

LESSONS LEARNED FROM UNCED

What lessons has the world community learned from the ambitious UN Conference on Environment and Development in Rio de Janeiro last June? What are the next steps on the international legal agenda to promote biodiversity and resource conservation? How could successor plenipotentiary conferences be more efficiently structured to promote substantive text?

The panel, sponsored by the International Environmental Law Interest Group, was convened at 8:30 a.m. Friday, April 2, 1993, by its Chair, Jutta Brunnée,* who introduced the panelists: Edward A. Parson, Harvard University; Parvez Hassan, World Conservation Union, Bonn; Elliot L. Richardson, Milbank, Tweed, Hadley & McCloy; and Richard N. Gardner, Columbia University School of Law.

ASSESSING UNCED AND THE STATE OF SUSTAINABLE DEVELOPMENT

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In order to seek "lessons" from the United Nations Conference on Environment and Development (UNCED), popularly known as the Earth Summit, we must not only observe what happened there, but also presume to evaluate it: to identify aspects of the two-year preparatory process, the two-week Conference, and subsequent follow-up that we deem successful and worthy of imitation, and other aspects that we deem failures. Ideally, we would also seek generalizable reasons for the success or failure of these aspects.

In this presentation, I will undertake three tasks: (1) I review and criticize the principal ways that UNCED has been evaluated; (2) I propose an alternative approach to evaluating attempts at international cooperation such as UNCED, and present a cautiously positive evaluation; (3) in part arguing against myself, I suggest that the scale of the environment-development problem is even greater than critics have acknowledged, and that at its heart is an intellectual incoherence that represents an even more serious obstacle to concrete progress than lack of political will or leadership.

Evaluating a massive event such as UNCED is a risky endeavor, particularly this close to the fact. The risk has deterred few, though; many commentators have already weighed in with their assessments. The reviews are mixed, with consistently different kinds of reasons advanced to argue success and failure.

Of the favorable reviews, many point simply to the event's enormous scale and pageantry. It was the largest international conference ever held, with political leaders from more than 150 countries, representatives from more than 1,400 NGOs, and 8,000 journalists in attendance. Two treaties were signed; two statements of principles and a massive forty-chapter "workplan" were negotiated. More than 100 heads of government sat together, for a few minutes, at a single, very large table.

Scale and pageantry are not entirely frivolous concerns. If the goal of the conference was to raise public and political consciousness and focus attention on envi-

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ronment and development issues, then those elements helped. It would surely be unsatisfactory, though, if all we got from spending this much of the world's money and scarce political attention were "the most expensive adult-education project in the history of the world" (as one NGO participant described UNCED).

Moreover, beyond the large volume of agreements negotiated, UNCED clearly did provide several concrete benefits. It created a salient political deadline that clearly forced negotiations on climate change and biodiversity to quick conclusions, although the treaties produced are arguably flawed. It focused the attention, not just of the public and news media, but also of political leaders on environment and development, at least for the few minutes it took them to be briefed. It similarly focused the attention of governments called upon to prepare national reports on their policies, laws and institutions relevant to environment and development. And it empowered and legitimized many nongovernmental organizations (NGOs), through their participation in preparing national reports and the conference itself, and the astonishing level of international NGO networking that occurred, including many NGOs that have been starved of resources or suppressed in their own countries.

In contrast, the negative reviews of UNCED have typically focused on the absence of particular desired items in the negotiated products. For example, the Conference has been condemned because the United States refused to sign the biodiversity treaty and excluded carbon dioxide targets and timetables from the climate treaty; because the negotiated documents failed to address, except in the most tactful of terms, high rates of population growth in the developing countries and high levels of material consumption in the industrial countries; and because the level of new Overseas Development Assistance (ODA) pledged by industrialized countries was so low.

The most thoughtful critics identify more basic grounds for negative assessment of UNCED, rooted in a deeply pessimistic view of the weakness of will and inherent lack of leadership of political leaders. In the views of these critics, the value of a political spectacle such as UNCED is to create a momentary crest of enthusiasm that can be used with sufficient skill to induce politicians *against their political self-interest* to commit to concrete, verifiable actions. These commitments, against which performance must be measurable, then become levers by which domestic advocates can apply political pressure to force real changes in policy.¹ In these terms, UNCED failed because no commitments made there by governments were sufficiently specific, measurable or enforceable.

I contend that the basic thrusts of both these assessments are mistaken. Judging success on the basis of the scale and grandeur of the event, the volume of text negotiated, and presumed contribution to long-run public education processes demands too little of the event. But judging failure because of the absence of particular commitments, or even the absence of specific, binding and verifiable commitments in general, demands too much. Besides the obvious weaknesses of this second approach—that strong declarations do not necessarily bring changes in behavior;² that on many of the UNCED issues nobody knows what the right commitments would be; and that the extent to which a commitment is binding

¹ See, e.g., Jim MacNeill, *The 1992 Rio Conference: Setting the Global Compass*, in CENTER FOR OUR COMMON FUTURE, *RIO REVIEWS* 33 (1992); and HELGE OLE BERGESON, *EMPTY SYMBOLS, OR A PROCESS THAT CAN'T BE REVERSED?*, Fridtjof Nansen Institute, Oslo, August 1992.

² Perhaps the most striking example of this phenomenon in the environmental field is the 1982 World Charter for Nature.

can be strongly contested due to intentional or unintentional ambiguities of drafting³—it is more generally the case that insisting on binding national commitments to verifiable, accountable actions, when major governments are unwilling to make them, demands what an international conference can rarely, if ever, deliver.

UNCED should be judged, instead, by how effectively it advanced the world toward its stated goal: the promotion of effective international action to protect the environment, to advance development, and to improve understanding and implementation of the linkages between the two. While this judgment cannot be made definitively so close to the event,⁴ I argue in a recent paper with two colleagues that international efforts to promote cooperation, on environment and development or on other issues, can be most effective when they provide three kinds of functions. All three are reasonably observable, and none requires extreme assumptions about the ability of international processes to override sovereign interests.⁵

First, international activity can raise the level of concern among governments about environment and development issues. This process is similar to the “adult education” approach to evaluation I criticized above, but is more focused on senior government officials and political leaders. International activity can raise their concern by disseminating information about environment and development issues, particularly if done in a way that is comprehensive, current, accessible and deemed credible by a wide range of government participants.

Second, international activity can provide a forum to help governments coordinate their policies and build cooperation. This can include relatively easy issues on which coordination is cheap and essential for effective action, such as coordinating international environmental monitoring or developing technical standards for environmental information exchange. But it can also include those more difficult issues on which policies must involve costly international public goods. On these matters, governments may be unwilling to act unilaterally, but willing to contribute their share, conditional on enough others doing so. International negotiations and conferences can then serve the purpose of increasing governments’ confidence that costly or risky (either economically or politically) environment and development measures they undertake will be reciprocated by enough others to make the political costs acceptable.

Finally, international action can support the exchange of resources—including not only funding, but also information, technology and experience—to increase national capacities to deal with environment and development issues.

On the basis of the extent of its contribution to these three functions, there are good grounds for a favorable evaluation of UNCED. *Agenda 21* is filled with provisions for developing and sharing information relevant to sustainable development that can serve to increase governmental concern.⁶

³ The tortured “commitments” language of the climate convention signed in Rio admits precisely this dissent. Governments have asserted both that it does, and that it does not, represent a binding carbon dioxide stabilization target.

⁴ Indeed, this judgment cannot be made cleanly even much later, for it requires making the counterfactual comparison, how would the world look if UNCED had not happened?

⁵ Peter M. Haas, Marc A. Levy, and Edward A. Parson, *Appraising the Earth Summit*, 34 ENVIRONMENT, October 1992, at 8.

⁶ It is unfortunate, though, that these provisions are principally written in terms of specific issue areas. For example, there are separate plans to improve management and distribution of information pertaining to forests, health, agriculture and climate, but no provisions to improve coordinated access to information across these issue areas.

The national reports that preceded UNCED, and that are likely to play a role in consideration of information by the Commission on Sustainable Development (CSD), can perform a similar concern-elevating function.⁷ Since governmental concern can be as effective when motivated by the desire to avoid embarrassment as when sincere, the Commission's provision for obtaining information to support its evaluations from nongovernmental and advisory organizations is particularly promising in this regard.⁸

The Ministerial segment of the CSD meetings can also serve to promote continued high-level political concern by exposing Ministers to public and political pressure and to jawboning from their peers. Because of the structure of the CSD's workplan, in which a different sectoral cluster of issues is considered each year, while other clusters of "cross-cutting issues" are considered every year, it has been decided that there will be a Ministerial segment at the conclusion of each year's meeting. This very frequency and regularity of Ministerial meetings, however, may mean that vigilance is required to maintain their effectiveness at promoting Ministerial concern. If through frequency the meetings come to seem routine, they may progressively lose their ability to command Ministers' attention; hence, the Commission's effectiveness would deteriorate.

The provision of a senior, highly competent, and we hope sufficiently funded CSD Secretariat, promises to promote coordination and cooperation among national governments. If CSD meetings mostly include senior, technically competent civil servants, well supported by an equivalently competent Secretariat, they will help develop the good working relations among technical and scientific staff in UN agencies, international organizations and national governments that are necessary to work out the nuts and bolts of policy coordination. Moreover, this same bureaucratic cooperation and relationship building is also necessary to develop the groundwork for the more politically delicate trades and pledges of reciprocal cooperation that Ministers must negotiate.

The charge of the Commission to review national and international policies with regard to their implications for sustainable development combines both raising concern and facilitating cooperation. It will at a minimum raise concern to avoid embarrassment, and will moreover contribute to each government's sense that its own and others' conduct will be monitored and reported. Knowing that all will be subject to the same scrutiny can help build the sense that one can take on obligations confident that one will not be exploited.

Finally, the workplans in *Agenda 21*, subsequent decisions and programs being established in other organizations⁹ show a thoroughgoing concern with developing institutional and technical capacity, particularly in governments of developing countries, to enable them better to monitor, make, implement and enforce policy.

The Vastness of the Task, the Smallness of our Understanding

In the meetings since Rio, there remains a strong sense of commitment to what many representatives perceive as a historic project of institution building. Much

⁷ Hard-negotiated text defining the CSD's plan of work continues to mention, but not require, national reporting as one of the Commission's means of gathering information.

⁸ Two particularly promising sources of high-quality, objective, nongovernmental information for the Commission's deliberations will be the Earth Council, a body established at the initiative of UNCED Secretary-General Maurice Strong, and the Secretary-General's newly established High-Level Advisory Body of Experts, fifteen to twenty-five experts who will serve the Secretary-General, the Senior Advisory Committee on Coordination, and the Commission in their individual capacities.

⁹ UNDP's "Capacity 21" initiative, for example.

of the effort under way is directed toward fulfilling the three functions that I argue hold the most promise of promoting effective international action. Based on these three functions, my assessment of UNCED is optimistic. But when the rate of accomplishments is compared to the magnitude of the job to be done, this optimism must be tempered.

Among the harshest criticisms of UNCED were those pointing to its failure to articulate an integration of environment and development. Though statements pertaining principally to environmental protection and principally to the promotion of development appeared in close proximity, the linkages between them remained unelaborated. Critics point particularly to the Rio Declaration, which can be interpreted cynically as a few environment principles for the North, with a few development principles for the South.¹⁰ These critics attribute this failing, and others, to a lack of political will and leadership. I contend that there is an even deeper failing responsible—that the environment and development agenda lacks intellectual coherence, and consequently does not make possible a clear, persuasive statement of how to integrate the two in law, policy and institutions.

In my view, this incoherence stems from a fundamental challenge that was cogently posed, but not answered, in the 1987 report of the UN World Commission on Environment and Development (the WCED, or Brundtland Commission). It was the Brundtland report that called for the international conference that eventually became UNCED. The report articulated, and denounced, what might be called the “old paradigm” of environment and development.

In the old paradigm, environmental protection is conceived in one of two ways: Either it is a programmatic activity separate from those of energy, industry, agriculture and forestry agencies, embodied in a separate operational agency—an approach that necessarily restricts environmental policy to going around cleaning up the effluent of others at the “end of the pipe”—or, alternatively, it is a constraint imposed on other activities embodied in a regulatory organization, possibly a central agency—an approach that necessarily creates a perception of opposition between the goals of protecting the environment and developing the economy. These two aspects of the old paradigm, and the tension between them, are imprinted on the legislation and institutions for environmental protection in virtually every nation, as well as internationally.

The Brundtland Commission’s denunciation of the old paradigm was detailed and cogent. But its articulation of an alternative view was much less so. It asserted that there is in fact no contradiction between the goals of environmental protection and development—that only our faulty thinking makes it seem so. It claimed, rather, that protecting the environment and developing the economy are inextricably linked goals, presented this claim through the deeply evocative term “sustainable development,” and supported it with a series of compelling examples of two kinds: (1) instances of environmental destruction so extreme as to ruin the very foundations of a region’s economy; and (2) instances of decisions by firms or industries to improve environmental performance that, either due to the very act of reducing a waste flow or as a side effect of the technical innovation necessary to do so, bring such unanticipated gains that both financial and environmental performance are improved.

Since the Brundtland report, the number of examples in both categories has increased. In effect, they now constitute a set of illustrations through which to

¹⁰ *E.g.*, David Runnalls, *Successes and Failures from Rio*, EARTH SUMMIT TIMES, June 15, 1992, at 7.