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Foreword: The Challenge of Rio

David H. Getches†

It had to be in Rio. Where else, in such a short time, could anyone experience the paradoxes that join the world’s environmental and economic crises? Participants in the United Nations Conference on Environment and Development (UNCED) attended long days of meetings which opened “big issues” for discussion, and then, on evening walks, found families of people in tatters camped on sidewalks in front of expensive jewelry stores. It was impossible to leave the cloistered gringo colony of the Sheraton where President Bush stayed, without almost touching the teeming favela, home to uncounted thousands, that pours down the hillside to within a stone’s throw of the hotel. At dawn, children from the favela run on the beach below the strip of elegance that separates them from the sea. The taint of raw sewage from the city whose population is known within only a million or two, presses leeward, forbidding bathers. The flotsam and jetsam of poverty and pollution literally surround islands of modern development in Rio, as they do figuratively around the globe.

The security-conscious halls of Riocentro Convention Center, where the official Earth Summit sessions were held, are an hour’s bus ride from the city, insulated from the paradoxes of Rio life. But the Global Forum, the “alternative Earth Summit,” sprawled across Flamengo Park in downtown Rio itself. By actual count, there were more people in downtown Rio last

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June involved in intense activity to improve the planet than were inside Riocentro “making international law.” The Global Forum highlighted the vastly increased role of nongovernmental organizations (NGOs) in combatting problems and in struggling for a place in the political process. A widely diverse array of NGOs sponsored literally thousands of events attended by 20,000 to 30,000 people a day for twelve days beginning June 3, 1992. Thousands of booths housed environment and development groups, social, religious, and professional organizations both large and small from around the world whose missions strained any connection with the environment. There were also thirty-five big tents for lectures and discussions.

Never before UNCED have NGOs been such active and material contributors to an international event. Only limited numbers of preregistered NGO representatives were admitted to Riocentro, which was the bailiwick primarily of government delegates and observers from 180 nations, but the UNCED proceedings were broadcast to the Global Forum on a twenty-foot television screen. Most people at the Forum, however, were more interested in debating the issues of sustainability in the tents or “networking” with others. They took an occasional break to enjoy entertainment from the likes of Olivia Newton-John and John Denver. One had the feeling that something was surely “happening,” though it was not clear how influential all the commitments and efforts would be.

The intense, high-spirited Forum closed each night under a pall of concern that it would not reopen the next day because the power company and other providers had not been paid and threatened to remove power and rented equipment. That never occurred, but the threat reminded everyone of the fiscal precariousness of nongovernmental efforts. This seemed ironic given the fact that NGOs have animated most domestic and international issues for over twenty years. They served as “the soul and conscience of the Summit,” and its ultimate success will depend largely on their organization of people and their vigilance and pressure on governments. Yet they remained outside, unofficial, and short of funds.

We will debate for some time the significance of Rio. The original concept was to join the strands of environmental protection actions underway in industrialized countries since the 1972 UN Stockholm Conference on the Human Environment, with the growing realization that environmental problems could never be solved apart from the problems of economic distress of the third world. This goal was accomplished.

To those who already understood the continuity of environmental and economic health, Rio may seem unremarkable. A visionary like Maurice F. Strong, the moving force of the Earth Summit, may have been disappointed that Rio participants did not go far enough in undertaking the vital work of sustainable development. But history will nevertheless record Rio as a pivot point, a time and place where opportunity and awareness coalesced. The events of the summer of 1992 plainly were monumental; after Rio no world leader or educated citizen can avoid a share of responsibility for the fate of the world. Ignorance or denial of the tie that binds environment to economy was erased as an acceptable or credible explanation for misguided policies or even individual actions.

One measure of success or failure is in the official agreements that were reached. Two conventions, the Framework Convention on Climate Change and the Convention on Biological Diversity were negotiated before UNCED and signed there. Two aspirational documents were negotiated in a series of UNCED preparatory committee meetings and concluded in Rio. They were a statement of guiding principles called the Rio Declaration and the 500-page "cookbook" for sustainability known as Agenda 21. Participating countries also agreed to a set of Forest Principles and to hold a conference for a future convention on desertification.

The list of legal instruments is impressive and, though their content is rather flaccid, if every nation faithfully adhered to them we would be solidly on the path to sustainability. The problem is that assent was reached through whittling away at somewhat better documents. It is revealing in the descriptions of negotiations of several of these instruments that there are no prominent examples of one party trading off a stronger commitment to pursue a principle in return for a like commitment from another party. Typically, one party would let another relax its commitment in return for a

7. See Editorial, 22 ENVTL. POL'Y & L. 4 (1992), and Nicholas C. Yost, Rio and the Road Beyond, 11 ENVTL. L. 4, at 1 (1992). See also Agenda 21, supra note 5, at ch. 11.
similar easing of responsibility. This may not bode well for the promises of Rio being enthusiastically embraced and enforced. The hope, however, lies in carrying into policy and practice a consciousness among peoples that was excited at Rio.

A homily of the nineteen-seventies was: "When the people lead, the leaders will follow." In Beyond Rio: Prospects and Portents, Secretary-General Maurice F. Strong writes modestly of UNCED which was, after all, his creation. The most stirring challenge he raises is that, while Rio's pledges "represent an important launching pad for the new global partnership that is the key to our common future," there is a "crisis in governance" that must be met by all of us. He argues that "leadership must come from the people."

By some accounts, the performance of more than 170 world leaders was exemplary at Rio. They all came, and most spoke thoughtfully of environmental issues and sustainability. Beneath the veneer, though, was a troubling tension. Much of UNCED, indeed, was an unseemly quarrel over money. Several of the developing countries plausibly apologized for their inability to stem deforestation, let alone absorb the rest of the world's excess carbon, without financial help. The industrialized countries tried to obscure their avoidance of promising aid to their have-not neighbors. None of them embraced the undiplomatic defiance of President George Bush who used the occasion to proclaim "the day of the open checkbook is over."

Yet most of them effectively hid behind United States' recalcitrance to escape making clear commitments.

To be sure, the north-south disparity in wealth impedes the path to sustainability, but to dwell on it misses the real point of Rio. The benefits to all people, whether from developing or industrialized countries, are so great and the necessity of action so essential that squabbling over finances defies self-interest. The argument is over the price of a lifeboat when we could be cooperating to prevent the shipwreck. Not everything has a high price tag, but even prices that seem high today may look like bargains in retrospect if we do not act soon. Excuse-making on all sides is evidence of the failure of leadership that Secretary-General Strong despairs, and that provokes his caution about the prospects for genuine success.

Strong insists that world leaders must join in a global partnership to foster three goals. First, they must create a new economic regime that uses market mechanisms to reflect the true costs of pollution in prices for goods and services; developed countries should invest in relieving the burdens of

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developing countries' transition to sustainability. Second, a new legal regime can give maximum force to the conventions signed at Rio and press the principles of the Rio Declaration and Agenda 21 into acceptance as norms for people and nations. Finally, he argues for a nongovernmental multilateral system to oversee the implementation of the Rio promises. In addition to the United Nations Sustainable Development Commission and a strengthened role for the UN generally, he describes a new Earth Council which will foster a new and even more participatory role for NGOs in follow-up activities after UNCED.

Senator Timothy Wirth, a member of the United States delegation, criticizes the official United States performance at Rio in his article, *The Road from Rio—Defining a New World Order*. He points to the anomaly of the world leader in environmental technology and policy emerging as a kind of international curmudgeon. He offers a hopeful approach for rectifying the US position: six goals, each with concrete measures. They build on the entreaty of Vice-President Albert Gore, Jr., to “make the rescue of the environment the central organizing principle for civilization,” hewing national policy and international relations as well as personal action to that end. The Cold War was the focus of policies and national commitments during most of the lives of everyone in the United States. Environmental sustainability should replace the Cold War as the focus for the future. Wirth concludes that the result will be greater security, economic and otherwise, for the United States and for the rest of the world.

Mukul Sanwal sounds a similar theme and argues that it is essential to have a comprehensive approach to cooperation among nations. In *Sustainable Development, the Rio Declaration and Multilateral Cooperation*, he contends that concerns for poverty and consumption can no longer be separated from one another or from environmental issues. In a word, he urges integration. Human, economic, and civil rights are all among the factors that define quality of life and it is false for any country to segregate policies relating to one from the others. Moreover, with the globalization of markets, once-domestic environmental issues become international. Policies for finance, services, technology, and trade must be integrated at an international level; concern for the related questions of pollution and ecology and their socioeconomic effects provide the crucible for integrated policy formation. The creation and implementation of these policies should be part of an interactive process that demands a level of multilateral cooperation, a key ingredient of sustainable development.

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The integration Sanwal describes presents international law with a new challenge: reconciling common concerns with the notion of differentiated responsibility. He finds in the Rio Declaration a recognition of the primacy of development in the balance between development and environmental protection. The focus has become the social environment, whose well-being depends on the physical environment and vice-versa. Developed and developing countries share this common concern, but they necessarily must split the responsibility according to their abilities. The nature of this differentiated responsibility—who should bear what burdens—was left unarticulated at Rio. Coming to terms with this controversial issue is essential, says Sanwal, since “living standards determine environmental priorities.”

The process of allocating differentiated responsibilities involves more than governments since NGOs and scientists have vital roles in the interactive process needed to frame and carry out policies of sustainability. The challenge calls for new legal remedies, arrangements, and institutions. International law must strive to frame an integrated policy for economics, trade, and technology—not just avoid clashes with individual states’ domestic policies. Sanwal suggests that the precautionary principle should guide the setting of priorities so that the most dangerous problems are identified and corrected. Perhaps we have already started to meet Sanwal’s challenge with devices like privately arranged debt-for-nature swaps and, indeed, the collaborative reporting and information exchange promised in the Biodiversity Convention and the Climate Convention.

If Rio made a start on the work of solving the interconnected problems of sustainable development, there is surely doubt about whether it went as far as it should or could have. M.P.A. Kindall’s view is that Rio failed at the most fundamental level: finding consensus on the essential questions. He implies in Talking Past Each Other at the Summit that a lack of effective communication may be the greatest impediment to accomplishing sustainability. Kindall, a member of the US delegation to UNCED, corroborates reports that the severest and most intractable disagreements were between developing and developed countries.

Kindall illustrates by recounting the negotiating experiences with three key issues. He says that articulation of the most essential principle of all—that environment and development are interdependent goals—in the Rio Declaration and Agenda 21 was frustrated by misunderstandings. In particular, the developing countries misperceived the environmental protection issue as one being foisted on them by the developed countries, while the developed countries, especially the United States, resisted discus-
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...tion of their own development policy, i.e., consumption patterns, as part of the commitment to achieving sustainability.

Next, he shows the differences in perceptions over financing the ambitious goals and standards called for in Agenda 21. The developed countries tended to favor reprogramming and conditioning existing aid programs to make them more environmentally responsible over infusing new funds and creating earmarked pools of money, but the developing countries saw their obligation for environmental protection as contingent on substantial new funding. To these countries, the United States was seen as particularly unwilling to assume financial responsibility. No one, least of all other developed countries, did anything to change this perception.

Kindall also explains the unproductive semantic debate over whether Agenda 21 would commit countries to "technology transfer" or to "technology cooperation." Apparently, the issue became a vehicle for the United States to promote its ideology that private investment is the appropriate vehicle for technology to be developed and disseminated, and for the developing countries to express their distrust of US dedication to expediting the movement of technology. The same issue was rehearsed and the positions of the parties amplified in the debate on the Biodiversity Convention, as discussed in Melinda Chandler's article. The United States used the so-called intellectual property issue as a reason for refusing to ratify that treaty, attracting the criticism of both developed and developing countries and creating an avalanche of negative press attention.

Kindall finally analyzes a significant barrier in the political culture of the United States that caused resistance to promising measures that are needed to respond to the challenge of Rio. Disdain for central planning is a residue of the Cold War mentality. Thus, the specificity of goals for the Climate Convention, even nonbinding targets, to be facilitated by national governments alienated the United States and were finally removed as the price of a US signature. Because integration of environmental and economic goals are critical to a world, or even a national, strategy for sustainable development, the author concludes that the US must rethink and modernize its knee-jerk reaction to planning and goal-setting.

Rubens Ricupero, coordinator of the UNCED Contact Group on Finances, provides a first-hand account of negotiators' experiences with the tough questions they had to confront in a short time during the financial negotiations for Agenda 21. In Chronicle of a Negotiation: The Financial Chapter of Agenda 21 at the Earth Summit, he conveys the flavor of the process, confirming the tension described by Kindall and others. The
struggle to gain consensus, and the agonized consideration of the significance of even a few simple words, are described in the article.

Ricupero tells of around-the-clock discussions of the persistent issues of how to finance the ambitious goals of Agenda 21. Despite four preparatory conferences, several issues were still pending even as UNCED convened: the role of the Global Environmental Facility (GEF), created by the World Bank to make environmental grants; whether the developed countries would accept .7% of gross domestic product (GDP) as their target for their official development assistance (ODA) to developing countries; and whether to recapitalize the International Development Association and add to it an “Earth Increment” for environmental projects.

His account is enlightening to anyone who wants to understand the alliances and dichotomies among groups of countries that affected the dynamics of negotiation, and he recreates the atmosphere within the official negotiations at Rio. The significance of nuance will be surprising to all but experienced negotiators of sensitive international issues and other complex legal matters.

Consider the agreement of the parties to the aid-target language. Ricupero writes triumphantly—and I recall the relief that accompanied announcement of this breakthrough—of finding a text that was acceptable. The US and some other developed countries refused to be associated with the .7% GDP target as they had since the goal was set some twenty years ago. But they all agreed to this provision:

Developed countries reaffirm their commitments to reach the accepted United Nations target of 0.7 per cent of GDP for [development aid] and, to the extent that they have not yet achieved that target, agree to augment their aid programmes in order to reach that target as soon as possible and to ensure a prompt and effective implementation of Agenda 21.11

The US delegation head, EPA Administrator William Reilly, could announce to a news conference the next morning that the United States agreed to the language and still say, in answer to press questions, that the longstanding US position (not to accept the .7% target) had not changed. The bewildered press corps did not pursue the issue. The secret, of course,

10. Like Kindall, Ricupero talks of the inadequacy of “developed-developing” and “north-south” to describe the schisms that complicated the negotiations. For instance: there was pressure from the developed nations who had attained the .7% GDP aid target on those which had not; there were cries for special treatment by the industrialized but economically distressed former Soviet bloc countries; and oil producing countries resisted tying wealth to an obligation to provide aid as much as they opposed goals for reducing energy consumption.

was in the word "reaffirm"; since the United States never affirmed the target, it wasn't reaffirming it. To non-lawyers this could look like verbal sleight-of-hand.

Of the two treaties—enforceable, multilateral agreements to undertake particular actions—that were signed at Rio, only the Climate Convention\(^ {12} \) gained approval of the United States. Elizabeth Barratt-Brown, Scott Hajost, and John Sterne, Jr. give a bittersweet account of this "successful" negotiation in *A Forum for Action on Global Warming: The UN Framework Convention on Climate Change*.

The Climate Convention became a classic example of how the disparate self-interests of the parties resulted in competitive weakening of the overall document. The authors of the article make a convincing case for the seriousness of the climate change threat as a predicate to illustrating the transparency of some parties' (mainly the United States') efforts to dwell on research rather than promising to reduce carbon emissions. "Scientific uncertainty" was used to legitimate the avoidance of expensive, lifestyle-intrusive reductions in greenhouse gas emissions.

Developed countries' dilutions of targets and commitments afforded occasions for developing countries to insist on softening the institutional provisions. Developing countries demanded a "right to develop" as a way of maintaining the emphasis on financial assistance and tried to weaken any enforcement mechanisms such as requirements for monitoring and dispute resolution which could create pressures on developing countries as they seek some of the more basic "comforts"—like electric power and refrigeration—that assuredly will produce more greenhouse gases.

Ironically, everyone had known for about two years what the Convention ought to say. The world had exceeded safe levels of greenhouse gas emissions and they had to be reduced, or at least stabilized. Barratt-Brown, et al., laud the Convention's articulation of a goal of stabilization of emissions, tying it to the limits of tolerance in the ecosystem. Knowing that a genuine reversal of global warming would require major reductions in greenhouse gas emissions, the parties opted for a realistic short-term goal. They picked the level of emissions in 1990, when the negotiations were in their infancy, as a tangible goal. Though not intended as enforceable, this benchmark gave everyone an objective indicator of performance. But there the disappointments began.

Measurable commitments, and even anything as specific as non-binding targets, were resisted and trade-offs took on an air of reverse one-upmanship. When trading away the minor teeth of the Convention had been

\(^ {12} \) Climate Convention, *supra* note 2.
exhausted and the tangible goal of reducing emissions to 1990 levels (one that bore most heavily on the United States) remained, US negotiators used the ultimate bargaining tactic: boycott. If the last tooth was not plucked from the agreement, not only would the United States refuse to sign, but the President would not bless Rio with his presence.

The United States got its way, of course, and the Convention emerged vaguer and more platitudinous. The rest of the world received the opportunity to subject the leader of the last superpower to verbal bashing. Unfortunately, the official US attitude that was punished misrepresented the country's impressive, long-standing domestic commitments to environmental protection and improvement. The United States might have emerged as the exemplar of uniting economic and environmental progress, but refused the opportunity.

Barratt-Brown, Hajost, and Sterne start and end with the hope that political changes in the United States will revive the sleepy climate treaty. It is possible that internal commitment to environmentalism will move the United States to be a pacesetter for greenhouse gas reduction. The Clean Air Act Amendments of 1990\(^\text{13}\) are a step in the right direction. Their emissions trading provisions provide a model for what can and should be done internationally. A vigorous global market for greenhouse gases can result in equitable exchanges of rights to emit, obligations to maintain sinks to absorb, and ultimately worldwide reductions in greenhouse gases. The debate over issues like the role of the Global Environment Facility would pale in this setting. US leadership and wide participation could fill the hollow vessel of the Climate Convention with meaning.

The most vaunted of the international agreements signed at Rio was the Biodiversity Convention.\(^\text{14}\) Strong had been skeptical about pursuing a biodiversity treaty but proponents, especially the United States, pressed ahead with the negotiations.\(^\text{15}\) All other nations reached agreement, but then the United States refused to sign, citing inadequate intellectual property protection, inappropriate biosafety provisions, and the Convention's finan-

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cial mechanism as the impediments to its consent. Last minute efforts by William Reilly to resolve the US objections were dashed when a member of Vice President Dan Quayle’s staff leaked to the media a confidential communication from Reilly in Rio to the White House, causing the US delegation enormous embarrassment. Lost in the controversy is the fact that 154 nations did sign the treaty (and that the United States now has the opportunity to reconsider its position).

The United States and other countries where technological development is a major industry were leery of language that seemed to require modifying laws concerning patents, copyrights, trademarks, and other intellectual property protections to ensure “cooperation” in sharing ideas and inventions that help preserve biodiversity. All but the United States were willing to tolerate the ambiguity of the convention’s cryptic article on the subject.

The United States always objected to the provisions on safety of biotechnology because it considered the question to be improperly raised and the approach taken to be wrong. It is difficult to believe that this issue alone would have kept the United States from agreeing to the convention.

The most vexing question for the United States was financing. And it appears that the delegation, as well as other developed country delegations, had cause for worry. The provisions appear to promise whatever funding it takes to implement the treaty, with plenty of room for future misunderstanding. Other developed countries withdrew their objections, however, when a clarifying appendix was added to the Convention. The developing countries did not get their way completely. Much of the financing issue swirled around the role of the Global Environmental Facility (GEF). Over developing countries’ objections the GEF, albeit “fully restructured,” is to be the interim mechanism. In addition, the obligations of the developing countries are not made contingent on receipt of financial resources and technology.

In her analysis, *The Biodiversity Convention: Selected Issues of Interest to the International Lawyer*, Melinda Chandler points out that in spite of the United States’ controversial refusal to sign it, major issues resolved during the negotiations are of considerable importance to international environmental law. The provisions adopted by the parties represent some


17. *See* Biodiversity Convention *supra* note 3, at art. 16. Other articles, such as art. 15 on genetic resources, and art. 19 on biotechnology, implicate intellectual property issues. *See* Chandler, *The Biodiversity Convention*, *infra* at 168.
innovative approaches to biodiversity protection. Of special interest is the emphasis on impact assessment and the role of indigenous people.

General issues of future importance for international negotiations that emerged during the Biodiversity Convention debates included two questions related to individual nations’ sovereignty. The developing countries insisted on provisions that acknowledged their “sovereign right to exploit their own resources pursuant to their own environmental policies.” That this issue was hotly contested for hours is evidence of the tension created by differentiated responsibility and vast disparities in economic capacity. How much effort and resources should the United States expend rescuing a few species while hundreds are jeopardized by policies abroad? How much species protection will be demanded of a Somalia or a Bangladesh, for example, when their people are driven by survival to cut trees or kill tigers?

Another sovereignty issue of considerable importance that is likely to recur is how to handle constitutional federalism. Though it is especially a concern of the United States, I attended a discussion at the Global Forum among lawyers from several countries where a Canadian expert explained the importance of the issue to his nation. The United States’ insistence on language preserving its political choice to cooperate with states rather than preempt their wildlife laws with federal actions must have been puzzling to other countries. For them, however, it is a lesson in the realpolitik of dealing with the US, as the issue will arise in the future. For the US, the controversy may signal that it is time to rethink a traditional approach of honoring federalism in shibboleths in legal documents. There is, in fact, no constitutionally vested state monopoly on wildlife responsibility and the federal government has increasingly decided to preempt state laws. Why then complicate vitally significant international negotiations with insistence on basically hortatory political language?

Although impact assessment, a US invention, has become generally accepted as critical to environmental protection, the Biodiversity Conven-

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19. Federal regulation of wildlife in order to carry out treaty obligations has long been upheld by the Supreme Court. Missouri v. Holland, 252 U.S. 416 (1920). Congress can override state laws under the Supremacy Clause. U.S. Const. art. VI, § 2. Furthermore, state wildlife legislation may be limited even where the Congress has not legislated if it interferes with interstate commerce over which congressional power is supreme. See Hughes v. Oklahoma, 441 U.S. 322 (1978).


tion negotiations showed the reluctance of some states to extend the process. The Convention was weakened considerably when some of the parties refused to include an obligation to do impact assessments for other than government projects, insisted on curtailing the scope of public participation in the process, and limited the review to "adverse" effects.

Among the most interesting highlights of the Biodiversity Convention and of the Rio summit as a whole is the role of indigenous people. Chris Wold's article, discussed below, describes the efforts of aboriginal peoples at Rio to build on their common attributes and problems, including their role in securing and gaining from biodiversity. A look at a map of the world's great pools of genetic resources would show an enormous coincidence with the homelands of indigenous peoples. Whether this correlation is a product of their stewardship or simply a phenomenon of their having occupancy rights in remote places that have not suffered as much species loss as developed places, the fact is significant. If the question is "who owns biodiversity?", equity demands that the rest of us reckon with indigenous people. If the issue is to learn more of the existence, uses, and potential benefits of genetic resources (medicinal plants and animals, salt-resistant crops, etc.), indigenous people may hold much of the knowledge we need. Paired with the technological resources for genetic engineering in the developed world, the genetic materials of the developing world, especially in the tropics, are potentially of inestimable value. They are called by some "the oil of the 21st Century.”

The Biodiversity Convention raised the issues of the obligations involved in exploiting the biological and genetic resources and knowledge controlled by indigenous people, but the parties effectively avoided making any real commitments. The countries within which native people reside see themselves as proprietors of the genetic wealth and want to deal directly with the tribes. Common desires for individual national primacy in dealings with aboriginal peoples led to their inaction. The Convention simply recognizes national obligations to encourage an equitable sharing of benefits.

Jeffrey Kovar of the United States Department of State contributes A Short Guide to the Rio Declaration, the saga of the only "unbracketed" document to go to Rio. Its consensus adoption was facilitated by advance negotiation during the Preparatory Committee meetings. Kovar's explanation of the process leading up to Rio with its give-and-take on issues like the "right to develop" (code for ignoring ecological or human rights abuses) reveals it as a precursor of what unfolded at Rio as the bracketed items in other documents were negotiated.

The Rio Declaration\textsuperscript{23} may be viewed either as the greatest success or the greatest failure of Rio. It succeeded in garnering universal support, yet it failed to meet the expectations of many, including Secretary-General Strong, for a short “Earth Charter” that could hang on every child’s bedroom wall. I heard one wag say that the idea died with the realization of a false premise: most of the world’s children do not have bedrooms. Negotiators from developing countries, indeed, immediately took issue with the assumption that everyone owed an obligation to protect the planet apart from an assurance of economic security from the developed world. It started as a modest but noble task—to find an understandable statement of obligations to all of nature that could be subscribed to by every one of the earth’s citizens and governments—but was swallowed in a quid pro quo negotiators’ game. If the charge of articulating Strong’s vision had been given to a diverse citizens’ committee—or to a single poet or philosopher—it might have been achieved; we would have a simple and moving covenant with the planet. But the task was given to international lawyers and submerged in the hand-wringing rhetoric of international negotiation.

The result of the negotiations was a Rio Declaration containing 27 principles that was both too much and too little. If the Declaration is viewed as a solid mission statement for the Rio summit itself, it is a considerable achievement. Viewed positively, it is a notable announcement of the understanding of all countries that priorities should shift to environmentally and economically sustainable policies that can be maintained only through international collaboration. Nevertheless, it arguably falls short of a commitment to enduring norms that will guide the discourse of future international environmental law. Additionally, it fails to fulfill the Earth Charter idea.

One risk in memorializing the Rio experience solely in terms of legally-binding conventions is to overlook the significance in international law of obligations, understandings, and expectations that are based on political agreement. Most of the nations of the world are signatories to more than a dozen major conventions on wildlife, habitat, oceans, atmosphere and hazardous substances.\textsuperscript{24} Compliance and enforcement still tend

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\item \textsuperscript{23} Rio Declaration, supra note 4.
to be encumbered by ambiguities, rivalries, and lack of political will. The force of international law does not depend entirely or even primarily on ostensibly "binding" agreements. Countries judge one another according to their compliance with widely accepted principles and international law is as much a product of well-accepted norms as it is of specific treaty obligations. So it will be with the Rio Declaration. Strong calls the Rio Declaration and Agenda 21 "major new examples of 'soft law'" that will carry considerable clout in the international political arena.\(^{25}\)

In this context, Agenda 21 is worthy of mention, although it is not the central focus of any of the articles in this issue. The scope and vision of Agenda 21 are almost boundless. It deals with conservation programs from forest management, to the atmosphere, to water and waste. There are 115 clean-up programs proposed. Equity, economy and environment are joined as they must be. There are sections on the socioeconomic dimension that deal with housing, health, population, and consumption. Special treatment is accorded to the importance of solving human rights problems and issues particular to children, women, indigenous people, and labor. The value of strengthening the role of NGOs is stressed. Several sections deal with the financing needed to implement Agenda 21. That these were bracketed by the United States and other countries is not surprising given the revelation that a price tag of about $125 billion per year would fall on the developed countries.\(^{26}\)

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\(^{26}\) Yost, *supra* note 7, at 4. The UNCED staff estimated the full cost of Agenda 21 to be $625 billion per year, that the developing countries would provide $500 billion and the developed countries the rest. Of this, $55 billion is already paid in development aid leaving a shortfall of $70 billion. *Id.*
Taken as a whole, Agenda 21 is a manifesto for all of society. Each of the components is elevated in importance by its linkage with the others, but also put in perspective as essential, but discrete, ingredients of sustainability. The level of compliance with most elements can be monitored and measured. For instance, environmental protections and enforcement are to be enacted into the laws of all countries by 2000. I believe that the hard specifics of Agenda 21 can enhance the cautious proclamations of the Rio Declaration and become the point of reference for all of international environmental law in the future. This body of soft law can surpass the potency of the binding conventions that were adopted.

If the challenge of Rio is to be met, if the vision captured in the practical terms of Agenda 21 is to be realized, the mission cannot be left to governments. Hope for successful responses to the challenge of Rio may be more firmly staked to grassroots politics and to innovations in the private sector than to international law. This message is implicit in the articles by Jorge Caillaux and Patricia Moore entitled *UNCED and Agenda 21: A View from Peru*, and the article by Chris Wold on *An Earth Parliament for Indigenous Peoples*. The role of business is also critical. That it should be a role attractive to business is persuasively argued in a book by Stephan Schmidheiny, chairman of the Business Council for Sustainable Development (BCSD), entitled *CHANGING COURSE: A GLOBAL BUSINESS PERSPECTIVE ON DEVELOPMENT AND THE ENVIRONMENT*. The book is reviewed by Anita Halvorssen.

Caillaux and Moore carry home to Peru the outcome of the Earth Summit and show its force—and limited relevance—in light of on-the-ground political and economic realities. In some ways, Peru is typical of the developing world. It suffers widespread poverty and tainted water supplies. Like many other developing countries, its political and economic energies are sapped by insurgency—in Peru, the senseless, vicious campaigns of Maoist terrorists. If anyone doubts the linkages of environment, health, economy, political stability, human rights, drug trade, and education, they are convincingly described by Caillaux and Moore. Even more striking is their description of the essential functions of NGOs in the business of fomenting environmental policy and public awareness.

In Peru, NGOs have given intellect and conscience to the development of environmental laws like the country’s 1990 Environmental Code. Without NGOs, the Peruvian government could easily have ignored environmental concerns in light of the daily exigencies of terrorism, drug trafficking, and a foundering economy. But groups like Caillaux’s Peruvian Environmental Law Society provided the impetus and drafting
acumen it took to present the legislature with a code that predated but appears to follow the prescriptions of Agenda 21.

NGOs catalyze grassroots sentiment and understanding, a spirit of innovation, and efficiency in operation. They are vehicles for leveraging private and foreign government funding to effect official action and inspire local commitment. While some have criticized the limitations on their participation, the attendance and influence of thousands of credentialed NGO representatives clearly influenced the direction and improved the outcomes. For the future, it means that the NGO role will only grow. Most important, the NGOs have an ownership interest in the products of UNCED. Though they might have been stronger, the commitments made at Rio provide benchmarks to measure the performance of nations and people. NGOs will be watching and pressing for compliance.

NGOs present one option for public participation in planning for and securing a survivable planet. Chris Wold suggests another element in his article on An Earth Parliament Initiative for Indigenous Peoples: Investigating Alternative World Governance. The Earth Parliament Initiative was an attempt of aboriginal groups to create an entity that would enable them to interact collectively with environmental groups and scientists and to represent the commonalities of their cause at the official forums where international law is made.

During the Earth Summit, a moving exhibit opened at the Paço Imperial in Rio. It depicted the consequences of cultural abrasion in the slightly more than one generation since whites pierced the Amazon jungle and “discovered” a previously isolated group of Caiapó Indians. Photographs of near-naked, tattooed primitives holding radios to their ears begin to tell the story. Once they were self-sufficient and in balance with their surroundings. Now they sell rights to have their pictures taken and to have trees cut. They depend on rubber sandals, imported foods, building materials, radios, and cash to buy these things. A slightly self-congratulatory caption in the exhibit describes medical facilities introduced to the jungle; the altruism and benefits are mitigated considerably by the degree to which they treat imported maladies. Some Caiapó leaders wearing brilliantly feathered headdresses were at the museum opening, obliging the TV cameras, upstaging the dark-suited politicians. A close look showed surfer shorts under their loin cloths. The next night there were other indigenous people in traditional garb giggling with prostitutes in Copacabana.

Thousands of indigenous people were in Rio, mostly at the Global Forum since few of them were granted the official role that would gain
them admittance to UNCED. Their prominence in the consciousness of other participants was heartening. Dozens of events in the tent structures where people gathered in Flamengo Park, site of the Global Forum, featured discussions of indigenous peoples' issues. As the earth's longest-surviving cultures, they have some knowledge to impart about the science of living in balance with the earth. Furthermore, they remain custodians of the most unspoiled corners of the world. They have a stake of their own in what happened in Rio during June 1992. Problems like biodiversity protection implicate them. That their interests were glossed over in the Biodiversity Convention is one illustration of the point. Parts of Agenda 21 express concern for justice toward and involvement of indigenous people in pursuing sustainability. But I wonder how many indigenous people participated in composing even these sections.

Wold, whose work as an international lawyer with the Center for International Environmental Law has taken him into tribal communities around the world, attended and assisted the organizational meetings for the Earth Parliament. His description of the difficulties of bringing such diverse groups under a single umbrella is reminiscent of the obstacles confronting international organization generally. Even at the level of deciding who would participate, the indigenous peoples agonized over whether it should be limited to "traditional" people or open to all indigenous groups. Laying on class lines that separate indigenous people by their present vocation or language smacks of exclusivity, and it was partly the exclusivity of the official process that drove indigenous people together at Rio. A curious issue was whether a global Earth Parliament should draw from, or somehow depend on, national Earth Parliaments from each country. On one hand, it seems ironic to organize along the lines defined by the colonizers who typically diminished aboriginal lands and sovereignty. On the other, the absence of national level confederations of tribal people has effectively hampered the individual groups in their dealings with national governments.

Wold suggests that the exploration of options in the Earth Parliament debates may yield ideas applicable to the general search for more appropriate and participatory world environmental governance. He makes the case for having new and alternative entities to mediate and adjudicate international environmental issues.

Private enterprise must be an active partner, rather than an adversary, in all governmental and grassroots efforts to achieve a sustainable balance between the natural environment and human development. In CHANGING COURSE, Schmidheiny acknowledges that business has two options: to resist as long as possible or to join in shaping the future.
concerns can be converted into a source of competitive advantage rather than just a cost of doing business if enterprises and society as a whole emphasize efficiency and flexibility. BCSD predictably urges open markets and a level playing field in the international economic arena. But the report offers some innovative suggestions for financing Agenda 21 as well, such as matching aid funds for joint ventures in developing countries, grants for information access, and long-term partnerships for technology “cooperation.”

The 48 members of the BCSD signed the report as individuals, and it remains to be seen whether the enterprises they represent will internalize the concepts set forth in CHANGING COURSE. No matter what the outcome, perhaps the most important feature of the report is that it provides solid points of departure for multi-sectoral dialogue, de-emphasizes the antagonistic aspects and promotes the cooperative role that all stakeholders in private business can play in assuring economic and environmental sustainability, and articulates a new consciousness of the interrelatedness of people and enterprise.

The impact of UNCED will not be judged by the relative success or failure of a single one of its instruments or aspirations. The days of making global policy in a superpower vacuum are over. World governance will have to pay more attention to a balance of people than a balance of power. What lies ahead is a period of experimenting with new ways to integrate the public and private sectors, to reconcile national sovereignty with international sustainability, and to put the price tags for these efforts into long-term perspective. We don’t have much time for trial-and-error. There will be trials, but we can minimize the errors by learning to listen to all the voices raised at the Earth Summit.