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# The Earth Summit and Limits on Carbon Dioxide Emissions: Reading Between the Lines

JAMES D. DESMOND\*

## INTRODUCTION

In June of 1992, the United Nations Conference on Environment and Development, UNCED, was held in Rio de Janeiro, Brazil. The primary goal of UNCED, commonly referred to as the Earth Summit,<sup>1</sup> was to alter the economic behavior of industrialized and developing countries so that their economic growth would be compatible with the conservation of the planet.<sup>2</sup> The Earth Summit addressed issues such as the cutting of rain forests, the extinction of plant and animal life, and the process of global warming.<sup>3</sup> This last issue, the process of global warming, and the Bush Administration's stance on it, caused the United States to receive a substantial amount of criticism.<sup>4</sup>

To lessen the process of global warming, the European Economic Community proposed that the industrialized nations stabilize their carbon dioxide emissions at 1990 levels by the year 2000.<sup>5</sup> They also proposed that an energy tax be levied on all nonrenewable forms of energy so that the higher cost of these fuels would reduce consumption and provide revenue to implement environmentally-safe technologies.<sup>6</sup> The United States stood

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<sup>1</sup> *Preparatory Committee Narrows Options for 'Agenda 21'*, 28 UN MONTHLY CHRON. 65 (1991).

<sup>2</sup> *Id.*; see also Peter Eisner, *Seeking Common Ground; Rio Summit Closes with Pacts, Pledges*, NEWSDAY, June 15, 1992 (News), at 6.

<sup>3</sup> Eisner, *supra* note 2, at 6.

<sup>4</sup> *Id.* The United States was most often accused of "political posturing and isolationism.", *id.*

<sup>5</sup> Coopers & Lybrand, *Euroscope*, ENVIRONMENT, July 23, 1992, at 4.

<sup>6</sup> *Id.*

as the main opposition to these initiatives.<sup>7</sup> As a result, the United States was referred to as everything from an "isolationist villain"<sup>8</sup> to an "ogre."<sup>9</sup>

This paper examines the Earth Summit and the stance of the Bush Administration in greater depth. However, to understand the opposing views of the Bush Administration and the European Economic Community, the process of global warming and its scientific basis must first be considered.

## I. THE PROCESS AND POSSIBLE EFFECTS OF GLOBAL WARMING

Scientists believe that the collection of carbon dioxide within the earth's atmosphere is the primary cause of the greenhouse effect.<sup>10</sup> By allowing sunlight to penetrate the earth's atmosphere while preventing much of the sunlight's heat from escaping into space,<sup>11</sup> carbon dioxide increases the earth's temperature by an average of 35 degrees Celsius.<sup>12</sup> However, some scientists fear that humans, by producing excessive amounts of carbon dioxide, may be causing the earth's temperature to rise too rapidly.<sup>13</sup> For example, the United States, which is responsible for 23% of all global carbon dioxide emissions,<sup>14</sup> is expected to double its carbon dioxide output within the next forty years.<sup>15</sup> Similarly, the at-

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<sup>7</sup> See David Ignatius, *After the Wars: Can "Real Men" Make Policy?*, WASH. POST, June 28, 1992 (Outlook), at C1; see also Stephen Swanson, *U.S. Tossing Cold Water on Global Warming Pact*, CHI. TRIB., Feb. 23, 1992 (Perspective), at 1.

<sup>8</sup> Eisner, *supra* note 2.

<sup>9</sup> Ignatius, *supra* note 7 (quoting former national security adviser Zbigniew Brzezinski).

<sup>10</sup> Jennifer Woodward, Comment, *Turning Down the Heat: What United States Laws Can Do to Help Ease Global Warming*, 39 AM. U. L. REV. 203, 203-04 (1989-90). The other greenhouse gases are: nitrous oxide (N<sub>2</sub>O), tropospheric ozone (O<sub>3</sub>), and chlorofluorocarbons (CFCs). Lewis B. Solomon & Bradley S. Freedberg, *The Greenhouse Effect: A Legal and Policy Analysis*, 20 ENVTL. L. 83, 83-84 (1990).

<sup>11</sup> Woodward, *supra* note 10.

<sup>12</sup> *Id.* at n.21.

<sup>13</sup> *Id.* at 203-05.

<sup>14</sup> Coopers & Lybrand, *supra* note 5. In contrast to the U.S. emission rate, Europe only accounts for 13% of the global carbon dioxide emissions, *id.* It is estimated that the United States is responsible for nearly 55% of the global warming that occurred in the 1980's. Guruswamy, *infra* note 19, at 102.

<sup>15</sup> *Senate Hearing Is Arena for Clash Over Predictions of Climate Change*, 22 ENV'T. REP. (BNA) 1548 (Oct. 11, 1991) [hereinafter *Senate Hearing*] (statement by Sen. Albert Gore, D-Tenn., chairman of the Senate, Commerce, Science, and Transportation Committee).

mospheric level of carbon dioxide should double between the years 2030 and 2060.<sup>16</sup> Such a doubling of carbon dioxide concentrations would raise the earth's temperature from 3 to 5 degrees Fahrenheit (1.5 to 4.5 degrees Celsius).<sup>17</sup> Such a rise in the earth's temperature would create a corresponding rise in the temperature of the sea, causing polar and glacial ice to melt, and thus, creating a rise of the sea level.<sup>18</sup> Current estimates suggest that the sea could rise as much as twenty centimeters by the year 2020 and as much as one meter by the end of the century.<sup>19</sup> When evaluating the impact of these figures, it should be noted that eight to ten million people live within one meter of high tide in Bangladesh, Egypt, and Vietnam, and a one meter rise in sea level could submerge as much as 15% of Egypt and one-sixth of Bangladesh.<sup>20</sup> Furthermore, a rise in sea level would also require the construction of levees and sea walls in order to preserve coastal lands.<sup>21</sup> Not only would these structures be costly, but they also could adversely affect marine life by preventing the movement of fish within coastal areas.<sup>22</sup> Two-thirds of the world's fish supply depend on coastal wetlands for their survival.<sup>23</sup>

A decrease in the amount of moisture in the soil, a further result of a rise in the earth's temperature, could lessen crop production as well.<sup>24</sup> If present precipitation levels do not increase, a two-degree rise in temperature could reduce crop production by as much as 10%.<sup>25</sup> The extinction rate for plant and animal life is expected to increase because of their inability to adapt to a rapid change in the earth's temperature.<sup>26</sup> A rise in temperature could even increase the spread of contagious diseases by allowing tropical diseases, in particular yellow fever and den-

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<sup>16</sup> Woodward, *supra* note 10, at n.7.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 213-14.

<sup>19</sup> Lakshman Guruswamy, *Integrated Environmental Control: The Expanding Matrix*, 22 ENVTL. L. 77, 104 (1992).

<sup>20</sup> *Id.* About half a million people live within three meters of sea level in the South Pacific on islands such as Tuvalu, Kiribati and Toleau, *id.*

<sup>21</sup> *Id.* It is estimated that the cost of protecting the shoreline in the United States would be from \$24 million to \$80 million, *id.* at 103.

<sup>22</sup> Guruswamy, *supra* note 19, at 104.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 107-08.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 104. According to present estimates, even without the threat of global warming, 20% of all species now living will be extinct by the year 2000, *id.*

gue fever, to shift northward.<sup>27</sup> Considering all the possible detrimental effects a rise in the earth's temperature could have, it seems obvious why the European Community sought binding limits on carbon dioxide emissions.<sup>28</sup>

## II. ANOTHER VIEW: GLOBAL WARMING WILL NOT HAVE DISASTEROUS EFFECTS ON THE ENVIRONMENT

Scientists have been unable to conclusively prove that the above changes will occur from a rise in the earth's temperature.<sup>29</sup> Some scientists question whether the earth's temperature is even rising,<sup>30</sup> while still others claim that even if the earth's temperature is rising, it will only positively affect the environment.<sup>31</sup> As a result, "the only scientific consensus is that the sky will remain blue."<sup>32</sup>

These varying views are attributable to the fact that computer-simulated models of the earth, technically known as General Circulation Models (GCMs),<sup>33</sup> are used to predict the effects of global warming. The problem is that the accuracy of these models is largely in question.<sup>34</sup> Critics of global warming point out that if GCMs existed at the turn of the century, they still would not have accurately predicted the climate changes that have occurred over the last ninety years.<sup>35</sup> For example, if a GCM is programmed to simulate the climatic conditions existing in 1880, it predicts that a five-degree rise in temperature should have occurred by now.<sup>36</sup> Yet, the earth's temperature has risen no more than one degree over the last hundred years.<sup>37</sup> A variety of theories attempt to explain this discrepancy. Some scientists the-

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<sup>27</sup> Solomon & Freedberg, *supra* note 10, at n.78.

<sup>28</sup> *European Community Plans New Environmental Program, Common Position for Rio Summit*, 15 Int'l Env'tl. Rep. (BNA) 24 (Jan. 15, 1992).

<sup>29</sup> Gregg Easterbrook, *A House of Cards*, NEWSWEEK, June 1, 1992, at 24.

<sup>30</sup> See *id.* Richard Lindzen, a meteorologist at the Massachusetts Institute of Technology, claims that any rise in the earth's temperature is the result of natural fluctuations which have occurred many times in history. *Senate Hearing; supra* note 15; See also Leonard S. Greenberger, *U.S. Wins Battle Over Global Warming Pact*, 129 Pub. Util. Rep. (PUR) 28 (June 15, 1992).

<sup>31</sup> Guruswamy, *supra* note 19, at 106.

<sup>32</sup> Easterbrook, *supra* note 29, at 29.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Easterbrook, *supra* note 29, at 29.

orize that the depletion of the ozone is disguising a rise in the earth's temperature.<sup>38</sup> Others believe that natural events, such as the eruption of Mount Pinatubo, emit enough pollution to interfere with sunlight, thereby causing a decrease in the earth's temperature.<sup>39</sup> Still others believe that the cooling effect of sulfur dioxides is masking an increase in the earth's temperature.<sup>40</sup>

Despite which theory is used to explain the discrepancies of GCMs, several factors concerning their accuracy are evident. First, GCMs are only as precise as the information from which they are programmed.<sup>41</sup> For example, most scientists theorize that chloroflourocarbons (CFCs) warm the earth.<sup>42</sup> Recently, however, researchers discovered that CFCs cool the earth as much as they warm it.<sup>43</sup> Similarly, scientists have generally assumed that water in the atmosphere reacts in the same manner to sunlight whether in the form of vapor or ice crystals.<sup>44</sup> But a recent study indicates that when the differences between these two states are accounted for, the predicted rise in the earth's temperature falls dramatically.<sup>45</sup> Thus, the inaccuracies of GCMs are a reflection that scientists do not fully understand all the complexities of the earth's climate.<sup>46</sup> Second, as one commentator pointed out,

even the best temperature records are fuzzy by a few shades of a degree, plus or minus. That is a tenuous basis to analyze a greenhouse effect which so far is, at worst, only slightly larger than the margin of error in the numbers. Stephen Schneider of NCAR [National Center for Atmospheric Research] acknowledges, "It's possible that everything in the last 30 years of temperature records is no more than noise." *Noise* is statistician's slang for little numerical fluctuations that don't add up to a hill of beans.<sup>47</sup>

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<sup>38</sup> *Id.*; See also Swanson, *supra* note 7.

<sup>39</sup> Easterbrook, *supra* note 29, at 29. James Hansen, director of a NASA affiliated GCM project, in order to test the accuracy of GCMs, predicted that the eruption of Mount Pinatubo would decrease the global temperature by one degree in 1992, *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* Scientists now feel that since heat escapes through the thinner ozone. CFCs probably have no net effect on global warming. Swanson, *supra* note 7.

<sup>44</sup> Easterbrook, *supra* note 29, at 29.

<sup>45</sup> *Id.* The predicted rise in temperature, originally at 10 degrees, falls to 3 degrees, *id.*

<sup>46</sup> See Easterbrook, *supra* note 29, at 29; see also *Environmentalists Say UNCED Will Fail if Bush Does Not Agree to Greenhouse Cuts*, Int'l Envtl. Daily (BNA) (Feb. 18, 1992) [hereinafter *Environmentalists*].

<sup>47</sup> Easterbrook, *supra* note 29, at 29.

Regardless of the level of faith placed in model predictions, it seems clear that the study of climatic changes is still in its infancy.<sup>48</sup>

### III. OPPOSING VIEWS OF THE EUROPEAN COMMUNITY AND THE BUSH ADMINISTRATION

The opposing views as to the possible effects of global warming mirror the opposing views of the Bush Administration and the European Community. The Bush Administration considered global warming to be little more than a fiction.<sup>49</sup> In contrast, the European Community perceived global warming as a reality with serious consequences.<sup>50</sup>

The European Community had hoped a *binding* treaty would be signed at the Earth Summit that would commit industrialized nations to stabilizing their carbon dioxide emissions at 1990 levels by the year 2000.<sup>51</sup> This initiative only addressed carbon dioxide and not the other greenhouse gases.<sup>52</sup> The European Community also proposed that an energy tax be levied on oil, coal, natural gas and other nonrenewable forms of energy.<sup>53</sup> The tax would have started at a rate of \$3 per barrel of oil or oil equivalent, and increased to a rate of \$10 per barrel by the year 2000.<sup>54</sup> Adoption of these plans was conditioned on approval by both the United States and Japan.<sup>55</sup> Even though Japan favored the plans, the United States adamantly opposed them.<sup>56</sup>

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<sup>48</sup> See *Environmentalists*, *supra* note 46. A Gallup poll released in February found that most climate experts believe global warming is a reality. However, only 41% believe that current scientific evidence proves this, *id.*

<sup>49</sup> *Id.* Former White House chief of staff John H. Sununu was highly skeptical of the theory of global warming, and some feel that he passed this skepticism onto President Bush. *A New White House Climate?*, HARTFORD COURANT, Feb. 21, 1992 (Editorial), at 10.

<sup>50</sup> Coopers & Lybrand, *supra* note 5.

<sup>51</sup> Howard La Franchi, *Europe Misses Its Chance for Leading Role in Rio*, CHRISTIAN SCI. MON., June 1, 1992 (The World), at 6.

<sup>52</sup> *Environmentalists*, *supra* note 46.

<sup>53</sup> Marlise Simons, *Europe Sees Oil Tax as a Way to Dampen Demand*, N.Y. TIMES, June 1, 1992, at A6.

<sup>54</sup> Mathew L. Wald, *Carbon Tax: Green Twist on Oil Price*, N.Y. TIMES, June 6, 1992, at 37. "Saudi Arabia, the world's largest oil exporter, quickly responded that it would simply freeze its level of production, which would force up the price of oil." *Id.*

<sup>55</sup> David Warsh, *The Road from Rio: Bush Maneuvering for a Carbon Tax; Economic Principals*, BOSTON GLOBE, June 14, 1992 (Economy), at 81; see also Coopers & Lybrand, *supra* note 5.

<sup>56</sup> Warsh, *supra* note 55.

The Bush Administration continually opposed the idea of specific timetables or binding limits and instead called for a flexible plan to meet the energy needs of individual nations.<sup>57</sup> Specifically, the White House proposed that all the greenhouse gases be targeted for reduction and that each country set its own goals for reducing these gases.<sup>58</sup> The idea was since the energy needs of countries differ, the White House's proposal would be the most practical for the greatest number of countries.<sup>59</sup> Additionally, the Bush Administration opposed the idea of an energy tax claiming that such a tax would burden an already weak American economy,<sup>60</sup> compromise the American standard of living,<sup>61</sup> and disproportionately affect the United States which relies heavily on coal for energy security.<sup>62</sup>

#### IV. THE UNITED STATES PREVENTED THE ADOPTION OF A BINDING TREATY AT THE EARTH SUMMIT

Rather than a binding treaty, a statement of principles concerning the greenhouse gases was adopted at the Earth Summit.<sup>63</sup> At the close of the conference, 153 of 178 represented nations<sup>64</sup> had signed a treaty agreeing "to stabilize the amount of greenhouse gases in the atmosphere at a level which would prevent dangerous interference with climate systems."<sup>65</sup> Thus, the Bush Administration successfully prevented the imposition of either initiative but only at the cost of appearing to be a "villain."<sup>66</sup>

#### V. THE FINANCIAL COSTS OF IMPLEMENTING THE RIO ACCORDS

According to current estimates, financing all of the Rio ac-

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<sup>57</sup> *Environmentalists*, *supra* note 46.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Carbon Dioxide Pollution Up 5 Percent in Past Decade*, UNITED PRESS INT'L, June 15, 1992 (Washington News).

<sup>61</sup> See Keith Schneider, *The Nation; Environmental Policy: It's a Jungle in There*, N.Y. TIMES, June 7, 1992, § 4, at 1.

<sup>62</sup> See Michael Weisskopf, *Rust-Belt Emissions Cloud Earth Summit; US Factories Lag in Energy Efficiency*, WASH. POST, June 2, 1992, at A1.

<sup>63</sup> Eisner, *supra* note 2.

<sup>64</sup> Rudy Abramson, *Earth Summit Ends on Optimistic Note; Environment; Leaders Declare Confrontational Meeting a Success and Urge Quick Action*, L.A. TIMES, June 15, 1992, at 4.

<sup>65</sup> Eisner, *supra* note 2.

<sup>66</sup> *Id.*



cords will cost \$125 billion annually,<sup>67</sup> approximately \$70 billion more than industrialized nations presently give in foreign aid.<sup>68</sup> To achieve this goal, the industrialized nations would need to pledge 0.7% of their Gross National Product (GNP), for foreign aid,<sup>69</sup> a goal rejected by the United States since 1974.<sup>70</sup> Even though the United States has continually opposed the 0.7% goal,<sup>71</sup> in March of this year it did pledge \$75 million so that developing countries might explore alternative energy sources to reduce their greenhouse gases.<sup>72</sup> At the Earth Summit, the United States also pledged \$150 million annually toward the protection of rain forests.<sup>73</sup> As the above figures indicate, implementing the Rio accords would require an extensive financial commitment by the United States. In addition, the accords raise the question of whether substantial expenditures on carbon dioxide limits are justified at this time.

#### VI. PRIORITIES: SHOULD OUR FINANCIAL RESOURCES BE USED TO PREVENT GLOBAL WARMING OR SHOULD OTHER CRISES TAKE PRIORITY?

In opposition to such expenditures is the fact that global warming is not a scientific certainty.<sup>74</sup> Because of the inaccuracies of GCMs, scientists have not conclusively proven that the earth's temperature is in fact rising.<sup>75</sup> If the theory of global warming is ultimately proven incorrect, substantial amounts of money will have been wasted. Furthermore, one has to consider whether the problem of global warming should take priority over currently existing world problems.<sup>76</sup> For instance, one-fifth of the world's

<sup>67</sup> Mary Adler & Jerry Hager, *Earth at the Summit*, NEWSWEEK, June 1, 1992, at 20, 22 (referring to the cost of financing all the Rio accords and not just those dealing with global warming).

<sup>68</sup> Lucia Mouat, *Earth Summit in Rio Faces Complex Issues*, CHRISTIAN SCI. MON., Mar. 27, 1992 (The U.S.), at 7; see also Easterbrook, *supra* note 29.

<sup>69</sup> Charles Petit, *Earth Summit Concludes—'An Historic First Step' But Leaders Fear Actions Won't Match Words*, S.F. CHRON., June 15, 1992 (News), at A1.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Climate Talks Adjourn With Few Agreements, Much Criticism*, Int'l Envtl. Daily (BNA) (Mar. 3, 1992) (\$50 million went into the Global Environment Facility which is administered by the World Bank, and \$25 million was granted directly to developing countries).

<sup>73</sup> Eisner, *supra* note 2.

<sup>74</sup> See *supra* notes 28-47 and accompanying text.

<sup>75</sup> See Easterbrook, *supra* note 29; see also Murray Weidenbaum, *Times Board of Economists: Earth Summit: Some Hard Facts are Concealed by the Shrill Critiques*, L.A. TIMES, July 26, 1992, at D2; see also notes 29-47 and accompanying text.

<sup>76</sup> Weidenbaum, *supra* note 75.

population lacks access to safe water, resulting in the death of about three million people annually, most of whom are children.<sup>77</sup>

On the other hand, by the year 2025 developing countries will be responsible for nearly 50% of the world's carbon dioxide output.<sup>78</sup> Furthermore, the United States has only 5% of the world's population but emits nearly a quarter of the world's carbon dioxide.<sup>79</sup> As a result, a strong argument can be made that the United States should take a leadership role in implementing carbon dioxide limits. In addition, by waiting for science to provide more conclusive proof of the effects of global warming, irreparable damage could occur to the environment in the interim. For example, the first ozone alert was issued back in 1974.<sup>80</sup> However, the leaders of the world did not act until 1985 when the ozone hole over Antarctica was finally confirmed.<sup>81</sup> Recent research has shown that the hole in the ozone is more severe than originally expected<sup>82</sup>, so much so that President Bush changed the phasing out of CFC's to five years earlier than required by the international treaty.<sup>83</sup> Even though the White House claimed that the scientific evidence on the hole in the ozone was much more certain than that of the greenhouse effect,<sup>84</sup> the hole in the ozone still seems to warn of the hazards of inaction. As the above discussion illustrates, there are several competing issues behind the problem of global warming, all of which deserve further consideration.

## VII. THE KEY PLAYERS AT THE SUMMIT: JAPAN, THE EUROPEAN COMMUNITY, AND THE UNITED STATES

### A. Japan

Most newspaper articles on the Earth Summit criticized the Bush Administration for its lack of leadership<sup>85</sup> and praised

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<sup>77</sup> *Id.*

<sup>78</sup> *Global Climate Coalition Endorse Administration Proposal to Create Technology Fund*, PR NEWSWIRE, Feb. 27, 1992. In contrast, the United States will be responsible for approximately 14%, *id.*

<sup>79</sup> *See supra* note 2.

<sup>80</sup> Michael Lemonick, *The Ozone Alert*, TIME, Feb. 17, 1992, at 60, 62.

<sup>81</sup> *Id.* at 63.

<sup>82</sup> *Id.*; *see also* Swanson, *supra* note 7.

<sup>83</sup> Lemonick, *supra* note 80.

<sup>84</sup> *Id.*

<sup>85</sup> *See supra* note 4 and accompanying text.

Japan for its pledge of more than \$7 billion in aid.<sup>86</sup> However, the issues are not as clear as most commentators would have readers believe. For many years, Japan has been viewed as an "ecological outcast" among nations.<sup>87</sup> This is because Japan is the largest importer of wood cut from tropical forests<sup>88</sup> and is adamantly opposed to any ban on whaling.<sup>89</sup> Also, until recently, Japan refused to ban the importation of ivory.<sup>90</sup> Furthermore, a Malaysian court recently ordered a Japanese mining venture closed down because it was poisoning local villagers with radioactive waste.<sup>91</sup> The venture was partly owned by Mitsubishi Kasei Corporation, one of Japan's top chemical companies that was shut down only after a seven-year court battle.<sup>92</sup>

In addition to the above criticisms, some critics claim that Japan is more interested in profits from the sale of environmentally-safe technologies than in environmental preservation.<sup>93</sup> They point out that in 1990 Japan set up the Research Institute of Innovative Technology for the Earth with an annual budget of \$37.5 million.<sup>94</sup> According to one observer, Japan intends for its "environmental policy to force their industry to invent new technologies."<sup>95</sup> As one Japanese businessman put it: "In the future, access to international markets will depend on who has the most environmentally sound technologies. If U.S. companies don't move aggressively, we will see the same conflict in environmental technology that we see today between GM and Honda."<sup>96</sup> Perhaps, if for no other reason than to remain competitive with other countries, the United States should seriously consider the possibility of carbon dioxide limits.

Regardless of which factors motivate Japan, it is doubtful that its environmental goals will be met in 1993. Because of the

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<sup>86</sup> Andrew Pollack, *Japan and Ecology: Room to Improve*, N.Y. TIMES, July 31, 1992, at A8.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* (Japan agreed to ban the importation of ivory in 1989).

<sup>91</sup> Merrill Goozner, *Court Hands Japan Environmental Setback*, CHI. TRIB., July 14, 1992 (News), at 4.

<sup>92</sup> *Id.*

<sup>93</sup> Pollack, *supra* note 86.

<sup>94</sup> Emily T. Smith, *Growth v. Environment, In Rio Next Month, A Push For Sustainable Development*, BUS. WEEK, May 11, 1992, at 66, 73-74.

<sup>95</sup> *Id.* at 73.

<sup>96</sup> *Id.* at 74 (statement by Tsukasa Sakai, senior managing director of JGC Corporation).

world-wide recession, the Japanese government is expected to increase the budget of its environmental agency by only 4% in 1993 and is reportedly falling short of the funds it promised at the Earth Summit.<sup>97</sup> Until the recession in Japan ends, it is likely that any environmental breakthroughs by the Japanese government will have to wait.

### *B. The European Community*

The European Community, like the United States, did not come out of the Earth Summit unscathed. It hoped to take a leadership role at the Summit, but individual differences among members prevented it from doing so.<sup>98</sup> Instead, it has been referred to as the "lion that squeaked."<sup>99</sup>

The European Community hoped its members would agree to increase their aid to developing countries to 0.7% of their GNP, nearly double the amount the European Community presently gives.<sup>100</sup> Both France and The Netherlands agreed to meet the 0.7% goal.<sup>101</sup> Germany was supportive of the 0.7% goal, but because of the high cost of reuniting with East Germany, could only commit to reaching it as soon as possible.<sup>102</sup> The United Kingdom offered no new funds and rejected the 0.7% goal.<sup>103</sup> Moreover, even though the European Community jointly pledged \$4 billion in aid to developing countries,<sup>104</sup> much of this figure has been referred to as only "creative accounting."<sup>105</sup> Only \$55 to \$75 million of the \$4 billion pledged actually represents new funds.<sup>106</sup>

Despite any failings the European Community had at the Earth Summit, the European Community has been aggressively implementing environmental preservation programs in the six

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<sup>97</sup> Suvendrini Kakuchi, *Environment '93: Recession Cuts Through Japan's Green Pledge*, Inter. Press Serv., (Dec. 28, 1992).

<sup>98</sup> Howard LaFranchi, *Europe Misses Its Chance For Leading Role in Rio*, CHRISTIAN SCI. MON., June 1, 1992 (The World), at 6.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *World Leaders Express Concerns, Promise Funding for Developing World*, Int'l Environl. Daily (BNA) (June 16, 1992).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* (statement by senior British delegate at the Summit).

<sup>106</sup> *Id.*

months subsequent to the Summit. Germany, the Netherlands, and Switzerland have all adopted subsidies in an effort to increase the use of mass transit.<sup>107</sup> The German government is pushing automakers to increase their cars' fuel economy to as much as 47 miles per gallon.<sup>108</sup> By failing to force its industry to develop new technologies, the United States could be placing itself at a competitive disadvantage with both Europe and Japan.

### C. *The United States*

In an interview on CNN's "International Hour," President Bush stated that "we took to Rio the best environmental record of any nation in the world."<sup>109</sup> Even though such an assertion rings of political rhetoric, over the years the United States has been a leader in environmental protection.<sup>110</sup> For example, in 1970 the Environmental Protection Agency was created, the first such government agency of its kind.<sup>111</sup> The United States was the first country to implement catalytic converters and switch to lead-free gasolines.<sup>112</sup> In regard to the enforcement of environmental legislation, a British environmental group recently stated that the United States was five to ten years ahead of the European Community.<sup>113</sup> With these accomplishments in mind, one has to wonder what the United States did wrong to deserve such a vast amount of criticism at the Earth Summit. Even William Reilly, head of the Environmental Protection Agency, criticized the White House's efforts, or lack thereof,<sup>114</sup> and likened his experience to a "bungee jump" with a severed cord.<sup>115</sup>

President Bush's opposition to the carbon dioxide limits and the funding issue was not without justification. The United

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<sup>107</sup> Margaret Kriz, *Europe's Cooldown*, 24 NAT'L J. 2728 (1992).

<sup>108</sup> *Id.*

<sup>109</sup> *Special Edition of CNN's "International Hour," Interview with: President George Bush*, Fed. News Serv. (June 15, 1992), [hereinafter *Special Edition*].

<sup>110</sup> Bernard Debusmann, *Rio Summit Shows U.S. Fall From World Ecological Leadership*, Reuter Libr. Rep. (June 14, 1992).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> Weidenbaum, *supra* note 75 (statement by Ecofin, British Environment Services Group).

<sup>114</sup> Michael Weisskopf, *Reilly Faults Earth Summit Preparation; EPA Chief Likens Rio Experience to a 'Bungee Jump' with a 'Cut Line'*, WASH. POST., Aug. 1, 1992, at A13.

<sup>115</sup> *Id.* (referring to efforts by White House officials to undermine him).

States presently gives 0.15% of its GNP as foreign aid.<sup>116</sup> Thus, to meet the 0.7% goal, the United States would have to more than quadruple its present amount of aid.<sup>117</sup> In addition, the European Community earned \$210 billion from oil taxes in 1991,<sup>118</sup> more than three times the value of their imports.<sup>119</sup> It is estimated that a carbon tax could increase the price of gasoline by 6%, natural gas by 33%, and coal almost by 60%.<sup>120</sup> As the above discussion illustrates, the White House was not without reasons for opposing the European Community's plan. However, the United States failed to effectively convey these justifications for several reasons.

President Bush viewed the Earth Summit with less importance than the European Community. President Bush, in referring to the results of the Summit, stated,

I don't think it [the Earth Summit] affects fantastic change in the United States because I think we are already embarked on the soundest most forward-looking environmental change policy in the world. So I think what it will do, though, is get others to come along and add up to—meet the standards that we're setting.<sup>121</sup>

In contrast to President Bush's view, the rest of the world saw the United States as the problem<sup>122</sup> since the United States produces more carbon dioxide emissions than any other country in the world.<sup>123</sup> Another reason the White House clashed with the European Community was that President Bush was generally opposed to the idea of new taxes. During the 1988 Republican Convention, George Bush uttered those now famous words "Read my lips, no new taxes,"<sup>124</sup> a promise he later broke, stimulating

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<sup>116</sup> LaFranchi, *supra* note 98.

<sup>117</sup> *See id.*

<sup>118</sup> Simons, *supra* note 53.

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Special Edition, supra* note 109.

<sup>122</sup> *See The Press; Rio Conference on the World's Editorial Pages*, L.A. TIMES, June 9, 1992 (World Report), at 3.

<sup>123</sup> *See supra* note 5 and accompanying text.

<sup>124</sup> Peter D. Hart & Thomas Riehle, *Campaign Inevitables: War and Taxes*, NEWS-DAY, Aug. 23, 1992 (Currents), at 31.

severe criticism.<sup>125</sup> Similarly, in March of 1992, President Bush prevented the passage of a Democratic tax package which would have offset a tax cut for the middle class with a tax increase on the wealthy.<sup>126</sup> President Bush claimed that since the wealthy provide investment, any increase in their taxes would only have hurt the economy further.<sup>127</sup> Thus, President Bush backed himself into a corner when it came to the issue of taxes. By opposing a tax cut for the middle class, he could not approve an across-the-board tax increase without alienating the middleclass; to have done so would have gone against the very reasons he opposed the Democratic tax package. To approve a tax with the proceeds being shipped overseas would have added to the negative impression that the President was more concerned about foreign relations than domestic concerns. If the European Community wanted the Bush Administration's approval, they should have chosen some instrument, other than a tax, to implement the carbon dioxide limits. Even if a carbon tax was the most effective means of limiting carbon dioxide emissions; it was not the most politically astute.

Lastly, was the environment even a politically hot issue last November? President Bill Clinton, by choosing environmentally-active Senator Al Gore as a running mate, obviously thought it was.<sup>128</sup> However, an election poll indicated that only 15% to 20% of Americans viewed the environment as a priority for the nation.<sup>129</sup> Even though this amounts to a significant minority, it should still be noted that jobs and health care topped the list of Americans' concerns.<sup>130</sup>

### VIII. WAS THE SUMMIT A SUCCESS?

Whether UNCED is deemed a success or a failure depends upon who is doing the speaking. A representative of the Sierra Club said, "I think the whole thing was a disappointment. In the United States, we are still guzzling energy and oil at the same rate or more since last June. Nor have any specific steps

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<sup>125</sup> See *id.*

<sup>126</sup> H.R. 4210, 102d Cong., 2d Sess. (1992); *House Fails to Override President's Veto of Tax Bill by Wide Margin*, Daily Rep. for Exec. (BNA) 59 (Mar. 26, 1992).

<sup>127</sup> *Id.*

<sup>128</sup> *Clinton Selects Sen. Gore as Running Mate on Democratic Ticket*, Daily Rep. for Exec. (BNA) 133 (July 10, 1992) (Sen. Al Gore is the author of the book *EARTH IN THE BALANCE*).

<sup>129</sup> *Environment Could Grow into Key Election Issue*, CHI. TRIB., June 26, 1992 (News), at 4.

<sup>130</sup> *Id.*

been taken to halt global warming."<sup>131</sup> Former Soviet leader Mikhail Gorbachev concluded that many were "disappointed" by the results of the Earth Summit.<sup>132</sup> Ronaldo Sardenberg, Brazil's ambassador to the United Nations, has accused the industrialized nations of entering into a "conspiracy of silence" in regard to the funding issue.<sup>133</sup>

Despite these criticisms, the Summit can still point to several successes. A primary goal of the conference was to awaken the global consciousness to the problems facing the environment.<sup>134</sup> Considering the several thousand newspaper articles and editorials written on the Earth Summit, this goal has surely been met. Binding limits on carbon dioxide may one day be enacted into some form of legislation as a result of the Summit. Both Representative Henry Waxman (D-Calif.) and Senator Al Gore (D-Tenn.) introduced bills into Congress requiring the United States to stabilize its carbon dioxide emissions at 1990 levels.<sup>135</sup> The Rio Summit may have ended, but its issues are still being addressed.

Further, even though the United States balked at the idea of a specific carbon dioxide limit at the Summit,<sup>136</sup> it still may choose to voluntarily comply with the proposed limits. For example, a 1982 Law of the Sea Treaty which was not signed by the United States nor by enough countries to be ratified, is now widely taken as law.<sup>137</sup> Also, the White House agreed to strengthen the Rio agreement if scientific evidence proves that the threat of climate change is more serious than expected.<sup>138</sup>

#### IX. THE CLINTON ADMINISTRATION MAY ENACT AN ENERGY TAX AS A MEANS FOR REDUCING THE DEFICIT.

Perhaps if President Bush had been reelected, the possibility of an energy tax would not have been an issue for at least

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<sup>131</sup> Katherine Molinski, *Earth Summit High Hopes Plummit (sic)*, TORONTO STAR, Dec. 19, 1992, at D6 (statement by Dan Becker, a representative of the Sierra Club).

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> See *supra* note 1 and accompanying text.

<sup>135</sup> Leonard S. Greenberger, *U.S. Wins Battle Over Global Warming Pact*, UTL. FORT., June 15, 1992, at 28. Rep. Waxman has introduced H.R. 4750 and Sen. Gore has introduced S. 2668, *id.*

<sup>136</sup> See *supra* notes 56-61 and accompanying text.

<sup>137</sup> Charles Petit, *Earth Summit Concludes—'An Historic First Step' but Leaders Fear Actions Won't Match Words*, S.F. CHRON., June 15, 1992, at A1.

<sup>138</sup> *Pursuing the Principles of Rio*, CHI. TRIB., June 20, 1992 (Editorial), at 20.



another four years. However, under the Clinton Administration, the idea of an energy tax is currently being considered. The new Administration is reportedly considering the imposition of a "broad-based energy tax" as a means for reducing the deficit.<sup>139</sup> If the Administration imposes such a tax, it is likely to take one of three forms. The first

is the "B.T.U." tax, in which each unit of energy, no matter what the source, would be taxed at the same rate; second is a sales tax on the fuel used by the utilities, industries and individuals; third is a "carbon tax" based on how much carbon dioxide the fuel's use creates.<sup>140</sup>

All of these methods are controversial and will "produce a different set of winners and losers."<sup>141</sup> For example, all consumers will not only have to directly pay more for the energy they use but also indirectly<sup>142</sup> because "[e]verything has an energy component from maple syrup, which is produced with prodigious amounts of oil, to a dentist's filling a cavity, which requires electricity for the drill."<sup>143</sup>

Depending upon which type of tax is chosen, different areas of the country will be harder hit than other areas. If a carbon tax is chosen, Ohio would be hit hard because it relies mainly on coal for its energy production.<sup>144</sup> An area such as Washington State would only be mildly affected since most of its power comes from hydroelectricity and nuclear power.<sup>145</sup> Thus, an energy tax is no less controversial in the Clinton Administration than it was in the Bush Administration. However, an energy tax would be an effective means of reducing the deficit.<sup>146</sup> And since the Clinton Administration promised to reduce the deficit by

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<sup>139</sup> Mathew L. Wald, *Pondering an Energy Tax that Can't Please All the People*, N.Y. TIMES, Jan. 31, 1993, §3, at 10 (statement by Lloyd Bentsen, Treasury Secretary).

<sup>140</sup> *Id.* Two other possible forms are taxes on imported oil and on gasoline generally, *id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.* About 90% of Ohio's electricity is produced from coal.

<sup>145</sup> Wald, *supra* note 139. Approximately 90% of Washington's power comes from these two sources, *id.*

<sup>146</sup> *Id.*

\$145 billion over the next four years,<sup>147</sup> it seems likely that some form of an energy tax will be enacted despite any complaints by those who are disproportionately affected.

#### CONCLUSION

As the above discussion illustrates, numerous competing considerations are dictating and affecting the environmental policy of the United States. In this writer's opinion, the key to balancing these considerations is *moderation without stagnation*.

Certainly, we should not impose any type of environmental regulation without fully understanding its impact and without being convinced of its necessity. However, we cannot deny that carbon-based fuels are limited in supply and emit a substantial amount of pollution into the atmosphere annually. Hopefully, one day we will find a means of limiting carbon dioxide emissions that balances both of these considerations.

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