DECLARATION OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT (STOCKHOLM DECLARATION), 1972 AND THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT, 1992

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Introduction

The Stockholm and Rio Declarations are outputs of the first and second global environmental conferences, respectively, namely the United Nations Conference on the Human Environment in Stockholm, June 5-16, 1972, and the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, June 3-14, 1992. Other policy or legal instruments that emerged from these conferences, such as the Action Plan for the Human Environment at Stockholm and Agenda 21 at Rio, are intimately linked to the two declarations, conceptually as well as politically. However, the declarations, in their own right, represent signal achievements. Adopted twenty years apart, they undeniably represent major milestones in the evolution of international environmental law, bracketing what has been called the "modern era" of international environmental law (Sand, pp. 33-35).

Stockholm represented a first taking stock of the global human impact on the environment, an attempt at forging a basic common outlook on how to address the challenge of preserving and enhancing the human environment. As a result, the Stockholm Declaration espouses mostly broad environmental policy goals and objectives rather than detailed normative positions. However, following Stockholm, global awareness of environmental issues increased dramatically, as did international environmental law-making proper. At the same time, the focus of international environmental activism progressively expanded beyond transboundary and global commons issues to media-specific and cross-sectoral regulation and the synthesizing of economic and development considerations in environmental decision-making. By the time of the Rio Conference, therefore, the task for the international community became one of systematizing and restating existing normative expectations regarding the environment, as well as of boldly positing the legal and political underpinnings of sustainable development. In this vein, UNCED was expected to craft an "Earth Charter", a solemn declaration on legal rights and obligations bearing on environment and development, in the mold of the United Nations General Assembly's 1982 World Charter for Nature (General Assembly resolution 37/7). Although the compromise text that emerged at Rio was not the lofty document originally envisaged, the Rio Declaration, which reaffirms and builds upon the Stockholm Declaration, has nevertheless proved to be a major environmental legal landmark.

Historical Background

In 1968-69, by resolutions 2398 (XXIII) and 2581 (XXIV), the General Assembly decided to convene, in 1972, a global conference in Stockholm, whose principal purpose was "to serve as a practical means to encourage, and to provide guidelines … to protect and improve the human environment and to remedy and prevent its impairment" (General Assembly resolution 2581 (XXVI). One of the essential conference objectives thus was a declaration on the human environment, a "document of basic principles," whose basic idea originated with a proposal by the United Nations Educational, Scientific and Cultural Organization (UNESCO) that the conference draft a "Universal Declaration on the Protection and Preservation of the Human Environment". Work on the declaration

was taken up by the Conference's Preparatory Committee in 1971, with the actual drafting of the text entrusted to an intergovernmental working group. Although there was general agreement that the declaration would not be couched in legally binding language, progress on the declaration was slow due to differences of opinion among States about the degree of specificity of the declaration's principles and guidelines, about whether the declaration would "recognize the fundamental need of the individual for a satisfactory environment" (A/CONF.48/C.9), or whether and how it would list general principles elaborating States' rights and obligations in respect of the environment. However, by January 1972, the working group managed to produce a draft Declaration, albeit one the group deemed in need of further work. The Preparatory Committee, however, loath to upset the compromise text's "delicate balance", refrained from any substantive review and forwarded the draft declaration consisting of a preamble and 23 principles to the Conference on the understanding that at Stockholm delegations would be free to reopen the text.

At Stockholm, at the request of China, a special working group reviewed the text anew. It reduced the text to 21 principles and drew up four new ones. In response to objections by Brazil, the working group deleted from the text, and referred to the General Assembly for further consideration, a draft principle on "prior information". The Conference's plenary in turn added to the declaration a provision on nuclear weapons as a new Principle 26. On 16 June 1972, the Conference adopted this document by acclamation and referred the text to the General Assembly. During the debates in the General Assembly's Second Committee, several countries voiced reservations about a number of provisions but did not fundamentally challenge the declaration itself. This was true also of the Union of Soviet Socialist Republics and its allies which had boycotted the Conference in Stockholm. In the end, the General Assembly "note[d] with satisfaction" the report of the Stockholm Conference, including the attached Declaration, by 112 votes to none, with 10 abstentions (General Assembly resolution 2994 (XXVII)). It also adopted resolution 2995 (XXVII) in which it affirmed implicitly a State's obligation to provide prior information to other States for the purpose of avoiding significant harm beyond national jurisdiction and control. In resolution 2996 (XXVII), finally, the General Assembly clarified that none of its resolutions adopted at this session could affect Principles 21 and 22 of the Declaration bearing on the international responsibility of States in regard to the environment.

Following its adoption, in 1987, of the "Environmental Perspective to the Year 2000 and Beyond" (General Assembly resolution 42/186, Annex) – "a broad framework to guide national action and international co-operation [in respect of] environmentally sound development" - and responding to specific recommendations of the World Commission on Environment and Development (WCED), the General Assembly, by resolution 44/228 of 22 December 1989, decided to convene UNCED and launch its preparatory committee process. The resolution specifically called upon the Conference to promote and further develop international environmental law, and to "examine … the feasibility of elaborating general rights and obligations of States, as appropriate, in the field of the environment". Work on this objective, and on "incorporating such principles in an appropriate instrument/charter/statement/declaration, taking due account of the conclusions of all the regional preparatory conferences" (A/46/48), was assigned to Working Group III (WG-III) on legal and institutional issues whose mandate was expanded beyond States' rights/obligations in the field of the environment, to include "development", as well as the rights/obligations of other stakeholders (such as individuals, groups, women in development, and indigenous peoples). WG-III held its first substantive meeting during the Preparatory Committee's third session in Geneva, in 1991. Actual drafting of the text of the proposed instrument, however, did not begin until the fourth and final meeting of the Preparatory Committee in New York, in March/April, 1992.

A proposal for an elaborate convention-style draft text for an "Earth Charter", first advocated by a WCED legal expert group, did not win approval as it was specifically rejected by the Group of 77 developing countries (G-77 and China) as unbalanced, as emphasizing environment over development. The Working Group did settle instead on a format of a short declaration that would not connote a legally binding document. Still, negotiations on the text proved to be exceedingly difficult. Several weeks of the meeting were taken up by procedural maneuvering. In the end, a final text emerged only as a result of the forceful intervention of the chairman of the Preparatory Committee, Tommy Koh. The resulting document was referred to UNCED for further consideration and finalization as "the chairman's personal text". Despite threats by some countries to reopen the debate on the Declaration, the text as forwarded was adopted at Rio without change, although the United States (and others) offered interpretative statements thereby recording their "reservations" to, or views on, some of the Declaration's principles. In resolution 47/190 of 22 December 1992 the General Assembly endorsed the Rio Declaration and urged that necessary action be taken to provide effective follow-up. Since then, the Declaration, whose application at national, regional and international levels has been the subject of a specific, detailed review at the General Assembly's special session on Rio+5 in 1997, has served as a basic normative framework at subsequent global environmental gatherings, namely the World Summit on Sustainable Development in Johannesburg in 2002 and "Rio+20", the United Nations Conference on Sustainable Development in 2012.

Summary of Key Provisions and Their Present Legal Significance

a. General Observations

The Stockholm Declaration consists of a preamble featuring seven introductory proclamations and 26 principles; the Rio Declaration features a preamble and 27 principles. As diplomatic conference declarations, both instruments are formally not binding. However, both declarations include provisions which at the time of their adoption were either understood to already reflect customary international law or expected to shape future normative expectations. Moreover, the Rio Declaration, by expressly reaffirming and building upon the Stockholm Declaration, reinforces the normative significance of those concepts common to both instruments.

Both declarations evince a strongly human-centric approach. Whereas Rio Principle 1 unabashedly posits "human beings … at the centre of concerns for sustainable development", the Stockholm Declaration — in Principles 1-2, 5 and several preambular paragraphs — postulates a corresponding instrumentalist approach to the environment. The United Nations Millennium Declaration 2000 (General Assembly resolution 55/2), also reflects an anthropocentric perspective on respecting nature. However, the two declarations' emphasis contrasts with, e.g., the World Charter for Nature of 1982 (General Assembly resolution 37/7), and the Convention on Biological Diversity (preambular paragraph 1), whose principles of conservation are informed by the "intrinsic value" of every form of life regardless of its worth to human beings. Today, as our understanding of other life forms improves and scientists call for recognizing certain species, such as cetaceans, as deserving some of the same rights as humans, the two declarations' anthropocentric focus looks somewhat dated.

At times Principle 1 of both the Stockholm and Rio Declarations has been mistaken to imply a "human right to the environment". The Stockholm formulation does indeed refer to a human's "fundamental right to … adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". However, at the conference, various proposals for a direct and thus unambiguous reference to an environmental human right were rejected. The Rio Declaration is even less suggestive of such a right as it merely stipulates that human beings "are entitled to a healthy and

productive life in harmony with nature". Since then, the idea of a generic human right to an adequate or healthy environment, while taking root in some regional human rights systems, has failed to garner general international support, let alone become enshrined in any global human rights treaty. Indeed, recognition of a human right to a healthy environment is fraught with "difficult questions" as a 2011 study by the United Nations High Commissioner on Human Rights wryly notes.

As a basic UNCED theme, "sustainable development" — commonly understood as development that "meets the needs of the present without compromising the ability of future generations to meet their own needs"(Our Common Future) — runs like an unbroken thread through the Rio Declaration. However, sustainable development is also a strong undercurrent in the Stockholm Declaration, even though the WCED was not to coin the concept until several years after Stockholm. For example, Principles 1-4 acknowledge the need for restraint on natural resource use, consistent with the carrying capacity of the earth, for the benefit of present and future generations. The Rio Declaration expands on the sustainable development theme and significantly advances the concept by, as discussed below, laying down a host of relevant substantive and procedural environmental legal markers. Nevertheless, to this day the actual operationalization of the concept has remained a challenge. In this vein, on the eve of "Rio+20", United Nations Secretary-General Ban felt compelled to reiterate the urgent need for "sustainable development goals with clear and measurable targets and indicators."

b. The Prevention of Environmental Harm

Probably the most significant provision common to the two declarations relates to the prevention of environmental harm. In identical language, the second part of both Stockholm Principle 21 and Rio Principle 2 establishes a State's responsibility to ensure that activities within its activity or control do not cause damage to the environment of other States or to areas beyond national jurisdiction or control. This obligation is balanced by the declarations' recognition, in the first part of the respective principles, of a State's sovereign right to "exploit" its natural resources according to its "environmental" (Stockholm) and "environmental and developmental" policies (Rio). While at Stockholm some countries still questioned the customary legal nature of the obligation concerned, today there is no doubt that this obligation is part of general international law. Thus in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* first, and again more recently in the *Case concerning Pulp Mills on the River Uruguay*, the International Court of Justice expressly endorsed the obligation as a rule of international customary law. Moreover, the *Pulp Mills* decision clearly confirms that the State's obligation of prevention is one of due diligence.

c. The Right to Development in an Environmental Context

Both at Stockholm and at Rio, characterization of the relationship between environment and development was one of the most sensitive challenges facing the respective conference. Initial ecology-oriented drafts circulated by western industrialized countries failed to get traction as developing countries successfully reinserted a developmental perspective in the final versions of the two declarations. Thus, after affirming that "both aspects of man's environment, the natural and the man-made, are essential to his well-being" (preambular paragraph 1), Principle 8 of the Stockholm Declaration axiomatically labels "economic and social development" as essential. Rio Principle 3, using even stronger normative language, emphasizes that the "right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations". Although the United States joined the consensus on the Declaration, in a separate statement it reiterated its opposition to development as a right. The international legal status of the "right to development" has

remained controversial even though, post-Rio, the concept has attracted significant support, e.g. through endorsements in the 1993 Vienna Declaration and Programme of Action, and the Millennium Declaration. At any rate, there is no denying that the Rio formulation has had a strong impact on the international political-legal discourse and is frequently invoked as a counterweight to environmental conservation and protection objectives. Today, economic development, social development and environmental protection are deemed the "interdependent and mutually reinforcing pillars" of sustainable development (Johannesburg Plan of Action, para.5).

d. Precautionary Action

One of several of the Rio Declaration Principles that does not have a counterpart in the Stockholm Declaration is Principle 15, which provides that "the precautionary approach shall be widely applied by States according to their capabilities:" Whenever there are threats of serious or irreversible damage, a lack of full scientific certainty shall not excuse States from taking cost-effective measures to prevent environmental degradation. At Rio, a European initiative proposing the inclusion of precautionary action as a "principle" failed to gain support. Today, the concept is widely reflected in international practice, although there exists no single authoritative definition of either its contents or scope. This has prompted some States, including the United States, to question its status as both a "principle of international law" and *a fortiori* a rule of customary international law (World Trade Organization, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, paras.7.80-7.83). However, in its 2011 Advisory Opinion, the Seabed Chamber of the International Tribunal of the Law of the Sea takes note of "a trend towards making this approach part of customary international law", thereby lending its voice to a growing chorus that recognizes "precaution" as an established international legal principle, if not a rule of customary international law.

e. "Common but Differentiated Responsibilities"

While today the concept of "common but differentiated responsibilities" ("CBDR") is accepted as a cornerstone of the sustainable development paradigm, it is also one of the more challenging normative statements to be found in the Rio Declaration. The second sentence of Principle 7 provides: "In view of the different contributions to global environmental degradations, States have common but differentiated responsibilities". Ever since its adoption, its exact implications have been a matter of controversy. Specifically, taken at face value the formula seems to imply a causal relationship between environmental degradation and degree of responsibility. However, "differential responsibilities" has been considered also a function of "capability" reflective of a state's development status. Unlike the essentially contemporaneously drafted provision in the United Nations Framework Convention on Climate Change, which refers to States' "common but differentiated responsibilities *and respective capabilities*" (Article 3, para.1, emphasis added), the second sentence of Principle 7 omits any reference to capabilities. A separate sentence in Principle 7 does acknowledge the relevance of capabilities. But it does so in relation to developed countries' special responsibility regarding sustainable development on account of "the technologies and financial resources they command". Principle 7 indirectly, then, links developing country status to "responsibilities". What remains unclear, at any rate, is whether "CBRD" implies that developing country status in and of itself entails a potential diminution of environmental legal obligations beyond what a contextually determined due diligence standard would indicate as appropriate for the particular country concerned. Certainly, both the Stockholm and Rio Declarations (Principle 23 and Principle 11, respectively) expressly recognize the relevance of different national developmental and environmental contexts for environmental standards and policies purposes. However, developing country status per se does not warrant a lowering of normative expectations.

At Rio, the United States stated for the record that it "does not accept any interpretation of Principle 7 that would imply a recognition or acceptance by the United States of … any diminution of the responsibilities of developing countries under international law". The United States delegation offered the same "clarification" in respect of various references to "CBDR" in the Plan of Implementation of the World Summit on Sustainable Development in 2002. Consistent with this view, the 2011 International Tribunal of the Law of the Sea Advisory Opinion, in construing the scope of a State's international environmental obligations, refused to ascribe a special legal significance to developing country status and instead affirmed that "what counts in a specific situation is the level of … capability available to a given State…".

f. Procedural Safeguards

Principles 13-15 and 17-18 of the Stockholm Declaration — rather modestly — emphasize the need for environmental and development planning. The absence of any reference in the Declaration to a State's duty to inform a potentially affected other state of a risk of significant transboundary environmental effects was due to the working group on the Declaration's inability to reach agreement on such a provision. However, the working group did agree on forwarding the matter to the General Assembly which, as noted, endorsed such notification as part of States' duty to cooperate in the field of the environment. By contrast, the Rio Declaration unequivocally and in mandatory language calls upon States to assess, and to inform and consult with potentially affected other States, whenever there is a risk of significantly harmful effects on the environment: Principle 17 calls for environmental impact assessment; Principle 18 for emergency notification and Principle 19 for (routine) notification and consultation. At the time of the Rio Conference, and perhaps for a short while thereafter, it might have been permissible to question whether the contents of all three principles corresponded to international customary legal obligations. However, today given a consistently supportive international practice and other evidence, including the International Law Commission's draft articles on Prevention of Transboundary Harm from Hazardous Activities, any such doubts would be misplaced.

g. Public Participation

Principle 10 of the Rio Declaration posits that "[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level". It then calls upon States to ensure that each individual has access to information, public participation in decision-making and justice in environmental matters. Although Principle 10 has some antecedents in, for example, the work of the Organization of Economic Co-operation and Development, it nevertheless represents a trail blazer, laying down for the first time, at a global level, a concept that is critical both to effective environmental management and democratic governance. Since then, international community expectations, as reflected notably in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), the 2010 UNEP Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters and various resolutions of international organizations and conferences, have coalesced to the point where the normative provisions of Principle 10 must be deemed legally binding. While the actual state of their realization domestically may be still be a matter of concern—implementation by States of their Principle 10 commitments is specifically being reviewed within the context of Rio+20—today the rights of access to information, public participation, and access to justice arguably represent established human rights.

h. The Interface of Trade And Environment

In Principle 12 of the Declaration, the Rio Conference sought to address one of the controversial issues of the day, the interrelationship between international trade and environmental conservation and protection. After exhorting States to avoid trade policy measures for environmental purposes as "a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade" — language that closely follows the chapeau of Article XX of the General Agreement on Tariffs and Trade (GATT) — Principle 12 criticizes States' extra-jurisdictional unilateral action: "Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided". This provision traces its origin to a proposal by Mexico and the European Community both of which had been recent targets of United States environment-related trade measures. Responding to the adoption of Principle 12, the United States offered an interpretative statement that asserted that in certain circumstances trade measures could be effective and appropriate means of addressing environmental concerns outside national jurisdiction. This U.S. position has now been fully vindicated. As the World Trade Organization Appellate Body first acknowledged in the *Shrimp-Turtle* cases, unilateral trade measures to address extraterritorial environmental problems may indeed be a "common aspect" of measures in restraint of international trade exceptionally authorized by Article XX of the GATT.

i. Indigenous Peoples

Rio Principle 22 emphasizes the "vital role of indigenous people and their communities and other local communities" in the conservation and sustainable management of the environment given their knowledge and traditional practices. It then recommends that States "recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development". Even at the time of its drafting this was a somewhat modest statement, considering that in the case of indigenous peoples, cultural identity and protection of the environment are inextricably intertwined. Thus some international legal instruments such as the International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries of 1989 and the Convention on Biological Diversity, which was opened for signature at Rio, already specifically recognized and protected this relationship. Since Rio, indigenous peoples' special religious, cultural, indeed existential links with lands traditionally owned, occupied or used have been further clarified and given enhanced protection in a series of landmark decisions by human rights tribunals as well as in the United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295).

j. Women in Development

The Rio Declaration was the very first international instrument to explicitly recognize that the empowerment of women and, specifically, their ability to effectively participate in their countries' economic and social processes, is an essential condition for sustainable development. Principle 20 of the Rio Declaration calls attention to women's "vital role in environmental management and development" and the consequent need for "their full participation." It recognizes the fact that women's livelihood, in particular in developing countries, often will be especially sensitive to environmental degradation. Unsurprisingly, this "women in development" perspective has been strongly endorsed in other international legal instruments, such as the preambles of the Convention on Biological Diversity or the Desertification Convention, and in resolutions of various international conferences. In short, as a United Nations Development Programme website puts it, gender equality and women's empowerment represent not only fundamental human rights issues, but "a pathway to achieving the Millennium Development Goals and sustainable development." However, as the calls for "sustainability, equity and gender

equality" at Rio+20 seem to underline, much work appears still to be necessary before the Principle 20 objectives will truly be met.

k. Environmental Liability and Compensation

Finally, both the Stockholm and the Rio Declarations call for the further development of the law bearing on environmental liability and compensation. Whereas Stockholm Principle 22 refers to international law only, the corresponding Rio Principle 13 refers to both national and international law. Notwithstanding these clear mandates, States have tended to shy away from addressing the matter head-on or comprehensively, preferring instead to establish so-called private law regimes which focus on private actors' liability, while mostly excluding consideration of States' accountability. Recent developments, however, when taken together, can provide a basic frame of reference for issues related to environmental liability and compensation, be that at national or international level. These developments include, in particular, the work of the International Law Commission, especially its draft Principles on Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities; and the 2010 UNEP Guidelines for the Development of Domestic Legislation on Liability, Response Action and Compensation for Damage Caused by Activities Dangerous to the Environment. In this vein, therefore, it might be argued that today the expectations of legislative progress generated by the Stockholm and Rio Declarations have finally come to be realized, at least in large part.

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