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The Stockholm Declaration on the Human Environment

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Reprinted from
THE HARVARD INTERNATIONAL LAW JOURNAL
VOLUME 14, NUMBER 3
SUMMER 1973

The Stockholm Declaration on the Human Environment

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The Conference on the Human Environment, held at Stockholm from June 5 to 16, 1972, was in many respects the most successful international conference held in recent years. In a two-week period it adopted not only a basic Declaration and a detailed resolution on institutional and financial arrangements, but also 109 recommendations comprising an ambitious action plan.¹ The Declaration contains a set of "common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment." The resolution on institutional and financial arrangements proposed the establishment by the General Assembly of the United Nations of: an intergovernmental Governing Council for Environmental Programmes, to provide general policy guidance for the direction and coordination of environmental programs; an Environment Secretariat headed by an Executive Director; an Environment Fund, to provide additional financing for environmental programs; and an

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1. The official text of these documents is contained in the REPORT OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT, U.N. Doc. A/CONF.48/14, at 2-65, and Corr.1 (1972). They have been reprinted in CENTRE FOR ECONOMIC AND SOCIAL INFORMATION AT U.N. EUROPEAN HEADQUARTERS, ENVIRONMENT: STOCKHOLM (1972) (there are two editions of this widely distributed document, the second of which though less colorful is more complete); 11 INT'L LEGAL MATS. 1416-69 (1972); SWEDISH MINISTRY FOR FOREIGN AFFAIRS, FÖRENTA NATIONERNAS MILJÖKONFERENS I STOCKHOLM 83-141 (Aktstycken utgivna av Utrikesdepartementet, Ny serie II:25; 1972; in English). The text of the Declaration is also published in 67 DEP'T. STATE BULL. 116 (1972).

interagency Environmental Co-ordinating Board for the purpose of ensuring cooperation and coordination among all bodies concerned in the implementation of environmental programs. The Action Plan concentrates on environmental assessment, through the establishment of an Earthwatch, designed to identify and measure international environmental problems and warn against impending crises; environmental management acting on the basis of Earthwatch assessments; and the necessary supporting measures, including education, training, and public information.

The success of the Stockholm Conference was based on a complex preparatory process, during which agreement was reached among the major groups of countries on most issues, so that only a limited number of questions had to be resolved at the Conference itself. The preparation for the Conference was primarily in the hands of a small but well-organized and efficient Conference Secretariat, headed by Maurice F. Strong, former President of the Canadian International Development Agency, a man with an uncanny ability of finding at the last minute the compromise formula which had eluded everyone else, and a singleminded persistence which somehow melted the many obstacles on the path to Stockholm. The papers for the Conference were the result of a multifaceted interaction between the Secretariat, panels of independent experts, and intergovernmental working groups.² What happened in Stockholm was just the visible top of the iceberg; a whole mountain of arduous preparatory labor was the necessary prerequisite of the final success. While many documents are not available, and some stages thus may have been missed, an attempt will be made in the first part of this paper to trace the main steps of this intricate legislative process, through which agreement was finally reached on the Declaration; and in the second part, the text of the Declaration will be analyzed in detail. Similar studies need to be made in the future of the other Stockholm documents.

DECLARATION ON THE HUMAN ENVIRONMENT

When Sweden suggested in 1968 the convening of an international conference on the problems of human environment, the main objectives were to "create a basis for comprehensive consideration within the

2. See, e.g., Gardner, *The Role of the United Nations in Environmental Problems*, 26 INT'L ORG. 237, at 243 (1972); Johnson, *The United Nations' Institutional Response to Stockholm: A Case Study in the International Politics of Institutional Change*, id., 255, at 256, n. 1.

United Nations of the problems of human environment," and to "focus the attention of Governments and public opinion in various countries on the importance of the problem."³ These objectives were endorsed by the Economic and Social Council and the General Assembly in their resolutions relating to the convening of the conference.⁴

The idea of a Universal Declaration on the Protection and Betterment of the Environment seems to have been originated by the Intergovernmental Conference of Experts on the Scientific Basis for Rational Use and Conservation of the Resources of the Biosphere, convened in Paris by UNESCO in September 1968.⁵ It was immediately seconded by the U.N. Advisory Committee on the Application of Science and Technology to Development,⁶ and by the Secretary-General of the United Nations.⁷ The recommendation of the Secretary-General was in turn endorsed by the Economic and Social Council and the General Assembly.⁸

The Preparatory Committee for the Conference, established under General Assembly Resolution 2581, had before it a recommendation by the Secretary-General that it draw up a declaration on the human environment dealing with "rights and obligations of citizens and Governments with regard to the preservation and improvement of the

3. 45 U.N. ECOSOC, Annexes, Agenda Item 12 (Doc. E/4466/Add.1) at 2 (1968).

4. ECOSOC Res. 1346, July 30, 1968, 45 U.N. ECOSOC, Supp. 1 (Doc. E/4561) at 8 (1968); G.A. Res. 2398, Dec. 3, 1968, 23 U.N. GAOR, Supp. 18 (Doc. A/7218) at 2 (1969).

5. UNESCO, *USE AND CONSERVATION OF THE BIOSPHERE: PROCEEDINGS OF THE INTERGOVERNMENTAL CONFERENCE OF EXPERTS ON THE SCIENTIFIC BASIS FOR RATIONAL USE AND CONSERVATION OF THE RESOURCES OF THE BIOSPHERE* 229-30 (1970). See also L.K. CALDWELL, *IN DEFENSE OF EARTH: INTERNATIONAL PROTECTION OF THE BIOSPHERE* 143 (1972); *International Conference on the Biosphere*, 14 UNESCO CHRONICLE 414 (1968); UNESCO Doc. SC/MD/9, at 31 (1969); 23 U.N. GAOR, Annexes II, Agenda Item 91 (Doc. A/7291) at 2 (1968).

6. U.N. Doc. E/AC.52/L.65, Annex IV, para. 6 (1969).

7. U.N. Doc. E/4667, paras. 89, 120 (1969). According to the Secretary-General, one of the objectives of the Conference on the Human Environment could be to adopt: Certain basic premises and considerations to guide the action of governments and intergovernmental organizations, as well as of individuals in relation to the environment. Such premises could include the recognition of the environment as a public resource essential to the survival of man, the acknowledgment of the responsibility of governments, local authorities, industrialists, agriculturists, as well as individual citizens in the maintenance and enhancement of environmental quality, the need for establishing effective and rational management of the environment and of its resources.

Id., para. 89. This report is reprinted in HOUSE COMMITTEE ON SCIENCE AND ASTRONAUTICS, *A READER IN INTERNATIONAL ENVIRONMENTAL SCIENCE*, 92d Cong., 1st Sess. 69, at 92, 120-21 (1971).

8. ECOSOC Res. 1448, Aug. 6, 1969, 47 U.N. ECOSOC RESOLUTIONS (Doc. E/4735) at 5 (1969); G.A. Res. 2581, Dec. 15, 1969, 24 U.N. GAOR, Supp. 30 (Doc. A/7630) at 44-45 (1970).

human environment."⁹ The Committee agreed that a draft declaration should be presented to the Conference and asked the Secretary-General to prepare suggestions as to the content of the declaration, after consultation with the Member States. The Committee adopted also several guidelines for the preparation of the declaration,¹⁰ which were later endorsed expressly by the Economic and Social Council.¹¹

At its second session, the Preparatory Committee established an Intergovernmental Working Group for the preparation of the draft declaration on the basis of governments' replies to a questionnaire sent by the Secretary-General in December 1970.¹² The Committee agreed that the Declaration should be "inspirational and concise"; it should be "readily understandable by the general public so that it could serve as an effective instrument for education and stimulate public awareness and community participation in action for the protection of the environment." While most members of the Committee felt that the Declaration should contain "universally recognized fundamental principles recommended for action by individuals, States and the international community," there was some divergence of views on the question "to what extent the Declaration should also attempt to lay down specific guidelines for action." The view prevailed that the Declaration should merely outline "broad goals and objectives," and that a detailed action program should be embodied in other documents to be adopted by the Conference.¹³ The crucial paragraph of the Report dealt with the legal effect of the Declaration as follows:

It was pointed out that, by its very nature, the Declaration should

9. U.N. Doc. A/CONF.48/PC/2, para. 16 (1970).

10. U.N. Doc. A/CONF.48/PC/6, para. 27(32)-(38) (1970). These guidelines were as follows:

(35) The declaration should be a document of basic principles, calling mankind's urgent attention to the many varied and interrelated problems of the human environment, and to draw attention to the rights and obligations of man and State and the international community in regard thereto.

(36) The declaration would serve to stimulate public opinion and community participation for the protection and betterment of the human environment and, where appropriate, for the restoration of its primitive harmony etc., in the interest of present and future generations. It would also provide guiding principles for Governments in their formulation of policy and set objectives for future international co-operation.

(37) In formulating the declaration on the human environment, due account has to be taken of the environmental stresses caused by the differences in social and economic development between various parts of the world.

11. ECOSOC Res. 1536, July 27, 1970, 49 U.N. ECOSOC, Supp. 1 (Doc. E/4904) at 8 (1970).

12. The text of the questionnaire and the replies of the Governments are reproduced in U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, and Add.1 and 2 (1971).

13. U.N. Doc. A/CONF.48/PC/9, paras. 27-32 (1971).

not formulate legally binding provisions, in particular as regards relations between States and individuals, or as between the latter, which were considered in principle to be governed by national legislation. The Declaration could, however, in the view of some delegations, make an important contribution by universally recognizing the fundamental need of the individual for a satisfactory environment which permits the enjoyment of his human rights. Other delegations were of the opinion that the Declaration could contain a separate section embodying general principles elaborating the rights and duties of States with respect to the environment. Some delegations favoured emphasis in the Declaration on the responsibilities of States and the need for solidarity in combating environmental problems.¹⁴

The Committee also was worried about the relationship between international and domestic measures, and expressed the view that the Declaration should "focus on the need for States to legislate internally to protect and preserve the environment, as well as on the need for international co-operation for the same purpose."¹⁵

Another issue which arose in the Committee later complicated the drafting of the Declaration. For the moment, the Committee agreed that "the relationship between environment and development is one of the issues of crucial importance and it would be useful to make a particular reference in the Declaration to the protection of the interests of developing countries."¹⁶

Finally, some representatives expressed themselves in favor of including in the Declaration a definition of the term "human environment," while others felt "that it might be difficult at the present stage to reach agreement on a satisfactory definition which would not be unduly restrictive; and that an attempt to formulate a definition might unprofitably delay the preparatory work on the substance of the draft Declaration."¹⁷

The Intergovernmental Working Group on the Declaration had a difficult task before it.¹⁸ It decided to concentrate on a preamble and a statement of fundamental principles, and referred back to the Preparatory Committee the question of the need to formulate general

14. *Id.* at para. 33.

15. *Id.* at para. 34.

16. *Id.* at para. 35.

17. *Id.* at para. 36.

18. For an excellent analysis of the principal issues before the first session of the Working Group, see Robinson, *Problems of Definition and Scope*, in *LAW, INSTITUTIONS AND THE GLOBAL ENVIRONMENT* 44, at 74-85 (J. L. Hargrove ed. 1972).

guidelines for action by states and international organizations.¹⁹ While the Working Group presented to the Preparatory Committee a draft of a preamble and seventeen fundamental principles, the report acknowledged lack of agreement on the draft as a whole and on practically every paragraph of it. In particular, the draft was attacked on the grounds that it "unduly dissociated the environmental issues from the general framework of development and development planning, in such a manner as to render it an instrument for purely restrictive, anti-developmental and 'conservationist' policies," and that it did not put in the forefront the basic principle that each state has inalienable sovereignty over its environment.²⁰

The Preparatory Committee continued to insist that the Declaration should be "concise and inspirational, embodying the aspirations of the world's people for a better environment";²¹ decided that the Declaration should not include "specific guidelines for action which would find their place elsewhere in the programme of the Conference"; and agreed that the Declaration should be based on "well-established principles of international law, notably those embodied in the United Nations Charter, including the principle of national sovereignty and international co-operation." Views were also expressed on various portions of the Declaration, and the Working Group was asked to develop the draft further, without confining itself to the previous text.²²

The Working Group produced a new text of a preamble and 23 principles, differing considerably from the first one, but in view of the continuing disagreements its report made clear that this draft was not to be considered final.²³ Nevertheless, the Secretary-General expressed the hope that the Preparatory Committee would endorse the draft texts and submit them to the Conference.²⁴ In his usual optimistic spirit, Mr. Strong, the Secretary-General of the Environ-

19. U.N. Doc. A/CONF.48/PC.11, paras. 226-34 (1971).

20. U.N. Doc. A/CONF.48/PC.12, Annexes I and II (1971), especially Annex II, paras. 3, 58.

21. Some delegations felt that the draft fell so short of being inspirational that they suggested that the Secretariat should engage a professional writer to improve the language of the Declaration. U.N. Doc. A/CONF.48/PC.13, para. 159 (1971).

22. *Id.* at paras. 149-65 (1971). The draft Declaration was also criticized at the 51st session of the Economic and Social Council, and some representatives suggested that "a fresh attempt" be made to reach a consensus on the matter. REPORT OF THE ECOSOC ON THE WORK OF ITS 50TH AND 51ST SESSIONS, 26 U.N. GAOR, Supp. 3 (Doc. A/8403) at 47 (1971).

23. U.N. Doc. A/CONF.48/PC.16, para. 5 and Annex III (1972). The new preamble was largely based on a United States draft. See U.S. Press Release USUN-2(72) (1972).

24. U.N. Doc. A/CONF.48/PC.15, para. 22 (1972).

ment Conference, in his opening statement to the Preparatory Committee, commended the Working Group for doing its job well and for preparing "a compelling document that should give inspiration and hope to people everywhere"; and expressed his belief that the document "merits the attention of the Conference in its present form."²⁵

In introducing the draft to the Preparatory Committee, the Chairman of the Working Group, Mr. Migliuolo (Italy), explained that:

[T]he draft prepared by the Group was based on the recognition of the rights of individuals to an adequate environment, the responsibility of States for damage to the environment of other States, or of areas beyond the limits of national jurisdiction resulting from activities within their own jurisdiction, and the particular interests of developing countries.²⁶

The Preparatory Committee recognized that the draft represented "a realistic attempt to reconcile different views and interests," and that, though it could be improved upon, "great care should be taken not to destroy the delicate balance on which it rested." Without discussing the substance of the document, the Committee agreed to forward the draft to the Conference, it being understood that this action "did not imply any expression of approval or disapproval thereof on the part of the Preparatory Committee." It was made clear that all delegations would remain free to submit to the Conference not only drafting suggestions and interpretative statements but also substantive amend-

25. U.N. Doc. CESI Note/71, at 4 (1972). Ambassador Phillips (U.S.), in a similar vein noted that the draft represented:

a fairly high degree of consensus among the members of the 27-nation drafting group, as well as a number of other UN members that sat in as observers and gave their views. It is of course a compromise document. As a practical matter it is doubtful whether it would be advisable at this stage to seek further changes in it—given the delicate balance of views in the present text on such questions as development and environment, and the degree of responsibility of states to respect each other's interests in environmental matters.

While acknowledging that the draft will not fully satisfy anybody, he expressed the view that:

if the Declaration, approximately as it now stands, is adopted at Stockholm, it will be a highly valuable document, both in educating world public opinion and in laying at least a foundation for the creation of future international law in the field of the environment.

U.S. Press Release USUN-15(72), at 4 (1972). Interesting proposals for changes in the Declaration were suggested by the Secretary of State's Advisory Committee on the Stockholm Conference, but they do not seem to have been presented at Stockholm. For their text see SECRETARY OF STATE'S ADVISORY COMMITTEE ON THE 1972 UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, STOCKHOLM AND BEYOND 141-45 (May 1972).

26. U.N. Doc. A/CONF.48/PC/17, para. 77 (1972).

ments.²⁷ The draft was thus saved from further tinkering and was issued as one of the basic Conference documents, without any indication as to remaining areas of disagreement.²⁸

In the general debate at the Stockholm Conference many speakers stressed the importance of the Declaration, and some of them urged that it be adopted without any amendments, in order not to imperil the fragile consensus achieved in pre-Conference consultations. Some speakers, while willing to accept the draft, expressed dissatisfaction with its inadequate treatment of the needs of developing countries. Finally, there were some who insisted on their right to propose amendments, and pointed out that many participants in the Conference had not had a chance to express their views during the preparatory process.²⁹

Though Mr. Strong implored the Conference not to endanger the consensus by trying to improve the draft,³⁰ on request of the People's Republic of China, as amended by Iran, a working group on the Declaration was established by the Conference.³¹ In the Working Group, China again took the initiative in suggesting amendments and to the last minute insisted on the adoption of some of its ten major proposals.³² This opened the way to a blizzard of amendments,³³ and it was only thanks to the strong chairmanship of Mr. Taieb Slim (Tunisia) and the patient work of the rapporteur, Mr. Bacon (Canada), of the Swedish Legal Adviser, Mr. Hans Blix, and of Mr. Strong and his associates that, after an all-night session, a draft emerged on the last day of the Conference.³⁴

The Working Group agreed on a revised text of 21 of the 23 prin-

27. *Id.* at paras. 78-83.

28. U.N. Doc. A/CONF.48/4, Annex (1972).

29. U.N. Doc. A/CONF.48/14, at 83 (1972).

30. U.N. Press Release HE/S/8, at 5 (1972).

31. U.N. Doc. A/CONF.48/14, at 86-88 (1972). China first proposed an ad hoc committee, but Iran's amendment suggesting a working group instead was accepted by the Conference.

32. The sessions of the Working Group were secret, but the Chinese proposals somehow reached the press. See Stockholm Conference ECO, June 10, 1972, at 1-2, 5; *id.*, June 14, 1972, at 1, 8. For an excellent comment on China's role at the Stockholm Conference see Timmler, *Stockholm Conference on the Human Environment*, 23 *AUSSENPOLITIK* 450-60 (English ed., 1972). The principal Chinese amendments may be found in U.N. Doc. A/CONF.48/WG.1/CRP.23 (1972).

33. For a list of the amendments see U.N. Doc. A/CONF.48/INF.7, at 17-18 (1972). Some of them are discussed in C. PELL & C. CASE, UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT: REPORT TO THE SENATE, 92d Cong., 2d Sess. 6-7 (1972) [hereinafter PELL-CASE REPORT].

34. For good descriptions of the final stage of the drafting of the Declaration, see Jacobsen, *A Call to Environmental Order*, 28 *BULL. OF THE ATOMIC SCIENTISTS*, Sept. 1972, at 21-22; Keys, *Stockholm plus and minus*, 17 *WORLD FEDERALIST*, July/August 1972, at 10-11; McLin, *Stockholm: The Politics of 'Only One Earth'*, 7 *FIELDSTAFF REPORTS* (West Europe Series), June 1972, at 8-9.

ciples submitted by the Preparatory Committee; added four new principles; decided to refer to the General Assembly of the United Nations old Principle 20 relating to the supplying of information by states on activities within their territory which might have an adverse effect on the environment in areas beyond their jurisdiction; and referred to the plenary session for final decision old Principle 21 relating to nuclear weapons which China considered too narrow as it did not include "inhuman biological and chemical weapons." Other states, without asking for further amendments, made interpretative statements which became part of the record, while China repeated its reservations. The Conference decided to add a revised version of old Principle 21 as new Principle 26, and adopted the Declaration by acclamation.³⁵

Once the painful process of hammering out the principles was concluded, many states voiced praise for the final result. During the debate in the plenary session, the Indian representative said that "the Declaration represented an important milestone in the history of the human race," and that it was "a starting-point in the task of making the planet a fit place for future generations." He expressed the hope that the governments of countries not represented at the Conference — the Soviet Union, Cuba, and other Communist countries (with the exception of Romania and Yugoslavia) — would also subscribe to "the principles enshrined in the text."³⁶ The representative of Chile felt that "the Declaration constituted a point of departure for a process which would continue well into the future," and emphasized that it was "a provisional document that might be improved in the future."³⁷ The most positive statement was made by the representative of Canada (J.A. Beesley), who considered the Declaration as "a first step toward the development of international environmental law."³⁸ In his concluding speech, Mr. Strong stated: "What many sceptics thought would only be a rhetorical statement has become a highly significant document reflecting community of interest among nations regardless of politics, ideologies or economic status."³⁹

The decisions of the Stockholm Conference were submitted to the General Assembly of the United Nations, which referred the matter to its Second Committee. The debate was opened by Mr. Strong who,

35. U.N. Doc. A/CONF.48/14, at 113-19, and Annex II (1972).

36. *Id.* at 113. The USSR and other Eastern European countries boycotted the Conference to protest the exclusion of East Germany.

37. *Id.* at 116.

38. *Id.* at 115; U.N. Press Release HE/S/79, at 3 (1972).

39. *Id.* at 5.

even more forcefully than at Stockholm, hailed the Declaration as a major achievement. He noted that:

It is the first acknowledgement by the community of nations of new principles of behaviour and responsibility which must govern their relationship in the environmental era. And it provides an indispensable basis for the establishment and elaboration of new codes of international law and conduct which will be required to give effect to the principles set out in the Declaration.⁴⁰

The representative of Kenya supported the Declaration's 26 principles, "for they were 'common convictions' which reinforced the Principles and Purposes of the Charter of the United Nations."⁴¹ The representative of Yugoslavia felt that the Declaration, despite its shortcomings, "was a well-balanced document, represented a moral and political commitment and provided a basis for launching joint international action." He also expressed the hope that the Declaration "would also stimulate countries to adopt a more positive approach to environmental problems."⁴² In a similar spirit, the representative of Ghana was hopeful that "the international community would regard itself as committed by the Declaration to resolve the problems of the planet," and noted the link in the Declaration between development and environment, which was of vital importance to the third world.⁴³

The representative of China pointed out that the Declaration was "a marked improvement on the original draft and reflected some of the reasonable demands of the developing countries," but his delegation continued to have reservations with regard to some of the principles it embodied.⁴⁴ The representative of Chile considered that the text of the Declaration "lacked ideological balance . . . and should be revised," as the United Nations should not attach "special priorities to a problem like that of the human environment, which was important only to a limited number of States."⁴⁵ The Soviet representative, while complaining about the exclusion of the German Democratic Republic from the Stockholm Conference, and though his delegation rejected various decisions of the Conference, stated that in principle his delegation was "not opposed to the current session of the General Assembly taking note of the Declaration." He emphasized, however, that this

40. Statement by Maurice F. Strong . . . before the Second Committee of the General Assembly . . . , 19 Oct. 1972, at 2-3 (mimeo.) (1972).

41. U.N. Doc. A/C.2/SR.1469, at 6 (prov. ed. 1972).

42. U.N. Doc. A/C.2/SR.1470, at 5 (prov. ed. 1972).

43. U.N. Doc. A/C.2/SR.1471, at 4 (prov. ed. 1972).

44. U.N. Doc. A/C.2/SR.1472, at 16 (prov. ed. 1972).

45. U.N. Press Release GA/EF/1406, at 5 (1972).

"did not imply agreement with all its provisions."⁴⁶ The representative of South Africa announced that his delegation could not accept the Declaration as it contained an unwarranted reference to South Africa's internal policies with respect to apartheid, and claimed that the Declaration could not be described as having been unanimously adopted.⁴⁷

After this discussion, the Committee adopted a widely sponsored draft resolution in which the General Assembly was asked to note with satisfaction the report of the Stockholm Conference, and to draw the attention of governments and of the newly established Governing Council for Environmental Programmes to the Declaration. This draft resolution was adopted by 103 votes to none, with 12 abstentions (the Soviet bloc and South Africa).⁴⁸ The plenary session of the General Assembly adopted this text on December 15, 1972, as Resolution 2994, by 112 votes to none, with 10 abstentions.⁴⁹ The

46. U.N. Doc. A/C.2/SR.1470, at 12 (prov. ed. 1972).

In its only contribution to the preparation of the Declaration, its reply to the questionnaire circulated by the Secretary-General, the Soviet Union made, *inter alia*, the following points:

[T]he Declaration might recommend general principles for the formulation of State policies and the main trends of action by international organizations in connexion with the problem of the environment, emphasizing the importance of international co-operation on a bilateral, regional and world basis in order to solve this problem.

[T]he Declaration should be a relatively brief document, suitable for distribution through the mass media and readily accessible to the general public.

[T]he Declaration obviously should not include any provisions concerning relations between a State and its citizens or between individual citizens. These relations are defined by national legislation, as is consonant with the sovereign right of each State.

The Declaration should not over-dramatize the problem of the environment.

[The Declaration should state] that the causes of impairment of the environment and the gravity of the problem differ from country to country and that this depends on the manner and degree of socio-economic development.

[T]he Declaration should be universal in character [and the following wording should be inserted in it]: "In accordance with the spirit of the Charter of the United Nations, all States concerned have pledged themselves to take individual or collective action for the achievement of a solution to the problem of the environment."

In order to make the Declaration reflect the relationship, which is of special interest to the developing countries, between the problem of the environment and the socio-economic problems of development, the text of the Declaration might usefully point out that the solution of these problems would be substantially assisted by State planning of the extraction and utilization of natural resources.

The Declaration should embody general principles which can be recommended to Governments as guidelines for individual and collective action to improve the environment. Among these it is especially important to emphasize the principle of the inalienable sovereignty of States over their natural resources.

U.N. Doc. A/CONF.48/PC/WG.1/CRP.4/Add.2, at 4-6 (1971).

47. U.N. Doc. A/C.2/SR.1479, at 4 (prov. ed. 1972).

48. U.N. Doc. A/8901, paras. 5-9 (1972).

49. U.N. Doc. A/PV.2112, at 6 (prov. ed. 1972).

General Assembly also dealt with several other resolutions which bear on the interpretation of the Declaration; they will be considered in appropriate places in the next part of this essay. The Declaration did not really come through the Assembly unscathed, but the text itself was not tampered with in the Assembly as all agreed that it would be too dangerous to upset the fragile balance reached at Stockholm. It remains to be seen how the Declaration will survive in practice and what use will be made of it by governments and the environmentalists.

COMMENTS ON THE DECLARATION⁵⁰

The Declaration consists of a preamble and a set of principles. As in many other international documents, the Preamble is an important part of the document and the principles need to be considered in light of it. Consequently, the issues raised by the Preamble will be considered here first, paragraph by paragraph.

Declaration of the United Nations Conference on the Human Environment

**The United Nations Conference on the Human Environment,
Having met at Stockholm from 5 to 16 June 1972,**

Having considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment,

Comment. As noted in the previous section, the object of the Declaration is to provide both inspiration and guidelines for the governments and peoples of the world. From the beginning some of the draftsmen tried to prepare a Declaration primarily inspirational, informative, and educational in character, designed to stimulate public concern over a few selected issues, thus leading indirectly to the required political action. Others claimed that, without losing its inspirational character, the Declaration should provide specific guidelines for individual, national, and international action. It was argued that the first approach demands a fairly concise text which could be easily disseminated by mass media and could also serve as a convenient instrument for education. The second approach would require, on the

50. In the preparation of this comment, the author relied on the original questionnaire of the Secretary-General, the replies of various governments, and the drafts and the deliberations of the Working Group, the Preparatory Committee, and the Stockholm Conference. As most of these documents have not been published, it proved possible to provide detailed references only in some instances.

other hand, a more elaborate statement, couched in more legalistic language, with consequent loss of public appeal. The compromise was to attempt to achieve both goals through the device of combining a more literate preamble with a more legalistic set of principles. Neither goal was really achieved. The Preamble has all the marks of a committee draft, loaded with favorite phrases of various members, while the principles are not very legalistic, with a few exceptions such as Principles 1, 7, and 21. The final dividing line seems instead to be between a description of the present sad state of affairs and hopeful guidelines for better behavior in the future. It is in this spirit that the introduction to the Declaration speaks of "the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment."

The other issue which had to be resolved before detailed drafting could begin related to the addressees of the Declaration. Should it be addressed to the governments of the world, to individuals, or to the world's peoples? Should it take man as its measure and speak of his rights and duties, or should it in a traditional fashion deal only with the governments, their shortcomings, their responsibilities, and their rights? While paragraph 7 of the Preamble deals with all levels—individuals, organizations, local and national governments, and international institutions—the introductory phrase of the Declaration, inspired by a similar phrase at the beginning of the Charter of the United Nations, is addressed to "the peoples of the world." Unlike the Constitution of the United States, which opens with the single "people," the Charter and the Declaration recognize the pluralistic nature of the present world society and use the plural "peoples." Even in the face of the dire peril which the Declaration loudly proclaims, it proved too difficult to accept the vision of the unity of mankind, of one people single and indivisible, embarked on a common journey toward a better future. The founders of the United States, at the very moment when the country was falling apart, dared to use the magic, unifying word "people"; the draftsmen of the Declaration, in an allegedly more realistic spirit, compromised on "peoples," certainly an improvement on "countries," "nations," or "governments."

I

Proclaims that—

1. Man is both creature and moulder of his environment, which gives him physical sustenance and affords him the opportunity

for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself.

Comment. This convoluted paragraph combines three staccato phrases of the first draft of the Working Group, which made the following points:

Man is the nucleus of all efforts to preserve and enhance the environment;

Man's life is affected by his environment which in turn is affected by his activities;

The maintenance of a safe, healthy and wholesome environment is indispensable to man's well-being and to the full enjoyment of his basic human rights, including the right to life itself;⁵¹

People started tinkering with these phrases immediately, some trying to get rid of the reference to "the right to life itself," others trying to bring into the forefront of the document the relationship between environment and development by adding at the end of the third sentence the words "and the fruits of economic and social development."⁵²

Rejecting the "artificial and disjointed pattern" of the first preamble, the United States suggested rewriting it "in a connected narrative form — a series of paragraphs in which the reader can grasp not only

51. U.N. Doc. A/CONF.48/PC.12, Annex I, at 1 (1971). Compare this draft with an earlier, more elaborate Canadian draft which would have started the Declaration as follows:

Whereas there is a fundamental human need for an environment which permits the fullest enjoyment of basic human rights as enumerated in the Universal Declaration of Human Rights including the right to life;

And whereas human life on the planet earth is dependent upon land, air, water and the sun, and upon other forms of life on earth;

And whereas human life is also dependent upon the maintenance of the ecological balance of the biosphere;

And whereas human life is affected by environmental processes and influences which are in turn affected by human activities;

And whereas human beings use the resources of the biosphere for their physical, mental, social and economic development; . . .

U.N. Doc. A/CONF.48/PC/WG.1/CRP.4/Add.2, at 2 (1971).

52. U.N. Doc. A/CONF.48/PC.12, Annex II, at 3 (1971).

the ideas but the logical connection between them." The U.S. representative explained his idea at some length:

If the traditional UN preamble can be said to have any organizing principle at all, it is simply additive: A plus B plus C. Each idea is self-contained, set off by its inevitable participle—looking like one item in a row of parts waiting for some mechanic to assemble them. That is not the ideal way to convey a complex set of ideas, let alone to make them inspire.

It is important to keep in mind that the subject we have in hand, the human environment, is still a new subject to most of the people of the world whom we hope to reach. It is complex and easy to misunderstand. We cannot expound it clearly and bring it fully to life for a world audience unless our presentation of ideas is not only relevant and true but clear and cogent. If this is well done, and if some talented persons can be found to make the diction suitably euphonious and elevated, our Preamble can serve not only as a convincing introduction to the Principles, but also as an instrument for enlightenment in its own right, addressed to decision-makers, publicists, students, voluntary organizations and public opinion generally: people whose support is rather important to the world environmental effort in years to come. . . .

Let me sum up, and conclude, by suggesting four points as to what the Preamble should and should not be:

1. It should serve not only as a factual and conceptual point of departure for the Fundamental Principles but also as an educational document in its own right.
2. It should set forth basic, relevant facts and conclusions about the world's environmental problems and the need for action at various levels—but without becoming involved in questions of rights and duties which are the province of the operative section.
3. It should be organized in narrative style and thus form a logical and connected whole.
4. It should be inspirational, not merely in the aesthetic sense but in the sense of conveying intellectual and moral conviction.⁵³

To show how this can be done, he introduced the following draft of the first paragraph (words later omitted are in italics):

1. Man is both creature and creator of his environment. His physical needs are *circumscribed* by age-long evolution in his terrestrial home. But his intellect and his social and moral nature have set him free from time immemorial to transcend and trans-

53. U.S. Press Release USUN-2(72), at 1-2 (1972).

form wild nature, and thereby *to* create for his *innumerable* progeny a better and more fully human life. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself.⁵⁴

While he had less luck with his other paragraphs, this one escaped the Working Group's gauntlet almost unscathed, and the Working Group sent to the Conference the following text (with changes indicated in italics):

1. Man is both creature and moulder of his environment. His physical needs *and capacities* are *conditioned* by age-long evolution in his terrestrial home. But his intellect and his social and moral nature have set him free from time immemorial to transcend and transform wild nature *and to build his own society and culture*, and thereby create for his progeny a better and more fully human life. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights — even the right to life itself.⁵⁵

The beginning and the end of the draft survived the Conference, but the in-between section was given a different twist from that originally intended. The final text points out more clearly the relationship between man and his environment, the mutual interdependence, and the reciprocal influences both for better and for worse. At the same time, the final text refuses to credit the natural processes of evolution with having developed man's physical needs and capacities, and simply notes that the environment has given man not only physical sustenance but also afforded him the opportunity for intellectual, moral, social, and spiritual growth. This is but a pale version of the earlier ringing statement that man's "intellect and his social and moral nature set him free from time immemorial to transcend and transform wild nature and to build his own society and culture." Man's "social and moral nature" gave way to a mere "opportunity for intellectual, moral, social, and spiritual growth," but at the same time the draftsmen got rid of the somewhat incompatible idea in the earlier draft that man's nature was not only social and moral but also wild, and needed to be transcended and transformed. Doubtful animalistic theories of human nature were thus replaced by a more sociological approach, giving credit more to the conditioning

54. *Id.* at 3.

55. U.N. Doc. A/CONF.48/4, Annex, at 1 (1972).

effect of the environment and the new opportunities provided to man by improvements in the environment, rather than to a victory of Dr. Jekyll over Mr. Hyde in the man-beast's breast.

The middle sentence pays proper obeisance to the role played by science and technology in providing mankind with the power to transform the environment on an unprecedented scale. It was lifted from the second paragraph of the earlier draft in order to provide at the very beginning a counterpoise to the cries of some young environmentalists who have blamed science and technology for our present predicament. The draftsmen put instead in the forefront the notion that without science and technology man would not have been able to master the environment and, as pointed out in the final sentence, might have even forfeited his life in the struggle against cruel nature.

The final phrase relates the issue of the environment to another great problem facing the United Nations—the promotion of universal respect for, and observance of, human rights and fundamental freedoms.⁵⁶ Proper environment, in both its natural and man-made aspects, is deemed essential to the enjoyment of human rights,⁵⁷ and the right to life itself depends on the preservation and protection of the environment. While some early drafts referred expressly to the Universal Declaration of Human Rights⁵⁸ as the source for the recognition of the right to life, most of the later drafts found such reference unnecessary or undesirable. Principle 1 (discussed below) interestingly enough speaks of other fundamental rights, but does not mention the right to life. But there is no question that man's life and his environment are interdependent. If the environment is damaged beyond its recuperative power, man may not survive on earth. On the other hand, if man decides to exterminate his brethren, in the process he may destroy the whole ecological system as well. In an all-out nuclear war, both mankind and the remainder of life on earth may perish completely, and the earth may become as dead as the moon.

2. The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire

56. U.N. CHARTER, art. 55(c).

57. G.A. Res. 2398, Dec. 3, 1968, expressed concern about the effects of environmental deterioration "on the condition of man, his physical, mental and social well-being, his dignity and his enjoyment of basic human rights, in developing as well as developed countries." 23 U.N. GAOR, Supp. 18 (Doc. A/7218) at 2 (1969).

58. Approved by G.A. Res. 217A, Dec. 10, 1948, 3 U.N. GAOR, Part I, Resolutions (Doc. A/810) at 71 (1948). Article 3 provides that "Everyone has the right to life, liberty and the security of person."

of the peoples of the whole world and the duty of all Governments.

Comment. This paragraph is based on a Chinese proposal, which read as follows:

The conservation and improvement of the human environment is a major issue which affects the livelihood and economic development of the people throughout the world as well as an urgent wish of the peoples of the whole world and the bounden duty of all governments.⁵⁹

Except for minor drafting changes, the Chinese text was accepted by the Conference. It links the improvement of the environment not only with the well-being of peoples but also with economic development. In a rather indirect way the text proclaims the legal obligation of all governments to protect the environment. The essence of the paragraph could be paraphrased as follows: "The protection and improvement of the human environment is the duty of all governments." While suggestions that such an obligation be included in the Declaration were made several times in the early drafting stages,⁶⁰ states were rather reluctant to accept such a broad obligation of an indeterminate scope. The Chinese delegation was somehow able to persuade the other members of the Working Group not only to accept this duty but also to put it most appropriately in the forefront of the Declaration. This was a striking accomplishment, though the language is more obscure than might have been desired, considering the importance of the principle involved.

3. Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In our time, man's capability to transform his surroundings, used wisely, can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to human beings and the human environment. We see around us growing evidence of

59. U.N. Doc. A/CONF.48/WG.1/CRP.23 (1972). In a similar vein, Iran suggested that the Conference recognize "the main goal of development, in its widest and noblest sense, to be providing man with his basic rights as well as enabling him to enjoy welfare and prosperity. . . ." U.N. Doc. A/CONF.48/WG.1/CRP.5 (1972).

60. Some replies to the questionnaire of the Secretary-General suggested, for instance, that states have the duty to carefully husband natural resources and to maintain and enhance the quality of the environment for present and future generations. For the replies of Colombia, Denmark, the Holy See, Italy, the Netherlands, Switzerland, and the United Arab Republic see U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 25, 27, 37, 44, 48-49, 58, 60 (1971).

man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies harmful to the physical, mental and social health of man, in the man-made environment, particularly in the living and working environment.

Comment. This paragraph is traceable to the original resolution of the General Assembly relating to the convening of the Stockholm Conference, in which the General Assembly noted that "the relationship between man and his environment is undergoing profound changes in the wake of modern scientific and technological developments"; that "these developments, while offering unprecedented opportunities to change and shape the environment of man to meet his needs and aspirations, also involve grave dangers if not properly controlled"; and that "the continuing and accelerating impairment of the quality of the human environment [is] caused by such factors as air and water pollution, erosion and other forms of soil deterioration, waste, noise and the secondary effects of biocides, which are accentuated by rapidly increasing population and accelerating urbanization."⁶¹ It was first formulated by the United States as follows:

In our time man has acquired, through the accelerating growth of science and technology, the power to transform his surroundings in countless ways and on an unheard-of scale. Used wisely, this power can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to the human environment. We see around us growing evidence of this man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and the human body; major disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable living and mineral resources; and gross deficiencies in the man-made environment of human settlements.⁶²

A slight revision of this paragraph, prepared jointly by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,⁶³ was forwarded to the Stockholm Conference in the following form:

Man has constantly to sum up experience and go on discovering,

61. G.A. Res. 2398, Dec. 3, 1968, 23 U.N. GAOR, Supp. 18 (Doc. A/7218) at 2 (1969).

62. U.S. Press Release USUN-2(72) at 3 (1972).

inventing, creating and advancing. In our time he has acquired, through the accelerating advancement of science and technology, the power to transform his surroundings in countless ways and on an unheard of scale. Used wisely, this power can bring to all peoples the benefits of development and the opportunity to enhance the quality of life. Wrongly or heedlessly applied, the same power can do incalculable harm to the human environment. We see around us growing evidence of man-made harm in many regions of the earth: dangerous levels of pollution in water, air, earth and living beings; major and undesirable disturbances to the ecological balance of the biosphere; destruction and depletion of irreplaceable resources; and gross deficiencies in the man-made environment of human settlements.⁶⁴

At Stockholm, the new Working Group accepted a Finnish amendment broadening the last phrase of the paragraph, and replacing the reference to "human settlements" with more general reference to "living and working environment."⁶⁵ It is not enough to try to improve the places where man lives; it is important to ensure that he works in adequate surroundings.

The triumphant note in the first part of this paragraph is followed by the discordant note in the second half. Mankind is capable of great progress, but has used its power not only for good but also increasingly for evil. Instead of bringing to all peoples the benefits of development, man has created deficiencies in the environment which are actually harmful to his physical and mental health. While in war in the past the victor gained some benefits from victory, in the modern war which man wages against the environment in the many ways noted in this paragraph, man himself is the principal victim.⁶⁶

63. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4 (1972). This document contains joint proposals of an ad hoc group of developing countries from various continents which assumed leadership in the Working Group.

64. U.N. Doc. A/CONF.48/4, Annex, at 1 (1972).

65. U.N. Doc. A/CONF.48/WG.1/CRP.9 (1972). The need to refer specifically to the "working environment" was suggested previously by the International Labor Organization. U.N. Doc. A/CONF.48/PC/WG.1/CRP.7, at 2 (1971).

66. This point was put strongly in an Indian proposal, which also provided the basis for a part of the next paragraph of the Declaration. This proposal was to insert into the Preamble the following paragraph:

Since man first discovered that he could use nature for his own purposes, he has been interfering with his environment. Man is a part of nature and only one of the many species who inhabit the earth, but he has treated it as his colony to exploit for immediate gain with little thought for the future. The scale of human interference with the rhythms of nature has already reached alarming proportions, and its adverse effects are being increasingly felt in the technologically advanced

4. In the developing countries most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In the industrialized countries, environmental problems are generally related to industrialization and technological development.

Comment. While some elements of this paragraph may be found in various proposals before the Stockholm Conference, it was derived primarily from the following Chinese proposal:

At the present stage, the world environmental issue falls into two categories. In the developing countries, most of their environmental problems are caused by under-development which prevented them from taking energetic measures to improve the environment. Therefore, the developing countries must mainly direct their efforts to develop their national economy, build their modern industry and modern agriculture, safeguard their state sovereignty and independence and under this prerequisite, to adequately solve their own environmental problems. As to the few highly industrialized countries, where pollutions are most serious and even endanger the environment of neighbouring countries and that of the world, the speedy solution of this problem has become the strong desire of the people of the countries concerned and the world as a whole.⁶⁷

Some important changes were made, however, in the Chinese draft. While the emphasis on development was retained in the final text, it was softened to some extent, and the confusing reference to sovereignty

countries. While precious resources are being diverted to stockpile weapons capable of annihilating many times over not only the human race but all forms of life on this planet, millions continue to live well below the minimum levels required for a decent human existence. Deprived of adequate food and clothing, shelter and education, health and sanitation, this section of humanity mainly in the developing countries is a monument to the inadequacy of the present international mechanisms to ensure the welfare of the human race in global terms. The very existence of such conditions is a major factor in the degradation of the human environment.

U.N. Doc. A/CONF.48/CRP.9 (1972).

67. U.N. Doc. A/CONF.48/WG.1/CRP.23 (1972). The second sentence of para. 4 of the Declaration comes from the Indian proposal quoted in the previous footnote.

and independence was omitted. This softening was balanced by an increased emphasis on development in the sentences relating to the industrialized countries. Instead of urging them to provide a speedy solution of the pollution problems at home, the new text stresses the need to help the developing countries to reduce the gap between them and the developed countries. The Chinese idea of self-help has been thus replaced by the notion that the closing of the gap should be primarily accomplished through efforts of the industrialized countries.

5. The natural growth of population continuously presents problems on the preservation of the environment, and adequate policies and measures should be adopted, as appropriate, to face these problems. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment. Along with social progress and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day.

Comment. In its first draft of 1971, the United States had included the statement that "excessive population growth can defeat man's efforts to preserve the earth's environment."⁶⁸ This was further elaborated in the 1972 draft:

68. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 64 (1971). This paragraph was included in the first draft of the Working Group in the following form: "Excessive population growth could defeat man's efforts to preserve and enhance his environment." U.N. Doc. A/CONF.48/PC.12, Annex I, at 1 (1971). The report of the Working Group contained the following comments on this proposal:

The delegations of Brazil, Czechoslovakia and the USSR stated that the problem of population manifests itself differently in various regions and countries of the world. While in some countries this problem takes the form of so-called excessive population growth, in other countries, on the contrary, there is a need to increase the birth rate. In the opinion of these delegations, the problem of population and the establishment of policies in this field should be defined only by the Governments of the countries concerned. Accordingly, the problem of population as stated in the present document is not universal, and consequently it should not be included in the draft declaration.

The delegation of Argentina stated its serious opposition to the sentence as drafted since in its opinion it did not reflect the world situation but only the problems of certain regions of the world. The delegation of Argentina initially considered that this principle should be forwarded to the Preparatory Committee in brackets. However, in order to reach a generally acceptable formulation, the delegation of Argentina proposed the inclusion of the words "in certain regions" between the words "growth" and "could" and also the substitution of the word "imperial" for the word "defeat" so that the sentence would read as follows: "Excessive population growth, in certain regions, could imperil man's efforts to preserve and enhance the environment. . . ."

Several other delegations, for instance those of Costa Rica, Cyprus, India, Iran, Japan, the Netherlands and the United States, felt that the problem of excessive

In our time also, the growth of population in many areas, through both migration and unprecedented natural increase, has accelerated to rates which could frustrate all efforts to conquer poverty and underdevelopment and to maintain a decent human environment.⁶⁹

The Working Group also had before it a proposal by Brazil, Egypt, and Yugoslavia referring to "the environmental strains which, in some regions, arise from excessive population concentrations."⁷⁰ This proposal led to a joint draft by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,⁷¹ which was approved provisionally by the Working Group and transmitted to the Stockholm Conference in the following form:

In our time also, the growth of population in certain areas, through both migration and unprecedented natural increase, has accelerated to rates which could frustrate all efforts to conquer poverty and underdevelopment and to maintain a decent human environment, whereas other areas have not yet reached population densities conducive to economic efficiency and the high productivity that will permit the rapid increase of standards of living.⁷²

A different twist was given to this paragraph by the Chinese proposal on the subject which read:

The natural growth of population continuously presents new problems on the preservation of environment. But provided the governments genuinely take the interest of the people to heart and adopt correct policy and measures, these problems can be solved. Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and through their hard work, continuously transform the human environment. Along with social progress

population growth could not be disregarded in the context of protecting and enhancing the environment and advocated retention of this preambular paragraph. The delegation of the United States further stated that regardless of their population density, all countries had to give due regard to population growth.

Id., Annex II, at 4-5.

69. U.S. Press Release USUN-2(72) at 3 (1972).

70. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.1, at 1 (1972).

71. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev. 4, at 2 (1972).

72. U.N. Doc. A/CONF.48/4, Annex, at 1 (1972). A slightly revised version of this draft was presented at Stockholm by Egypt and Libya:

In our time also the growth of population in some areas, through both migration and natural increase, has accelerated to rates which may hamper efforts to conquer poverty and under-development, whereas some other areas have not yet reached population densities conducive to economic efficiency and high productivity.

U.N. Doc. A/CONF.48/WG.1/CRP.21 (1972).

and the advance of production, science and technology, the capability of man to improve the environment increases with each passing day. This has opened up a broad vista for the enhancement of environment quality and the creation of a happy life.⁷³

The final draft closely follows the Chinese text, with a few minor amendments. Instead of the previous negative approach to population growth, the new draft emphasizes the fact that of all things in the world, people are the most valuable. While population growth may cause some problems, adequate policies can provide solution. As the Chinese draft pointed out, what is needed is for governments to take the interests of the people genuinely to heart and to open broad vistas to a happy life.

6. A point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequence. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes. There are broad vistas for the enhancement of environmental quality and the creation of a good life. What is needed is an enthusiastic but calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with nature, a better environment. To defend and improve the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.

Comment. This text constitutes an expansion of a United States draft which read as follows:

Thus a point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely we can, through fuller knowledge and wiser action, achieve for ourselves and our posterity a better life in an environment

73. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 2 (1972).

more in keeping with human needs and hopes. To defend and enhance the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of world-wide economic and social development.⁷⁴

Two of the three additional sentences in the middle of the paragraph were taken from a joint draft of Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia;⁷⁵ the phrases about the “broad vistas” and the “better life” seem to have come from the Chinese proposal for the previous paragraph. Apart from that addition, only minor drafting changes were made at the Stockholm Conference.

This paragraph continues the upward momentum of the previous paragraph in a slightly repetitious manner. While paragraph 5 spoke of “hard work”, paragraph 6 refers to “intense but orderly work.” There are references here to both “better life” and “good life.” Environmentalists are commended to combine enthusiasm with a calm state of mind. In paragraph 2, the protection and improvement of the human environment was considered as “the urgent desire of the peoples of the world”; in paragraph 6, the imperative goal for mankind is to defend and improve the human environment for present and future generations.

This paragraph puts on a par the three basic goals of mankind—protection of the human environment, peace, and worldwide economic and social development. This triad had been put together in the original United States proposal, in which this mention of peace was preceded by a paragraph referring to the fact that “immense resources continue to be consumed in armaments and armed conflict, wasting and threatening still further the human environment.”⁷⁶ Though this paragraph, combining the ideas of wasting resources on armaments and of armed conflicts threatening the human environment, was forwarded by the Working Group to the Stockholm Conference,⁷⁷ it was not included in the Declaration. This was probably due to the

74. U.S. Press Release USUN-2(72), para. 5, at 3 (1972).

75. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev. 4, at 2 (1972).

76. U.S. Press Release USUN-2(72), para. 4, at 3 (1972).

77. U.N. Doc. A/CONF.48/4, Annex I, para. 4, at 2 (1972). A parallel proposal presented to the Stockholm Conference by Egypt and Libya read as follows:

Meanwhile, while precious resources continue to be directed to stockpile weapons capable of annihilating not only the human race but all forms of life on this planet, millions continue to live well below the minimum levels required for a decent human existence.

U.N. Doc. A/CONF.48/WG.I/CRP.21 (1972).

confusion on the subject engendered by a Chinese proposal which would have replaced this paragraph by one condemning imperialism as the "root-cause of modern wars."⁷⁸ Between the old proposal which some considered too weak and the Chinese one which some considered too one-sided, the whole idea was dropped as too controversial.

7. To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden for large-scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class of environmental problems, because they are regional or global in extent or because they affect the common international realm, will require extensive co-operation among nations and action by international organizations in the common interest. The Conference calls upon Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

Comment. This paragraph of the Preamble may be traced to a suggestion by the Netherlands that the Preamble should elaborate on the three-level relationship of "man — State — international community." It explained this suggestion as follows:

Man, comes first, his dignity and his equal and inalienable rights; man, whoever and wherever he may be, is at the centre of all our efforts (see the Universal Declaration of Human Rights). It could also be pointed out that man has not only rights but also responsibilities towards his fellow-men and the community (see article 29 of the Universal Declaration). The preamble would then turn its attention to the *State*, which has a duty towards people under

78. The Chinese proposal would have inserted here the following language:

Imperialism is the root-cause of modern wars. The imperialists launch aggressive wars and use the greatest achievement of modern technology to barbarously massacre millions of people, destroy culture and civilization created by mankind in the course of thousands of years, ruin the environment for human existence and bring about unprecedented catastrophe to mankind. All the countries and peoples who cherish peace and uphold justice should unite, condemn the crimes of aggression committed by imperialism and new and old colonialism, check aggressive wars, safeguard international peace and protect the human environment.

U.N. Doc. A/CONF.48/WG.1/CRP. 23, at 2 (1972).

its direct responsibility but also the duty to work in cooperation with other States in order that all States can fulfil their obligations to mankind to the fullest possible extent (this is also the underlying principle of Article 56 of the United Nations Charter: "All members pledge themselves to take joint and separate action, etc."). This obligation of States to cooperate with one another would lead to the third dimension, namely, that of the *international community*. By the Charter of the United Nations the international community, as embodied in the United Nations Organization, has undertaken to promote certain economic, social and humanitarian purposes (Article 55 of the United Nations Charter). In relation to this it may be stated that the commitment made by the international community should not only be promotional in character, but should also provide for devices of review and re-appraisal once concrete standards and programmes have been formulated for the maintenance and improvement of the human environment. It would also seem important to underline the global character in the preamble. Although the problems presented by the environment can vary from country to country they are becoming of increasing concern to all members of the international community regardless of their geographical, economic and social situation.⁷⁹

The Netherlands Government suggested further that the preamble should conclude:

[W]ith an appeal to all *organs of society, both national and international*, to the end that they, keeping the Declaration in mind, should strive for the realization of the principles and guidelines set out in the Declaration (see as an example the last paragraph of the preamble of the Universal Declaration of Human Rights). A conclusion of the preamble on these lines would bring out that the Declaration is not only based on the three-level legal framework of "man — State — international community," but rises above what is essentially a practical juridical construction in addressing a general appeal to all organs of society and to mankind as a whole in the interests of the well-being of future generations.⁸⁰

This proposal was given concrete form by the United States, which presented the following draft:

To achieve this environmental goal will demand the acceptance of responsibility by individuals and communities at every level, all sharing equitably in common efforts. Citizens and families, teach-

79. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 48-49 (1971).

80. *Id.* at 49.

ers and students, scientists, technicians, leaders and voluntary organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden of large-scale environmental policy and action within their jurisdictions. A growing class of environmental problems, because they are regional or global in extent or because they affect the international realm, will require extensive cooperation among nations and action by international organizations in the common interest.⁸¹

Some minor but not unimportant changes were made in this draft by the amended text prepared jointly by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,⁸² which was forwarded by the Working Group to the Stockholm Conference in a slightly revised form. The Working Group text read as follows (changes from the United States draft being indicated in italics):

To achieve this environmental goal will demand the acceptance of responsibility by *citizens* and communities *and by enterprises and institutions* at every level, all sharing equitably in common efforts. *Individuals in all walks of life as well as* organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future. Local and national governments will bear the greatest burden *for* large-scale environmental policy and action within their jurisdictions. A growing class of environmental problems, because they are regional or global in extent or because they affect the *common* international realm, will require extensive co-operation among nations and action by international organizations in the common interest.⁸³

The sentence in the middle of the paragraph, relating to international cooperation in raising resources to support the developing countries in carrying out their responsibilities for achieving the environmental goal, was added at Stockholm as a result of a proposal by Egypt and Libya.⁸⁴ The final phrase of the paragraph, calling for common efforts, originated in a Chinese proposal which, in addition, contained some striking language, imbued with optimism about the future of mankind "full of hope and filled with infinite brilliance."⁸⁵

81. U.S. Press Release USUN-2(72) at 4 (1972).

82. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev. 4, at 2 (1972).

83. U.N. Doc. A/CONF.48/4, Annex, at 2 (1972).

84. U.N. Doc. A/CONF.48/WG.1/CRP.21 (1972).

85. The Chinese proposal for the final paragraph of the Preamble read as follows:

Man has constantly to sum up experience and go on discovering, inventing, creating and advancing. In the protracted struggle, mankind is sure to win social progress, scientific and technical development and will also certainly attain a good environ-

Departing from the "peoples" of the prefatory phrase, the Preamble ends with a reference not only to "Governments and peoples" but also to "all the people" — a step in the right direction. The last paragraph of the Preamble also makes clear that responsibility for achieving the environmental goals specified in the Declaration lies in the hands of both governments and of individuals and organizations. Enterprises, institutions "at every level," local governments, and international organizations are expressly mentioned among the addressees of the Declaration. While it is recognized that the greatest burden must be born by the local and national governments, who are primarily responsible for environmental policy and action within their jurisdiction, the Declaration assigned at least three areas to international cooperation. In the first place, international cooperation will be necessary to provide the additional resources required by the developing countries for meaningful environmental action. Secondly, there is a growing class of environmental problems which are regional or global in extent, and can be dealt with only through regional or global cooperation. Finally, the Declaration points out that certain environmental problems affect "the common international realm," which seems to be a variation of the idea of the "common heritage of mankind" accepted by the General Assembly in connection with the seabed and the ocean floor.⁸⁶ Only common institutions can properly protect common interests. The Stockholm Conference created these institutions, thus providing the necessary framework for the achievement of the environmental goals proclaimed in the preamble to the Declaration.

II

PRINCIPLES

States the common conviction that:

Principle 1

Man has the fundamental right to freedom, equality and ade-

ment [fit] for its own existence and development. The future of mankind is full of hope and filled with infinite brilliance. The Conference calls upon the governments and peoples to act positively and exert common efforts for the preservation and improvement of the human environment, for the benefit of the people and for their posterity.

U.N. Doc. A/CONF.48/WG.1/CRP.23, at 2 (1972).

86. Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, G.A. Res. 2749, Dec. 17, 1970, 25 U.N. GAOR, Supp. 28 (Doc. A/8028) at 24 (1971).

quate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Comment. While the Working Group of the Preparatory Committee agreed early on the scope and style of the Preamble, its members held rather divergent views with respect to the proposed statement of principles. Should the principles be limited to interstate relations, or should they deal also with relations between individuals and states, or even between individuals themselves? Should they spell out the rights and duties of man, states, and the international community, respectively? Should they stress environmental rights or should they emphasize responsibilities with regard to the protection and enhancement of the human environment? Should the principles contain guidelines for action or legal obligations? These were some of the questions presented in the questionnaire circulated by the Secretary-General,⁸⁷ and he got a bewildering number of replies, which the Working Group somehow condensed into first 17 and later 23 principles.

Some thought it desirable that the Declaration should start with a general affirmation of every human being's "right to a wholesome environment."⁸⁸ They pointed out that this right was already recog-

87. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 3-4 (1971). This document also contains some background notes by the Secretary-General (at 5-14) and the replies of 18 Governments. Later replies are reproduced in the addenda to this document.

88. Replies by Colombia, Denmark, Ethiopia, the Holy See, Panama, Singapore, and the United Arab Republic. *Id.* at 12, 25, 28, 32, 40, 51, 52, 60. On the other hand, the Swiss Government expressed the view that "the recognition of a subjective individual right to the enjoyment of [a sound and healthy] environment is not really compatible with some national legal systems, such as Swiss constitutional law." *Id.* at 57.

It may also be noted that the European Conservation Conference of 1970, in its Declaration on the Management of the Natural Environment of Europe, proposed the preparation of a protocol to the European Convention on Human Rights "guaranteeing the right of every individual to enjoy a healthy and unspoiled environment." It recommended that this protocol should cover "the rights to breathe air and drink water reasonably free from pollution, and the right to freedom from undue noise and other nuisances, and to reasonable access to coast and countryside." Council of Europe, Eur. Consult. Ass., 22d Sess., 1st Part, 2 Docs.: WORKING PAPERS, Doc. No. 2758, at 36-37 (1970). See also *id.*, 24th Sess., 2d Part, TEXTS ADOPTED BY THE ASSEMBLY, Recommendation 683, at 2-3 (1972), requesting that an ad hoc committee consider "whether the right to an adequate environment should be raised to the level of a human right, and devise an appropriate instrument to protect this new right."

Similarly, the Declaration on the Control of Environment in South-East Asia included

nized by the Universal Declaration of Human Rights⁸⁹ and by the International Covenant of Economic, Social and Cultural Rights.⁹⁰ Accordingly, the United States proposed that:

Every human being has a right to a healthful and safe environment, including air, water and earth, and to food and other material necessities, all of which should be sufficiently free from contamination and other elements which detract from the health or well-being of man.⁹¹

At the first session of the Working Group preliminary agreement was reached on the following phraseology:

Everyone has a fundamental right to a safe, healthy and wholesome environment for the full enjoyment of his basic human rights including the right to favourable physical working conditions and to a standard of living adequate for his health and well-being.⁹²

Immediate objections were raised by the representatives of several specialized agencies. The representative of the World Health Organization suggested the following alternative wording for this principle:

Everyone has a fundamental right to an environment that safeguards the health of present and future generations for the full enjoyment of his basic human rights, including the right to a standard of living adequate for his well-being.⁹³

While the representative of the Food and Agriculture Organization proposed the addition of a reference to "the right to clean food," the representative of the International Labor Organization suggested the substitution of "working environment" for "physical working conditions," as the second phrase was too wide. He considered that the

among its principles the statement that "[e]ach person has a fundamental right to a healthful environment." U.N. Doc. A/CONF.48/PC/WG.I/CRP.4, at 52 (1971).

89. Article 25(1) of the Universal Declaration of Human Rights reads in part as follows:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing . . . G.A. Res. 217A, Dec. 10, 1948, 3 U.N. GAOR, Part I, Resolutions (Doc. A/810) at 76 (1948).

90. In article 11 (1) of the International Covenant on Economic, Social and Cultural Rights, States Parties to that Covenant recognize "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Adopted by G.A. Res. 2200, Dec. 16, 1966, 21 U.N. GAOR, Supp. 16 (Doc. A/6316) at 50 (1967).

91. U.N. Doc. A/CONF.48/PC/WG.I/CRP.4, at 65 (1971).

92. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971).

93. *Id.*, Annex II, at 7.

words "working environment" were more appropriate as they included "both occupational safety and health in the traditional sense and also such disciplines as industrial psychology, designed to make the whole environment of work more fully adapted to the physical and psychological needs of man."⁹⁴

At the second session of the Working Group, a new draft was presented jointly by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,⁹⁵ and was referred by the Working Group to the Stockholm Conference. It read as follows:

Man has the fundamental right to adequate conditions of life, in an environment of a quality which permits a life of dignity and well-being and bears a solemn responsibility to protect and enhance the environment for future generations.⁹⁶

At the Stockholm Conference, Chile quite reasonably suggested that the environment should be protected for the benefit not only of future generations but also the present one, and the end of the first sentence was changed accordingly.⁹⁷

Greater difficulties were caused by a Tanzanian amendment,⁹⁸ endorsed later by twelve other African states,⁹⁹ which would have added an express reference to the right to life itself, and would have supplemented the text by another sentence denouncing expansionism, apartheid, colonialism, and racism.¹⁰⁰ After some hard bargaining a modified version of the second sentence was inserted in the Declaration, though some countries felt that this was an extraneous matter which should not have been raised. At the end only South Africa made a reservation to this paragraph, contending that the Conference was not competent to include here a principle which "clearly con-

94. *Id.*

95. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4, at 2 (1972).

96. U.N. Doc. A/CONF.48/4, Annex, at 2 (1972).

97. U.N. Doc. A/CONF.48/WG.1/CRP.10 (1972).

98. U.N. Doc. A/CONF.48/WG.1/CRP.8 (1972).

99. For the 13-state proposal see U.N. Doc. A/CONF.48/WG.1/CRP.20 (1972). The same amendment was incorporated in a joint nine-state proposal. U.N. Doc. A/CONF.48/WG.1/CRP.22 (1972).

100. The 13-state proposal read as follows:

Man has the fundamental right to life itself and therefore to adequate conditions of life, in an environment of a quality which permits a life of dignity and well-being and bears a solemn responsibility to protect and enhance the environment for future generations. In this respect we unequivocally denounce expansionism, disrespect of territorial integrity and crimes committed against mankind by advocates of apartheid, colonial and racist practices which also threaten the human environment.

U.N. Doc. A/CONF.48/WG.1/CRP.20 (1972).

stituted interference in the internal affairs of a Member State, in direct conflict with the Charter of the United Nations."¹⁰¹

In several respects, the final text is not an improvement on the earlier versions. Direct references to the right to life itself and the right to a safe, healthy, and wholesome environment have been omitted, though the former is at least mentioned in the first paragraph of the Preamble. It would have been an important step forward if the right to an adequate environment were put in the forefront of the statement of principles, thus removing the lingering doubts about its existence. The reference to the "fundamental right to . . . adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being" is as close as the Declaration comes to a recognition of this essential right. Perhaps this phrase is meant to convey the existence of the right to an adequate environment, but it would have been much better had the draftsmen of the Declaration stated it more clearly.

Similarly, the reference in some early drafts to "everyone" as the possessor of the right has been replaced by a more generic reference to "man," thus further weakening any parallel to the Universal Declaration of Human Rights which uses the "everyone" language. Is it the individual "man" who is entitled to benefit from the Declaration, or the collective "man," mankind as a whole? While the intention might have been to use the collective approach, the final text seems to have returned to the notion of man as an individual entitled to certain rights, even if these rights had to be phrased in very general terms. It is the individual who can, under the Declaration, claim the right to "freedom, equality, and adequate conditions of life." The first two of these rights he already enjoys under the Universal Declaration, and even the third one, especially as it is phrased here, might be already protected by that Declaration (as was noted in the second paragraph of this comment).

In another parallel with the Universal Declaration (article 29), the Stockholm Declaration balances man's rights with his responsibilities, and exhorts him "to protect and improve the environment for present and future generations."¹⁰²

101. U.N. Doc. A/CONF.48/14, at 117 (1972).

102. Early in the drafting the Danish Government suggested that the "main emphasis should be placed on the responsibilities of the individual and at all levels to protect and improve the quality of human environment." U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 29 (1971). For the statements of France, Italy, the Netherlands, and Singapore see *id.* at 33, 44, 48, 52. The first draft of the Working Group contained a separate para. 2, stating that "[e]veryone has a responsibility to protect the environment." U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). A United Kingdom proposal would have combined the two paragraphs suggested by the Working

Principle 2

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Comment. In the Background Notes accompanying his questionnaire, the Secretary-General suggested that the Declaration should refer to the "duty of all nations to carefully husband their natural resources and to hold in trust for present and future generations the air, water, lands, and communities of plants and animals on which all life depends."¹⁰³ This proposal was endorsed by Colombia,¹⁰⁴ which also noted that to achieve this objective "most careful planning and rational management of natural resources is required."¹⁰⁵ In a slightly amended form this proposal was incorporated in the draft prepared by the first session of the Working Group, which read:

States shall carefully husband their natural resources and shall hold in trust for present and future generations the air, water, land and plants and animals on which all life depends.¹⁰⁶

Objections were immediately raised to this text, as some delegations considered that it was "unduly restrictive of the concept of national sovereignty," and that it introduced "an element of discrimination against developing countries which are only now entering upon their own development process."¹⁰⁷ Five developing countries (Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia) then came up with the proposal that the Conference should declare its firm belief in the need "to safeguard the natural resources of the earth, including the air, water, land, flora and fauna, and especially natural ecosystems, through careful planning or management, as appropriate, for the benefit of

Group in the following manner, shifting the responsibility from "everyone" to "mankind":

Mankind bears the solemn responsibility of maintaining an environment in which the safety, health and creative fulfilment of every individual are not hampered by avoidable deficiencies in his working or home environment or by inadequacies in his standard of living.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.11 (1972).

103. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 13 (1971).

104. *Id.* at 25.

105. *Id.* at 23.

106. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971).

107. *Id.*, Annex II, at 8.

present and future generations."¹⁰⁸ The Working Group reformulated this proposal in a more direct form,¹⁰⁹ and with only minor changes this provision was adopted by the Conference.¹¹⁰

The final formulation is more neutral than the original. The emphasis is no longer on a duty of states to husband their resources, but on careful planning and management of earth resources, without specification of the addressee. Similarly, the idea that states hold their resources "in trust" for present and future generations¹¹¹ has been replaced by the vaguer notion of an unspecified somebody safeguarding the resources for "the benefit" of these generations.

Nevertheless, it is important that the Stockholm Conference followed here the example set by the United Nations Declaration on the Sea-Bed which specified that the exploration of the area subject to that Declaration and the exploitation of its resources shall be carried out "for the benefit of mankind as a whole."¹¹² Similarly, the natural resources listed in Principle 2 of the Stockholm Declaration are to be safeguarded for the benefit of mankind.

Principle 3

The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.

Comment. This principle serves as an introduction to the more

108. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev.4, at 4 (1972).

109. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

110. The change relating to the protection of "natural ecosystems," which was restricted in the final draft to "representative samples of natural ecosystems," was suggested by Brazil. U.N. Doc. A/CONF.48/WG.I/CRP.6 (1972). The United States was not happy about this restriction, and found it necessary to present to the Conference the following interpretative statement:

The United States of America places emphasis on the word "representative" which, in our view, ensures that the phrase means retention of a complete system with all of the complex interrelationships intact, not a portion thereof. Moreover, the size of the sample must be sufficient to represent the size of the whole.

U.N. Doc. A/CONF.48/14, at 118 (1972). Uruguay also entered a reservation to Principle 2, since it considered that much more than "representative samples" of ecosystems must be safeguarded; it was essential "to preserve, maintain the balance and ensure the rational exploitation of ecosystems as a whole." *Id.* at 115.

111. The U.S. Advisory Committee on the Stockholm Conference, commenting on one of the earlier drafts, suggested the inclusion in Principle 2 of a "declaration of common media (air and water) as a common trust." SECRETARY OF STATE'S ADVISORY COMMITTEE ON THE 1972 UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, STOCKHOLM AND BEYOND 143 (May 1972).

112. G.A. Res. 2749, Dec. 17, 1970, 25 U.N. GAOR, Supp. 28 (Doc. A/8028) at 24 (1971).

specific Principle 4 relating to wildlife and is complemented by Principle 5 concerning the non-renewable resources.

Principle 3 is based on a Swedish proposal which presented the issue in a more explicit manner. It read as follows:

The productive basis of renewable resources of the earth, such as farmland, forests, crops and fish, which in many cases and places have been threatened or destroyed, must be maintained or enhanced.¹¹³

In a much more limited fashion, a joint proposal by Brazil, Egypt, and Yugoslavia would have stressed only the need to "restore, wherever possible, the productive capacity of those renewable resources that have been unnecessarily depleted."¹¹⁴ A later version, endorsed also by Costa Rica and Zambia, broadened the scope of this paragraph and came closer to the Swedish text by emphasizing the need to "maintain, and wherever practicable, restore or improve, the capacity of the earth to produce vital renewable resources."¹¹⁵

The Working Group of the Preparatory Committee amalgamated these proposals into a common text,¹¹⁶ which was adopted by the Stockholm Conference without any change. It must be noted, however, that at the Conference an unsuccessful attempt was made to add to this principle a sentence ascribing the degradation of the environment in the developing countries to low prices for their products.¹¹⁷ The essence of that idea, in a more moderate form, was later embodied in Principle 10.

113. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 3 (1971). Even more emphatically, the Netherlands proposed the following text:

Each State shall do its utmost to restore and improve the productive capacity of renewable resources of the earth, such as farmland, forests, crops and fish for the proper supply of future generations with food and other material products.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, at 3 (1972). Compare the proposals by India and Australia. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, at 2 (1972); *id.*, CRP.9, at 1 (1972).

114. U.N. Doc. A/CONF.48/WG.1(II)/CRP.3/Rev.3, at 3 (1972).

115. *Id.*, Rev.4, at 4 (1972).

116. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

117. The idea of adding in Principle 3 a reference to the relationship between the human environment and the prices for primary products originated with Algeria. U.N. Doc. A/CONF.48/WG.1/CRP.17 (1972). It was later embodied in the following proposal by nine African countries:

In developing countries, the exhaustion of the capacity of the soil to produce these resources is caused not only by ecological processes but also from economic factors such as the inadequate payment made by rich countries for the agricultural and animal husbandry products of the developing countries. The prices of these products must therefore be reassessed to provide an effective remedy against the degeneration of this capacity in developing countries.

U.N. Doc. A/CONF.48/WG.1/CRP.22 (1972).

While one cannot quarrel with the content of this principle, it is regrettable that both here and in the companion Principles 4 and 5, the Working Groups rejected less ambiguous proposals which would have imposed upon each state the duty to do its utmost to fulfill the purposes of these principles. Nevertheless, one may argue that the word "must" in Principle 3 implies such a duty, and that all states, acting jointly and severally, ought to maintain and improve the capacity of the earth to produce such vital products as crops and fish.

Principle 4

Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat which are now gravely imperilled by a combination of adverse factors. Nature conservation including wildlife must therefore receive importance in planning for economic development.

Comment. While some of the other principles of the Stockholm Declaration deal with subjects of only recent concern, Principle 4 deals with a topic which has been preoccupying international conferences for some time. A convention on the preservation of wild animals, birds, and fish in Africa was signed at London on May 19, 1900.¹¹⁸ Another convention for the preservation of fauna and flora in Africa was signed at London on November 8, 1933.¹¹⁹ A convention on nature protection and wild life preservation in the Western Hemisphere was opened for signature at Washington on October 12, 1940.¹²⁰ A worldwide treaty prohibiting or restricting commercial trade in endangered animal species was signed at Washington on March 3, 1973.¹²¹

For this very reason, it seems that the early Working Group did not find it necessary to deal with this issue. Only when India called attention to this problem at Stockholm, was a provision on the subject inserted in the Declaration, following quite closely the Indian text.¹²²

Though Principle 4 mentions only vaguely the adverse factors which imperil wildlife, the second sentence obliquely makes the point that it is economic development in various parts of the world on which the

118. 94 BR. AND FOR. STATE PAPERS 715 (1904).

119. 172 L.N.T.S. 241; 6 M. HUDSON, INT'L LEG. 504 (1937).

120. 161 U.N.T.S. 193; 8 M. HUDSON, INT'L LEG. 573 (1949).

121. The text is reproduced in SENATE EXECUTIVE H, 93d Cong., 1st Sess. 1-36 (1973).

122. The Indian proposal at Stockholm read as follows:

Man, being only one of the many species inhabiting the earth, owes a special responsibility to safeguard the heritage of wild life and its habitat which are now

blame should be put. When new cities are built, when both industrialization and agriculture spread to new areas, and when new roads and dams bring revolutionary changes into the old natural habitats, decimated wildlife retreats further and further into the jungle or mountains, and finally, running out of space, completely perishes. As man's activities have caused this disaster, it is his special responsibility to do something about it, and this principle acknowledges that obligation.

Principle 5

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.

Comment. This principle can be traced to a Swedish proposal, which more pointedly suggested that:

The non-renewable resources of the earth, such as minerals, which in some cases are running out, must be employed, whenever possible, in such a way that they may be used again.¹²³

Consistent with their emphasis on programming, Brazil, Egypt, and Yugoslavia would have limited this principle to a statement of the need "to programme the utilization of the non-renewable resources in such a way that the requirements of mankind can be met for the foreseeable future."¹²⁴ In a more elegant way, their joint proposal with Costa Rica and Zambia suggested that the need is to "employ the non-renewable resources of the earth in such a way as to guard against the danger of their future exhaustion."¹²⁵ The Working

gravely imperilled by a combination of adverse factors. Nature conservation including wild life must, therefore, receive high priority in planning for economic development.

U.N. Doc. A/CONF.48/CRP.9, at 2 (1972).

123. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.2, at 3 (1971). The stronger Dutch version of this proposal read as follows:

Each State shall undertake all efforts to employ the non-renewable resources of the earth, such as minerals which in some cases are running out, in such a way that they may be used again.

U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.5, at 3 (1972).

124. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev.3, at 3 (1972).

125. *Id.*, Rev.4, at 4 (1972). An Indian proposal stressed that the non-renewable resources "must be employed with greater economy." U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.6, at 2 (1972); U.N. Doc. A/CONF.48/CRP.9, at 2 (1972). In more detail, Australia would have worded this principle as follows:

Minerals and other non-renewable resources must be used thriftily, avoiding unnecessary dispersal of the products and providing, when possible, for recycling.

Group embodied these proposals in the following text, corresponding to the first part of the final text:

The non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion.¹²⁶

The second part of the principle was suggested at Stockholm by Pakistan.¹²⁷ As was noted in the Comment to Principle 2, the idea of sharing of benefits by all mankind provides a link between the Stockholm Declaration and other United Nations Declarations which with increasing frequency put stress on the new social character of international law, which no longer protects the lucky few, but instead provides for more distributive justice. While the Sea-bed Declaration was limited to the resources of the seabed, the Stockholm Declaration applies the principle of equitable sharing more boldly to all non-renewable resources, wherever they may be situated.

Algeria presented at Stockholm an amendment which emphasized that increased prices for non-renewable resources were the best means for enabling the developing countries to avoid over-exploitation.¹²⁸ As revised by a group of nine African countries, the additional sentence in Principle 5 would have read as follows:

An increase in the base prices for such resources may enable the developing countries to avoid over-exploitation and to identify means of conservation, and even regeneration, of deposits.¹²⁹

Though this proposal was not accepted by the Working Group, it influenced the formulation of Principle 10, which introduces another equitable precept into the Declaration.

Principle 6

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not

Particular attention must be given to cases where, at present usage rates, known reserves will soon be exhausted.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, at 1 (1972).

126. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

127. U.N. Doc. A/CONF.48/WG.1/CRP.3 (1972).

128. U.N. Doc. A/CONF.48/WG.1/CRP.11 (1972). The amendment paralleled the one suggested by Algeria with respect to Principle 3. See note 117 *supra*.

129. U.N. Doc. A/CONF.48/WG.1/CRP.22, at 2 (1972).

inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.

Comment. The need to deal with toxic substances appeared early in the drafting of the Declaration, and the following general provision on the subject was suggested by Sweden:

The issuing of non-natural or toxic substances or of excessive quantities of natural substances, has already led to severe damage, and must be checked to ensure that it does not lead to dangerous damages in the ecosystems.¹³⁰

The Working Group combined this proposal with one presented jointly by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,¹³¹ and presented to the Stockholm Conference a revised text:

The discharge of toxic substances, or of other substances in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be checked to ensure that serious or irreversible damage is not inflicted upon ecosystems.¹³²

Apart from some minor changes, the Conference added, as a result of a Chinese proposal,¹³³ the rousing second sentence about the "just struggle of the peoples of various countries against pollution." It might have been more useful if the Conference instead, or in addition, had in the first sentence imposed an obligation on states to take all practicable steps to halt the discharges of toxic and other harmful substances. There is such a general agreement on the special danger not only to ecosystems but also to human health involved in such discharges, that should an extra effort have been made at the Conference to embody a stronger obligation in this paragraph, it might have succeeded here, though it had been rejected in connection with several earlier, more general principles.

130. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 3 (1971).

131. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4, at 4 (1972). For similar proposals by the Netherlands and India see U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, at 3-4 (1972); *id.*, CRP.6, at 2 (1972). Australia proposed a more specific text:

Steps must be taken to reduce to a minimum the broad dispersal into the environment of substances toxic to man, or to useful flora or fauna, especially non-biodegradable substances, to limit the wide dispersal of other non-biodegradable substances, and to prevent the accumulation, locally or widely, of harmful concentrations of substances which in small concentrations are harmless.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, at 1 (1972).

132. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

136. See pp. 459, 462 *supra*.

Principle 7

States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Comment. This provision constitutes a specific application of Principle 6, and its inclusion was spurred by the slowness of parallel efforts to conclude a detailed convention on dumping of toxic substances in the ocean.¹³⁴ When it became obvious that such a convention would not be ready for signature at Stockholm, as was originally hoped, India suggested the addition of this paragraph,¹³⁵ which the Conference accepted without change.

It must be noted that this principle, unlike the previous ones, imposes an obligation on states to take all possible steps, though this obligation is limited perhaps by the word "possible," since what might be possible for some technologically advanced states might not be possible for most developing countries. Nevertheless, the provision proves that there was no absolute barrier at Stockholm to phrasing the principles in terms of state obligations; and as was noted in some of the previous Comments,¹³⁶ a more persistent effort on the part of a few delegations might have resulted in phrasing of most of the principles in terms similar to Principle 7.

If Principle 7 is compared with Principle 6, one further difference can be pointed out. While Principle 6 is limited to pollution which might inflict serious or irreversible damage upon ecosystems, Principle 7 applies more broadly to pollution caused by substances not only liable "to create hazards to human health, to harm living resources and marine life," but also likely "to damage amenities or to interfere with other legitimate uses of the sea." This difference might perhaps

134. After several meetings on the subject, at Ottawa in 1971, and at Reykjavik and London in 1972, a Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters was signed at London, Mexico City, Moscow, and Washington on Dec. 29, 1972. U.N. Doc. A/AC.138/SC.III/L.29 (1973). Apart from more detailed provisions, this Convention contains the following more general obligation:

Contracting Parties shall individually and collectively promote the effective control of all sources of pollution of the marine environment, and pledge themselves especially to take all practicable steps to prevent the pollution of the sea by the dumping of waste and other matter that is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea.

Id. at 3.

135. U.N. Doc. A/CONF.48/CRP.9, at 2 (1972).

136. See pp. 459, 462 *supra*.

be explained by the fact that most ordinary discharges of toxic substances occur in, and are restricted in their effects to, a specific locality within national jurisdiction, and do not cause any harm abroad. On the other hand, damage to the oceans is causing harm to the common heritage of mankind or "the common international realm" (as stated in paragraph 7 of the Preamble), and there is, therefore, a stronger international interest in providing more binding and more precise obligations to protect the oceans.

Principle 8

Economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.

Comment. From the very beginning of the discussion of the question of the human environment, the United Nations was concerned about the relationship between the protection of the human environment and economic and social development. The first resolution on the subject by the Economic and Social Council already noted that "due attention to problems of the human environment is essential for sound economic and social development."¹³⁷ In his 1970 questionnaire, the Secretary-General raised the issue of how the Declaration could "best recognize the essential relationship between environment and development" and "take due account of the social and economic implications, in particular for the developing countries, of environmental action within the socio-economic context of development."¹³⁸ In reply, Colombia pointed out that "there is no fundamental conflict between the promotion of economic and social development and concern for environmental quality since the ultimate goal of both is the enhancement of the quality of human life."¹³⁹ The United States suggested the inclusion in the Declaration of a statement that:

The economic development and environmental quality are essential aspects of human progress, which can be pursued simultaneously

137. ECOSOC Res. 1346, July 30, 1968, 45 U.N. ECOSOC, Supp. 1 (Doc. E/4561) at 8 (1968). A similar view was expressed by the General Assembly in Res. 2398, Dec. 3, 1968, 23 U.N. GAOR, Supp. 18 (Doc. A/7218) at 2 (1969).

138. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 3 (1971).

139. *Id.* at 25. For similar comments by the Holy See, Italy, Singapore, Switzerland, and the United Arab Republic see *id.* at 38-39, 43, 52, 56-57, 59.

by wise application of science and technology and the adoption of enlightened social attitudes and practices.¹⁴⁰

In its first draft, the Working Group would have merely inserted a statement in the Preamble that:

There is no fundamental conflict between economic and social development and the preservation and enhancement of the human environment, since both seek to provide and sustain increasing opportunities to all peoples for a better life.¹⁴¹

To ensure a proper consideration of all the ramifications of the relationship between environment and development, Mr. Strong, the Secretary-General of the United Nations Conference on the Human Environment, arranged for a meeting of a special panel of experts at Founex, Switzerland in June 1971. In its report, the panel emphasized that the major environmental problems of the developing countries are not caused so much by development as by the lack of it. Not merely the "quality of life" but "life itself is endangered by poor water, housing, sanitation and nutrition, by sickness and disease and by natural disasters." Thus, for the developing countries "development becomes essentially a cure for their major environmental problems."¹⁴²

These ideas were taken into account in a joint proposal by Brazil, Egypt, and Yugoslavia, in which the following nicely balanced statement was contained:

Development plans should be compatible with a sound ecology and adequate environmental conditions can best be ensured by the promotion of development.¹⁴³

A later version of this proposal gave priority to development in the following way:

140. *Id.* at 64.

141. U.N. Doc. A/CONF.48/PC.12, Annex I, at 2 (1971). See also *id.*, Annex II, at 6.

142. DEVELOPMENT AND ENVIRONMENT: REPORT OF A PANEL OF EXPERTS . . . (Founex, Switzerland, 4-12 June 1971), U.N. Doc. A/CONF.48/10, Annex I, at 3-4 (1972) [hereinafter Founex Report]. Concerning the conflict between the industrialized and the developing countries before and at Stockholm see de Araujo Castro, *Environment and Development: The Case of the Developing Countries*, 26 INT'L ORG. 401 (1972); Doud, *International Environmental Developments: Perceptions of Developing and Developed Countries*, 12 NATURAL RESOURCES J. 520 (1972); PELL-CASE REPORT at 8-10; Sullivan, *The Stockholm Conference: A Step toward Global Environmental Cooperation and Involvement*, 6 INDIANA L. REV. 267, at 270-73 (1972); Wijkman, *Second-best Solution at Stockholm*, 9 INTERECONOMICS 262 (1972). See also COMMISSION TO STUDY THE ORGANIZATION OF PEACE, THE UNITED NATIONS AND THE ENVIRONMENT: TWENTY-SECOND REPORT 21-27 (1972).

143. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.2, at 2 (1972).

Economic and social development is essential for adequately safeguarding those natural and other conditions on earth that are necessary for the maintenance and improvement of the quality of life of the present and future generations.¹⁴⁴

The final version of this proposal, co-sponsored by Costa Rica and Zambia,¹⁴⁵ was incorporated in the second draft of the Working Group and referred by it to the Stockholm Conference,¹⁴⁶ which approved it without change.

By thus making economic and social development an integral factor in the process of improving the human environment, this compromise formula enabled the Conference to avoid a dangerous clash between the developed and the developing countries, and made it possible for the developing countries to play a constructive role at Stockholm.

Principle 9

Environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can best be remedied by accelerated development through the transfer of substantial quantities of financial and technological assistance as a supplement to the domestic effort of the developing countries and such timely assistance as may be required.

Comment. As noted in the Comment to Principle 8, the Founex Report put stress on the link between environmental deficiencies, on the one hand, and underdevelopment and natural disasters on the other hand.¹⁴⁷ The Report also pointed out that the concern for human environment should not only reinforce the commitment to development but also strengthen the commitment to international aid; it "should provide a stimulus for augmenting the flow of resources from the industrialized to the developing countries."¹⁴⁸

On the basis of a joint proposal by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia,¹⁴⁹ the Working Group of the Preparatory Committee presented to the Stockholm Conference the following proposal dealing with the linkage problem:

Environmental deficiencies generated by the conditions of under-

144. *Id.*, Rev.3, at 2 (1972).

145. *Id.*, Rev.4, at 3 (1972).

146. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

147. Founex Report at 4.

148. *Id.* at 8.

149. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev.4, at 3 (1972).

development pose grave problems and can best be remedied by and in the course of development.¹⁵⁰

The Working Group of the Stockholm Conference had to deal with several amendments to this provision. Pakistan suggested the addition of a phrase relating to massive financial assistance;¹⁵¹ the Holy See proposed to add a reference to "natural disasters, wars and intolerable social conditions";¹⁵² and Algeria would have ascribed underdevelopment to "various forms of foreign exploitation and domination."¹⁵³ A joint text by the Holy See, India, and Pakistan would have combined some of these ideas in the following manner:

Environmental deficiencies generated by: (a) the conditions of under-development pose grave problems and can best be remedied by accelerated development through transfer of massive financial and technological assistance as a supplement to the domestic effort of the developing countries; (b) natural disasters, social degradation and wars call for timely remedial action at the national and international level for the afflicted countries concerned.¹⁵⁴

In the final text, the Working Group retained the references to underdevelopment and natural disasters, but omitted the references to social degradation, wars, and foreign exploitation and domination. To compensate for this, the Working Group put main emphasis on the need to transfer substantial (rather than "massive") quantities of financial and technical assistance in order to supplement the domestic effort of the developing countries. To make the point doubly clear the Working Group also added a perhaps redundant reference to "such timely assistance as may be required." This last phrase is

150. U.N. Doc. A/CONF.48/4, Annex, at 3 (1972).

151. The Pakistani amendment read:

Environmental deficiencies generated by the conditions of under-development pose grave problems and can best be remedied by accelerated development through transfer of massive financial and technological assistance to the developing countries.

U.N. Doc. A/CONF.48/WG.1/CRP.3 (1972).

152. The Holy See proposal would have added here the following sentence:

Violent damage inflicted on the environment by natural disasters, wars and intolerable social conditions calls for immediate appropriate action by the national and international community.

U.N. Doc. A/CONF.48/WG.1/CRP.7 (1972).

153. The Algerian version was as follows:

Environmental deficiencies ascribable to under-development caused by various forms of foreign exploitation and domination pose grave and pressing problems and can best be remedied by and in the course of development.

U.N. Doc. A/CONF.48/WG.1/CRP.12 (1972). This text was incorporated in a joint proposal by nine African countries. U.N. Doc. A/CONF.48/WG.1/CRP.22, at 2 (1972).

154. U.N. Doc. A/CONF.48/WG.1/CRP.15 (1972).

probably meant to ensure quick assistance in case of natural disasters; it reinforces the special United Nations program in that field, designed to "ensure prompt, effective and efficient response to a Government's need for assistance, at the time of a natural disaster or other disaster situation, that will bring to bear the resources of the United Nations system, prospective donor countries and voluntary agencies."¹⁵⁵

The central issue of additional technical and financial assistance formed the subject of long negotiations at Stockholm and is further dealt with in Principle 12.

Principle 10

For the developing countries, stability of prices and adequate earnings for primary commodities and raw material are essential to environmental management since economic factors as well as ecological processes must be taken into account.

Comment. Principle 10 was added at Stockholm in order to emphasize the underlying idea of Principle 5 that the benefits from the exploitation of natural resources should be equitably shared by all mankind. Nine African countries originally proposed amendments implementing this idea in connection with Principles 3 and 5. It was contended that inadequate payments for primary agricultural and mineral products were responsible for the exhaustion of the developing countries' capacity to provide these products. To remedy this tragic situation, it was recommended that the base prices for these products be reassessed and sufficiently increased to enable the developing countries to avoid overexploitation.¹⁵⁶

The new text of Principle 10 presents the same idea in a more elegant phrasing. It connects the need for price stability and adequate earnings from sale of primary commodities and raw materials by the developing countries with the concept of environmental management. Only when these prices reach sufficient stability will it be possible for the developing countries to plan adequately for the preservation and improvement of the environment. The necessary financing can be obtained more reliably through an improvement in the terms of trade than through technical and financial assistance, which too often depends on political rather than ecological or economic factors.

¹⁵⁵ G.A. Res. 2816, Dec. 14, 1971, 26 U.N. GAOR, Supp. 29 (Doc. A/8429) at 85-86 (1972). This resolution established the post of a U.N. Disaster Relief Coordinator with a broad mandate in the field of disaster relief. *Id.* at 86.

¹⁵⁶ U.N. Doc. A/CONF.48/WG.1/CRP.22, at 1-2 (1972).

Principle 11

The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures.

Comment. The Founex Report noted the fear of the developing countries that the insistence of the industrialized countries on rigorous environmental standards for products entering international trade might lead to an environmental "neo-protectionism." The industrialized countries willing to apply high environmental standards to their industries might insist on banning from international trade goods produced by industries in the developing countries applying less rigorous environmental standards. The Report recommended a comprehensive study of both the potential threats to the exports of the developing countries and the corrective action that may be possible. It also suggested the monitoring of the rise of non-tariff barriers on grounds of environmental concern.¹⁵⁷

To remove these apprehensions, Brazil, Egypt, and Yugoslavia jointly suggested the following text:

No environmental policy should adversely affect present or future development possibilities of developing countries or hamper the attainment of better living conditions for all.¹⁵⁸

A revised draft of this proposal, co-sponsored by Costa Rica and Zambia gave a more positive cast to this idea and supplemented it with an endorsement of further international action in this area.¹⁵⁹ This proposal was forwarded by the Working Group to the Stockholm Conference,¹⁶⁰ which accepted it with only minor editorial changes.

Principle 12

Resources should be made available to preserve and improve the environment, taking into account the circumstances and particular requirements of developing countries and any costs which may

157. U.N. Doc. A/CONF.48/10, Annex I, at 26-28 (1972).

158. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev.3, at 3 (1972).

159. *Id.*, Rev.4, at 3 (1972).

African countries.¹⁸⁹ It is directed against projects which are designed to perpetuate the separation by races, especially in new housing developments. It is also applicable to so-called "Bantustans," where an attempt is made to resettle whole tribes in new, often unproductive, areas.

Principle 16

Demographic policies, which are without prejudice to basic human rights and which are deemed appropriate by Governments concerned, should be applied in those regions where the rate of population growth or excessive population concentrations are likely to have adverse effects on the environment or development, or where low population density may prevent improvement of the human environment and impede development.

Comment. The touchy question of population growth had to be handled gingerly in the preparatory work for the Stockholm Conference. It was included in the program of the Conference under the heading relating to human settlements; the Conference was asked to review "environmental problems arising from population growth and distribution."¹⁹⁰ Apart from certain proposals made in connection with paragraph 5 of the Preamble to the Declaration,¹⁹¹ the issue of including a principle on the subject was first raised by Sweden:

Measures must be considered and taken where population growth is excessive or patterns of life have developed which are wasteful of natural resources or careless of the environment.¹⁹²

189. U.N. Doc. A/CONF.48/WG.1CRP.20 (1972); *id.*, CRP.22, at 2 (1972).

190. U.N. Doc. A/CONF.48/PC/6, at 9 (1970). The Conference paper on human settlements contained the following comment:

While the population crisis is of global dimension, the need to control population growth and to change migration flows is not felt equally in all countries. In some less industrialized countries, for instance, it may be counter productive to control the growth of sparse populations or to slow down or arrest migrations to small urban centres which, in these countries, constitute the growth poles of future development. On the other hand, both industrialized and developing countries may need to consider limiting population growth to achieve their development goals and to meet their environmental objectives in line with their available resources. In view of the convening for 1974 of a World Population Conference, no attempt is being made in this paper to discuss extensively population control problems.

U.N. Doc. A/CONF.48/6, at 8 (1971). An earlier paper stated even more firmly that: It was felt that the high levels of population density existing in certain countries as well as the problem of population growth which exists in some regions may have a global significance, but that it was the responsibility of each State to determine policies on the matter.

U.N. Doc. A/CONF.48/PC/13, at 16 (1971).

191. See Comment on para. 5 of the Preamble, pp. 444-46 *supra*.

192. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 4 (1971). The Indian

A joint proposal by Brazil, Egypt, and Yugoslavia would have suggested in a more balanced fashion that there was a need to "devise demographic policies that will take into account the environmental strains which, in some regions, arise from excessive population concentrations or too low demographic densities."¹⁹³ The idea was spelled out in a proposal by these countries, in which Costa Rica and Zambia joined, adding, *inter alia*, the important proviso that demographic policies should be without prejudice to basic human rights.¹⁹⁴ After a stylistic revision by the Working Group, this proposal was forwarded to the Stockholm Conference,¹⁹⁵ which adopted it, with only one minor change.

The idea of "population control" being taboo to many countries, Principle 13 employs the more general term "demographic policies." This principle distinguishes clearly between those regions in which there is overpopulation and those regions (especially in Africa and South America) where low population density not only impedes development but also results in low national income insufficient for improving the environment so that a larger population could live in it, thus creating a vicious circle.

The proviso on human rights in this principle safeguards the right of individuals to decide on the size of their families and protects them against governmental edicts (like those of the Pharaoh in the times of Moses) ordering families to restrict the number of births or providing for compulsory sterilization. An individual might owe a duty to his fellow inhabitants of this crowded planet to restrict his family to a reasonable size, but Principle 13 does not allow the state to force him to accept birth control. It must be the individual's independent, voluntary decision. To protect this basic human right, it may also be necessary to ensure that a state does not deprive an individual of access to means of birth control. Demographic policies prohibiting the dissemination of knowledge and devices needed for birth control would be as destructive of human rights as those directed toward compulsory birth control.

Principle 17

Appropriate national institutions must be entrusted with the

proposal was identical. U.N. Doc. A/CONF.48/PC/WG.1(H)/CRP.6, para. 15, at 3 (1972).

193. U.N. Doc. A/CONF.48/PC/WG.1(H)/CRP.3/Rev.3, at 4 (1972).

194. *Id.*, Rev. 4, at 4 (1972).

195. U.N. Doc. A/CONF.48/4, Annex, para. 13, at 4 (1972).

task of planning, managing or controlling the environmental resources of States with the view to enhancing environmental quality.

Comment. This principle is a truncated version of a proposal included in the first draft of the Working Group of the Preparatory Committee which read:

States shall establish and strengthen appropriate institutions to plan and manage their environmental resources and to elaborate and enforce environmental quality standards.¹⁹⁶

This proposal would have imposed directly on states the obligation to establish appropriate institutions, while the final text puts this obligation in an indirect form, though the word "must" is used, connoting such an obligation. The early proposal also contained the obligation to elaborate and enforce environmental quality standards; the final text merely speaks of "controlling" the environmental resources, which does not necessarily include the enactment of required standards.

The first erosion of the original proposal occurred when Sweden reworded it to omit the reference to an obligation of states, substituting for it the neutral "institutions must be established" formula.¹⁹⁷ A further rewording by India removed the duty to adopt environmental standards.¹⁹⁸ The idea of "control" in addition to management and planning was suggested by Australia.¹⁹⁹ A joint proposal by Brazil, Egypt, and Yugoslavia recognized the need to "ensure that appropriate institutions are given the task of managing the environmental resources with a view to enhancing environmental quality."²⁰⁰

The Working Group of the Preparatory Committee combined these proposals into a formula which was adopted without change by the Conference.²⁰¹

Principle 18

Science and technology, as part of their contribution to eco-

196. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). In a minor variation, the Dutch proposal substituted "Each State shall." U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, para. 8, at 4 (1972). Canada would have substituted the slightly weaker phrase "States should." U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.4 (1972).

197. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, para. 8, at 3 (1971).

198. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, para. 9, at 3 (1972).

199. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, para. 8, at 2 (1972).

200. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.3, at 4 (1972).

201. U.N. Doc. A/CONF.48/4, Annex, para. 14, at 4 (1972). A more elaborate provision on the subject was suggested at Stockholm by Iran, but was not adopted by the Conference Working Group. U.N. Doc. A/CONF.48/WG.1/CRP.5, at 2 (1972).

conomic and social development, must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems and for the common good of mankind.

Comment. While some have blamed science and technology as being the main villains responsible for environmental degradation, others have looked to them as the main means for preserving and improving the environment. This principle is based on the second point of view.

The first draft of the Working Group of the Preparatory Committee included a more positively worded statement of this principle:

States shall apply modern science and technology to the use of natural resources and to the planning of human settlements in such a way as to preserve and enhance the human environment for present and succeeding generations.²⁰²

Nevertheless, one delegation considered this statement too narrow, as it did not "reflect the need for international co-operation in the application of modern science and technology and its transfer to developing countries."²⁰³ This idea was later included in Principle 20.

Sweden was responsible for giving this principle the more impersonal cast.²⁰⁴ Australia presented a more general and more noble variation of this proposal which contained references to development and to the needs of all mankind.²⁰⁵ A simpler formula, suggested by Brazil, Egypt, and Yugoslavia,²⁰⁶ was later expanded into the following text:

Science and technology, as part of their contribution to economic and social organization and development process, can and should be so directed as to contribute to the prevention and solution, or

202. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971).

203. *Id.*, Annex II, at 8.

204. The Swedish proposal was as follows:

Modern science and technology must be brought to bear in identifying and avoiding environmental risks in the use of natural resources and the planning of human settlements.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 4 (1971). For an identical proposal by India see U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, para. 14, at 3 (1972).

205. The Australian proposal read as follows:

Science and technology must be called upon to provide the solution of the problem of planning the development necessary for the adequate provision for the material needs of all mankind in such a way as to avoid a destructive impact on the environment, which would defeat the aim of development.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, at 2 (1972).

206. The first draft by Brazil, Egypt, and Yugoslavia was as follows:

Science and technology can and should be so directed as to equate and solve adequately environmental problems.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.1, at 2 (1972).

at least reduction, of environmental problems, including in respect of natural resources exploitation and the physical planning of human settlements.²⁰⁷

A third version, in the preparation of which Costa Rica and Zambia joined,²⁰⁸ was accepted by the Working Group of the Preparatory Committee and was forwarded to the Conference. It read:

Science and technology must be applied to the identification, avoidance and control of environmental risks and the solution of environmental problems, in the furtherance of economic and social development.²⁰⁹

At Stockholm, Brazil suggested rephrasing the reference to economic and social development and moving it to the beginning of the principle,²¹⁰ and Chile proposed that science and technology be considered as the "common property of mankind."²¹¹ The Working Group turned these ideas around; in particular, the Chilean proposal ended in the form of a goal for application of science and technology, "common property" being replaced by "common good."

The final text links application of science and technology to economic and social development; defines the tasks of science and technology as identifying environmental risks, helping in avoiding such risks, and assisting in controlling them should they nevertheless occur; and even more broadly imposes on scientists and technologists the duty to provide a solution for environmental problems. There is finally the injunction that science and technology should no longer be the handmaidens of evil but should instead become white knights acting always for the common good of mankind. Their duty should no longer be to serve some parochial interests of a nation or an industry, but only the interests of mankind as a whole.

Principle 19

Education in environmental matters, for the younger generation as well as adults, giving due consideration to the underprivileged, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and improving the

207. *Id.*, Rev. 3, at 3 (1972).

208. *Id.*, Rev. 4, para. 10, at 3 (1972).

209. U.N. Doc. A/CONF.48/4, Annex, at 4 (1972).

210. U.N. Doc. A/CONF.48/WG.1/CRP.6 (1972).

211. U.N. Doc. A/CONF.48/WG.1/CRP.10 (1972).

environment in its full human dimension. It is also essential that mass media of communications avoid contributing to the deterioration of the environment, but, on the contrary, disseminate information of an educational nature, on the need to protect and improve the environment in order to enable man to develop in every respect.

Comment. The same UNESCO Conference on the Biosphere which was the first to suggest the preparation of a Declaration on the Human Environment also adopted several recommendations on the need for adequate environmental education and the possible contribution of mass media to such education.²¹² The Secretary-General of the United Nations in his first report on the subject pointed out that "education at all levels and in all countries is at present not properly designed to produce adequate understanding and appreciation of the very nature of environmental problems"; that "very little educational material suited to the actual requirements of developing countries is as yet available in this field"; that training of specialists and technicians to handle environmental problems is a major need in developing countries; and that mass media place too much emphasis "on sensational, but relatively unimportant issues, ignoring less spectacular, but more urgent and fundamental questions."²¹³ Consequently, the Secretary-General suggested that one of the topics of the Stockholm Conference should be the "educational aspects of environmental issues."²¹⁴ The Preparatory Committee agreed that "the aims of the environmental information and education action programme at the Conference should be first to increase man's understanding of the environment and secondly to build a sense of awareness and commitment for a better human environment." The Committee recommended that the Working Group on the Declaration should include in the Declaration a statement calling upon states "to educate and inform the people concerning their environmental rights and responsibilities."²¹⁵

Japan was the first to suggest that the Declaration include in the Preamble a paragraph recognizing the need "to overcome the serious deficiency in knowledge and education particularly for young generations regarding the problem of the deterioration of the environment

212. U.N. Doc. A/7291, Annex, at 14-18 (1968).

213. U.N. Doc. E/4667, at 18 (1969).

214. U.N. Doc. A/CONF.48/PC.8, Annex I, at 5 (1970). For his later proposals on this subject see U.N. Docs. A/CONF.48/PC.11, at 21-22 (1971), and A/CONF.48/9, at 20-23, 28-32 (1971).

215. U.N. Doc. A/CONF.48/PC/13, at 19 (1971).

which threatens the present and future generations of mankind."²¹⁶ But the first principle on the subject was proposed by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia, in the following form:

Education in environmental matters, especially for the younger generations, is essential in order to broaden the basis for an enlightened opinion and responsible conduct by individuals, enterprises and communities in protecting and enhancing the environment.²¹⁷

This proposal was forwarded without change by the Working Group of the Preparatory Committee to the Stockholm Conference.²¹⁸ A complete revision of it suggested by the Holy See would have introduced a number of additional ideas:

It is essential that public opinion should be continuously formed and informed on matters relating to the environment considered in its full anthropological dimension, in order to bring home to individuals, enterprises and communities a sense of their responsibilities in protecting and improving a truly human environment; it is necessary to provide the younger generations with appropriate instruction and to ensure that adults, especially the underprivileged, are continuously educated in the changing conditions of the environment.²¹⁹

While the Working Group of the Conference accepted some of these ideas, it reformulated them and added the sentence relating to mass media.

The final text recognizes that not only the young but also adults, and especially the underprivileged, need education in environmental matters. Such education would create a broader basis for enlightened public opinion and would lead to a more responsible conduct by individuals, especially those in charge of enterprises and communities.

After an indirect criticism of mass media for their contribution to the deterioration of the environment—having in mind perhaps the masses of newspapers which need to be disposed of every day and the noise pollution caused by ubiquitous transistor radios—Principle 19 exhorts them in a rather gingerly fashion merely to disseminate in-

²¹⁶ U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.7 (1972).

²¹⁷ U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4, at 3 (1972). For different versions, combining education with scientific research, see U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, para. 9, at 3 (1971) (the Swedish proposal); U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, para. 11, at 3 (1972) (the Indian proposal).

²¹⁸ U.N. Doc. A/CONF.48/4, Annex, para. 16, at 4 (1972).

²¹⁹ U.N. Doc. A/CONF.48/WG.1/CRP.7 (1972).

formation of an educational nature on the need to protect and improve the environment.

This is a far cry from the original injunction of the Secretary-General of the Conference to develop "a dynamic sense of responsibility in the general public," and the Preparatory Committee's appeal for the promotion through all pedagogical means of a new environmental ethic ("man's being an integral part of the whole environment"), and thus avoid the creation of an environmental educational gap between governments and people.²²⁰

Principle 20

Scientific research and development in the context of environmental problems, both national and multinational, must be promoted in all countries, especially the developing countries. In this connection, the free flow of up-to-date scientific information and transfer of experience must be supported and assisted, to facilitate the solution of environmental problems; environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries.

Comment. The recognition of the need for scientific research in the field of environment can also be traced to the UNESCO Conference on the Biosphere.²²¹ In his first report, the Secretary-General of the United Nations recognized that significant research problems on global scale environmental phenomena required major international programs; that more emphasis needed to be placed on the biological and social sciences, especially as little was known about many extremely complex socio-cultural and psychological problems of the environment; and that more must be done about the transfer of technology from developed to developing countries.²²² In a more definite manner, the Preparatory Committee stressed the need to improve exchange of information on environmental matters between governments, particularly with regard to information other than scientific.²²³

In its first draft, the Working Group of the Preparatory Committee proposed merely that:

States shall promote the free exchange of scientific and other in-

220. U.N. Doc. A/CONF.48/PC/13, at 18-19 (1971).

221. U.N. Doc. A/7291, Annex, at 8-10, 22, 24 (1968).

222. U.N. Doc. E/4667, at 16-17 (1969).

223. U.N. Doc. A/CONF.48/PC.9, at 29 (1971). For a report on the subject by the Secretary-General see U.N. Doc. A/CONF.48/PC.11, at 26-33 (1971). For a criticism of this report see U.N. Doc. A/CONF.48/PC/13, at 22-23 (1971).

formation and facilitate the sharing of experience in combating environmental problems.²²⁴

The working group at its second session blended variations²²⁵ on this theme into the following text:

Research and the free exchange and transfer of scientific and other knowledge and experience must be promoted to the fullest extent practicable in order to facilitate the solving of environmental problems taking particularly into account the needs of developing countries.²²⁶

The Stockholm Conference was faced with a variety of amendments designed to strengthen this provision for the benefit of the developing countries. Brazil proposed deletion of "to the fullest extent practicable,"²²⁷ a phrase permitting the developed countries to argue that certain measures were not practicable (*e.g.*, because of patent or copyright problems). Sudan thought that "taking into account the needs of developing countries" was too weak, and that the developed countries should be "giving priority to the needs of developing countries."²²⁸ Algeria suggested rather boldly that not only scientific knowledge but also technology should be transferred to the developing countries "free of charge,"²²⁹ while China proposed quite pointedly that:

Advanced science and technology in connexion with protecting and enhancing the environment should not be monopolized by one or two countries, and should be provided without compensation to the countries in need of them, particularly the developing countries.²³⁰

These ideas were expressed more gently in the final text, which states that "environmental technologies should be made available to developing countries on terms which would encourage their wide dissemination without constituting an economic burden on the developing countries."

India attempted to insert a reference to "development" by suggesting that the world community should take into account both the needs

224. U.N. Doc. A/CONF. 48/PC.12, Annex I, at 4 (1971).

225. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, para.9, at 3 (1971); *id.*, CRP.3/Rev.4, para. 11, at 5 (1972); *id.*, CRP.6, para. 11, at 3 (1972).

226. U.N. Doc. A/CONF.48/4, Annex, at 4 (1972).

227. U.N. Doc. A/CONF.48/WG.1/CRP.6 (1972).

228. U.N. Doc. A/CONF.48/WG.1/CRP.2 (1972).

229. U.N. Doc. A/CONF.48/WG.1/CRP.14 (1972).

230. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 3 (1972).

of the developing countries and "the necessity to further research and development in those countries."²³¹ By shifting this idea to the forefront of the principle, the final text placed emphasis on the promotion of both scientific research and development for the solution of environmental problems "in all countries, especially the developing countries."

Attempts to combine these drafts were made by two groups of African countries, which presented the following merged text:

Research and the free exchange and transfer of up-to-date scientific, technological and other knowledge and experience must be promoted to the fullest extent in order to facilitate the solving of environmental problems giving priority to the needs of developing countries.²³²

The final text is more carefully written. Free exchange and transfer of scientific, technological, and other knowledge and experience have been replaced by "free flow" of scientific information, while transfer of "experience" and of technology will no longer be free. The needs of developing countries are no longer given priority, but special arrangements are to be made for making environmental technologies available to them. While scientific research "must" be promoted, and free flow of scientific information "must be supported and assisted," in connection with environmental technologies the weaker "should be made available" is used; on the other hand, the weasel phrase "to the fullest extent practicable" has been deleted. In this way a compromise has been achieved, balancing the desire of the developing countries for maximum benefits against the fears of the developed countries concerning excessive commitments.

Principle 21

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Comment. This principle attempts to balance the right of a state to control matters within its territory with its responsibility to ensure

231. U.N. Doc. A/CONF.48/CRP.9, at 2 (1972).

232. U.N. Doc. A/CONF.48/WG.1/CRP.20 (1972); *id.* CRP.22, at 2 (1972).

that what is done within that territory does not cause damage outside.

The right of a state to control the exploitation of resources within its territory is one of the basic components of state sovereignty. This right was recognized explicitly by several resolutions of the General Assembly. Thus in 1952 the General Assembly adopted a resolution pointing out that "the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty and is in accordance with the Purposes and Principles of the Charter of the United Nations."²³³ In 1954 the General Assembly requested the Commission on Human Rights to include among its recommendations concerning international respect for the right of peoples and nations to self-determination one concerning their "permanent sovereignty over their natural wealth and resources, having due regard to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries."²³⁴ The Commission accordingly included in article 1 of both draft Covenants on Human Rights the following paragraph:

The right of peoples to self-determination shall also include permanent sovereignty over their natural wealth and resources. In no case may a people be deprived of its own means of subsistence on the grounds of any rights that may be claimed by other States.²³⁵

The General Assembly later rewrote this paragraph, and the final text reads:

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.²³⁶

²³³ G.A. Res. 626, Dec. 21, 1952, 7 U.N. GAOR, Supp. 20 (Doc. A/2361) at 18 (1953). The idea appeared earlier, in a narrower form, in Res. 523, Jan. 12, 1952, which noted that "under-developed countries have the right to determine freely the use of their natural resources." 6 U.N. GAOR, Supp. 20 (Doc. A/2119) at 20 (1952).

²³⁴ G.A. Res. 837, Dec. 14, 1954, 9 U.N. GAOR, Supp. 21 (Doc. A/2890) at 21 (1954).

²³⁵ 10 U.N. GAOR, Annexes, Agenda Item 28 (Part II) (Doc. A/2929, ch. IV) at 13 (1955). A comment stated that "the right of self-determination certainly included the simple and elementary principle that a nation or people should be master of its own natural wealth or resources. The proposal, it was emphasized, was not intended to frighten off foreign investment by a threat of expropriation or confiscation; it was intended rather to warn against such foreign exploitation as might result in depriving the local population of its own means of subsistence." *Id.* at 15.

²³⁶ G.A. Res. 2200, Annex, Dec. 16, 1966, 21 U.N. GAOR, Supp. 16 (Doc. A/6316) at 49, 53 (1967).

In the meantime, the General Assembly requested in 1958 a survey of the status of the permanent sovereignty of peoples and nations over their natural wealth and resources, with due regard "to the rights and duties of States under international law and to the importance of encouraging international co-operation in the economic development of under-developed countries";²³⁷ and on the basis of that study²³⁸ the General Assembly adopted in 1962 a detailed resolution on the subject, declaring, *inter alia*, that:

The right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.²³⁹

This resolution was reaffirmed in 1966, at the same time that the Covenants on Human Rights were approved; the General Assembly also confirmed that "the exploitation of natural resources in each country shall always be conducted in accordance with its national laws and regulations."²⁴⁰

In the light of this history, the Secretary-General suggested in his 1970 questionnaire that the Declaration on Human Environment include the "principle of national sovereignty over natural resources."²⁴¹ This suggestion was endorsed in several replies to the questionnaire.²⁴² Canada suggested the following six principles:

1. Every State has a sovereign and inalienable right to its environment including its land, air and water, and to dispose of its natural resources.
2. Every State has a right to environmental integrity corresponding to its right to territorial integrity.
3. Every State has the right to take all necessary and appropriate measures to protect its environmental integrity.

237. G.A. Res. 1314, Dec. 12, 1958, 13 U.N. GAOR, Supp. 18 (Doc. A/4090) at 27 (1959).

238. U.N. Docs. A/AC.97/5/Rev.2, E/3511, A/AC.97/13, at 244 (U.N. Publ. 62.V.6, 1962).

239. G.A. Res. 1803, Dec. 14, 1962, 17 U.N. GAOR, Supp. 17 (Doc. A/5217) at 15 (1963).

240. G.A. Res. 2158, Nov. 25, 1966, 21 U.N. GAOR, Supp. 16 (Doc. A/6316) at 29 (1967). See also G.A. Res. 2692, Dec. 11, 1970, 25 U.N. GAOR, Supp. 28 (Doc. A/8028) at 63 (1971). In 1972 the General Assembly broadened the scope of the right to control natural resources by affirming that states' permanent sovereignty extended to "all their natural resources, on land within their international boundaries, as well as those found in the sea-bed and the subsoil thereof within their national jurisdiction and in the superjacent waters." U.N. Doc. A/RES/3016, Jan. 15, 1973.

241. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 13 (1971).

242. *Id.* at 58 (Switzerland), 60 (United Arab Republic); *id.*, Add.2, at 6 (Soviet Union).

4. Every State has a duty to conduct its activities with due regard to their effects upon the environment of other States.

5. No State may use or permit the use of its territory in such a manner as to cause damage to the environment of other States or to the environment of areas beyond the limits of national jurisdiction.

6. No State may use areas beyond the limits of national jurisdiction in such a manner as to cause damage to the environment of such areas or to the environment of other States.²⁴³

The Working Group of the Preparatory Committee included in the preamble to its first draft two parallel statements:

Each State has inalienable sovereignty over its natural resources; Each State has the responsibility to exercise its sovereignty over its natural resources in a manner compatible with the need to ensure the preservation and enhancement of the human environment.²⁴⁴

Some members of the Working Group would have preferred to merge these two paragraphs in order to place the concept of sovereignty in its environmental context. Others argued that the exercise of sovereignty cannot be subject to qualification or limitation and urged the deletion of reference to the need to preserve the environment in the second paragraph.²⁴⁵ It was also suggested that, in order to follow more closely the resolutions of the General Assembly on the subject, a reference should be made to the right of a state to freely exploit its natural resources.²⁴⁶

A more radical proposal would have included in the Preamble either a statement that "[e]ach State has inalienable sovereignty over its environment," or, by merging the old and the new text: "Each State has inalienable sovereignty over its environment and over its resources."²⁴⁷ The same delegation (probably Canada) also proposed the insertion in the draft Declaration of a new principle:

Each State has a sovereign right to its environment and to dispose of its natural resources and a right to take all necessary and appropriate measures to protect its environmental integrity.²⁴⁸

243. *Id.* at 3.

244. U.N. Doc. A/CONF.48/PC.12, Annex I, at 1 (1971).

245. *Id.*, Annex II, at 5.

246. *Id.*

247. *Id.* at 12.

248. *Id.*

In support of this proposal, it was argued that as a first step in the development of international environmental law it is necessary to make clear the principle that "sovereignty includes the right to environmental integrity and the right to maintain that integrity in a wholesome and unimpaired condition."²⁴⁹ Another delegation supported this proposal, subject to the condition that any such right can be exercised only in accordance with the Charter of the United Nations and the general principles of international law.²⁵⁰ Several other delegations opposed these proposals, however. They observed that, unlike the concept of sovereignty, the concept of the human environment did not have any clearly established limits; consequently, the proposed new principle could be interpreted as "implying that each State was left free to define the extent of its environment" to the prejudice of the established principles of international law.²⁵¹ One must note, however, that the proposed amendment would have effectively disposed of this objection, since it would have subjected the exercise of the right of a state to protect its environmental integrity to the general principles of international law. The idea of referring to international law was used in another context, however, when the Working Group decided to include among the principles the following Principle 6:

Each State has the responsibility, in accordance with the Charter of the United Nations and consistent with the principles of international law, to conduct its activities so as not to cause damage to the environment of other States, or to the environment of areas beyond the limits of national jurisdiction.²⁵²

When the matter was reconsidered at the second session of the Working Group, Sweden attempted to move the discussion to a different level by suggesting the following broad principle:

249. *Id.* at 13.

250. *Id.* at 14.

251. *Id.*

252. *Id.*, Annex I, at 3. The following alternative text also found some support:

Each State, in accordance with the Charter of the United Nations and consistent with the principles of international law, shall conduct its activities so as not to cause damage to the environment of other States or to the environment of areas beyond the limits of national jurisdiction.

Id., Annex II, at 8. Canada proposed later the following version which also included non-governmental activities:

States have the responsibility, in accordance with the Charter of the United Nations and the principles of international law, to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States, or to the environment of areas beyond the limits of national jurisdiction.

U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.4 (1972).

In bringing about economic and social development and adequate conditions for all, states whether acting individually in the exercise of their sovereignty over their natural resources or in concert through international organizations, must use their power to preserve and enhance the human environment and to ensure favourable living and working conditions for all.²⁵³

In an effort to avoid a direct statement of state responsibility, Sweden also proposed that:

It must be ensured by every state that activities within its jurisdiction or control are conducted so as not to cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.²⁵⁴

A more precise formulation of the first of these two principles was suggested by the Netherlands:

Each State, when exercising sovereignty over its natural resources for economic and social development, shall take due account of the effect of its activities on the ecological balance of the biosphere.²⁵⁵

An Australian attempt to combine the principles relating to national sovereignty over resources and to the duty of a state not to cause damage beyond its boundaries took the following form:

In conformity with the Charter of the United Nations and the principles of international law, each State should, without prejudice to its sovereign right to exploit its own resources, take effective steps to ensure that present or future activities within its jurisdiction or control cause no damage to the environment of other States or areas beyond the limits of national jurisdiction. It should consult and cooperate with other States as relevant.²⁵⁶

The sovereign right of each country to exploit its resources was put in the forefront of the joint proposal by Brazil, Egypt, and Yugoslavia, but was accompanied by recognition that this right is limited by the need to avoid harmful effects on the environment beyond its borders.²⁵⁷ A later version of this proposal made clear that this right

253. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 3 (1971).

254. *Id.* at 4.

255. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, at 3 (1972). Its second principle was close to Principle 6 of the Working Group. *Id.* para. 14, at 4-5. For an Indian variant of the two principles see U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, paras. 7-8, at 3 (1972).

256. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, at 2 (1972).

257. This early draft of the joint three-State proposal read as follows:

shall be exercised "in consistency with the Charter of the United Nations and the principles of international law."²⁵⁸ The final version of this proposal, co-sponsored by Costa Rica and Zambia, was accepted by the Working Group, except that the reference to "environmental policies, standards and criteria" was shortened to "environmental policies."²⁵⁹ While no changes were made in this paragraph at Stockholm, the United States made a statement of interpretation claiming that:

[N]othing contained in this principle, or elsewhere in the Declaration, diminishes in any way the obligation of States to prevent environmental damage or gives rise to any right on the part of States to take actions in derogation of the rights of other States or of the community of nations. The statement on the responsibility of States for damage caused to the environment of other States or of areas beyond the limits of national jurisdiction is not in any way a limitation on the above obligation, but an affirmation of existing rules concerning liability in the event of default on the obligation.²⁶⁰

The consensus reached in the Working Group of the Preparatory Committee on this principle was so fragile that the Working Group of the Conference not only refused to clarify the text, as suggested by the United States, but also rejected a number of amendments of the kind that it had no trouble in accepting in connection with other principles. Thus it rejected a Brazilian proposal to delete the restrictive reference to the Charter of the United Nations and the principles of international law, as well as another Brazilian proposal to restore an earlier text allowing each state to follow, without any restriction, not only its environmental policies but also its "standards and criteria."²⁶¹ The Working Group also refused to make a concession to the group of nine African countries, which wanted to make clear that the sovereign right to exploit resources was accompanied by the right to control them.²⁶²

The sovereign right of each country to exploit its own resources in accordance with its own environmental policies, standards and criteria shall be exercised in such a manner as to avoid producing harmful effects on other countries or on areas beyond national jurisdiction.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.2, at 2 (1972).

258. *Id.*, Rev.3, at 3 (1972).

259. Compare U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4, para. 5, at 3 (1972) with U.N. Doc. A/CONF.48/4, Annex, para. 18, at 4 (1972).

260. U.N. Doc. A/CONF.48/14, at 118 (1972).

261. U.N. Doc. A/CONF.48/WG.1/CRP.6 (1972).

262. U.N. Doc. A/CONF.48/WG.1/CRP.22, at 2 (1972).

The final text does not merely reiterate the generally accepted principle that a state has the sovereign right to exploit its own resources, but gives the blessing of the Charter and of the principles of international law to the right of a state to exploit these resources pursuant to its own environmental policies. While this provision does not go as far as to assert that a state has unlimited sovereignty over its environment, it comes quite close to such an assertion. An over-broad interpretation of this sovereign right would be inconsistent with the rest of the Declaration which emphasizes the fact that no part of the global environment can be separated from the rest and that it has to be preserved and improved for the benefit of all the people of both the present and future generations. No state can claim an absolute right to ruin its environment in order to obtain some transient benefits. It should think not only of the effect on other peoples but also about the future of its own people. It should not ruin the soil of its country in order to get a few extra crops or to sell more wood or pulp. Destruction and depletion of irreplaceable resources are clearly condemned by the Declaration, even when there is no effect abroad, and a state cannot engage in such activities behind the shield of misconceived sovereignty. It would have been better, therefore, if some clearer guideline had been inserted in the first part of Principle 21. It is unfortunate that the Conference did not consider the proposal by the Holy See that in the exploitation of national resources states should follow "a just environmental policy."²⁶³ There is clearly need here for some standard referring to the common good rather than to states' own policies, however inadequate.

The second part of Principle 21 was considered by many so important that they were willing to pay the price of the imperfections of the first part in order to nail down a crucial rule of general importance. The Canadian delegation, for instance, later commented that this principle reflects existing rules of international law, the first element in it stressing the rights of states, "while the second element made it clear that those rights must be limited or balanced by the responsibility to ensure that the exercise of rights did not result in damage to others." This balancing of rights and responsibility was essential "to reconcile national interests and those of the international community."²⁶⁴ While the principle of responsibility of one state for

²⁶³ U.N. Doc. A/CONF.48/WG.1/CRP.7, at 2 (1972).

²⁶⁴ U.N. Doc. A/AC.138/SC.III/SR.20, at 4 (prov. ed. 1972). Principles 21 and 22 have been accepted by the Governments of the United States and Canada, in a joint communiqué of July 13, 1972, as the basis for "the development of law and procedures for settlement of disputes of an environmental nature." *Id.* at 5; Council on Environ-

damage caused in another is generally recognized, though there have been only a few relevant international decisions on the subject,²⁶⁵ Principle 21 makes clear that the rule of responsibility applies not only to damage caused to the environment of other states but also to any injury inflicted on the environment of "areas beyond the limits of national jurisdiction," such as the high seas or Antarctica. Within the ambit of the principle are not only damage-causing activities within the area under a state's jurisdiction, including its territorial waters, but also activities conducted by persons or ships under its "control," wherever they may act. This extension of the principle applies clearly to citizens of a state, to ships flying its flag, and perhaps even to corporations incorporated in its territory. It is more doubtful whether it applies to residents of a state, to ships owned by its nationals but flying other countries' flags, or to foreign subsidiaries controlled by corporations incorporated in the state. Even if broad application of this principle should result in concurrent responsibility of several states, it may be hoped that states would be willing to interpret this provision in a manner which would best ensure an adequate preservation of the human environment.

Principle 22

States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Comment. This principle is closely connected with the previous one. If states are bound by international law to prevent activities which damage the environment in other states or in areas beyond national jurisdiction, states should also be responsible for damage actually caused by such illegal activities. This link appeared earlier in the questionnaire circulated by the Secretary-General in 1970, in which he suggested the inclusion in the Declaration of "the principle that States are internationally responsible for harm caused by them or their citizens to environmental resources shared with other States and for ensuring that national activities are carried out in conformity

mental Quality, Meeting between Mr. Train and Mr. Davis to Discuss Environmental Concerns, July 14, 1972, at 1 (mimeo. press release). See also 3 ENVIRONMENTAL REP., CURR. DEV. 345 (1972).

²⁶⁵ For a recent survey of international decisions and agreements on the subject see Bleicher, *An Overview of International Environmental Regulation*, 2 ECOLOGY L.Q. 1, at 16-51 (1972).

with the principles set forth in the present Declaration."²⁶⁶ While some replies to this questionnaire accepted the idea of liability of a state for damage caused to areas beyond that state's jurisdiction,²⁶⁷ others expressed doubts about it.²⁶⁸

The Working Group of the Preparatory Committee had before it a simple proposal by Canada that:

Each state has the responsibility to compensate for damage to the environment caused by activities carried on within its territory.²⁶⁹

Other states were not ready, however, to go so far, and proposed that the matter be referred for further study. As a compromise, they agreed to include in the Declaration a proposal that:

States shall examine the possibility of concluding international agreements providing for compensation in respect of damage to the environment caused by its activities.²⁷⁰

An alternative proposal would have limited liability to activities prohibited by special agreements:

Each State has the responsibility to compensate for damage to the environment caused by non-performance or disregard of the specific engagements to which it is a party.²⁷¹

The main opposition to the proposal was based on fear that it would be "tantamount to endorsing the principle of the absolute liability of States," based on the risk theory. Preference was expressed for restricting responsibility to cases of "negligence of a State, imputable either to inaction or the failure to fulfil specific commitments."²⁷²

At the second session of the Working Group, Australia presented a draft paralleling the language of the previous principle:

In conformity with the Charter of the United Nations and the principles of international law, when such damage has occurred, the State, activities within which were responsible for the damage,

266. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 14 (1971).

267. *Id.* at 26 (Colombia), 58 (Switzerland).

268. *Id.* at 19 (Austria), 46 (Japan).

269. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). For a previous draft see U.N. Doc. A/CONF.48/PC/WG.1/CRP.4/Add.2, para. 7, at 3 (1971).

270. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). It was suggested that the text might be strengthened by changing the beginning phrase to "States shall seek to conclude." *Id.*, Annex II, at 9. Another proposal would have made the last phrase more precise by reformulating it as follows: "... caused to the environment of other States by activities carried on within or outside their territory." *Id.* at 10.

271. *Id.* at 9.

272. *Id.* at 15.

should rectify or compensate for the damage and co-operate in the development of procedures for settling disputes which may arise.²⁷³

A similar proposal made by Brazil, Costa Rica, Egypt, Yugoslavia, and Zambia emphasized the need to "provide, in accordance with the Charter of the United Nations and the principles of international law, economic indemnification for damage caused beyond national jurisdiction, whenever compensation by other means is not feasible."²⁷⁴ The more conservative viewpoint prevailed, however, and the Working Group recommended the following text:

States shall co-operate to develop further the international law regarding liability and compensation in respect of damage which is caused by activities within their jurisdiction or control to the environment of areas beyond their jurisdiction.²⁷⁵

At Stockholm only minor changes were made in this draft. In particular, the Working Group of the Conference rejected a Chinese proposal which would have added the following sentence:

The victim state has the right to demand compensation from the pollutor-country which has discharged or dumped at will toxic substances, thereby seriously polluting and poisoning the environment of other states.²⁷⁶

While Principle 22 contains merely a promise that states shall co-operate to develop further the international law regarding liability for environmental damage, the word "further" contains an admission that some law on the subject already exists. It also makes clear that liability is not limited to pollution but also extends to other environmental damage, for instance, that caused by "environmental aggression," such as weather and climate modification, changing the flow of ocean currents, melting the polar icecaps, etc. Principle 22 follows Principle

273. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.9, at 2 (1972). More forthrightly, Canada suggested that:

States have the responsibility in accordance with the Charter of the United Nations and the principles of international law, to compensate for damage caused by activities within their jurisdiction or control and should co-operate in the development of procedures for the settlement of disputes which may arise.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.4 (1972).

274. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.4, at 4 (1972). A similar proposal was made at Stockholm by Brazil. U.N. Doc. A/CONF.48/WG.1/CRP.6 (1972).

275. U.N. Doc. A/CONF.48/4, Annex, at 4 (1972).

276. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 3 (1972).

21 in broadening liability; it applies not only to activities within the jurisdiction of states, but also to those under their control.

This principle has been hailed by the Canadian Government as one laying the foundation for the future development of international environmental law; less than a month after its adoption this principle was applied by the Governments of Canada and the United States to environmental questions which may arise between them, and they agreed to cooperate in the development of arrangements concerning compensation for the victims of pollution.²⁷⁷

During the preparatory stage of the Conference, Principles 21 and 22 relating to possible damage to the environment and to liability for it were accompanied by a third principle relating to the duty to provide a proper warning to other states. The Working Group of the Preparatory Committee originally proposed that:

Relevant information must be supplied by States on activities or developments within their jurisdiction or under their control whenever they believe, or have reason to believe, that such information is needed to avoid the risk of significant adverse effects on the environment in areas beyond their national jurisdiction.²⁷⁸

This so-called "Principle 20" was the subject of lengthy debates at Stockholm and was forwarded by the Conference to the 27th session of the General Assembly, which incorporated a modified version of it in a separate resolution. Its origins can be traced to the suggestion by the Secretary-General that the Declaration include a principle relating to:

[T]he right and duty to consult each other if there is reason to believe that any planned activity may cause serious harm to the environment in general or infringe upon the environmental rights of other States.²⁷⁹

The Working Group of the Preparatory Committee had before it a proposal by the United States that:

Whenever a proposed activity by any State might cause grave harm to human environment beyond its territory the State or States

277. U.N. Doc. A/AC.138/SC.III/SR.20, at 4-5 (prov. ed. 1972). See also note 264 *supra*.

278. U.N. Doc. A/CONF.48/4, Annex, para. 20, at 4 (1972).

279. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 14 (1971). The idea was approved by several Governments. See *id.* at 19 (Austria), 26 (Colombia), 58 (Switzerland), and *id.*, Add.1, at 6 (United Kingdom).

280. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 65 (1971).

planning such an activity should undertake appropriate international consultations before proceeding with any such activity.²⁸⁰

Canada presented a slightly more elaborate proposal, clarifying what was meant by "appropriate international consultations":

Every State has a duty to consult with other States before undertaking activities which may damage the environment of such States, and a similar duty to consult with the appropriate international organization, if any, before undertaking activities which may damage the environment in areas beyond the limits of national jurisdiction.²⁸¹

Since the Working Group could not agree on a proper formulation, it presented two complementary texts, one emphasizing the duty to consult and the other empowering a state to demand consultation if another state's activities threaten damage. They read as follows:

Each State has the duty to undertake international consultations before proceeding with activities which may cause damage to the environment of another State or to the environment of areas beyond the limits of national jurisdiction.

A State having reason to believe that the activities of another State may cause damage to its environment or to the environment of areas beyond the limits of national jurisdiction, may request international consultations concerning the envisaged activities.²⁸²

Some delegations contended that these provisions were not suitable for inclusion in the Declaration because they were either "inherent in the obligations undertaken by Member States in the Charter of the United Nations, and thus redundant," or "were an extension of these obligations which would be outside the scope of a declaratory and inspirational instrument."²⁸³ It would be more appropriate to deal with them through international treaties, which would require, however,

281. *Id.*, Add.2, at 3 (1971). A later version of the Canadian proposal read:

States should give notice to other States (or appropriate international agency, if any) and, where requested, should undertake international consultations before proceeding with activities which may cause damage to the environment of another State or to the areas beyond the limits of national jurisdiction; such notice shall include sufficient facts as will permit the recipient State to assess the probable effect of the proposed activities.

U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.4, at 2 (1972).

282. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). It was also suggested that the term "damage" be qualified by an adjective such as "serious" or "substantial." *Id.*, Annex II, at 9.

283. *Id.* at 8.

detailed negotiations.²⁸⁴ Others opposed these provisions on substantive grounds, arguing that they "neither had a sound juridical basis nor could be considered politically desirable, at least at the present stage of scientific knowledge of the problems of the environment."²⁸⁵

At the second session of the Working Group the Netherlands suggested forthrightly that:

States shall inform other States directly concerned or appropriate international organizations on any envisaged activity which may cause damage to the environment of those States or of areas beyond the limits of national jurisdiction; in appropriate cases States shall enter into international consultations.²⁸⁶

A more limited proposal was made by Australia, which, however, contained the additional obligation to engage in a "collaborative investigation."²⁸⁷ Brazil, Egypt, and Yugoslavia proposed an even vaguer statement, stressing the need to "supply the relevant information on facts that, in the view of those responsible for them, may provoke serious environmental damage beyond national jurisdiction."²⁸⁸ As revised later, in cooperation with Costa Rica and Zambia, this proposal was accepted by the Working Group and became Principle 20 of the Preparatory Committee draft.²⁸⁹

At Stockholm a group of African countries suggested a strengthening of the obligation by deleting the words "they believe, or have reason to believe that" and by omitting the word "significant."²⁹⁰ Argentina would also have strengthened the obligation by adding the following additional sentence:

This information must also be supplied at the request of any of the Parties concerned, within appropriate time, and with such data as may be available and as would enable the above-mentioned

284. *Id.* at 9.

285. *Id.*

286. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.5, at 5 (1972).

287. The Australian proposal was as follows:

When, in any State, a major activity is contemplated that has an appreciable probability of damaging the environment of another State, or States, or of international areas, the first State should inform the States concerned and, if requested, undertake detailed collaborative investigations.

U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.9, at 2 (1972).

288. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.3/Rev.3, at 4 (1972).

289. See note 278 *supra*.

290. U.N. Doc. A/CONF.48/WG.I/CRP.20 (1972); *id.*, CRP.22, at 3 (1972). These amendments were also supported by several Latin American countries. U.N. Doc. A/CONF.48/14, at 119; *id.*, Corr.1 (1972).

Parties to inform and judge by themselves of the nature and probable effects of such activities.²⁹¹

On the other hand, Brazil suggested the following limitation:

No State is obliged to supply information under conditions that, in its founded judgement, may jeopardize its national security, economic development or its national efforts to improve environment.²⁹²

The Conference decided to refer the text and the proposed amendments for the consideration of the General Assembly²⁹³ in the hope that a consensus would emerge by the time the General Assembly discussed that principle.²⁹⁴

Brazil, which was the main opponent in Stockholm of adopting a principle which might be misused for placing obstacles in the path of development, took the lead at the General Assembly in presenting a draft resolution which was co-sponsored by a large group of developing countries and a few developed countries. It was proposed that the General Assembly adopt the following resolution:

The General Assembly, . . .

Bearing in mind that, in exercising their sovereignty over their natural resources, States must seek, through effective bilateral and multilateral co-operation or through regional machinery, to preserve and improve the environment,

1. *Emphasizes* that, in the exploration, exploitation and development of their natural resources, States must not produce significant harmful effects in zones situated outside their national jurisdiction;

2. *Recognizes* that co-operation between States in the field of the environment, including co-operation towards the implementation of principles 21 and 22 of the Declaration of the United Nations Conference on the Human Environment, will be effectively achieved if official and public knowledge is provided of the technical data relating to the work to be carried out by States within their national jurisdiction with a view to avoiding significant harm that may occur in the human environment of the adjacent area;

3. *Recognizes further* that the technical data referred to in the preceding paragraph will be given and received in the best spirit

291. U.N. Doc. A/CONF.48/CRP.5 (1972).

292. U.N. Doc. A/CONF.48/14, at 119 (1972).

293. *Id.*

294. *Id.* at 116 (statement by Zambia).

of co-operation and good neighbourliness, without this being construed as enabling each State to delay or impede the programmes and projects of exploration, exploitation and development of the natural resources of the States in whose territories such programmes and projects are carried out.²⁹⁵

Emphasizing that "conditions of under-development were incompatible with an environment which was both sociologically and ethically acceptable," and that "the responsibility of the international community for its environment must, first and foremost, be translated into terms of global co-operation for global social and economic expansion and development,"²⁹⁶ the Brazilian representative explained that the proposed resolution was intended to reinforce, in an operational and practical manner, the scope and significance of Principles 21 and 22, which he whole-heartedly supported. Its purpose was to provide member states with "the guidelines they required in order to co-operate in a true sense of good neighborliness."²⁹⁷

Some states were, however, opposed to the revival of Principle 20, arguing, *inter alia*, that it was for each state to decide the kind of information it wished to transmit.²⁹⁸ Canada attempted to revise the proposed resolution, because it believed that the proposal made an attempt to reinterpret Principles 21 and 22 of the Stockholm Declaration. The Canadian representative noted that:

In effect, [the draft resolution] appeared to imply that all that was required to ensure international co-operation on environmental matters was the provision of information on activities which might have a harmful effect on other States. It suggested that the implementation of principles 21 and 22 would be achieved if knowledge was provided of the technical data relating to the work envisaged. However, those two principles involved not only the

295. U.N. Doc. A/8901, at 3-4 (1972).

296. U.N. Doc. A/C.2/SR.1466, at 16 (prov. ed. 1972).

297. *Id.* at 15. Similar statements were made by representatives of Argentina, *id.* at 17; Pakistan, U.N. Doc. A/C.2/SR.1467, at 6 (prov. ed. 1972); Sri Lanka, A/C.2/SR.1469, at 2-3 (prov. ed. 1972); Venezuela, U.N. Doc. A/C.2/SR.1471, at 3 (prov. ed. 1972); Trinidad and Tobago, U.N. Doc. A/C.2/SR.1472, at 20 (prov. ed. 1972); Malaysia, U.N. Doc. A/C.2/SR.1473, at 12-13 (prov. ed. 1972); Zambia, *id.* at 14.

The proposal was also endorsed by the United States, U.N. Docs. A/C.2/SR.1467, at 3-4 (prov. ed. 1972) and A/C.2/SR.1473, at 16-17 (1972); Australia, U.N. Doc. A/C.2/SR.1468, at 11 (prov. ed. 1972); Austria, U.N. Doc. A/C.2/SR.1469, at 4 (prov. ed. 1972); Haiti, *id.* at 12; Guatemala, *id.* at 13-14; Spain, U.N. Doc. A/C.2/SR.1470, at 5 (prov. ed., 1972); Yugoslavia, *id.* at 7; Egypt, *id.*; Indonesia, *id.* at 10; Cyprus, *id.* at 22; Libya, U.N. Doc. A/C.2/SR.1471, at 2 (prov. ed. 1972); Italy, *id.* at 6; Thailand, U.N. Doc. A/C.2/SR.1474, at 10 (prov. ed. 1972).

298. Czechoslovakia, U.N. Doc. A/C.2/SR.1469, at 5 (prov. ed. 1972).

right to exploit resources but also the responsibility not to damage others in the course of exploitation activities and to develop new laws and procedures enabling the disputes to be settled if damage did occur. Clearly, to achieve those objectives, something more than the publication of information was required. Obviously the establishment of much wider international co-operation in environmental matters must be envisaged. Those two principles formed the point of departure for the development of international environmental law. Without appropriate legislation, there could be no assurance that big and small countries could establish co-operation on an equal footing, as called for in principle 24 of the Declaration, nor that the polluters would agree to pay. Countries like Canada, which were not great Powers, must be able to rely on the law to defend their interests.²⁹⁹

In a spirit of cooperation, he offered only two "essential" amendments to paragraph 2 of the draft: that the words "including co-operation towards the implementation" of Principles 21 and 22 be replaced by "including co-operation by the implementation"; and that the words "effectively achieved" be replaced by "facilitated."³⁰⁰ The Mexican representative also objected to the draft, as it could be interpreted to mean that "the responsibility to ensure protection of the environment, embodied in principles 21 and 22, could be met by merely informing neighbouring countries," while Mexico's view was that "it was the responsibility of all States to avoid activities within their jurisdiction or control which might cause damage to the environment beyond their national frontiers and to repair any damage caused."³⁰¹ The New Zealand representative thought that the draft severely weakened Principles 21 and 22, because the words "significant harmful effects" and "significant harm" might give rise to endless debates about what was harmful and what was significant. There was also the implication that the duty to cooperate can be effectively fulfilled by merely exchanging information.³⁰² The Netherlands representative did not consider the draft satisfactory since "a State whose activities had harmful effects on the environment outside its national jurisdiction was responsible for providing the other States concerned with as much advance information as possible."³⁰³ The draft was also restricted to

299. U.N. Doc. A/C.2/SR.1469, at 14 (prov. ed. 1972).

300. *Id.* at 15; U.N. Doc. A/8901, at 4 (1972).

301. U.N. Doc. A/C.2/SR.1470, at 19 (prov. ed. 1972).

302. U.N. Doc. A/C.2/SR.1472, at 15 (prov. ed. 1972). For the statement by Finland see *id.* at 5.

303. U.N. Doc. A/C.2/SR.1479, at 7 (prov. ed. 1972).

harm to "adjacent areas," though damage sometimes might occur in other areas as well.³⁰⁴

After the delegates of Brazil, Argentina, and the United States made clear that the draft was not intended to derogate from, modify, weaken, or limit Principles 21 and 22,³⁰⁵ Canada agreed to withdraw her two amendments.³⁰⁶ Nevertheless, to make doubly sure, Australia, Canada, Mexico, New Zealand, and Panama introduced a supplementary resolution declaring that "no resolution adopted at the twenty-seventh session of the General Assembly can affect principles 21 and 22 of the Declaration."³⁰⁷ When it came to voting, the spirit of compromise prevailed; the first resolution was adopted by 114 votes to none, with 10 abstentions,³⁰⁸ and the supplementary resolution was accepted by 111 votes to none, with 11 abstentions.³⁰⁹

The General Assembly, having informally agreed not to examine the substance of the Declaration and not to entertain any amendments to it, did not even contemplate the possibility of adding the principle embodied in the first resolution to the Declaration. Nevertheless one might consider, for all practical purposes, that the new principle has become Principle 22A (or 22 *bis*, should the European nomenclature be used). It balances neatly the desire of some states to be informed in time of any activities within the territory of a state so that steps might be taken to avoid significant harm in adjacent areas, with the firm conviction of other states that such information should not be used by a state to delay or impede the development of natural resources in another state. As to whether this line can be drawn in practice, only future experience in applying this resolution will tell. Nevertheless, however vaguely stated, this principle provides the legal basis for a state which feels threatened to require the state in which a dangerous activity is conducted to provide the other state with the relevant technical data. This is certainly a step in the right direction. Like the requirement for an environmental impact statement in some national legal systems, the fact that there is a requirement to provide the technical data might result in the abandonment of some marginal projects.

304. *Id.* at 8. A similar point was made by the representative of Sri Lanka. U.N. Doc. A/C.2/SR.1469, at 2-3 (prov. ed. 1972).

305. U.N. Doc. A/C.2/SR.1473, at 15-17 (prov. ed. 1972).

306. U.N. Doc. A/C.2/SR.1479, at 5 (prov. ed. 1972).

307. U.N. Doc. A/8901, at 5, 35 (1972).

308. Most of these 10 votes were cast by socialist countries, which abstained on all resolutions relating to environment.

309. U.N. Doc. A/C.2/SR.1479, at 7, 8 (prov. ed. 1972). The final texts of the two resolutions may be found in U.N. Docs. A/RES/2995 and A/RES/2996 (1973).

Principle 23

Without prejudice to such criteria as may be agreed upon by the international community, or to standards which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.

Comment. The idea that each people is entitled to the preservation of its system of values, an important part of its cultural heritage and environment, appeared early in the following statement by the Holy See:

To stress the primacy which must be given to man in the consideration of either economic development or the natural environment is the only way to reconcile development with the protection of the environment. It is also the way to recognize the importance, in protecting the environment, of protecting the cultural and spiritual values which form the most valuable asset handed down by the past to the present generation, not as a dead tradition, but as a vital, ever-fertile element whose decay is one of the gravest symptoms of imbalance in a culture or civilization.³¹⁰

The other basic concept in this principle relates to the need to devise different standards for the most advanced countries and for the developing countries. It can be traced to the Founex Report, which emphasized that each developing country must define for itself the minimum environmental standards which it wishes to impose in the light of its own stage of development and its own cultural and social objectives.³¹¹

The two ideas were combined in the following proposal presented by Chile to the Stockholm Conference:

Without prejudice to such general principles as may be agreed upon by the international community, or to the criteria and minimum levels which will have to be determined nationally, it will be essential in all cases to consider the systems of values prevailing in each country, avoiding where necessary the use of standards which are valid for the most advanced countries but which may be inappropriate and high in social cost for the developing countries.³¹²

310. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 39 (1971).

311. U.N. Doc. A/CONF.48/10, Annex I, at 20, 33 (1971).

312. U.N. Doc. A/CONF.48/WG.1/CRP.10 (1972).

This proposal was adopted by the Conference with minor, though significant, changes.

The final text recognizes that criteria agreed upon by the international community will have priority over national policies. In this connection, the word "criteria" is a more definite one than the words "general principles" which appeared in the Chilean draft, since a country would have a wider freedom of maneuver within the general principles than it might have within more specific criteria. On the other hand, at the next level of specificity, "standards" will be determined nationally, as will the local systems of values. Since both will be determined by the competent national authority, there should be no danger of clash between them. Nevertheless, in order to ensure that undue pressure is not put upon a country to adopt advanced international standards to the detriment of cultural values and at unwarranted social cost, Principle 23 contains the injunction to consider carefully whether certain environmental standards which might be valid for industrialized countries are appropriate for a particular developing country.

Principle 24

International matters concerning the protection and improvement of the environment should be handled in a co-operative spirit by all countries, big or small, on an equal footing. Co-operation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

Comment. Most of the early proposals related to the second sentence of this principle; the first one was added at the last minute in response to a Chinese suggestion.

In his questionnaire the Secretary-General pointed out that "the interdependence and the regional or global character of a growing number of environmental problems calls for a concentrated effort towards their solution by all members of the international community, regardless of their geographical, economic, and social situation, or their political systems."³¹³ He also suggested that "States should be guided by the principle of co-operation and mutual assistance and should conduct all their activities related to environmental problems

313. U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 7-8 (1971).

with due regard to the corresponding interests of other States, in accordance with international law, including the Charter of the United Nations."³¹⁴ Similarly, the United States suggested that "actions necessary for the conservation, and the enhancement of the human environment will require sustained co-operation by States, peoples, and international organizations."³¹⁵

The Working Group of the Preparatory Committee included in its first draft the principle that:

States shall, in accordance with the Charter of the United Nations, take joint and separate action, both directly and through international organizations, to preserve and enhance the human environment.³¹⁶

Sweden suggested that this proposal be reworded to read:

Co-operation bilaterally, regionally or internationally must be undertaken by states, whenever separate and unco-ordinated national measures appear inadequate, to avoid or eliminate threats to the environment.³¹⁷

A joint proposal by Brazil, Egypt, and Yugoslavia emphasized the need to "co-operate in the international field so as to prevent, eliminate or at least adequately reduce and effectively control adverse ecological effects resulting from activities conducted in all spheres and in such a way that due account is taken of the interests of all States."³¹⁸ As revised later, in cooperation with Costa Rica and Zambia,³¹⁹ and as restyled by the Working Group, this proposal was forwarded to Stockholm in the following form:

Co-operation through international agreements or otherwise is

314. *Id.* at 14. This suggestion was endorsed by Colombia, *id.* at 26; Denmark, *id.* at 29; and Switzerland, *id.* at 58.

315. *Id.* at 64.

316. U.N. Doc. A/CONF.48/PC.12, Annex I, at 3 (1971). It was also suggested that the beginning of the paragraph be revised to read: "States shall cooperate . . . by taking joint and separate action." *Id.*, Annex II, at 10. For another slight variant of this proposal see U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, para. 18, at 5 (1972) (the Netherlands draft).

317. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.2, at 4 (1971). See also U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.6, para. 10, at 3 (1972) (the Indian proposal). Similarly, Canada suggested that:

States should co-operate with other States bilaterally, regionally or internationally to avoid or eliminate threats to the environment whenever separate and unco-ordinated national measures appear inadequate.

U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.4 (1972).

318. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev.2, at 3 (1972).

319. *Id.*, Rev.4, para. 13, at 5 (1972).

essential to prevent, eliminate or reduce and effectively control adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the interests of all States.³²⁰

At Stockholm a reference to "sovereignty" was added near the end of the paragraph; it was made explicit that states may cooperate through both multilateral and bilateral agreements; "or otherwise" was replaced by the more elegant "or other appropriate means"; the order of the goals was reversed; and a sentence was added, reflecting the following Chinese amendment:

International matters regarding the protection and improvement of the environment should be handled in the spirit of all countries, big or small, on an equal footing, and with the fullest mutual consultations possible.³²¹

When the Chinese proposal was revised, the phrase "the fullest mutual consultations possible" was dropped. The change reflected the bitter battle fought on the subject in connection with the so-called "Principle 20."³²² China did not succeed in slipping the idea inconspicuously through the back door of Principle 24.

In its final form the principle emphasizes not only cooperation but also equality among states, and the need to respect the sovereignty and interests of all states, not only of the parties to a particular arrangement. It should have been possible to phrase this principle in the form of a state duty, as was done with respect to the next principle, but Principle 24 was probably considered too complicated to be added to the few specific duties clearly imposed by the Declaration.

Principle 25

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.

Comment. The problem of coordination — a favorite one in United Nations circles — took a prominent place in the work of the committees working on institutional arrangements for the protection of the human environment, which culminated in the adoption of a

320. U.N. Doc. A/CONF.48/4, Annex, at 5 (1972).

321. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 4 (1972).

322. For a discussion of that principle see Comment on Principle 22, pp. 496-502 *supra*.

separate resolution on institutional arrangements.³²³ The Working Group of the Preparatory Committee in its first draft proposed that:

States shall direct their activities within international organizations so as to ensure that these organizations perform an increasingly effective role in the preservation and enhancement of the human environment.³²⁴

Some delegations objected to this proposal because "it dictated policies to sovereign States" and "it reflected a tendency to place undue emphasis on policies of the environment to the detriment of the specific purposes for which the various international organizations were established."³²⁵

The Netherlands inserted in this draft a more express reference to coordination:

States shall direct their activities within international organizations so as to ensure that these organizations perform in a coordinated and concerted manner an increasingly effective role in the enhancement and preservation of the human environment.³²⁶

The Working Group simplified this proposal and sent it to the Stockholm Conference in the following form:

States shall ensure that international organizations play a coordinated, efficient and dynamic role for the protection and enhancement of the environment.³²⁷

This proposal was accepted by the Stockholm Conference, with only a small drafting change.³²⁸

It is encouraging that this principle is at least stated in a strong, positive form, imposing a clear obligation on states. It is based on the sound notion that the best method of coordination is for states to instruct their delegates to various international organizations to act in accordance with certain agreed goals, such as the protection of the environment. Unfortunately, it happens too often that the delegates of the

323. U.N. Doc. A/CONF.48/14, at 61, 64-65 (1972). The proposals embodied in this resolution, with only one modification, were included in G.A. Res. 2997, Dec. 15, 1972, U.N. Doc. A/RES/2997, at 6-7 (1973).

324. U.N. Doc. A/CONF.48/PC.12, Annex I, at 4 (1971).

325. *Id.*, Annex II, at 12.

326. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.5, at 5 (1972).

327. U.N. Doc. A/CONF.48/4, Annex, at 5 (1972).

328. It may be noted that Brazil suggested that this principle be deleted. U.N. Doc. A/CONF.48/WG.1/CRP.6 (1972). China suggested the addition of a sentence, which, however, was inserted instead in Principle 24. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 3-4 (1972).

same state to different organizations take conflicting positions, and that there seems to be no effective coordination on the national level, inasmuch as the delegates to various international organizations represent different ministries. The power of the Foreign Ministry in many governments is not strong enough to provide sufficient guidance to relatively independent delegates, especially since in some cases the delegates are the only experts on the subject which the country possesses. Nevertheless it may be hoped that this strong injunction in Principle 25 will prove to be an effective weapon in the hands of national coordinators of environmental policy to ensure dynamic coordination at least in the field of environmental protection.

Principle 26

Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction. States must strive to reach prompt agreement, in the relevant international organs, on the elimination and complete destruction of such weapons.

Comment. The United Nations has long been concerned with the question of the elimination of the weapons of mass destruction. Many proposals were also made to prohibit their use, and as a minimum to prohibit their testing, with the resultant contamination of the atmosphere.³²⁹

It was fitting that Japan, the victim of the first use of nuclear weapons, should propose the insertion in the Declaration of a provision urging "every State possessing nuclear and thermonuclear weapons to put an end to the testing of such weapons in all spheres in order to prevent further deterioration of human environment on a global scale."³³⁰ Later Japan proposed a much broader text:

The testing and use of nuclear weapons and other weapons of mass destruction should be ended as early as possible in all environments in order to prevent further deterioration of the human environment on a global scale.³³¹

Another proposal, by Brazil, Egypt, and Yugoslavia stressed the

329. For a detailed story of the various proposals, negotiations, and agreements see UNITED NATIONS DEPARTMENT OF POLITICAL AND SECURITY COUNCIL AFFAIRS, THE UNITED NATIONS AND DISARMAMENT, 1945-1970 (U.N. Publ. 70.IX.1, 1970). In particular, with respect to the discontinuance of nuclear weapon tests, see *id.* at 191-254.

330. U.N. Doc. A/CONF.48/PC/WG.I(II)/CRP.7 (1972).

331. *Id.*, Rev.1 (1972).

need to "end the testing of nuclear weapons in all spheres and, also in the context of measures designed to improve environmental conditions on a world-wide basis, to prohibit the production and use of nuclear, chemical and biological weapons and to ensure their early destruction."³³² In a joint proposal with Costa Rica and Zambia, they suggested more precisely the bringing about of "the co-operation through international agreements or otherwise, that is essential in order to prevent, eliminate or reduce and effectively control adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the interests of all States."³³³ The Working Group distilled from all these proposals, and forwarded to the Stockholm Conference, the following pithy statement:

Man and his environment must be spared the serious effects of further testing or use in hostilities of weapons, particularly those of mass destruction.³³⁴

At Stockholm, the United States made an effort to put this proposal into a wider framework, suggesting that:

States must intensify efforts to maintain international peace and security so that man and his environment can be spared any serious effects of testing and use in hostilities of weapons, particularly those of mass destruction.³³⁵

Tanzania would have added a sentence condemning "the use of chemical and biological agents in wars of aggression which degrade man and his environment,"³³⁶ thus condemning the use of such weapons as herbicides.³³⁷ Peru, having in mind the French nuclear tests in the Pacific as well as the Chinese tests, which were condemned by a separate resolution of the Conference,³³⁸ proposed the addition of a sentence prohibiting outright "nuclear tests for military purposes."³³⁹

332. U.N. Doc. A/CONF.48/PC/WG.1(II)/CRP.3/Rev. 3, at 4 (1972).

333. *Id.*, Rev.4, at 5 (1972).

334. U.N. Doc. A/CONF.48/4, Annex, at 5 (1972).

335. U.N. Doc. A/CONF.48/WG.1/CRP.4 (1972).

336. U.N. Doc. A/CONF.48/WG.1/CRP.8 (1972). This proposal was endorsed by a group of African countries. U.N. Doc. A/CONF.48/WG.1/CRP.20 (1972); *id.*, CRP.22, at 3 (1972).

337. For a discussion of the herbicide issue see *Hearings on Preparations for and Prospects of the June 1972, U.N. Conference on the Human Environment Before the Senate Committee on Foreign Relations*, 92d Cong., 2d Sess., 34-37 (1972).

338. U.N. Doc. A/CONF.48/14, at 66-67 (1972).

339. U.N. Doc. A/CONF.48/CRP.6/Rev.1 (1972). When Japan and New Zealand agreed to co-sponsor this proposal, the additional sentence was rephrased to read:

Accordingly, those states intending to carry out nuclear weapons tests must definitely

China, while defending her right to conduct nuclear tests in the atmosphere in self-defense against the superpowers which were stepping up the arms race, repeated her pledge not to be first to use nuclear weapons.³⁴⁰ She proposed, accordingly, the following text:

In order to protect mankind and the human environment, it is imperative to firmly prohibit the use of and thoroughly destroy the inhuman biological and chemical weapons which seriously pollute and damage the environment; to completely prohibit and thoroughly destroy nuclear weapons and, as the first step, to reach an agreement by the nuclear states on the non-use of nuclear weapons at no time and under no circumstances.³⁴¹

The Working Group was unable to reach a consensus, but forwarded a text to the plenary Conference which the Conference approved subject to the observations and reservations made by various States.³⁴² During the plenary session complaints were made that the text was unsatisfactory as it did not refer explicitly to biological and chemical weapons, and did not give priority to an agreement on non-use of nuclear weapons.³⁴³ Japan stated for the record her interpretation that "principle 26 as approved definitely implied prohibition of testing of nuclear weapons since dangers to the human environment arose particularly from atmospheric testing."³⁴⁴ The United States also presented an interpretative statement emphasizing the close link between prohibitions and adequate international controls:

The United States of America fully supports the purpose, aspirations, and ultimate goals contained in this paragraph. We are constantly striving to meet such goals in all relevant fora including for example SALT, which has recently achieved such success. We regard our commitment under this principle as identical to the treaty obligation we have assumed in connexion with the Treaty on the Non-Proliferation of Nuclear Weapons, specifically article VI, including the requirement of "strict and effective international control." We believe it obvious that agreements called for in the principle must be adequately verifiable or they will not be soundly

abandon their plans to carry out such tests as they may lead to further contamination of the environment.

U.N. Doc. A/CONF.48/CRP.6/Rev. 2 and Corr. 1 (1972).

340. U.N. Doc. A/CONF.48/14, at 107 (1972).

341. U.N. Doc. A/CONF.48/WG.1/CRP.23, at 3 (1972); U.N. Doc. A/CONF.48/14, at 114 (1972).

342. U.N. Doc. A/CONF.48/14, at 119; *id.*, Annex II, at 1 (1972).

343. Comments by Tanzania, China, Egypt, and Sweden. U.N. Doc. A/CONF.48/14, at 113-17 (1972).

344. *Id.* at 117.

enough based to achieve the purposes of this principle.³⁴⁵

The final text is limited to nuclear weapons and other weapons of mass destruction, a category which usually includes chemical and biological weapons. Any large scale use of such weapons can result not only in the destruction of the two opponents but also in such contamination of the biosphere that only small remnants of mankind might be able to survive in a few corners of the world. While the environmental crisis has made the world conscious of the possibility of a rapid deterioration of environment which would make life difficult and after a while even impossible, a nuclear war can bring about such deterioration instantly. Though nuclear weapons are needed at this point as a deterrent against precipitous action by one of the nuclear powers, their actual use would be an unmitigated disaster not only to the people of the nuclear powers directly involved, but also to all innocent bystanders in other countries. Understanding this well, several of the smaller countries have been pushing for years for the elimination of nuclear weapons. The nuclear powers are deadlocked, however, on the issue of the extent of controls needed to prevent a circumventing of a ban on the possession and production of nuclear weapons, and only a few peripheral agreements have been reached. Principle 26 has added another exhortation that prompt agreement be reached on such a ban, but this exhortation has little meaning without some ingenious suggestion as to how to break the existing deadlock on controls. If success is reached in controlling other environmental hazards, a new incentive would be added to dealing more effectively with weapons of mass destruction.

THE EFFECT OF THE DECLARATION

While the necessarily foreshortened history of the Declaration presented in the previous section cannot provide a clear picture of all the

345. *Id.* at 118. Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, T.I.A.S. No. 6839, cited in this statement, provides that:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

The text of the Treaty is annexed to G.A. Res. 2373, June 12, 1968, 22 U.N. GAOR, Supp. 16A (Doc. A/6716/Add.1) at 5-7 (1968). For a comment on the United States position at Stockholm on arms control issues see Langway and Edgerton, *The U.S. at Stockholm*, 215 NATION, July 10, 1972, at 7. See also Wijkman, *Second-best Solution at Stockholm*, 9 INTERECONOMICS 262 (1972).

spirited debates that took place, it may be hoped that it helps to explain some of the reasons for the final form and content of the document. Though several preliminary drafts were based on certain guidelines as to the sequence of provisions and the form in which they should be drafted, the text finally patched together from bits and pieces of various drafts does not show any real coherence of form or any uniform way of treating the substance.

When the Working Group of the Preparatory Committee sent its draft to the Committee, it made it clear that the order in which the paragraphs appear in the draft was provisional only;³⁴⁶ nevertheless, the sequence of its draft was closely followed in the final text, with only minor departures. This sequence is not completely haphazard. Starting with a general provision relating to fundamental human rights, the Declaration proceeds to deal first with the management of earth resources and the threat of pollution which brought the whole subject to public attention. The next part of the Declaration considers the relationship between development and environment, the main area of confrontation between the industrialized and the developing countries. A section on planning and environmental policies incorporates also the main provision relating to demographic policies. Another group of provisions relates to science, technology, and education. They are followed by the pivotal principles embodying the main international duties of states with respect to the prevention of damage to the human environment and, if necessary, the payment of compensation. An article on relationship between national values and international standards introduces the section on international cooperation. The text concludes with a provision on weapons of mass destruction, the ultimate threat to the human environment.

While one could quarrel with this sequence of ideas, it would be rather difficult to come out with a different one, considering the actual content and form of the various provisions. Had it been possible to adhere to the early idea of enumerating, respectively, the rights and duties of man, states, and the international community,³⁴⁷ a logically more pleasing grouping might have been achieved. But it is quite possible that this approach, if rigidly followed, might have led to a severe duplication of parallel provisions, and confusion might have resulted. Similar fate might have befallen an attempt to distinguish relations between states from relations between states and individuals, between individuals *inter se*, between states and international

346. U.N. Doc. A/CONF.48/PC.16, Annex III, at 2 (1972).

347. See, e.g., U.N. Doc. A/CONF.48/PC/WG.1/CRP.4, at 3 (1971).

organizations, and between individuals and international organizations.³⁴⁸

As far as the form is concerned, only few principles are stated in the usual obligatory "States shall" form.³⁴⁹ Some use the next best "States should" phrase;³⁵⁰ one speaks of states' rights;³⁵¹ most employ the words "must" or "should" (without mentioning the word "states"), or the phrase "is essential."³⁵² There is no special reason for these differences, but it is obvious that the draftsmen were reluctant to couch all principles in the form of clear duties of states. This was due to some extent to the inherent differences among them as to the import and effect of the various principles. Even those states which were very anxious to include a definite obligation concerning certain subjects, vehemently opposed doing it with respect to others. In several cases the situation was reversed, and the opponents of a strict rule on a previous occasion suddenly became strong supporters of a binding obligation in respect of a topic dear to them. The necessary compromises resulted in an inconsistency of formulas and the constant shifting from one approach to another.

Taking the document as a whole, one is nevertheless surprised that despite the generality of some provisions and their uncertain phrasing the general tone is one of a strong sense of dedication to the idea of trying to establish the basic rules of international environmental law.³⁵³ The development of the new notion that international law should no longer be purely an interstate system but should bring both individuals and international organizations into the picture, and the impact of the other modern idea—that international law should have more social content and should become an instrument of distributive justice—have led to a new way of expressing the basic rules of international law. They need no longer be formulated merely in the form of declarations of rights and duties of states, but can use other, different formulations, conveying the feeling of the international community that the time has come to attend to certain common tasks

348. *Id.* at 3-4.

349. Principles 7, 22, and 25.

350. Principles 11, 13, and 24.

351. Principle 21.

352. Principles 1-6, 8, 10, 12, 14-20, 23, 24, and 26.

353. The United States report on the Stockholm Conference, prepared by the Office of Environmental Affairs of the Department of State, notes that the Declaration, although less balanced than the Working Group draft and less clearly focused on environmental concerns, "preserves a number of extremely important principles of conduct for states in dealing with environmental problems of international significance." It cites in this connection Principles 2, 16, 21, and 25. DEP'T OF STATE, OFFICE OF MEDIA SERVICES, RESULTS OF THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT 10 (1972).

through common means and in accordance with generally agreed guidelines. While the authors of the Declaration faced several old-fashioned battles about nuances in language, and while some of the states were afraid that they might be tricked into assuming broader obligations than they were ready for, the final result was achieved through a consensus on the urgent need for a Declaration, however imperfect in theory or unsatisfactory in certain details. It is the broad consensus on the central objective that really matters. Since states have become serious about the need to protect and improve the human environment, their representatives could not return home with empty hands. They had to reach an agreement on the basic principles and on the spirit in which that agreement has to be interpreted and applied.

While some reports from Stockholm, in usual journalistic fashion, concentrated on disagreements and difficulties, blowing up bits of information gained in the corridors,³⁵⁴ the true story of Stockholm should point out the fact that representatives of so many states were able to find their way through this uncharted sea and to bequeath to their successors a chart which should help them to reach the goal in a more expeditious manner.

Diplomats and international lawyers are not yet used to this new method of parliamentary diplomacy, through which decisions are made and documents are approved in much more informal ways than in days of parchments, red wax and elaborate seals. Now that they have at their disposal instantaneous means of communication and no longer need rely on easily outmoded prior instructions, modern state representatives at international assemblies can, and in fact do, reach final agreements in less solemn form than their predecessors did. When need arises, they are able to create instantaneous international law through the adoption by universal consensus of declarations establishing new principles for areas previously ungoverned by any agreed rules. This is not, however, an automatic, general process applicable to all types of situations. It requires the conjunction of an urgent topic, a propitious international climate, adequate preparation, and a dedicated group of well-qualified people intent on achieving a meaningful result. Such combination of events, circumstances, and people does not happen often, but once it occurs the results usually exceed the early expectations of some of the originators of the idea.

When the Universal Declaration of Human Rights was adopted in

354. See, e.g., Landsberg, *Can Stockholm Succeed*, 176 *SCIENCE* 749 (1972); *Woodstockholm*, *TIME*, Jun. 19, 1972, at 55.

1948,³⁵⁵ several of its draftsmen emphasized that it was meant to be merely a hortatory document, while only a few brave souls were willing to accept its binding force.³⁵⁶ But twenty years later all the doubts were dispelled and the Teheran Conference unanimously proclaimed that the Universal Declaration "states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community."³⁵⁷ Similarly, despite the statements by some of the conservative participants in the drafting of the Stockholm Conference that this document is not a binding legal instrument, it is quite likely that in the not too distant future a more enlightened view of the nature and stature of the Stockholm Declaration will be accepted.

The force of the Universal Declaration of Human Rights was derived by some from the fact that it was a universally accepted interpretation of the scope of the term "human rights" in the Charter of the United Nations. One might also consider — as did the delegate of Kenya in the General Assembly — that the 26 principles of the Stockholm Declaration were "common convictions" which "reinforced the Principles and Purposes of the Charter of the United Nations," and that, together with the Universal Declaration of Human Rights and the International Strategy for the Second Development Decade, they "collectively create a new atmosphere for international co-operation."³⁵⁸ In the new ambiance of international relations thus established, this first step toward the establishment of international environmental law on a firm foundation might prove to be more decisive than originally anticipated. Having accepted the responsibility for the preservation and improvement of the human environment, the international community will find in the Stockholm Declaration a source of strength for later, more specific action.

355. For the text see G.A. Res. 217A, Dec. 10, 1948, 3 U.N. GAOR, Part I, Resolutions (Doc. A/810) at 71 (1949).

356. For a summary of the discussion see Sohn, *A Short History of United Nations Documents on Human Rights*, in COMMISSION TO STUDY THE ORGANIZATION OF PEACE, THE UNITED NATIONS AND HUMAN RIGHTS: EIGHTEENTH REPORT OF THE COMMISSION 60-72 (1968).

357. FINAL ACT OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, TEHERAN, 1968, U.N. Doc. A/CONF.32/41, at 4 (1968). But see U.S. DEP'T OF STATE, SAFEGUARDING OUR WORLD ENVIRONMENT: THE U.N. CONFERENCE ON THE HUMAN ENVIRONMENT 25 (Dep't of State Publ. 8630, 1972).

358. U.N. Doc. A/C.2/SR.1469, at 6 (prov. ed. 1972).