

**Chapter-6- International Conferences /
Commissions / Treaties / Declarations**

6.1-RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT 1992

Rio Declaration on Environment and Development, 1992 introduced norms of national and international behaviour in respect of the management of natural resources and sustainable development. Document was, however, declaratory in nature and contributed to the development of what is called "soft" law¹. The Universal Declaration of Human Rights proclaimed in 1948 to the binding provisions of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both adopted in 1966². The last concept was particularly important, as it highlighted the fact that pollution does not recognize political or geographical boundaries, but affects countries, regions and people beyond its point of origin³. Such important global environmental problems include, for example, all kinds of pollution, climate change, the depletion of the ozone layer, the use and management of oceans and fresh water resources, excessive deforestation, desertification and land degradation, hazardous waste and depleting biological diversity⁴. In the years that followed, it also came to be recognized that regional or local environmental problems, such as extensive urbanization, deforestation, desertification, and general natural resource scarcity, could spread to pose serious repercussions for broader international security⁵.

This idea has been captured in the definition of "sustainable development," as defined by the World Commission on Environment and Development⁶ in 1987 as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." It showed that social, environmental and economic needs must be met in

¹ But these norms are not considered binding on nation-states and the international community until they are adopted through a treaty, directly or indirectly, in the national laws of a country. Such law making through treaties is referred to as "hard" law.

² <http://www.iucn.org/themes/law/cel07.html>

³ Over the decades following Stockholm, this concept was broadened to encompass environmental issues that are truly transnational in scope, requiring concerted action by all countries and all regions of the world in a universal manner in order to deal with them effectively.

⁴ http://www.johannesburgsummit.org/html/basic_info/unced.html

⁵ For example, they undermine the economic base and social fabric of weak and poor countries, generate or exacerbate social tensions and conflicts and stimulate greater flows of refugees.

⁶ (The Brundtland Commission)

balance with each other for sustainable outcomes in the long term⁷. It identified the critical elements of change, showing that success in one area requires action in the others in order to continue over time⁸. A major achievement of UNCED was Agenda 21⁹, a thorough and broad-ranging programme of actions demanding new ways of investing in our future to reach global sustainable development in the 21st century. Four preparatory committees or "prepcoms" met in the two years prior to UNCED to produce the texts of major UNCED agreements¹⁰.

Human Impact Assessment¹¹

Sustainable development requires from the balancing of the ecological, economic, social and cultural impacts of the activities of human beings and their organisations¹². Agenda 21 documents is 700 pages long and embraces all areas of sustainable development¹³. Our Common Future, which was presented to the UN General Assembly in October 1987 and disseminated world-wide¹⁴.

At the global level, the role for EIA was formally recognised at the Earth Summit held at Rio in 1992. Principle 17 of the Rio Declaration states: *EIA, as a National instrument, shall be*

⁷ It showed that if people are poor, and national economies are weak, the environment suffers; if the environment is abused and resources are over consumed, people suffer and economies decline. The conference also pointed out that the smallest local actions or decisions, good or bad, have potential worldwide repercussions.

⁸ The Summit's primary aim was to produce an extended agenda and a new plan for international action on environmental and developmental issues that would help guide international cooperation and policy development into the next century.

⁹ Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which human impacts on the environment.

<http://www.un.org/esa/sustdev/documents/agenda21/index.htm>

¹⁰ <http://www.ciesin.org/datasets/unced/unced.html>

¹¹ <http://www.stakes.fi/sva/huia/>

¹² Taking the human dimension of various policies, programs, projects and activities adequately into account calls for a systematic and multidimensional assessment of the potential impacts of these actions on the well-being and health of people and their communities.

¹³ A comprehensive blueprint for a global partnership, Agenda 21 strives to reconcile the twin requirements of a high quality environment and a healthy economy for all people of the world, while identifying key areas of responsibility as well as offering preliminary cost estimates for success.

¹⁴ The report placed the concept of sustainable development as an urgent imperative on the global agenda, and led directly to the decision by the United Nations to convene the 1992 Earth Summit.

undertaken for the proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent National Authority.

It is important to note that the demand for environmental assessment of industries in the United States came from the public and through legislative action, whereas in India it was taken up as an executive order - in 1994 through the MoEF notification - without any legislation being passed, or the Parliament being involved¹⁵. Further, while initially it was proposed that Comprehensive EIA reports based on one whole year's data would be required, the MoEF diluted this requirement so that data from a single season, compiled in a Rapid EIA, would be sufficient for seeking environmental clearances¹⁶. Given that there were very few individuals and NGOs with proper knowledge of the EIA process at that time, and that the government had no tradition of, or felt the need for including public participation in the developmental decision making, there was no effective external political impetus to force the MoEF to be more inclusive and transparent¹⁷. Instead, the notification was passed with many flaws, despite these errors being identified in the 1988 government-supported conference¹⁸.

UNEP, UNIDO and UNDP were asked to sponsor studies to review the extent of public participation and its effectiveness in conducting EIA studies in various developing countries, so that the comparative studies might assist in determining the best alternatives to ensure public involvement in EIA in India¹⁹. Though Thailand and Philippines were among the few countries that implemented EIA as early as 1977, not a single project was ever denied clearance despite several thousands of projects being subjected to EIA²⁰. Earth Day of 1970, which brought twenty-million Americans together in a celebration of and education about

¹⁵ The notification introduced in January that year underwent several changes by May; these diluted public participation in EIAs to mere tokenism. The changes were also introduced furtively, without prior publication. Hence, there was no time provided for the public, or even informed environmentalists themselves, to comment on the changes.

¹⁶ Diwan S and Rosencranz A, 2001: *Environmental Law and Policy in India*, pg 418.

¹⁷ <http://www.indiatogether.org/2006/mar/env-eiafail.htm>

¹⁸ For example, the conference had pointed out that EIA reports were too mechanistic and bulky without proper data analysis, that the reliability of the data itself was questionable, that compliance monitoring was seldom carried out, and there was often no proper public consultation. None of these issues, however, were addressed by the 1994 EIA notification.

¹⁹ Environmental impact assessment for developing countries edited by Asit K Biswas and SBC Agrawal; sponsored by Pollution Control Research Institute, 1991, New Delhi.

²⁰ Ibid.

quality-of-life issues and concern for the environment, was a clear indication of the public's interest in such issues²¹. In 1971, a full quarter of the U.S. public thought that protecting the environment was important²². The Convention on Biological Diversity is more specific. Article 14 of that Convention requires Contracting Parties to introduce appropriate procedures for EIA of proposals, which might have effects on biological diversity²³. It is regional in scope and elaborates principle 10 of the Rio Declaration, which stresses the need for citizen's participation in environmental issues and for access to information on the environment held by public authorities²⁴. The procedural rights created under the convention should be regarded as a 'floor' rather than a 'ceiling'²⁵. This is true even in many nations that are nominally democratic²⁶. These three rights—the rights to information, participation, and redress—are often referred to as the *Access Principles*²⁷. Unfortunately, the record of most nations in conferring these basic rights is still far from perfect²⁸.

Precautionary Principle: Current Status and Implementation²⁹

The United States has not adopted precaution as an explicit basis for environmental policy, even though this country has ratified the Rio Declaration on Environment and Development, which obliges nations to exercise the precautionary principle³⁰. The US Trade Representative, and the US Department of Commerce, representing mainly economic and

²¹ The American Environmental Movement: SURVIVING THROUGH DIVERSITY by Stacy J. Silveira

²² Earth Day Recollections: What It Was Like When The Movement Took Off by John C. Whitaker [EPA Journal - July/Aug. 1988]

²³ http://www.ramsar.org/archives/archives_pritchard.htm

²⁴ <http://www.field.org.uk/aarhus.php>

²⁵ Ibid.

²⁶ Democratic governance is more than merely casting a ballot in periodic elections. It means having opportunities beyond the ballot box to make one's voice heard, including participation in public hearings, review of official documents, and involvement in official processes, such as the preparation of environmental impact assessments.

²⁷ http://population.wri.org/pubs_content_text.cfm?ContentID=3788

²⁸ A 2001 assessment of nine nations—both rich and poor—found a variety of systemic weaknesses. For example, many nations have improved their laws granting public access to government data and analysis, but implementation of these laws is weak.

²⁹ <http://www.greens.org/s-r/23/23-17.html>

³⁰ Nonetheless, the US President's Council on Sustainable Development has articulated in some US environmental laws and early court interpretations, as well as precaution, in a 1996 statement of guiding principles for sustainable development.

industrial interests³¹. That is partly because the World Trade Organization and other international economic institutions, such as the World Bank and the International Monetary Fund, are taking an increasingly important role in defining environmental policy throughout the world³². Aggressive environmental health goals provide a stimulus for innovation and an acknowledgment of potential risks, even without proof of causality³³.

Important cases

In *M.C. Mehta v. Union of India*³⁴ the Supreme Court held that Principle 15 of the Rio Conference of 1992 relating to the applicability of precautionary principle, which stipulates that where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation, is also required to be kept in view. The harm can be prevented even on a reasonable suspicion. It is not always necessary that there should be direct evidence of harm to the environment.

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu*³⁵ the Apex Court emphasized to the “precautionary principle”, and this was reiterated in the Rio Conference of 1992 in its Principle 15, which reads as follows:

“Principle 15. —In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.”

³¹ The bodies most competent to speak on matters of health and the environment—the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Health and Human Services—have been mostly silent.

³² WTO rules require that countries who institute environmental or health protection measures that might inhibit trade can only do so on the basis of a quantitative risk assessment and so long as the action (or standard) is consistent with international standards set by agencies such as Codex Alimentarius. Any stricter standard is at risk of being challenged by another country as a trade barrier.

³³ Continuous monitoring to ensure that they can be updated as new information becomes available must follow decisions made under a precautionary framework. The goal should be to continuously improve environmental conditions, anticipate potential impacts before they occur (obey warning signals), and take action to prevent harm based on this information.

³⁴ (2004) 12 SCC 118, at page 167

³⁵ (1999) 2 SCC 718, at page 733