

INTERNATIONAL LAW-MAKING PROCESS IN THE UNITED NATIONS: COMPARATIVE ANALYSIS OF UNCED AND UNCLOS III

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I. INTRODUCTION

The international community has experienced two important United Nations' conferences in the last twenty years: the United Nations Conference on Environment and Development (UNCED) in 1992¹ and the Third United Nations Conference on the Law of the Sea (UNCLOS III) from 1973 to 1982.² These two conferences are important due to two independent but mutually reinforcing factors: the breadth of participation³ in the conferences and their function as international law-making fora.

The United Nations (UN) is increasingly looked to as a legitimate institution for creating a global legal order for future international cooperation.⁴ Conferences convened under the auspices of the UN have become and will increasingly be the primary modality for international law-making for those

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1. UNCED was the largest intergovernmental meeting ever held. UNCED Secretary-General said: "The world will not be the same after this Conference. Diplomacy will not be the same. The United Nations will not be the same. And prospects for our earth cannot—must not—be the same." *Earth Summit Approves Agenda 21, Rio Declaration Record Number of World Leaders Attend*, 29 UN Chronicle, Sept. 1992, at 59-60.

2. UNCLOS III was hailed as the most important multilateral conference of the 1970's. Albert W. Koers, *The Third United Nations Conference on the Law of the Sea—some remarks on its contribution towards the making of international law*, in INTERNATIONAL LAW AND ITS SOURCES: LIBER AMICORUM MAARTEN BOS 23, 23 (Wydo P. Heere ed., 1989).

3. UNCED was attended by 176 State delegations and a delegation from EEC. *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF. 151/26 (Vol. IV) (1992), at 4-6 [hereinafter *Report of UNCED, Vol IV*]. UNCLOS III was attended by 163 State delegations. Final Act of the Third United Nations Conference on the Law of the Sea, reprinted in 1 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 1982: A COMMENTARY 404-22 (Myron H. Nordquist ed., 1985) [hereinafter 1 COMMENTARY]. For comparison, the UN membership in December 1982 was 157 and in June 1992 was 178.

4. R.P. Dhokalia, *Reflection on International Law-Making and Its Progressive Development in the Contemporary Era of Transition*, in INTERNATIONAL LAW IN TRANSITION: ESSAYS IN MEMORY OF JUDGE NAGENDRA SINGH 203, 228 (R.S. Pathak & R.P. Dhokalia eds., 1992). Erik Suy, *Innovation in International Law-Making Processes*, in THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE 187, 187 (Ronald St. J. Macdonald et al. eds., 1978).

subjects which must be treated in global perspective.⁵ These UN conferences are often utilized as international treaty-making fora. The increasing reliance on treaties as a formal source of international law⁶ signifies the need for written, specific and obligatory instruments which to establish an institutional framework to create a permanent legal regime for international cooperation.

The reason the UN is increasingly looked to as a legitimate forum for international law-making is its political and universal nature in which each State holds only one, equal vote. Every State can participate with equal footing in an international law-making process carried out under the authority of the UN. The strongest support for the UN forum, of course, comes from the developing countries who have no effective political, economic or military bargaining power to influence the practice of States.⁷ Even though there are serious cleavages among developing countries with regard to the substance of the law, they are united in their quest for full and effective participation in the process of making international law.

This strong trend of utilizing the UN as a legitimate international law-making forum with full and effective participation can be clearly demonstrated by an analysis of the UNCED law-making process. It is therefore expected that the UN, and especially the conferences convened under its auspices, will be the major forum for deliberate creation of international legal instruments.⁸ Based upon this expectation, the present article analyzes the major features and trends of the process of international law-making in the UN by comparing UNCED and UNCLOS III.⁹

This article deals mainly with the processes of international law-making. The process of international law-making greatly influences its substantive

5. The recent argument that the United Nations rather than the limited Consultative Parties of the Antarctica Treaty should be involved in regulating the activities in Antarctica signifies the increasing reliance on the United Nations as the forum for creating legal regime of global interest. U.N. Press Release, GA/PS/2947 (Nov. 23, 1992).

6. The General Assembly declared that "multilateral treaties are an important means of ensuring co-operation among States and an important primary source of international law." G.A. Res. 37/110, *Review of the multilateral treaty-making process*, U.N. GAOR, 37th Sess., Supp. No. 51, at 269, U.N. Doc. A/37/51 (1983). See also Barry Buzan, *Negotiating by Consensus: Developments in Technique at the United Nations Conference on the Law of the Sea*, 75 AJIL 324, 327-29 (1981).

7. See EDWARD MCWINNEY, UNITED NATIONS LAW MAKING 56, 76 (1984) (Third World preference for "democratic" instruments of law making such as the UN General Assembly resolutions).

8. This expectation is already being realized. The UN is preparing for a convention to combat decertification and established an intergovernmental negotiating committee for this purpose under the auspices of the General Assembly. G.A. Res 47/188, U.N. GAOR, 47th Sess., U.N. Doc. A/RES/47/188 (1993).

9. Even though the interaction between international instruments so created and custom poses an interesting phenomena in international law-making process, this topic will not be dealt with in the present study. Also, the present article mainly focuses on the process of international law-making in the United Nations conferences and will not deal directly with the "law-making activities" of the General Assembly and other organs of the United Nations, although these activities also come under the purview of international law-making process in the United Nations.

outcome. It is not an overstatement that the decisions regarding organizational and procedural matters in the process often determine the trend of negotiations in favor of a certain group of States. This is why the negotiators devote a great amount of their effort to gaining acceptance for their preferred organizational and procedural rules over others.

From an international legal point of view, what is most important with respect to the international law-making process is to explore the organizational and procedural factors which contribute to a wider, hopefully universal, acceptance of the outcome of that process such that the international community firmly agrees on a set of rules by which all States abide.¹⁰ This is crucial when the international community is in transition and, simultaneously, the law is undergoing a profound change. The law of the sea and international environmental law are among those fields of international law which have been experiencing such a change.

Thus, this article analyzes the processes of UNCED and UNCLOS III to explore the major features and trends in international law-making and to examine what improvements and modifications States considered necessary to achieve the goal of universal acceptance.¹¹ The key words which will emerge from the analysis are democratization and efficiency of the international law-making process.

The comparative analysis of UNCED and UNCLOS III shall highlight the importance of the process of international law-making. More importantly, it shall demonstrate the major features and trends of the international law-making process which are less influenced by the subject matter of the particular conference. Thus, the conclusion reached at the end of the article can be applied to future international law-making conferences in a variety of fields. The negotiators at UNCED were very much aware of the past experience of UNCLOS III and consequently tried to avoid its mistakes while emulating its successes. This fact justifies the comparative analysis of UNCED and UNCLOS III.¹²

10. See THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* 193 (1990) (the process of rule-making is important to the legitimacy—or the voluntary compliance pull—of the rule itself).

11. See Paul Szasz, *Improving the International Legislative Process*, 9 GA. J. INT'L & COMP. L. 519, 533 (1979) (the necessity for such a study is recognized).

12. Though this article explores the major features and trends of the international law-making process in the UN by comparing UNCED and UNCLOS III, the emphasis is on the former. This is so because there has already been extensive research and analysis on the process of UNCLOS III, while there has not yet been a systematic analysis of the UNCED process. For a very brief account of the UNCED process, including those of the Climate Convention and the Biodiversity Convention, see 1 REV. EUR. COMMUNITY & INT'L ENVTL. L. 240 (1992) (special issue on UNCED).

II. THE LAW-MAKING PROCESS IN UNCED: UNIQUE FEATURES

A. An Overview of the Process: A Multi-Fora Process

The most interesting feature of the UNCED process is that it was a multi-*fora* process. Strictly and formally speaking, UNCED itself is the Conference which was convened by the General Assembly¹³ and was held at Rio de Janeiro from June 3-14, 1992. The Conference adopted three non-binding documents: the Agenda 21¹⁴, the Rio Declaration on Environment and Development (the Rio Declaration),¹⁵ and the "Forests Statement."¹⁶ These documents were prepared by the Preparatory Committee for UNCED (PrepCom). At the same Conference, two conventions prepared in different bodies were opened for signature.

The PrepCom was established by the General Assembly in December 1989¹⁷ to "prepare draft decisions for the Conference and submit them to the Conference for consideration and adoption."¹⁸ It held one organizational session in March 1990¹⁹ and four substantive sessions before the Conference.²⁰ Under the chairmanship of Tommy Koh,²¹ the PrepCom established two working groups and later one legal working group and produced three documents to be adopted by the Conference. After Pre-Conference consultation on June 1-2, 1992,²² the Conference was opened on June 3. The Main Committee, chaired by Tommy Koh, was the focal

13. G.A. Res. 44/228, U.N. GAOR, 44th Sess., Supp. No. 49, at 151, U.N. Doc. A/44/49 (1990) (¶ 1 of Resolution I).

14. *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/CONF. 151/26 (Vol. I-III) (1992).

15. *The Rio Declaration on Environment and Development, adopted June 14, 1992*, U.N. Doc. A/CONF. 151/5/Rev.1, reprinted in 31 I.L.M. 874 (1992).

16. *Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests, adopted June 13, 1992*, U.N. Doc. A/CONF. 151/6/Rev.1, reprinted in 31 I.L.M. 881 (1992).

17. G.A. Res. 44/228, *supra* note 13 (¶ 1 of Resolution I).

18. *Id.* at ¶ 8 of Resolution II (other mandates were to draft the agenda for the Conference, and to adopt guidelines for States to take a harmonized approach in their preparations and reporting).

19. *See Report of the Preparatory Committee for the United Nations Conference on Environment and Development, Organizational Sess.*, U.N. GAOR, 44th Sess., Supp. No. 48, U.N. Doc. A/44/48 (1989) [hereinafter *UNCED PrepCom Report, Org. Sess.*].

20. *See Report of the Preparatory Committee for the United Nations Conference on Environment and Development, 1st Sess.*, U.N. GAOR, 45th Sess., Supp. No. 46, U.N. Doc. A/45/46 (1990) [hereinafter *UNCED PrepCom Report, 1st Sess.*]; *2nd Sess.*, U.N. GAOR, 46th Sess., Supp. No. 48, Part I, U.N. Doc. A/46/48 (1991) [hereinafter *UNCED PrepCom Report, 2nd Sess.*]; *3rd Sess.*, U.N. GAOR, 46th Sess., Supp. No. 48, Part II, U.N. Doc. A/46/48 (1991) [hereinafter *UNCED PrepCom Report, 3rd Sess.*]; *Report of the Preparatory Committee for the United Nations Conference on Environment and Development on the Work of Its Fourth Session*, U.N. Doc. A/CONF.151/PC/128 (1992) [hereinafter *UNCED PrepCom Report, 4th Sess.*].

21. Tommy Koh was the president of the latter part of UNCLOS III.

22. *Report of UNCED, Vol IV, supra* note 3, at 4. The details of this consultation is reported in U.N. Doc. A/CONF. 151/L.1, but the present writer was unable to refer to it.

negotiating body which established eight "contact groups" to facilitate the negotiation.²³ The Conference adopted all three documents, the Agenda 21, the Rio Declaration and the Forests Statement, by consensus.

One of the two conventions opened for signature during the Conference was the Framework Convention on Climate Change (Climate Convention)²⁴. After scientific assessments were completed by the Intergovernmental Panel on Climate Change (IPCC), which was established jointly by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO),²⁵ the General Assembly established the Intergovernmental Negotiating Committee on Climate Change (INC on Climate Change)²⁶ to prepare a draft convention. The INC on Climate Change held its first session in February 1991 during which it established two working groups²⁷ and held four other sessions.²⁸ At the resumed fifth session in April to May 1992, the Climate Convention was adopted, and at UNCED it

23. *Id.* at 18.

24. *Framework Convention on Climate Change, adopted May 9, 1992, reprinted in 31 I.L.M. 849 (1992).*

25. UNEP Governing Council Decision 14/20, *United Nations Environment Programme: Report of the Governing Council, 14th Sess.*, U.N. GAOR, 42d Sess., Supp. No. 25, Annex II, at 71, U.N. Doc. A/42/25 (1987) [hereinafter *Report of the Governing Council, 14th Sess.*]. Three working groups were established in November 1988 to deal with (1) scientific assessment, (2) evaluation of impacts, and (3) formulation of response strategies of climate change. *Report of the Secretary-General: Protection of global climate for present and future generations of mankind*, U.N. GAOR, 44th Sess., U.N. Doc. A/44/484, at 5-6 (1989). For the reports submitted by them, see the *Overview in INTERNATIONAL LAW AND GLOBAL CLIMATE CHANGE 280-94* (Robin Churchill & David Freestone eds., 1991) [hereinafter *INTERNATIONAL LAW AND GLOBAL CLIMATE CHANGE*]. The policymakers summary and the report of the Working Group I is reproduced in *INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE: THE IPCC SCIENTIFIC ASSESSMENT* (Cambridge Univ. Press, 1990). The report by the Working Group III is reproduced in *INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE: THE IPCC RESPONSE STRATEGIES* (Island Press, 1991).

26. G.A. Res. 45/212, U.N. GAOR, Sess. 45th, Supp. No. 49, at 147, U.N. Doc. A/45/49 (1990) (operative ¶ 1: "Decides to establish a single intergovernmental negotiating process under the auspices of the General Assembly . . . for the preparation by an Intergovernmental Negotiating Committee of an effective framework convention on climate change. . .").

27. See *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its First Session*, U.N. Doc. A/AC.237/6 (1991) [hereinafter *INC on Climate Report, 1st Sess.*].

28. See *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its Second Session, Held at Geneva from 19 to 28 June 1991*, U.N. Doc. A/AC.237/9 (1991) [hereinafter *INC on Climate Report, 2d Sess.*]; *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its Third Session, Held at Nairobi from 9 to 20 September 1991*, U.N. Doc. A/AC.237/12 (1991) [hereinafter *INC on Climate Report, 3d Sess.*]; *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its Fourth Session, Held at Geneva from 9 to 20 December 1991*, U.N. Doc. A/AC.237/15 (1992) [hereinafter *INC on Climate Report, 4th Sess.*]; *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the First Part of Its Fifth Session, Held at New York from 18 to 28 February 1992*, U.N. Doc. A/AC.237/18 (Part I) (1992) [hereinafter *INC on Climate Report, 5th Sess. Part I*]; *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of the Second Part of Its Fifth Session, Held at New York from 30 April to 9 May 1992*, U.N. Doc. A/AC.237/18 (Part II) (1992) [hereinafter *INC on Climate Report, 5th Sess. Part II*].

was opened for signature. As of June 29, 1992, 155 States and the EEC had signed the Convention.²⁹

The second convention opened for signature during the Conference was the Convention on Biological Diversity (Biodiversity Convention).³⁰ This convention was prepared by the *Ad Hoc* Working Group of Legal and Technical Experts on Biological Diversity (Legal WG on Biodiversity) which was later renamed the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INC on Biodiversity). The Legal WG on Biodiversity was established by the Governing Council of UNEP in 1989³¹ and considered the draft convention submitted by the UNEP secretariat.³² After revising the draft five times, the INC on Biodiversity sent the final draft for adoption at the Conference for Adoption of the Agreed Text of the Convention on Biological Diversity in May 1992.³³ The Convention was signed by 157 States and the EEC at the Conference.³⁴

Thus, the PrepCom-UNCED process, the Climate Convention process and the Biodiversity Convention process were institutionally separate and were pursued in different fora with different procedures and organizational

29. *Framework Convention on Climate Change*, *supra* note 24 at 849 note *.

30. *Convention on Biological Diversity* (adopted May 22, 1992), reprinted in 31 I.L.M. 818 (1992).

31. UNEP Governing Council Decision 15/34, *United Nations Environment Programme: Report of the Governing Council, 15th Session*, U.N. GAOR, 44th Sess., Supp. No. 25, at 161, U.N. Doc. A/44/25 (1989) (operative ¶ 6) [hereinafter *Report of the Governing Council, 15th Sess.*]. UNEP Governing Council Decision 16/42, *United Nations Environment Programmes: Report of the Governing Council, 16th Session*, U.N. GAOR, 46th Sess., Supp. No. 25, at 100, U.N. Doc. A/46/25 (1991) (operative ¶ 1) [hereinafter *Report of the Governing Council, 16th Sess.*]. The General Assembly endorsed these decisions. G.A. Res. 44/229, U.N. GAOR, 44th Sess., Supp. No. 49, at 155, U.N. Doc. A/44/49 (1990) (operative ¶ 22).

32. See the following reports. *Report of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity of the Work of Its First Session* (Nairobi, 19-23 November 1990), U.N. Doc. UNEP/Bio.Div/WG.2/1/4 (1990) [hereinafter *Legal WG on Biodiversity Report, 1st Sess.*]. *Report of the Ad Hoc Working Group of Legal and Technical Experts on Biological Diversity on the Work of Its Second Session* (Nairobi, 25 Feb.-6 Mar. 1991), U.N. Doc. UNEP/Bio.Div./WG.2/2/5 (1991) [hereinafter *Legal WG on Biodiversity Report, 2d Sess.*]; *Report of the Intergovernmental Negotiating Committee for a Convention on Biological Diversity on the Work of Its Third Session/Fifth Negotiating Session* (Geneva, 25 Nov.-4 Dec., 1991), U.N. Doc. UNEP/Bio.Div/N5-INC.3/4 (1991) [hereinafter *INC on Biodiversity Report, 5th Sess.*]. I referred to a Spanish version for the 4th session. *Informe del Comité Intergubernamental de Negociación de un Convenio Sobre la Diversidad Biológica Acerca de la Labor Realizada en el Cuarto Periodo de Sesiones de Negociación/Segundo Periodo de sesiones del cin, PNUMA Comité Intergubernamental de Negociación de un Convenio Sobre la Diversidad Biológica, Cuarto periodo de sesiones de negociación/segundo periodo de sesiones del cin* (Nairobi, 23 de Sept. a 2 de Oct. de 1991), U.N. Doc. UNEP/Bio.Div/N4-INC.2/5 (1991) [hereinafter *INC on Biodiversity Report, 4th Sess.*]. I was unable to refer to the reports of third negotiating/INC first session (24 June to 3 July 1991), 6th negotiating/INC 4th session (6-15 Feb. 1992), and 7th negotiating/INC 5th session (11-19 May 1992). The document number for the first one is: U.N. Doc. UNEP/Bio.Div/INC.3/11. But I was able to refer to Fourth Revised Draft Convention on Biological Diversity, U.N. Doc. UNEP/Bio.Div/N6-INC.4/2 (1991) and Fifth Revised Draft Convention on Biological Diversity, U.N. Doc. UNEP/Bio.Div/N7-INC.5/2 (1992).

33. *Convention on Biological Diversity*, *supra* note 30, at 818, note *.

34. *Id.*

structures. In fact, this separation was a result of arduous negotiations and was a deliberate decision of the negotiators. On the other hand, the UN made its effort to coordinate these three fora in order to achieve efficiency and to avoid duplication. Because of this interrelationship among the three fora, it is justified to treat them as one international law-making process which I call the UNCED process.³⁵

B. Quest for Effective Participation

The UNCED process had been effectively initiated³⁶ when the World Commission on Environment and Development (Brundtland Commission) submitted a report entitled "Our Common Future" in April 1987.³⁷ The report recommended to the General Assembly that it prepare a Declaration and a Convention on Environmental Protection and Sustainable Development.³⁸ Also of significance in this year was the report submitted by UNEP entitled "Environmental Perspective to the Year 2000 and Beyond."³⁹ This report urged the conclusion of conventions in fields of climate change and protection of biological diversity.⁴⁰

After the Stockholm Conference on the Human Environment in 1972, UNEP was established with its decision-making body "the Governing

35. Please refer to the timetable at the end of this article.

36. In this article, I generally follow the analytical framework suggested by the Secretary-General of the U.N. *Report of the Secretary-General: Review of the Multilateral Treaty-Making Process*, U.N. GAOR, 35th Sess., U.N. Doc. A/35/312 (1980) [hereinafter *SG Report on Treaty-Making Process*]. See also *Report of the Working Group on the Review of the Multilateral Treaty-Making Process: Review of the Multilateral Treaty-Making Process*, U.N. GAOR, 6th Comm., 37th Sess., U.N. Doc. A/C.6/37/L.29 (1982) [hereinafter *1982 Report on Treaty-Making*]; *Report of the Working Group on the Review of the Multilateral Treaty-Making Process: Review of the Multilateral Treaty-Making Process*, U.N. GAOR, 38th Sess., U.N. Doc. A/C.6/38/L.28 (1983) [hereinafter *1983 Report on Treaty-Making*]; *Report of the Working Group on the Review of the Multilateral Treaty-Making Process: Review of the Multilateral Treaty-Making Process*, U.N. GAOR, 39th Sess., U.N. Doc. A/C.6/39/L.12 (1984) [hereinafter *1984 Report on Treaty-Making*].

37. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987). This Commission is established by G.A. Res. 38/161, U.N. GAOR, 38th Sess., Supp. No. 47, at 131, U.N. Doc. A/38/47 (1983). For an overview of the work and the member of the Commission, see *OUR COMMON FUTURE* at 352 (Annex 2).

38. *OUR COMMON FUTURE*, *supra* note 37, at 332-333.

39. *Report of the Governing Council, 14th Sess.*, *supra* note 25, at 96. This report was submitted by an open-ended intergovernmental intersessional preparatory committee established in 1983. UNEP Governing Council Decision 11/3 Part Six, *United Nations Environment Programme: Report of the Governing Council, 11th Sess.*, U.N. GAOR, 38th Sess., Supp. No. 25, at 28, U.N. Doc. A/38/25 (1983). The members of the Committee, Algeria, Argentina, Austria, Bangladesh, Botswana, Brazil, Cameroon, Canada, Chile, China, Denmark, FRG, Greece, India, Indonesia, Ivory Coast, Jamaica, Japan, Kenya, Malawi, Malaysia, Mexico, Morocco, Netherlands, Poland, Saudi Arabia, Senegal, Switzerland, Ukrainian SSR, USSR, were decided by UNEP Governing Council Decision 12/1 Part II, *United Nations Environment Programme: Report of the Governing Council, 12th Sess.*, U.N. GAOR, 39th Sess., Supp. No. 25, at 20, U.N. Doc. A/39/25 (1984).

40. *Report of the Governing Council, 14th Sess.*, *supra* note 25, at 125.

Council” comprised of 58 States,⁴¹ less than a third of the current UN membership. UNEP was also a technical body mainly concerned with scientific and information matters.⁴² Through its discreet and arduous work,⁴³ a substantial groundwork for UNCED was prepared by UNEP, culminating in the above mentioned “Environmental Perspective.” Until 1987, the General Assembly of the UN had assumed only an endorsing role regarding the work done by UNEP.⁴⁴

However, this universally represented political organ of the UN could not remain an idle onlooker once an international law-making process had been effectively initiated in a field where important interests of States were at stake. The developing countries mobilized their efforts to make the General Assembly the focus of the UNCED process. The developing countries demanded their effective participation in the international law-making process. In order to achieve this, they preferred an universally represented forum. Some of the contentious issues in the three processes demonstrate the effort and the success of the developing countries’ quest for effective participation in the international law-making process.

1. PrepCom-UNCED Process

In 1988, the General Assembly took a definitive step toward commencing the Conference when it requested States and UNEP to submit their views on the question of convening a UN conference on the environment and development.⁴⁵ UNEP, by its decision 15/3 of May 1989,⁴⁶ gave detailed elements to be considered for inclusion in a G.A. resolution. It identified eight environmental issues to be considered at the Conference and recommended that the Governing Council of UNEP should be the Preparatory Committee of the Conference. Additionally, this Committee was to be “open on a basis of equality to all State Members of the United Nations or members of a specialized agency or of the International Atomic Energy Agency.”⁴⁷

41. G.A. Res. 2997 (XXVII), U.N. GAOR, 27th Sess., Supp. No. 30, at 43, U.N. Doc. A/8730 (1972) (the 58 members are divided as follows: 16 for African States, 13 for Asian States, 6 for Eastern European States, 10 for Latin American States, and 13 for Western European and other States).

42. *Id.* at ¶ 2 of Resolution I.

43. See generally Carol Annette Petsonk, *The Role of the UNEP in the Development of International Environmental Law*, 5 AM. U. J. INT’L. L. & POL’Y 351 (1990).

44. See G.A. Res. 42/187, U.N. GAOR, 42d Sess., Supp. No. 49, at 154, U.N. Doc. A/42/49 (1988).

45. G.A. Res. 43/196, U.N. GAOR, 43d Sess., Supp. No. 49, at 147, U.N. Doc. A/43/49 (1988). See also the draft resolution submitted by Canada, Denmark, Finland, the Netherlands, Norway and Sweden, U.N. Doc. A/C.2/43/L.36 (1988), *Report of the Second Committee (Part VIII): Development and International Economic Co-operation- Long-term Strategy for Sustainable and Environmentally Sound Development*, U.N. GAOR, 43d Sess., at 9, U.N. Doc. A/43/915/Add.7 (1988).

46. *Report of the Governing Council, 15th Sess.*, *supra* note 31, at 115.

47. *Id.* at 118.

The reason for utilizing the Governing Council, even though the new Committee would have no resemblance to it, was that "the Council, as the authoritative body on environmental matters, could provide guidance to the preparatory committee."⁴⁸

During the debate in 1989 both in UNEP and in the General Assembly, the choice of forum for the preparatory committee of the Conference became one of the major contentious issues. The developed countries generally favored UNEP playing a central role in preparing instruments to be adopted at the Conference.⁴⁹ On the contrary, the developing countries, including India,⁵⁰ Brazil⁵¹ and Mexico,⁵² expressed the view that the General Assembly and a preparatory committee under its auspices should be the main forum for international law-making in the environmental field.

The opposing approaches were represented in two draft resolutions, one submitted by the European Community (EC)⁵³ and the other by the Group of 77 (G-77).⁵⁴ The EC draft was identical to the one recommended by the Governing Council of UNEP with respect to the preparatory committee.⁵⁵ The G-77 draft proposed an independent Preparatory Committee for UNCED under the auspices of the General Assembly. The latter one prevailed becoming G.A. Resolution 44/228.⁵⁶ Thus, this resolution effectively severed the institutional continuity of the PrepCom from UNEP.

Why did the developing countries insist on this point, especially when the EC draft also guaranteed their participation? There are two conceivable reasons. First, the developing countries wanted to sever the continuity with

48. *Id.* at 32.

49. For example, Norway, Sweden, and France favored the Governing Council to constitute the preparatory body for UNCED. *Report of the Secretary-General: Question of the Convening of a United Nations Conference on Environment and Development*, U.N. GAOR, 44th Sess., U.N. Doc. A/44/256/Add.1, at 24 (1989) and U.N. GAOR, 44th Sess., at 13, U.N. Doc. A/44/256/Add.2 (1989). The Japanese representative said it is important to strengthen the role of UNEP. U.N. GAOR, 44th Sess., 85th plen. mtg., at 59-60, U.N. Doc. A/44/PV.85 (1989).

50. U.N. GAOR, 44th Sess., 85th plen. mtg., at 46, U.N. Doc. A/44/PV.85 (1989) (reserving its position on a provision endorsing UNEP decisions).

51. *Id.* at 56-57 (stating that the preparatory process of the Conference itself should become the focus of the efforts, including those already under way).

52. *United Nations Environment Programme: Report of the Governing Council, 2d Special Sess.*, U.N. GAOR, 45th Sess., Supp. No. 25, at 13-14, U.N. Doc. A/45/25 (1990) [hereinafter *Report of the Governing Council, Second Special Sess.*] (declaring that the General Assembly as well as the PrepCom for UNCED have a major role to play in recommending criteria for the drafting of the climate convention).

53. U.N. Doc. A/C.2/44/L.58 (1989), *Report of the Second Committee (Part VIII): Development and international economic co-operation—Environment*, U.N. GAOR, 44th Sess., at 41, U.N. Doc. A/44/746/Add.7 (1989) [hereinafter EC Draft of 1989].

54. U.N. Doc. A/C.2/44/L.55 (1989), *Report of the Second Committee (Part VIII): Development and international economic co-operation—Environment*, U.N. GAOR, 44th Sess., at 33, U.N. Doc. A/44/746/Add.7 (1989) [hereinafter G-77 Draft of 1989].

55. EC Draft of 1989, *supra* note 53, at 44.

56. G.A. Res. 44/228, *supra* note 13, at 154 (decided to establish the Preparatory Committee for UNCED, which "shall be open to all States Members of the UN or members of the specialized agencies, with the participation of observers, in accordance with the established practice of the General Assembly").

UNEP since the work done by UNEP up until then was generally controlled by developed countries without effective participation of developing countries. They did not want the Governing Council's previous work to infiltrate into the international law-making process unchecked by them. In short, they wanted to start the international law-making process afresh.⁵⁷ Second, the location of the preparatory sessions was a real concern for developing countries. They wanted the sessions to be held where they could effectively participate without incurring extra financial burden. The UN Headquarters in New York or Geneva, where most of the States have their permanent missions, was a preferred place to the UNEP Headquarters in Nairobi.⁵⁸ Resolution 44/228 designated two sessions in New York and Geneva, and one session in Nairobi.⁵⁹ The question concerning the choice of forum, therefore, was inextricably linked to the concept of effective participation by developing countries in the international law-making process.

Another development of interest with regard to the PrepCom-UNCED process was the establishment of a voluntary fund for the purpose of assisting developing countries to participate fully and effectively in the Conference and in its preparatory process. Paragraph 15 of Part II of Resolution 44/228 established the fund and invited Governments to contribute to it.⁶⁰ The General Assembly repeatedly urged States to contribute to the fund, and as a result, the PrepCom-UNCED process was generally attended by a large number of delegations.⁶¹ The Conference itself was attended by a record number of 176 State delegations.

2. Climate Convention Process

The quest for effective participation by developing countries was much more acute in the process leading to the adoption of the Climate Convention. This was because their interests were more at stake in this process as it directly concerned the issue of development and the final outcome of the process was to be a legally-binding treaty. The choice of forum, again, became the major issue.

UNEP was the leading body to respond to the problem of climate

57. This does not, however, rule out the contribution of the work of UNEP to the newly formed preparatory body. In fact, the G.A. resolution specifically mentioned UNEP contribution "on the basis of guidelines and requirements to be established by the PrepCom." G.A. Res. 44/228, *supra* note 13, at 154-55 (¶ 9 of Resolution II).

58. G-77 draft specifically mentioned that the PrepCom be established at the UN Headquarters in New York and that the sessions be held in New York and Nairobi. G-77 Draft of 1989, *supra* note 54, at 39.

59. G.A. Res. 44/228, *supra* note 13, at 154 (¶ 2 of Resolution II).

60. *Id.* at 155 (¶ 15 of Resolution II).

61. The Organizational Session (NY)—137 countries; the First Session (Nairobi)—94 countries; the Second Session (Geneva)—127 countries; the Third Session (Geneva)—148 countries; and Fourth Session (NY)—165 countries. The Bolivian representative, speaking on behalf of G-77, complained of the low participation at the first session of PrepCom. U.N. GAOR 2d Comm., 45th Sess., 39th mtg., at 9-10, U.N. Doc. A/C.2/45/SR.39 (1990).

change, and it established IPCC in 1988 to continue this momentum and sought to be the main forum for the preparation of the Climate Convention. In fact, this was the general expectation of the developed countries⁶² and of the Western scholars.⁶³ Even the General Assembly seemed to support the leading role played by UNEP and IPCC until 1989.⁶⁴ However, the potential conflict was already apparent. In 1988 one developing country expressed the view that the General Assembly as “the parliament of mankind” should take the initiative on the issue of climate change.⁶⁵ G.A. Resolution 44/207 adopted in 1989 contained the following paragraph:

Reaffirms that, owing to its universal character, the United Nations system, through the General Assembly, is the appropriate forum for concerted political action on global environmental problem[.]⁶⁶

As the work by IPCC progressed, the developing countries increasingly expressed their view that IPCC should not be a negotiating body for the preparation of the Convention⁶⁷ because its work method and organs did not ensure their effective participation. The developing countries complained of the proliferation of meeting locations and that the meeting dates coincided.⁶⁸ With lack of financial and human resources, the developing countries could not participate in all the meetings sponsored by IPCC. The effort by IPCC to ensure that the developing countries participate⁶⁹ could not drastically

62. U.N. GAOR 2d Comm., 43d Sess., 44th mtg., at 9 (UK), 11-12 (U.S.), U.N. Doc. A/C.2/43/SR.44 (1988). U.N. GAOR 2d Comm., 43d Sess., 25th mtg., at 13-14 (U.S.), U.N. Doc. A/C.2/43/SR.25 (1988).

63. Catherine Tinker, *Environmental Planet Management by the United Nations: An Idea Whose Time Has Not Yet Come?* 22 N.Y.U. J. INT'L. L. & POL. 793, 814-15 (1990) (stating that IPCC should be a drafting forum for a global warming convention).

64. G.A. Res. 43/53, U.N. GAOR, 43d Sess., Supp. No. 49, at 133, U.N. Doc. A/43/49 (1989). See also G.A. Res. 44/207, U.N. GAOR, 44th Sess., Supp. No. 49, at 130, U.N. Doc. A/44/49 (1990) (¶ 10).

65. U.N. GAOR 2d Comm., 43d Sess., 25th mtg., *supra* note 62, at 4-6 (Malta). The Egyptian representative cast doubt on the role of IPCC and requested it be under the supervision of the UNEP. U.N. GAOR 2d Comm., 43d Sess., 44th mtg., *supra* note 62, at 12.

66. G.A. Res. 44/207, *supra* note 64 at ¶ 5.

67. *Report of the Governing Council, 15th Sess.*, *supra* note 31, at 57-58.

68. For example, IPCC in 1990 had following meetings: WG I—meeting of lead authors in Edinburgh, Scot., Feb. 26 to Mar. 3; WG II—meeting of co-chairmen of the 7 subgroups in Nalchik, USSR, Feb. 24 to Mar. 2 and plenary session in Moscow, USSR, Mar. 28 to 31; WG III—plenary session in Geneva, Switz., June 5 to 8; Special Committee—plenary in Washington D.C., Feb. 9 and drafting group meeting in Paris, Fr., April 5 to 6. U.N. Doc. UNEP/GC.16/21/Add.3, at 4-5 (1991).

69. The General Assembly and UNEP repeatedly requested to ensure the participation of developing countries. G.A. Res. 44/207, *supra* note 64 at 10th preambular ¶ and operative ¶ 9. UNEP Governing Council Decision SS.II/3 B, *Report of the Governing Council, Second Special Sess.*, *supra* note 52, at 23 (operative ¶ 1). IPCC even established a Special Committee on the Participation of Developing Countries and IPCC Trust Fund to support their participation. IPCC, Overview, *reprinted in* INTERNATIONAL LAW AND GLOBAL CLIMATE CHANGE, *supra* note 25, at 280, 290-91.

change the situation.⁷⁰ Another factor which made the developing countries turn against IPCC was that they were vastly under-represented in principal posts established by the IPCC. For example, the Working Group on Response Strategies (WG III) of IPCC was chaired by the United States, with five co-chairmen from Canada, China, Malta, the Netherlands and Zimbabwe. Out of 9 co-chair posts of the subgroups of WG III, only one went to Africa (Zimbabwe) and three to Asia (China, Japan and India). No Latin American or Caribbean States were represented.⁷¹ It is understandable that the developed countries dominate important posts in a body like IPCC where scientific and technical expertise is required to become a member. However, this was precisely the reason that developing countries disliked IPCC and also, to a certain extent, UNEP.

"The negotiating process should be organized and conducted in such a manner as to ensure openness, transparency, universality and legitimacy."⁷² Because of the lack of effective participation by developing countries, IPCC was no longer conceived as an universal and legitimate body to proceed with the law-making process.⁷³ The General Assembly, in its resolution 45/212, established the INC on Climate Change under its own auspices. It was entrusted with the mandate to prepare an effective framework convention on climate change.⁷⁴ The IPCC report was deliberately undermined to the status of "inputs for the negotiation."⁷⁵ Previously it was given the status of "the basis for the negotiation."⁷⁶

The developing countries again succeeded in their effort to sever the institutional continuity from a body in which they could not fully participate, and they succeeded in moving the international law-making forum to a body in which they could participate effectively. It is undeniable that the IPCC reports played a major role in arousing the awareness of both the general public and the State delegates for the need for climate protection, but IPCC was not a suitable forum for the international law-making process since

70. The participation was generally low. The first session was attended by 30 countries, and the second session by 43 countries. *Report of the Secretary-General: Protection of Global Climate for Present and Future Generations of Mankind*, U.N. GAOR, 44th Sess., at 5-6, U.N. Doc. A/44/484 (1989).

71. CLIMATE CHANGE: THE IPCC RESPONSE STRATEGIES, *supra* note 25, at xiii.

72. The Ad Hoc Working Group of Government Representatives to Prepare for Negotiation on a Framework Convention on Climate Change, recommendation, *Report of the Secretary General: Progress achieved in the implementation of resolution 44/207 on protection of global climate for present and future generations of mankind*, U.N. GAOR., 45th Sess., at 4, U.N. Doc. A/45/696 (1990) [hereinafter Recommendation by WGGR of 1990].

73. See U.N. GAOR 2d Comm., 45th Sess., 40th mtg., at 7-8 (Mexico), 16-17 (China), U.N. Doc. A/C.2/45/SR.40 (1990); U.N. GAOR 2d Comm., 45th Sess., 43d mtg., at 10 (India), U.N. Doc. A/C.2/45/SR.43 (1990).

74. G.A. Res. 45/212, *supra* note 26 at ¶ 1.

75. *Id.* at ¶ 15.

76. *Report of the Second Committee: Protection of global climate for present and future generations of mankind*, U.N. GAOR, 45th Sess., at 3, U.N. Doc. A/45/851 (1990) [hereinafter 58 Countries Draft of 1990].

developing countries could not effectively participate.

Similar to the PrepCom-UNCED process, the INC on Climate Change had a special voluntary fund to assist developing countries to participate fully and effectively in the process.⁷⁷ For example, at the fifth session of the INC on Climate Change, 87 delegations out of 115 participants from developing countries were supported by the fund.⁷⁸ Also, other measures were utilized to effectuate the participation of developing countries. These included the decision to hold no more than two meetings at any one time within the INC, and to hold no inter-sessional meetings of INC working groups or any subgroups.⁷⁹

3. Biodiversity Convention Process

As the Executive Director of UNEP, Dr. Mostafa K. Tolba proudly stated that the Biodiversity Convention was “the UNEP-brokered convention.”⁸⁰ It is true that UNEP and various working groups established by it were the main bodies which established the scientific groundwork for the preparation of the Biodiversity Convention.⁸¹ It is also true that the negotiation process took place in Legal WG on Biodiversity established by the Governing Council of UNEP, and that when INC on Biodiversity was to succeed the Legal WG, the Governing Council of UNEP reaffirmed that this change of name would not in any way affect the continuity of the process.⁸²

But this was actually a case of sour grapes because the negotiators entrusted only one subject to UNEP, and moreover, it was the subject in which they were least interested among the three. It seems that the developing countries entrusted the preparation of the Biodiversity Convention to UNEP in order to obtain the General Assembly’s control over the other

77. G.A. Res. 45/212, *supra* note 26 at ¶ 10. See also G.A. Res. 46/169, U.N. GAOR, 46th Sess., Supp. No. 49, at 130-31, U.N. Doc. A/46/49 (1992) (¶ 5, inviting more contribution to the Fund).

78. *INC on Climate Report, 5th Sess. Part I, supra* note 28, at 11.

79. Decision of the Committee 1/1 Annex III, *INC on Climate Report, 1st Sess., supra* note 27, at 24.

80. Unofficial paper, UNEP Feature, *Breakthrough in Nairobi*, (May 22, 1992) (available from the Public Inquiries Unit in New York).

81. *Ad Hoc Working Group of Experts on Biological Diversity* (Expert WG on Biodiversity), UNEP Governing Council Decision 14/26, *Report of the Governing Council, 14th Sess., supra* note 25, at 78. See *Report of the Ad Hoc Working Group on the Work of Its First Session* (Geneva, 16-18 November 1988), U.N. Doc. UNEP/Bio.Div.1/3 (1989) [hereinafter *Expert WG on Biodiversity Report, 1st Sess.*]; *Report of the Ad Hoc Working Group on the Work of Its Second Session in Preparation for a Legal Instrument on Biological Diversity of the Planet* (Geneva, 19-23 February 1990), U.N. Doc. UNEP/Bio.Div.2/3 (1990) [hereinafter *Expert WG on Biodiversity Report, 2d Sess.*]; *Report of the Ad Hoc Working Group on the Work of Its Third Session in Preparation for a Legal Instrument on Biological Diversity of the Planet* (Geneva, 9-13 July 1990), U.N. Doc. UNEP/Bio.Div.3/12 (1990) [hereinafter *Expert WG on Biodiversity Report, 3d Sess.*]. A Sub-Working Group on Biotechnology (SWGB) was also established. See *Final Report of the Sub-Working Group on Biotechnology* (Nairobi, 14-17 November 1990), U.N. Doc. UNEP/Bio.Div/SWGB.1/5/REV.1 (1990) [hereinafter *Biotechnology Report*].

82. *Report of the Governing Council, 16th Sess., supra* note 31, at 104 (¶ 1 and 2).

two more important processes.

Still, effective participation was an unyielding demand of the developing countries. The Legal WG and INC on Biodiversity were open-ended so that, technically, all States could participate in them.⁸³ Additionally, the Governing Council of UNEP called upon Governments to provide necessary financial and technical resources to enable full and effective participation of the developing countries.⁸⁴ In response to this call, some States did actually provide these resources.⁸⁵ Notwithstanding these measures, the participation in the Biodiversity process was generally low compared to other processes⁸⁶ because of lack of interest and the difficulty in participating.⁸⁷

The UNCED process clearly demonstrates the unyielding demand of the developing countries for "full and effective participation"⁸⁸ in the international law-making process from its beginning. The concept of effective participation was inextricably linked to the legitimacy of the negotiating forum, and consequently, to the legitimacy of its outcome. In order to achieve effective participation, the choice of negotiating forum was of critical importance. Also, the financial assistance was needed to make sure that the open-ended forum be filled with delegates.

Another fact which is worthy of our notice is the general acceptance of this demand by the developed countries. No State opposed the general concept of effective participation in the international law-making process. Actually, the establishment of a fund to assist developing countries was a proposal initially contained in the EC draft.⁸⁹ Thus, the developed countries recognized the concept of effective participation as an indispensable element of a legitimate forum for international law-making. What they were concerned with was the efficiency of the law-making process.

Therefore, it is expected that, with the strong demand from developing countries and the general acceptance of developed countries, the effective participation of developing countries, through financial measures to effectuate

83. UNEP Governing Council Decision SS.II/7, *Report of the Governing Council, Second Special Sess.*, *supra* note 52, at 31.

84. UNEP Governing Council Decision 15/34, *Report of the Governing Council, 15th Sess.*, *supra* note 31, at 162.

85. *Legal WG on Biodiversity Report, 2d Sess.*, *supra* note 32, at 17. (Australia, Denmark, Finland, Netherlands, Norway, Sweden, Switzerland, United Kingdom and United States announced their pledges).

86. For example, only 70 countries participated at the first session of the Legal WG on Biodiversity. *Legal WG on Biodiversity Report, 1st Sess.*, *supra* note 32, at 4.

87. The meeting place must have had some negative effect. Rules of Procedure explicitly state that the meetings shall take place in Nairobi unless otherwise decided. See U.N. Doc. UNEP/Bio.Div/WG.2/2/5, Annex (Rule 2 of the Rules of Procedure).

88. This phrase was repeated in many of the General Assembly resolutions. *E.g.*, G.A. Res. 44/228, *supra* note 13 at ¶ 15 of Resolution II; G.A. Res. 45/211, U.N. GAOR, 45th Sess., Supp. No. 49, at 146, U.N. Doc. A/45/49 (1991) (¶ 8); G.A. Res. 45/212, *supra* note 26 at ¶ 10; G.A. Res. 46/168, U.N. GAOR, 46th Sess., Supp. No. 49, at 130, U.N. Doc. A/46/49 (1992) (operative ¶ 8: "adequate and full"); G.A. Res. 46/169, U.N. GAOR, 46th Sess., Supp. No. 49, at 131, U.N. Doc. A/46/49 (1992) (¶ 5).

89. EC Draft of 1989, *supra* note 53 at ¶ 14.

such participation, shall be a principle of the international law-making process.

C. Participation of Non-Governmental Organizations

Another unique feature of the UNCED process was that a record number of Non-Governmental Organizations (NGOs) indirectly participated as observers in the international law-making process. Not only was the quantitative figure impressive⁹⁰ but the degree of their participation and the semi-official status they acquired during the process were of such importance that the international law-making process may never be the same after UNCED. If the increase in participation of States could be described as a horizontal expansion of participation, the participation of NGOs can be described as a vertical expansion of participation in the international law-making process.⁹¹

In its first decision 1/1, the PrepCom, recognizing that the effective contributions of NGOs in the preparatory process were in its interest, decided to allow NGOs to make written presentations and to briefly address the PrepCom meetings.⁹² The Climate Convention process also invited NGOs to make contributions to its preparatory process, taking into account decision 1/1 of the PrepCom.⁹³ PrepCom decision 2/1 stipulated detailed procedures to be followed for accreditation of NGOs to participate in the PrepCom meetings.⁹⁴ And by G.A. Resolution 46/168, all NGOs accredited to participate in the work of the PrepCom were invited to participate in the Conference as observers.⁹⁵ At the Conference, many NGOs addressed the plenary meetings in the same manner as the delegates from States and intergovernmental organizations.⁹⁶

90. In the PrepCom-UNCED process, 11 NGOs (organizational sess), 42 NGOs (1st Sess.), 163 NGOs (2d Sess.), 253 NGOs (3d sess.) and more than 300 NGOs (4th sess.) participated as observers. In Climate Convention process, 72 NGOs (1st Sess.), 38 NGOs (2d Sess.), 34 NGOs (3d Sess.), 45 NGOs (4th Sess.), 54 NGOs (5-1 Sess.) and 51 NGOs (5-2 Sess.) participated as observers. In Biodiversity Process, 2 NGOs (Expert WG 1st Sess.), 2 NGOs (Expert WG 2d Sess.), 3 NGOs (Expert WG 3d Sess.), 2 NGOs (Legal WG 1st Sess.), 7 NGOs (Legal WG 2d Sess.), 11 NGOs (Legal WG 4th Sess.), and 7 NGOs (Legal WG 5th Sess.) participated as observers.

91. Professor Sands urges for an increasing role of NGOs in environmental protection, especially in the enforcement area. See generally Philippe J. Sands, *The Environment, Community and International Law*, 30 HARV. INT'L L.J. 393 (1989).

92. PrepCom Decision 1/1, *UNCED PrepCom Report, 1st Sess.*, supra note 20, at 22.

93. G.A. Res. 45/212, supra note 26 at ¶ 19. See also, Rule 49 of Rules of Procedure of INC on Climate Change, U.N. Doc. A/AC.237/2 (1991), Annex.

94. *UNCED PrepCom Report, 2d Sess.*, supra note 20, at 21. The accredited NGOs are listed in PrepCom Decision 2/2, id. at 22; PrepCom Decision 3/1, *UNCED PrepCom Report, 3d Sess.*, supra note 20, at 27-31; and PrepCom Decision 4/1, *UNCED PrepCom Report, 4th Sess.*, supra note 20, at 33-55.

95. G.A. Res. 46/168, supra note 88 at ¶ 9(f).

96. See *Report of UNCED Vol. IV*, supra note 3, at 12-15.

Even though they were not given any negotiating role in the process,⁹⁷ the NGOs' contribution to the international law-making process was highly commended.⁹⁸ The General Assembly recommended that the follow-up mechanism of the Conference, the Commission on Sustainable Development, provide for NGOs to participate effectively in its work and contribute within their areas of competence to its deliberation.⁹⁹

The NGOs' role in the international law-making process is still indirect in the sense that they themselves may not be involved in an actual negotiation and that their views may be reflected in the process only through State delegates. However, the importance of their contribution to the international law-making process has been clearly recognized during UNCED, and their increasing involvement in the process is an irreversible trend.

III. COMPARATIVE ANALYSIS OF THE UNCED AND UNCLOS III PROCESSES

The unique features of the UNCED process discussed above represent the progressive developments from previous international law-making processes, especially that of UNCLOS III. The multi-*fora* process was one facet of the separate-but-coordinated approach employed in UNCED which could be considered an improvement from the comprehensive approach employed in UNCLOS III. The quest for effective participation could be considered as a reinforcement of the trend to achieve a more representative forum in the international law-making process which has started in UNCLOS III. This development with regard to the preparatory forum can be characterized as democratization of the international law-making process in the UN.

Through the comparative analysis of UNCED and UNCLOS III, I shall demonstrate these developments along with other features and trends of the international law-making process which will contribute to a wider acceptance of the outcome of that process.

A. The Preparatory Fora and Democratization of the International Law-Making Process

The Secretary-General's report stated that, generally speaking, the international law-making process in the UN is almost always a "multistage process." The first stages of the formulation of an instrument are generally

97. PrepCom Decision 1/1, *supra* note 92, at ¶ 4(a). Rule 49 of Rules of Procedures of INC on Climate Change, *supra* note 93.

98. See the statement by Fernando Collor, President of the UNCED, *Report of UNCED, Vol. IV, supra* note 3, at 64; and the statement by Maurice Strong, Secretary-General of UNCED, *Id.* at 71.

99. G.A. Res. 47/191, U.N. GAOR, 47th Sess., at ¶ 7(b), U.N. Doc. A/RES/47/191 (1993).

entrusted to some restricted body but the final stages always involve a representative body whose membership generally coincides with the potential scope of participation in the proposed instrument.¹⁰⁰ The same report also suggested that once the law-making process has started, an initial draft of all provisions, or at least of the substantive provisions, of the proposed instrument must be prepared.¹⁰¹ Therefore, the report recognized that, from an organizational point of view, a preparatory forum is a restricted body and, from a functional point of view, it is a body which prepares a draft and that these two aspects usually coincide in the international law-making process.

However, these characteristics were not observed in both the UNCED and the UNCLOS III processes. There were three interesting features with respect to the preparatory fora similar to both processes. First, the International Law Commission (ILC) was not utilized, which brings up the question of lawyers' role in the international law-making process. Second, from an organizational point of view, the preparatory fora were not restrictive and, in fact, there was a clear trend towards the opposite. Third, from a functional point of view, the preparatory fora were unable to prepare draft instruments.

1. ILC and the Role of Lawyers

One of the unique features of UNCLOS III was the fact that the preparatory work was not assigned to ILC or a specialized expert body.¹⁰² There was in fact no serious consideration of possible ILC involvement in the UNCLOS III preparatory process. There are several conceivable reasons for this decision.¹⁰³ The most important explanation is that it was generally recognized that the questions at UNCLOS III would not be purely legal. Rather it involved political, economic, strategic and other considerations, and it was considered that ILC would be inappropriate to deal with these issues. Also of importance was the perception, especially of developing countries, that ILC is under-represented and conservative in its approach.¹⁰⁴

Similarly, in the UNCED process, there was no suggestion of entrusting the preparatory work to ILC. Instead, the preparatory works for the

100. *SG Report on Treaty-Making Process*, *supra* note 36, at 5-6.

101. *Id.* at 16.

102. See Tommy T.B. Koh & Shanmugam Jayakumar, *The Negotiating Process of the Third United Nations Conference on the Law of the Sea*, 1 COMMENTARY, *supra* note 3, at 46-50 (detailed analysis of the role, or lack of it, of ILC in UNCLOS III).

103. *Id.* at 49-50.

104. See generally MOHAMED EL BARADEI, THOMAS M. FRANCK & ROBERT TRACHTENBERG, *THE INTERNATIONAL LAW COMMISSION: THE NEED FOR A NEW DIRECTION* 4-16 (UNITAR, 1981) [hereinafter ILC: NEW DIRECTION]. See also Thomas M. Franck & Mohamed El Baradei, *Current Development: The Codification and Progressive Development of International Law: A UNITAR Study of the Role and Use of the International Law Commission*, 76 AJIL 630 (1982).

UNCED process were entrusted to intergovernmental bodies like the INC on Climate Change, the INC on Biodiversity and PrepCom. A number of scientific and technical expert working groups were established in the UNCED process, but they were all intergovernmental in nature and were not given an official mandate to prepare draft instruments.¹⁰⁵ In the case of IPCC, the preparatory function was deliberately stripped away because of the demand of developing countries.

The same reasons raised in the case of UNCLOS III for not utilizing ILC could also apply to the UNCED process. The UNCED process involved political, economic and scientific considerations which presumably cannot be dealt with from a purely legal point of view. The under-representativeness and conservative approach of ILC have not been modified in any significant way.¹⁰⁶ It could be concluded, as Dhokalia did, that “[t]he ILC approach appears to work better in the refinements of rules of traditional international law, while special committee approach seems better suited to new international law topics.”¹⁰⁷

Two observations should be made from the comparative analysis of UNCED and UNCLOS III with respect to the issue of utilizing ILC and international lawyers. First, there is a clearly recognizable trend that non-political fora, like ILC,¹⁰⁸ were considered by States, especially developing ones, to be inappropriate for the international law-making process in which important interests of States are at stake. In this sense, this trend is parallel to the States’ tendency to avoid technical and scientific expert bodies like IPCC to take control of the international law-making process. Mexico declared that the elaboration of a convention is mainly a political, not technical, endeavor which, as such, must be directed by governmental representatives.¹⁰⁹

This observation should not be confused with the second observation concerning the role of international lawyers in the international law-making process. International lawyers played a vital role in facilitating the international law-making processes both in UNCLOS III and UNCED. For example, in UNCLOS III, the Private Group on Settlement of Disputes was composed of able international lawyers and was able to produce an

105. However, in the case of Expert WG on Biodiversity, even though the mandate of that group was only to investigate the feasibility of creating a possible convention, it assumed the preparatory function by recommending elements to be included in the convention. Strictly speaking, elements are not a draft therefore not a preparatory work of a convention, but the demarcation line between preparatory work and pre-preparatory work is becoming unclear.

106. ILC membership was enlarged to 34 from 25 in 1981 in order to be more representative of the international community. MCWHINNEY, *supra* note 7, at 102 (explaining the background of this enlargement).

107. Dhokalia, *supra* note 4, at 227.

108. This non-political nature of ILC is, of course, relative since quite a few members of ILC are governmental officials, but they still serve on ILC in their individual capacity and cannot represent the views of their governments.

109. *Report of the Governing Council, Second Special Sess.*, *supra* note 52, at 13-14.

acceptable draft.¹¹⁰ In the fifth session of the Biodiversity Convention negotiation, the Drafting Group of Lawyers was formed to review the text from a legal point of view.¹¹¹ Most of the delegations in both UNCLOS III and UNCED were full of international lawyers.

Therefore, what the States at UNCLOS III and UNCED tried to avoid was not the international lawyers but non-political and non-representative bodies becoming the main fora of international law-making. Though they may no longer be the principal actors in the international law-making process which is becoming more political and intergovernmental from the beginning, international lawyers greatly facilitate the negotiation by providing legal expertise especially in drafting stages of the international law-making process. Also, ILC, with prominent legal experts, may be able to be involved in the international law-making process by supporting the main political intergovernmental law-making forum with specific mandate given to it. This proposition, however, presupposes changes in ILC's structural rigidity and in its working method.¹¹² It must become more responsive to the immediate and specific needs of the main international law-making forum.

2. The Representative Fora

As the Secretary-General's report stated, a preparatory forum entrusted with the preparation of a draft instrument has usually been a restricted body. This feature applies, in a sense, to the UNCLOS III preparatory forum which was limited in its membership. Before the mandate to prepare a draft treaty was entrusted, the Sea-Bed Committee established by the General Assembly was originally composed of only 35 member States and was later increased to 42.¹¹³

When the General Assembly decided to convene a Conference, the Sea-Bed Committee was enlarged by "44 members, appointed by the Chairman of the First Committee in consultation with regional groups and taking into account equitable geographical representation thereon[.]"¹¹⁴ The mandate of this "Enlarged Sea-Bed Committee" was to prepare draft treaty articles for

110. Koh & Jayakumar, *supra* note 102, at 110 (The members included Louis Sohn of the U.S., Galindo Pohl of El Salvador, A.O. Adede of Kenya, Willem Riphagen of the Netherlands).

111. *INC on Biodiversity Report, 5th Sess., supra* note 32, at 7, 16.

112. ILC: NEW DIRECTION, *supra* note 104, at 17-33 (especially the chamber proposal).

113. G.A. Res. 2340 (XXII), U.N. GAOR, 22d Sess., Supp. No. 16, U.N. Doc. A/6716 (1967), *reprinted in* 1 COMMENTARY, *supra* note 3, at 161 (establishing the *Ad Hoc* Sea-Bed Committee). G.A. Res. 2467 (XXIII), U.N. GAOR, 23d Sess., Supp. No. 18, U.N. Doc. A/7218 (1968), *reprinted in* 1 COMMENTARY, *supra* note 3, at 163 (establishing the Committee on the Peaceful Uses of the Sea-Bed and Ocean Floor Beyond the Limits of National Jurisdiction).

114. G.A. Res. 2750 (XXV), U.N. GAOR, 25th Sess., Supp. No. 28, U.N. Doc. A/8028 (1970), *reprinted in* 1 COMMENTARY, *supra* note 3, at 176 (operative ¶ 5 of Resolution C).

the conference on the law of the sea. Thus, it became an official preparatory forum in the UNCLOS III process. This decision is significant in two aspects. First, there was a clear recognition that the participation of States in the preparatory forum must be much larger than the body not entrusted with the preparatory work. The number of participating States became 86 and was later increased by 4.¹¹⁵ Second, when it came to officially deciding the members of a preparatory body, "equitable geographical representation" became the explicit standard for choosing members. In previous resolutions, there were no explicit mention of this standard. Even though the Enlarged Sea-Bed Committee was a "restrictive forum" in the sense that it was not open-ended, as Koh and Jayakumar declared, "[t]he Sea-Bed Committee, although ostensibly engaged in preparatory work, was, in effect, a mini-Conference."¹¹⁶ It was, in fact, quite a big Conference.

This trend for "representative fora" was more conspicuous in UNCED as discussed in Part II, Section B. All the preparatory fora in the UNCED process were open-ended, and States took a step forward by ensuring the representativeness of preparatory fora with financial and other measures to effectuate the participation of developing countries. In the UNCED process, States, especially developing countries, endeavored to enlarge the membership of preparatory fora, and as a result, the preparatory fora were no longer restricted bodies but instead became universally represented bodies.

The universal participation in preparatory fora being achieved, the demand of developing countries for representativeness then turned to the number and the selection of officers of preparatory fora. The developing countries generally favored a large number of officers and demanded strict regional representation in selection of officers and in working groups. For example, the number of Vice-Chairmen for the PrepCom proposed by EC was 8¹¹⁷ and that by G-77 was 21,¹¹⁸ but the final compromise was increased to 39.¹¹⁹ The election of a bureau for INC on Climate Change was originally based on "the need to reflect a balance of interests and specific concern,"¹²⁰ but this was amended to read as follows: "a Bureau . . . shall be elected, each of the five regional groups being represented by one mem-

115. G.A. Res. 2881 (XXVI), U.N. GAOR, 26th Sess., Supp. No. 29, U.N. Doc. A/8429 (1971), reprinted in 1 COMMENTARY, *supra* note 3, at 182 (operative ¶ 3).

116. Koh & Jayakumar, *supra* note 102, at 52.

117. EC Draft of 1989, *supra* note 53 (recommending one Chairman, eight Vice-Chairmen and one Rapporteur).

118. G-77 Draft of 1989, *supra* note 54 (recommending one Chairman, 21 Vice-Chairmen and one Rapporteur).

119. At the General Assembly, the specific number was not agreed upon where the resolution only indicated that vice-chairmen be of "a substantial number." G.A. Res. 44/228, *supra* note 13 at ¶ 3 of Resolution II. At the organization session of the PrepCom, 39 vice-chairmen were elected. *UNCED PrepCom Report, Org. Sess.*, *supra* note 19, at 5 (8 from Latin American and Caribbean States, 11 from African States, 9 from Asian States, 4 from Eastern European States, and 7 from Western European and Other States).

120. 58 Countries Draft of 1990, *supra* note 76, at 5 (¶ 9).

ber.”¹²¹

Therefore, from the comparative analysis of UNCLOS III and UNCED, we are able to discern a clear trend for “representativeness” not only in preparatory fora but also in bureaus and working groups established by them. The preparatory forum must be representative of the international community in terms of quality (geographical representativeness) and quantity (large participation).

3. Continuous Process

The third feature common to the UNCLOS III and UNCED processes was that both failed to prepare a clear draft instrument before the negotiation started. Thus, from a functional point of view as well there was no clear distinction between the preparatory forum and the negotiating or “adoption” forum.

In the UNCLOS III process, the Enlarged Sea-Bed Committee could not produce a single preparatory document in the set of draft treaty articles,¹²² and still the General Assembly proceeded to convene the Conference in 1973, as planned.¹²³ It was only after the end of the third session of the Conference in 1975, when the Single Negotiating Text was worked out, that the Conference had a single preparatory document.¹²⁴ It could be argued that the negotiation had been effectively initiated from this moment,¹²⁵ and the Conference itself had undertaken the function of preparing a draft instrument. Alternatively, it could be argued that the preparatory process had started in 1970 with the establishment of the Enlarged Sea-Bed Committee, and this process continued right into the first three sessions of the Conference. Either way, the structural change of the forum had only a minimal significance regarding the functional continuity of the overall international law-making process.¹²⁶

This feature can be more clearly recognized in the UNCED process

121. G.A. Res. 45/212, *supra* note 26, at ¶ 11. At the second session of the Legal WG on Biodiversity, the rules of procedure, which required a Bureau to be elected with due regard to the principle of equitable geographical representation, was adopted and consequently the U.S. dropped out from the Bureau. *Legal WG on Biodiversity Report, 2d Sess., supra* note 32, at 7-8.

122. Koh & Jayakumar, *supra* note 102, at 50.

123. G.A. Res. 3067 (XXVIII), U.N. GAOR, 28th Sess., Supp. No. 30, U.N. Doc. A/9030 (1973), *reprinted in* INTERNATIONAL LAW AND GLOBAL CLIMATE CHANGE, *supra* note 25, at 188 (¶ 2).

124. Koh & Jayakumar, *supra* note 102, at 51.

125. Edward Miles complained of the “almost unending repetition of national positions” in the first two sessions of the Conference. Edward Miles, *An Interpretation of the Caracas Proceedings*, in *LAW OF THE SEA: CARACAS AND BEYOND* 39, 40 (Law of the Sea Institute, 1975).

126. *See* Koh & Jayakumar, *supra* note 102, at 52 (arguing that one of the reasons that the General Assembly proceeded to convene the Conference without a draft was that many delegations felt that the Conference had already commenced, *de facto*, with the 1970 General Assembly resolution and the enlargement of the Sea-Bed Committee, and the actual convening of the Conference was more of a formality).

where the preparatory and the negotiation processes were both undertaken in universally represented fora. For example, the PrepCom was formally the preparatory forum for UNCED, but substantively it cannot be distinguished from the Conference itself as the preparation and the negotiation were simultaneously undertaken in both the PrepCom and the Conference.¹²⁷ In the Climate Convention process, there was no separate "adoption forum" since the INC on Climate Change had functioned both as preparatory and adoption fora.¹²⁸

Therefore, from the comparative analysis of UNCED and UNCLOS III processes, one can recognize the trend that the preparatory process and the negotiation and adoption processes are becoming inseparable and continuous. It would be better to view the work by the preparatory fora and the negotiation and adoption fora as a continuous international law-making endeavor rather than to artificially distinguish them.

By analyzing the international law-making processes of UNCLOS III and UNCED, we are able to discern some important features and trends in the international law-making process in the UN. First, there was a clear recognition among States that the international law-making process is a political process and should therefore be entrusted to an intergovernmental forum. Second, that political body had to be representative of the international community, both qualitatively and quantitatively, to be entrusted with the preparation of international legal instruments. Third, the international law-making process has become a continuous process as both the preparation and negotiation-adoption functions were undertaken in a representative forum.

These features and trends can be characterized as the democratization of the international law-making process. Every State, as a sovereign State without distinction to its political, economic and military powers, and technological developments, has the right to participate from the beginning in the international law-making process. The recent developments signify the increasing recognition among States that they may even have the obligation to ensure others' right to participate, especially developing countries. The emphasis on the political and representative nature of the preparatory fora by developing countries and the general acceptance of it by developed countries have consolidated the trend toward the democratization of the international

127. The Agenda 21 and the Forests Statement were heavily bracketed indicating disagreements at the end of the drafts submitted to the Conference and they cannot be characterized as a set of agreed draft texts for adoption. See U.N. Doc. A/CONF. 151/4 (Part I-IV)(1992) (Draft Agenda 21) and U.N. Doc. A/CONF. 151/6 (1992) (Draft Forests Statement). On the other hand, the Rio Declaration contained no bracket and was adopted as it was at the Conference. See U.N. Doc. A/CONF. 151/5 (1992) (Draft Rio Declaration).

128. The issue of whether a separate conference for adoption of the Convention was necessary became a question at the first part of the fifth session of the INC, but the INC Chairman explained it was not necessary. *INC on Climate Report, 5th Sess., supra* note 28, at 9.

law-making process.¹²⁹

The democratization of the international law-making process surely contributes to the legitimacy of the process and consequently its outcome. This in turn contributes to a wider acceptance of the international legal instruments created in such a process. The democratization, however, has a negative effect on the international law-making process which is similar to any domestic legislative process. The efficiency and the protection of minorities become the primary concern. Through the experience of two conferences, the international community has devised some negotiating techniques to address these problems, which I shall discuss in the next section.

B. Modality of Negotiation: Comprehensive or Coordinated Approach

1. UNCLOS III: Comprehensive Approach

The comprehensive approach to the international law-making process in UNCLOS III was effectively determined by the General Assembly and included the following four factors. First, all the interrelated issues would be dealt with together as a whole.¹³⁰ Second, the outcome of the conference would be in a single instrument.¹³¹ Third, that instrument would be a legally binding treaty. Fourth, the treaty would contain detailed provisions.¹³²

The decision to pursue the process in this manner was the result of a skillful diplomacy of Latin American and other coastal States.¹³³ Also, there was pressure among the delegates that they should not pursue the separate approach utilized in the first Law of the Sea Conference in 1958, which resulted in four separate conventions, and States ratifying only those which favored their particular interests.¹³⁴ Thus, the comprehensive approach was deliberately chosen by the negotiators at UNCLOS III.

However, because of this approach, there were some undesirable side-

129. This is a horizontal democratization on the governmental level. The increasing participation of NGOs points to the direction of vertical democratization of international law-making process, but as I have discussed above, their involvement is still indirect. Therefore, I would like to confine myself, at this time, to the discussion concerning horizontal democratization of international law-making process.

130. G.A. Res. 2750 C (XXV), *supra* note 114, at third preambular paragraph (which calls for the holding of "a comprehensive conference on the law of the sea").

131. G.A. Res. 3067 (XXVIII), *supra* note 123, at ¶ 3 (which states that the Conference's mandate shall be to adopt "a convention dealing with all matters relating to the law of the sea").

132. The fourth factor was the result of a negotiating strategy of the United States in order to strictly limit the power of the Authority.

133. Koh & Jayakumar, *supra* note 102, at 36-37.

134. James K. Sebenius, *Crafting a Winning Coalition: Negotiating a Regime to Control Global Warming*, in GREENHOUSE WARMING: NEGOTIATING A GLOBAL REGIME 69, 76 (World Resources Institute, 1991). See also Robert D. Eustis, Note: *Procedures and Techniques of Multinational Negotiation: the LOS III Model*, 17 VA. J. INT'L. 217, 230-231 (1977).

effects which the negotiators did not foresee. First, the length of the Conference—nine years—was directly attributable to this approach. The agenda contained 25 very broad issues, and the decision to create a legally binding treaty for all these issues made States more cautious in the negotiation. Because of “the theory of interrelationship,” delegates resorted to delaying tactics in the negotiation of one issue hoping to obtain concessions in negotiations of other issues. Without a clear time limit, the result of all this was the longest intergovernmental law-making negotiation in the history of the UN.¹³⁵

The second side-effect was that the negotiation became so complicated that it was almost unmanageable.¹³⁶ Because of “the theory of interrelationship,” there was a wide variety of trade-offs between related and unrelated issues. The Conference agreed to work on the basis of a “package-deal” so as to stamp an official seal on those trade-offs made among the delegates. There were a dozen official and private negotiating groups trying to work out these packages, usually at informal meetings.¹³⁷ The negotiation at UNCLOS III was so complex that one observer cried out that “we should *never again* convene a conference of the size and complexity of the UNCLOS III.”¹³⁸

In short, the comprehensive approach utilized at UNCLOS III was inefficient. The negotiators at UNCED avoided the precedent of UNCLOS III and established a more efficient approach which could be called a “coordinated approach.”

2. UNCED: Coordinated Approach

a. Avoiding the Precedent

At the beginning of the UNCED process, there was an irresistible trend for a comprehensive approach advanced generally by developing countries based on the “interrelationship argument.” Based on the theory of interrelationship between environment and development which was specifically recognized by G.A. Resolution 44/228,¹³⁹ the developing countries tried to link the issues of climate change and biodiversity with the broader context of environment and development and to give the PrepCom overall control

135. For more thorough analysis, see Koh & Jayakumar, *supra* note 102, at 39-42.

136. Miles, *supra* note 125, at 40. See also Eustis, *supra* note 134, at 230.

137. See generally Koh & Jayakumar, *supra* note 102, at 87-99, 104-112.

138. Miles, *supra* note 125, at 40 (emphasis in the original).

139. G.A. Res. 44/228, *supra* note 13, at ¶ 4-6 and 11 of Resolution I (The importance of this resolution is signified by continuous reference to it by developing countries). *E.g.*, Statement by Algeria, U.N. GAOR 2d Comm., 45th Sess., 41st mtg., at 11, U.N. Doc. A/C.2/45/SR.41 (1990). Additionally, the agenda of the PrepCom was named “Preparation for the UNCED on the Basis of General Assembly Resolution 44/228 and Taking into Account Other Relevant General Assembly Resolutions” by the demand of developing countries.

over these issues.¹⁴⁰ The draft resolution submitted by G-77 identified the objective of the Conference to “adopt formal agreements on specific commitments,”¹⁴¹ implying that the final outcome would be legally binding treaties with specific obligations. Thus, the developing countries saw advantages in the comprehensive approach even in the UNCED process.

The developed countries and the academic circle¹⁴² were generally opposed to the comprehensive approach utilized in UNCLOS III process. For example, the United States argued that the negotiations on a climate convention should be conducted in a focused and efficient manner and therefore should take place independent of the work by the PrepCom.¹⁴³ The draft resolution submitted by EC contained a provision affirming that “the main objective of the Conference should be to agree on strategies and measures,”¹⁴⁴ specifically avoiding the reference to legally binding instruments.

Thus, the developed countries considered the PrepCom inappropriate for negotiations on legally binding conventions on climate change and biodiversity and tried to entrust the PrepCom with only the preparation of non-binding instruments. They endeavored to separate the preparatory fora for the two conventions from the PrepCom.

On this issue of modality of negotiation, the developed countries’ argument prevailed. In the final form of G.A. Resolution 44/228, any mention of “formal agreements” was deleted.¹⁴⁵ The conventions on climate change and biodiversity were to take the form of “framework” or “umbrella,”¹⁴⁶ signifying that only general principles and obligations would

140. U.N. GAOR 2d Comm., 45th Sess., 41st mtg., at 6, U.N. Doc. A/C.2/45/SR.41 (1990) (The Brazilian Representative stating that the negotiation on a climate convention should be closely linked to the work of PrepCom). See also U.N. GAOR 2d Comm., 45th Sess., 40th mtg., at 16-17, U.N. Doc. A/C.2/45/SR.40 (1990) (The Chinese Representative stating that the PrepCom should ensure negotiations on legal instruments be consistent with the theme and principles of the Conference).

141. G-77 Draft of 1989, *supra* note 54 at ¶ 11 of Resolution II.

142. EDITORS OF THE HARVARD LAW REVIEW, TRENDS IN INTERNATIONAL ENVIRONMENTAL LAW 53-54 (American Bar Association, 1992) (commenting that it may be more effective to reach several agreements on narrow issues than to attempt to negotiate one comprehensive agreement). Elliot Richardson, *Elements of a Framework Treaty on Climate Change, in GREENHOUSE WARMING: NEGOTIATING A GLOBAL REGIME* 25, 27 (World Resources Institute, 1991).

143. U.N. GAOR 2d Comm., 44th Sess., 51st mtg., at 14, U.N. Doc. A/C.2/44/SR.51 (1989). See also U.N. GAOR 2d Comm., 45th Sess., 49th mtg., at 3-5, U.N. Doc. A/C.2/45/SR.40 (1990) (The New Zealand representative expressing the view that the preparation for Climate Convention and Biodiversity Convention should be separate from the Conference preparation).

144. EC Draft of 1989, *supra* note 53, at 41 (¶ 3).

145. G.A. Res. 44/228, *supra* note 13 at ¶ 15(d) and (f) of Resolution I.

146. For the Climate Convention, see UNEP Governing Council Decision 15/36, *Report of the Governing Council, 15th Sess.*, *supra* note 31, at 166 (¶ 8); G.A. Res. 44/207, *supra* note 64 at ¶ 10; and G.A. Res. 45/212, *supra* note 26 at ¶ 1 (stating the mandate of the INC on Climate Change as to prepare an effective framework convention on climate change).

For the Biodiversity Convention, see UNEP Governing Council Decision 14/26, *Report of the Governing Council, 14th Sess.*, *supra* note 25, at 78 (¶ 1). Developed countries supported

be set out in treaties, with an institutional mechanism to develop detailed obligations in the future.¹⁴⁷ Most significantly, three separate fora were established. Each of the convention-preparation fora, one for the Climate Convention and another for the Biodiversity Convention, dealt only with one subject and was deliberately separated from the PrepCom.

Thus, the developed countries succeeded in avoiding the precedent of the inefficiency of the comprehensive approach utilized in UNCLOS III. The UNCED process became a multi-fora international law-making process with three separate fora each dealing with different subjects. The separation of the international law-making forum would contribute to a more efficient negotiation, but the UN tried to coordinate them institutionally¹⁴⁸ so as to obtain maximum efficiency in the overall law-making process.

b. The Coordinated Approach

At its organizational session, the PrepCom decided to establish appropriate guidelines for the provisions of progress reports on the negotiations taking place under the auspices of UNEP.¹⁴⁹ At its first session, the Secretary-General of UNCED was requested to closely follow the work on both the climate change and the biodiversity negotiation processes.¹⁵⁰

Based on this information, the Secretary-General of UNCED was requested to submit a report on the contribution of the PrepCom to the negotiations held in other fora. This report became the cornerstone of the coordinated approach of UNCED.¹⁵¹

a framework convention. *Proceedings of the Ad Hoc Working Group on the Work of Its First Session*, U.N. Doc. UNEP/Bio.Div.1/Inf.2, at ¶ 88 (U.S.), ¶ 89 (Netherlands) and ¶ 90 (Norway) (1989).

147. David A. Wirth & Daniel A. Lashof, *Beyond Vienna and Montreal: A Global Framework Convention on Greenhouse Gases*, 2 *TRANSNAT'L. L. & CONTEMP. PROBS.* 79, 81-83 (1992). The idea of "framework" came from the precedent of the ozone protection convention and protocols. *Vienna Convention for the Protection of the Ozone Layer*, adopted Mar. 22, 1985, reprinted in 26 *I.L.M.* 1516, 1529 (1987). *Montreal Protocol on Substances That Deplete the Ozone Layer*, adopted Sept. 16, 1987, reprinted in 26 *I.L.M.* 1541, 1550 (1987), amended and adjusted, reprinted in 30 *I.L.M.* 539 (1991).

148. The UN endeavor was an institutional coordination and was not a substantive coordination. In other words, as will be discussed below, the three fora were designed to coordinate in respect to the issues dealt with in each forum and with respect to the function of each forum. There was no coordination with respect to the substantive provisions and specific phrases. In fact, there are many inconsistencies among the final instruments created in the three fora. See Marc Pallemerts, *International Environmental Law From Stockholm to Rio: Back to the Future?* 1 *REV. EUR. COMMUNITY & INT'L ENV. L.* 254, 257 (1992) (citing discrepancies between the Climate Convention and the Biodiversity Convention).

149. *UNCED PrepCom Report, Org. Sess.*, supra note 19, at 10.

150. The PrepCom Decision 1/11 on Climate Change, *UNCED PrepCom Report, 1st Sess.*, supra note 20, at 26 (¶ (a)). See also *id.* The PrepCom Decision 1/16 on Conservation of Biological Diversity, at 31 (¶ (a)).

151. *Report of the Secretary-General of the Conference: Preparation for the United Nations Conference on Environment and Development on the Basis of General Assembly Resolution 44/228 and Taking Into Account Other Relevant General Assembly Resolutions*, U.N. Doc. A/CONF. 151/PC/14, at 12-13 (1991).

The report concluded that "the PrepCom's role can be seen as one of providing broad and complementary support to these negotiating process[es]."¹⁵² The PrepCom could support the INC on Climate Change and the INC on Biodiversity in two respects. First, as a forum to create non-legally binding instruments, the PrepCom could incorporate those issues which States were not yet prepared to legally commit themselves.¹⁵³ This kind of coordination can be characterized as the division of functions among the international law-making fora, some of which deal with non-binding instruments and others deal with legally binding instruments. The PrepCom, in order to effectively fulfill this task, decided not to duplicate or pre-empt the work of the convention processes.¹⁵⁴

Second, the PrepCom, from a broader view on the environment and development, could recommend the issues that should be dealt with by a particular negotiating forum, or could combine the issues which were common to two negotiating fora. This kind of coordination can be characterized as the dividing or combining of issues among the international law-making fora. For example, the INC on Climate Change at its third session decided to refer the issue of forestry, which was common to both the Climate Change and Biodiversity, to the PrepCom.¹⁵⁵ Also, the negotiations on the financial interim mechanisms were coordinated by the PrepCom, the INC on Climate Change and the INC on Biodiversity.¹⁵⁶

Therefore, the UNCED process was designed to be a coordinated multi-fora process in which separate negotiating fora supposedly cooperate with each other to produce universally acceptable instruments with maximum efficiency. How far this coordination was achieved in actual practice is difficult to evaluate, but at least the report by the Secretary-General of UNCED demonstrated the need for such a coordination in multi-fora international law-making processes.

152. *Id.* at 13.

153. *Id.* at 12 (The Secretary-General stated that "while many of the specific programmes and actions needed will ultimately be mandated and carried out pursuant to the provisions of legally binding conventions, the process of developing and implementing them *on a voluntary basis* should proceed in parallel with the negotiating process." He continued that "*many such programmes and actions will be of such a nature that Governments will be prepared, and in some cases may even prefer, to proceed with them on a voluntary basis before they become mandatory under a legal agreement.*") (emphasis added).

154. The PrepCom Decision 2/8 on Climate Change, *UNCED PrepCom Report, 2d Sess., supra* note 20, at 31; The PrepCom Decision 2/9 on Biodiversity, *id.* at 32; The PrepCom Decision on Protection of the Atmosphere, *UNCED PrepCom Report, 3rd Sess., supra* note 20, at 65; The PrepCom Decision on Conservation of Biological Diversity: Options for Agenda 21, *id.* at 72.

155. *INC on Climate Report, 3d Sess., supra* note 28, at 21.

156. GLOBAL AGENDA: ISSUES BEFORE THE 47TH GENERAL ASSEMBLY OF THE UNITED NATIONS 184 (John Tessitore & Susan Woolfson eds., 1992).

3. Achieving A Consensus

a. The Consensus Procedure At UNCLOS III

As UNCLOS III became a conference with universal participation, the minority, mostly developed Western States, made every effort to avoid or delay the taking of decisions by voting in which they would clearly be outnumbered. The hard-fought negotiation on the rules of procedure¹⁵⁷ resulted in a consensus procedure with elaborate rules of decision-making.¹⁵⁸ The Gentlemen's Agreement approved by the General Assembly was annexed to the rules of procedure of the Conference. Its operative paragraph stated as follows: "the Conference should make every effort to

157. See generally Miles, *supra* note 125, at 47-55.

158. See U.N. Doc. A/CONF. 62/30 and Rev. 1-3 (1974, 1975, and 1980).

Rule 37 (1) Before a matter of substance is put to the vote, a determination that all efforts at reaching general agreements have been exhausted shall be made by the majority specified in paragraph 1 of rule 39.

(2) Prior to making such a determination the following procedures may be invoked:

(a) When a matter of substance comes up for voting for the first time, the President may, and shall if requested by at least 15 representatives, defer the question of taking a vote on such matter for a period not exceeding 10 calendar days. The provision of this sub-paragraph may be applied only once on the matter.

(b) At any time the Conference, upon a proposal by the President or upon motion by any representative, may decide, by a majority of the representatives present and voting, to defer the question of taking a vote on any matter of substance for a specified period of time.

(c) During any period of deferment, the President shall make every effort, with the assistance as appropriate of the General Committee, to facilitate the achievement of general agreement, having regard to the over-all progress made on all matters of substance which are closely related, and a report shall be made to the Conference by the President prior to the end of the period.

(d) If by the end of a specified period of deferment the Conference has not reached agreement and if the question of taking a vote is not further deferred in accordance with subparagraph (b) of this paragraph, the determination that all efforts at reaching general agreement have been exhausted shall be made in accordance with paragraph 1 of this rule.

(e) If the Conference has not determined that all efforts at reaching agreement had been exhausted, the President may propose or any representative may move, notwithstanding rule 36, after the end of period of no less than five calendar days from the last prior vote on such a determination, that such determination be made in accordance with paragraph 1 of this rule; the requirement of five days' delay shall not apply during the last two weeks of a session.

(3) No vote shall be taken on any matter of substance less than two working days after an announcement that the Conference is to proceed to vote on the matter has been made, during which period the announcement shall be published in the Journal at the first opportunity.

Rule 39 (1) Decisions of the Conference on all matters of substance, including the adoption of the text of the Convention on the Law of the Sea, as a whole, shall be taken by a two-thirds majority of the representative present and voting, provided that such majority shall include at least a majority of the States participating in the session of the Conference.

(2) Rule 37 shall not apply to the adoption of the text of the Convention as whole. However, the Convention shall not be put to the vote less than four working days after the adoption of the Conference.

(3) Except as otherwise specified in these rules, decisions of the Conference on all matters of procedure shall be taken by a majority of the representatives present and voting.

(4) If the question arises whether a matter is one of procedure or of substance, the President shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting. *Id.*

reach agreement on substantive matters by way of consensus and there should be no voting on such matters until all efforts at consensus have been exhausted." Undoubtedly, this unique decision-making procedure was one of the main reasons for the very long duration of UNCLOS III.¹⁵⁹

There were other negotiating techniques devised during UNCLOS III to reach a consensus. One was the "package-deal" technique. The "package-deal" was designed to recognize and formalize the trade-offs made by negotiators among related and unrelated issues dealt with at UNCLOS III. As discussed above, because of this technique, the negotiators resorted to delaying tactics and the issues became so complexly interwoven that the negotiation was no longer manageable. Even though some argue that the consensus procedure and the "package-deal" were integrally linked at UNCLOS III,¹⁶⁰ the "package-deal" was more a result of the multi-issue comprehensive approach rather than that of the consensus procedure.

The second technique was the attribution of great authority to key individuals, namely the President of the Conference and the Chairmen of the three main committees.¹⁶¹ These key individuals were given the authority to prepare common negotiating texts in order to facilitate the negotiation.¹⁶² The positive impact of this technique was, as expected, to foster real negotiation which was lacking until this technique was devised. But there was also serious backlash, causing the Conference to later decide to limit its application.¹⁶³

Since the Chairmen could draft and revise texts within their individual capacity, they were not required to consult key negotiators and they might upset compromises reached in some other negotiating groups.¹⁶⁴ This happened when the First Committee's Chairman, Paul Engo, introduced a revised text on the deep sea-bed mining regime in consultation with a handful of his friends, mostly from developing countries. He ignored the fruitful negotiation and the compromise already reached in the Evensen Group. The revised text was so inclined to the demands of developing countries that the United States and other developed countries declared it fundamentally unacceptable.¹⁶⁵ The United States tried hard to redress the imbalance

159. Koh & Jayakumar, *supra* note 102, at 104.

160. Buzan, *supra* note 6, at 339. See also G. Plant, *The Third United Nations Conference on the Law of the Sea and the Preparatory Commission: Model for United Nations Law-Making?* 36 INT'L & COMP. L.Q. 525, 528-31 (1987).

161. Koers, *supra* note 2, at 28-30.

162. Plant, *supra* note 160, at 535. See also Buzan, *supra* note 6, at 333-334 (discussing the background of choosing this technique at UNCLOS III).

163. In 1978, the authority of the individual presiding officers was curtailed by forming and entrusting the function of revisions to the "collegiality" composed of the President, the three Committee Chairmen, the Rapporteur-General and the Chairman of the Drafting Committee. Plant, *supra* note 160, at 537.

164. *Id.* at 535.

165. The account of this incident and the angry reaction of the United States were interestingly depicted in MARKUS G. SCHMIDT, COMMON HERITAGE OR COMMON BURDEN? 132-138 (1989).

reflected in the text but could never achieve it. This was an important reason for its refusal to accept the Law of the Sea Convention.

With these experiences still vividly remembered, the negotiators at UNCED tried to improve some of the aspects of the consensus procedure utilized at UNCLOS III in order to achieve more efficient law-making process in UNCED.

b. The "Revised" Consensus Procedure at UNCED

In the UNCED process, the rules of procedure and the election of officers were also controversial issues. The general trend that can be recognized from the three processes was to keep the consensus procedure but, at the same time, to somewhat facilitate the decision-taking by vote. For example, the rules of procedure of the Conference drafted by the PrepCom recognized the need to achieve a consensus but avoided elaborate provisions regarding the decision-making by simply referring to the General Assembly rules of procedure.¹⁶⁶ The General Assembly requires two-thirds majority only on decisions on "important questions." The same trend could be seen in the INC on Climate Change¹⁶⁷ and in the INC on Biodiversity.¹⁶⁸ These provisions provide modest pressure on the negotiators, thus facilitating the effort to reach a consensus.

The need for more efficient decision-making at UNCED was the result of time limitations set on each of the three processes. This is another improvement from UNCLOS III where there was no such limitation. UNCED was specifically limited to a two week duration by G.A. Resolution 44/228.¹⁶⁹ Each session of the INC on Climate Change was also limited to a two week duration,¹⁷⁰ and the Convention had to be ready by the

166. Provisional Rules of Procedure, Article 33 (best endeavors to accomplish general agreement) and Article 35 (decision-making in accordance with the GA rules of procedure), *Note by the Secretary-General of the Conference: Adoption of the Rules of Procedure*, U.N. Doc. A/CONF.151/2, at 10 (1992). The secretariat's draft required two thirds vote for every substantive decision. *Report of the Secretary-General of the Conference: Draft provisional agenda, organization of work and draft rules of procedure of the Conference*, U.N. Doc. A/CONF.151/PC/56, at 13-14 (1991).

167. The draft submitted by the secretariat required two thirds vote for all substantive matters. *Note by the Secretariat: Organizational Matters: Rules of Procedure*, U.N. Doc. A/AC.237/2, at 8 (1991). But it was again changed as to conform with the GA rules. *Rules of Procedure*, U.N. Doc. A/AC.237/5, at 7-8 (1991).

168. *Legal WG on Biodiversity Report, 2d Sess., supra* note 32, Annex, at 26. (Rule 32: The meeting should make every effort to reach consensus on substantive matters; Rule 34(1): Subject to Rule 32, decisions of the meeting on substantive matters shall be taken by a two-thirds majority of the Parties present and voting).

169. G.A. Res. 44/228, *supra* note 13 at ¶ 1 of Resolution I.

170. G.A. Res. 45/212, *supra* note 26 at ¶ 6.

Conference. The Biodiversity process had the same restraints.¹⁷¹ The time limitation, if fair and adequate, could also facilitate negotiation toward consensus by providing appropriate pressure on the negotiators.

Another improvement at UNCED, which would reinforce the effort to achieve consensus with maximum efficiency, was the attribution of authority to representative bodies rather than to individuals. In the long run, a discreet deliberation by key representatives would contribute more to an efficient law-making process than a hasty decision by an individual would. For example, the INC on Climate Change utilized the system of co-chairmanship for its two working groups.¹⁷² Even though this was a political decision to resolve a deadlock, this system worked very well as at least one each from developed and developing countries could participate in the formulation of important documents.¹⁷³ This kind of technique could contribute to increasing confidence of negotiators in working groups and in the negotiating forum itself.

Thus, in the UNCED process, the protection of the minority in the universally participated law-making process was ensured by the consensus procedure, and at the same time, the efficiency of the process was achieved by the multi-*fora* approach and other measures to facilitate the negotiation. All these efforts at UNCED should be looked at as making the international law-making process in the UN more efficient and its content more reflective of the real interests of the international community, without sacrificing the universality and representativeness which are indispensable factors for the creation of universally applicable legal regimes for international cooperation.

C. The Follow-Up Mechanisms: Continuation of the Process

Before concluding, a few words should be said about the follow-up mechanisms in order to understand the overall trends of the international law-making process in the United Nations.

The International law-making process of UNCLOS III did not end at the final session of the Conference in December 1982. The Conference established the Preparatory Commission For the International Sea-Bed Authority and For the International Tribunal For the Law of the Sea (Sea-

171. Clare Shine & Palitha T.B. Kohona, *The Convention on Biological Diversity: Bridging the Gap Between Conservation and Development*, 1 REV. EUR. COMMUNITY L. & INT'L ENV. L. 278, 282 (1992) (stating that the PrepCom set the deadline of June 1992 and that this served to put constructive pressure on negotiators).

172. *INC on Climate Report, 2d Sess.*, *supra* note 28, at 6-7 (Japan and Mexico as Co-Chairmen of Working Group I, and Canada and Vanuatu as Co-Chairmen of Working Group II).

173. For example, the Co-Chairmen of WG I were given the authority to prepare "a new compilation of elements." *INC on Climate Report, 2d Sess.*, *supra* note 28, at 10-12.

Bed PrepCom)¹⁷⁴ with the mandate to draft rules and procedures for the Authority and to exercise the powers and functions assigned by the resolution concerning pioneer activities in the Area.¹⁷⁵ The Sea-Bed PrepCom, with the participation of all the signatories of the Convention, has been working to establish an universally acceptable legal regime, which the Conference could not quite achieve, by formulating specific provisions which take into account new concepts and economic and technological developments.¹⁷⁶

The international law-making process of UNCED is also continuing. The Economic and Social Council of the UN, at the request of the General Assembly,¹⁷⁷ established the Commission on Sustainable Development in 1993 with the mandate to effectively follow-up the Conference and to examine the progress of the implementation of Agenda 21.¹⁷⁸ Through the work of this Commission, some of the principles enunciated in the Rio Declaration and the Forests Statement could be clarified and some of the provision of Agenda 21 might be incorporated in legally binding instruments in the future.

The INC on Climate Change adopted a resolution concerning interim arrangements at its fifth session.¹⁷⁹ It provided that the INC would again be convened by the Secretary-General to prepare for the first session of the Conference of the Parties of the Climate Convention and, accordingly, the sixth session of the INC on Climate Change was held in December 1992¹⁸⁰ and the seventh session was held in March 1993. It is very possible that the INC might be able to agree on protocols even before the Convention enters into force.

It is, therefore, another feature of the recent international law-making

174. Resolution I: Establishment of the Preparatory Commission for the International Sea-Bed Authority and For the International Tribunal for the Law of the Sea, *reprinted in* 1 COMMENTARY, *supra* note 3, at 423.

175. Resolution II: Governing Preparatory Investment in Pioneer Activities Relating To Polymetallic Nodules, *reprinted in* 1 COMMENTARY, *supra* note 3, at 425.

176. See generally *Progress Report of the Chairman of the Preparatory Committee for the International Seabed Authority and For the International Tribunal for the Law of the Sea on the Work of the Commission*, U.N. Doc. LOS/PCN/L.103, at 11-50 (1992) (This is a summary of 10 years of work of the Sea-Bed PrepCom). Regarding the pioneer activities the Sea-Bed PrepCom reached an understanding which takes into account the economic reality of the issue. For example, the self-selection of the area to be reserved for the Authority was adopted even though Resolution II requires the PrepCom to designate those areas. More significantly, the annual fee which the registered investors must pay under the resolution was waived on the condition that they satisfy obligations concerning training and exploration. *Id.* at 6-7.

177. See generally G.A. Res. 47/191, *supra* note 99.

178. The Commission is composed of 53 Member States and elected Razali Ismaili of Malaysia as its Chairman. *Report of the Commission on Sustainable Development on Its Organizational Session*, U.N. Doc. E/1993/25, E/CN.17/1993/3, at 9 (1993).

179. *Resolution Adopted by the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change* (INC/1992/1), U.N. Doc. A/AC.237/18 (Part II)/Add.1, at 28 (1992).

180. See *Report of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change on the Work of Its Sixth Session Held at Geneva From 7 to 10 December*, U.N. Doc. A/AC.237/24 (1993).

processes in the UN that the instruments so created establish the fora to continue the process of international law-making with more defined directions and within the framework of the mother instruments. The international law-making process in the UN is an incessant process towards creating a better and more acceptable international cooperative legal regime.

IV. CONCLUSIONS

The present article analyzed, through the comparative analysis of UNCED and UNCLOS III, the major features and trends of the process of international law-making in the United Nations in order to extrapolate the organizational and procedural factors which the States consider as contributing to the legitimacy of the process. The legitimate process yields legitimate outcome, and that in turn contributes to the wider, hopefully universal, acceptance of international legal instruments which the present international community desperately needs.

It was the demand of the developing countries, who have been left out of the law-making process until recently, which established the principle of effective participation in the international law-making process in order to make the law-making forum representative of the international community, both quantitatively and qualitatively. The representative forum in which every State is treated politically equal with respect to the making of international law is the foundation of the democratization of the international law-making process. The United Nations, and especially the conferences convened under its auspices, becomes the primary choice for such a forum.

Combined with the general acceptance of this principle by developed countries, the democratization of the international law-making process contributes to the wider acceptance of legal instruments created in such a process.

It was the demand of the minority developed countries, who were outnumbered in the democratized international law-making process, which promoted the development of a more efficient and interest-reflecting modality of negotiation in the international law-making process. The separate-but-coordinated approach with the "revised" consensus procedure was devised to make the international law-making process more efficient and, at the same time, to adequately protect the minority. These techniques facilitate the negotiation and the achievement of consensus in an universally participated law-making forum. This, combined with the general acceptance by developing countries, contributes to the wider acceptance of legal instruments created in such a forum.

The achievement of the delicate balance between democratization and efficiency in the international law-making process depends on the diplomatic skill and the cooperative spirit of the negotiators in the conferences.

Even though the international law-making process has become a political endeavor from its inception with State representatives playing the primary negotiating role, the importance of participation of international lawyers and

NGOs has also increased in recent international law-making processes. The participation of NGOs may especially be considered an important factor to be taken into account for the concept of the democratization of the international law-making process.

The international law-making process in the United Nations is an incessant process, the dynamics of which has significant impact on the international community. The changes in the international community influence the principles and modality of the international law-making process, and the changes in the international law-making process in turn become the impetus for further changes in the international community.¹⁸¹ A better understanding of the international law-making process sharpens our observation of the international community.

181. *See generally* CHANGE AND STABILITY IN INTERNATIONAL LAW-MAKING (Antonio Cassese & Joseph H.H. Weiler eds., 1989).

Table (1)

THE UNCED PROCESS

	UNCED	Climate Change	Biodiversity	Other
<u>1987</u>				
April	Our Common Future <i>[Declaration and convention by GA]</i>	Our Common Future <i>[Convention]</i>	Our Common Future <i>[Convention]</i>	
June		UNEP GC Dec.14/20 <i>[need of intergov'tal mechanism]</i>	UNEP GC Dec.14/26 <i>[Expert WG for umbrella convention]</i>	
Dec.	GA Res.42/186 <i>[Env. Persp.]</i> GA Res.42/187 <i>[Report of the World Comm.]</i>	GA Res.42/184 <i>[prob. of climate change]</i>	GA Res.42/184 <i>[takes note of GC Dec.]</i>	
<u>1988</u>				
June				World Conf. on the Changing Atmosph., Toronto
Nov.		IPCC 1st Sess. <i>[est. 3 working groups]</i>	UNEP Exp.WG on Biodiversity, 1st Sess.	
Dec.	GA Res.43/196 <i>[decide to discuss UNced next session]</i>	GA Res.43/53 <i>[conv. on climate change mentioned]</i>		
<u>1989</u>				
Feb.				Mig of Legal & Policy Experts, Ottawa. Conf. of Developing countries on climate change.
Mar.				Hague Conf. on Atmosphere.
May	UNEP GC Dec.15/3 <i>[UN conf. on env. & dev.]</i>	UNEP GC Dec.15/36 <i>[preparation for conv.]</i>	UNEP GC Dec.15/34 <i>[est.of Legal WG]</i>	
June		IPCC 2nd Sess.		EC Council Res.
July				Paris Summit.
Sept.				Non-Aligned Count. Conf. Tokyo Conf. on Global Env.
Nov.				Ministerial Conf., Noordwijk.
Dec.	GA Res. 44/228 <i>[UNCED. PrepCom]</i>	GA Res.44/207 <i>[GA as appropriate forum]</i>	GA Res.44/229 <i>[welcome GC dec.]</i>	Cairo Compact.
<u>1990</u>				
Feb.		IPCC 3rd Sess.	UNEP Exp.WG on Biodiversity 2nd Sess.	
Mar.	UNCED PrepCom Org Sess.			
May				Bergan Ministerial Declaration.
June		IPCC WG3 Response Strategy Report.		

	(UNCED)	(Climate Change)	(Biodiversity)	(Other)
<u>1990</u>				
July			UNEP Exp.WG on Biodiversity 3rd Sess. <i>[elements of conv.]</i>	Houston Summit
Aug.	UNEP GC Dec.SS.II/9 <i>[priority of issues at UNCED]</i>	UNEP GC Dec.SS.II/3 <i>[WG for convention preparation]</i>	UNEP GC Dec.SS.II/5 <i>[progress report]</i>	
	UNCED PrepCom 1st Sess. <i>[more research]</i>	UNCED PrepCom Dec 1/11 <i>[control over UNEP work]</i>	UNCED PrepCom Dec 1/16	
Sept.		IPCC 1st Assess. Report UNEP Ad Hoc WG of Gov. Repr. <i>[recommen.]</i>		
Nov.			UNEP SWG on Biotech. UNEP Legal WG on Biodiversity 1st sess. <i>[elements of draft]</i>	2nd World Climate Conf.
Dec.	GA Res.45/211 <i>[endorse PrepCom]</i>	GA Res.45/212 <i>[INC established]</i>		
<u>1991</u>				
Jan.			UNEP Mtg of legal advisors.	
Feb.		INC on Climate 1st sess. <i>[2 Working G]</i>	UNEP Legal WG on Biodiversity 2nd Sess. <i>[draft convention]</i>	
Mar.		IPCC 5th pl.sess.		
Apr.	UNCED PrepCom 2nd Sess. <i>[relation with INC]</i>			
May		UNEP GC Dec. 16/41.	UNEP GC Dec.16/42 <i>[rename to INC on Biodiversity]</i>	
June		INC on Climate 2nd sess. <i>[single text]</i>		Beijing Ministerial Declaration.
July			INC on Biodiversity 3rd/1st sess. <i>[revised draft conv.]</i>	
Aug.	UNCED PrepCom 3rd Sess.			
Sept.		INC on Climate 3rd Sess.		
Oct.			INC on Biodiversity 4th/2nd sess. <i>[2nd revised draft conv.]</i>	
Dec.	GA Res.46/168 <i>[UNCED]</i>	GA Res.46/169 <i>[protect.of climate]</i> INC on Climate 4th Sess. <i>[consolidated working doc.]</i>	INC on Biodiversity 5th/3rd Sess. <i>[3rd revised draft conv.]</i>	
<u>1992</u>				
Feb.	UNEP 3rd Special Sess.	INC on Climate 5th Sess, 1st pt. <i>[Revised Text under Neg.]</i>	INC on Biodiversity 6th/4th Sess. <i>[4th revised draft conv.]</i>	

	(UNCED)	(Climate Change)	(Biodiversity)	(Other)
1992				
Mar	UNCED PrepCom 4th Sess.			
May		INC on Climate 5th Sess. 2nd pt. [adoption of Convention]	INC on Biodiversity 7th/5th Sess. Adoption Conference. [adoption of convention]	Tokyo Decl. Kuala Lumpur Decl.
June	THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT			
	[Adopted Agenda 21, Rio Decl., Forest Statement]	[Convention opened for signature]	[Convention opened for signature]	
Dec.	Commission for Sustainable Development GA Res.47/191	INC on Climate 6th Sess.		

