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# Defining Sustainable Development After Earth Summit 2002

HARI M. OSOFSKY\*

## I. INTRODUCTION

In August 2002, over 22,000 people met in Johannesburg, South Africa, to attempt progress on a vast cluster of issues that the international community terms “sustainable development.”<sup>1</sup> Many participants left bitterly disappointed, with several non-governmental organizations (NGOs) detailing issue by issue how Earth Summit 2002 (Summit) had failed.<sup>2</sup>

In February 2003, many fewer people gathered at Loyola Law School in Los Angeles, California, to discuss the status of sustainable development in the aftermath of the Summit. The presentations ranged from project finance to environmental justice, each focusing on particular topics within the vast umbrella of sustainable development. At its conclusion, no one expressed bitter disappointment.

Despite having chaired this panel, however, I left it still not quite sure precisely what sustainable development is and where it stands. I am not alone in this sense of uncertainty.<sup>3</sup> The literature on sustainable

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1. UNITED NATIONS DEP'T OF ECON. & SOC. AFFAIRS, UNITED NATIONS, SUSTAINABLE DEVELOPMENT DIVISION, *THE ROAD FROM JOHANNESBURG: WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT: WHAT WAS ACHIEVED AND THE WAY FORWARD* (Jan. 2003), <http://www.un.org/esa/sustdev/media/Brochure.PDF> [hereinafter *The Road from Johannesburg*].

2. E.g., Greenpeace, *Earth Summit 2002 Report Card*, at [http://archive.greenpeace.org/earthsummit/report\\_card](http://archive.greenpeace.org/earthsummit/report_card) (Greenpeace's evaluation of Earth Summit 2002).

3. See, e.g., Hans Christian Bugge & Lawrence Watters, *A Perspective on Sustainable Development After Johannesburg on the Fifteenth Anniversary of Our Common Future: An Interview with Gro Harlem Brundtland*, 15 *GEO. INT'L ENVTL. L. REV.* 359, 360 (2003).

development agrees consistently on one central point: Notwithstanding increasing international recognition of sustainable development as part of customary international law, no unitary and detailed definition exists for this term. In fact, some scholars even go so far as to explain why this lack of definition is not problematic.<sup>4</sup>

In assessing the progress—or lack thereof—made at the Summit, an analysis of the definitional issues is crucial. The international community's choice to define sustainable development ambiguously, combined with a structural mismatch between the relevant actors and the decision-making process of the international community, limited the "success" possible at the Summit. Many of the disagreements and criticisms with respect to individual issues stem from fundamental, conceptual, and structural struggles with sustainable development as currently conceived.

This Article explores these foundational issues and assesses the road ahead from Johannesburg in light of them. Part II discusses the morass of conceptual and political problems that serve as barriers to a consensus definition. Part III considers the structural barriers to achieving sustainable development, however it is defined. The Article concludes in Part IV by evaluating the limited conceptual and practical progress made at the Summit, and its implications for the next steps.

## II. BARRIERS TO DEFINITION

The primary problem with—or from a politician's perspective—the strength of the concept of sustainable development is that no one knows precisely what it means, even sixteen years after its popularization by the Brundtland Report.<sup>5</sup> The ambiguity stems partly

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(Interview) ("While the precise contours of sustainable development are not reflected in any one formulation, the concept continues to evolve in order to encompass the objectives of the international community.").

4. See Michael Jacobs, *Sustainable Development as a Contested Concept*, in ANDREW DOBSON, FAIRNESS AND FUTURITY: ESSAYS ON ENVIRONMENTAL SUSTAINABILITY AND SOCIAL JUSTICE 21, 37 (Andrew Dobson ed., 1999).

5. WORLD COMM'N ON ENVIRONMENT & DEVELOPMENT, OUR COMMON FUTURE (1989) [hereinafter *The Brundtland Report*]. The Brundtland Report represents the first time the term "sustainable development" was used in an international legal document. The broad concept expressed in the Brundtland Report is, however, older than many of the countries currently participating in the dialogue over how to achieve it. The notion of balancing between the needs of the current generation and those to come—one of the leading definitions of sustainable development—had been articulated for hundreds of years by indigenous cultures and more recently by environmentalists and scholars. See generally S. JAMES ANAYA, INDIGENOUS PEOPLES IN INTERNATIONAL LAW 104-07 (1996) (discussing connections between indigenous culture and religion and the land that indigenous peoples inhabit). The Brundtland Report's

from the multiplicity of definitions of sustainable development, not only in the debates of commentators, but also in the international agreements themselves.<sup>6</sup> Scholars, activists, and politicians expressed at least twenty-five definitions of sustainable development between 1979 and 1988.<sup>7</sup> The transformation in the definition from the Brundtland Report to last year's Johannesburg Declaration on Sustainable Development is significant.<sup>8</sup>

Even if the world community were to reach consensus on one of the current formulations, however, the definitions themselves are vague, allowing for many interpretations. The country reports prepared for the Summit reflect the many different types of initiatives lumped together under the rubric of sustainable development.<sup>9</sup>

significance was not in the novelty of its ideas, but in its bringing this concept into the realm of international law and policy.

6. Many international agreements, as well as the speeches and articles that discuss them, mention sustainable development as a crucial goal. See, e.g., *Rio Declaration on Environment and Development*, Princs. 1, 4, 5, 8, 9, 21, 22, 24 & 27, in REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, U.N. Doc. A/CONF.151/26, U.N. Sales No. E.93.I.8, at 8-9, reprinted in 31 I.L.M. 874, 876, 877, 880 (1992) [hereinafter Rio Declaration]; Convention on Environmental Impact Assessment in a Transboundary Context, done on Feb. 25, 1991, pmbl., 1989 U.N.T.S. 309, 310, reprinted in 30 I.L.M. 800, 802; Protocol to the 1979 Convention on Long-range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, done on June 13, 1994, pmbl., 1302 U.N.T.S. 217; Kyoto Protocol to the United Nations Framework Convention on Climate Change, U.N. Doc. FCCC/CP/1997/L.7/Add.1, pmbl., reprinted in 37 I.L.M. 22.

7. DAVID PEARCE ET AL., BLUEPRINT FOR A GREEN ECONOMY, Annex, 173-84 (1989).

8. The definition in the Brundtland Report, echoed in Principle 3 of the Rio Declaration, was: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The Brundtland Report, *supra* note 5, at 43. In contrast, the tone is quite different in the Johannesburg Declaration on Sustainable Development:

5. Accordingly, we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development—economic development, social development, and environmental protection—at the local, national, regional, and global levels. . . .

11. We recognize that poverty eradication, changing consumption and production patterns, and protecting and managing the natural resource base for economic and social development are overarching objectives of, and essential requirements for sustainable development.

*Johannesburg Declaration on Sustainable Development*, in UNITED NATIONS DEP'T OF ECON. AND SOC. AFFAIRS SUSTAINABLE DEVELOPMENT DIV., REPORT ON THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, Annex ¶¶ 5, 11, U.N. Doc. A/CONF.199/20, U.N. Sales No. E.03.II.A.1, (2002), [http://www.un.org/esa/sustdev/documents/WSSD\\_POI\\_PD/English/POI\\_PD.htm](http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm) [hereinafter Johannesburg Declaration].

9. See National Assessment Reports for the World Summit, at [http://www.johannesburgsummit.org/html/prep\\_process/natlassessrep.html](http://www.johannesburgsummit.org/html/prep_process/natlassessrep.html) (last visited Nov. 4, 2003) (providing a list of National Assessment Reports for the World Summit prepared by various countries).

While the plethora of initiatives does indicate the multifaceted nature of sustainable development, the differences in interpretation also reflect deep-seated power struggles among poorer and richer nations. This Part explores four of the causes of this definitional ambiguity: (A) inherent tension in the term, (B) international power dynamics, (C) the simultaneously global and local nature of sustainable development problems, and (D) the continuous evolution of the world community.

#### *A. Tension Inherent in the Term*

Although definitions of sustainable development vary, they all focus on some notion of balancing among competing claims. The world has finite natural resources. Only the most radical of commentators would claim that every nation developing as rapidly as possible would be sustainable.

If one accepts the notion that sustainable development requires some constraints on or changes in behavior by particular entities, tensions are difficult to avoid. What is the appropriate way to balance the needs of present and future generations? What national policies should be implemented? How will they account for inequities among nations in wealth and natural resources? In an international community traditionally built on nation states, how will nonstate actors be integrated into a system of sustainable development? If individual and local decision-making in the aggregate often determines large scale sustainability, how does an international meeting with thousands of participants help to foster critical community-based initiatives?

None of these questions has an easy answer. We do not live in a Rawlsian construct<sup>10</sup> in which we can simply take the original position and frame a just world. Providing a functional definition for sustainable development requires accepting these tensions and addressing them. The difficulty of this task begins to explain the lack of a meaningful, unitary definition of sustainable development, as well as some of the divisions at Johannesburg.

#### *B. International Power Dynamics: Definitional Problems and the "North-South" Divide*

In addition to the many tensions inherent in the term "sustainable development," the differing viewpoints of countries in the "North" and

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10. See generally JOHN RAWLS, A THEORY OF JUSTICE 11-12 (1971) (discussing his theory for achieving a just society by determining social position from behind a veil of ignorance).

the “South” have created further definitional difficulties. Where a nation lies along the spectrum of “development” helps to determine its sense of how to achieve sustainable development. The divide can be framed in several different ways.

First, developed countries have already had the opportunity to grow by using practices that caused major environmental degradation. If developing countries cannot go through that same process, their growth would be unfairly impaired.<sup>11</sup>

Second, two of the many factors which cause environmental problems are population growth and consumption. Developed countries have relatively stable populations, but high rates of per capita consumption. In contrast, developing countries have low per capita consumption, but rapidly expanding populations. The North and South tend to be divided on whether population growth or consumption primarily drives environmental problems.<sup>12</sup>

Finally, the causes of environmental degradation are different in developed and developing countries. Most significantly, poverty is a major factor in much of the degradation occurring in developing countries.<sup>13</sup>

These three descriptions only begin to scratch the surface of the North/South divide, in part because the divide is not really a bilateral one. Development occurs along a spectrum, and the causes of environmental degradation reflect the individual situations of each country. For instance, China and Malawi are generally both termed “developing” countries, but achieving some measure of balance between development and environmental protection in each of them would require quite different strategies. At Johannesburg (as at Rio before), it was clear that achieving the goal of sustainable development—whatever that means exactly—would require addressing the significant differences among the participating countries, with sensitivity to equity, poverty, and stages of development.<sup>14</sup>

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11. See Gary C. Bryner, *Agenda 21: Myth or Reality?*, in *THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW, AND POLICY* 157, 158 (Norman J. Vig & Regina S. Axelrod eds., 1999) (discussing North/South tensions that informed the creation of Agenda 21).

12. See Jacobs, *supra* note 4, at 33 (discussing different interpretations of sustainable development in the North and South).

13. The Road from Johannesburg, *supra* note 1.

14. See *id.*

### C. Global and Local Nature of Sustainable Development

The simultaneously local, regional, national, and international nature of problems occurring at the intersection of environment and development creates a further barrier to definition. International law and problem-solving have always been complicated by the fact that governments, sovereignty, and militaries are nationally based.<sup>15</sup> As a result, international institutions struggle to have functional enforcement authority.

Because each nation has permanent sovereignty over its national resources,<sup>16</sup> international environmental law traditionally focuses on problems with transboundary or global commons dimensions. Problems at the intersection of environment and development, however, do not fit neatly into either international or domestic environmental legal structures because they are cross-cutting. Individual decisions in local communities, regional and national policies, and large-scale

15. IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 59 (4th ed. Clarendon Press 1990) (1966) (explaining that in the traditional conception of international law, individuals only gain legal personality through the state). Ian Brownlie describes the corollaries of the principles of state sovereignty and equality as: prima facie exclusive jurisdiction over a territory and its permanent population, non-intervention duty with respect to other states' exclusive jurisdiction, and consent forming the basis for treaty and customary international legal obligations. *Id.* at 287-88.

16. This principle is stated in the Rio Declaration as:

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 and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or other areas beyond the limits of national jurisdiction.

RIO DECLARATION, *supra* note 6, Princ. 2 (*emphasis added*). Principle 21 of the Stockholm Declaration is identical, save for the italicized text. *Stockholm Declaration of the United Nations Conference on the Human Environment*, Princ. 21, in REPORT OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT, U.N. Doc. A/CONF.48/14 at 2-65, and Corr.1 (1972), reprinted in 11 I.L.M. 1416, 1420 (1972) revised by U.N. Doc. A/CONF.48/14/Rev. 1 at 2, U.N. Sales No. E.73.II.A.14 and Corr., chap. I (1973). See also NICO SCHRIJVER, *SOVEREIGNTY OVER NATURAL RESOURCES, BALANCING RIGHTS AND DUTIES* 11, 19 (1997). See generally GEORGE ELIAN, *THE PRINCIPLE OF SOVEREIGNTY OVER NATURAL RESOURCES* 88-89, 94, 128, 193 (1979); Alexander Kiss, *The Rio Declaration on Environment and Development*, in *THE ENVIRONMENT AFTER RIO: INTERNATIONAL LAW AND ECONOMICS* 55, 56-57 (Luigi Campiglio et al. eds., 1994); Franz Xavier Perrez, *The Relationship Between "Permanent Sovereignty" and the Obligation Not to Cause Transboundary Environmental Damage*, 26 ENVTL. L. 1187, 1190-1197 (1996); Ileana M. Porras, *The Rio Declaration: A New Basis for International Cooperation*, in *GREENING INTERNATIONAL LAW* 20, 30-32 (Philippe Sands ed., 1993); A. Dan Tarlock, *Exclusive Sovereignty Versus Sustainable Development of a Shared Resource: The Dilemma of Latin American Rainforest Management*, 32 TEX. INT'L L.J. 37, 38-46 (1997).

international power dynamics together determine whether development will occur in a sustainable way.

Multinational enterprise complicates this picture further. Companies of one nationality (generally a developed country) create joint ventures with domestic companies of another nationality, or create subsidiaries based in another country. When these entities engage in environmentally unsound practices, regulation at any level of government—from local to international—is often difficult. Moreover, despite the problems that often result from their operations, the multinational entities' need to maintain their international reputation often makes them more susceptible to pressure than their fully domestically based counterparts.<sup>17</sup>

This multifaceted nature of sustainable development helps to explain how national plans submitted at the Summit could vary so widely, yet still fall under the rubric of sustainable development (or how our panel could focus on three very different topics, all of which had to do with sustainable development).<sup>18</sup> This variation, even if necessary, stymies efforts to assess what nations should be achieving and how successful they are in doing so.

Agenda 21 was intended to address this problem, at least in part, by moving beyond the goals of the Rio Declaration to specific action steps.<sup>19</sup> The Summit, with its emphasis on poverty, aimed to overcome obstacles to implementing Agenda 21 and to that end, focused on the many components that comprise sustainable development.<sup>20</sup> Advocates

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17. For a discussion of multinational enterprise, particularly in developing countries, see HENRY J. STEINER ET AL., *TRANSNATIONAL LEGAL PROBLEMS: MATERIALS AND TEXT* 81-84 (4th ed. 1994) (1968); DETLEV F. VAGTS, *TRANSNATIONAL BUSINESS PROBLEMS*, 111-42 (1986); 20 UNITED NATIONS LIBRARY ON TRANSNATIONAL CORPORATIONS: *TRANSNATIONAL CORPORATIONS: THE INTERNATIONAL LEGAL FRAMEWORK* 83-115, 169-211, 212-50 (A.A. Fatouros ed., 1994); 19 UNITED NATIONS LIBRARY ON TRANSNATIONAL CORPORATIONS: *TRANSNATIONAL CORPORATIONS AND NATIONAL LAW* 21-37 (Seymour J. Rubin & Don Wallace, Jr. eds., 1994).

18. Compare, e.g., Parvez Hassan, *From Rio 1992 to Johannesburg 2002: A Case Study of Implementing Sustainable Development in Pakistan*, 6 *SING. J. INT'L & COMP. L.* 683 (2002), with U.S. INTERAGENCY WORKING GROUP ON SUSTAINABLE DEVELOPMENT INDICATORS, *SUSTAINABLE DEVELOPMENT IN THE UNITED STATES: AN EXPERIMENTAL SET OF INDICATORS* (1998) and THE PRESIDENT'S COUNCIL ON SUSTAINABLE DEVELOPMENT, *TOWARDS A SUSTAINABLE AMERICA: ADVANCING PROSPERITY, OPPORTUNITY, AND A HEALTHY ENVIRONMENT FOR THE 21ST CENTURY* (1999) (demonstrating the range of national sustainable development plans).

19. AGENDA 21, ¶ 8.4, REPORT OF THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, U.N. Doc. A/CONF.151/26, U.N. Sales No. E.93.I.11 (1992), available at <http://www.un.org/esa/sustdev/agenda21.htm>.

20. The Road from Johannesburg, *supra* note 1.



and governments set goals for particular agreements to be reached. NGO reports were similarly specific, breaking down sustainable development into individual issues, and criticizing the lack of concrete progress on each of them.<sup>21</sup>

These efforts at concreteness did not, however, eliminate the slipperiness of the problem. Even if the conference participants had managed to achieve specific targets better, these targets still must be related back to the big picture of sustainable development. Necessary variations in individual steps toward achieving sustainable development make any agreement on a unitary definition a daunting task.

#### D. Continuous Evolution of World Community

The need to reconnect specific aims with the big picture is further complicated by the fact that the world is ever-evolving. Communities transform over time as individuals enter and leave them through birth, death, and migration. Governments and laws change locally and nationally. International events focusing on issues other than sustainable development—such as the recent war in Iraq—affect the environment and political relationships among nations. Moving beyond a completely anthropocentric view, humans are part of a larger ecosystem that evolves in ways that they cannot control.<sup>22</sup>

A definition of and plan for sustainable development that are at once international, national, and local must be flexible enough to shift with these changes. While the goal of clean drinking water in each country remains constant, the steps needed to achieve it will vary over time, just as it does across localities. Moreover, because level of development occurs across a spectrum rather than simply bilaterally (developed vs. developing), the structures designed to respond to inequity must be continuously fine-tuned.

Although such flexibility sounds sensible in theory, its shifting sands provide yet another barrier to defining sustainable development in a functional way. Flexible targets stymie attempts to measure and assess progress, and categorization of countries is highly political. China, for

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21. E.g., *Earth Summit 2002 Report Card*, *supra* note 2 (Greenpeace's evaluation of Earth Summit 2002).

22. See generally Fred P. Bosselman & A. Dan Tarlock, *The Influence of Ecological Science on American Law: An Introduction*, 69 CHI.-KENT L. REV. 847 (1994) (describing the evolution of scientific understanding of ecosystems); Charles W. Powers & Marian R. Chertow, *Industrial Ecology: Overcoming Fragmentation*, in THINKING ECOLOGICALLY: THE NEXT GENERATION OF ENVIRONMENTAL POLICY 19, (Marian R. Chertow & Daniel C. Esty eds., 1997) (discussing industrial ecology's attempts to incorporate ecosystems into environmental management).

example, wanted recognition as a developing country in the WTO structure in order to limit its obligations as a WTO member.<sup>23</sup>

These difficulties do not excuse the problems at the Summit that NGOs and other advocates highlighted. For progress on sustainable development to occur, nations must be pressured to achieve targets. Infrequent international gatherings can provide critical opportunities for new commitments and conversations, but the problems of defining sustainable development served as a fundamental barrier to the Summit's success. Any workable approach must take these definitional issues into account rather than simply gloss over them.

### III. STRUCTURAL BARRIERS TO UNDERSTANDING AND ACHIEVING SUSTAINABLE DEVELOPMENT

In the above unpacking of obstacles to definition, structural issues begin to emerge. While nation-states remain the primary subjects and objects of international law, nonstate actors play a critical role in creating and solving sustainable development problems. Agreeing on broad principles is easier than establishing specific commitments, but the devil is in the details: A primary goal of the Summit was to explore ways of implementing Agenda 21. The issues are simultaneously local, national, and international, and yet functional enforcement mechanisms only exist at the first two of these levels.

Evaluating the status of sustainable development in the Summit's aftermath requires an understanding of these structural issues. As with the conceptual barriers explored above, real progress on sustainable development can only come by acknowledging the existing framework for international problem-solving. This Part engages these structural issues, and how they influenced the Summit's approach and the results that it achieved.

#### *A. Nonstate Actors and the Politics of Inclusion*

Nonstate actors have long played a crucial role in fostering international law and institutions; the evolution of the concept of sustainable development is no exception. NGOs, corporations, and other

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23. Raj Bhala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469, 1474 (2000); see also Richard J. Ferris, Jr. & Hongjun Zhang, *The Challenges of Reforming an Environmental Legal Culture: Assessing the Status Quo and Looking at Post-WTO Admission Challenges for the People's Republic of China*, 14 GEO. INT'L ENVTL. L. REV. 429, 457-60 (2002) (analyzing the impact of China's WTO accession on its approach to environmental law).

nonstate entities were vocal participants at Rio, Johannesburg, and the smaller conferences in between. NGOs' community-based work and large-scale advocacy have been critical to the implementation that has occurred.<sup>24</sup> Corporate decision-making impacts the viability of sustainable development plans; corporate involvement is thus critical to crafting functional solutions.<sup>25</sup>

Despite this high level of involvement, the role that nonstate actors play in creating international norms is ultimately limited. Treaties are formed among sovereign states. Customary international law, though evolving in concept, still requires that a significant number of states believe they are bound by international norms. Although the active participation of nonstate actors in gatherings such as the Summit represents a shift away from the Westphalian model of sovereign states making agreements among themselves, states still have a role that far exceeds that of other actors.<sup>26</sup>

The continued prioritization of the nation-state is controversial. On the one hand, for international agreements to have binding authority, the participating entity must be able to make a tangible commitment. Only states have governments, militaries, and citizens. On the other hand, although NGOs often have constituency groups and play important advocacy roles, they lack states' authority and standing. Similarly, corporations often have more money than smaller governments and they influence states' decisions greatly, but they cannot create binding international law on their own.

The arrangements at the Summit reflected this dichotomy, as is not uncommon at international gatherings. The primary and NGO forums were not even in physical proximity. Although buses were provided between the two sites,<sup>27</sup> going from one to the other took effort. These

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24. Numerous scholars have discussed the growing importance of nongovernmental organizations in environmental governance. See Powers, *supra* note 22, at 27; Hilary French, *The Role of Non-State Actors*, in GREENING INTERNATIONAL INSTITUTIONS 251 (Jacob Werksman ed., 1996); Kal Raustiala, *States, NGOs, and International Environmental Institutions*, 41 INT'L STUDIES Q. 719 (1997). See generally NGOS, THE UN, AND GLOBAL GOVERNANCE (Thomas G. Weiss & Leon Gordenker eds., 1996) (discussing the role of NGOs in the international system); A. Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61 (1992); Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 MICH. J. INT'L L. 183, 184 (1997).

25. See Robert J. Fowler, *International Environmental Standards for Transnational Corporations*, 25 ENVTL L. 1, 1-3 (1995).

26. See *id.* at 18-21.

27. ICLEI, *Local Transportation in Johannesburg*, at <http://www.iclei.org/rioplusten/participation.html> (posted Aug., 19, 2002) (describing transportation between sites).

simultaneous but separated forums added a structural barrier—beyond the diffuse nature of the concept—to achieving a coherent understanding of sustainable development.

Even if the forums occurred closer together with more integration of nonstate actors, the status difference among entities still would have constrained the dialogue. Moreover, combining the actors all of the time might have limited progress in needed smaller-scale negotiations. Even if physical proximity would not have served as a panacea, however, the dispersion and status differences certainly created an obstacle to inclusive dialogue.

### *B. Complications of Creating Appropriate Hard Law*

A further obstacle on the road to progress is commitment-phobia. Nations generally will commit to broad principles when they are not bound by them, but to narrow legalisms when they are bound. Even these carefully delineated binding commitments regularly prove too much. Dualist countries frequently sign a treaty, but do not take the required steps to incorporate it domestically.<sup>28</sup> Or when the agreement has been fully incorporated, states often minimally comply but face limited international reaction to noncompliance.<sup>29</sup>

It was against this backdrop, with significant (but not unusual) recalcitrance on the part of the United States in particular,<sup>30</sup> that thousands of people gathered in Johannesburg to make progress. Participants were called upon to make difficult choices about lofty, nonbinding language versus specific commitments. The disappointing, but not surprising, result was the generalities of the Johannesburg Declaration and the less ambitious, smaller commitments that many nations made.<sup>31</sup>

In analyzing the Summit's progress on sustainable development, it is therefore important to assess both categories of commitments.<sup>32</sup> With respect to the general nonbinding principles, one can examine the

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28. For a discussion of the relationship between international law and domestic law in monist and in dualist states, see BROWNIE, *supra* note 15, at 31–56.

29. International environmental law faces a plethora of enforcement difficulties. See, e.g., David S. Ardia, *Does the Emperor Have No Clothes? Enforcement of International Laws Protecting the Marine Environment*, 19 MICH. J. INT'L L. 497, 508–16 (1998) (analyzing enforcement problems with laws protecting the marine environment).

30. George (Rock) Pring, *The 2002 Johannesburg World Summit on Sustainable Development: International Environmental Law Collides with Reality, Turning Jo'burg into "Joke 'Burg"*, 30 DENV. J. INT'L L. & POL'Y 410, 413–16 (2002).

31. See *id.* at 415–18.

32. For this assessment, see *infra* Part IV.

conceptual evolution since the Brundtland Report and the Rio Declaration. Similarly, the new specific initiatives can be compared against existing and anticipated monetary expenditures, policy changes, and projects.

### C. Enforcement Problems

International agreements almost invariably face enforcement problems that arise from the nature of international governance. There is no world government. The United Nations and the various other permanent and ad hoc international entities simply lack the power of national governments. Their power is limited to that which sovereign states choose to cede to them (which is generally not a great deal, especially when the nations involved have significant stature on the world stage). The United States, for example, has a long history of undermining international institutions' assertion of authority over it.<sup>33</sup>

Sustainable development is not immune to this enforcement problem. In implementing Agenda 21 and preparing for the Summit, sovereign states shaped their own enforcement agendas and informed other entities of their plans.<sup>34</sup> While the public pressure afforded by the Summit may have resulted in individual plans going further than they otherwise would have, enforcement against nations who renege on specific commitments likely will be limited.

The enforcement problem with respect to sustainable development, however, goes beyond the generic problems of international law and institutions. The mushiness of the definition of sustainable development makes holding nation-states accountable for achieving it nearly impossible. The lack of a unitary definition means that nations have tremendous control over what they call sustainable development. Given the complex and changing nature of the problems, some flexibility is important, but there may not yet be enough substance to the definition to move beyond reliance on participating nations' good will.

Clearly, countries did agree to some specific expenditures, policies, and programs.<sup>35</sup> If they do not follow through, other countries and advocacy organizations can pressure them to comply. NGOs also can, have, and will continue to evaluate the adequacy of measures taken.

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33. *E.g.*, *Case Concerning Military and Paramilitary Activities in and Against Nicaragua*, 1984-1985 I.C.J. Y.B. at 135-147 (citing 1984 I.C.J. 169; 1984 I.C.J. 392); *see also* LORI F. DAMROSCH ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 880-93 (4th ed., 2001) (discussing the case).

34. *See* National Assessment Reports, *supra* note 9.

35. *See* The Road from Johannesburg, *supra* note 1.

Lack of consensus on the definition, however, continues to limit efforts to connect these individual initiatives to the big picture of sustainable development and to assess the extent to which the steps taken at the Summit achieve it.

#### IV. EVALUATING THE SUMMIT AND THE MESSY ROAD AHEAD

Evaluations of the Summit should occur out of an understanding, but not necessarily an acceptance, of the conceptual and structural constraints on defining sustainable development. For example, although the Johannesburg Declaration is no more precise or binding than the Stockholm or Rio Declarations, its content is somewhat different. Evaluating these shifts helps us to understand the conceptual movement of sustainable development, even if the precise contours remain vague. Similarly, the types of commitments that nations made at the Summit and the extent to which they included nonstate actors, while inadequate (as detailed by numerous organizations), provide a map for where sustainable development is going. This Part explores the extent of the conceptual and practical progress at the Summit, and the resulting impact it had on sustainable development.

##### *A. Conceptual Progress at the Summit*

The Summit aimed to build on the conceptual work of the Rio Conference and Agenda 21, rather than to reinvent it. Not surprisingly, therefore, the Johannesburg Declaration overlaps significantly with the Rio Declaration.

The biggest shift that occurred was the explicit acknowledgement of social development—in addition to economic development and environmental protection—as a core component in the Johannesburg Declaration's definition of sustainable development.<sup>36</sup> Although the Rio Declaration (and other agreements since then) certainly referenced poverty eradication and other aspects of social development, it primarily emphasized the need to balance environment and development.<sup>37</sup>

The acknowledgment of social development as a pillar comports with the goals of the conference, which aimed at addressing obstacles to implementing Agenda 21 and creating new initiatives to that end. One of the major obstacles to implementing Agenda 21 was the persistence and sometimes even deepening of poverty in many developing

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36. Johannesburg Declaration, *supra* note 8, Princ. 5.

37. See Rio Declaration, *supra* note 6, Princ. 5.

countries.<sup>38</sup> The greater emphasis on social development reflects a growing acceptance that initiatives promoting economic growth and environmental protection are inadequate on their own to achieve sustainable development.

Although the term "social development," like sustainable development, is also open to interpretation, its inclusion helps to refine the orientation of more specific initiatives. The Johannesburg Declaration thus reflects a small step in the continuing process of understanding and defining the complex of issues that converge around sustainable development.

### *B. Practical Progress at the Summit*

The practical results of the Summit unfortunately reflected a North/South deadlock, exacerbated by the United States's refusal to engage in new multilateral treaties or other hard commitments. In place of binding multilateral commitments, the Summit emphasized public-private partnerships; 300 new partnerships were announced there.<sup>39</sup> Although the fostering of public-private partnerships acknowledges the need for greater inclusion of nonstate actors in achieving sustainable development, the lack of binding agreements and regression on some issues were widely criticized.<sup>40</sup>

The initiatives focused on six main areas: (1) water and sanitation; (2) energy; (3) health; (4) agriculture; (5) biodiversity and ecosystem management; and (6) finance, trade, and globalization. Most of the action steps that countries took represented little progress beyond ones previously taken. The initiatives, however, at least provide a new infusion of cash from developed countries to support needed projects.<sup>41</sup>

At a practical level, like at a conceptual one, the Summit represented at most a baby step forward in defining and implementing sustainable development. The various issues described in the first two parts, combined with a U.S. administration opposed to new binding multilateral commitments, thwarted significant progress.

### *C. The Road Ahead*

The Summit was an expensive gathering that, by most accounts, had limited results. The international community has moved on, with a

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38. See *The Road from Johannesburg*, *supra* note 1.

39. See *id.*

40. See Pring, *supra* note 30, at 415-16.

41. See *The Road from Johannesburg*, *supra* note 1.

meeting in Morocco in June 2003 to develop a ten-year framework of programs aimed at achieving “sustainable consumption and production.”<sup>42</sup> Meanwhile, the extent to which meaningful progress is possible on much of Agenda 21 continues to be unclear.

Despite the many problems and limitations that thwart the achievement of sustainable development, these ongoing dialogues about sustainable development serve an important purpose. They create public pressure to achieve progress on a difficult, but critically important, set of issues lumped under the rubric of sustainable development.

The Summit focused media attention for at least a few days on these issues and generated thousands of articles on the subject of sustainable development. It also resulted in some new monetary commitments that probably would not have been made otherwise.<sup>43</sup> These modest achievements alone may not be enough to justify the Summit’s cost, but finding better ways to galvanize support for sustainable development, or to achieve additional progress in the current political climate, is difficult.

In the final analysis, like so many others who have commented on sustainable development, I am unsure exactly what it is, but believe that it is important. While the conceptual and structural barriers may continue to prevent a meaningful unitary definition, I hope that the world community takes more steps—even if they are often very small ones—toward achieving the three pillars outlined in the Johannesburg Declaration.

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42. Press Release, United Nations Commission on Sustainable Development, Marrakech Meeting Takes Forward Johannesburg Summit Commitments to Sustainable Production and Consumption (June 12, 2003), available at [http://www.un.org/esa/sustdev/media/press\\_release\\_1206.pdf](http://www.un.org/esa/sustdev/media/press_release_1206.pdf).

43. See The Road from Johannesburg, *supra* note 1.



