

ANEXOS / ANNEXES

DECLARACIÓN DE ESTOCOLMO SOBRE EL MEDIO AMBIENTE HUMANO (1972)

La Conferencia de las Naciones Unidas sobre el Medio Ambiente Humano, reunida en Estocolmo del 5 al 16 de junio de 1972, y atenta a la necesidad de un criterio y unos principios comunes que ofrezcan a los pueblos del mundo inspiración y guía para preservar y mejorar el medio ambiente humano,

I

Proclama que:

1. El hombre es a la vez obra y artífice del medio ambiente que lo rodea, el cual le da el sustento material y le brinda la oportunidad de desarrollarse intelectual, moral social y espiritualmente. En la larga y tortuosa evolución de la raza humana en este planeta se ha llegado a una etapa en que, gracias a la rápida aceleración de la ciencia y la tecnología, el hombre ha adquirido el poder de transformar, de innumerables maneras y en una escala sin precedentes, cuanto lo rodea. Los dos aspectos del medio ambiente humano, el natural y el artificial, son esenciales para el bienestar del hombre y para el goce de los derechos humanos fundamentales, incluso el derecho a la vida misma.

2. La protección y mejoramiento del medio ambiente humano es una cuestión fundamental que afecta al bienestar de los pueblos y al desarrollo económico del mundo entero, un deseo urgente de los pueblos de todo el mundo y un deber de todos los gobiernos.

3. El hombre debe hacer constante recapitulación de su experiencia y continuar descubriendo, inventando, creando y progresando. Hoy en día, la capacidad del hombre de transformar lo que le rodea, utilizada con discernimiento, puede llevar a todos los pueblos los beneficios del desarrollo y ofrecerles la oportunidad de ennoblecer su existencia. Aplicado errónea o imprudentemente, el mismo poder puede causar daños incalculables al ser humano y a su medio ambiente. A nuestro alrededor vemos multiplicarse las pruebas del daño causado por el hombre en muchas regiones de la tierra, niveles peligrosos de contaminación del agua, del aire, de la tierra y de los seres vivos; grandes trastornos del equilibrio ecológico de la biosfera; destrucción y agotamiento de recursos insustituibles y graves deficiencias, nocivas para la salud física, mental y social del hombre, en el medio ambiente por él creado, especialmente en aquel en que vive y trabaja.

4. En los países en desarrollo, la mayoría de los problemas ambientales están motivados por el subdesarrollo. Millones de personas siguen viviendo muy por

debajo de los niveles mínimos necesarios para una existencia humana decorosa, privadas de alimentación y vestido, de vivienda y educación, de sanidad e higiene adecuadas. Por ello, los países en desarrollo deben dirigir sus esfuerzos hacia el desarrollo, teniendo presente sus prioridades y la necesidad de salvaguardar y mejorar el medio ambiente. Con el mismo fin, los países industrializados deben esforzarse por reducir la distancia que los separa de los países en desarrollo. En los países industrializados, los problemas ambientales están generalmente relacionados con la industrialización y el desarrollo tecnológico.

5. El crecimiento natural de la población plantea continuamente problemas relativos a la preservación del medio ambiente, y se deben adoptar las normas y medidas apropiadas, según proceda, para hacer frente a esos problemas. De todas las cosas del mundo, los seres humanos son lo más valioso. Ellos son quienes promueven el progreso social, crean riqueza social, desarrollan la ciencia y la tecnología y, con su duro trabajo transforman continuamente el medio ambiente humano. Con el progreso social y los adelantos de la producción, la ciencia y la tecnología, la capacidad del hombre para mejorar el medio ambiente se acrece a cada día que pasa.

6. Hemos llegado a un momento de la historia en que debemos orientar nuestros actos en todo el mundo atendiendo con mayor solicitud a las consecuencias que puedan tener para el medio ambiente. Por ignorancia o indiferencia, podemos causar daños inmensos e irreparables al medio ambiente terráqueo del que dependen nuestra vida y nuestro bienestar. Por el contrario, con un conocimiento más profundo y una acción más prudente, podemos conseguir para nosotros y para nuestra posteridad unas condiciones de vida mejores en un medio ambiente más en consonancia con las necesidades y aspiraciones del hombre. Las perspectivas de elevar la calidad del medio ambiente y de crear una vida satisfactoria son grandes. Lo que se necesita es entusiasmo, pero, a la vez, serenidad de ánimo, trabajo afanoso, pero sistemático. Para llegar a la plenitud de su libertad dentro de la naturaleza, el hombre debe aplicar sus conocimientos a forjar, en armonía con ella, un medio ambiente mejor. La defensa y el mejoramiento del medio ambiente humano para las generaciones presentes y futuras se ha convertido en meta imperiosa de la humanidad, que ha de perseguirse al mismo tiempo que las metas fundamentales ya establecidas de la paz y el desarrollo económico y social en todo el mundo, y de conformidad con ellas.

7. Para llegar a esta meta será menester que ciudadanos y comunidades, empresas e instituciones, en todos los planos, acepten las responsabilidades que les incumben y que todos ellos participen equitativamente en la labor común. Hombres de toda condición y organizaciones de diferente índole plasmarán, con la aportación de sus propios valores y la suma de sus actividades, el medio ambiente del futuro. Corresponderá a las administraciones locales y nacionales, dentro de sus respectivas jurisdicciones, la mayor parte de la carga en cuanto al establecimiento de normas y la aplicación de medidas en gran escala sobre el medio ambiente.

También se requiere la cooperación internacional con objeto de allegar recursos que ayudem a los países en desarrollo a cumplir su cometido en esta esfera. Y hay un número cada vez mayor de problemas relativos al medio ambiente que, por ser de alcance regional o mundial o por repercutir en el ámbito internacional común, requerirán una amplia colaboración entre las naciones y la adopción de medidas para las organizaciones internacionales en interés de todos. La Conferencia encarece a los gobiernos y a los pueblos que aúnen esfuerzos para preservar y mejorar el medio ambiente humano en beneficio del hombre y de su posteridad.

II

PRINCIPIOS

Expresa la convicción común de que:

Principio 1

El hombre tiene el derecho fundamental a la libertad, la igualdad y el disfrute de condiciones de vida adecuadas en un medio ambiente de calidad tal que le permita llevar una vida digna y gozar de bienestar, y tiene la solemne obligación de proteger y mejorar el medio ambiente para las generaciones presentes y futuras. A este respecto, las políticas que promueven o perpetúan el *apartheid*, la segregación racial, la discriminación, la opresión colonial y otras formas de opresión y de dominación extranjera quedan condenadas y deben eliminarse.

Principio 2

Los recursos naturales de la tierra incluidos el aire, el agua, la tierra, la flora y la fauna y especialmente muestras representativas de los ecosistemas naturales, deben preservarse en beneficio de las generaciones presentes y futuras, mediante una cuidadosa planificación u ordenación, según convenga.

Principio 3

Debe mantenerse y, siempre que sea posible, restaurarse o mejorarse la capacidad de la tierra para producir recursos vitales renovables.

Principio 4

El hombre tiene la responsabilidad especial de preservar y administrar juiciosamente el patrimonio de la flora y la fauna silvestres y su hábitat, que se encuentran actualmente en grave peligro por una combinación de factores adversos. En consecuencia, al planificar el desarrollo económico debe atribuirse importancia a la conservación de la naturaleza, incluidas la flora y la fauna silvestres.

Principio 5

Los recursos no renovables de la tierra deben emplearse de forma que se evite el peligro de su futuro agotamiento y se asegure que toda la humanidad comparta los beneficios de tal empleo.

Principio 6

Debe ponerse fin a la descarga de sustancias tóxicas o de otras materias a la liberación de calor, en cantidades o concentraciones tales que el medio ambiente no puede neutralizarlas, para que no se causen daños graves o irreparables a los ecosistemas. Debe apoyarse la justa lucha de los pueblos de todos los países contra la contaminación.

Principio 7

Los Estados deberán tomar todas las medidas posibles para impedir la contaminación de los mares por sustancias que puedan poner en peligro la salud del hombre, dañar los recursos vivos y la vida marina, menoscabar las posibilidades de esparcimiento o entorpecer otras utilizaciones legítimas del mar.

Principio 8

El desarrollo económico y social es indispensable para asegurar al hombre un ambiente de vida y de trabajo favorable y para crear en la tierra las condiciones necesarias de mejora de la calidad de vida.

Principio 9

Las deficiencias del medio ambiente originadas por las condiciones del subdesarrollo y los desastres naturales plantean graves problemas, y la mejor manera de subsanarlas es el desarrollo acelerado mediante la transferencia de cantidades considerables de asistencia financiera y tecnológica que complemente los esfuerzos internos de los países en desarrollo y la ayuda oportuna que pueda requerirse.

Principio 10

Para los países en desarrollo, la estabilidad de los precios y la obtención de ingresos adecuados de los productos básicos y las materias primas son elementos esenciales para la ordenación del medio ambiente, ya que han de tenerse en cuenta tanto los factores económicos como los procesos ecológicos.

Principio 11

Las políticas ambientales de todos los Estados deberfan estar encaminadas a aumentar el potencial de crecimiento actual o futuro de los países en desarrollo y no

deberían coartar ese potencial ni obstaculizar el logro de mejores condiciones de vida para todos, y los Estados y las organizaciones internacionales deberían tomar las disposiciones pertinentes con miras a llegar a un acuerdo para hacer frente a las consecuencias económicas que pudieran resultar, en los planos nacional e internacional, de la aplicación de medidas ambientales.

Principio 12

Deberían destinarse recursos a la conservación y mejoramiento del medio ambiente teniendo en cuenta las circunstancias y las necesidades especiales de los países en desarrollo y cualesquiera gastos que pudieran originar a estos países la inclusión de medidas de conservación del medio ambiente en sus planes de desarrollo, así como la necesidad de prestarles, cuando lo soliciten, más asistencia técnica y financiera internacional con ese fin.

Principio 13

A fin de lograr una más racional ordenación de los recursos y mejorar así las condiciones ambientales, los Estados deberían adoptar un enfoque integrado y coordinado de la planificación de su desarrollo, de modo que quede asegurada la compatibilidad del desarrollo con la necesidad de proteger y mejorar el medio ambiente humano en beneficio de su población.

Principio 14

La planificación racional constituye un instrumento indispensable para conciliar las diferencias que puedan surgir entre las exigencias del desarrollo y la necesidad de proteger y mejorar el medio ambiente.

Principio 15

Debe aplicarse la planificación a los asentamientos humanos y a la urbanización con miras a evitar repercusiones perjudiciales sobre el medio ambiente y a obtener los máximos beneficios sociales, económicos y ambientales para todos. A este respecto deben abandonarse los proyectos destinados a la dominación colonialista y racista.

Principio 16

En las regiones en que exista el riesgo de que la tasa de crecimiento demográfico o las concentraciones excesivas de población perjudiquen al medio ambiente o al desarrollo, o en que la baja densidad de población pueda impedir el mejoramiento del medio ambiente humano y obstaculizar el desarrollo, deberían aplicarse políticas demográficas que respetasen los derechos humanos fundamentales y contasen con la aprobación de los gobiernos interesados.

Principio 17

Debe confiarse a las instituciones nacionales competentes la tarea de planificar, administrar o controlar la utilización de los recursos ambientales de los Estados con el fin de mejorar la calidad del medio ambiente.

Principio 18

Como parte de su contribución al desarrollo económico y social se debe utilizar la ciencia y la tecnología para descubrir, evitar y combatir los riesgos que amenazan al medio ambiente, para solucionar los problemas ambientales y para el bien común de la humanidad.

Principio 19

Es indispensable una labor de educación en cuestiones ambientales, dirigida tanto a las generaciones jóvenes como a los adultos y que preste la debida atención al sector de población menos privilegiado, para ensanchar las bases de una opinión pública bien informada, y de una conducta de los individuos, de las empresas y de las colectividades inspirada en el sentido de su responsabilidad en cuanto a la protección y mejoramiento del medio ambiente en toda su dimensión humana. Es también esencial que los medios de comunicación de masas eviten contribuir al deterioro del medio ambiente humano y difundan, por el contrario, información de carácter educativo sobre la necesidad de protegerlo y mejorarlo, a fin de que el hombre pueda desarrollarse en todos los aspectos.

Principio 20

Se deben fomentar en todos los países, especialmente en los países en desarrollo, la investigación y el desarrollo científicos referentes a los problemas ambientales, tanto nacionales como multinacionales. A este respecto, el libre intercambio de información científica actualizada y de experiencia sobre la transferencia debe ser objeto de apoyo y de asistencia, a fin de facilitar la solución de los problemas ambientales; las tecnologías ambientales deben ponerse a disposición de los países en desarrollo en unas condiciones que favorezcan su amplia difusión sin que constituyan una carga económica para esos países.

Principio 21

De conformidad con la Carta de las Naciones Unidas y con los principios del derecho internacional, los Estados tienen el derecho soberano de explotar sus propios recursos en aplicación de su propia política ambiental, y la obligación de asegurarse de que las actividades que se lleven a cabo dentro de su jurisdicción o

bajo su control no perjudiquen al medio ambiente de otros Estados o de zonas situadas fuera de toda jurisdicción nacional.

Principio 22

Los Estados deben cooperar para continuar desarrollando el derecho internacional en lo que se refiere a la responsabilidad y a la indemnización a las víctimas de la contaminación y otros daños ambientales que las actividades realizadas dentro de la jurisdicción o bajo el control de tales Estados causen a zonas situadas fuera de su jurisdicción.

Principio 23

Sin perjuicio de los criterios que puedan acordarse por la comunidad internacional y de las normas que deberán ser definidas a nivel nacional, en todos los casos será indispensable considerar los sistemas de valores prevalecientes en cada país y la aplicabilidad de unas normas que, si bien son válidas para los países más avanzados, pueden ser inadecuadas y de alto costo social para los países en desarrollo.

Principio 24

Todos los países, grandes o pequeños, deben ocuparse con espíritu de cooperación y en pie de igualdad de las cuestiones internacionales relativas a la protección y mejoramiento del medio ambiente. Es indispensable cooperar, mediante acuerdos multilaterales o bilaterales o por otros medios apropiados, para controlar, evitar, reducir y eliminar eficazmente los efectos perjudiciales que las actividades que se realicen en cualquier esfera puedan tener para el medio ambiente, teniendo en cuenta debidamente la soberanía y los intereses de todos los Estados.

Principio 25

Los Estados se asegurarán de que las organizaciones internacionales realicen una labor coordinada, eficaz y dinámica en la conservación y mejoramiento del medio ambiente.

Principio 26

Es preciso librar al hombre y a su medio ambiente de los efectos de las armas nucleares y de todos los demás medios de destrucción en masa. Los Estados deben esforzarse por llegar pronto a un acuerdo, en los órganos internacionales pertinentes, sobre la eliminación y destrucción completa de tales armas.

DECLARAÇÃO DO RIO SOBRE MEIO AMBIENTE E DESENVOLVIMENTO (1992)

A Conferência das Nações Unidas sobre Meio Ambiente e Desenvolvimento, Tendo-se reunido no Rio de Janeiro, de 3 a 21 de junho de 1992,

Reafirmando a Declaração da Conferência das Nações Unidas sobre o Meio Ambiente Humano, adotada em Estocolmo em 16 de junho de 1972, e buscando avançar a partir dela,

Com o objetivo de estabelecer uma nova e justa parceria global por meio do estabelecimento de novos níveis de cooperação entre os Estados, os setores chave da sociedade e os indivíduos,

Trabalhando com vistas à conclusão de acordos internacionais que respeitem os interesses de todos e protejam a integridade do sistema global de meio ambiente e desenvolvimento,

Reconhecendo a natureza interdependente e integral da terra, nosso lar,

Proclama:

Princípio 1

Os seres humanos estão no centro das preocupações com o desenvolvimento sustentável. Têm direito a uma vida saudável e produtiva, em harmonia com a natureza.

Princípio 2

Os Estados, de conformidade com a Carta das Nações Unidas e com os princípios do Direito Internacional, têm o direito soberano de explorar seus próprios recursos segundo suas próprias políticas de meio ambiente e desenvolvimento, e a responsabilidade de assegurar que atividades sob sua jurisdição ou controle não causem danos ao meio ambiente de outros Estados ou de áreas além dos limites da jurisdição nacional.

Princípio 3

O direito ao desenvolvimento deve ser exercido, de modo a permitir que sejam atendidas equitativamente as necessidades de gerações presentes e futuras.

Princípio 4

Para alcançar o desenvolvimento sustentável, a proteção ambiental deve constituir parte integrante do processo de desenvolvimento, e não pode ser considerada isoladamente deste.

Princípio 5

Todos os Estados e todos os indivíduos, como requisito indispensável para o desenvolvimento sustentável, devem cooperar na tarefa essencial de erradicar a pobreza, de forma a reduzir as disparidades nos padrões de vida e melhor atender as necessidades da maioria da população do mundo.

Princípio 6

A situação e necessidades especiais dos países em desenvolvimento, em particular dos países de menor desenvolvimento relativo e daqueles ambientalmente mais vulneráveis, devem receber prioridade especial. Ações internacionais no campo do meio ambiente e do desenvolvimento devem também atender os interesses e necessidades de todos os países.

Princípio 7

Os Estados devem cooperar, em um espírito de parceria global, para a conservação, proteção e restauração da saúde e da integridade do ecossistema terrestre. Considerando as distintas contribuições para a degradação ambiental global, os Estados têm responsabilidades comuns porém diferenciadas. Os países desenvolvidos reconhecem a responsabilidade que têm na busca internacional do desenvolvimento sustentável, em vista das pressões exercidas por suas sociedades sobre o meio ambiente global e das tecnologias e recursos financeiros que controlam.

Princípio 8

Para atingir o desenvolvimento sustentável e mais alta qualidade de vida para todos, os Estados devem reduzir e eliminar padrões insustentáveis de produção e consumo e promover políticas demográficas adequadas.

Princípio 9

Os Estados devem cooperar com vistas ao fortalecimento da capacitação endógena para o desenvolvimento sustentável, pelo aprimoramento da compreensão científica por meio do intercâmbio de conhecimento científico e tecnológico, e pela intensificação do desenvolvimento, adaptação, difusão e transferência de tecnologias, inclusive tecnologias novas e inovadoras.

Princípio 10

A melhor maneira de tratar questões ambientais é assegurar a participação, no nível apropriado, de todos os cidadãos interessados. No nível nacional, cada indivíduo deve ter acesso adequado a informações relativas ao meio ambiente de que disponham as autoridades públicas, inclusive informações sobre materiais e atividades perigosas em suas comunidades, bem como a oportunidade de participar em processos de tomada de decisões. Os Estados devem facilitar e estimular a

conscientização e a participação pública, colocando a informação à disposição de todos. Deve ser propiciado acesso efetivo a mecanismos judiciais e administrativos, inclusive no que diz respeito a compensação e reparação de danos.

Princípio 11

Os Estados devem adotar legislação ambiental eficaz. Padrões ambientais e objetivos e prioridades em matéria de ordenação do meio ambiente devem refletir o contexto ambiental e de desenvolvimento a que se aplicam. Padrões utilizados por alguns países podem resultar inadequados para outros, em especial países em desenvolvimento, acarretando custos sociais e econômicos injustificados.

Princípio 12

Os Estados devem cooperar para o estabelecimento de um sistema econômico internacional aberto e favorável, propício ao crescimento econômico e ao desenvolvimento sustentável em todos os países, de modo a possibilitar o tratamento mais adequado dos problemas da degradação ambiental. Medidas de política comercial para propósitos ambientais não devem constituir-se em meios para a imposição de discriminações arbitrárias ou injustificáveis ou em barreiras disfarçadas ao comércio internacional. Devem ser evitadas ações unilaterais para o tratamento de questões ambientais fora da jurisdição do país importador. Medidas destinadas a tratar de problemas ambientais transfronteiriços ou globais devem, na medida do possível, basear-se em um consenso internacional.

Princípio 13

Os Estados devem desenvolver legislação nacional relativa a responsabilidade e indenização das vítimas da poluição e outros danos ambientais. Os Estados devem ainda cooperar de forma expedita e determinada para o desenvolvimento de normas de direito internacional ambiental relativas a responsabilidade e indenização por efeitos adversos de danos ambientais causados, em áreas fora de sua jurisdição, por atividades dentro de sua jurisdição ou sob seu controle.

Princípio 14

Os Estados devem cooperar de modo efetivo para desestimular ou prevenir a realocação ou transferência para outros Estados de quaisquer atividades ou substâncias que causem degradação ambiental grave ou que sejam prejudiciais à saúde humana.

Princípio 15

De modo a proteger o meio ambiente, o princípio da precaução deve ser amplamente observado pelos Estados, de acordo com suas capacidades. Quando houver ameaça de danos sérios ou irreversíveis, a ausência de absoluta certeza

científica não deve ser utilizada como razão para postergar medidas eficazes e economicamente viáveis para prevenir a degradação ambiental.

Princípio 16

Tendo em vista que o poluidor deve, em princípio, arcar com o custo decorrente da poluição, as autoridades nacionais devem procurar promover a internalização dos custos ambientais e o uso de instrumentos econômicos, levando na devida conta o interesse público, sem distorcer o comércio e os investimentos internacionais.

Princípio 17

A avaliação de impacto ambiental, como instrumento nacional, deve ser empreendida para atividades planejadas que possam vir a ter impacto negativo considerável sobre o meio ambiente, e que dependam de uma decisão de autoridade nacional competente.

Princípio 18

Os Estados devem notificar imediatamente outros Estados de quaisquer desastres naturais ou outras emergências que possam gerar efeitos nocivos súbitos sobre o meio ambiente destes últimos. Todos os esforços devem ser empreendidos pela comunidade internacional para auxiliar os Estados afetados.

Princípio 19

Os Estados devem prover oportunamente, a Estados que possam ser afetados, notificação prévia e informações relevantes sobre atividades potencialmente causadoras de considerável impacto transfronteiriço negativo sobre o meio ambiente, e devem consultar-se com estes tão logo quanto possível e de boa fé.

Princípio 20

As mulheres desempenham papel fundamental na gestão do meio ambiente e no desenvolvimento. Sua participação plena é, portanto, essencial para a promoção do desenvolvimento sustentável.

Princípio 21

A criatividade, os ideais e a coragem dos jovens do mundo devem ser mobilizados para forjar uma parceria global com vistas a alcançar o desenvolvimento sustentável e assegurar um futuro melhor para todos.

Princípio 22

As populações indígenas e suas comunidades, bem como outras comunidades locais, têm papel fundamental na gestão do meio ambiente e no desenvolvimento, em virtude de seus conhecimentos e práticas tradicionais. Os

Estados devem reconhecer e apoiar de forma apropriada a identidade, cultura e interesses dessas populações e comunidades, bem como habilitá-las a participar ativamente da promoção do desenvolvimento sustentável.

Princípio 23

O meio ambiente e os recursos naturais dos povos submetidos a opressão, dominação e ocupação devem ser protegidos.

Princípio 24

A guerra é, por definição, contrária ao desenvolvimento sustentável. Os Estados devem, por conseguinte, respeitar o direito internacional aplicável à proteção do meio ambiente em tempos de conflito armado, e cooperar para seu desenvolvimento progressivo, quando necessário.

Princípio 25

A paz, o desenvolvimento e a proteção ambiental são interdependentes e indivisíveis.

Princípio 26

Os Estados devem solucionar todas as suas controvérsias ambientais de forma pacífica, utilizando-se dos meios apropriados, de conformidade com a Carta das Nações Unidas.

Princípio 27

Os Estados e os povos devem cooperar de boa fé e imbuídos de um espírito de parceria para a realização dos princípios consubstanciados nesta Declaração, e para o desenvolvimento progressivo do direito internacional no campo do desenvolvimento sustentável.

COMISIÓN DE DESARROLLO Y MEDIO AMBIENTE
DE AMERICA LATINA Y EL CARIBE,
INFORME "*NUESTRA PROPIA AGENDA*", 1990

(Excerptas)

(...) Nuestra región ha experimentado un proceso de democratización que no debe interrumpirse. Para alcanzar el desarrollo con equidad es necesaria una amplia participación de la sociedad civil en ese proceso. (p. IX).

(...) Hablar de derechos humanos (incluyendo el derecho a comer, a disponer de un techo, a la educación, a la salud, a tener ingresos, etc.), del medio ambiente, del apoyo a las democracias y a la diversidad cultural, tiene mucho mayor sentido cuando se lo hace en un contexto humano. (p. 14).

(...) Tampoco será posible el desarrollo sustentable sin una verdadera democracia. Si no profundizamos esa democracia para hacerla más participativa dándole mayor presencia a la sociedad civil y si no modernizamos las viejas estructuras de nuestros Estados para hacerlos más eficientes, será imposible que podamos romper las barreras que obstaculizan un desarrollo económico, social y ecológicamente viable. (...) Dentro de nuestra propia visión del desarrollo sustentable y como requisito a la vez de la democracia, el objetivo central de esa estrategia no puede ser otro que el mejoramiento de la calidad de vida para toda la población. Enfrentar la pobreza crítica que afecta a la mayoría de la población constituye en el presente la máxima prioridad para elevar la calidad de vida. (pp. 51-52).

(...) Un requisito fundamental es concebir una estrategia económico-social, que encuadrada dentro de los objetivos de un desarrollo sustentable, nos conduzca hacia una sociedad más igualitaria. (p. 78).

NOTE OF THE EXECUTIVE DIRECTOR
OF UNEP ON THE IMPLICATIONS OF THE
"COMMON CONCERN OF MANKIND"
CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES

*(To the UNEP Group of Legal Experts Meeting of Malta,
of 13-15 December 1990)*

(Excerpts)

1. In the course of the current decade we are up against a new range of global challenges: ozone layer depletion, global climate change, conservation of biological diversity being some of them. The global challenges proved to be difficult, if not impossible, to deal with on the basis of classic postulates of inter-state reciprocity of advantages, state-to-state liability, and traditional legal standing.

2. The world community is being faced with the necessity of prompt political and legal responses to cope with global environmental problems, which put at stake the very survival of human civilization, its present and future generations.

3. Some of possible responses can be found in newly emerged concepts of global commons, common heritage of mankind, intergenerational equity, ecological security. The most recent concept which is appropriate in this context is the concept of common concern of mankind.

4. The concept of "common concern of mankind" is deeply rooted in such concepts as common interest, global commons, common heritage of mankind and closely linked to the concept of inter-generational rights. Indeed, the significant controversies and conflicting interpretations which have appeared during application of the 'common heritage' approach in different areas like the law of the sea and space law inspired governments to choose another derivative, i. e., common concern, to serve concerted actions in equitable sharing of burdens in environmental protection, rather than of benefits from exploitation of the environmental wealths.

5. "Common concern" concept has at least two important facets: spatial and temporal. Spacial aspect means that common concern implies co-operation of all States on matters being similarly important to all nations, to the whole international community. Temporal aspect arises from long-term implications of major environmental challenges which affect the rights and obligations not only of present but also of future generations. (...)

16. A general approach to the concept of common concern which has been introduced in a number of international documents, represents at the current stage a holistic paradigm aimed mainly at the global climate issue. The paradigm needs in-depth conceptual elaboration to expand its application to all major environmental challenges.

17. Certain common elements can be tentatively deduced from the analysis of the international documents quoted above. First, they give evidence that the concept of "common concern" serves as a consolidating factor for East-West-North-South environmental dialogue in spite of existing geographical, economic and political differences. It can also be stated that the common concern has acquired global character (not excluding its regional manifestations). The obligation to cooperate which stems from the concept should involve all countries and all levels of concerted actions. The ecological inter-dependence, which transpierces world community, has obtained not only spatial, but also temporal (inter-generational) parameters. (...)

22. A number of authoritative international lawyers (W. P. Gormley, Judge R. S. Pathak, A. A. Cançado Trindade) have decisively linked environmental protection to the human rights issue. Indeed, from the 1972 Stockholm Declaration the environmental protection has been always seen in human dimension. This indicates another possibility to consider the common concern concept as applicable to protection of fundamental human rights, in particular, the right to healthy and safe environment. Yet another aspect to be considered are the inter-generational rights (i.e., temporal facet of the common concern of mankind). A number of scholars have already included these rights into the category of 'collective' or 'solidarity' rights. These 'third generation' human rights were described, *inter alia*, as rights of every human being and of all human beings taken collectively (UNESCO Symposium on New Human Rights: The Rights of Solidarity, Mexico City, 1980, p. 30).

23. One more implication of temporal aspect of the "common concern of mankind" concept consists in the fact that many environmental effects manifest in a long time manner, what makes their predictability and timely mitigation a rather complicated and low-reliable matter. This again reinforces an already established assumption of vital importance and preferability of precautionary approach to any activity which may seriously affect common environmental concerns.

24. Along with new set of legal rights and obligations the concept of "common concern of mankind" triggers further institutional developments. The first step would be an enhanced use of the existing international institutions. This trend is easily detectable in recent international law developments. Both the 1986 Convention on Early Notification of a Nuclear Accident and the 1986 Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency upgrade the participation of the IAEA in submitting notifications and other relevant information and in rendering assistance. (...)

26. Joint efforts of governments, scientific community, scholars and public opinion are of crucial importance for the concept of "common concern of mankind" [so that it] does not rest as just a vague political formula, which could be used to legitimize lack of concrete actions by simply declaring an environmental concern. Only based on such efforts the concept may acquire necessary legal validity, thus transforming in a source of wide range of action-oriented binding obligations. The development of the concept of "common concern of mankind" would be not only of theoretical significance, but in the first place of practical viability for international law-making processes currently on the agenda. The nearest opportunity to test legal validity of the emerging theoretical hypotheses are the forthcoming negotiations on global climate and biological diversity conventions. The preparation of these conventions, if successfully accomplished, would create a unique input into the substantial content of the 1992 U. N. Conference on Environment and Development.

REPORT OF THE I MEETING OF THE UNEP
GROUP OF LEGAL EXPERTS TO EXAMINE THE
IMPLICATIONS OF THE "COMMON CONCERN OF MANKIND"
CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES
(Malta, 13-15 December 1990)

The UNEP Group of Legal Experts to Examine the Concept of the "Common Concern of Mankind" on Global Environmental Issues held its first Meeting in Malta, on 13-15 December 1990. The Meeting was organized jointly by the United Nations Environment Programme (UNEP), the Ministry of Foreign Affairs and Justice of Malta and the University of Malta. The Group of Legal Experts was made up of the following participants: Dr. Mostafa K. Tolba (UNEP Executive Director and Chairman of the Group), Judge Manfred Lachs (International Court of Justice), Ambassador Julio Barboza (Argentina), Professor Antônio A. Cançado Trindade (Brazil), Mr. Tang Cheng Yun (China), Mr. Frank X. Njenga (Kenya), Mr. Patrick Szell (United Kingdom), Mr. Ajai Malhotra (India), Professor David Attard (Malta), Dr. N. Hassan Wirajuda (Indonesia), Dr. Iwona Rummel Bulska (UNEP), Dr. Alexandre Timoshenko (U.S.S.R.), and Mr. Lal Kurukulasuriya (Sri Lanka). Professor A.A. Cançado Trindade and Professor David J. Attard were designated *co-rapporteurs* of the Group. The following is a report of the four rounds of discussions held at the first meeting of the UNEP Group of Legal Experts on the "Common Concern of Mankind" Concept.

2. In the first round of discussions attention was centred on the origin, contents, rationale and implications of the concept of common concern of mankind. It was initially recalled that in the past the notion of *international* concern had been resorted to in the practice of U.N. organs in dealing with cases pertaining to the protection of human rights and self-determination of peoples, thus operating a reduction of the domain of domestic jurisdiction of States. This evolution was pushed forward by the judicial recognition in the *Barcelona Traction* Case (2nd Phase, 1970) that certain issues were the concern of all States creating obligations *erga omnes*. The present concept of *common concern of mankind*, which found expression in U.N. General Assembly Resolution 43/53 of December 1988 wherein climate change was so characterized, went much further, disclosing a pronounced temporal and social dimension (*infra*), and focusing on issues which were truly fundamental to all mankind. The concept was also being considered in other contexts of environmental law (such as biological diversity).

3. Still with regard to the origins of this new concept, there was general agreement that the distinct notion of common heritage of mankind had been marked by controversies around the element of exploitation of resources (e.g., of the seabed

and ocean floors beyond national jurisdiction). The more recent concept of common concern of mankind, in its turn, did not have such proprietary connotations and this proved more suitable to address global environmental issues (e.g., depletion of ozone layer and global climate change); hence its apparent growing acceptance, in the context of such global issues (e.g., the 1989 Hague Declaration, the 1990 Langawi Declaration), in the last three years, with the emphasis on the element of *protection*. It was pointed out that regimes of protection have a specificity of their own, based upon considerations of *ordre public*, transcending reciprocity,

4. The UNEP Secretariat Note on the Common Concern of Mankind Concept, circulated to participants, proved to be a thoughtful and useful basis for discussion of the contents and rationale of the concept. The starting-point of the debates which followed was the general recognition of the legitimate interest of mankind to concern itself with issues pertaining to global climate change (even when activities took place within a country's territory). Hence the notion of *commonness* (affecting all humankind). A global threat to the environment could become a common concern of mankind, bringing to the fore the notion of obligations *erga omnes*. It was recalled that pertinent elements could be detected in explanatory theories, such as: the idea of freedom of access and equitable sharing by all (doctrine of *res communis*), the idea of non-appropriation and *gestion* under public law (doctrine of international public domain), the idea of protection of a common good and extending the beneficiaries to future generations (doctrine of [public] trust). Hence the constitutive elements of common concern, namely: involvement of all countries, all societies, and all classes of people within countries and societies; long-term temporal dimension, encompassing present as well as future generations; and some sort of sharing of burdens of environmental protection (*infra*).

5. It was suggested that the concept of common concern of mankind ought to be approached from a novel juridical perspective. The term *mankind* from the start disclosed the link with the human rights framework (*infra*) and the long-term temporal dimension (encompassing also future generations). The term *concern* suggested a primary focus on the *causes* of the problems (e.g., emissions of certain gases to the atmosphere causing severe environmental degradation to the detriment of the humankind), thus stressing the *preventive* character of environmental protection (the general obligation of due diligence); but it also focused on consequential effects or *responses* to be taken (e.g., application of pollution control standards, recognition of rights of action at national and international levels, and establishment of institutional framework for protection). The term *common* (as in "common concern") was employed in a same and parallel way as "public" (as in "public order") in domestic law, given the decentralization of the international legal order; the notion of "common concern" appeared thus closely related to such concepts as "obligations *erga omnes*", "*jus cogens*", "common heritage" and "global commons". Attention was drawn to the distinct connotations — if not ambiguities

— in the common law system of the term *interest*, which, however, were not present in the civil law system, thus allowing in the light of this latter to speak of a "common interest of mankind".

6. As to the implications of the concept of common concern of mankind, it was first pointed out that the present discussions of the UNEP Group of Legal Experts meant to lay down the normative basis for the ongoing negotiating process preparatory to the 1992 U.N. Conference of Environment and Development (working out of normative principles); hence the need to clarify the concept at issue, from which — once definitively accepted by the international community — rights and obligations would flow in the near future when dealing with global environmental issues. The need of relating preventive with corrective measures was also stressed: it was commented that the current corrective measures are here being approached from an intra-generational perspective, while preventive measures seem to lend themselves more easily to an inter-generational perspective.

7. Another implication was identified in the need to conciliate the global treatment that issues, such as climate change, require with the differential treatment that many countries (e.g., developing countries) require. The 1987 Montreal Protocol on Substances that Deplete the Ozone Layer was recalled in that connection. There was special emphasis on the need to balance sovereign rights of States with the interests of the international community in respect of environmental protection (Principle 21 of the Stockholm Declaration on the Human Environment having been referred to in that respect); this question brought to the fore the central issue of the *sharing of burdens* in environmental protection.

8. In fact, the whole second round of discussions centred on this last point. The majority of participants supported the notion of *equitable* sharing of burdens, whereas some preferred the expression *fair* sharing of burdens. The former recalled the application of equitable considerations in the law of the sea maritime delimitation; the latter referred to the distinct connotations of the equitable principle. There was general agreement, however, that some sort of sharing of burdens there must certainly be. Some experts regarded sharing of burdens as an important subsidiary principle instrumental in the application of the common concern of mankind concept itself (collective or concerted actions); other experts went further, in expressing the view that the success or failure of the very concept of common concern of mankind would ultimately depend on the recognition or acceptance of the principle of equitable sharing of burdens.

9. It became clear that the present debates related essentially to the sharing of costs and benefits of environmental protection. *All* countries shared a common concern for the protection of the global environment and *all* countries had to contribute to the achievement of that protection: equitable sharing of burdens meant however that often some countries were to give greater contributions to that effect than others (the example of the 1987 Montreal Protocol having again been invoked in that connection). The experts developed two sets of considerations, in the form of

guiding principles in that regard. First, in the present context equitable or fair sharing of burdens meant much heavier burdens on developed countries, proportional to their historical and present responsibility for atmospheric pollution, and for excessive levels of *per capita* emissions of gases deteriorating the atmosphere (application of the "main responsibility" principle). Secondly, in the present context equitable or fair sharing of burdens also meant, rather than imputation of liability and responsibility on States, the account to be taken of the distinct economic, financial and technological capabilities of States to contribute to the resolution of this problem (preventive and corrective action). Both guiding principles were to be taken into consideration.

10. It was exemplified that conversion of means of production so as not to emit harmful substances into the environment required technology transfer (to developing countries) at affordable cost and technical and financial assistance (to developing countries) at much higher levels, which could only be achieved if developed countries came to regard them as duties emanating from the common concern of mankind concept in respect of adverse climate change. The opinion was voiced that it was impossible to detach "common concern" (linked to common responsibilities) from issues such as poverty and underdevelopment, and that environmental considerations should thus not be advanced to introduce conditionalities in development financing. It was agreed that obligations should here be met in accordance with the capacities of the countries (equitable or fair sharing of burdens *in response* to a common concern of mankind).

11. The third round of discussions centred on the relationships between environmental protection and human rights protection. It was initially pointed out that resort to the concept of common concern of mankind, besides disclosing the link with the human rights framework, warned that one was here before a crucial question of *survival*, which brought to the fore the fundamental right of all to live in a clean, safe and healthy environment. Hence the fundamental importance of the human rights framework also for environmental protection. Some participants recommended that the theory of "generations of human rights", in particular, was preferably to be avoided in view of its inadequacies. There was on the main issue general agreement that environmental protection and human rights protection were in fact linked and could not be divorced from each other, and that emphasis should here be laid on fundamental rights.

12. The framework of human rights, with emphasis on social dimension and participation, was regarded as more appropriate than the framework of international ecological security, with emphasis on the State system, for approaching global environmental issues. It was pointed out that the preventive dimension was present in both environmental protection and human rights protection (in the instruments of protection themselves, in their evolutionary interpretation, in the evolving notion of *potential* victims). It was considered important to bring together the evolutions of environmental protection and human rights protection; they disclosed many

affinities and both underwent a process of globalization. It was argued that a bridge between the two lay in the fundamental rights to life and health in their wide dimension, comprising negative as well as positive measures, resting at the basis of the *ratio legis* of the two regimes of protection and paving the way for the recognition and crystallization of the right to a healthy environment. It was further argued that the protection of vulnerable groups (e.g., indigenous populations) lay at the basis of environmental protection and human rights protection, thus disclosing the need to bring together human and environmental considerations. The need was pointed out to develop further attention and research on the question of the implementation of the right to a healthy environment, in its individual and collective dimensions.

13. The fourth and last round of discussions concentrated on the alternative to a Convention — either on Climate or on Biological Diversity — to be adopted at the forthcoming 1992 U.N. Conference on Environment and Development. It was stressed that such [future] Convention should attract support from as many countries as possible. In case it were not adopted at the 1992 Conference, the possibility of a Code of Conduct was raised; other alternatives mentioned were a Declaration of Principles (by the U.N. General Assembly) or else a Framework of Principles and Guidelines. It was suggested that, should a Convention not be reached by 1992, the negotiatory process should continue even after that date, as one should not sacrifice content for expediency.

14. At the end of the debates, it became clear that a couple of points remained to be considered in due course, e.g., issues pertaining to the implementation of the "common concern" concept, to the ways and means whereby the concept could develop into an institution of public international law, to the methods to be devised for implementation, and to the corresponding organizational framework. It was decided that the UNEP Group of Legal Experts on the "Common Concern of Mankind" Concept was to hold its second meeting in the last week of March 1991, at a place still to be determined.

Professor A.A. CANÇADO TRINDADE
Professor D.J. ATTARD
Co-Rapporteurs of the UNEP Group of Experts

REPORT OF THE II MEETING OF THE UNEP
GROUP OF LEGAL EXPERTS TO EXAMINE THE
IMPLICATIONS OF THE "*COMMON CONCERN OF MANKIND*"
CONCEPT ON GLOBAL ENVIRONMENTAL ISSUES
(Geneva, 20-22 March 1991)

1. The first meeting of the UNEP Group of Legal Experts to examine the concept of the common concern of mankind in relation to global environmental issues was held in Malta on 13-15 December 1990. The meeting was organized jointly by the United Nations Environment Programme (UNEP), the Ministry of Foreign Affairs and Justice of Malta and the University of Malta.

2. The second meeting took place in Geneva on 20-22 March 1991 and was attended by Dr. Mostafa K. Tolba (UNEP Executive Director), Prof. Antônio A. Cançado Trindade (Brazil), Prof. Sun Lin (China), Mr. Frank X. Njenga (Kenya), Mr. Ajai Malhotra (India), Prof. David Attard (Malta), Ambassador Juan Antonio Mateos Cicero (Mexico), Mr. Alexandre Timoshenko (USSR), Mr. Amdan Mat Din (Malaysia), Mrs. Iwona Rummel-Bulska (UNEP). The session had five rounds of discussions.

3. In his introductory statement the Executive Director of UNEP Dr. Mostafa K. Tolba drew the attention of the participants to the growing interest of States in the concept of common concern of mankind particularly within the context of negotiations on legal instruments on climate change and conservation and sustainable use of biological diversity. He identified the following aspects of the concept of common concern of mankind which require further consideration and elaboration by the Legal Experts:

- possible implications of the concept for specific obligations in the relevant international treaties;
- implication for the human right to a healthy environment;
- implications with respect to the issues of equitable burden-sharing and fair compensation.

Several other issues were identified as requiring consideration by the Legal Experts:

- elaboration of an Earth Charter as a possible outcome of the United Nations Conference on Environment and Development;
- environmental implications of the Gulf War.

4. During the general discussion on the concept of common concern of mankind, the Experts reiterated that the concept still has no legal consequences in terms of rights and duties. It was stressed that the concept should not infringe the

sovereign right of States and, in this context, a point was raised whether it is desirable to narrow down the scope of the concept and its application and to confine it to global environmental issues which may cause significant adverse effects upon the environment. It was re-emphasized that the common concern concept was not meant to substitute the concept of common heritage. There was a general understanding that at the current stage the common concern of mankind may serve as a guiding principle rather than as a legal rule. The responsibility and cooperation aspects of the concept were further emphasized.

5. While discussing the practical application of the common concern concept, it was stressed that the current global environmental agenda has been tailored mainly according to the interests of the developed countries. The world community needs an improved and comprehensive international environmental agenda which should also incorporate the issues of particular concern to developing countries, e.g., eradication of poverty, desertification, soil erosion, health, education, nutrition, urbanisation and housing. It was agreed that more attention by the international community would be required with respect to environmental protection of global commons. The provision of a life of dignity to all in a clean, safe and healthy environment should be a matter of common concern of mankind.

6. The subject of equitable and fair burden-sharing was discussed in detail at the first meeting of the Group. It was re-emphasized by the Experts as an important implication of the common concern concept. It was agreed that the use of the term "equitable" would be preferable because of its acceptance by general international law and in particular, in relevant decisions of the International Court of Justice. At the same time it was pointed out that the principle of fair burden-sharing and compensation could be applicable in some specific cases (e.g., access to biological diversity resources).

7. The Experts considered the principles relating to common concern of mankind which could be reflected in a possible Convention on Biological Diversity. It was acknowledged that each State had the full sovereign right to exploit its natural resources. It was also felt that the informal innovation by local peoples — the concept of farmers' rights — would also need to be recognized and duly rewarded. The Experts stressed that the additional burden on developing countries, due to the protection of their biological diversity, must be recognized in any protection of their biological diversity, and met by new and additional funding to be provided by the developed countries. It was stressed that the benefits of research in bio-technology should be equitably shared and made available to the developing countries which, in most cases, were the original source of the gene pools on which the research was based. The Experts further emphasized the importance of recognition of the direct linkage between the conservation of biological diversity in developing countries and access to their bio-material, with: (a) the access of developing countries to end products made by using their bio-material and to the relevant technologies, and (b) the equitable sharing of the benefits and profits from

such use of bio-material with the country of origin of such bio-material. In interpreting equitable considerations one has to be innovative. It should be a legal reflection of a full scale global partnership, which simultaneously seeks to protect the environment while looking to the upliftment of the developing countries.

8. Against the background of the consideration of the issue at their first meeting, the Experts further examined the human right to a safe and favourable environment given the growing attention of the world community to the subject. It was acknowledged that this issue had important implications for developing countries' problems with direct bearing on living conditions such as eradication of poverty, demographic pressures, health and sanitation, education, nutrition, housing and urbanization, and for translating the internationally accepted right to development into reality.

9. A discussion was held on a possible new code of international environmental principles (e.g., in the form of an Earth Charter) to be elaborated by the 1992 United Nations Conference on Environment and Development. It was felt that the principles and recommendations emanating from the 1972 Stockholm Conference on Human Environment needed to be re-assessed. The Experts pointed out that the possible new code should place further emphasis on addressing the issues of environment and development in an inter-related manner. While not incorporating legal obligations such a code could be an authoritative statement of the world community on the issues of environment and development.

10. The matter of institutional authority in respect of issues characterized as common concern of mankind was raised. Suggestions as to which institutional authority this may be were considered, such as the U.N. General Assembly, the Security Council, the International Court of Justice (chambers), and strengthening the role of the UNEP Governing Council.

11. In the deliberations on the issue of the ecological warfare its relevance to the environmental consequences of the Gulf War was examined. It was acknowledged that war produces environmental harm even when the specific objective was not to inflict environmental damage. The following means and methods of the hostile activities harmful to the environment were identified: a) warfare of any kind with environmental implications; b) ecological warfare where the environment, its components or ecological processes are used as weapons. The magnitude of potential environmental damage has expanded considerably as a result of development and availability of more powerful and sophisticated weaponry.

Acknowledging the complexity of defining "ecological warfare" the Experts put forward certain preliminary considerations:

- deliberate use of the environment: as a means of destruction, damage, or injury; and

- the extent of environmental damage incurred in relation to the widespread, long-lasting or severe effects.

In this respect the term "ecological aggression" as an alternative to the term "ecological warfare" was suggested. It was recognized that the difficulties to define "ecological warfare" went along with the difficulties to apply existing law. In particular, a possible applicability of the 1977 First Additional Protocol to the 1949 Geneva Conventions on Humanitarian Law and of the 1977 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques was considered.

12. It was emphasized that ecological warfare could cause injury, not only to the hostile States themselves, but also to third States, and to the environment including areas beyond national jurisdiction, to the international community as a whole, thus making it a common concern of mankind. Within the context of ecological warfare, the problem of ecological refugees was raised; it was suggested that this issue should also be considered in broader terms covering ecologically displaced persons.

13. The Experts discussed various options for legal remedies against ecological warfare. There was a proposal to qualify ecological warfare as an international crime. A need was emphasized for a wider involvement of the U.N. General Assembly with respect to ecological warfare/ecological aggression.

14. It was strongly felt that the UNEP Governing Council should play a prominent role in the study and consideration of the environmental ramifications of ecological warfare/ecological aggression. The appropriateness for the UNEP Governing Council's preventive and remedial actions with respect to ecological warfare/ecological aggression was emphasized.

15. The Experts identified the following aspects which would require further consideration, *inter alia*:

- ecological harm caused by warfare of any kind;
- the use of the environment as an instrument of war;
- protection of sites having specific ecological value and vulnerability of sites with destructive potential to the environment;
- prohibition of certain categories of weapons of mass destruction;
- ecological refugees/ecologically displaced persons;
- damage beyond the territories of the hostile parties;
- implications for common concern of mankind;
- legal remedies and institutional mechanism.

16. In view of the complexity and variety of implications of ecological warfare/ecological aggression, the Legal Experts felt that a thorough and detailed study of the subject was required. For this purpose the Group could hold two or more meetings in 1991 after the 16th session of the UNEP Governing Council. Such

a study would cover a substantive report on ecological warfare/ecological aggression containing not only a detailed investigation of the issue, but also recommendations on possible global responses and the relevant role of the U.N. system.

17. Upon being requested, the Legal Experts considered a number of issues concerning the Antarctica which had been raised at the 45th session of the U.N. General Assembly. Given the timing of the current negotiations on Antarctica issues and the sensitivity involved the Experts felt that certain constraints existed. The Experts further felt that these issues should be reassessed at a later stage, when the results of the forthcoming negotiations become available. However, in the Experts' view any serious deterioration of the environment in the Antarctica would be unwise and should be avoided. If appropriate, this issue could also be further examined when this Group of Legal Experts next meet.

UNEP Secretariat

**REPORT OF THE UNITED NATIONS DECADE
OF INTERNATIONAL LAW SYMPOSIUM
ON DEVELOPING COUNTRIES AND
INTERNATIONAL ENVIRONMENTAL LAW
(Beijing, China, 12-14 August 1991)**

INTRODUCTION

A Symposium on Developing Countries and International Environmental Law was sponsored by the Chinese Government in Beijing, China, on 12-14 August 1991, which was organized by the Ministry of Foreign Affairs of China with the cooperation of the United Nations, the United Nations Environment Programme, the Ford Foundation, China's National Environmental Protection Administration, the Chinese Society of International Law and the Environmental Law Institute of Wuhan University.

The Symposium was attended by Experts from both developing countries and developed countries and from relevant international organizations. Dr. Mostafa Tolba, Executive Director of the United Nations Environment Programme (UNEP), the Honorable Mr. Ni Zhengyu, Judge of the International Court of Justice (ICJ), Dr. F. Njenga, Secretary-General of the Asian-African Legal Consultative Committee (AALCC), and Mr. Wang Tieya, Vice-Chairman of the Chinese Society of International Law (CSIL) also participated in the Symposium as special invitees.

OPENING ADDRESSES

In his opening address, H. E. Mr. Qian Qichen, State Councillor and Minister of Foreign Affairs, stressed the importance of international environmental law. He said that international environmental law is growing into an important field of progressive development and codification of international law and that during its development process, many new concepts and new ideas have emerged which call for in-depth study and discussions by jurists of various countries. He also said that the key issue here is whether or not the developed countries will truly understand the special conditions and needs of the developing countries, give their sincere accommodation to such conditions and needs, and translate such understanding and accommodation into international instruments in the form of corresponding rights and obligations.

In his statement titled "Tapping Our Boundless Creativity", Dr. M. Tolba, Executive Director of UNEP, elaborated profoundly on various important aspects of the development of international environmental law. He said that writing laws to

save our planet constitutes an entirely new challenge in the long tradition of law. An international treaty to deal with global environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of indigenous techniques and technologies, is not worth its weight in paper. International environmental laws need to build regimes which ensure that additional financial resources are available to enable developing countries to acquire cleaner technologies. The only guarantee that international environmental law will continue to develop into a comprehensive body of working legal instruments so badly needed is to ensure that we anticipate new environmental problems and prevent them and correct the existing damage.

Mr. Qu Geping, Director of China's National Environmental Protection Administration, said in his speech that China has attached great importance to environmental protection and that China has always held a positive and prudent attitude towards the law-making activities of international environmental law.

On behalf of Mr. K. Fleischauer, Under-Secretary-General, the Legal Counsel of the United Nations, Mr. A. Adede congratulated the convocation of this Symposium and conveyed his conviction that the Symposium will indeed make a tangible contribution to the implementation of the programmes of the United Nations Decade of International Law.

In the afternoon, H. E. Mr. Li Peng, Premier of the State Council of the People's Republic of China, received all the participants in Zhongnanhai.

SUMMARY OF PROCEEDINGS

In the first session of the Symposium, the participants elected Professor Sun Lin, Director of the Treaty and Law Department of China's Foreign Ministry, Chairman of the Symposium. Professor Antônio A. Cançado Trindade from Brazil and Mr. Ajai Malhotra from India were elected *Rapporteurs*. Mr. Liu Daqun from the Treaty and Law Department of the Chinese Foreign Ministry was appointed Secretary.

In his introductory remarks, Professor Sun Lin, Chairman of the Symposium, said that the purpose of the Symposium is to strengthen the common understanding of the international community, the developed and developing countries in particular, to enhance the development of international environmental law and to narrow down their differences. He also said that he has been in the hope that this Symposium could serve as a starting point of a long process with a view to having some preliminary results.

A summary report, following a wide-ranging exchange of views in which on some aspects differing perceptions were put forward in a constructive spirit, follows:

Common Concern of Mankind

It was felt that the recently emerged concept of common concern of mankind was sufficiently flexible to warrant its general acceptance as providing a broad basis for the consideration of global environmental issues. It was this flexibility that made the concept readily acceptable. To attempt to provide it with specific attributes or legal connotations at this stage would perhaps not serve the interest of its further development. Acknowledging that protection of the environment and development were indivisible and could not be considered in isolation from each other, it was felt that the concept of common concern of mankind should relate both to environment and to development.

Sharing of Burdens

It was emphasized that underlying the concept of "common concern" was the requirement to forge a global partnership on the international plane which would simultaneously seek to protect the environment while addressing the developmental needs of the developing countries. Accordingly, the developed countries, being primarily responsible for the historic and current emission of pollutants into the environment, bore the main responsibility for cleaning up the environment. This widely-accepted "main responsibility" principle must provide the basis for action in the environmental field. Moreover, if one were to consider the financial, economic, scientific and technological capabilities for undertaking such corrective action relating to the environment, it becomes quite clear that it is the developed countries which must shoulder most of the burdens. Equally, the developing countries must participate in efforts to clean up the environment, taking into account their own specific capabilities and their national plans, programmes and priorities relating to development and the environment.

Sovereign Rights

International cooperation in the field of environment and development must fully respect the sovereign rights of States. Its role should be to support and supplement, not to supplant, national efforts.

Funding and Technology Transfer

It was agreed that adequate, new and additional funding should be required by developing countries to enable them to join in international cooperative efforts to protect the environment. It was stressed that transfer of environmentally sound technologies to the developing countries should be made available on a preferential and non-commercial basis. Such technologies should not simply become another

source of excessive commercial profit for the developed world. It was stressed that the Multilateral Fund set up under the Montreal Protocol and the system of its management and control provided an excellent example to be emulated as and when other funding mechanisms were established under international legal instruments presently being negotiated. While reference was made to the Global Environmental Facility, it was, however, felt that in its present form the GEF was quite inadequate in addressing the pressing environmental concerns of the developing countries. There was also a consensus that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing.

Special Needs of Developing Countries

It was felt that unless widespread and abject poverty in the developing countries was tackled head on, the international community would not be avoiding at its own peril facing up to a major contributor to environmental degradation in the developing world. The environmental problems of developing countries were often a reflection of the inadequacy of development. Addressing these environmental problems in their totality and in a balanced manner would require that full cooperation be extended to the developing countries in their efforts to break the vicious circle linking poverty, underdevelopment and environmental degradation. Special attention would have to be given to the particular needs and concerns of the least developed countries. Solution of global environmental problems would have to be accompanied by solution of the problem of global poverty.

The concept of "sustainable development" included the fostering of economic growth, the meeting of basic domestic needs (including in areas such as health, nutrition, education and housing) and the eradication of poverty so as to provide to all a life of dignity in a clean, safe and healthy environment. While considering the concept of "sustainable development", it was important to remember that its major focus had to be on the "development" aspect of the concept.

Environmental Protection and Human Rights

There was general consensus that there were linkages between the domain of environmental protection and that of human rights, provided mainly by the focus on certain fundamental rights (*inter alia*, the right to life and the right to health). It was further indicated that the emergence of the right to a healthy environment and the right to development was meant to enhance rather than to restrict, other rights, given their indivisibility and interrelatedness. It was generally felt that

environmental protection also amounted ultimately to a quest for survival and the protection of human health.

Settlement of Disputes

Several mechanisms of dispute-settlement appropriate for environmental protection were surveyed; particular emphasis was laid on dispute-avoidance by means of exchange of information or consultation. It was felt that any new legal instruments which may be negotiated should contain in-built mechanisms for settlement of disputes; reference was, in this context, made to the mechanism for dispute-settlement contained in the 1985 Vienna Convention on the Protection of the Ozone Layer as a good model to be followed.

RECOMMENDATIONS

During the discussions, the following areas were identified as requiring further consideration for the progressive development of international environmental law in the context of the U.N. Decade of International Law, 1990-1999:

- (a) Progressive refinement of the concept of the right to development;
- (b) Development of the evolving concept of the right of all to a life of dignity and adequate standard of living in a clean, safe and healthy environment;
- (c) Equitable sharing of burdens as a legal basis for transfer of adequate, new and additional financial resources to developing countries;
- (d) A legal basis for transfer of environmentally sound technologies to developing countries on preferential and non-commercial terms;
- (e) Progressive and timely refinement of the "common concern of mankind" concept with reference to its implications for both environment and development;
- (f) Elaboration of measures directed to ensure that the transnational corporations operating in developing countries carry out their special responsibility for environmental protection and sustainable development in those countries;
- (g) The sovereign rights of States over their natural resources.

Professor A.A. CANÇADO TRINDADE
Mr. A. MALHOTRA
Co-Rapporteurs of the Beijing Symposium

PARTICIPANTS:

Participants from the developing countries:

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Participants from the developed countries and organizations:

Australia	Mr. Michael Smith
Germany	Mr. Arsgar O. Vogel
U.K.	Dr. Glen Plant
U.S.A.	Prof. Stephen McCaffrey
U.N.	Mr. Adronico Adede
	Mr. Roy S. Lee
UNEP	Dr. Iwona Rummel-Bulska

Special Invitees:

UNEP	H.E. Dr. Mostafa K. Tolba
The Ford Foundation	Mr. Peter Harris
	Mr. Johnathan Hecht
International Court of Justice	Judge Ni Zhengyu
Iran - U.S. Claims Tribunal	Mr. C.W. Pinto
Asian-African Legal Consultative Committee (AALCC)	Mr. Frank X. Njenga
International Council of Environmental Law (ICEL)	Mr. Erkki Hollo
Chinese Society of International Law	Prof. Wang Tieya

- VIII -

WORKING PAPER ON "HUMAN RIGHTS AND
THE ENVIRONMENT" PREPARED BY PROFESSOR
A. A. CANÇADO TRINDADE FOR THE
UNITED NATIONS ENVIRONMENT PROGRAMME
(UNEP) (04 September 1991)

(Excerpts)

(...) Just as concern for human rights protection can be found in the realm of international environmental law (Preamble and Principle 1 of the 1972 Stockholm Declaration on the Human Environment, Preamble and Principles 6 and 23 of the 1982 World Charter for Nature, Principles 1 and 20 proposed by the World Commission on Environment and Development in its 1987 report), concern for environmental protection can also be found in the express recognition of the right to a healthy environment in two recent human rights instruments, namely: the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Article 11), and the 1981 African Charter on Human and Peoples' Rights (Article 24); in the former, it is recognized as a right of "everyone" (§ 1), to be protected by the States Parties (§ 2), whereas in the latter it is acknowledged as a peoples' right.

(...) Furthermore, the protection of vulnerable groups (...) appears today at the confluence of international human rights law and international environmental law: (...) the issue has been approached on the basis of both human and environmental considerations. (...)

(...) The basic right to life, encompassing the right of living, entails negative as well as positive obligations in favour of preservation of human life. (...) It establishes a "link" between the domains of international human rights law and environmental law. (...) It has as extensions or corollaries the right to a healthy environment and the right to peace (...). (...) It lies at the basis of the ultimate *ratio legis* of the domains of international human rights law and environmental law, turned to the protection and survival of the human person and mankind.

Inextricably interwoven with the right to life itself, the right to health entails *negative* obligations (not to practice any act which can endanger one's health (...)) as well as *positive* obligations (to take all appropriate measures to protect and preserve human health (...)).

(...) [In the *E.H.P. versus Canada* case (1982), concerning disposal of nuclear wastes, the Human Rights Committee's (under the U.N. Covenant on Civil and Political Rights)] acceptance of the complainant's *jus standi* (on her behalf and also on behalf of the 129 Port Hope residents concerned) added to the Committee's

acknowledgement of the importance of the matter raised in the communication by the author's reference to "future generations" as an expression of concern (... bear) witness of the inter-relatedness between environmental protection and human rights protection, in particular when fundamental rights, such as the rights to life and to health, are at stake. (...)

If the right to a healthy environment is taken (...) as a "procedural" right, the right to a due process before a competent organ, (... [it is]) thus assimilated to any other right guaranteed to individuals and groups of individuals. This right entails, as corollaries, the right of the individual concerned *to be informed* of projects and decisions which could threaten the environment (the protection of which counting on preventive measures), and the right of the individual concerned *to participate* in the taking of decisions which may affect the environment (active sharing of responsibilities in the management of the interests of the whole collectivity). To the rights to information and of participation one can add the *right to available and effective domestic remedies* [cf. 1982 World Charter for Nature, § 23] (...).

The recognition of the right to a healthy environment (...) enriches and reinforces existing human rights and brings to the fore other rights in new dimensions [e.g., right of citizen participation, rights to information and to education (in environmental matters)]. Once asserted as a *human right*, the right to a healthy environment, rather than entailing restrictions to the exercise of other rights, comes to enrich the *corpus* of recognized human rights. (...)

Given that human rights protection antedates environmental protection in time, it is to be expected that the experience accumulated in the implementation of the former can be of use and value to the implementation of the latter. Some inspiration can possibly be derived from the experience of application, e.g., of the methods of reporting and fact-finding as developed in the international protection of human rights for the improvement of the international implementation of instruments on environmental protection. (...)

Addendum:

The endeavours undertaken so far of co-ordination of mechanisms — in particular the reporting systems — in the field of human rights protection can be of some avail and value for the consideration of the implementation of instruments on environmental protection. In 1982 the U. N. General Assembly (resolution 37/44) drew attention to the fact that many periodic reports under human rights treaties were outstanding and, in some cases, initial reports were several years overdue; it thus requested the Secretary-General to address the issue so that the situation could be improved.

In August 1984 the Secretary-General organized at Geneva the first meeting of chairmen of U.N. human rights supervisory organs. The chairmen proposed: exchange of information and co-ordination of guidelines for submission of reports,

larger periodicity for reports, consolidation and uniformization of the proposed guidelines, and establishment of a programme of advisory services and technical assistance to States Parties. In 1985 the General Assembly (resolution 40/116) took note "with appreciation" of the compilation of general guidelines for reports elaborated by the supervisory organs.

Pursuant to another request by the General Assembly (resolution 44/135), the second meeting of chairmen of U.N. human rights supervisory organs took place at Geneva in October 1990. Attention was again drawn to the importance of timely reporting by all States Parties, as well as to the following other points: provision for funding to supervisory organs under U.N. human rights treaties from the regular budget of the United Nations, cross-references by States Parties to information contained in their reports submitted under other U.N. human rights instruments, promotion of greater interaction among supervisory organs (including the holding of joint sessions of working groups of two or more supervisory organs), application of consolidated guidelines (especially for the initial part of States Parties' reports) and further exchange of information, greater use of advisory services and technical assistance programmes organized by the United Nations.

In the field of human rights protection, *co-ordination* assumes a distinct meaning in respect of each mechanism employed. Thus, with regard to the *petitioning* system, co-ordination has been taken to mean the avoidance of conflict of jurisdiction, of duplication of proceedings and of conflicting interpretation of corresponding provisions of co-existing international instruments by the supervisory organs. With regard to the *reporting* system, it has been taken to mean the consolidation of uniform guidelines (concerning form and contents) and the standardization of reports. And with regard to the *fact-finding* system, it has been taken to mean the regular exchange of information and reciprocal consultations between the supervisory organs concerned. The elements above referred to, and the experience on the present issue of implementation developed in the field of human rights protection can be of use for the devising and improvement of methods of implementation of instruments on environmental protection.

Brasilia, 04 Sept. 1991.

A.A.C.T.

WORKING PAPER ON "INTERNATIONAL
ENVIRONMENTAL LAW: PRINCIPAL ISSUES
CONCERNING THE AMERICAN STATES" PREPARED
BY PROFESSOR A. A. CANÇADO TRINDADE FOR THE
O.A.S. INTER-AMERICAN JURIDICAL COMMITTEE
(06 November 1991)

Excerpts

The OAS Inter-American Juridical Committee has decided to conduct a legal study on the "efforts to establish a body of environmental law in the Americas" (OAS, CP/RES. 557 (848/91) of 1991, and OEA/Ser. Q, CJI/RES. II. 9/91, of 1991). For that purpose, the OAS Inter-American Juridical Committee has requested me to prepare a working paper indicating which are, in my opinion, the *principal environmental issues concerning the American States* nowadays, from the standpoint of *international environmental law*. To that end, I shall first identify the general traits of the evolution of international environmental law and the sectors or areas in relation to which action — in varying degrees — has been taken in the course of that evolution; the way will then be open for the identification of the main environmental priority concerns of Latin American and Caribbean countries today, with attention further turned to the interrelatedness of environment and development concerns and the complementarity of international instruments at global and regional levels dealing with the same issues and supported by national legislation and management. (...)

In fact, one of the most substantial inputs in the current *travaux préparatoires* for UNCED in 1992 has been that of the countries of Latin America and the Caribbean. The general framework for regional action in preparation for UNCED-92 is provided by the 1989 Brasilia Declaration on the Environment, adopted at the VI Ministerial Latin American and Caribbean Summit of March 1989. The Declaration stressed that the improvement of economic and social conditions of life was "the key to preventing the defacement of the environment" in the countries of the region (§ 3). While recognizing "the imperative need to strike a balance between socioeconomic development and environmental protection and conservation through the proper management of natural resources and control of environmental impacts" (§ 1), the Declaration, after recalling the sovereign right of States "to administer freely" their natural resources (§ 2), further emphasized the gravity of the *external debt problem*, the solution of which appears as an essential condition for adequately addressing environmentally sound development and for

securing democracy in Latin America (§§ 2 and 5-7). Last but not least, the Brasilia Declaration expressed concern at the threat and risks of weapons of mass destruction owned by some countries and their tests and experiments (§ 13), and called for intensified international cooperation for environmental protection (§§ 10 and 14).

12. The Brasilia Declaration was complemented by the 1990 Action Plan for the Environment in Latin America and the Caribbean, adopted at the VII Ministerial Meeting on the Environment in Latin America and the Caribbean of October 1990. The Action Plan, recalling the Brasilia Declaration, insisted on the "inseparable linkage" between environmental concerns and the development model (§§ 3-4 of "Call to Action"). The final report of VII Ministerial Meeting warned that priorities varied in different regions: while the greenhouse effect and ozone layer depletion were "great concerns in the industrialized world", "the top environmental priority in Latin America and the Caribbean was to alleviate poverty" (§ 20.5); priority should be given to "the structural problems caused by poverty, unfair international economic conditions and the external debt" (§ 10).

13. The 1990 Action Plan began by insisting that in Latin America and the Caribbean a prerequisite of sustainable development was the solution to the problems of poverty, the foreign debt, fairer international pricing for its natural resources; in sum, environmental protection was an integral part of the economic, social and cultural development of Latin America and the Caribbean (§§ 10, 12, 15-16 and 23). Next, the Action Plan identified, as the main problems of the region, the *urban concentration of the population* and the mushrooming of *unplanned human settlements*, the generation of considerable amounts of *wastes* and the *impact on public health* (§ 24).

14. The Action Plan for the Environment then turned to other problems, which could be summarized under three main headings, namely: *resource management* problems (deforestation, soil loss and degradation, marine and coastal resources deterioration, and water resources deterioration); *environmental quality* problems (the urban problem, environmental impacts of mining activities, energy issues, extinction of native and folk cultures, illegal drug-crop cultivation); and *global environmental* problems (climate change, ozone layer depletion, loss of biodiversity, transboundary hazardous wastes) (§§ 24-41). The current international agenda, by focussing largely on these latter, did not exactly reflect all the main current Latin American and Caribbean priorities.

15. Nevertheless, it was undeniable that developments since the 1972 Stockholm Declaration had awoken awareness, stimulated national legislation and institutions and fostered international/regional/subregional cooperation in relation to the environment (§ 42). Suffice it here to recall, e.g., the establishment in 1989 of the environmental policy of the 1978 Treaty for Amazonian Cooperation and, in the framework of that Treaty, of a Special Commission for the Amazonian Environment - CEMAA (§ 43). On the other hand, obstacles to environmental

management in Latin America and the Caribbean remained, namely: insufficient funding and co-ordination, insufficient environmental assessment of development projects, insufficient and unstructured environmental information, insufficient research on environmental problems, absence of environmental education, impact of the economic crisis, predominance of destructive technologies, insufficient consideration to the "limited and exhaustible nature" of environmental resources, use of environmental conditionalities by industrialized countries "to block access of the region's exports to their markets" (§ 48).

16. The strategy of the Action Plan encompassed the priority to be accorded to *preventive* environmental protection activities in the region, and the promotion of greater citizen awareness and participation in solving environmental problems (§ 55). The document ended with a "Call to Action", which, besides reasserting the links between environmental concerns and the development model (§§ 3-4), urged the States of the region to achieve "regional unity and action" in preparation of UNCED and at UNCED-92 (§ 5 and 8), and to hold widespread consultations and peoples' participation (§ 9). In sum, the Action Plan, together with the Declaration of Brasilia, represent the general framework for environmental management in Latin America and the Caribbean at the current stage of preparations for UNCED-92.

17. Moving from considerations of principle (*supra*) to a closer identification of regional priority areas, the Latin American and Caribbean countries went further in the Tlatelolco Platform on Environment and Development adopted by the Ministerial Meeting of Latin American and Caribbean countries, at Mexico City in March 1991, at the end of the Regional Preparatory Meeting (of the PrepCom) for UNCED-92. The Tlatelolco Platform in fact represents the joint strategy of the Latin American and Caribbean countries for UNCED-92. The 1991 Tlatelolco Platform as well acknowledged the link between poverty and environmental degradation (§§ 18 and 24(g)) and the link between such degradation and unsustainable development models (§§ 2, 4, 6 and 9); it called for the incorporation of the "environmental dimension" as a basic component of the process of sustainable and equitable development (§§ 23 and 13) and then drew attention to the related relevance of observance of human rights. In that respect, the Tlatelolco Platform emphasized the region's "significant achievements in strengthening democratic processes, preserving peace and promoting respect for human rights" (§ 3), as well as the need to secure "access to decent living conditions, adequate levels of social organization and political representation and the genuine participation of the population in the definition of its own development" (§ 18). The Tlatelolco Platform insisted on "the essential need for the active commitment of all sectors of society in order to promote environmental protection and enhancement and sustainable development" (§ 21).

18. The Tlatelolco Platform then turned to the identification of priority concerns of the countries of the region calling for their joint action for UNCED-92

(§§ 24-25). According to the document, the following environmental topics were "of fundamental importance" for the Latin American and Caribbean countries:

1) *protection of the atmosphere and climate change*: the negotiation of a framework Convention on the matter to be adopted at UNCED-92, besides acknowledging the primary responsibility of developed countries, must also recognize the need for developing countries to use their natural resources in an environmentally sustainable manner; the region must aim at finding substitutes for ozone-depleting substances;

2) *biodiversity and biotechnology*: the knowledge and preservation of biodiversity were of great importance to the region, and biotechnological advances and the economic potential for the exploitation of biodiversity made it necessary to conclude an international agreement on the matter; such an agreement on conservation of biological diversity must include obligations for the conservation of biodiversity and benefits and obligations relating to biotechnology;

3) *protection and management of land resources*: problems of deforestation, desertification and drought required "integrated measures" which, while recognizing national sovereignty over natural resources, reversed those processes and guaranteed the conservation and management of ecosystems; forestry management was a priority objective of activities to prevent deforestation;

4) *soil degradation* (acidification, erosion and salinization): this is a problem which to some extent affects all countries in Latin American and the Caribbean, as a result of unsuitable rural and agricultural development patterns; support for the countries of the region to prevent and combat soil degradation is thus a priority in international action;

5) *protection and management of oceans, seas and coastal areas*: there is need to strengthen regional cooperation programmes such as the Greater Caribbean and South-East Pacific Regional Seas Programmes and the South Atlantic Programme; given the wide variety of marine, coastal and ocean resources (that can be used for the benefit of the population), there is need to draw up an inventory of those resources, to establish "special areas" on the basis of the characteristics of those resources, and to foster the relations between regional and subregional programmes and institutions (e.g., for exchange of information);

6) *protection of freshwater quality and supply*: this is vital for the countries of the region; there is need to formulate regional strategies and programmes for the conservation and integrated development of water resources, and to formulate research and monitoring programmes to abate or eliminate the pollution of freshwater resources;

7) *eradication of poverty in human settlements*: there is need to recover the rate of growth, embark on structural reforms and alter economic and social policies, and to give priority to the supply of appropriate health and education services and to the improvement of housing and allied services in urban and rural areas; there is

also need for further international cooperation in distinct areas (e.g., trade, external debt, transfer of technology, additionality of financial resources) to eradicate poverty;

8) *urban development and the environment*: there is urgent need to raise the standard and quality of life, with new financial mechanisms to tackle the problems of housing, sanitary conditions (drinking water supply and sewerage systems), waste disposal, and air pollution;

9) *environmental management of wastes (particularly toxic or hazardous wastes)*: there is a priority need to pursue a regional follow-up machinery complementing the Basel Convention (e.g., procedures on liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes); there is need to set up a mechanism to prohibit hazardous or harmful substances, products, processes and technologies prohibited in the countries of origin being marketed or exported to developing countries.

19. Another document illustrative of Latin American perceptions and priorities in the field of environmental law was the 1990 report "*Our Own Agenda*", prepared by the Latin American and Caribbean Commission on Development and Environment. This report, a sort of Latin American and Caribbean version of the 1987 report of the Brundtland Commission, purported to develop a regional outlook of the issue of the environment prior to UNCED-92. The present report drew attention to the relevance to that central issue of securing respect for human rights. The report stated categorically that "to speak of human rights (including the right to eat, to housing, to education, to health, and to income), of the environment, or of support for democracy and cultural diversity is infinitely more logical from the human perspective" (p. 11). The report "*Our Own Agenda*" next warned in this connection that "our region has experienced a democratization process that should be sustained. The broad participation of civilian society is essential if we are to achieve development with equity" (p. IX). Sustainable development will thus not be possible without real democracy: it will be "impossible to break down the barriers that stand in the way of economic, social and ecologically viable development" without a "democracy that permits greater participation by society" (p. 45). Achievement of sustainable development should be "the joint responsibility of State and Society", what presupposed the existence of a well-informed society, a social mobilization on behalf of sustainable development, and "the citizens' ability to control the State"; a participating democracy was characterized by "a proliferation of organizations which serve as intermediaries between the State and society" (pp. 72-75).

20. The regional Latin American and Caribbean report went on to identify distinct ways to strengthen the constitutional State, namely: first, the development of adequate environmental legislation (with corrective as well as — and mainly — preventive measures, also requiring environmental impact studies); second, the introduction of reforms that made "the judicial power truly autonomous"; and third,

the establishment of the basis for "a legal system that protects the citizens against abusive exercises of power" (pp. 78-79). Significantly, the report "*Our Own Agenda*" emphasized that the central objective of the new strategy to stimulate sustainable development pursuant to such regional outlook "can be none other than the improvement of the quality of life of the population. If we are to improve the quality of life, we must, first and foremost, face up to the abject poverty which currently affects the bulk of the population. We cannot talk of improving the environment as long as such a sizeable segment of our people lives in conditions of extreme poverty" (p. 45). In sum, the fundamental aim of the new economic and social strategy was "to enhance the well-being of most of the population to the fullest", in conformity with the "objectives of sustainable development", leading necessarily to a "more egalitarian society" (p. 68). The regional report thus clearly stressed the link between pursuance of ecologically sustainable development and enhancement of human rights, in particular economic and social rights.

21. The present report singled out some topics of priority concern for Latin American and Caribbean countries. It emphasized, e.g., *urban poverty* — the environmental problems of human settlements — as an integral part of the industrial environment of Latin America: the disorganized urbanization with insufficient capital, with belts of poverty surrounding big Latin American cities in totally degraded social and physical settings, called for the need to disperse population in medium-sized cities, to disperse economic activity with modern and decentralized government (pp. IX, 62, 24 and 11). The highest concerns here were with the elimination of extreme poverty and the rational use of natural resources, in sum, the improvement of the quality of life of the population in endeavouring to achieve a more egalitarian society (pp. 45, 47 and 68). Related to this was the issue of *land use or management* (pp. 19, 62 and 82), to which the report ascribed particular importance and the "best possibilities" for the region. Other regional priorities foreseen were the issues of *water resource* (pp. IX, 25-26 and 59), *energy* (pp. IX, 30 and 59-60), *biodiversity* (pp. IX-X, 14, 26, 53 and 56-57), *forestry* (pp. 15-16 and 28-29), *air pollution* (pp. 7, 23 and 40), *cultural heritage* (pp. VIII, 14 and 46). The report further referred to the issues of *disarmament and the threat of nuclear weapons* (pp. VII, 35 and 83), of *wastes* (pp. IX and 23), and the problems of *debt* (pp. VIII and 71-72) and of *drugs* (pp. 4 and 39).

22. May it be added that, within the inter-American system, initial efforts have been undertaken to identify priority environmental issues for the American States. The creation of an inter-American system for *nature conservation* was in the agenda of the OAS General Assembly, which instructed the OAS Permanent Council to establish a special working group to identify ways and means whereby the OAS could work more effectively for environmental protection (OAS, AG/RES.1050 (XX-0/90), of 1990). Furthermore, it addressed the issue of *new technologies* and the environment (OAS, OEA/Scr.P, AG/doc. 2777/91, rev. 1, of 1991). The Inter-American Development Bank (IDB), on its turn, has turned its

attention more specifically to the way in which environmental management (current institutional and legal framework and role reserved to NGOs) is organized in Latin American and Caribbean countries which are BID borrowers, taking due account also of environmental legislation.

23. In BID's assessment, the main environmental problems faced by the countries of the region are *environmental deterioration in urbanized areas, poverty* (as related to environmental degradation), *deterioration of water resource, deforestation, destruction of biological diversity, deterioration of coastal resources, pollution from agro-chemicals, deterioration of natural and cultural heritage* (of Amerindian communities), and *institutional shortcomings* (inadequate environmental legislation and management). BID has drawn attention to the fact that the specific environmental problems of Latin American and Caribbean countries "have mainly to do" with "major changes" having repercussions on their natural resources over time.

24. A final observation remains to be made, on the interrelationship or complementarity of international environmental instruments at global and regional levels when they address the same issues. The elaboration and adoption, by the U.N. General Assembly, of the 1982 World Charter for Nature, for example, discloses a wide consensus on some basic principles, by developing as well as developed countries. On the basis of surveys of national environmental legislation and management by U.N. specialized agencies such as WHO and FAO, ten areas or sectors have been identified as being of priority to most developing countries, namely: *land use and soil conservation, water resource, forestry, marine resources and coastal areas, air quality, wildlife and protected natural areas, sanitation and waste management, hazardous substances, working environment* (occupational health and safety) and *pollution sources* (e.g., energy production, exploitation of resources, and wastes of various kinds). It is not surprising that such priority concerns correspond, by and large, to those of Latin American and Caribbean countries.

25. The 1981 UNEP Montevideo Programme for the Development and Periodic Review of Environmental Law listed, alongside with global environmental issues, some topics which also correspond to Latin American and Caribbean priority concerns, namely, soil conservation, coastal zone management, air pollution, rivers' and inland waters' pollution, environmental impact assessment. In the recent Review Conference of the 1981 Montevideo Programme, held a few days ago in Rio de Janeiro (October 30 to November 02, 1991), those topics were retained in the Programme, added to new areas, one of which is also of crucial importance to Latin American countries, namely, the environmental problems of urbanization. Last but not least, it should not pass unnoticed that regional endeavours will necessarily have to count on corresponding legislative and administrative provisions at the national level (as the experience of the UNEP Regional Seas Programme clearly demonstrates), — whether environmental statutes

pertain to anti-pollution law, or to environment and natural resources law, or else to environmental framework law.

26. The above-surveyed are, in my opinion, from the standpoint of international environmental law, the principal environmental issues concerning the American States nowadays, which the OAS Inter-American Juridical Committee may wish to take into account and develop in its forthcoming legal study on the "efforts to establish a body of environmental law in the Americas".-

Brasilia, 06 Nov. 1991.

A. A. C. T.

A CALL: "ENVIRONMENT AS A HUMAN RIGHTS
ISSUE"(*), FROM THE ORGANIZING COMMITTEE OF THE
DECADE OF HUMAN RIGHTS EDUCATION

Throughout the world, environment is addressed as one of the most serious public issues. Concerns about the Environment are at the focal point of debate and activities of numerous grassroots organizations worldwide. Be it industrial hazards, pesticides, toxic waste, nuclear garbage, deforestation, hydro-eletric projects, birth-control devices, acid rain, etc., groups and individuals are working to reverse and/or stop governments and industries from violating humanity's human right to a healthy environment.

The relationship between the infliction of environmental harms and the violation of human rights has been repeatedly demonstrated and documented in development experience. Activities that produce serious environmental degradation inevitably produce serious harms to some groups of people; when there are no protections against these human harms, and when they go unredressed, basic human rights are violated.

Development projects which impose fundamental changes in/on ecologies destroy resources which are essential to the livelihood, well-being and often the cultures of distinct groups of people. Besides development projects, negligence and lack of corporate responsibility on the part of multinationals, particularly in the

(*) Message to the Inter-American Seminar on Human Rights and the Environment:

New York, 30 January 1992

Dear Professor Cançado Trindade,

(...) The Organizing Committee of the Decade of Human Rights Education will appreciate it very much if you could present the enclosed "Call" at the Seminar, in our behalf.

I believe that this Seminar is an important event at which time we can take a major step towards promoting environment as a human rights issue. This will contribute to developing a more comprehensive understanding of human rights as a holistic paradigm. Please give my personal regards to the participants.

Sincerely,

Shulamith Koenig

Executive Director, Organizing Committee
Decade of Human Rights Education.

developing world, has also contributed to environmental destruction and loss of lives.

The only way to prevent violations is to empower people. Experience from all over the world demonstrates that environmental laws may never protect people from environmental harms unless people enjoy rights to participate in the process of enforcing these laws. Excluding affected people from the enforcement of environmental standards is a clear violation of human rights which leads inevitably to other violations of human rights.

The Organizing Committee of the Decade of Human Rights Education is working to link the various social justice issues by promoting a holistic approach to human rights. We believe that the holistic approach is crucial to the development of a human rights way of life, where policy makers decisions about the environment grow out of a commitment to promote and protect human rights.

Understanding environment as a human rights issue will complement and reinforce the exercise of other fundamental human rights such as the right to citizen participation, the right to be informed of government decisions, gender equality etc.

Rights to a healthy and supportive environment are often considered as aspirational with no legal entitlements attached to them. Conditional legal remedies and entitlements need to be drafted in order to give government platitudes more teeth and to ensure their enforcement as human rights. Moreover these entitlements should not be restricted to the protection of the environment but should include plans for promoting restoration as a human rights concern.

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PRONUNCIAMIENTO DEL I CONGRESO INDÍGENA
INTERAMERICANO DE RECURSOS NATURALES
Y MEDIO AMBIENTE (COMISIÓN III)
(Ciudad de Panamá, 6-11 de noviembre de 1989)

(Excerptas)

Nosotros, los representantes de treintidos naciones indígenas de diecisiete países del continente americano, reunidos en la Ciudad de Panamá, en ocasión del Primer Congreso Indígena Interamericano sobre la Conservación de Recursos Naturales y Medio Ambiente, hacemos el pronunciamiento siguiente.

Considerando (...)

5. Que es necesario resolver nuestra situación problemática y continuar la lucha por nuestras reivindicaciones, siendo asunto fundamental la propiedad y derecho de usufructo de la tierra y sus recursos, así como el respeto a nuestras culturas. (...)

7. Que la crisis ambiental por la que atravieza el mundo es el resultado del proceso de explotación irracional de recursos por parte de intereses económicos locales y hegemónicos transnacionales, siendo esto una agresión que atenta contra la posibilidad de una vida digna de los pueblos indígenas, debiendo ser por esto, un componente básico de la lucha indígena.

Declaramos (...)

2. Que, es necesario lograr la reivindicación histórica del derecho de los pueblos indígenas a su patrimonio natural y cultural, no como una concesión de los gobiernos sino como el reconocimiento del derecho real que poseen los primeros pobladores milenarios del continente americano.

3. Que, los Estados actuales deben de reconocer el hecho histórico de que los pueblos indígenas son naciones que poseen su propia lengua, su propia cultura, su propia religión, su propia tradición, su propia organización sociopolítica y su propio territorio; y que, por lo tanto, los Estados deben de reconocer su carácter multinacional, pluricultural y plurilingüístico.

4. Que, el reconocimiento del patrimonio natural y cultural de los pueblos indígenas debe ser legal e integral. Debe incorporarse al marco legal y constitucional de los Estados y debe incluir todos los componentes naturales, sociales y culturales que conforman la base de la vida humana. Debe incluir los

recursos naturales renovables y no-renovables; del suelo y del subsuelo; terrestres y acuáticos; e incluso el espacio aéreo. Debe considerar el medio ambiente como un ámbito natural, sociopolítico y cultural.

5. Que, en reconocimiento del derecho de los pueblos indígenas a la autodeterminación, es de vital importancia la participación de los mismos en todas las acciones gubernamentales y no-gubernamentales que afectan de alguna forma los patrimonios naturales y culturales que existen dentro de sus territorios. Así, los proyectos de desarrollo deben contar con la participación efectiva de los pueblos indígenas en todas sus etapas: planificación, decisión, ejecución, evaluación y reformulación. (...)

PRONUNCIAMIENTO DEL II CONGRESO INDÍGENA
INTERAMERICANO DE RECURSOS NATURALES
Y MEDIO AMBIENTE (GRUPO 5)
(San Ignacio de Moxos, Bolivia, 2-8 de diciembre de 1991)

(Excerptas)

Considerando (...)

3. Que los recursos naturales y el medio ambiente están en un avanzado proceso de destrucción por parte de empresas privadas, nacionales e internacionales, y estatales.

4. Que los territorios que por derecho histórico mayor han pertenecido y pertenecen a los pueblos originarios, han sido invadidos y arrebatados causando la destrucción, miseria y muerte de sus habitantes. (...)

6. Que el desarrollismo ha atropellado a los pueblos originarios en sus costumbres, creencias, lengua y tradiciones.

7. Que los recursos naturales y medio ambiente están regulados en su manejo por normas legales que no son acordes con la política que promueven los pueblos originarios.

Resuelven:

Preámbulo

Que para el desarrollo de la plataforma de los derechos y garantías fundamentales de los pueblos originarios de América se debe tomar en cuenta la concepción filosófica de los mismos, al asumirse no como amos y patronos de la naturaleza, sino como sus hijos. Ello obliga a no destruir a la madre tierra, ni explotarla, sino aprovecharla armónica y racionalmente bajo sistemas de trabajo solidarios y comunitarios. (...)

III. Establecimiento del derecho de los pueblos a disponer de los medios materiales y culturales necesarios para su reproducción y crecimiento de manera especial a la conservación, recuperación y ampliación de las tierras y territorios que han ocupado tradicionalmente. Este derecho incluye la participación en los beneficios de la utilización de los recursos naturales que se encuentren en sus territorios y la conservación de las calidades del habitat. Deberá ser asegurado tanto dentro del régimen de propiedad individual y colectiva como mediante el desarrollo de nuevos sistemas normativos adecuados. (...)

V. Afianzamiento del derecho al ejercicio y desarrollo de las culturas originarias, a su crecimiento y transformación, y a la participación de los pueblos en la afirmación de un Estado pluricultural.

VI. Establecimiento de las condiciones jurídicas y sociales que garanticen los derechos políticos, económicos, sociales, históricos y culturales de los pueblos originarios. (...)

Integrantes:

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Observadores:

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