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Introduction: Symposium 2002: Rio + 10: Preparing for the Earth's Environmental Future Today

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**SYMPOSIUM 2002:
RIO + 10: PREPARING FOR THE EARTH'S ENVIRONMENTAL
FUTURE TODAY**

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As our world becomes smaller and oceans suddenly seem too small to protect us from perils once inconceivable, the concept of a global community is beginning to take shape. Gone are the days when environmental degradation in South America, Africa, or Asia were problems of another place and for another time. Modern science has revealed a staggering continuum of environmental degradation that renders problems, once local, eminently global.

In 1986, global carbon emissions stood at approximately 5.3 billion tons.¹ By 2100, global carbon emissions could increase to 20 billion tons per year.² Although some debate the significance of this figure, many scientists conclude that the proliferation of greenhouse gases will cause a 2.5 degree increase in average temperatures by 2040.³ Some estimate that this temperature increase will cost the United States economy \$60 billion, as it spends billions to curb land loss due to rising oceans and suffers from a decrease in agricultural production.⁴ Although the United States bears such costs as a nation, it alone did not cause these problems. "The developed market economies of North America, Western Europe and Japan produce 49 percent of global carbon dioxide emissions, the economies of Europe 25 percent and the developing countries 26 percent."⁵ These figures reveal that just as the United States did not cause this problem alone, it cannot conquer it alone. Just as global environmental problems are caused by many nations,

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¹ RANEE K. L. PANJABI, THE EARTH SUMMIT AT RIO: POLITICS, ECONOMICS, AND THE ENVIRONMENT 128 (1997).

² *Id.*

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.*

such global environmental problems can only be conquered through consensus.

The importance of consensus is profoundly illustrated in the discovery of chlorofluorocarbons ("CFC"s) in the 1930s and their devolution in the 1980s and early 1990s. CFCs were once thought to be ideal for many uses, as they are non-flammable, non-toxic and non-reactive with other chemical compounds.⁶ As such, CFCs have been used extensively in commercial and noncommercial refrigeration units, as well as aerosol propellants.⁷ Nevertheless, beginning as early as 1973, their environmentally destructive properties became known when chlorine was found to cause destruction of ozone.⁸ The widespread use of CFCs went largely unabated, however, until the 1985 announcement of a significant ozone depletion over Antarctica.⁹ Subsequent research has revealed a global increase in CFCs that extends well beyond the confines of Antarctica.¹⁰ Although we are rapidly phasing out CFCs, their long tropospheric¹¹ lifetimes and ability to destroy large quantities¹² of ozone molecules imperil human health. Even a relatively minor decrease in ozone can lead to an increase in ultraviolet light on the earth's surface.¹³ This increase in ultraviolet light at the earth's surface will lead to an increase in skin cancer, and may lead to a reduction in agricultural production.¹⁴ As such, the global proliferation of CFCs, like greenhouse gases, presents local problems that require global solutions.

We cannot remedy these problems without uniting the approximately six billion people that inhabit the earth to fight the systematic destruction of our planet that threatens our very existence.¹⁵ Dr. Mostafa Tolba, Director of the United Nations Environment Programme noted that this destruction is

⁶ Chlorofluorocarbons and Ozone Depletion, <http://www.ciesin.org/TG/OZ/cfcozn.html> (last visited Feb. 27, 2003).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Chlorofluorocarbons and Ozone Depletion, <http://www.ciesin.org/TG/OZ/cfcozn.html> (last visited Feb. 27, 2003).

¹² See PANJABI, *supra* note 1, at 7 (noting that "one CFC molecule can destroy approximately 100,000 ozone molecules").

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

not feigned, but rather is real and significant.¹⁶ Dr. Tolba stated that,

Humans continue to alter in a few decades precise ecological balances that have evolved over billions of years. The facts show again and again—in dwindling fish stocks, projected shortfalls in fuel wood, quickening soil erosion and millions of tons of greenhouse gases spewed into the atmosphere—time is running out.¹⁷

Although time may be running out, people from around the world are more aware of our global environmental problems than ever. This global awareness was displayed when 150 world leaders attended the Conference on Environment and Development (“Rio Conference”) in Rio De Janeiro in June 1992.¹⁸

Nevertheless, the mere presence of a bevy of world leaders, shaking hands and posing for photo opportunities, does not mean that such leaders are committed to taking the kind of local action that will yield global results. Hollow promises yield hollow results, which is a notion espoused by Brazil’s Acting Environment Minister, Jose Goldemberg, who stated that “there is a big difference between rhetoric and action. Rhetoric is very easy, action is very difficult.”¹⁹ These words symbolize the struggles of the Rio Conference and beyond, as the participating countries agreed to a comprehensive plan to achieve sustainable development, known as Agenda 21.²⁰

Of course, such plans mean little unless they are effectively implemented. The United Nations Secretary-General Boutros Boutros-Ghali emphasized this point by stating that “[t]he function of the United Nations is not to mask general inaction with verbiage, speeches, reports and programs.”²¹ Time would ultimately determine whether Agenda 21 was merely a tool designed to mask inaction, or whether it would yield results. Agenda 21 provided “a blueprint for the clean-up of the environment;”²²

¹⁶ *Id.* at 11.

¹⁷ See PANJABI, *supra* note 1, at 11.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See John C. Dernbach, *Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development*, 27 WM. & MARY ENVTL. L. & POL’Y REV. 79, 79 (2002); Agenda 21, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151.26 (1992) [hereinafter Agenda 21].

²¹ See PANJABI, *supra* note 1, at 11.

²² *Id.* at 14.

however, its implementation would not be easy. The estimated cost of implementing Agenda 21 was \$125 billion per year, a cost that would have to be absorbed by developed countries already befallen by recession.²³ Its cost, coupled with the breadth and specificity of Agenda 21 may obscure its vision.²⁴ Nevertheless, Agenda 21, like the Rio Declaration, stands as a symbol of the grand ambition of the Rio Conference, an ambition that may be clouded by practical obstructions.

Like Agenda 21, the Rio Declaration²⁵ provided a compelling statement of environmental principles offered to guide a population increasingly concerned with the perils of environmental degradation. The core of the Rio Declaration's vision is embodied by its first Principle, which states that "[h]uman beings are the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."²⁶ The Rio Declaration provided a suggestive mechanism to achieve this vision, as Principle 2 states that "States have . . . the responsibility alone to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limit of national jurisdiction."²⁷ This Principle illustrates a key problem with the Rio Declaration, as it provides a vision to achieve sustainable development, without providing an enforcement mechanism. Although the delegates to the Rio Conference unanimously²⁸ agreed to the Rio Declaration, we must ask what the significance of unanimity is when nations are free to deviate from the path of the Rio Declaration without consequence? Perhaps the Rio Declaration's significance derives from its clear endorsement of sustainable development as a guiding principle that promotes a balance between development and environmental protection? Ultimately, many question the significance of the Rio Declaration, calling it merely an empty statement of environmental principles, painfully lacking a mechanism to ensure its effectuation.²⁹ The debate regarding the significance of the Rio Declaration and the lasting impact of the Rio Conference would once again take center stage in 2002.

²³ *Id.* at 15.

²⁴ Agenda 21, *supra* note 20.

²⁵ Rio Declaration on Environment and Development, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/5/Rev.1 (1992), *reprinted in* 31 I.L.M. 874 [hereinafter Rio Declaration]

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See* PANJABI, *supra* note 1, at 15.

²⁹ *Id.* (noting that the Rio Declaration is not legally binding).

An assessment of the Rio Conference became critical, as the *World Summit on Sustainable Development* was scheduled for August 26, 2002 to September 6, 2002 in Johannesburg, South Africa. Accordingly, the *William and Mary Environmental Law and Policy Review* invited many of our nation's preeminent scholars to participate in a symposium that took place on March 22 and 23, 2002. The symposium, *Rio + 10: Preparing For the Earth's Environmental Future Today* focused on the successes and failures of the Rio Conference with a vision toward the Johannesburg Summit.

William and Mary School of Law Professor Michael Gerhardt moderated the first panel which was comprised of Professor Jonathan Wiener of the Duke University School of Law; Dean John Applegate of the Indiana University School of Law; Professor Timmons Roberts, of the College of William and Mary Sociology Department; and Pep Fuller, former Counselor of International Affairs, Office of Prevention, Pesticides, and Toxic Substances, U.S. Environmental Protection Agency. This panel discussed the "precautionary principle," which states that when an activity threatens to harm human beings or the environment, precautionary measures must be taken to counteract the threat. As such, governments, businesses and other organizations have a duty to take anticipatory action to prevent future harm.

Pep Fuller, former Counselor of International Affairs for the Environmental Protection Agency moderated the second panel, which was comprised of Professor Nicholas Robinson of the Pace University School of Law; Professor Barbara Stark of the University of Tennessee School of Law; Professor Linda Malone of the College of William and Mary School of Law; and Scott Pasternack of the Earthjustice Legal Defense Fund. This panel considered international governance systems and sources of international justice. Panelists discussed the existing system of international environmental governance and considered possible means to improve this system.

William and Mary School of Law Professor Ronald Rosenberg moderated the third panel, which was comprised of Professor Richard Collins of the University of Virginia; Professor John Dernbach of the Widener University School of Law; Professor Antonio Benjamin of the University of Texas School of Law; and Professor Paulette Stenzel of Michigan State University. This panel considered the environmental, social and legal issues surrounding the concept of sustainable development.

Issues 27:1 and 27:2 contain Articles written by seven of the symposium participants. These participants provide their perspectives on the successes and failures of the Rio Conference, while offering insight into the probable results of the Johannesburg Summit.

Dean Applegate premises his Article upon the utility of the

precautionary principle. He notes that although the United States and the World Trade Organization are skeptical³⁰ of the precautionary principle, it provides an opportunity to ask difficult questions of new technology.³¹ Dean Applegate notes that this principle requires that the potential hazards of such technology be assessed, but that the depth of the assessment depends upon the formulation of the precautionary principle.³² Further, he notes that this principle is constantly under assault by economic forces within the United States and abroad, but that even a limited precautionary principle fosters a commitment to the minimization of harm.³³ Ultimately, Dean Applegate laments the failure of the Johannesburg Summit to debate the erosion of the precautionary principle.³⁴ He argues that the precautionary principle is important because it protects the environment and human health in regulatory domains where scientific uncertainty abounds.³⁵ He concludes that this principle can foster a commitment to aggressively regulate these areas and that such regulation is necessary to protect our health and environment.³⁶

Professor Dernbach contends that sustainable development has re-defined the traditional development model to include environmental protection.³⁷ As such, it provides a framework for achieving economic and social development, without rendering environmental degradation an acceptable consequence.³⁸ Nevertheless, he argues that to achieve sustainable development we must set specific international goals for environmental protection and social well-being.³⁹ These goals can only be achieved if we set targets and timetables that operate nationally and internationally.⁴⁰ These targets and timetables will be ineffective without legal and administrative mechanisms to achieve them.⁴¹

Ultimately, Professor Dernbach concludes that few targets and timetables exist in international law, as the international community is unwilling

³⁰ John S. Applegate, *The Taming of the Precautionary Principle*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 13, 13 (2002).

³¹ *Id.* at 71.

³² *Id.*

³³ *Id.* at 72.

³⁴ *Id.* at 77.

³⁵ Applegate, *supra* note 30, at 77.

³⁶ *Id.*

³⁷ Dernbach, *supra* note 20, at 79.

³⁸ *Id.*

³⁹ *Id.* at 81.

⁴⁰ *Id.*

⁴¹ *Id.*

to enter into legally binding commitments to specific goals.⁴² He contends that there will be greater interest in targets and timetables in the coming decade.⁴³ Nevertheless, these targets and timetables will likely be non-binding, which means that there must be effective methods to induce compliance.⁴⁴ Professor Dernbach states that global reporting efforts, such as United Nations Development Programme's report on the Millennium Declaration, would be an effective way to induce compliance.⁴⁵ He concludes that by applying targets, timetables and effective implementation mechanisms, we can use sustainable development to address global poverty and environmental degradation.⁴⁶

Professor Stark frames her discussion by offering three observations from the second session of the Global Preparatory Committee for the World Summit on Sustainable Development that correspond to postmodern concepts. Professor Stark first observes that no big picture of the concept of sustainable development emerged from these meetings.⁴⁷ She argues that this corresponds to the definition of postmodernism as "incredulity towards metanarratives."⁴⁸ Second, she observes that although there was no big picture, no guiding framework, participants promoted thousands of little plans.⁴⁹ This, she contends, corresponds to the postmodern acceptance of the chaotic.⁵⁰ Third, she observes that the United States maintained a very low profile in its official capacity, even though its presence as a catalyst for global capitalism was ubiquitous.⁵¹ She notes that this behavior embodies Frederic Jameson's description of postmodernism as the "cultural logic of late capitalism."⁵² Ultimately, Professor Stark examines these three concepts and offers them as the working definition of postmodern international law. She concludes that postmodern international law is an effective tool that encourages engagement in the process of achieving sustainable development.⁵³

Professors Timothy Beatley and Richard Collins contend that there

⁴² See Dernbach, *supra* note 20, at 134.

⁴³ *Id.* at 135.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 136.

⁴⁷ Barbara Stark, *Sustainable Development and Postmodern International Law: Greener Globalization?*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 137, 139 (2002).

⁴⁸ *Id.* at 142.

⁴⁹ *Id.* at 140.

⁵⁰ *Id.* at 142.

⁵¹ *Id.* at 141.

⁵² Stark, *supra* note 47, at 142.

⁵³ *Id.* at 192.

has been little progress since Rio in meeting the global sustainability goals endorsed at the Rio Conference.⁵⁴ In fact, they note, not only are Americans living less-sustainably, domestic apathy is pervasive due in part to the Bush administration's low prioritization of environmental issues.⁵⁵ As such, their Article considers mechanisms to move American society toward sustainability and to make Americans view these concepts as important.⁵⁶ Beatley and Collins contend that progress towards sustainability in the United States can only be achieved through strategies that reflect American circumstances and values.⁵⁷ As such, they argue that we can achieve sustainability through emphasis on action at the local level.⁵⁸ This localized approach is necessary because Americans need to see "faces, names and actual people", as they strive to achieve sustainability.⁵⁹

In adopting a local strategy to achieve sustainability, the authors consider Maryland's smart growth initiatives and Maryland's strategy to the one adopted in New Jersey.⁶⁰ The authors argue that these smart growth initiatives are inadequate, as they are merely land use and urban design concepts.⁶¹ These concepts do not address our consumption of resources and the manner in which we live in unsustainable communities.⁶² Ultimately, Beatley and Collins propose a broader vision of the sustainable community, where concern for land use coexists with concern for the impacts of lifestyle and consumption.⁶³ They argue that if local communities develop and apply such broad visions of sustainability they can make progress towards sustainability.⁶⁴

Professor Linda Malone and Scott Pasternack discuss the procedure for filing an actionable international human rights claim based upon environmental degradation within the United Nations fora.⁶⁵ First, the

⁵⁴ Timothy Beatley & Richard Collins, *Americanizing Sustainability: Place-Based Approaches to the Global Challenge*, 27 WM & MARY ENVTL. L. & POL'Y REV. 193, 193 (2002).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 194.

⁵⁸ Beatley & Collins, *supra* note 54, at 194.

⁵⁹ *Id.* at 194-95.

⁶⁰ *Id.* at 202.

⁶¹ *Id.* at 205.

⁶² *Id.* at 208.

⁶³ See Beatley & Collins, *supra* note 54, at 208-09.

⁶⁴ *Id.* at 214.

⁶⁵ Linda Malone & Scott Pasternack, *Exercising Environmental Human Rights and Remedies in the U.N. Fora*, 27 WM. & MARY ENVTL. L. & POL'Y REV. (forthcoming Winter 2002).

authors consider what constitutes environmental degradation for the purposes of a claim against a nation-state.⁶⁶ Within this context, they consider an array of possible deprivations that are theoretically actionable. Second, they discuss the process for selecting a proper forum for establishing a valid human rights claim.⁶⁷ This discussion includes several factors that should be considered when selecting the best possible forum. Third, they discuss several of the specific human rights fora provided by the United Nations, including the Committee on the Elimination of all forms of Racial Discrimination, the Committee on the Rights of the Child and the Committee on Human Rights.⁶⁸ Fourth, they discuss newly emerging rights that are becoming recognized as customary international law.⁶⁹ Finally, they discuss enforcement procedures after an international forum has found an actionable human rights violation exists and the nation-state has not remedied the situation.⁷⁰ For example, they note that the United Nations Security Council can pursue economic sanctions or threaten military action against a nation that fails to remedy the human rights violation.⁷¹

Professor Nicholas A. Robinson suggests that the momentum to organize the international community to deal with environmental problems waned significantly following the Rio Conference.⁷² As such, when the United Nations convened the World Summit on Sustainable Development in Johannesburg in 2002 one of the primary goals was to improve the system of international governance.⁷³ Nevertheless, he notes that though nations identified significant environmental problems, they displayed an unwillingness to strengthen international governance systems.⁷⁴ The Johannesburg participants deferred to existing governance systems and simply suggested that those systems operate more effectively.⁷⁵ As such, Professor Robinson examines the reasons that nations have not chosen to advance the current systems of international governance.

He contends that nations focus upon pressing issues of political

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Malone & Pasternack, *supra* note 65.

⁷¹ *Id.*

⁷² Nicholas A. Robinson, *Befogged Vision: International Environmental Governance a Decade After Rio*, 27 WM. & MARY ENVTL. L. & POL'Y REV. (forthcoming Winter 2002).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*