

Pace Environmental Law Review

Volume 13
Issue 1 Fall 1995

Article 2

September 1995

The Treaty System from Stockholm (1972) to Rio de Janeiro (1992)

Andronico O. Adede

Follow this and additional works at: <http://digitalcommons.pace.edu/pelr>

Recommended Citation

Andronico O. Adede, *The Treaty System from Stockholm (1972) to Rio de Janeiro (1992)*, 13 Pace Envtl. L. Rev. 33 (1995)

Available at: <http://digitalcommons.pace.edu/pelr/vol13/iss1/2>

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Environmental Law Review by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

COLLOQUIUM

**The Treaty System from Stockholm (1972)
to Rio de Janeiro (1992)**

STATEMENT BY ANDRONICO O. ADEDE*
AT "THE RIO ENVIRONMENTAL TREATIES COLLOQUIUM"
AT THE PACE LAW SCHOOL CENTER FOR ENVIRONMENTAL
LEGAL STUDIES, OCTOBER 30, 1994

Twice this century, the international community has felt the need to discuss and consider, in a global forum, problems encompassing both the environment and development. In 1972, there was the United Nations Conference on the Human Environment (Stockholm Conference).¹ Twenty years later, the international community convened the United Nations Conference on Environment and Develop-

* Deputy Director, Codification Division, Office of Legal Affairs, United Nations, New York; Adjunct Professor of International Environmental Law, Pace University School of Law Spring 1993, 1995. The views expressed in the statement are those of the author and do not, in any way, represent those of the United Nations or of the Law School.

1. At the United Nations Conference on the Human Environment held at Stockholm, the international community adopted the Stockholm Declaration on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1972), *reprinted in* 11 I.L.M. 1417 (1972) [hereinafter Stockholm Conference].

ment (UNCED).² This second Conference culminated in The Rio Earth Summit (Rio Conference). This article provides an informational background on the Treaty System which emerged in the environmental field during the twenty years between the Stockholm Conference and the Rio Conference.

The evidence disclosed is a truism. Whenever the international community identifies a particular problem which it feels can only be effectively dealt with in a concerted way, it determines an appropriate forum and international framework through which the desired action can be taken. Such an international framework, in turn, operates as a basis for international action. The international action may include the negotiation and formation of treaties (hard law), guidelines (soft law),³ or resolutions.⁴

Taking its cue from Principle 24 of the Stockholm Declaration,⁵ which encouraged governments to negotiate and conclude treaties in the environmental field, the international community began working in earnest towards this end. Many governments soon began concluding treaties that established international frameworks for dealing with environmental problems. These early treaties placed emphasis upon the so-called "first generation" environmental problems.⁶ They involved water, air, and soil pollution arising from activities associated with industry, poverty and under-development.⁷ In November 1972, one month after the Stockholm

2. Rio Declaration on Environment & Development, U.N. Doc. A/CONF. 151/5 (1992) [hereinafter Rio Declaration].

3. Weinfred Lang, *Environmental Protection: The Challenge for Environmental Law*, 20 J. WORLD TRADE L. 489, 495 (1986).

4. A resolution is "[a]n international term for an [act] passed by inter-governmental institutions, usually by a majority of votes." EDMUND JAN OS-MANCZYK, *THE ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL RELATIONS* 748 (2d ed. 1990).

5. See Stockholm Conference, *supra* note 1 at Art. II, princ. 24. "International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects . . ." *Id.*

6. See generally LYNTON K. CALDWELL, *INTERNATIONAL ENVIRONMENTAL POLICY: EMERGENCE AND DIMENSIONS* 83-85 (2d ed. 1990).

7. *Id.*

Conference, another conference produced the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention).⁸ The London Dumping Convention was followed immediately by another convention, the International Convention for the Prevention of Pollution from Ships (MARPOL).⁹

During this period, other specialized agencies of the United Nations sporadically addressed environmental issues. These agencies took active roles in negotiating and concluding instruments involving the prevention of marine pollution within their particular jurisdiction. Meanwhile, the International Maritime Organization (IMO)¹⁰ dealt exclusively with marine pollution from ships. To underscore this point, it ensured that the words "Pollution From Ships" appeared in the title of every convention.¹¹ Subsequently, the United Nations Environment Programme (UNEP),¹² which was established as a result of the Stockholm Conference,¹³ also asserted its competence and authority in the area of marine pollution.¹⁴ In 1974, UNEP negotiated the Paris Convention for the Pre-

8. Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, Dec. 29, 1972, 1046 U.N.T.S. 120 [hereinafter London Dumping Convention]. Its general objective is to "control all sources of marine pollution effectively, particularly by controlling ships' disposal of wastes generated on land." J. WILLIAM FUTRELL, ENVIRONMENTAL LAW INSTITUTE, *International Environmental Legal Framework*, C990 A.L.I.-A.B.A. 1, 35 (1995).

9. International Convention for the Prevention of Pollution from Ships (MARPOL), Nov. 2, 1973, IMCO Doc. MP/Conf./WP. 35 (1973), *reprinted in* 12 I.L.M. 1319 (1973) [hereinafter IMCO Convention]. This Convention was produced under the auspices of the Intergovernmental Maritime Consultative Organization (IMCO), now known as the International Maritime Organization (IMO).

10. "[T]he IMO is primarily a legislative body and a forum in which Member States can express their views reflecting state or international shipping practice." THE INTERNATIONAL MARITIME ORGANIZATION 13-14 (Samir Mankabady ed. 1986).

11. IMCO Convention, *supra* note 9, at Art. 3(1).

12. For an assessment of the UNEP see generally Mark A. Gray, *The United Nations Environment Program: An Assessment*, 20 ENVTL. L. 291, 299 (1990).

13. The United Nations Assembly accepted the recommendation of the 1972 Stockholm Conference that a United Nations Environment Programme be established. 1992 UNITED NATIONS HANDBOOK 145 (1992). For a description of other treaties and their relation to the Stockholm Conference see CALDWELL, *supra* note 6.

14. See generally Gray, *supra* note 12.

vention of Marine Pollution From Land-Based Sources.¹⁵ Thereafter, problems of marine pollution from ships became the exclusive province of IMO, while problems relating to marine pollution from land-based sources, as well as other non-ship sources, became the exclusive province of UNEP.

Under this division of labor, UNEP initiated its Regional Seas Programme¹⁶ and negotiated a number of treaties:¹⁷ the 1976 Barcelona Convention for the Protection of the Mediterranean Sea Against Pollution,¹⁸ the 1978 Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment From Pollution,¹⁹ the 1981 Abidjan Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region,²⁰ the 1981 Lima Convention for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific,²¹ the 1982 Jeddah Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environ-

15. Convention for the Prevention of Marine Pollution From Land-Based Sources, June 4, 1974, *reprinted in* 13 I.L.M. 352 (1974).

16. The United Nations Regional Seas Programme was "[a] UNEP-sponsored attempt to address common environmental problems in selected shared bodies of water." Gray, *supra* note 12.

17. Although the international community's emphasis during the 1970s was on pollution of water, air, and soil, the International Union for Conservation of Nature and National Resources expanded the community's concern to endangered wildlife and played a big part in negotiating the 1973 Washington Convention on International Trade in Endangered Species of Wild Fauna and Flora. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249, 993 U.N.T.S. 243, *reprinted in* 12 I.L.M. 1085 (1973) [hereinafter CITES]. CITES served as a forerunner to the instruments for the preservation of biodiversity.

18. Convention for the Protection of the Mediterranean Sea Against Pollution, *done* Feb. 16, 1976, *reprinted in* 15 I.L.M. 290 (1976).

19. Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, *done* Apr. 24, 1978, 1140 U.N.T.S. 133.

20. Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, *done* Mar. 23, 1981, *reprinted in* 20 I.L.M. 746 (1981).

21. Convention for the Protection of the Marine Environment and Coastal Areas of the South-East Pacific, *done* Nov. 12, 1981 *reprinted in* 2 UNITED NATIONS ENVIRONMENT PROGRAM, SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT 130 (Iwona Rummel-Bulska & Seth Osafo, eds. 1991).

ment,²² the 1983 Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region,²³ the 1985 Nairobi Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region,²⁴ and the 1986 Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region.²⁵ These conventions were followed by subsequent protocols addressing particular issues.²⁶

While the international community focused its concern during the 1970s on the so-called "first generation" environmental problems,²⁷ the so-called "second generation" environmental problems surfaced and gained much attention in the mid-1980s.²⁸ They involve global warming, depletion of the stratospheric ozone, climate change, desertification, protection of habitat, protection of the environment in times of armed conflict, and international transport of toxic chemicals and hazardous wastes.²⁹ At this time, governments realized that the only way to effectively deal with these problems would be through concerted international action, namely multilateral treaties.³⁰ Further, the global community had

22. Regional Convention for the Conservation of the Red Sea and Gulf of Aden Environment, *done* Feb. 14, 1982, *reprinted in* 9 ENVTL. POL'Y & LAW 56 (1982).

23. Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, *done* Mar. 24, 1983, T.I.A.S. No. 11085.

24. Convention for the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, *done* June 21, 1985, *reprinted in* 2 UNITED NATIONS ENVIRONMENT PROGRAM, SELECTED MULTILATERAL TREATIES IN THE FIELD OF THE ENVIRONMENT 324 (Iwona Rummel-Bulska & Seth Osafo, eds. 1991).

25. Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, *done* Nov. 25, 1986, 26 I.L.M. 38 (1987).

26. After Stockholm, the UNEP began to use a two part process in generating instruments for the protection of the environment. First, the environmental problem was identified. Second, an appropriate legal forum for negotiating a multilateral treaty was located.

27. See CALDWELL, *supra* note 6-7 and accompanying text.

28. See CALDWELL, *supra* note 6, at 85.

29. See *id.*

30. "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental meas-

realized that there had been little integration of environmental issues into developmental policies since the Stockholm Conference.³¹ Accordingly, the international community responded by convening the 1992 United Nations Conference on Environment and Development.³² This Conference initiated a carefully negotiated mandate for achieving proper integration of environmental issues into developmental policies.³³ The mandate encouraged that this effort be taken at both the local and national level.³⁴

Since the Stockholm Conference, a "new breed" of environmental treaties have emerged, which integrates both environmental and developmental issues into a single instrument. The "new breed" of treaties is strongly influenced by sustainable development,³⁵ a concept which gained impetus during the UNCED process. Additionally, the treaties focus on issues not previously addressed in environmental treaties.³⁶

Many of the "new breed" of instruments deal with "second generation" environmental problems. An example of this type of instrument is the Framework Convention on Climate Change (FCCC).³⁷ Concerned with the problems associated with climate change, the UNEP and World Meteorological

ures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus." Rio Conference, *supra* note 2.

31. *See id.* at princ. 4. "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it." *Id.*

32. *Id.*

33. *See Agenda 21*, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (1992) *reprinted in* AGENDA 21: EARTH'S ACTION PLAN (Nicholas A. Robinson et al. eds., 1993) [hereinafter *Agenda 21*].

34. *Id.*

35. "[D]evelopment that meets the needs of the present without compromising the ability of future generations to meet their own needs." UNITED NATIONS WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43 (1987).

36. THE ENVIRONMENT AFTER RIO (Luigi Campiglio et al., eds., 1994).

37. *Framework Convention on Climate Change*, U.N. Conference on Environment and Development, U.N. Doc A/CONF.151/26, *reprinted in* 31 I.L.M. 849 (1992) [hereinafter *Climate Change*].

Organization (WMO)³⁸ established, in 1987, the Intergovernmental Panel on Climate Change (IPCC). The IPCC was formed to determine, through studies, whether there was a need to convene to discuss global warming.³⁹ At this particular time there was serious scientific controversy in the international community as to whether there was such a thing as "global warming."⁴⁰ Some members of the international community contended that there was no conclusive scientific evidence to support this phenomenon⁴¹ and therefore no basis on which to impose legal obligations upon members of the international community.⁴² Conversely, others believed there were sufficient facts to confirm the occurrence of global warming,⁴³ and as a means to combat the problem, sought international action in the form of a treaty.⁴⁴

In 1990, the IPCC produced its studies before the Second World Climate Conference (SWCC).⁴⁵ Based on these studies, the SWCC decided that it was necessary to initiate a procedure to negotiate a multilateral treaty to deal with the problems of climate change.⁴⁶ The SWCC then transferred

38. Created in 1947, WMO's function is to set up a system of monitoring and exchange of "meteorological information, standardize observations, encourage application of meteorological science, including prediction and modification of weather, and encourage and coordinate research." ALEXANDER KISS & DINAH SHELTON, *INTERNATIONAL ENVIRONMENTAL LAW* 67 (1991) [hereinafter Kiss]. It has created a system for monitoring the environment in a global context. *Id.*

39. *Id.*

40. Larry B. Stammer, *No Major Warming Found in Studies of U.S. Climate*, L.A. TIMES, Jan. 26, 1989, at 1.

41. *Id.*

42. See PATRICIA W. BIRNIE & ALAN E. BOYLE, *INTERNATIONAL LAW AND THE ENVIRONMENT* 392 (1992).

43. Michael Weisskopf, *'Greenhouse Effect' Fueling Policy Makers; Concept From 19th Century 'Is Here'*, WASH. POST, Aug. 15, 1988 at A1.

44. *Id.*

45. INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE: THE IPCC SCIENTIFIC ASSESSMENT* (1990). "We are certain of the following: there is a natural greenhouse effect which already keeps the Earth warmer than it would otherwise be." *Id.* at xi; See also INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, *CLIMATE CHANGE 1992: THE SUPPLEMENTARY REPORT TO THE IPCC SCIENTIFIC ASSESSMENT* (1992).

46. Ministerial Declaration on the Second World Climate Conference, Nov. 7, 1990, reprinted in 20 ENVTL. POL'Y & L. 220 (1990).

the responsibility of negotiating such instrument to the General Assembly for wider participation.⁴⁷ Soon thereafter, the General Assembly adopted a resolution establishing the Intergovernmental Negotiating Committee on Climate Change (INCCC) and instructed it to produce an umbrella framework treaty for signature at the Rio Conference.⁴⁸ Accordingly, the Framework Convention on Climate Change (FCCC) was concluded and opened for signature at the Rio Conference on June 4, 1992.⁴⁹

The FCCC is an example of the "new breed" of instruments concluded during the Rio Conference. Notably, it calls for sustainable development⁵⁰ and requires its signatories to take climate considerations into account in the development of their social, economic and environmental policies and actions.⁵¹ Among the issues addressed in this instrument are

In order to achieve sustainable development in all countries and to meet the needs of present and future generations, precautionary measures to meet the climate challenge must anticipate, attack, or minimize the causes of, and mitigate the adverse consequences of, environmental degradation that might result from climate change. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent such environmental degradation. *Id.*

47. Developing Countries complained the IPCC did not ensure their participation in the process and did not adequately represent their interests. G.A. Res. 44/207, U.N. GAOR, 44th Sess., Supp. No. 49, at 130, U.N. Doc. A/44/49 (1990). The Ad Hoc Working Group of Government Representatives recommended that the negotiating process be reorganized and conducted "to ensure openness, transparency, universality, and legitimacy." The Ad Hoc Working Group of Government Representatives to Prepare for Negotiation on a Framework Convention on Climate Change, recommendation, Report of the Secretary General: Progress achieved in the implementation of resolution 44/207 on Protection of Global Climate for Present and Future Generations of Mankind, U.N. GAOR, 45th Sess., at 4, U.N. Doc. A/45/696 (1990).

48. G.A. Res. 45/212, U.N. GAOR 2d Comm. 45th Sess., Supp. No. 49A, at 147, U.N. Doc. A/45/49 (1991).

49. *Climate Change*, *supra* note 37. The goal of the treaty is to return industrialized and former Soviet bloc nations "to their 1990 levels of . . . anthropogenic emissions of carbon dioxide and other greenhouse effect gases." *Air Pollution: Climate Plan May Still Allow Companies Credit for Emissions Offsets Abroad*, *DOE Official Says*, 24 ENV'T. REP. (BNA) at 205 (Mar. 25, 1994).

50. *Climate Change*, *supra* note 37, at Art. 3, ¶ 4.

51. *Id.* at Art. 4, ¶ 1(f).

the transfer of environmentally sound technologies⁵² and financial resources,⁵³ duties of international co-operation⁵⁴ and exchange of information,⁵⁵ and participation of the public⁵⁶ and non-governmental organizations⁵⁷ in addressing the issue of climate change.

The "new breed" of environmental treaties serves as an example for other United Nations' organizations as well. For example, the Food and Agricultural Organization of the United Nations (FAO) attempted to emulate the UNEP and the WMO in the creation of the Tropical Forestry Action Plan.⁵⁸ However, it experienced much difficulty in achieving this objective.⁵⁹ Many countries feel that a forest's main value is its service as a carbon sink,⁶⁰ which helps control global warming.⁶¹ Therefore, because of its impact on climate change, these countries contended that deforestation should be stopped.⁶² On the other hand, many developing countries opposed any instrument which would impair their sover-

52. *Id.* at Art. 4, ¶ 5.

53. *Id.* at Art. 4, ¶ 3.

54. *Climate Change*, *supra* note 37, at Art. 3, ¶ 5.

55. *Id.* at Art. 5.

56. *Id.* at Art. 6(a).

57. *Id.* at Art. 4, ¶ 1(i).

58. Norman Myers, *The Anatomy of Environmental Action: The Cost of Tropical Deforestation*, in *THE INTERNATIONAL POLITICS OF THE ENVIRONMENT*, 430, 440-42 (Andrew Hurrell and Benedict Kingsbury eds., 1992). The Tropical Forestry Action Plan (TFAP) proposed to foster sustainable "logging, tree planting, watershed rehabilitation, research and education, species protection, and enhanced forestry management all round." *Id.* at 441.

59. See ROBERT WINTERBOTTOM, *WORLD RESOURCES INSTITUTE, TAKING STOCK: THE TROPICAL FORESTRY ACTION PLAN AFTER FIVE YEARS* 27 (1990).

60. U.N. DEP'T OF PUB. INFO., *Saving the Forests: Forgoing a Global Compact, Earth Summit in Focus*, Feb. 1992. Sink means "any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere." FCCC, *supra* note 37, at Art. 1, para. 8.

61. June Starr and Kenneth C. Hardy, *Not By Seeds Alone: The Biodiversity Treaty and the Role for Native Agriculture*, 12 *STAN. ENVTL. L.J.* 85 (1993); see Arthur Fisher, *Playing Dice With the Earth's Climate*, *POPULAR SCIENCE*, Aug. 1989, at 51.

62. Henry W. McGee, *The Deforestation of the Brazilian Amazon: Law, Politics, and International Cooperation*, 21 *U. MIAMI INTER-AM. L. REV.* 513 (1990). Developing countries containing tropical rain forests, such as Brazil, are constantly criticized for permitting their citizens to destroy the forests. See *id.*

eignty and require them to preserve their forests for the benefit of the world.⁶³ Furthermore, they felt that a convention concerning only environmental issues was too limited in scope. As such, they wanted the FAO Convention to include a consideration of the developmental issues associated with forests.⁶⁴ Accordingly, developing countries applied the brakes and refused to continue negotiating. It soon became clear that the FAO was unable to negotiate a convention on tropical forests,⁶⁵ and that it was necessary to find a more competent negotiating forum. As a result, one of the hottest issues discussed during the Rio process was how to approach this problem.⁶⁶ As discussions progressed, it became clear that the international community was not ready to adequately address this issue. However, by the end of the Rio Conference, a non-legally binding authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests was produced (Statement of Principles).⁶⁷

The Statement of Principles is another example of the "new breed" of instruments resulting from the Rio Confer-

63. Diane Dumanoski, *U.S., in Shift, Backs 2 Key Points at Rio*, BOSTON GLOBE, June 11, 1992, at 16.

64. The forests' natural ecosystem also serves as a source of food, housing, clothing, medicine, energy and a commercially valuable resource. See Brian F. Chase, *Tropical Forests and Trade Policy: The Legality of Unilateral Attempts to Promote Sustainable Development Under the GATT*, 17 HASTINGS INT'L & COMP. L. REV. 349, 358-62 (Winter 1994). See BRIGHTMAN, CONSERVATION & RESOURCE DEPLETION: THE CASE OF THE BOREAL FOREST ALGONQUIANS.

65. See Myers, *supra* note 58, at 441-42.

66. Discussions centered around whether or not the international community was capable of producing a legally binding framework to address all of the issues concerning forests. See Peter H. Sand, *UNCED and the Development of International Environmental Law*, 8 J. NAT. RESOURCES & ENVTL. L. 209 (1992-93), available in WESTLAW.

67. Statement of Principles for A Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests, Agenda Item 9, at 1 U.N. Doc. A/CONF.151/6/Rev.1 (1992), reprinted in 31 I.L.M. 881 (1992) [hereinafter Statement of Principles]. Developing countries are not so much disappointed with the Forestry Principles, rather, they sense a lack of commitment by developed nations and feel that without speedy implementation, the principles will be a meaningless piece of paper. *Malaysia Wants Early Action on UNCED Forest Measures*, ASIAN POL. NEWS, Sept. 13, 1993, available in WESTLAW.

ence. Significantly, it focuses on the management, conservation and sustainable development of forests.⁶⁸ Among other issues, the Statement of Principles addresses the multiple social, economic, cultural and ecological functions and uses of forests;⁶⁹ the participation of local governments, non-governmental organizations⁷⁰ and women⁷¹ in the management of forests; trade in forest products;⁷² duties of international cooperation⁷³ and exchange of information;⁷⁴ and the transfer of environmentally sound technologies⁷⁵ and financial resources.⁷⁶

Along with this "new breed" of treaties came a new found power of the developing countries. Delegates presenting different views than those of the industrialized countries were no longer looked upon as detractors of international negotiations. Their governments no longer recalled them from negotiations for preventing the industrialized countries from getting their own way.⁷⁷ Additionally, representatives of the developing countries learned to cooperate with each other and present a unified interest rather than quickly concede to the positions of the industrialized countries. In doing so, the developing countries were able to successfully reject a binding international treaty concerning forests⁷⁸ in exchange for a set of non-binding principles.⁷⁹

This occasion brought into focus an unacceptable double standard which exists in international negotiations. While the industrialized countries believe they have the right to prohibit developing countries from engaging in environmentally destructive activities, they believe they should be free to

68. Statement of Principles, *supra* note 67, at princ. 3(a).

69. *Id.* at princ. 2(b).

70. *Id.* at princ. 2(d).

71. *Id.* at princ. 5(b).

72. Statement of Principles, *supra* note 67, at princ. 13(e).

73. *Id.* at princ. 3(b), 12(a).

74. *Id.* at princ. 2(c), 12(c).

75. *Id.* at princ. 11.

76. Statement of Principles, *supra* note 67, at princ. 7(b), 10.

77. This happened to a number of delegates from developing countries during the Law of the Sea negotiations.

78. See Dumanoski, *supra* note 63, at 16.

79. See *supra* note 67-76 and accompanying text.

continue such activities. Aware of this double standard, delegates of developing countries are no longer easily taken advantage of. The uninitiated delegates of industrialized countries who have recently attempted to perpetuate this double standard have been rudely rebuffed and publicly humbled.⁸⁰ The growing power and awareness of developing countries act as a check on the international community and have brought about a change promoting comprehensive environmental treaty systems.

During the period between the Stockholm Conference and the Rio Conference, the United Nations took various approaches to combatting international environmental problems. To demonstrate this, a comparison of the approach taken by the United Nations to combatting air and water pollution is necessary.

The 1972 Stockholm Conference⁸¹ called for the development of treaties in the environmental field. Work began almost immediately, and shortly thereafter, various instruments to combat marine pollution were established. These instruments portrayed the typical piecemeal approach to developing international law frequently followed after Stockholm. Issues were addressed through specific non-interrelated treaties and put in place before a general framework treaty was established. Some of the specific non-interrelated treaties are the 1972 London Convention on the Prevention of Marine Pollution by Dumping of Waste and Other Matter,⁸² the 1973 IMCO Convention on the Prevention of Marine Pollution from Ships (MARPOL),⁸³ and the 1974 Paris Convention on the Prevention of Marine Pollution From Land-Based Sources.⁸⁴ These specific treaties were established before the adoption of Part XII of United Nations Convention on the Law of the Sea,⁸⁵ the provision containing

80. See Eugene Linden, *Rio's Legacy*, TIME, June 22, 1992, at 44.

81. Stockholm Conference, *supra* note 1.

82. London Dumping Convention, *supra* note 8.

83. IMCO Convention, *supra* note 9, at 1320.

84. Convention on the Prevention of Marine Pollution From Land-Based Sources, *supra* note 15.

85. *United Nations Convention on the Law of the Sea*, U.N. Doc. A/CONF. 62/122 (1982), reprinted in 21 I.L.M. 1261 (1982) [hereinafter LOS].

the general guidelines for the prevention of marine pollution.⁸⁶

The United Nations followed a different approach in combatting air pollution. There, general framework treaties were negotiated and put in place before specific protocols providing for their implementation were adopted. First, the 1979 Long Range Transboundary Air Pollution Agreement (LRTAP)⁸⁷ and the 1987 Convention for the Protection of the Ozone Layer⁸⁸ were negotiated. These two general framework treaties were then followed by specific protocols providing for their implementation. LRTAP was followed by the 1987 Montreal Protocol on Substances that Deplete the Ozone,⁸⁹ and the Convention for the Protection of the Ozone Layer was followed by the 1992 Helsinki Protocol⁹⁰ on reduction of sulphur emissions, the 1988 Sofia Protocol⁹¹ on reduction of nitrogen oxide emissions, and the 1991 Geneva Protocol⁹² on reduction of volatile organic compound emissions.

The international community took a similar approach, in its negotiation of the FCCC, to that taken in combatting air pollution.⁹³ Instead of implementing the FCCC through the imposition of various non-interrelated treaties, as done in addressing problems of marine pollution, the international community followed a more comprehensive approach. It established a framework convention which was to be implemented by specific, subsequently negotiated, protocols.⁹⁴

86. *Id.* at 1308.

87. Long Range Transboundary Air Pollution Agreement, *done* Nov. 13, 1979, *reprinted in* 18 I.L.M. 1442 (1979).

88. Convention for the Protection the Ozone Layer, *done* Mar. 22, 1985, *reprinted in* 26 I.L.M. 1516 (1987).

89. Protocol on Substances that Deplete the Ozone Layer, *done* Sept. 16, 1987, *reprinted in* 26 I.L.M. 1541 (1987).

90. Protocol on the Reduction of Transboundary Fluxes by at Least 30 Percent, *done* July 8, 1985, *reprinted in* 31 I.L.M. 848 (1992).

91. Protocol to the 1979 Convention on Long Range Transboundary Air Pollution, *done* Oct. 31 1988, *reprinted in* 28 I.L.M. 212 (1989).

92. Protocol to the 1979 Convention on Long Range Transboundary Air Pollution Concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes, *done* Nov. 18, 1991, *reprinted in* 31 I.L.M. 568 (1992).

93. *Climate Change*, *supra* note 37.

94. *See id.*

Under this approach, the major treaty itself is in the form of a framework convention and the annexes to the treaty are the specific implementing protocols. This approach does not foreclose the international community from undertaking the negotiation of a comprehensive multilateral treaty which, itself, contains both general provisions and technical annexes concerning specific issues. The international community used to follow such an approach, but now, because of the time involved in identifying the problems to be addressed and agreeing on a forum, it tends to conclude a framework treaty first, followed by specific implementing protocols.

The IUCN has made a significant contribution to the treaty-making efforts by attempting to negotiate a comprehensive global treaty addressing both environmental and developmental issues. These efforts have resulted in the establishment of a draft International Covenant on Environment and Development (draft Covenant).⁹⁵ The draft Covenant places certain obligations on the actors in the international community which, if observed, will provide a credible impetus for implementing the concept of sustainable development. Significantly, it organizes the various sustainable treaties under an umbrella framework.⁹⁶

The Treaty System, from Stockholm to Rio, has been in a period of transition with a new breed of instruments and concepts emerging. We must be aware of the new breed of environmental treaties which have emerged out of the Rio process and pay close attention to subsequently negotiated treaties. The "new breed" of treaties tries to incorporate new concepts and concerns aimed at bringing about sustainable develop-

95. J. WILLIAM FUTRELL AND SUSAN CASEY-LEFKOWITZ, AMERICAN LAW INSTITUTE, *The Road From Rio: Next Steps*, C883 A.L.I.-A.B.A. 553 (1994).

96. This is the same approach used in the establishment of Part XII of the Third United Nations. LOS, *supra* note 67. LOS pursued a comprehensive approach to combatting problems of marine pollution from ships, land-based sources, and other atmospheric sources. While different United Nations System organizations, programmes, and bodies considered each of these types of marine pollution, Part XII of LOS addressed them all. *See generally* KENNETH R. SIMMONDS, U.N. CONVENTION ON THE LAW OF THE SEA 1982 (1983).

ment. These include inter-generational equity,⁹⁷ common but differentiated responsibility,⁹⁸ caution against allowing a lack of scientific evidence to serve as a pretext for inaction,⁹⁹ the polluter-pays-principle,¹⁰⁰ duties of co-operation and exchange of scientific information,¹⁰¹ trade and the environment,¹⁰² sovereignty and the environment,¹⁰³ and the role of non-governmental organizations and local communities in the negotiation and implementation of environmental treaties.¹⁰⁴ Above all, the "new breed" of treaties address, in greater detail, arrangements for both the transfer of funds to combat environmental problems¹⁰⁵ and the transfer of environmentally sound technologies.¹⁰⁶ Furthermore, they take into account the interest of developing countries to ensure their participation in both the negotiation and governance of

97. David A. Wirth, *The Rio Declaration on Environment and Development: Two Steps Forward and One Back, or Vice Versa?*, 29 GA. L. REV. 599, 625 (1995).

98. See Phillipe Sands, *The "Greening" of International Law: Emerging Principles & Rules*, 1 IND. J. GLOBAL LEGAL STUD. 293 (1994).

99. Wirth, *supra* note 79, at 634; James E. Hickey, Jr. and Vern R. Walker, *Refining the Precautionary Principle in International Law*, 14 VA. ENVTL. L.J. 423 (1995).

100. Wirth, *supra* note 96, at 640.

101. *Id.* at 637.

102. *Id.* at 640.

103. See generally Rio Declaration, *supra* note 2, at princ. 2.

States have . . . the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdictions or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. *Id.*

104. BARBARA J. BRAMBLE AND GARETH PORTER, NATIONAL WILDLIFE FEDERATION, *Non-Governmental Organizations and the Making of U.S. International Policy*, C990 A.L.I.-A.B.A. 407 (1985).

105. See Jason M. Patlis, *The Multilateral Fund of the Montreal Protocol: A Prototype for Financial Mechanisms in Protecting the Global Environment*, 25 CORNELL INT'L L.J. 181 (1992).

106. See generally Rio Declaration, *supra* note 2, at princ. 9.

States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.

Id.

such treaties. Overall, the “new breed” of environmental treaties demonstrate that the international community has become more concerned with the means of implementing the treaties once they become operative.