44. US Environmental Protection Agency, *What Are Type 2 Deliverables?*, available at <http://www.epa.gov/international/WSSD/type2.html> (last visited Mar. 5, 2003).

45. *Background Information on Type II Outcomes: Explanatory Note by the Chairman of the [World Summit on Sustainable Development] Preparatory Committee*, available at

In effect, when it became clear that US obstructionism would not let the Johannesburg Summit live up to its creators' ambitious vision of truly implementing Agenda 21, governments defaulted back to the former, failed system of uncoordinated "foreign aid" projects.⁴⁶ Ominously, the UN sponsors themselves conceded this switch "marked a major departure from previous UN conferences. . . that could have a major effect on the way the international community approaches problem solving in the future."⁴⁷ US Johannesburg delegate John Turner, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, attempted to justify the switch: "I think goals are important, but they're only lofty rhetoric without the commitment of resources."⁴⁸ But critics condemned the switch as a blatant attempt to divert attention from the reluctance of wealthy nations to reduce trade subsidies and commit new resources for the South and pointed out that most of the money will come from already existing programs.⁴⁹

Some 220 of these "public-private partnerships" (totaling \$235,000,000 in promised resources) were announced at the summit.⁵⁰ The US announced 25 partnerships valued at \$125,000,000 in one briefing – including a "water for the poor" project, a "clean energy initiative," an "initiative to cut hunger in Africa," a "Congo basin forest partnership," and efforts to combat AIDs, TB, and malaria – although it did not say how many of the initiatives were new or already under way before Johannesburg.⁵¹ Confusingly, in another announcement, the US claimed it would provide more than \$1 billion over the next four years.⁵²

One youth leader at Johannesburg pinpointed the problems with this approach:

Some of the partnerships that were showcased in Johannesburg may not be so bad. Some are steps in the right direction, and involve good NGO's doing quality work on the ground. . . . But many dangers exist with making partnerships the centerpiece of a once-every-ten-years Earth Summit. First among them: in the

<http://wssd.info/partnerships.html> (last visited Mar. 5, 2003).

46. Nathan Wyeth, *Final Thoughts on the WSSD*, available at <http://www.sierraclub.org/ssc/wssd/article.html> (last visited Mar. 5, 2003). Such "partnerships" have been sponsored or encouraged by the UN for nearly 20 years. See Eric J. Lyman, *State Department Proposes Partnerships to Address Environmental, Health Issues*, 33 ENV'T REP. (BNA) 1913 (Sept. 6, 2002).

47. *The Johannesburg Summit Test*, *supra* note 36.

48. Swarns, *World Development Forum Begins with a Rebuke*, *supra* note 7.

49. See Swarns, *supra* note 40.

50. UN, *Key Outcomes of the Summit*, available at http://www.johannesburgsummit.org/html/documents/summit_docs/2009_keyoutcomes_commitments.doc (last visited Mar. 5, 2003) [hereinafter *Key Outcomes of the Summit*].

51. Lyman, *supra* note 46.

52. Swarns, *supra* note 40. In fairness, the US has promised to increase its overseas development assistance (ODA); at the 2002 Monterrey Finance Ministers' meeting, President Bush pledged to increase US ODA by 50%, from \$10 billion per year to \$15 billion. Ved Nanda, *Lending a Helping Hand, Foreign aid policy shift must be applauded*, DENV. POST, April 21, 2002. The UN-recommended level of ODA for wealthy nations is 0.7% of GNP. The US is presently giving only 0.1% of its GNP, compared to the EU at 0.33%. Even Japan currently gives out \$3 billion more ODA dollars a year than the US. *Id.*

absence of any accountability or guidelines for partnerships . . . , they provide an opportunity for multinationals [business entities] to continue with business as usual and wrap their operations in the flag of the U.N. and sustainability to inoculate themselves against criticism. The bigger threat, though, is the way that partnerships take the focus away from governmental agreements at the WSSD, and distract media and public scrutiny from the abject failures in that area. When it comes to issues like climate change, it's clear that partnerships are incapable of making the necessary global corrections. Commitments and leadership from governments are the only solution.⁵³

One could wish the politicians had shown as much maturity.

The US delegation's position at Johannesburg was negative and reactionary on virtually every issue, from renewable energy, safe drinking water, sanitation, trade, and foreign aid to women's reproductive health, agricultural subsidies, and human rights. But it was not alone. On renewable energy, Saudi Arabia, Canada, Japan, and Australia joined it in opposing deadlines for a 10-15% conversion from fossil fuels to solar, wind, and other renewables; the European Union joined it in opposing elimination of agricultural subsidies that make it next to impossible for poor countries to export to the US and EU; developing countries joined it in watering down a commitment to reducing the threat of dangerous chemicals; and Australia joined it in initially refusing to support a timeline for reducing the number of people who lack adequate sanitation.⁵⁴

So, what accomplishments can Johannesburg claim? Of the customary "Type 1 deliverables" (paper) not much of substance. First, delegates produced a pious "Political Declaration"⁵⁵ (e.g., "We commit ourselves to build a humane, equitable and caring global society . . ." ⁵⁶) which avoids setting any standards or making any real commitments. Second, despite Agenda 21's existence and non-fulfillment, they drafted a new "Plan of Implementation"⁵⁷ (only fifty-four pages, compared to the detailed Agenda 21, which is more than ten times that long). The good news is that Rio and progeny survive this pap – the delegates "strongly reaffirm our commitment to the Rio principles, the full implementation of Agenda 21 . . . the United Nations Millennium Declaration and . . . the outcomes of the

53. Wyeth, *supra* note 46. This is not to deny that "partnership" projects may be a necessary, if not sufficient, means to achieve sustainable development; the President and CEO of the Wildlife Conservation Society argues that "the anemic official conservation agenda" can and should be overcome by collaborative projects among individuals, companies, civic institutions, and conservation NGOs without reliance on governments, pointing to an estimate that an annual global investment of \$30 billion could halt "nature's decline." Steven Sanderson, *The Future of Conservation*, 81 FOREIGN AFF. 162, 164, 171 (2002).

54. Swarns, *U.S. Is Not the Only Nation Resisting a Strong Pact at the Summit Meeting on Global Warming*, *supra* note 7.

55. The Johannesburg Declaration on Sustainable Development (Sept. 4, 2002), available at http://www.johannesburgsummit.org/html/documents/summit_docs/1009wssd_pol_declaration.htm (last visited Mar. 5, 2003).

56. *Id.* at ¶ 2.

57. World Summit on Sustainable Development Plan of Implementation (revised, Sept. 23, 2002), available at http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm (last visited Mar. 5, 2003) [hereinafter WSSD Plan of Implementation].

major United Nations conferences and international agreements since 1992."⁵⁸ What a relief.

The major "commitments"⁵⁹ in the Plan of Implementation include:

- Water and sanitation – halve the proportion of the world's people who are without access to basic sanitation⁶⁰ and safe drinking water by 2015;⁶¹
- Energy – increase access to modern energy services,⁶² increase energy efficiency,⁶³ and renewable energy use,⁶⁴ phase out energy subsidies where appropriate,⁶⁵ and support access to energy for at least 35% of the African population by 2022;⁶⁶
- Health – aim to achieve use and production of chemicals that lead to minimization of significant adverse effects on human health and environment by 2020,⁶⁷ enhance cooperation to reduce air pollution,⁶⁸ and improve developing countries' access to environmentally sound alternatives to ozone-depleting chemicals by 2010;⁶⁹
- Agriculture – call on the Global Environmental Facility (GEF) to consider inclusion of desertification as a new focal area for funding⁷⁰ and develop food security strategies for Africa by 2005;⁷¹
- Biodiversity – significantly reduce biodiversity loss by 2010,⁷² reverse the current trend in natural resource degradation as soon as possible,⁷³ restore fisheries to their maximum sustainable yields by 2015,⁷⁴ establish representative marine protected areas by 2012,⁷⁵

58. *Id.* at ¶ 1.

59. While there are many vague, contentless "commitments" in the Plan, this list contains the ones the UN thought serious enough to be mentioned in its 2½-page *Highlights of Commitments and Implementation Initiatives* initially posted on the official UN Johannesburg website and revised on Sept. 12, 2002 (copy with author), but then removed and replaced by a much more face-saving and detailed 7-page *Key Outcomes of the Summit* in October, *supra* note 50 (at least until the next level of puffery comes along). Also see John Sullivan, "Plan of Implementation" Seeks to Aid Poor, Spur Growth Without Harming Environment, 33 ENV'T REP. (BNA) 1909 (Sept. 6, 2002).

60. WSSD Plan of Implementation, *supra* note 57, at ¶ 7.

61. *Id.*

62. *Id.* at ¶ 8.

63. *Id.* at ¶ 19(d).

64. *Id.*

65. *Id.* at ¶¶ 19(p), (q).

66. *Id.* at ¶ 56(j)(i).

67. *Id.* at ¶ 22.

68. *Id.* at ¶ 37.

69. *Id.* at ¶ 37(d).

70. *Id.* at ¶ 39(f).

71. *Id.* at ¶ 61.

72. *Id.* at ¶ 42.

73. *Id.* at ¶ 23.

74. *Id.* at ¶ 30(a).

75. *Id.* at ¶ 31(c).

- undertake initiatives to reduce land-based ocean pollution by 2004;⁷⁶
- Cross-cutting issues – recognize that opening up access to markets is a key to development,⁷⁷ support phase out of export subsidies,⁷⁸ establish a 10-year program on sustainable consumption and production,⁷⁹ promote corporate responsibility and accountability,⁸⁰ and improve natural disaster preparedness and response.⁸¹

An impressive list? A closer look shows three things detracting from that. First, these are the same type of *empty promises* that the same countries made ten years ago in Agenda 21 and have never put up the money to achieve. Second, *only two are new promises* – sanitation and marine reserves – the rest are existing commitments already made in previous post-Rio UN conferences.⁸² And third, a number of the old promises that are included are subtly and not so subtly *diluted, delayed, or denied*. Examples of the latter include making it only an “aim” to eliminate dangerous chemicals by 2020 (contrary to the thrust of current chemical treaties),⁸³ backing off to just “a significant reduction” in loss of biodiversity (clearly undercutting the 1992 Convention on Biological Diversity),⁸⁴ and promoting “clean” fossil fuels (despite the Climate Change treaty regime).⁸⁵

As one disgusted environmental NGO put it: “We could go on, but the list of weasel words and lost promises is nearly endless. Do not believe Government spin doctors who claim success for the Summit. It is by any objective test a failure.”⁸⁶ Another environmental NGO issued an amusing “report card” grading the summit with an “F” for the following:

- Energy and climate – only “urged” countries to ratify the Kyoto Protocol;
- Forests – failed to recommit to measures agreed to six months ago to halt all biodiversity loss by 2010;
- Agriculture – silent on genetic engineering, granting patents on life, only “invites” countries to ratify the Cartagena Biosafety Protocol;
- Toxics – weak support for the precautionary principle, adopted good language on corporate accountability which the US killed;
- Oceans – made fisheries restoration voluntary and only “where possible”;

76. *Id.* at ¶ 52(e).

77. *Id.* at ¶¶ 6(i), 41(e).

78. *Id.* at ¶ 86(c).

79. *Id.* at ¶ 14.

80. *Id.* at ¶¶ 45.ter, 122(f).

81. *Id.* at ¶¶ 35(g), 59, 99(e), 119.noviens.

82. Friends of the Earth, *Earth Summit: Betrayal...*, available at <http://www.rio-plus-10.org/en/info/rio+10/129.php> (last visited Mar. 5, 2003).

83. WSSD Plan of Implementation, *supra* note 57, at ¶ 22.

84. *Id.* at ¶ 42.

85. *Id.* at ¶ 19(e).

86. Friends of the Earth, *supra* note 82.

- Trade and development – failed to deal with globalization, failed to ensure free-trade rules do not preempt multilateral environmental agreements (MEAs).⁸⁷

Another NGO evaluated the summit's performance in 10 different categories (maximum 10 points each) and gave it a failing score of only 22 points out of a possible 100.⁸⁸

1. Corporate accountability (5 points out of 10) – opened the door to binding international standards for multinational corporations, but without any follow-up compliance mechanism;
2. Trade and globalization (only 2 points) – Free trade and globalization dominated over the environment, and the authority of MEAs over trade rules got sent back to the World Trade Organization for resolution!;
3. Ecological debt (0) – No formal recognition of the ecological debt the developed countries owe to the developing world, a backward step from Rio where the North agreed it had caused most environmental harm to date and had to take lead responsibility in the clean up;
4. Energy and climate change (3) – The Kyoto Protocol was reaffirmed, but efforts to commit to a 10% target for renewable energy failed;
5. Water and sanitation (3) – Weasel words weaken the much-ballyhooed commitment to halve the number of people without access to clean water and sanitation, and delegates failed to ensure water remains a public good and to safeguard against the problems of privatization;
6. Biodiversity (3) – Weakened biodiversity by only aiming to reduce the rate of loss, not eliminate loss, but modest progress on marine protected areas;
7. Aid and debt (1) – No new aid or debt relief targets; merely reiterates the UN-recommended 0.7% of GDP as the benchmark for nation's foreign aid, which is largely ignored;
8. Subsidies (1) – Useful progress on fisheries subsidies, but not on the critical farm, fossil fuel, and nuclear subsidies;
9. Consumption and production (2) – The Rio commitment for a ten-year action program to address over-consumption and

87. Greenpeace, *Earth Summit 2002: It's Time to Stop the War on the Earth*, available at http://archive.greenpeace.org/earthsummit/report_card (last visited Mar. 5, 2003).

88. Friends of the Earth International, *Earth Summit End of Term Report*, available at <http://www.rio-plus-10.org/en/info/rio+10/118.php> (last visited Mar. 5, 2003).

over-production was dropped in favor of a weaker "framework";

10. Rio Principles (2) – After much disagreement (led by the US), the good news is in the end there was no backsliding on key principles such as the "precautionary approach" and "common but differentiated responsibilities" of developing vs. developed states. The bad news is there was no progress.

So is the environmentalists' analysis overly harsh? It seems not, since even the UN sponsors' were tepid in their assessment:

By any account, the Johannesburg Summit has laid the groundwork and paved the way for action . . . there were no silver bullet solutions to aid the fight against poverty and a continually deteriorating natural environment. In fact, there was no magic and no miracle – only the realization that practical and sustained steps were needed to address many of the world's most pressing problems.

As an implementation-focused Summit, Johannesburg did not produce a particularly dramatic outcome – there were no agreements that will lead to new treaties and many of the agreed targets were derived from a panoply of assorted lower profile meetings. But some important new targets were established [citing the four targets for sanitation access, chemical safety, fish stocks maintenance, and biodiversity loss reduction].⁸⁹

This was certainly a sad conclusion for the first international sustainable development conference of the 21st century. Time will tell whether the US-led selfishness of Johannesburg represents the sad wave of the future or only an embarrassing blip on our progress toward ensuring a safe, healthy environment, society, and economy for the world in the years ahead.

89. *The Johannesburg Summit Test*, *supra* note 36.