

**YEAR IN REVIEW: THE INTERNATIONAL ENVIRONMENTAL COMMUNITY CELEBRATES A SERIES OF SUCCESSES BUT LAMENTS THE ONE THAT GOT AWAY**

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## I. INTRODUCTION

*Ronald C. Smith*

International cooperation raced forward in 2003, but the environmental community took a notable pratfall as well. The year will be celebrated as one in which world bodies collected the final signatures necessary to put important international agreements into force in areas such as biodiversity, trade of hazardous chemicals, and pollution from heavy metals. It is also scarred by the memory of a much anticipated victory on climate change that collapsed without warning.

International environmental law encompasses an increasingly diverse group of topics, thus, it was necessary to leave many things out in this year-in-review piece. Recognizing that we cannot offer an exhaustive review of all the events that impact transnational law, we concentrate our efforts on multinational environmental

agreements and review developments within the major organizations concerned with protection of the environment.

Through the hard work of the United Nations (U.N.), its affiliated bodies, and many other regional and international organizations, 2003 marked significant progress towards protecting the earth and the people who live on it from environmental degradation. Building upon decades of foundational treaties, the U.N. acted on a wide range of environmental issues. International agreements negotiated through the U.N. system can easily be seen as more significant in establishing enforceable international regulation. We also note regional bodies that played an important role in the development of global policy. As seen in the adoption of new environmental treaties and the work of existing international instruments, environmental protection develops and matures in many manners and forums.

We highlight the changing roles of some of these international organizations, detail many of the major studies released in 2003, and discuss initiatives to undertake new studies of worldwide importance. Four members of the *Journal of Transnational Law and Policy* contributed to this year-in-review look at international environmental law. For the purposes of this report, the subject matter has been divided in to eight major divisions. The author of each section is credited separately.

## II. KYOTO BREAKDOWN OVERSHADOWS CLIMATE CHANGE PROGRESS

*Ronald C. Smith*

### A. *Russia Drops Bombshell at Climate Change Conference*

The international environmental community was left standing at the altar in September as Russia abruptly backed away from its anticipated approval<sup>1</sup> of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. The dramatic reversal occurred with scientists and policymakers assembled at the U.N. World Climate Change Conference in Moscow.<sup>2</sup>

Speaking on the first day of the Moscow conference, Russian President Vladimir Putin abandoned “earlier Russian promises to

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1. Canadian Press, *Putin will ratify Kyoto Protocol, says Chretien* (last updated Oct. 20, 2003) (the statement coming just ten days before the Moscow conference), available at [http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1066649789506\\_131/](http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/1066649789506_131/).

2. Vladimir Isachenkov, *Putin says Russia hasn't decided on Kyoto Protocol ratification* (Sept. 30, 2003), at [http://www.enn.com/news/2003-09-30/s\\_8932.asp](http://www.enn.com/news/2003-09-30/s_8932.asp).

soon ratify the 1997 Kyoto Protocol”<sup>3</sup> and instead declared his nation undecided about the pact to reduce greenhouse gas emissions. Putin went on to cite theories that Russia could benefit from global warming.<sup>4</sup> He even joked that rising temperatures might save Russians money on fur coats.<sup>5</sup> The international response was anything but laughter.

Rajendra Pachauri, the chairman of the U.N.'s Intergovernmental Panel on Climate Change, responded harshly. “Simplistic assumptions that climate change would help Russian agriculture and make that extremely cold country warmer are scientifically erroneous,” Pachauri said.<sup>6</sup> “The impacts of climate change on Russia could be quite complex.”<sup>7</sup> Pachauri suggested that Russia was wasting an opportunity to regain some of the political influence it lost with the dissolution of the Soviet Union in 1991.<sup>8</sup> Boerge Brende, the head of the U.N. Commission on Sustainable Development, said climate change is the biggest environmental challenge the world faces and a Russian veto is a threat to international cooperation in other fields as well.<sup>9</sup>

European Union officials also pleaded with Russia to come back into the fold.<sup>10</sup> There was immediate concern that if Russia decides not to join the Kyoto Protocol it could spur backtracking by the European Union, Japan, or others who would be restricting emissions such as carbon dioxide when the provisions of the protocol do not have the force of international law.<sup>11</sup>

The Moscow bombshell came one year after well-received Russian and Canadian announcements of support for the treaty.<sup>12</sup> Canada followed through and ratified the treaty.<sup>13</sup> The only real

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3. Chris de Freitas, *Russians say sayonara to Kyoto Protocol*, THE NATIONAL BUSINESS REVIEW (Oct. 23, 2003), at [http://www.nbr.co.nz/home/column\\_article.asp?id=7377&cid=5&ename=Asia](http://www.nbr.co.nz/home/column_article.asp?id=7377&cid=5&ename=Asia).

4. Alister Doyle, *Kyoto veto will hurt Russia, says U.N. climate chief* (Oct. 17, 2003) (“Some Russian scientists reckon a warmer climate might aid farming by extending growing areas northwards, but others say rainfall might decrease in vital southern crop-growing regions and that the country could suffer more droughts and floods.”), at [http://www.enn.com/news/2003-10-17/s\\_9519.asp](http://www.enn.com/news/2003-10-17/s_9519.asp).

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. Alister Doyle, *Russian Kyoto veto threatens global environmental cooperation* (Oct. 1, 2003) (Brende, Norway’s environment minister, did not specify what cooperation might be damaged), at [http://www.enn.com/news/2003-10-01/s\\_8978.asp](http://www.enn.com/news/2003-10-01/s_8978.asp).

10. *Id.*

11. *Id.*

12. BNA, INC. *Russia, Canada Tell Development Summit They Will Push for Ratification of Kyoto Pact*, 25 Int’l Env’t Rep. 862 (Sept. 11, 2002), at <http://pubs.bna.com/ip/BNA/IER.NSF>.

13. *United Nations Framework Convention on Climate Change, Kyoto Protocol, Status of*

hint of a late course correction by Russia came just five days before the Moscow conference with Deputy Prime Minister Alexei Goreyev saying Russia needed more time but maintaining Moscow's support in principle.<sup>14</sup>

It took a phenomenal rally of the world community to put the Kyoto agreement within reach of the necessary signatories to take effect and give Russia the environmental spotlight for the past year. The United States devastated the chances of the treaty ever taking effect when President George W. Bush disavowed it.<sup>15</sup>

The United States' strength under the Kyoto ratification formula<sup>16</sup> is so significant that the refusal of the current Bush administration to back U.S. involvement was greeted as a virtual veto. The U.S. action was characterized as unilateral and part of a pattern of acting out of self-interest, much to the chagrin of its allies.<sup>17</sup> Provisions of the 1997 protocol require ratification by countries responsible for fifty-five percent of 1990 global emissions of carbon dioxide.<sup>18</sup> Without the United States, the treaty requires the signatures of virtually every other country.<sup>19</sup> Some 119 countries

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*Ratification*, United Nations documents, at <http://unfccc.int/resource/kpstats.pdf> [hereinafter *Status of Ratification*].

14. Oliver Bullough, *No timetable for Russian Kyoto approval, said minister* (Sept. 26, 2003), at [http://www.enn.com/news/2003-09-26/s\\_8823.asp](http://www.enn.com/news/2003-09-26/s_8823.asp).

15. Armin Rosencranz, *U.S. Climate Change Policy Under G. W. Bush*, 32 GOLDEN GATE U. L. REV. 479, 480. ("President George W. Bush's reversal and repudiation seemed a head-in-the-sand response driven by ignorance, shortsightedness and the interests of certain elements of the American business community." The Bush Administration repudiated the Kyoto Protocol in March 2001).

16. *Total carbon dioxide emissions of Annex I parties in 1990, for the purposes of Article 25 of the Kyoto Protocol*, United Nations documents, Kyoto Protocol, at <http://unfccc.int/resource/kpco2.pdf>.

17. See Jonathan B. Wiener, *Whose Precaution After All? A Comment on the Comparison and Evolution of Risk Regulatory Systems*, 13 DUKE J. COMP. & INT'L L. 207 (2003); Gareth Evans, *The U.S. Versus The World? How American Power Seems to the Rest of Us*, 1 SEATTLE J. SOC. JUST. 541 (2003); Jane Perlez, *The World; Here's One Treaty That the Bush Team Loves, to Death*, N.Y. TIMES, Aug. 26, 2001, at 3 ("The Bush administration has irritated many allies with its aversion to treaties, especially the Kyoto Protocol on global warming and the 1972 Antiballistic Missile Treaty."); Kenneth Roth, *Is America's withdrawal from the new International Criminal Court justified?*, WORLD LINK (July 17, 2002), ("The move suggests that a radically new vision is guiding American foreign policy: that the United States, with its extraordinary power, is no longer served by the international rule of law."), available at [http://www.worldlink.co.uk/stories/storyReader\\$1146](http://www.worldlink.co.uk/stories/storyReader$1146).

18. *Status of Ratification*, *supra* note 13.

19. *Id.* (Russia is responsible for seventeen percent of global carbon dioxide emissions and trails only the United States, with thirty-four percent, among countries immediately affected. China has signed the treaty but is classified as a developing country under the Kyoto Protocol and does not have to reduce emissions during the first stage of the agreement). See BNA, INC. *China Announces Ratification of Protocol, Expects to Benefit From Emissions Trading*, 25 Int'l Env't Rep. 19 (Sept. 11, 2002).

have now ratified the protocol, but the fifty-five percent threshold can only be reached if Russia or the United States gets on board.<sup>20</sup>

That gave Russia center stage, but Putin walked into the wings where, it appears, he will stay at least for the foreseeable future.<sup>21</sup> The situation was largely unchanged when the parties reconvened in Milan in December for a ten-day climate conference. While Russian officials continued to send mixed signals, there was speculation that political deals could still bring about a reconciliation.<sup>22</sup> With Putin facing a reelection challenge in March 2004, no progress or clarity was expected for months.<sup>23</sup>

The astonishing reversal by Putin temporarily drew some of the international wrath away from the United States. The Bush administration has taken a scholarly bashing for its rejection of the treaty. In the climate control arena, the Bush administration is seen as having “tilted the scales against protection.”<sup>24</sup>

In the face of that abuse and while watching the virtual stampede by the rest of the world to sign the treaty, the Bush administration in 2003 abruptly changed its rationale for failing to join the protocol.<sup>25</sup> The administration stopped opposing the treaty on the grounds that it was scientifically unfounded and adopted a rationale that it would be excessively costly. President Bush put forward the new grounds himself, saying “[t]he Kyoto treaty would severely damage the United States economy” and that he doesn’t accept that.<sup>26</sup>

While no longer open to accusations of ignoring scientific realities, the Bush administration, by making the change, opened itself to an equally powerful line of criticism holding that the U.S. leadership is acting out of short-sighted self-interest. Indeed some

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20. *Status of Ratification*, *supra* note 13.

21. Isachenkov, *supra* note 2.

22. *Russia May Offer Kyoto Backing for WTO Concessions by Europe*, BLOOMBERG.COM (last updated Dec. 10, 2003) (“The EU may moderate demands that Russia stop regulating gas prices and split up OAO Gazprom’s \$16 billion export market should Russia agree to sign the Kyoto treaty, a global accord to reduce carbon dioxide emissions. Governments seeking to join the WTO must first resolve outstanding issues with existing members.”), *at* <http://quote.bloomberg.com/apps/news?pid=10000085&sid=a1pC0IIosurc&refer=europe#>. See also Michael Meacher, *The Kyoto Protocol and a deadly game of Russian roulette*, THE INDEPENDENT (Dec. 7, 2003) (Meacher was the British Minister for the Environment from 1997 to 2003), *at* <http://argument.independent.co.uk/commentators/story.jsp?story=470786>.

23. Tim Hirsch, *Life remains in Kyoto treaty*, BBC NEWS (Dec. 10, 2003), *at* <http://news.bbc.co.uk/go/pr/fr/-/2/hi/europe/3308259.stm>.

24. Jack B. Weinstein, *Why Protect the Environment For Others?*, 77 ST. JOHN’S L. REV. 217, 218 (2003) (“In the arena of environmental action, the present administration has tilted the scales against protection. Examples are our failure to endorse the Kyoto Protocol, a sustained drive to drill for oil in Alaska, and granting increased freedoms to loggers”).

25. George Archibald and Carter Dougherty, *Bush pans Kyoto as Japan OKs Pact; EPA Diverges From President’s Views*, WASH. TIMES, June 5, 2002, at A1.

26. *Id.*

critics thought the original position was mere cover for that less principled opposition.<sup>27</sup>

Putin's comments showed no awareness of the U.S. change of position and opened Russia to the same two types of criticism Bush had been hearing: scientific ridicule and allegations of putting short-term self-interest before the good of the world.<sup>28</sup>

### *B. Agreements Reached on Pollution Credits and Greenhouse Gas Register*

While the Russian situation dominated the U.N. meetings, there were a few other notable developments. The European Union used the Milan conference to announce agreement on a program to allow trading of pollution credits that would enable the fifteen-nation bloc to meet greenhouse gas targets established under the Kyoto Protocol. The European Union's Environmental Chief Commissioner, Margot Wallstrom, said the trading program was ready should the Kyoto Protocol gain Russian approval and take force.<sup>29</sup> The creation of a Global Greenhouse Gas Register was also announced in Milan by the World Economic Forum. Companies will disclose their worldwide emissions through the register in what the creators hope will be a transparent, internationally consistent framework.<sup>30</sup>

The register was launched with the cooperation of eight companies that produce nearly five percent of global GHG emissions.<sup>31</sup> Another twelve major corporations were said to be immediately interested. Company data registration will begin on the register's website in early 2004 following the World Economic Forum's Annual Meeting in Davos, Switzerland, in January 2004.<sup>32</sup>

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27. See David A. Dana, *Symposium: Empirical Legal Realism: A New Social Scientific Assessment of Law and Human Behavior: A Behavioral Economic Defense of the Precautionary Principle*, 97 NW. U. L. REV. 1315 (2003).

28. For a more optimistic note, see generally Frank E. Loy, *On A Collision Course? Two Potential Environmental Conflicts Between the U.S. and Canada*, 28 CAN.-U.S. L. J. 11, 15 (2002). ("I do not think the present U.S. administration will soon change its mind about Kyoto — maybe it never will. However, no administration lasts forever. I think that, faced with a near-universal Kyoto Protocol that is proven to be an effective working instrument, the chances that the U.S. will participate in some form of an international regime are not at all bad").

29. Frances D'Emilio, *E.U. environment chief says greenhouse gas emission trading scheme is ready* (Dec. 12, 2003), at [http://www.enn.com/news/2003-12-12/s\\_11260.asp](http://www.enn.com/news/2003-12-12/s_11260.asp).

30. GreenBiz.com, *World Economic Forum creates global greenhouse gas register* (Dec.16,2003), at [http://www.enn.com/news/2003-12-16/s\\_11339.asp](http://www.enn.com/news/2003-12-16/s_11339.asp).

31. *Id.* (The eight major companies are: Anglo American, Cemex, Hewlett-Packard, Lafarge, RAO Unified UESR, RWE, ScottishPower, and Vattenfall).

32. The World Economic Forum is partnering with BrasilConnects, Deloitte Touche Tohmatsu, the International Emissions Trading Association, the Pew Center for Global Climate Change, the World Business Council on Sustainable Development, the World Energy

### III. CLEANING HOUSE: COOPERATIVE EFFORTS TO CURB POLLUTION AND MANAGE HAZARDOUS MATERIALS

*Tikkun A.S. Gottschalk*

#### A. *UN Treaty Regulating International Chemical Trade Enters into Force*

In 2003, trade was a prime target of international environmental cooperation. In November, Armenia ratified the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, triggering the entry into force of the Convention in 2004.<sup>33</sup> Promulgated in 1998, the Convention “require[s] exporters trading in a list of hazardous substances to obtain the prior informed consent of importers before proceeding with the trade.”<sup>34</sup> While some nations had already instituted voluntary informed consent procedures prior to 1998, entry into force of the Rotterdam Convention will make PIC legally binding.<sup>35</sup> Aside from the PIC provisions, the Convention promotes the safe use and transportation of chemicals through labeling standards, technical assistance, and compliance procedures.<sup>36</sup>

Like Armenia, many of the signatories to the convention are developing countries.<sup>37</sup> Developing countries are unlikely to have the institutional controls that enable them to prevent misuse, which can lead to both environmental damage and toxic exposure. “Implementation of the Convention will help countries to control the availability of pesticides that are recognized to be harmful to human health and the environment and of highly toxic pesticides that cannot be handled safely by small farmers in developing countries.”<sup>38</sup> The Convention allows signatories to restrict importation to only those chemicals that they can manage safely.<sup>39</sup>

At its signing in 1998, the Rotterdam Convention covered twenty-two pesticides and five industrial chemicals.<sup>40</sup> While the

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Council, the World Resources Institute, and the World Wildlife Fund in starting the register.

33. Press Release, United Nations Environment Program, Treaty on hazardous chemicals and pesticides trade to become law (Nov. 27, 2003) [hereinafter Treaty to Become Law], at <http://www.unep.org/>.

34. Rotterdam Convention, September 10, 1998, at <http://www.pic.int/>.

35. *Id.*

36. *Id.*

37. Treaty to Become Law, *supra* note 33.

38. *Id.* (quoting Jacques Diouf, the Director-General of the U.N. Food and Agriculture Organization).

39. *Id.*

40. Press Release, United Nations Environment Program, Asbestos and two hazardous pesticides could be added to trade watch list (Nov. 17, 2003), at <http://www.unep.org/>.

signatories to the convention have added five pesticides to the list since then, recent negotiations over whether to include chrysotile, a form of asbestos, failed to produce an agreement.<sup>41</sup> The European Union, Australia, and Chile have already banned chrysotile, and a growing number of other countries, including the United States, are considering similar restrictions.<sup>42</sup> Opposition to the ban was led by Canada and Russia — two leading exporters of chrysotile products.<sup>43</sup> Although negotiators did agree to ban four other types of asbestos, chrysotile, used in automobile brakes, gaskets, and armaments, accounts for ninety-four percent of asbestos consumption.<sup>44</sup>

### *B. Phase Out of Methyl Bromide Faces Uncertain Future*

As the Rotterdam Convention parties geared up for the treaty to enter into force, developed countries continued negotiations for the phasing out of the ozone-depleting pesticide methyl bromide under the Montreal Protocol on Substances that Deplete the Ozone Layer.<sup>45</sup> The Protocol, agreed upon in 1987, entered into force in 1989.<sup>46</sup> Targeted at all substances that deplete the ozone layer, “[t]he Montreal Protocol has so far been one of the great environmental success stories” responsible for the phasing out of chlorofluorocarbons (CFCs) and a seventy-percent reduction in the use of methyl bromide since the mid-1990s.<sup>47</sup>

Despite past successes, the methyl bromide initiative of the Montreal Protocol faces an uncertain future. Farmers in North America and Europe oppose the phase out, arguing that the few available alternatives to methyl bromide are either economically or technologically unfeasible.<sup>48</sup> The parties, negotiating in Nairobi, Kenya, postponed a final decision on the extent of exemptions to the phase out.<sup>49</sup> They reached agreement on a number of other issues but the exemptions issue will have to wait until the March 2004

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41. *Plan to Limit Asbestos Trade Fails*, TORONTO STAR, Nov. 19, 2003, at E04.

42. *Id.*

43. *Id.*

44. *Id.*

45. Press Release, United Nations Environment Program, Decision on Ozone Damaging Pesticide Deferred into 2004 (Nov. 14, 2003) [hereinafter Decision Deferred], at <http://www.unep.org>.

46. United Nations Environment Program, The Ozone Secretariat, The Montreal Protocol on Substances that deplete the Ozone Layer (Jan. 1, 1989), at <http://www.unep.org/ozone/montreal.shtml>.

47. Decision Deferred, *supra* note 45 (quoting Klaus Toepfer, Executive Director of the United Nations Environment Program).

48. Mary Beth Polley, *Sodium azide a possible replacement for methyl bromide*, 31 PESTICIDE & TOXIC CHEMICAL NEWS 20 (Aug. 4, 2003).

49. Decision Deferred, *supra* note 45.

meeting.<sup>50</sup> The phase out is scheduled to be complete by January 2005, with a seventy-percent reduction from 1991 levels required by 2003,<sup>51</sup> but further progress toward that goal will depend on the outcome of future negotiations.

*C. Pollutants Targeted by New Protocols to 1979 Treaty*

In contrast to the limited progress reached under the Montreal Protocol, parties to the 1979 Convention on Long-Range Transboundary Air Pollution achieved a number of milestones. Two additional protocols to the Convention entered into force in 2003.<sup>52</sup> The Protocol on Persistent Organic Pollutants (POPs Protocol) covers a variety of pesticides, industrial chemicals, and contaminants, banning some and restricting others. The Protocol on Heavy Metals (HM Protocol) targets cadmium, lead, and mercury, three well-known pollutants that cause chronic health problems and can travel great distances.<sup>53</sup> The United Nations Economic Commission for Europe (UNECE) adopted both the POPs and HM Protocols in Aarhus, Denmark, in 1998 at the same gathering of nations that approved the Convention on Access to Information, Public Participation in Decision Making, and Access to Justice in Environmental Matters.<sup>54</sup>

The POPs Protocol in many respects mirrors the Stockholm Convention; signed by over ninety countries in 2001, it focuses on the so-called “dirty dozen” chemical pollutants.<sup>55</sup> While the Stockholm Convention has yet to receive the necessary ratifications to become legally binding, in August the POPs Protocol received the final ratification needed for its enforcement.<sup>56</sup> The UNECE drafted both the POPs and HM Protocols, opening adoption and ratification, as with its parent Convention, to states within the UNECE region

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50. *Id.*

51. Chris Tomlinson, *U.S. Negotiators Meet Resistance in Seeking Exemptions to Chemical Treaty* (Nov. 12, 2003), available at [http://www.enn.com/news/2003-11-12/s\\_10332.asp](http://www.enn.com/news/2003-11-12/s_10332.asp).

52. Convention on Long-Range Transboundary Air Pollution, Agreements on Environment and Development (Nov. 13, 1979) [hereinafter *Agreements*], at <http://www.greenyearbook.org/agree/atmosphe/lrtap.htm>.

53. Press Release, United Nations Economic Commission for Europe, Entry into force of the Protocol to control persistent organics [hereinafter *Entry into Force of Protocol*] (Oct. 21, 2003), at <http://www.unece.org>.

54. Press Release, United Nations Economic Commission for Europe, Protocol to control persistent organics to enter into force (Aug. 5, 2003), at <http://www.unece.org>.

55. See, e.g., Michael Crane, *2003 Environmental Legislation Watch*, THE LEGAL INTELLIGENCER, Oct. 16, 2003 (The European Parliament ratified the Stockholm Convention at the same time as the POPs Protocol). *Parliamentary Green Light for Ratification of POPs Convention*, EUROPEAN REPORT (Nov. 22, 2003).

56. Entry into Force of Protocol, *supra* note 53.

and other countries with consultative status with the UNECE.<sup>57</sup> The seventeen states that have ratified the POPs Protocol held their first meeting in December to discuss its effectiveness and future amendments to the list of pollutants.<sup>58</sup>

The HM Protocol entered into force December 29, 2003. The Protocol seeks to reduce heavy metal pollution from industrial sources, such as coal power plants and garbage incineration.<sup>59</sup> It also aims to lower metal emissions from commercial products, such as batteries, fluorescent lamps, and paint. The first meeting of the parties is not scheduled until December 2004.<sup>60</sup>

Other U.N.-sponsored heavy metal agreements met with less success last year. Negotiations towards an international treaty on mercury pollution stalled at the meeting of the Governing Counsel of the UNEP in February.<sup>61</sup> The United States opposed any action leading to a binding international treaty on mercury pollution, although the conference did agree on a program to help countries reduce mercury emissions.<sup>62</sup> The Governing Counsel agreement, supported by more than 130 nations, also provides for a public awareness program to educate the public about the dangers of mercury exposure and pollution.<sup>63</sup>

#### *D. United Nations Orchestrates Plan to Improve Chemical Safety Worldwide*

Strategic Approach to International Chemicals Management (SAICM) is the latest effort by the international community to coordinate and improve chemical safety. In November 2003 more than 500 delegates met in Bangkok, Thailand, to discuss an international SAICM treaty.<sup>64</sup> The UNEP adopted the SAICM

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57. Agreements, *supra* note 52.

58. Entry into Force of Protocol, *supra* note 53.

59. Press Release, United Nations Economic Commission for Europe, Protocol on Heavy Metals Enters into Force and New Work on Persistent Organic Pollutants Agreed (Dec. 23, 2003) [hereinafter UNECE Press Release], at <http://www.unece.org>; see also, Agreements, *supra* note 52.

60. UNECE Press Release, *supra* note 59.

61. Cat Lazaroff, *U.S. derails U.N. plan to curb mercury emissions*, THE NEW ZEALAND HERALD, Feb. 12, 2003; see also Lauren Miura, *Mercury: Dems Attack U.S. Policy on International Treaty*, 10 GREENWIRE (Mar. 3, 2003).

62. Lazaroff, *supra* note 61; Press Release, United Nations Environment Programme, Action on Chemicals Pollution and Support for Africa Agreed at End of Global Environment Ministers Meeting, U.N. Doc. UNEP/135 (Feb. 7, 2003), at <http://www.un.org/News/Press/docs/2003/unep135.doc.htm>.

63. *Id.*

64. Press Release, United Nations Environment Programme, New Strategy for International Chemicals Management to be Launched in Bangkok, U.N. Doc. UNEP/179 (Nov. 5, 2003) [hereinafter UNEP Press Release], at <http://www.unep.org>; see also *U.N. Develops International Program to Manage Chemicals*, CHEMICAL WEEK, Nov. 12, 2003, at 8.

initiative in February 2002, after which it was formally endorsed at the World Summit on Sustainable Development.<sup>65</sup>

The UNEP, the Intergovernmental Forum on Chemical Safety (IFCS), and the Inter-Organizational Program for the Sound Management of Chemicals sponsored the Preparatory Committee for the development of SAICM (dubbed PrepCom I).<sup>66</sup> According to the IFCS, “A key feature of the SAICM process will be its engagement of all sectors of society with an interest in chemical safety, including environment, health, agriculture, labour, industry and development.”<sup>67</sup> PrepCom I delegates “agreed that the goal stated in the Johannesburg Summit Plan of Implementation, that by 2020 chemicals should be used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment, should be considered as the over-arching goal of SAICM.”<sup>68</sup>

#### *E. International Atomic Energy Agency Promotes Cooperation in Nuclear Safety*

In the fiftieth year after Eisenhower’s Atoms for Peace Speech,<sup>69</sup> the international community marked another year of progress in the safe and peaceful management of radioactive materials. The parties to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (Joint Convention) held their first review meeting in November 2003.<sup>70</sup> Although the Joint Convention came into force in 2001, it received

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65. UNEP Press Release, *supra* note 64; see also INTERGOVERNMENTAL FORUM ON CHEMICAL SAFETY, *Strategic Approach to International Chemicals Management* [hereinafter *IFCS Approach*], at <http://www.who.int/ifcs/Saicm.htm> (last visited Feb. 23, 2004).

66. Morley Brownstein, *The intergovernmental forum on chemical safety: a unique cooperative approach to international chemicals management*, 55 CANADIAN CHEMICAL NEWS 13 (Oct. 1, 2003).

67. *IFCS Approach*, *supra* note 65.

68. *Id.*

69. Dwight D. Eisenhower, Atoms for Peace, Address before the United Nations (Dec. 8, 1953), available at <http://www.eisenhowerinstitute.org/programs/globalpartnerships/safeguarding/atomsspeech.htm>; see also *Legacy: Atoms for Peace*, EISENHOWER BIRTHPLACE, at <http://www.eisenhowerbirthplace.org/legacy/ike0006.htm> (“Eisenhower’s Atoms for Peace speech embodied his most important nuclear initiative as President. From it sprang a panoply of peaceful atomic programs.”).

70. *First Review Meeting of the Joint Convention*, IAEA Conventions, RasaNet (Nov. 20, 2003) [hereinafter *First Review Meeting*], at [http://www-rasanet.iaea.org/conventions/jointcon\\_reviewmeetings.htm](http://www-rasanet.iaea.org/conventions/jointcon_reviewmeetings.htm); see generally Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, *Summary Report*, IAEA (Nov. 14, 2003) [hereinafter *Summary Report*], at [http://www-rasanet.iaea.org/downloads/conventions/jointcon\\_summary\\_report\\_finalNov19.pdf](http://www-rasanet.iaea.org/downloads/conventions/jointcon_summary_report_finalNov19.pdf).

a boost in legal weight with the ratification by the United States last year.<sup>71</sup>

Discussions at the November meeting in Vienna focused on national reports, a central requirement of the Joint Convention, submitted by the thirty-three contracting parties.<sup>72</sup> A state's national report contains a detailed discussion of its nuclear program, from general energy policy to specific regulatory frameworks.<sup>73</sup> As part of the peer review process, the parties exchange reports three months prior to review meetings and respond to questions concerning them.<sup>74</sup>

As noted in the summary report issued by the parties, decommissioning of nuclear reactors was also a central point of discussions at the review meeting.<sup>75</sup> Although decommissioning methods vary from state to state,<sup>76</sup> the parties agreed that safe and successful decommissioning depends upon adequately financing decommissioning from start to finish, designing facilities with decommissioning in mind, and comprehensive planning in preparation for decommissioning, among other important factors.<sup>77</sup>

The Joint Convention meeting is one of a number of activities sponsored by the International Atomic Energy Agency (IAEA), which was particularly active in the past year dealing with international nuclear law and policy. The IAEA hosted the second meeting of the parties to the Early Notification and Assistance Conventions. Dr. Mohamed ElBaradei, Director General of the IAEA, hoped that the meeting would "begin the transformation of the emergency conventions from purely reactive to more proactive mechanisms for enhancing emergency preparedness and response."<sup>78</sup> The IAEA used the cooperative framework established by the two conventions to complete missions to Bolivia, Ecuador,

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71. Elaine Hiruo and Daniel Horner, *Senate Ratifies Waste Convention*, 28 NUCLEAR FUEL 3 (Apr. 14, 2003).

72. *First Review Meeting*, *supra* note 70.

73. *See, e.g.*, U.S. DEPT. OF ENERGY, U.S. National Report: Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (May 2003), available at [http://web.em.doe.gov/integrat/National\\_Report\\_05-02-03\\_1.pdf](http://web.em.doe.gov/integrat/National_Report_05-02-03_1.pdf).

74. Gamini Seneviratne, *Review Finds Joint Convention Has Already Benefited Safety*, 28 NUCLEAR FUEL 9 (Nov. 24, 2003).

75. *Id.*; *Summary Report*, *supra* note 70, at 5-13.

76. *Id.* ("[S]ome Contracting Parties had opted to commence decommissioning as soon as the reactor was finally shut down," so as to complete it "as soon as possible while the expertise existed." Others had opted to do it in three stages: defueling the reactor, dismantling some of the plant and equipment to put the reactor into safe storage, and completing dismantling later. Preferred safe storage times varied; one party has opted for a 40-year period, others for longer) (quoting *Summary Report*, *supra* note 70, at 10.)

77. *Id.*

78. Mohamed ElBaradei, Statement to the Forty-seventh Regular Session of the IAEA General Conference 2003 (Sept. 15, 2003), available at <http://www.iaea.org>.

Nigeria, and the United Republic of Tanzania.<sup>79</sup> The missions assisted the countries in the recovery, characterization, and securing of radioactive sources “seized in illicit trafficking incidents.”<sup>80</sup>

Among its other regulatory activities, the IAEA published *The Long-Term Storage of Radioactive Waste: Safety and Sustainability*, a position paper targeted at protecting the environment from nuclear waste.<sup>81</sup> The publication is part of an action program initiated at the General Conference of the IAEA in 2001.<sup>82</sup> Guided by the principle that “[r]adioactive waste shall be managed in such a way that will not impose undue burdens on future generations,”<sup>83</sup> the paper argues that perpetual storage of nuclear waste is not a feasible alternative to disposal.<sup>84</sup> While recognizing the difficulties of transporting waste to disposal sites, the paper endorses geological disposal over long-term storage, although at the same time acknowledging that storage and disposal are complimentary activities.<sup>85</sup>

#### F. United Nations Combats Trade in “Environmental Commodities”

With the environmental dangers of pollution from POPs, nuclear waste, and other hazardous materials in mind, the UNEP launched a new program in June 2003, called Green Customs, to combat the illegal trade in environmentally harmful substances. Governed by numerous treaties, including the Basel Convention on the Transboundary Movements of Hazardous Wastes and their

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79. *Id.*

80. *Id.*

81. IAEA, *The Long Term Storage of Radioactive Waste: Safety and Sustainability: A Position Paper of International Experts* [hereinafter *Position Paper*], June 2003, at [http://www-pub.iaea.org/MTCD/publications/PDF/LTS-RW\\_web.pdf](http://www-pub.iaea.org/MTCD/publications/PDF/LTS-RW_web.pdf).

82. *Id.*

83. *Id.* at 1. (This principle is one of nine outlined in the *Principles of Radioactive Waste Management, Safety Series No. 111-F*, published in 1995 by the IAEA and available at <http://www.iaea.org>).

84. *Position Paper*, *supra* note 81, at 13.

85. *Id.* Discussions at the review meeting of the parties to the Joint Convention signaled possible disagreement over whether the long-term storage of spent fuel is an acceptable practice. In contrast to the views on long-term storage expressed by the authors of the *Position Paper*, *supra* note 81, the summary report of the review meeting notes that both “centralized long-term storage” and “storage on production sites pending the availability of a national disposal facility” are acceptable practices. Seneviratne, *supra* note 74, at 9. Whether this acceptance of both practices reveals an underlying divergence of views is not clear but it might explain the motivation behind the IAEA campaign to promote spent fuel safety.

Disposal,<sup>86</sup> the Rotterdam Convention,<sup>87</sup> and the Montreal Protocol,<sup>88</sup> Green Customs seeks to coordinate and support the worldwide enforcement of trade restrictions.<sup>89</sup> In addition to treaty organizations, the program involves Interpol and the World Customs Organization.<sup>90</sup>

According to the UNEP, trafficking in “environmental commodities . . . [is] one of the most profitable and fastest growing new areas of international criminal activity.”<sup>91</sup> In December 2000, the U.S. government reported that crime syndicates earned upwards of \$10 billion annually from the illegal dumping of hazardous waste.<sup>92</sup> The black market in CFCs and the illicit trade in natural resources, such as illegally logged timber, are similarly lucrative.<sup>93</sup>

The Green Customs initiative focuses in part on training border guards to identify illegal substances, which include endangered species, toxic waste, and ozone-depleting CFCs.<sup>94</sup> The UNEP-sponsored web site offers a range of educational products, from training videos and manuals to regional seminars on interdiction and enforcement.<sup>95</sup> The Green Customs program as a whole “aims to improve coordinated intelligence gathering, information exchange, guidance (such as codes of best practice) and training amongst the partner organizations involved.”<sup>96</sup>

#### IV. 2003 SEES ADOPTION OF SIGNIFICANT FRAMEWORKS FOR IMPLEMENTATION OF SUSTAINABLE DEVELOPMENT

*Jeff Timmerman*

Sustainable development in its turgid catch-all nature, is at once both an inclusive, and at times, elusive topic in international environmental law. While 2002 was a year for forging conclusive substantive agreements, 2003 was the year for establishing procedural frameworks to realize these substantive agreements. In the aftermath of the World Summit on Sustainable Development

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86. For more information on the Basel Convention, see <http://www.basel.int>.

87. See *supra* Part III.A.

88. See *supra* Part III.B.

89. See Eryn Gable, *New Initiative Targets Environmental Crime*, 10 GREENWIRE (June 2, 2003).

90. *Id.*

91. Press Release, United Nations Environmental Programme, *New Initiative to Combat Growing Global Menace of Environmental Crime* (June 2, 2003) [hereinafter *New Initiative*], at <http://www.unep.org>.

92. *Id.*

93. *Id.*

94. *Id.*

95. See *Green Customs*, at <http://www.unepie.org/ozonaction/customs>.

96. *New Initiative*, *supra* note 91.

(WSSD) held in Johannesburg in 2002, the United Nations Commission on Sustainable Development convened for its first post-WSSD substantive session (CSD-11) from April 28th-May 9th, 2003.<sup>97</sup> CSD-11 member states adopted a working program to be implemented in the period 2004-2017 to be “organized in a series of two-year action-oriented Implementation Cycles,” each cycle consisting of one-year review session followed by a one-year policy session.<sup>98</sup>

In the spirit of multilateralism, and in response to the pending Millennium Development Goals (MDG), the multi-year framework — an instructive pedagogical overview of the major substantive areas of sustainable development — consists of the following cycles:

- 2004/2005: water, sanitation, human settlements;
- 2006/2007: energy for sustainable development, industrial development, air pollution/atmosphere, climate change;
- 2008/2009: agriculture, rural development, land, drought, desertification, Africa;
- 2010/2011: transport, chemicals, waste management, mining, ten-year framework of programs on sustainable consumption and production patterns;
- 2012/2013: forests, biodiversity, biotechnology, tourism, mountains;
- 2014/2015: oceans and seas, marine resources, SIDS, disaster management and vulnerability;
- 2016/2017: overall appraisal of implementation ... [and] Further Implementation . . . .<sup>99</sup>

Also included in the working program are “cross-cutting issues” such as poverty eradication, gender equality, and education, to be

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97. *Summary of the Eleventh Session of the Commission on Sustainable Development*, EARTH NEGOTIATIONS BULLETIN (Int'l Inst. for Sustainable Dev.), May 2003, available at <http://www.iisd.ca/linkages.csd/csd11/>.

98. *Id.* at 1.

99. *Id.* at 9.

addressed within each cyclical period.<sup>100</sup> From a methodological viewpoint, implementation of the WSSD flows from the maintenance of a “people-centred [sic] approach to sustainable development.”<sup>101</sup>

*A. Marrakech Process Strengthens Resolve to Aid Developing Countries*

In a further attempt to reinforce commitments made at the 2002 Johannesburg Summit, leaders met in Marrakech, Morocco, from June 16th-19th, 2003 to launch the “Marrakech Process” aimed at implementing a ten-year framework to “strengthen and focus international cooperation, information exchange and assistance for developing countries.”<sup>102</sup> The Process re-emphasized the need to address consumption and production aspects of the three major pillars<sup>103</sup> of sustainable development — economy, environment, and society.<sup>104</sup>

The United Nations Development Program (UNDP) issued its *Human Development Report 2003*, launched at a July 8th press conference in Dublin, Ireland.<sup>105</sup> An entire chapter dedicated to public policies aimed at sustainability includes impact statements regarding the effects of worldwide poverty, gender imbalance, food, water, energy, and livelihoods.<sup>106</sup>

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100. *Id.*

101. *Chairperson's Summary of the High-Level Segment of CSD-11*, United Nations Division for Sustainable Development [hereinafter United Nations Division for Sustainable Development] (As will be discussed further *infra*, a proper point of perspective origination was a hotly debated academic topic in sustainable development and population this year), available at [http://216.239.41.104/search?q=cache:wpReBlc-fhkJ:www.un.org/esa/sustdev/csd/csd11/hls\\_summary.pdf+%22chairperson%27s+summary+of+the+high-level+segment+of+CSD-11%22&hl=en&ie=UTF-8](http://216.239.41.104/search?q=cache:wpReBlc-fhkJ:www.un.org/esa/sustdev/csd/csd11/hls_summary.pdf+%22chairperson%27s+summary+of+the+high-level+segment+of+CSD-11%22&hl=en&ie=UTF-8) (last visited Jan. 17, 2004).

102. “Marrakech Process” to Promote International Cooperation on Sustainable Consumption and Production, CSD UPDATE ON-LINE, (U.N. Div. for Sustainable Dev.), Aug.-Oct. 2003, at [http://www.un.org/esa/sustdev/publications/csd\\_newsletter/csdup82b.htm](http://www.un.org/esa/sustdev/publications/csd_newsletter/csdup82b.htm).

103. See *Population Issues Left Out of Earth Summit Discussion*, (Population Reference Bureau), (September 2002) at <http://www.prb.org/Template.cfm?Section=PRB&template=/ContentManagement/ContentDisplay.cfm&ContentID=6567>.

104. United Nations Division for Sustainable Development, *supra* note 101.

105. *Human Development Report 2003: Millennium Development Goals: A Compact Among Nations to End Human Poverty*, HUMAN DEV. REP. (U.N. Dev. Program), available at <http://www.undp.org/hdr2003/>.

106. See *id.* at *Public Policies to ensure environmental sustainability*, at [http://www.undp.org/hdr2003/pdf/hdr03\\_chapter\\_6.pdf](http://www.undp.org/hdr2003/pdf/hdr03_chapter_6.pdf) (last visited Jan. 17, 2004).

*B. Biotechnological Harmonization Gains International Momentum under Pressure to Dissolve Ideological Deadlock*

Food production was a hotly debated topic in sustainable development in 2003 highlighted by UNDP report addressing the importance of employing “[d]iverse genetic resources” to increase plant and livestock adaptability and production in an effort to solve world hunger.<sup>107</sup> In April 2003, representatives from developing African countries met to challenge the ideological deadlock undergirding the EU’s five-year de facto moratorium on genetically modified organisms (GMO’s).<sup>108</sup> Subsequently, in May 2003, the United States, Argentina, and Canada filed a World Trade Organization (WTO) case against the EU challenging the legality of the moratorium.<sup>109</sup>

The EU responded in July by passing two laws permitting its fifteen member nations to end the five-year moratorium on GMO’s, opting instead to implement a tracking and labeling initiative to regulate genetically modified foods.<sup>110</sup> In a showing of cooperative authority, the EU consequently sued eleven member states in late July for failing to adhere to its decision to suspend the moratorium.<sup>111</sup> By October 2003, the EU’s food safety chief announced that the five-year ban could effectively be lifted before the end of 2003.<sup>112</sup>

Additionally, the Codex Alimentarius Commission adopted a “landmark agreement” on the universality of biotechnology risk assessment in a July 2003 meeting in Rome.<sup>113</sup> The new system includes “pre-market safety evaluations and product tracing for recall purposes and post-market monitoring,” with the effect of allowing individuals from any of the 169 member countries to

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107. *Id.* at 125.

108. Susan Mabonga, *Biosafety News (Kenya): African Countries Query EU’s Move on GM Foods* (Apr. 21, 2003), at <http://www.foodsecurity.net/news/newsitem.php3?nid=1904&tnews=news>.

109. *European Union Moratorium*, (Biotechnology Industry Organization), at <http://www.bioorg/foodag/eumoratorium.asp> (last visited Jan. 17, 2003); See also News Release, United States Department of Agriculture, U.S. and Cooperating Countries File WTO Case Against EU Moratorium on Biotech Foods and Crops (May 13, 2003), available at <http://www.usda.gov/news/releases/2003/05/0156.htm>.

110. Biotechnology Industry Organization, *supra* note 109.

111. *Id.*

112. *EU May Start to Lift GMO Ban Before Year-End* (Oct. 3, 2003), available at [http://www.enn.com/news/2003-10-03/s\\_9075.asp](http://www.enn.com/news/2003-10-03/s_9075.asp).

113. News Release, Food and Agriculture Organization of the United States, Codex Alimentarius Commission adopts more than 50 New Food Standards (July 9, 2003), available at <http://www.fao.org/english/newsroom/news/2003/20363-en.html>.

compare risk assessments developed by other member countries regarding attributes like allergenicity and irradiation.<sup>114</sup>

Genetically modified trees also made headlines in 2003. At a December U.N. convention in Milan, 180 countries agreed to allow for the planting of genetically altered trees to offset global warming.<sup>115</sup> As part of a compromise, individual nations retained the right to evaluate potential risks domestically, overcoming sovereignty objections by influential countries including China and Brazil.<sup>116</sup>

On September 11, 2003, the Cartagena Protocol on Biosafety took effect following the June ratification by the Republic of Palau.<sup>117</sup> The protocol governs living modified organisms (LMO's) — the byproduct of biotechnology — establishing a “harmonized” set of rules and procedures allowing countries to make informed decisions prior to importing LMO's and genetically modified foods and ensuring compliance with identification and documentation standards.<sup>118</sup>

### *C. Summer Crisis Pushes Europe Toward Realizing Sustainable Energy*

In response to last summer's “deadly European heat wave”, and citing “massive power failures in the U.S.” and several developed European nations, the U.N. Environment Program launched a new initiative in Tokyo in October 2003 aimed at shifting investment to sustainable energy.<sup>119</sup> The initiative is aimed at spurring investment in sustainable energy as a viable alternative to damaging reliance on fossil fuels, concentrating especially on more “assessable, affordable and clean” energy sources for developing countries.<sup>120</sup>

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114. *Id.*

115. *UN to allow GM-Trees for producing carbon credits*, INDYMEDIA UK, Dec. 10, 2003, at <http://www.indymedia.org.uk/en/2003/12/282705.html>.

116. *Id.*

117. Press Release, United Nations Environment Program Convention on Biological Diversity, Cartagena Protocol on Biosafety Takes Effect 11 September, U.N. Doc. ENV/DEV/735 UNEP/163 (Sept. 9, 2003), available at <http://www.un.org/News/Press/docs/2003/envdev735.doc.htm>.

118. *Id.*

119. Press Release, United Nations Environment Program, UN Environment Chief Challenges World's Financiers: UNEP Launches New Initiative to Shift Investment to Sustainable Energy (Oct. 20, 2003), available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=352&ArticleID=4277&l=en>.

120. *Id.*

V. DESERTIFICATION FIGHT MOVES FROM CONSCIOUSNESS-RAISING  
TO IMPLEMENTATION

*Ronald C. Smith*

The world fight against desertification was transformed from a battle to raise awareness, to one of action by a major decision at the Sixth Conference of Parties for the U.N. Convention to Combat Desertification.<sup>121</sup> Desertification is often misunderstood as the expansion of existing deserts.<sup>122</sup> It occurs because of human activities and climactic changes in arid, semi-arid, and dry sub-humid areas. These ecosystems are extremely vulnerable to deforestation, overgrazing, and poor irrigation practices. Many of the world's poorest are among the 250 million people directly affected.<sup>123</sup>

The conference agreed on a funding mechanism that allows the convention to move beyond its research and planning roles.<sup>124</sup> During its August-September meeting in Havana, the 190-country conference enjoyed record attendance and discussed its new mission after endorsing the long-awaited funding plan.<sup>125</sup>

The Global Environment Facility was agreed upon, as the financial arm for the convention<sup>126</sup> and \$500 million was made available for the next three years.<sup>127</sup> The need for stronger financial

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121. *U.N. Desertification Conference Agrees On Initiatives*, U.N. WIRE, (U.N. Foundation) Sept. 8, 2003, (According to the U.N. the cost to prevent land degradation is around \$2.4 billion a year but \$42 billion in income is lost every year due to desertification.); at <http://cw.groupstone.net/Scripts/WebObjects-3.dll/CMWebRequests.woa/wa/displayContents>. For more information on the scope of commitments sought, see Press Release, UNCCD, Conference accepts the GEF as a financial mechanism and calls for more financial commitments to meet needs (Sept. 6, 2003) at [http://www.unccd.int/public\\_info/pressrel/showpressrel.php?pr=press06\\_09\\_03&nomenus=1](http://www.unccd.int/public_info/pressrel/showpressrel.php?pr=press06_09_03&nomenus=1).

122. *The United Nations Convention to Combat Desertification: An Explanatory Leaflet*, United Nations Convention to Combat Desertification (Jan. 18, 2003), at <http://www.unccd.int/convention/text/leaflet.php>.

123. *Id.*

124. Press Release, UNCCD, GEF Council adopts the operational modalities on sustainable land management, promising enhanced financial support to fight desertification (May 19, 2003) [hereinafter UNCCD Press Release] (The UNCCD was adopted after the 1992 United Nations Conference on Environment and Development. It has a permanent Secretariat based in Bonn and has been in force since 1996. It is the only international agreement on desertification and recurring droughts.); at [http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press19\\_05\\_03&nomenus=1](http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press19_05_03&nomenus=1).

125. Orfilio Palaez and Aldo Madruga, *U.N. Conference Against Desertification and Drought: A milestone in the fight against poverty*, GRANMA INTERNACIONAL DIGITAL, Sept. 3, 2003, at [www.granma.cu/ingles/2003/septiembre03/mar9/36uncon-i.html](http://www.granma.cu/ingles/2003/septiembre03/mar9/36uncon-i.html). The parties grew by four nations in 2003 with the Russian Federation, Lithuania, Bhutan and Timor Leste joining. See <http://www.unccd.int/convention/ratif/doiif.php?nomenus=1>.

126. U.N. Wire, *supra* note 121.

127. *Id.*

resources to battle desertification was highlighted at the World Summit on Sustainable Development in 2002. The funding announcement now allows the desertification convention to contribute to the Millennium Development Goals through implementation of its National Action Programmes. The conference reported that sixty-six countries have finalized long-term policy guidelines.<sup>128</sup>

U.N. Secretary-General Kofi Annan said nations at the World Summit recognized UNCCD as an “important tool not only for improving the livelihoods of the millions of people living in dry lands, but also for achieving the Millennium Development Goals.”<sup>129</sup> World leaders believe the desertification battle can assist in the goal of reducing the number of people living in abject poverty by half before 2015.<sup>130</sup>

The focus on desertification and deforestation becomes the fifth focal area of the Global Environment Facility.<sup>131</sup> Parties affected by desertification will now be able to apply for assistance in forming and implementing action programs.<sup>132</sup>

## VI. POPULATION REMAINS INTERNATIONAL ENVIRONMENTAL LAW'S “INVISIBLE” ELEPHANT

*Jeff Timmerman*

### *A. Developmental Disparity Becomes Increasingly Relevant*

The state of the world's population remains one of the grossly unresolved issues in current international environmental law partly because it encapsulates many characteristics of other substantive areas of the same body of law. Population is most conveniently compartmentalized as a subset of sustainable development. Controversially, the 2002 World Summit on Sustainable Development (WSSD) omitted population from its agenda, although population is “intrinsically linked” to economic, social, and environmental development — the aptly named “three pillars of

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128. Press Release, UNCCD, A breakthrough in anti-desertification drive expected at UNCCD Conference (Aug. 21, 2003), at [http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press21\\_08\\_03&nomenus=1](http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press21_08_03&nomenus=1).

129. Press Release, UNCCD, World leaders single out the UNCCD as a key instrument for the UN Millennium Development Goal of halving those living in abject poverty by 2015 (September 1, 2003), at [http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press01\\_09\\_03&noMenus=1](http://www.unccd.int/publicinfo/pressrel/showpressrel.php?pr=press01_09_03&noMenus=1).

130. *Id.*

131. UNCCD Press Release, *supra* note 122.

132. *Id.*

sustainable development.”<sup>133</sup> As has become increasingly apparent in 2003, the problem is not what has been said about population, but instead what has been left unsaid.

The population debate is hampered and effectively omitted from the sustainable development agenda by three convoluted academic arguments. The first, and perhaps most obtuse obstruction stems from a substantive trade-off reached at the 1992 Rio Earth Summit aptly dubbed the “North-South deal.”<sup>134</sup> At the heart of the exchange, developed countries (the “North”) agreed to drop discussion of population in exchange for a promise to avoid the topic of consumption by under-developed countries’ (the “South”). Simply, rather than address over-population and over-consumption, the two sides employed an international avoidance tactic along battle lines established, in large part, by disparate gross national products.<sup>135</sup>

Further enhancing this epidemiological population disaster is a complete lack of interdisciplinary unanimity.<sup>136</sup> What exactly is being explicated by linking population and the environment? Which disciplinary determinations are to be favored over others? For example, population assumes different meanings to demographers, family planning managers, community planners, healthcare workers, and conservationists.<sup>137</sup> Unless and until cross-disciplinarians settle on a standardized set of population definitions, properly addressing population on a domestic, let alone an international, forefront will prove to be fruitlessly equivocal.

Finally, further obscuring the population debate in relation to interdisciplinary ambiguity, efforts to link population and the environment are hindered by a complete lack of agreed-upon methodological variables.<sup>138</sup> At issue is where to properly establish an epistemological frame of reference. While some scientific disciplines establish baseline population perspective in terms of relation with and effects on individuals, others focus instead on the ecosystem as a proper referencing point, but others look to the unlimited potential of human creativity and human ability to uniquely solve complex problems.<sup>139</sup>

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133. *Population Issues Left Out of Earth Summit Discussion*, *supra* note 103.

134. *Id.*

135. *See id.* (The “South” is essentially comprised of two countries with proliferate sway – China and India.).

136. *See* Roger-Mark De Souza et al., *Critical Links: Populations, Health, and the Environment*, POPULATION BULLETIN (Population Reference Bureau), Sept. 2003, at 7, available at <http://www.prb.org/Template.cfm?Section=PRBLibrary&template=/ContentManagement/ContentDisplay.cfm&ContentID=9514>.

137. *Id.*

138. *Id.* at 13.

139. *Id.*

*B. UN Population Report Focuses on the Adolescent Dilemma; US Loses Ground*

The United Nations Population Fund released its annual *State of World Population 2003* report in October, entitled *Making 1 Billion Count: Investing in Adolescents' Health and Rights*.<sup>140</sup> In response to MDG agreements, the report notes that nearly half of the world's population is under the age of twenty-five, resulting in far-reaching implications in terms of poverty, HIV/AIDS, mortality, reproductive health, education, and sustainable development.<sup>141</sup>

While concentrating primarily on eliminating risky behavior and promoting healthy lifestyles among booming adolescent populations, the study also speaks to the opportunity for countries to exploit a demographic "bonus" created by a low dependency ratio.<sup>142</sup> Correlatively, declining fertility rates have created a larger working age population worldwide, creating a potential windfall for countries implementing "appropriate investments, policies and governance ... to launch an economic and social transformation."<sup>143</sup> The corresponding result — a swelled workforce with fewer social dependents — would create an intangible type of renewable benefit allowing future generations to profit from a one-time sociological *bonus*.

Finally, the 2003 Human Development Index, announced in *Human Development 2003*, warns of a pressing developmental crisis resulting in "severe and continuing socio-economic reversals."<sup>144</sup> Intriguingly, among wealthy countries in terms of poverty, illiteracy, unemployment, and life-expectancy, the United States ranks dead last.<sup>145</sup>

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140. Press Summary, United Nations Population Fund, *State of World Population 2003: Making 1 Billion Count: Investing in Adolescents' Health and Rights* (Oct. 8, 2003), available at [http://www.unfpa.org/swp/2003/pdf/english/swp03summary\\_eng.pdf](http://www.unfpa.org/swp/2003/pdf/english/swp03summary_eng.pdf).

141. *Id.*

142. *Id.*

143. *Id.*

144. United Nations Development Program, *supra* note 105. See also Press Release, United Nations Development Program, 2003 Human Development Index Reveals Developmental Crisis (July 8, 2003), available at [http://65.109.106.110/hdr2003/pdf/presskit/HDR03\\_PR4E.pdf](http://65.109.106.110/hdr2003/pdf/presskit/HDR03_PR4E.pdf).

145. *Id.*

## VII. INFORMATION TECHNOLOGY FRAMES NEW-AGE CULTURAL PRESERVATION EFFORT

*Jeff Timmerman*

Cultural preservation serves as another all-encompassing international environmental law forum, spanning issues as diverse as free trade and ethnic discrimination. For example, the Society for International Development (SID), a group of concerned individuals and non-governmental organizations, ended its three-year cyclical portfolio in 2003 focusing on multitudinous preservation topics including: conflicts over access to natural resources, supporting societies in transition, knowledge and information technologies for development, participatory action for capacity building and food security, feminization of power<sup>146</sup> and reproductive health, and the global challenges involved in transforming Europe.<sup>147</sup>

Perhaps the most pressing and practical innovations in cultural preservation came in the realm of information technology. Addressing the World Summit on the Information Society, Mark Malloch Brown, the UNDP Administrator, noted that information technology is “transforming societies and bringing positive change faster than any other current phenomenon — in developed and developing countries alike.”<sup>148</sup> UNDP aspires to manipulate information technology to further international development through innovations including distance learning programs, civil service reform, e-governance, and promotion of an unfettered free media — specifically aimed at the world’s most impoverished nations — while concurrently furthering cultural self-sufficiency by allowing progress to occur more naturally through local policy ordinances and entrepreneurship.<sup>149</sup> While not officially promulgated, UNDP action seems to be motivated by a desire to reach Millennium Development Goals while concurrently allowing for continued preservation of individual cultural heritage.

On a more concrete ground, the twenty-seventh session of the World Heritage Committee, held from June 30th – July 6th, placed twenty-four new sites on the World Heritage List in 2003, including

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146. The term “feminization of power” refers to a cultural paradigm shift delegating increased authority to women.

147. Society for International Development, Yearbook of International Cooperation of Environment and Development, at <http://www.greenyearbook.org/ngo/sid.htm> (last visited Jan. 17, 2004).

148. Mark Malloch Brown, Address at the World Summit on the Information Society (Dec. 11, 2003). Brown notes that technology development should focus on “three key pillars: practice, policy and partnerships.”

149. *Id.*

582 cultural sites and twenty-three sites of “outstanding universal value.”<sup>150</sup> Among the new designated cultural landmarks are the landscape and archaeological remains of the Bamiyan Valley, containing Buddhist “monastic ensembles and sanctuaries” and highlighting the destruction of two Buddha statues by the repressive Taliban regime in 2001. Also making the list were Prague’s historic Jewish Quarter, the United Kingdom’s famed Royal Botanic Gardens, and China’s imperial tombs of the Ming and Qing Dynasties.<sup>151</sup>

Finally, the U.N. Economic and Social Council met in August 2003 to discuss the prevention of discrimination and protection of indigenous peoples.<sup>152</sup> The principal theme was “indigenous peoples and globalization,” concentrating on “continued exploitation” and a new breed of neo-colonialism.<sup>153</sup> To demonstrate the cultural effects of globalization, Representative M. El. Hadgi Guisse<sup>154</sup> described the plight of the Ogoni tribe of Nigeria, persecuted and executed for demanding a share of the profits derived from territorial oil extraction.<sup>155</sup> Indigenous representatives also spoke to the “detrimental effects” caused by the imposition of agricultural subsidies in wealthy countries.

#### VIII. ECOSYSTEM STUDY, DURBAN ACCORD BOOST BIODIVERSITY

*Jennifer Ringsmuth*

##### *A. Study on Ecosystems Will Aid Conservation Efforts*

Ecosystem managers and policy makers have had difficulty protecting the Earth’s biodiversity due to a lack of “current, comprehensive, and scientifically authenticated data about the condition and capacity of the ecosystems they administer, how they interact, and the full effects of resource extractions.”<sup>156</sup> The year 2003 saw the realization of a study that will collect the data needed to illuminate how to manage and maintain such precious

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150. *World Heritage Committee Inscribes 24 New Sites on the World Heritage List*, UNESCO (July 3, 2003), at [http://www.portal.unesco.org/culture/en/ev.php@URL\\_ID=10122&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://www.portal.unesco.org/culture/en/ev.php@URL_ID=10122&URL_DO=DO_TOPIC&URL_SECTION=201.html).

151. *Id.*

152. U.N. ESCOR, 55th Sess., U.N. Doc. E/CN.4/Sub2/2003/22 (2003).

153. *Id.* at 10. Indigenous groups claim that globalization is merely “colonialism in a new format.”

154. Guisse is an eminent Senegalese jurist and former chairman of the U.N. Human Rights Sub-Commission.

155. U.N. ESCOR, *supra* note 152, at 9.

156. The Millennium Ecosystem Assessment, Bill Moyers Reports: Earth on Edge- Science Matters (last visited Jan. 5, 2004), at <http://www.pbs.org/earthonedge/science/>.

ecosystems.<sup>157</sup> This study, known as the Millennium Ecosystem Assessment (MA), “synthesizes information from the scientific literature, datasets, and scientific models, and makes use of knowledge held by the private sector, practitioners, local communities and indigenous peoples.”<sup>158</sup>

The MA focuses on ecosystem services (the benefits people obtain from ecosystems), how changes in ecosystem services have affected human well-being, how ecosystem changes may affect people in future decades, and response options that might be adopted at local, national, or global scales to improve ecosystem management and thereby contribute to human well-being and poverty alleviation.<sup>159</sup>

The MA seeks “to recognize priorities for action, provide tools for planning and management, supply foresight regarding the ramifications of decisions that affect ecosystems,” establish response tactics to reach human development and sustainability goals, and help create the individual and institutional capacity to take on ecosystem assessments and to act on their conclusions.<sup>160</sup> Additionally, it will help to meet assessment needs of several UN treaties, including the Convention to Combat Desertification, the Ramsar Convention on Wetlands, the Convention on Migratory Species, and the Convention on Biological Diversity.<sup>161</sup>

The MA, touted as “the most extensive study ever of the linkages between the world’s ecosystems and human well-being,”<sup>162</sup> was launched in June of 2001 by U.N. Secretary-General Kofi Annan.<sup>163</sup> It was planned by a conglomerate of UN agencies, international scientific organizations, and development agencies, with direction from private sector and civil society groups.<sup>164</sup> This year the first study, titled *Ecosystems and Human Well-being: A Framework for Assessment*, was published.<sup>165</sup> This “report lays out the approaches, assumptions, processes, and parameters scientists are using in the

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157. See Millennium Ecosystem Assessment Releases First Report, Millennium Ecosystem Assessment (Sept. 23, 2003), at [www.millenniumassessment.org/en/article.aspx?id=32](http://www.millenniumassessment.org/en/article.aspx?id=32).

158. About the Millennium Ecosystem Assessment, Millennium Ecosystem Assessment, at <http://www.millenniumassessment.org/en/about.overview.aspx> (last visited Jan. 5, 2004).

159. *Id.*

160. *Id.*

161. *Id.*

162. Upcoming Reports Link Human Well-being and Nature, Millennium Ecosystem Assessment, (June 5, 2003), at <http://www.millenniumassessment.org/en/article.aspx?id=2>.

163. *About the Millennium Ecosystem Assessment*, *supra* note 158.

164. *Upcoming Reports Link Human Well-being and Nature*, *supra* note 162.

165. *Millennium Ecosystem Assessment Releases First Report*, *supra* note 157.

study. It offers decision-makers a mechanism to identify options that can better achieve core human development and sustainability goals and better understand the trade-offs in decisions about development and the environment.”<sup>166</sup> The later research results will be published in 2004 in a series of four in-depth reports and several shorter studies.<sup>167</sup> Future volumes will detail ecosystems’ conditions, describe ecosystem change and human well-being situations, provide sample reactions to ecosystem changes and how to avoid them<sup>168</sup> and “will look at how these three topics are treated at a variety of scales from villages to regional watersheds”.<sup>169</sup> Approximately 500 scientists from seventy countries will labor on these reports which will then undergo an expert evaluation by hundreds of additional scientists.<sup>170</sup> With this assessment underfoot, participants in the MA hope to bring about sensible and sustainable management of Earth’s ecosystems<sup>171</sup> and to construct a basis for wise policy-making.<sup>172</sup>

### *B. Durban Accord to Protect More Land and Biodiversity*

The year 2003 also welcomed the Fifth International Union for the Conservation of Nature (IUCN)<sup>173</sup> World Parks Congress in Durban, South Africa.<sup>174</sup> Conservationists gathered to review the progress made since the last congress met ten years ago to discuss how to “preserve the planet’s natural heritage.”<sup>175</sup> Since that meeting in 1992, approximately twelve percent of the Earth’s surface is now considered to be ‘protected.’ Protected areas are vital in maintaining biodiversity.<sup>176</sup> The theme of this year’s conference was “Benefits Beyond Boundaries,”<sup>177</sup> it focused on the world’s protected nature areas and how poor countries can make

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166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *The Millennium Ecosystem Assessment*, *supra* note 156.

172. *Id.*

173. *World Parks Congress*, 1 CROSSROADS 6, 2003, at [http://www.heinzctr.org/crossroads/vol\\_1\\_issue\\_02.pdf](http://www.heinzctr.org/crossroads/vol_1_issue_02.pdf) (last visited Jan. 5, 2004).

174. Media Release, Department of Environmental Affairs and Tourism/IUCN, Vth IUCN World Parks Congress Sets Agenda For Next Decade, Spurs Conservation Initiatives for Africa (Sep. 17, 2003) [hereinafter Media Release], at <http://www.iucn.org/themes/wcpa/wpc2003/pdfs/newsevt/day10/finalwpcpr170903.pdf>.

175. See Ed Stoddard, *Parks Congress to Focus on Global Protected Areas*, WORLD ENVIRONMENT NEWS, Sep. 9, 2003, at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=22161>.

176. *World Parks Congress*, *supra* note 173, at 6.

177. Stoddard, *supra* note 175.

conservation pay for itself.<sup>178</sup> IUCN President Yolanda Kakabadse Navarro noted that one of the greatest challenges to the conservation community is “[t]urning ‘paper parks’ into real parks.”<sup>179</sup> ‘Paper parks’ are those areas that are officially protected but fail to offer real security for their wildlife.<sup>180</sup> For example, much of Indonesia’s Papua province is considered to be national parkland or nature preserve.<sup>181</sup> However, smuggling of rare and endangered birds is rampant in this supposedly protected area.<sup>182</sup> Also, in countries with internal wars and political unrest, such as the Democratic Republic of Congo, “parks are parks in name only.”<sup>183</sup> This year, the World Parks Congress attempted to find ways to broaden the rewards of conservation beyond park borders<sup>184</sup> by offering real economic benefits to local populations,<sup>185</sup> a goal that is essential to the successful protection of fragile ecosystems.<sup>186</sup>

To achieve this goal, the Fifth IUCN World Parks Congress developed the Durban Accord and the Durban “Action Plan, 32 Recommendations, and a message to . . . [the] Convention on Biological Diversity.”<sup>187</sup> The Durban Accord celebrates the role of protected areas in attaining conservation and development goals,<sup>188</sup> but also introduces new strategies that stress the role of local communities in protected area decisions and benefits.<sup>189</sup> The Durban Action Plan is “a technical document that provides policy-makers with key targets and timetables for the protected area agenda.”<sup>190</sup> Neither the Accord nor the Action Plan are legally binding. However, “they carry the voice of this decade’s most prestigious assembly of resource managers, conservation scientists, civil servants and community leaders devoted to protected areas.”<sup>191</sup> Thirty-two Recommendations were also made at the convention.<sup>192</sup> These Recommendations centered around three major themes: 1) making sure to incorporate the “interests and needs”<sup>193</sup> of the communities in and around the protected areas into the

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178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. Stoddard, *supra* note 175.

184. *Id.*

185. *World Parks Congress*, *supra* note 173, at 6

186. *Id.*

187. Media Release, *supra* note 174, at 1.

188. *Id.*

189. *Id.*

190. *Id.* at 3.

191. *Id.*

192. *Id.*

193. Media Release, *supra* 174, at 1.

management of the protected areas; 2) realizing that protected areas do much more than protect threatened species; they also can provide clean water and “play an important role in relation to mitigation and adaptation to climate change”;<sup>194</sup> and 3) recognizing “the importance of providing practical tools, guidelines and training, as well as resources, for protected area managers to achieve their objectives.”<sup>195</sup> The Accord, Action Plan, and Recommendations should be very helpful for protected area managers and policy makers internationally.<sup>196</sup> “With the Durban Accord and the Recommendations in hand, they can start a process with their governments, institutions and organizations to make the vision set in Durban — of protected areas as a common tool for biodiversity protections and poverty alleviation — a reality.”<sup>197</sup>

Additionally, a new study was unveiled at the Fifth World Parks Congress that indicates that approximately 1,310 species are not protected in any part of their ranges, with at least 831 species at the risk of extinction.<sup>198</sup> The study, known as the “global gap analysis,” reveals that striving to protect a targeted range of land in each country (such as ten percent) will not be effective in protecting biodiversity.<sup>199</sup> Rather, because “biodiversity is not distributed evenly over the surface of our planet[,]... some regions require much more protected area coverage than others to ensure that their full range of life forms is represented.”<sup>200</sup> The global gap analysis warns that the areas that need the most urgent protection are mostly in tropical forests and on islands.<sup>201</sup> Authors of the study placed the most urgency on protecting biodiversity in Asia and small island nations.<sup>202</sup>

In response to the study, the Fifth World Parks Congress delivered a message to next year’s meeting of the Convention on Biological Diversity (CBD)<sup>203</sup> emphasizing the “need to identify and fill-in the existing gaps in the global protected areas system.”<sup>204</sup>

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194. *Id.* at 3.

195. *Id.*

196. *Id.*

197. *Id.* at 2.

198. *Global Gap Analysis: Towards a Representative Network of Protected Areas*, ADVANCES IN APPLIED BIODIVERSITY SCIENCE (Center for Applied Biodiversity Science), 2003, at <http://cabs.kms.conservation.org/wombat/application/document/summary.cfm?RecordID=831FDA57-2060-4764-86B1-BC392C07AD20&ObjectID=4&IDList=831FDA57-2060-4764-86B1-BC392C07AD>.

199. *Id.* at 3.

200. *Id.*

201. *Id.* at 7.

202. *Id.* at 3.

203. Media Release, *supra* note 174, at 1.

204. *Id.* at 3.

Additionally, the message to the CBD stressed the importance of ensuring that local communities participate in the protection of areas and share in the benefits of the areas.<sup>205</sup> It also noted the importance of creating the conditions that are required of an efficiently-run system of protected areas,<sup>206</sup> such as “institutional and human capacity, supportive policy, legal frameworks that cut across all sectors, assessment mechanisms, and most importantly, . . . financial support . . . .”<sup>207</sup>

Also, the Fifth World Parks Congress established over 200,000 square kilometers of newly protected areas in Madagascar, Senegal, and Brazil.<sup>208</sup> It also looked to the future by “urg[ing] governments to greatly increase the amount of protected marine and coastal areas.”<sup>209</sup> A recommendation was made to establish a global system of marine protected areas by 2012, including “strictly protected areas that amount to at least twenty to thirty percent of each habitat.”<sup>210</sup>

### *C. EU Upholds Severe Fishing Restrictions to Prevent Further Peril to Fish Population*

The IUCN is not the only group worried about protecting marine life; the European Union (EU) has been forced to confront the problem of depleting fish stock head-on. Scientists have sternly warned the EU Fisheries Council that fish, such as cod and hake, are very near the brink of extinction in the waters off Europe.<sup>211</sup> Stocks of cod in the North Sea are already at levels one-tenth of the amount they were at in 1970.<sup>212</sup> Scientists have recommended for the second year in a row that the EU completely halt fishing on these fish stocks,<sup>213</sup> warning that the situation may otherwise end up like the one off Eastern Canada in which years of over fishing caused cod to disappear in the 1990s.<sup>214</sup> Canadian cod stocks still have not recuperated.<sup>215</sup> The EU fisheries commission is loath to

205. *Id.* at 4.

206. *Id.*

207. *Id.*

208. *Id.* at 2.

209. Ed Stoddard, *Parks Congress Sets 10-Year Plan to Protect Planet*, WORLD ENVIRONMENT NEWS, Sep. 18, 2003, at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=22279>.

210. *Id.*

211. Press Release, The European Commission, Outcome of the Fisheries Council of 17-19 December 2003 (Dec. 22, 2003), at [http://europa.eu.int/comm/fisheries/news\\_corner/press/inf03\\_62\\_en.htm](http://europa.eu.int/comm/fisheries/news_corner/press/inf03_62_en.htm).

212. EU Reaches Deal on Fish Quotas, CNN.com (Dec. 19, 2003), at <http://www.edition.cnn.com/2003/WORLD/europe/12/19/eu.fish.ap/index.html>.

213. *Outcome of the Fisheries Council of 17-19 December 2003*, *supra* note 211.

214. *EU Reaches Deal on Fish Quotas*, *supra* note 212.

215. *Id.*

adopt such stringent restrictions because doing so would eliminate the livelihoods of over 200,000 people.<sup>216</sup> Instead, the EU fisheries commission decided to keep the fishing quotas at last year's historically low level,<sup>217</sup> a level that has been said to be "the most radical reform of the European Union's common fisheries policy in its 20-year history."<sup>218</sup> This level includes a limit of 23,000 tons of North Sea cod, or less than a fifth of the amount fishermen were permitted to catch in 1998.<sup>219</sup> Additionally, the amount of time that fisherman can spend at sea was limited to fifteen days a month.<sup>220</sup> The purpose of these restrictions "is to get reluctant fisheries ministers to sign up to long-term recovery plans for two of the most endangered species, aiming to boost cod by 30 percent and northern hake by five percent each year for five to ten years."<sup>221</sup> Environmental groups have criticized this approach to conservation, saying that "Europe's long-term interest in saving fish stocks and fishing communities has been sacrificed for short-term gain."<sup>222</sup>

#### *D. Gloomy Update of IUCN's Endangered Species Red List*

Of course, North Sea cod is not the only species of wildlife in danger of extinction. There are 12,259 varieties of animals, plant, and water life that have earned a spot on the IUCN's 2003 Red List as critically endangered.<sup>223</sup> Among these critically endangered species are the Galapagos Island snails, the variegated spider monkey, and the Mekong giant catfish.<sup>224</sup> The IUCN and other organizations blame the loss of species on human activities.<sup>225</sup> For example, the Mekong giant catfish, which can grow up to ten feet in length and can weigh up to 660 pounds,<sup>226</sup> has suffered from more than an eighty percent decline in population since 1990 "due to

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216. *Id.*

217. *Q & A: Europe's Fishing Crisis*, GUARDIAN UNLIMITED, Dec. 19, 2003, at <http://www.guardian.co.uk/fish/story/0,7369,1110622,00.html>.

218. Andrew Osborn, *Fishermen Face Ruin as EU Slashes North Sea Catch Quotas*, THE GUARDIAN, Dec. 21, 2002, available at <http://www.guardian.co.uk/fish/story/0,7369,864120,00.html>.

219. Andrew Osborn, *Fishing Chiefs Clinch Quota Deal*, THE GUARDIAN, Dec. 19, 2003, at <http://www.guardian.co.uk/fish/story/0,7369,1110698,00.html>.

220. *Id.*

221. Jeremy Smith, *EU's Fischler Fires First Shot in Fish Talks*, WORLD ENVIRONMENT NEWS, Dec. 19, 2003, at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=23177>.

222. *Fishing Chiefs Clinch Quota Deal*, *supra* note 219.

223. *Nature Body Warns of Wildlife Extinction Threat*, WORLD ENVIRONMENT NEWS, Nov. 19, 2003, at <http://www.planetark.com/avantgo/dailynewsstory.cfm?newsid=22881>.

224. Press Release, IUCN Species Survival Commission, Release of 2003 IUCN Red List of Threatened Species, at <http://www.iucn.org/themes/ssc/RedList2003/English/newsreleaseen.htm> (last visited Feb. 23, 2004).

225. *See id.*; *Nature Body Warns of Wildlife Extinction Threat*, *supra* note 223.

226. *Nature Body Warns of Wildlife Extinction Threat*, *supra* note 223.

overfishing, habitat loss (such as through siltation and dredging) and obstruction of migratory routes through dam construction.”<sup>227</sup> Despite the Red List’s gloomy update, Achim Steiner, the IUCN Director General, remains hopeful that these species can recuperate, saying “[w]e now need the political will and resources to stem the loss of biodiversity. Human activities may be the main threat to the world’s species but humans can also help them recover. . . .”<sup>228</sup>

## IX. SECRETARY-GENERAL ELEVATES HOPES FOR RECURRING GLOBAL MARINE ASSESSMENT

*Ronald C. Smith*

### *A. Regular Marine Assessment Placed on a Fast Track*

Strong momentum developed toward an ongoing Global Marine Assessment (GMA) that has been discussed for years but was first formally proposed at the World Summit on Sustainable Development in 2002. Remarkable progress was made during discussions at an inter-agency meeting held in Paris in September 2003.<sup>229</sup> The GMA process envisions a global, comprehensive, and regular assessment that is focused exclusively on the marine environment. Most of the assessments in existence are regional in nature or cover one issue such as climate change.<sup>230</sup> The Global Environment Network is designed to be regular but it covers all elements of the environment and devotes only limited attention to the oceans. The Global International Water Assessment is a one-time study that should be completed this year. The Millennium Assessment is a single event scheduled for completion in 2005. A report issued in 2003<sup>231</sup> also noted the Global Ocean Surveying System and the United Nations Atlas of the Oceans which collect

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227. Press Release, IUCN Species Survival Commission, Release of the 2003 IUCN Red List of Threatened Species, at <http://www.iucn.org/themes/ssc/RedList2003/English/newsreleaseen.htm> (last visited Jan. 5, 2004).

228. *Id.*

229. *Oceans and the Law of the Sea: A regular process for the global reporting and assessment of the state of the marine environment: Proposals on modalities*, U.N. GAOR, 58th Sess., Agenda item 52(a) U.N. Doc. A/58/423 (Oct. 8, 2003) [hereinafter *Oceans and the Law of the Sea*], available at [http://www.un.org/Depts/los/general\\_assembly/documents/a58\\_GMAunedited.pdf](http://www.un.org/Depts/los/general_assembly/documents/a58_GMAunedited.pdf). (The publication *Global Marine Assessments: A survey of global and regional marine environmental assessment and related scientific activities* was released at the meeting. It included guidelines for the establishment of GMA. *Id.* at 7.)

230. *Id.* at 8. These include the Intergovernmental Panel on Climate Change (covering only climate change); the International Coral Reef Action Network (limited to the conservation and protection of coral reefs); and the Global Programme of Action for the Protection of the Marine Environment from Land Based Activities (dealing with the mitigation of outside impacts).

231. See *Oceans and the Law of the Sea*, *supra* note 229.

data and provide information but do not carry out assessments. Any future Global Marine Assessment would strive to track changes over time and establish trends. It would attempt to build on the existing assessments and integrate existing systems.<sup>232</sup>

The Secretary-General reported:

The GMA is meant to be global in geographic scope, comprehensive in the issues it covers, regular (no limit in time) and dedicated specifically to the state of the marine environment. It would take the ecosystem approach, assessing the interrelationship of all aspects of the environment and of all activities of the sea.<sup>233</sup>

In his summary to the United Nations following the Paris meetings, the Secretary-General also detailed some of the remaining complexities but then put forward a general framework<sup>234</sup> that would accomplish the assessment. The assessment would be under the oversight of the General Assembly without the creation of any new organization.<sup>235</sup> The Secretary General identified a set of policy decisions to be made by the General Assembly<sup>236</sup> and delineated a number of steps to be taken to formally establish the GMA before the end of this year.<sup>237</sup>

### *B. Law of the Sea Tribunal Still Underutilized*

In contrast to that frenetic activity, the world mostly slept through the thirteenth meeting of the United Nations Convention on the Law of the Sea. The convention welcomed four new member nations to its meeting at U.N. headquarters in June 2003.<sup>238</sup> The meeting was dominated by budgetary and housekeeping matters while the organization seeks more widespread acceptance.

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232. *Oceans and the Law of the Sea*, *supra* note 229, at 15.

233. *Id.* at 8

234. *Id.* at 10.

235. *Id.*

236. *Id.* at 13.

237. *Id.* (They include appointing experts to prepare a detailed plan and convening an intergovernmental meeting to review the resulting plan. The Secretary-General called for a final draft formally establishing the GMA to be endorsed by the General Assembly before the end of the year.)

238. Daolos/Unitar Briefing On Developments In Ocean Affairs And The Law Of The Sea, United Nations Institute for Training and Research, 3, available at [http://www.un.org/Depts/los/reference\\_files/new\\_developments\\_and\\_recent\\_adds.htm](http://www.un.org/Depts/los/reference_files/new_developments_and_recent_adds.htm). (Armenia, Kiribati, Qatar and Tuvalu bring total number of Parties to 142.) (last modified Jan. 16, 2004).

The Annual Report received from the International Tribunal for the Law of the Sea noted that the judicial role of the tribunal has not been fully utilized by the world community. The President of the Tribunal, Judge L. Dolliver M. Nelson, reported the legal arm of the convention had handled only one dispute in the previous twelve months and has had only eleven cases since its inception.<sup>239</sup> Backed by a General Assembly resolution, he called for more states to use the tribunal for the resolution of disputes.<sup>240</sup> Nelson also announced a plan to establish an international foundation in Hamburg, Germany, to benefit the Law of the Sea.<sup>241</sup>

### *C. Treaty to Provide Protection for Caspian Sea*

The Caspian Sea will be given unprecedented protection after a first ever treaty between the five nations that border the planet's largest inland body of water.<sup>242</sup> The signing followed nearly ten years of discussions,<sup>243</sup> and addressed pollution, habitat destruction, and the over-exploitation of marine life.<sup>244</sup> The Framework Convention for the Protection of the Marine Environment of the Caspian Sea grew out of the Caspian Environment Programme established in 1995 and follows an environmental assessment completed by the World Bank and the United Nations Development Programme.<sup>245</sup>

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239. *Id.* at 5.

240. *Id.* at 7. (The tribunal met in December 2002 to resolve a dispute over the Australian detention of the Russian vessel *Volga* and members of its crew.)

241. *Id.* at 8.

242. Press Release, United Nations, Secretary General Hails Signing of Caspian Sea Protection Treaty, U.N. Doc. SG/Sm/8984/L/T/4375 (Nov. 11, 2003), at <http://www.un.org/News/Press/docs/2003/sgsm8984.doc.htm>. (The five nations are Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, and Turkmenistan.)

243. *Id.*

244. Press Release, United Nations, Ministers to Sign New Environmental Treaty on Protecting the Caspian Sea, U.N. Doc. UNEP/178 (Nov. 3, 2003), at <http://www.un.org/News/Press/docs/2003/unep178.doc.htm>.

245. *Id.*