

RIO+20 UNITED NATIONS CONFERENCE ON SUSTAINABLE DEVELOPMENT: IS THIS THE FUTURE WE WANT?

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*This article focuses on the latest initiatives concerning sustainable development that occurred at the Rio+20 United Nations Conference on Sustainable Development (Rio+20 conference) in June 2012. Two of the main themes at this conference were first, states could develop a green economy and secondly, states could strengthen the governance framework of international institutions involved with sustainable development. This article examines whether the proposals in the agreement made at the Rio+20 conference, called *The Future We Want*, are adequate in light of the suggestions made for change in the draft version of this agreement. Ultimately, the question is whether the reforms proposed in *The Future We Want* are likely to bring about the adjustments necessary to promote effective sustainable development action and maintain adequate protection of the environment for future generations.*

I INTRODUCTION

Many world leaders, members of governments, the private sector, nongovernmental organisations (NGOs) and other groups participated in the Rio+20 United Nations Conference on Sustainable Development (Rio+20 conference) in June 2012. The main objectives outlined for this conference were that state governments should find ways to reduce poverty, promote social equity and achieve protection of the environment.¹ *The Future We Want* is the final agreement of 193 member states of the United Nations (UN) who were represented at the Rio+20 Conference.² The common vision in this agreement is that national governments (states) will strive for a sustainable future for people and the planet³ and take action to eliminate poverty.⁴ Underlying the challenges for addressing how to make progress on sustainable development is the view that all peoples should adopt a holistic attitude to sustainable development where human beings can exist in harmony with the natural environment.⁵ The two main themes for the Rio+20 conference were:

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¹United Nations Conference on Sustainable Development, *About Rio+20* <<http://www.uncsd2012.org/rio20/about.html>>.

²*The Future We Want* GA Res 66/288, UN GAOR, 66th sess, Agenda Item 19, (11 September 2012) [1] ('*The Future We Want*').

³ *Ibid* [1].

⁴ *Ibid* [2].

⁵ *Ibid* [40].

- (a) [a] green economy in the context of sustainable development and poverty eradication; and (b) the strengthening the institutional framework for sustainable development.⁶

If action is taken to achieve a green economy and enhance institutions this should strengthen governance of international institutions,⁷ improve integration of the three pillars of sustainable development — the economic, social and environmental pillars — result in better coordination within the UN system of governance⁸ and advance performance on sustainable development action.⁹

First, two key environmental law concepts are discussed. These are the concept of sustainable development and the common concern of humankind. The aim of this discussion is to show that all states are responsible for taking action on sustainable development. Next, this article will examine some of the main proposals at the Rio+20 conference including the adoption of the green economy, changes to international environmental governance, the proposal that an international ombudsman for future generations be appointed and the negotiation of sustainable development goals. The main argument is that if state governments are to prevent adverse outcomes for present and future generations they should commit to sustainable development action by considering more effective international governance reforms such as the establishment of a World Environment Organisation as well as sustainable development goals with specific timetables and targets for their implementation. In fact, it is arguably the responsibility of all states to adopt more effective sustainable development reforms in order to protect the environment for present and future generations as indicated by the operation of the common concern of humankind concept. The following two sections in the introduction outline the definition of two international environmental law concepts, sustainable development and the common concern of humankind. Even though commitments on sustainable development are chiefly set out in non-binding international agreements the significance of the operation of the common concern of humankind concept is that it indicates that all states have responsibilities to implement these commitments.

A *Sustainable Development*

1 *The definition of sustainable development*

It is in the interests of present and future generations that action is taken to progress sustainable development so that humankind can manage the serious economic, social and environmental challenges likely to occur in the future.¹⁰ The original definition of ‘sustainable development’ included consideration of meeting the needs of future generations and was adopted by the World Commission on Environment and Development (WCED).¹¹

⁶ Ibid [12].

⁷ Ibid [75].

⁸ Ibid [87].

⁹ Ibid [56].

¹⁰ Ibid [1]–[4].

¹¹ World Commission on Environment and Development, *Our Common Future* (Oxford University Press, Australian edition, 1987) 43. As *Our Common Future* defines:

Sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future. Far from requiring the cessation of economic growth, it recognizes that the problems

This definition of ‘sustainable development’ indicates limits should be applied to economic growth so present generations will enable future generations to continue to have access to resources and similar levels of economic welfare.¹² The implication of this definition is that a change in approach is necessary, away from the traditional discipline of economics and towards a new direction that focuses on the integration of economics and the environment. A new system of economics could take into account natural systems and environmental assets.¹³ Robert Costanza is a commentator who advocates a departure from the traditional view of economics. So, he developed the concept of ecological economics where the human economy is viewed as part of a larger natural economy.¹⁴ Costanza's perspective of ecological economics incorporates an ecological holistic worldview that takes account of the interactions between ecology and economics. This view focuses on human beings as dependent upon a surrounding ecological system where there are limited natural resources.¹⁵ The goal of sustainable development is to make sure that the actions concerned (such as the management of natural resources) can continue in the future¹⁶ so, the ecological balance of the environment should be taken into account in economics.

2 Sustainable development in international law

The application of the concept of sustainable development in international law has been considered in judgments in the International Court of Justice. In the *Case Concerning the Gabčíkovo-Nagymaros Project*,¹⁷ the majority of judges accepted ‘sustainable development’ as a concept of international law¹⁸ that plays a part in reconciling economic development with environmental protection. There are also a number of international agreements that set out the objectives of sustainable development. Some of the main international agreements promoting sustainable development action are the *Declaration of the United Nations Conference on*

of poverty and underdevelopment cannot be solved unless we have a new era of growth in which developing countries play a large role and reap large benefits.

As the report details, sustainable development includes two key concepts:

The concept of ‘needs’, in particular the essential needs of the world’s poor, to which overriding priority should be given; and the idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.

¹² United Nations Environment Program, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication* (2011) <www.unep.org/greeneconomy> (*Towards a Green Economy*).

¹³ See Robert Costanza, ‘The Ecological Economics of Sustainability’ in Robert Goodland, ‘The Case that the World has Reached Limits: More Precisely that Current throughput Growth in the Global Economy cannot be Sustained’ in Robert Goodland et al (eds), *Environmentally Sustainable Development: Building on Brundtland* (UNESCO, 1991) 83. As Costanza says: ‘[t]o achieve sustainability we must develop an *ecological economics* that goes well beyond the conventional disciplines of ecology and economics to a truly integrative synthesis’.

¹⁴ *Ibid* 85. According to Costanza:

Sustainability is a relationship between dynamic human economic systems and larger dynamic, but normally slower changing ecological systems, in which: (a) human life can continue indefinitely; (b) human individuals can flourish, (c) human cultures can develop; but in which (d) effects of human activities remain within bounds, so as not to destroy the diversity, complexity, and function of the ecological life support system.

Costanza continues:

‘Sustainability’ does not imply a static, much less a stagnant economy, but we must be careful to distinguish between ‘growth’ and ‘development’, as specified above. Economic growth, which is an increase in quantity, cannot be sustainable indefinitely on a finite planet. Economic development, which is an improvement in the quality of life without necessarily causing an increase in quantity of resources consumed, may be sustainable. Sustainable growth is an impossibility. Sustainable development must become our primary long-term goal.

¹⁵ *Ibid* 84.

¹⁶ *Caring for the Earth: A Strategy for Sustainable Living*, (IUCN, WWF, UNEP, 1991) 10.

¹⁷ *Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Judgment)* [1997] ICJ Rep 7, 75.

¹⁸ *Ibid*. See also *Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment)* [2010] ICJ Rep 14, 38–39.

Environment and Development (Rio Declaration),¹⁹ *Agenda 21: Programme of Action for Sustainable Development (Agenda 21)*,²⁰ the *Programme for the Further Implementation of Agenda 21*,²¹ the *Declaration on Sustainable Development (Johannesburg Declaration)* and the *World Summit on Sustainable Development Plan of Implementation (Plan of Implementation)*.²² In 2002 at the World Summit on Sustainable Development (WSSD), the definition of sustainable development was expanded to include the three main pillars — economic development, social development and environmental protection in the *Plan of Implementation (POI)*.²³ So, the definition of sustainable development was extended at the WSSD to include the social component. The aim of the POI is that action at all levels; international, national and local would promote the integration of these three components of sustainable development that are considered to be independent and mutually reinforcing pillars.²⁴ However, even though there have been a large number of international agreements aimed at achieving action on sustainable development objectives during the last twenty years, national governments at the Rio+20 conference noted that there had been insufficient progress on the implementation of commitments to sustainable development during this period.²⁵

3 Reasons for the failure to make progress on sustainable development

Some of the reasons promoted for the failure to advance the sustainable development agenda include ineffective governance at the international level and the inability of states to effectively integrate the three pillars of sustainable development.²⁶ This is due in part to the shortcomings of state governments who have given insufficient attention to the environmental pillar.²⁷ As a result, state governments at the Rio+20 conference recognised the need to strengthen international environmental governance to balance the integration of the environmental, social and economic pillars of sustainable development.²⁸ Clearly, effective action on sustainable development requires the support of all countries and the concept of the common concern of humankind is discussed in the following section as the operation of this concept overcomes the reluctance of some countries to advance the sustainable development action by relying upon the traditional doctrine of sovereignty over their natural resources.

¹⁹ *Declaration of the United Nations Conference on Environment and Development* (14 June 1992) UN Doc A/CONF.151/26 (Volume 1), 31 ILM 874 ('*Rio Declaration*').

²⁰ *Agenda 21: Programme of Action for Sustainable Development* United Nations Conference on Environment and Development (UNCED), (1992, United Nations Publication, New York), ('*Agenda 21*').

²¹ *Programme for the Further Implementation of Agenda 21* GA Res A/RES/S-19/2, UN GAOR, 19th Special sess, Agenda Item 8 (19 September 1997) <www.un.org/documents/ga/res/spec/aress19-2.htm>.

²² United Nations, *United Nations Report of the World Summit on Sustainable Development* <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/NO2/639/93/PDF/NO263693.pdf?OpenElement>>.

²³ World Summit on Sustainable Development, *Plan of Implementation* <http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf> [2].

²⁴ *Ibid.*

²⁵ *The Future We Want*, above n 2.

²⁶ Emlyn W Cruickshank, Kirsty Schneeberger and Nadine Smith (eds), *A Pocket Guide to Sustainable Development Governance Stakeholder Forum* (Commonwealth Secretariat, 2nd ed, 2012) <<http://www.earthsummit2012.org/news/976-pocket-guide-to-sustainable-development-governance-second-edition9>>.

²⁷ *The Future We Want*, above n 2, [87].

We reaffirm the need to strengthen international environmental governance within the context of the institutional framework for sustainable development, in order to promote a balanced integration of the economic, social and environmental dimensions of sustainable development as well as coordination within the United Nations system.

²⁸ *Ibid.*

B *Common Concern of Humankind*

1 *Operation of common concern of humankind*

There are a number of other impediments to progress on sustainable development action and a major concern is the failure to manage environmental protection for areas of the global public interest.²⁹ The common concern of humankind is a concept that has emerged in international environmental law to cover state responsibility for dealing with global threats to the environment of the planet.³⁰ This concept may apply to areas of global public interest including the management of resources within a state's jurisdiction that affect the global environment such as forests and biological diversity as well as governance over areas beyond a state's jurisdiction that form part of the global environment (the 'commons') such as the atmosphere. The development of a system of international governance that can effectively manage areas of the global public interest as well as the other areas of sustainable development is crucial for effective progress on sustainable development action in the future.³¹

2 *Sovereignty*

In the past, states have relied upon the traditional doctrine of absolute 'sovereignty' to exercise power over natural resources within their jurisdiction.³² Indeed, this reliance upon the doctrine of sovereignty of states to protect state interests means that it is unlikely that states would permit an international institution to gain authority over natural resources.³³ Arguably, the traditional doctrine of absolute sovereignty should no longer operate in the context of sustainable development and can be redefined in the light of global environmental threats and state responsibility to protect the environment in their own jurisdiction as well as in areas of the commons.³⁴ Sovereignty is no longer a doctrine of exclusion where states rely on permanent sovereignty over their natural resources to prevent international interference with operations within their jurisdiction. This doctrine has not prevented the development of treaties and customary international law dealing with the conservation of natural resources.³⁵ In fact, as is indicated in the concept of the common concern of humankind, states have a responsibility to cooperate on the management of natural resources for the benefit of the international community.³⁶

3 *International cooperation on sustainable development*

The concept of the common concern of humankind emphasises that international cooperation is necessary to effectively address the sustainable development of national resources in the global interest.³⁷ Consequently, states have a responsibility to cooperate and take action on

²⁹ Cruickshank, Schneeberger and Smith, above n 26, 9.

³⁰ See Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (Oxford University Press, 3rd ed, 2009) 128.

³¹ Cruickshank, Schneeberger and Smith, above n 26, 9.

³² Birnie, Boyle and Redgwell, above n 30, 191.

³³ Cruickshank, Schneeberger and Smith, above n 26, 10.

³⁴ Birnie, Boyle and Redgwell, above n 30, 192.

³⁵ *Ibid* 191-2.

³⁶ *Ibid*.

³⁷ *Ibid* 130. Birnie, Boyle and Redgwell describe the ambit of the common concern of humankind and state:

sustainable development objectives particularly where the issue is one that affects the global public interest as the case of the atmosphere³⁸ and biological diversity.³⁹ Alfred Rest is a commentator on international environmental law who noted that this concept of common concern of humankind has three dimensions. The *spatial dimension* indicates that all states have the responsibility to protect the global commons. Next, the *temporal dimension* applies because the common concern of humankind incorporates the concept of intergenerational equity through the consideration of future generations. Thirdly, the *social dimension* is included in this concept because all individuals, organisations and elements in society need to act together in order to counter environmental hazards.⁴⁰

If the common concern of humankind is applied to sustainable development in the spatial, temporal and social dimensions, there are three implications. First, the spatial component indicates that international cooperation is necessary to resolve global environmental problems.⁴¹ So states have a responsibility to provide information and permit monitoring of their environment by international bodies. They also have a responsibility to adhere to their commitments on environmental protection. Secondly, the temporal dimension links to intergenerational equity where the present generation should live off the income of nature rather than the capital.⁴² This would limit the consumption of resources in favour of future generations. Thirdly, the social dimension points to the public right to information about the extent of environmental degradation and the public right to participate in decision-making on issues concerning the environment.⁴³

Indeed, the cooperation of state governments on sustainable development objectives is necessary as the problem of environmental deterioration is very serious. If preventative action is not taken soon, irreversible changes may take place that could permanently damage ecosystems. The OECD *Environmental Outlook to 2050* report indicates that speedy action is vital if humankind is to avoid environmental disasters:

That it gives the international community of states both a legitimate interest in resources of global significance and a common responsibility to assist in their sustainable development. Moreover, insofar as states continue to enjoy sovereignty over their own natural resources and the freedom to determine how they will be used, this sovereignty is not unlimited or absolute, but must now be exercised within the confines of the global responsibilities set out in the Climate Change and Biological Diversity Conventions and also in the Rio Declaration and other relevant instruments.

³⁸ *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107, (entered into force 21 March 1994) preamble.

³⁹ *United Nations Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) preamble.

⁴⁰ Alfred Rest, 'Ecological Damage in Public International Law' (1992) 22 *Environmental Policy and Law* 31, 33. Rest explains the implications of these dimensions as follows:

In its *spatial components* this concept attaches itself to the principle that the "Global Commons" can only be protected by the community of states as a whole. And it appears that preventative action on the grounds of "*ecological (environmental) security*" for individuals and states is advisable. By means of reference to the protection of future generations, which already now demands direct action against climate change, the *time component* is emphasised which also lies at the bottom of the so-called "*concept of intergenerational equity*". Finally, the "Common Concern" aspect contains also a social dimension. All individuals, structures and parts of society should act jointly against the environmental threat.

⁴¹ Laura Horn, 'Globalisation, Sustainable Development and the Common Concern of Humankind' (2007) 17 *Macquarie Law Journal* 53, 80. See Laura Horn, *The Common Concern of Humankind and Legal Protection of the Global Environment* (PhD Thesis, The University of Sydney, 2001) 470–1 <<http://hdl.handle.net/2123/6188>>.

⁴² *Ibid.*

⁴³ *Ibid.*

The *Environmental Outlook Baseline* projections highlight the urgent need for action today to change the course of our future development. Delay in alleviating these environmental pressures will impose significant costs, undermine growth and development and run the risk of irreversible and potentially catastrophic changes further into the future. Change in natural systems is not linear. *There is compelling scientific evidence that natural systems have “tipping points” or biophysical boundaries beyond which rapid and damaging change becomes irreversible* (e.g. for species loss, climate change, groundwater depletion, land and soil degradation). However, these tipping points or thresholds are in many cases not yet fully understood, nor are the environmental, social and economic consequences of crossing them.⁴⁴

This continuing deterioration of the global environment is also likely to result in degenerating social and economic conditions for human beings further undermining any progress made on sustainable development. The following section discusses the first key proposal for reform at the Rio+20 conference that states to take action to develop a green economy.

II THE GREEN ECONOMY

1 *Promotion of the green economy*

The advancement of a fully functioning green economy will promote sustainable development⁴⁵ and can result in reduced levels of poverty.⁴⁶ The United Nations Environment Program (UNEP) in 2011 issued a report called *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication (Towards a Green Economy)*.⁴⁷

The ‘green economy’ was promoted in a UN General Assembly Resolution after the 2008 financial crisis as an opportunity for states to support green economy initiatives to increase employment and promote sustainable development action.⁴⁸ Many governments realised that the economy was not functioning effectively because it failed to account for the natural environment and that reforms were necessary.⁴⁹ Some of the reasons for emphasising the merits of the green economy were that financial crisis stimulus funds could be invested in areas such as ‘energy efficient technologies, renewable energy, public transport, sustainable agriculture, environmentally friendly tourism, and the sustainable management of natural resources including ecosystems and biodiversity.’⁵⁰ The focus on these areas of the green

⁴⁴ Organisation for Economic Co-operation and Development (OECD), *OECD Environmental Outlook to 2050*, (OECD Publishing, 2012) 26 (*‘OECD Environmental Outlook’*).

⁴⁵ Mark Halle, ‘Accountability in the Green Economy’ in Pardee Center Taskforce Report, *Beyond Rio+20: Governance for a Green Economy* (Report, Boston University, 2011) 19, 21 (*‘Pardee Center Taskforce Report’*).

⁴⁶ *Towards a Green Economy*, above n 12, 628.

⁴⁷ Ibid 16. In *Towards a Green Economy* the definition from UNEP is adopted as follows:

UNEP defines a green economy as one that results in “improved human well-being and social equity, while significantly reducing environmental risks and ecological scarcities” (UNEP 2010). In its simplest expression, a green economy is low-carbon, resource efficient, and socially inclusive. In a green economy, growth in income and employment are driven by public and private investments that reduce carbon emissions and pollution, enhance energy and resource efficiency, and prevent the loss of biodiversity and ecosystem services.

⁴⁸ *Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development*, GA Res 63/303, UN GAOR, 63rd sess, Agenda Item 48, UN Doc A/RES/63/303 (13 July 2009) [32].

⁴⁹ *Pardee Center Taskforce Report* above n 45, 5.

⁵⁰ Second Meeting of the Consultative Group of Ministers or High-level Representatives on International Environmental Governance, *Set of options for Improving International Environmental Governance* (28–9 October 2009) United Nations Environment Program 14

<<http://unep.org/environmentalgovernance/Portals/8/documents/IEG-Draft-Report-Rome-final-edited.pdf>> (*‘The Belgrade Process’*).

economy supported the development of new industry, increased employment as well providing environmental benefits.

In 2009, the second meeting of the Consultative Group of Ministers or High-level representatives on International Environmental Governance took place in Rome. The outcome of this meeting was the *Belgrade Process* paper that indicates that many of the same core objectives required for sustainable development are also necessary for a green economy.⁵¹ These core objectives are as follows:

1. Creating a strong, credible and coherent science base.
2. Developing a global authoritative and responsive voice for environmental sustainability.
3. Achieving coherence within the UN system.
4. Securing sufficient, predictable and coherent funding.
5. Ensuring a responsive and cohesive approach to meeting country needs.
6. Facilitating the transition towards a global green economy.⁵²

2 UNEP report

The UNEP report, *Towards a Green Economy*, offered to provide practical advice to policy-makers about the reforms necessary to transition to a green economy⁵³ and points out that the green economy is, in fact, a policy to achieve sustainable development.⁵⁴

The social objective of the movement to a green economy is to eliminate poverty and there are a number of sectors such as agriculture, fisheries and water management where the greening of these sectors could benefit the poor.⁵⁵ Some examples include the provision of opportunities for employment in organic agriculture, payments for carbon sequestration to protect forests and the promotion of inexpensive renewable energy.⁵⁶ Investment in these sectors through microfinance can also facilitate employment opportunities for the poor in the abovementioned activities.⁵⁷

So, if states develop a green economy this transition will assist them to achieve sustainable development as well as contribute to eradicating poverty.⁵⁸ According to *The Future We Want*, a state seeking to achieve a green economy, should use resources efficiently and maintain natural resources for future generations, reduce waste⁵⁹ and foster sustainable

⁵¹ Ibid 11.

⁵² Ibid.

⁵³ *Towards a Green Economy*, above n 12, 15.

⁵⁴ Ibid 19. According to *Towards a Green Economy*:

In sum, moving towards a green economy must become a strategic economic policy agenda for achieving sustainable development. A green economy recognises that the goal of sustainable development is improving the quality of human life within the constraints of the environment, which include combating global climate change, energy insecurity, and ecological scarcity. However, a green economy cannot be focused exclusively on eliminating environmental problems and scarcity. It must also address the concerns of sustainable development with intergenerational equity and eradicating poverty.

⁵⁵ Ibid 20.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ *The Future We Want*, above n 2, [56].

⁵⁹ Ibid [60]. As the *Future We Want* reported: '[w]e acknowledge that green economy in the context of sustainable development and poverty eradication will enhance our ability to manage natural resources sustainably and with lower negative environmental impacts, increase resource efficiency and reduce waste.'

consumption and production patterns.⁶⁰ The decisions on how to implement and develop a green economy are left up to the government of the individual state.⁶¹ Each state will have different priorities when deciding on policies to implement their transition to a green economy depending upon the particular country's stage of development and resources.⁶² A developing state may have a low environmental impact but urgently be in need of services such as education and health to promote social development. Other countries have achieved a high level of development but are degrading the quality of their environment and have high per capita greenhouse gas emissions. So the challenge for the latter countries is to maintain the quality of life for present and future generations whilst reducing the impact on the environment.⁶³

3 *The Future We Want - the green economy*

The term 'green economy' is not specifically defined in *The Future We Want* and the guidelines for states on how to achieve this objective are very general. The problem is that if the definition and implementation of 'green economy' are left to the individual country to determine, the responses to the achievement of this goal could be very different and possibly result in a failure to achieve this transition. Undoubtedly, states need to be moving towards a green and low carbon economy in order to make progress on sustainable development, however, they will also need clearer timelines and targets to achieve these changes.⁶⁴ Two methods that can facilitate the implementation of these changes to a green economy are:

1. the regulation of environmental standards; and
2. the introduction of appropriate property and zoning legislation in those states that lack these provisions.

First, clear environmental standards can assist consumers by providing information that increases consumer demand for sustainable products and helps achieve environmental objectives.⁶⁵ Some standards have been developed at the international level such as those for the reduction of greenhouse gas emissions and energy efficiency.⁶⁶ It is possible to develop international standards and encourage countries to adopt them at the national level provided that countries have administrative support to regulate and enforce them. One organisation that is endeavouring to promote international standards for sustainable development in the future is the International Organization for Standardization.⁶⁷ Secondly, property laws can encourage the sustainable management of natural resources and zoning legislation can limit the growth of cities as well as create reserves to protect ecosystems.⁶⁸

⁶⁰ Ibid [58(o)].

⁶¹ Ibid [56].

⁶² *Towards a Green Economy*, above n 12, 21.

⁶³ Ibid.

⁶⁴ See John Dernbach, 'Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development' 2002 (27) *William and Mary Environmental Law and Policy Review* 79, 136.

⁶⁵ *Towards a Green Economy*, above n 12, 563.

⁶⁶ Ibid.

⁶⁷ International Standards Organisation, *How ISO's Technical Programme and Standards Contribute to a Sustainable World* <http://www.iso.org/iso/sustainable_world_2008.pdf>. The website indicated that 'ISO is a trusted partner for developing standards contributing to the objectives of sustainable development.'

⁶⁸ *Towards a Green Economy*, above n 12, 565.

Many developed states are in favour of the green economy transition as a means towards achieving sustainable development. However, some developing countries are concerned about whether this change could lead to 'green protectionism' and prevent future growth. Green economy policies may be used by some countries to advance trade protectionism as in the case of advising consumers to buy goods locally to reduce the need for transport.⁶⁹ However, this policy could impact on some developing countries that may need to access these markets in order to access foreign currency.⁷⁰

Generally, many states agree that further changes are required to deal with serious problems including increased population numbers (anticipated to go beyond nine billion by 2050)⁷¹ and the continuing threat to the environment caused by climate change.⁷² *The Future We Want* indicates that schemes could be put in place (by the UN, international organisations and donors) to assist countries to adopt policies for a green economy.⁷³ This assistance could include matching countries with partners, as this is an effective tool to promote sustainable development.⁷⁴ Partnerships are the voluntary agreement between organisations (such as governments and business) to develop programs with sustainable development objectives. Two examples are the African Energy Legacy Projects⁷⁵ and the Asian Forest Partnership.⁷⁶ These partnerships complement the commitments of countries to make progress towards sustainable development. Other support for developing countries could include the provision of access to 'toolboxes' and best practices in applying policies as well as the development of models of good examples and methods to evaluate policies.⁷⁷

One of the aims of the transition to a green economy is that human beings learn to live within the constraints of the environment so that there is effective management of natural resources⁷⁸ enabling future generations of humans to maintain a similar quality of life to those of the present. Unfortunately, some of the proposals in *The Future We Want* agreement concerning the adoption of reforms to develop a green economy lack precision so it will be difficult to determine whether the objectives are being achieved. For example the development of standards can be a useful tool to achieve environmental objectives. However it may be difficult to set a uniform standard that is effective particularly if there are no procedures in place to enforce and review the regulation of the standard.⁷⁹ Complicated standards may also pose problems for developing countries that lack resources to ensure the legislation is complied with.⁸⁰

Appropriate monitoring and auditing of global economic data is necessary so that the rate of progress of countries towards the transition to a green economy can be followed. Indeed,

⁶⁹ Ibid 629.

⁷⁰ Ibid.

⁷¹ *The Future We Want*, above n 2, [21].

⁷² Ibid [25].

⁷³ Ibid [66].

⁷⁴ Ibid [71].

⁷⁵ United Nations Department of Economic and Social Affairs Division For Sustainable Development, *African Energy Legacy Projects*

<<http://sustainabledevelopment.un.org/index.php?page=view&type=1006&menu=1348&nr=1481>>.

⁷⁶ United Nations Sustainable Development Knowledge Platform, *Asia Forest Partnership*
<<http://sustainabledevelopment.un.org/index.php?page=view&type=1006&menu=1348&nr=1483>>.

⁷⁷ Ibid.

⁷⁸ See *The Future We Want*, above n 2, [60].

⁷⁹ *Towards a Green Economy*, above n 12, 564.

⁸⁰ Ibid.

states are more likely to make progress if there are incentives for countries to achieve these changes or, possibly, consequences where the goals are not reached.⁸¹ In 2013, a Global Sustainable Development Report will review the progress on sustainable development and cover issues identified by scientists as well as consideration of investment and technology requirements, implementation new economic measures beyond gross domestic profit (GDP) and suitable methods of monitoring.⁸²

The following section discusses a different view about the development of a green economy that emerged at the time of the Rio+20 conference from a civil society movement where the members collaborated to develop suggestions for advancing sustainable development objectives.

4 Peoples' Sustainability Treaty on Sustainable Economies

At the time of the Rio+20 conference, a civil society movement emerged calling for a unified global society to take responsibility for the transition towards sustainable development.⁸³ The engagement of this global civil society movement resulted in the drafting of the Peoples' Sustainability Treaties⁸⁴ to encourage the participation of the public in sustainable development issues. These peoples' treaties cover a range of topics including consumption and production, sustainable development governance, education, sustainable economies, sustainable development goals and corporate social responsibility. Even though these treaties are not international legal agreements and are clearly, not binding, they demonstrate the emergence of an active civil society movement that is showing increasing dissatisfaction with the lack of progress on sustainable development.

The subscribers to the Peoples' Sustainability Treaty on Sustainable Economies⁸⁵ (PSE) consider that the present green economy movement does not go far enough in the process of reform to a new economic system and is merely an attempt to 'green wash' the traditional economic system because of the continuing focus on economic growth and GDP.⁸⁶ The system proposed in the PSE is one of subsidiarity where the emphasis could be on local action rather than on a dominant global economy.⁸⁷ The PSE calls for commitments to replace GDP with a system of indicators⁸⁸ that takes into account human well-being and natural capital. Governments could introduce reforms to the economy such as removing fossil fuel and other subsidies that harm the environment, developing an international framework

⁸¹ *Pardee Center Taskforce Report* above n 45, 6.

⁸² United Nations Department of Economic and Social Affairs Division for Sustainable Development, 'The Global Sustainable Development Report 2013' (UN DESA, Report) <<http://sustainabledevelopment.un.org/index.php?menu=1621>>.

⁸³ Peoples' Sustainability Treaties, *Peoples' Sustainability Treaties Alternative Pathway for a Sustainable Transition* <<http://sustainabilitytreaties.org/movement> <http://sustainabilitytreaties.org/movement/>>.

⁸⁴ Peoples' Sustainability Treaties, *Peoples' Sustainability Treaties- Treaties@Rio+20* <<http://sustainabilitytreaties.org/draft-treaties/>>.

⁸⁵ Peoples' Sustainability Treaties, *Peoples' Sustainability Treaty on Sustainable Economies* <<http://sustainabilitytreaties.org/draft-treaties/sustainable-economies/>>. The subscribers include the following organisations: Centre for Environment and Development, Sri Lanka Center for Sustainability, Ramapo College of New Jersey, USA, The Northern Alliance for Sustainability (ANPED), Belgium, Fair Green Solutions, Denmark, Fair Green Solutions, India, World Society for the Protection of Animals, The Netherlands, Tellus Institute, USA, World Aquarium and Conservation for the Oceans Foundation, USA, CEE web for Biodiversity, Central and Eastern Europe.

⁸⁶ *Ibid* preamble.

⁸⁷ *Ibid* principle 2.

⁸⁸ *Ibid* commitments.

for corporate accountability and establishing a planetary commons management system to regulate natural resource use and waste.⁸⁹ These reforms are much more progressive than those contemplated in *The Future We Want* and they provide options that may be useful in the future particularly if current proposals for change adopted at the Rio+20 conference prove unsuccessful.

The participation of the public is a significant factor in achieving sustainable development.⁹⁰ If individuals, business organisations and other groups have access to information about the environment they can make informed decisions particularly about how to protect their environment.⁹¹ This public engagement encourages individual commitment and action on sustainable development. Public participation may also place pressure on states' governments to make changes. The Peoples' Sustainability Treaties indicate that there are significant groups of the public who are disillusioned by the current actions of state governments on sustainable development and who are willing to put pressure on governments in order to achieve speedier progress on the achievement of sustainable development.

Clearly, the transition to a green economy (as proposed in *The Future We Want*) will require additional funding for developing countries as well as improvements to institutional governance on sustainable development. A strengthened international governance framework could enable the establishment of new effective institutions and provide policy and legal options to help governments manage this transition to a green economy. The next area of reform that will be discussed in the following section is the strengthening of international environmental governance to assist states to make progress on the implementation of sustainable development objectives.

III INTERNATIONAL GOVERNANCE

At the Rio+20 conference, states agreed to strengthen the institutional framework for sustainable development by introducing reforms to international governance to avoid problems of duplication of work and to improve the implementation and review of progress on sustainable development.⁹²

The Future We Want indicates that strong governance is necessary for achieving sustainable development at all levels; namely, the local, national, regional and global levels.⁹³ At the international level, state governments considered that the General Assembly should retain its role on issues of concern to the international community⁹⁴ and integrate sustainable development as a key part of United Nations (UN) activities.⁹⁵ A subsidiary organisation of the UN, the Economic and Social Council (ECOSOC) is the main organisation responsible for the integration of economic, social and environmental areas of sustainable development policies and this council will continue to promote UN operations on sustainable development

⁸⁹ Ibid principles.

⁹⁰ *Agenda 21*, above n 20, [23.2].

⁹¹ Ibid.

⁹² *The Future We Want*, above n 2, [75].

⁹³ Ibid [76]. 'We recognize that effective governance at the local, subnational, national, regional and global levels representing the voices and interests of all is critical for advancing sustainable development.'

⁹⁴ Ibid [80]. 'We reaffirm the role and authority of the General Assembly on global matters of concern to the international community...'

⁹⁵ Ibid [81].

in the future.⁹⁶ Unfortunately, ECOSOC has been the subject of criticism because of its failure to achieve greater leadership and supervision of sustainable action.⁹⁷ So it was agreed at the Rio+20 conference that this organisation should be strengthened in order to achieve a balanced integration of the three pillars of sustainable development.⁹⁸

Four suggestions were canvassed in the lead up to the Rio+20 conference as reforms that could improve international governance on sustainable development. These options were set out in the draft version of *The Future We Want*⁹⁹ as first, the establishment of a new international institution to replace the Commission on Sustainable Development (CSD), second, the creation of the position of an international ombudsman, third, changes to the operation of UNEP and fourth, the establishment of a global organisation to protect the environment. These four proposals are discussed in the following sections.

A *High Level Political Forum*

The CSD is the institution responsible for coordinating the sustainable development agenda, monitoring the implementation of sustainable development commitments, developing guidelines and promoting partnerships between governments and international organisations to achieve sustainable development objectives.¹⁰⁰ However, the CSD has experienced difficulties because the functions allocated to it are too wide-ranging for it to manage all of them effectively¹⁰¹ and so, proposals for reform are timely. At the Rio+20 conference states agreed to establish a high-level political forum¹⁰² as a new leadership body that would eventually replace the CSD. The establishment of a high-level political forum could provide opportunities to enhance the involvement of major groups and stakeholders in decisions made by this organisation.¹⁰³ This forum will provide political direction¹⁰⁴ integrate the three pillars of sustainable development,¹⁰⁵ review progress on sustainable development¹⁰⁶ and improve coordination within the UN on sustainable development programs.¹⁰⁷ The high level political forum could also strengthen reliance on science in policy development by including a review of documentation and a global sustainable development report.¹⁰⁸ Details about the new governance structure of this political forum are yet to be decided and the size, structure and procedures of the new organisation will be determined in later negotiations.¹⁰⁹

⁹⁶ Ibid [82].

⁹⁷ Cruickshank, Schneeberger and Smith, above n 26, 81.

⁹⁸ *The Future We Want*, above n 2, [83].

⁹⁹ United Nations, *The Future We Want - Zero Draft of the Outcome Document* (2011)

<<http://www.uncsd2012.org/index.php?page=view&type=12&nr=324&menu=20>> ('*Draft The Future We Want*').

¹⁰⁰ See United Nations Department of Economic and Social Affairs Division for Sustainable Development, *About the Division for Sustainable Development* <<http://sustainabledevelopment.un.org/about.html>>.

¹⁰¹ See Dernbach, above n 64, 113.

¹⁰² *The Future We Want*, above n 2, [84].

¹⁰³ Ibid [85(h)].

¹⁰⁴ Ibid [85(a)].

¹⁰⁵ Ibid [85(b)].

¹⁰⁶ Ibid [85(e)].

¹⁰⁷ Ibid [85(k)].

¹⁰⁸ Ibid.

¹⁰⁹ Ibid [86]. These negotiations commenced in January 2013 and are likely to be completed by May 2013 to provide time for the convening of the high level political forum by the time of the 68th session of the United Nations General Assembly. See United Nations Sustainable Development Knowledge Platform, 'High level Political Forum' <<http://sustainabledevelopment.un.org/index.php?menu=1556>>.

The development of the high level political forum could provide an opportunity to establish an improved governance structure with transparency and accountability of membership. It is also possible that stakeholders could play a greater role in decision-making. The CSD supports engagement with NGOs and has permitted stakeholders to engage in multi-stakeholder dialogues. However, some criticism has been directed at this process because of the failure to take the recommendations of these stakeholders into account in the final decisions.¹¹⁰ Establishing a new institution would provide an opportunity for stakeholders to be permitted to influence the outcome of the final decisions. This could change the focus of power away from state governments who may vote to protect their own self-interest¹¹¹ rather than acting on behalf of the global public interest by agreeing to adopt more stringent commitments to protect the environment. It is unclear how decision-making will occur in the new high-level political forum. Undoubtedly, stakeholders and major groups will be included in the consultation process but the outcome of the process is likely to depend upon the success of negotiations carried out by governments.¹¹²

Earlier proposals for the introduction of a more powerful institution emerged from a number of suggestions for reform that included that the CSD should be replaced by a new organisation, the Sustainable Development Council that reports directly to the UN General Assembly, or, that both ECOSOC and the CSD should be merged into the new Sustainable Development Council.¹¹³ Another suggestion canvassed prior to the Rio+20 conference, but not adopted, was that a new institution, the Sustainable Development Trusteeship Council, could be established as a trustee with responsibility for the sustainable management of the global commons.¹¹⁴

A proposal for the establishment of a new institution, the Sustainable Development Council, that would report directly to the UN General Assembly was also set out in the draft version of *The Future We Want*,¹¹⁵ however, this proposition not accepted in the final agreement. The draft version of *The Future We Want* indicated that the CSD could be merged into the Sustainable Development Council that would base its work on the international agreements concerning sustainable development including *Agenda 21*¹¹⁶ and the *Rio Declaration*.¹¹⁷ This council would take responsibility for integration of the three pillars of sustainable

¹¹⁰ Satoko Mori, 'Institutionalization of NGO Involvement in Policy Functions for Global Environmental Governance' in Norichika Kanie and Peter Haas (eds), *Emerging Forces in Environmental Governance* (United Nations University Press, 2004) 157, 164.

¹¹¹ Klaus Bosselmann, *Principle of Sustainability: Transforming Law and Governance* (Ashgate Publishing Group, 2008) 180. According to Bosselmann:

As long as states have the monopoly for determining the role of international institutions, they will follow their needs, not the needs of ecological governance. As states favour short-term economic objectives over long-term environmental goals, they 'do not necessarily choose the tools which are most effective in achieving the policy goal, rather they will choose tools which will benefit them most politically. It is crucial, therefore, to perceive states as dynamic organizations capable of learning and adopting a trusteeship attitude to the global environment.

¹¹² United Nations Sustainable Development Knowledge Platform, above n 109, 8. 'Promote transparency and implementation by further enhancing the consultative role and participation of major groups and other relevant stakeholders at the international level in order to better make use of their expertise, while retaining the intergovernmental nature of discussions...'

¹¹³ See Cruickshank, Schneeberger and Smith, above n 26, 80.

¹¹⁴ Ibid 84.

¹¹⁵ *Draft The Future We Want*, above n 99, [49alt].

¹¹⁶ *Agenda 21*, above n 20.

¹¹⁷ *Rio Declaration*, above n 19.

development and promote implementation at all levels as well as ensure the efficient coordination of institutions.¹¹⁸

In the past there have been suggestions that the CSD could play a similar role in the conservation of the environment to that of the former Human Rights Commission in the protection of human rights.¹¹⁹ Indeed, one of the earliest commentators to analyse the environmental rights of future generations is Edith Brown Weiss who suggested that a Planetary Rights Commission could be established to enforce planetary rights in a similar way to the enforcement of human rights law.¹²⁰ So, the advantage of establishing a new Sustainable Development Council is that it could operate in a similar way to the present Human Rights Council with authority to encourage states to adhere to their commitments in international sustainable development agreements. It is likely that sustainable development issues would be taken more seriously by states if a new, more powerful institution were established.¹²¹ A Sustainable Development Council could be given powers to accept reports from NGOs and perhaps also from individuals that point out likely breaches of commitments on sustainable development targets agreed to by states.¹²² This Council could also provide an expert review of implementation and encourage greater accountability of states and ensure that they are complying with their obligations in international environmental conventions.¹²³

It is unlikely that the development of the high-level political forum will be as effective an institution as the proposed Sustainable Development Council. States have engaged in a negotiation process to develop an outline for the organisation of the high-level forum so that it can be convened at the first forum at the sixty-eighth session of the General Assembly.¹²⁴ The discussions have canvassed the suggestion that the forum should be flexible and connected to existing UN organisations rather than creating a new bureaucratic structure.¹²⁵ Representation from a wider range of environmental interest groups as well as other stakeholders and contribution from members of civil society¹²⁶ in the new high-level political forum could lead to more transparent and accountable decision-making.¹²⁷ It would be necessary to establish an appropriate democratic selection process to select the representatives and effective voting procedures to ensure that the decision-making process is transparent.

The report of the Secretary-General 'Lessons Learned from the Commission on Sustainable Development' in February 2013 indicated that the high-level forum should have a focussed

¹¹⁸ *Draft The Future We Want*, above n 99, [49].

¹¹⁹ 'Sustainable Development: The Challenge to International Law: Report of a Consultation Held at Windsor 27 to 29 April 1993' (1993) 2 (4) *Review of European Community and International Environmental Law* r5, r7.

¹²⁰ Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers Inc, 1989) 111.

¹²¹ Cruickshank, Schneeberger and Smith, above n 26, 87.

¹²² *The Belgrade Process*, above n 50, 9.

¹²³ *Ibid.*

¹²⁴ United Nations Sustainable Development Knowledge Platform, *High Level Political Forum* <<http://sustainabledevelopment.un.org/index.php?menu=1556>>.

¹²⁵ United Nations Sustainable Development Knowledge Platform, *Talking points of the co-facilitators at the open-ended informal meeting on HLPF held on Friday, 1st March 2013* <<http://sustainabledevelopment.un.org/index.php?page=view&type=255&nr=3419&menu=1556>>.

¹²⁶ See *The Future We Want*, above n 2, [76(h)].

¹²⁷ Mori, above n 110, 157.

agenda and engage with the work on sustainable development in key institutions, the United Nations, ECOSOC and the General Assembly.¹²⁸ This report concludes as follows:

To overcome the shortcomings and build on the strengths of the Commission on Sustainable Development, the forum would need to maintain a strong focus on implementation at all levels, including sharing of experiences; furthering integration of the three dimensions of sustainable development, engaging more strongly the economic and social policy making communities; enhancing the engagement of major groups, the academic and scientific community; having a focused and flexible agenda and a robust preparation process, with support from a stronger UN inter-agency process; encouraging and strengthening partnerships, initiatives and voluntary commitments, and reviewing and monitoring progress on a regular basis.¹²⁹

Another useful proposal in the draft version of *The Future We Want* was that an official international representative for future generations be appointed. This development could have also led to increased accountability of decision-making on the environment by states.

B *High Commissioner for Future Generations or Ombudsman*

In 1986, the Experts Group on Environmental Law of the World Commission on Environment and Development (WCED) recommended the appointment of an international ombudsman.¹³⁰ An ombudsman would have the responsibilities of 'representing and protecting the interests of future generations'¹³¹ together with other duties such as the assessment of compliance with international environmental agreements. Brown Weiss considered that the rights of future generations could be effectively enforced by a representative acting on behalf of the group for example an ombudsman or commissioner.¹³² The concept of intergenerational equity has been considered at the international level in the *Goa Guidelines on Intergenerational Equity*¹³³ that set out more detailed strategies to ensure that the interests of future generations are taken into account including the appointment of commissioners to protect the interests of future generations.

The draft version of *The Future We Want* suggested that the office of an ombudsman (or a High Commissioner) could be introduced at the international level.¹³⁴ Unfortunately, this proposal for the establishment of an ombudsman was not agreed to in the final version of *The Future We Want*. Instead, the decision was reached that the Secretary-General could provide a report on the needs of future generations.¹³⁵

¹²⁸ Report of the Secretary-General, *Lessons Learned from the Commission on Sustainable Development* UN GA 67th sess, Sustainable Development, Item 20(a) (21 February 2013) 93.

¹²⁹ *Ibid.*

¹³⁰ Experts Group on Environmental Law of the World Commission on Environment and Development, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* (Graham & Trotman, 1986) 16.

¹³¹ *Ibid.*

¹³² Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, (Transnational Publishers, Inc, 1989) 125.

¹³³ *Goa Guidelines on Intergenerational Equity* (1988) 18 *Environmental Policy and Law* 190.

¹³⁴ *Draft The Future We Want*, above n 99, [57] 'We agree to further consider the establishment of an Ombudsperson, or High Commissioner for Future Generations, to promote sustainable development.'

¹³⁵ *The Future We Want*, above n 1, [86]. 'We will also consider the need for promoting intergenerational solidarity for the achievement of sustainable development, taking into account the needs of future generations, including by inviting the Secretary-General to present a report on this issue.'

This report will be undertaken by the Secretary-General but the problem is that the issue of protecting the rights of future generations has been further delayed at a time when it is urgent for environmental decision-making to take into account the interests of forthcoming generations because of the possibility that irreversible changes to the environment could occur in the near future. There was little guidance in the draft *Future We Want* about the functions that an ombudsman would perform. It is likely that the office of an international ombudsman would act as a watchdog for future generations and protect their interests by representing them in policy discussions on all issues concerning sustainable development. An ombudsman could also be responsible for ensuring that intergenerational equity considerations are incorporated into sustainable development governance.¹³⁶

The proposal to consider the introduction of an ombudsman for future generations could have been a significant advance in international environmental law and it is unfortunate that this proposal was not specifically adopted in the *Future We Want*. An ombudsman could promote sustainable development, have standing in international courts and tribunals and could be granted the right to participate in decision-making in international sustainable development institutions. This office could advocate the rights of future generations in negotiations with states about the implementation of multilateral environmental conventions. An ombudsman could also encourage state to comply with their international commitments concerning the protection of the environment and draw the attention of the public to those states that have failed to meet their commitments. The Expert Panel on Intergenerational Solidarity commenced exchanging views with stakeholders in 2013 on issues concerning future generations, including the office of an ombudsman and these deliberations will assist the Secretary General in the preparation of the report on this topic.¹³⁷ Kate Offerdahl, a commentator on the Expert Panel on Intergenerational Solidarity, pointed out that the high-level political forum could have authority to implement the three pillars of sustainable development and the appointment of a high level representative for future generations would be crucial to this forum.¹³⁸ This representative should have power to challenge inappropriate business practices with a view to long-term interests rather than a short-term focus on the interests of the present generation.¹³⁹

One feature of the common concern of humankind concept is that states are responsible for the protection of natural resources to maintain access for future generations.¹⁴⁰ If clear state obligations to future generations are established and there are adequate provisions for an ombudsman to have standing it would be possible for future generations to bring legal actions if there is a breach or threatened breach of these obligations. A broader basis of standing before international courts and tribunals would encourage state governments to adhere to their international commitments on environmental protection.

¹³⁶ See Cruickshank, Schneeberger and Smith, above n 26, 58.

¹³⁷ United Nations Department of Economic and Social Affairs Division for Sustainable Development, *Expert Panel on Intergenerational Solidarity*

<<http://sustainabledevelopment.un.org/index.php?page=view&type=13&nr=438&menu=35>>.

¹³⁸ 'Expert Panel on Intergenerational Solidarity' (Concept Note, United Nations Headquarters New York, 9 May 2013) 3

<http://sustainabledevelopment.un.org/content/documents/1794Concept%20Note_Intergenerational%20Solidarity_0705.pdf>.

¹³⁹ Ibid.

¹⁴⁰ Birnie, Boyle and Redgwell, above n 30, 192.

Another change to international governance that could prove effective would be the introduction of a widely accessible international court for the environment,¹⁴¹ however, this proposal was not considered in *The Future We Want*. Certainly, there is a growing awareness in the international community of the need for a forum for environmental justice.¹⁴² The establishment of a court or tribunal with judges who are experts in environmental law could permit an ombudsman to have standing to claim infringements of the planetary rights of future generations. Indeed, the interests of future generations should be taken into account in decisions in cases concerning the global environment given that there are a number of references to future generations in international environmental agreements including the *United Nations Convention on Biological Diversity*,¹⁴³ *United Nations Framework Convention on Climate Change*,¹⁴⁴ the *Rio Declaration*¹⁴⁵ the *United Nations Convention on the Law of the Sea*¹⁴⁶ and *The Future We Want*¹⁴⁷ Another area of international environmental governance discussed at the Rio+20 conference was the need for reform to the United Nations Environment Program (UNEP) because this organisation is unable to effectively manage the increasing number of environmental problems that are occurring at a global level.

C *United Nations Environment Programme (UNEP)*

The United Nations Environment Programme (UNEP) is a subsidiary organ of the UN with a vast number of responsibilities concerning the management of different environmental regimes even though it operates on a very limited budget. This situation has led to criticism of UNEP, because of its inability to support more complex environmental areas such as sustainable development,¹⁴⁸ climate change and the protection of biodiversity without the provision of adequate financial resources.¹⁴⁹ Two options were canvassed in the draft version of *The Future We Want* to improve the governance of UNEP in the future. First, providing for universal membership and additional funding could strengthen the capacity of UNEP.¹⁵⁰ Secondly, UNEP could adopt the status of a specialised UN agency for the environment, with universal membership of its Governing Council and increased funding.¹⁵¹

The first option to strengthen the role of UNEP was accepted in the final version of *The Future We Want*.¹⁵² The proposal is that states will agree to reform UNEP as the leading

¹⁴¹ See Alfred Rest, 'Enhanced Implementation of the Biological Diversity Convention by Judicial Control' (1999) 29 *Environmental Policy and Law* 32, 37.

¹⁴² Alfred Rest, 'Enhanced Implementation of International Environmental Treaties by Judiciary – Access to Justice in International Environmental Law for Individuals and NGOs: Efficacious Enforcement by the Permanent Court of Arbitration' (2004) 1 *Macquarie Journal of International and Comparative Environmental Law*, 1.

¹⁴³ *United Nations Convention on Biological Diversity* opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993) preamble.

¹⁴⁴ *United Nations Framework Convention on Climate Change* opened for signature 9 May 1992, 1771 UNTS 107, (entered into force 21 March 1994) art 3 and preamble.

¹⁴⁵ See *Rio Declaration*, above n 19, principle 3.

¹⁴⁶ *United Nations Convention on the Law of the Sea (UNCLOS)* opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994) art 140.

¹⁴⁷ *The Future We Want*, above n 2, [1], [13].

¹⁴⁸ Peter Haas, Norichika Kanie and Craig Murphy, 'Conclusion: Institutional Design and Institutional Reform for Sustainable Development' in Norichika Kanie and Peter Haas (eds) *Emerging Forces in Environmental Governance* (United Nations University Press, 2004) 263, 270-271.

¹⁴⁹ See Mori, above n 110, 157.

¹⁵⁰ *Draft The Future We Want*, above n 99, [51].

¹⁵¹ *Ibid* [51alt].

¹⁵² *The Future We Want*, above n 2, [88].

global environmental authority by requesting that the General Assembly pass a resolution approving the change. The new reforms to UNEP would include universal membership in its Governing Council and strengthened governance to improve its accountability to states.¹⁵³ Other important reforms include the proposal to increase UNEP's financial resources,¹⁵⁴ strengthening UNEP's role in coordination bodies¹⁵⁵ and ensuring the active participation of all stakeholders to promote transparency and engagement by civil society.¹⁵⁶ So it is likely that the new UNEP will continue to operate as a programme and report to ECOSOC. However, the financial resources of UNEP may still be inadequate, as regrettably, agreement was not reached at the Rio+20 conference to set up a reliable funding mechanism. Instead financial resources for UNEP will be provided out of the UN budget and voluntary contributions.¹⁵⁷ *The Future We Want* also indicated that developing countries would require additional financial assistance to achieve sustainable development goals.¹⁵⁸ There are currently discussions occurring about how this assistance may be provided through an intergovernmental process. This process will involve consultations with financial institutions and stakeholders to prepare a report on a sustainable development financing strategy.¹⁵⁹ The intergovernmental committee is to conclude this report by 2014 and will develop options for the financing strategy to assist the funding of sustainable development objectives.¹⁶⁰

A preferable alternative is to restructure UNEP as a UN agency (or possibly a UN Environment organisation (UNEO)) because there are a number of functions that UNEP could carry out more effectively as a specialized agency with power to ensure that environmental programs are implemented. Advantages of setting up the UNEO are that it could have the power to:

1. focus on the implementation of environmental norms;
2. make decisions; and
3. pass binding regulations with the consent of all members.¹⁶¹

As an independent legal entity, the UNEO could achieve results through better coordination and implementation of environmental goals and would not be a subsidiary organ of the UN because of its increased authority as an agency. Commentators have suggested that the new institution could have following key functions:

- To define global environmental priorities and strategies;
- To produce and/or compile scientific data in order to inform decision makers;
- To act as an environmental watchdog and warning system;
- To build the capacities of developing countries;
- To assess and rationalize the international environmental governance system;

¹⁵³ Ibid [88(a)].

¹⁵⁴ Ibid [88(b)].

¹⁵⁵ Ibid [88(c)].

¹⁵⁶ Ibid [88(h)].

¹⁵⁷ Ibid [88(b)].

¹⁵⁸ Ibid [58(f)].

¹⁵⁹ United Nations Department of Economic and Social Affairs Division for Sustainable Development, *Expert Committee on a Sustainable Development Financing Strategy* <<http://sustainabledevelopment.un.org/index.php?menu=1557>>.

¹⁶⁰ United Nations Department of Economic and Social Affairs Division for Sustainable Development, *Intergovernmental Committee of Experts on Sustainable Development Financing* <<http://sustainabledevelopment.un.org/index.php?menu=1557>>.

¹⁶¹ Cruickshank, Schneeberger and Smith, above n 26, 46.

- To increase coordination and synergies with the UN agencies and environmental conventions; and
- To carry out financial consolidation (stable, predictable and permanent resources).¹⁶²

The proposed restructure of UNEP as a new powerful organisation (or UNEO) with universal membership could help to overcome some of the current problems with the implementation of sustainable development. A strong environmental authority could focus on environmental protection and facilitate the transition to sustainable development. Overall, the outcome would be an improvement on the present system of sustainable development governance where the focus tends to be on economic or social issues in priority to environmental concerns.¹⁶³

Indeed, it is likely that the ongoing pressures of economic growth and increased population have impacted upon much of the progress that has been made by states to meet environmental challenges¹⁶⁴ so, further immediate action on sustainable development objectives should be the priority for all states. Otherwise, there is a risk that many social and economic gains will eventually be lost because of long-term degradation of the environment.¹⁶⁵ Inevitably, environmental deterioration is likely to affect the continued existence of many species and the quality of life for human beings in the future.¹⁶⁶

One difficulty is that states would have to negotiate a treaty to introduce the necessary reforms for establishing a UNEO and this process is more onerous than the procedure for strengthening UNEP by means of a request to the UN General Assembly to pass a resolution.¹⁶⁷ Even if states agreed to cede power over their sovereignty to a powerful international authority by negotiating a treaty to introduce a UNEO, there are other impediments. Some states may refuse to ratify the treaty and others may adopt reservations to certain provisions in the treaty. In the event that some states do plan to ratify a treaty establishing this organisation, governments would need the political will to introduce necessary legislative changes at the national level.

Arguably, the reforms agreed to in *The Future We Want* do not go far enough to deal with the ineffectiveness of international environmental governance. The failure to raise the status of UNEP to that of an agency will result in a continued problem with international governance because there is no international entity with powers to ensure that states comply with their international commitments to protect the environment. In order to avoid this difficulty, the participants to *The Peoples' Sustainability Treaty on Sustainable Development Governance* proposed that establishing a new global organisation could be the answer to the problems with inadequate international governance.

D *World Environment Organisation*

¹⁶² Ibid 45.

¹⁶³ United Nations Department of Economic and Social Affairs, *The History of Sustainable Development in the United Nations* <<http://www.unsd2012.org/rio20/history.html>>.

¹⁶⁴ *OECD Environmental Outlook*, above n 44, 19.

¹⁶⁵ Ibid 26.

¹⁶⁶ See Millennium Ecosystem Assessment, *Ecosystems and Human Wellbeing: General Synthesis* (Island Press, 2005) 1 'Four Main Findings'.

¹⁶⁷ Cruickshank, Schneeberger and Smith, above n 26, 42.

The participants¹⁶⁸ of *The Peoples' Sustainability Treaty on Sustainable Development Governance*¹⁶⁹ are seeking to introduce two key changes to governance. The first suggestion is that a higher level Council on Sustainable Development could replace the CSD. Heads of state and ministers would provide policy guidance through the Council on Sustainable Development and a key function of this council would be to monitor the implementation of sustainable development.¹⁷⁰ This is similar to the proposal in the draft version of the *Future We Want* for the establishment of a Sustainable Development Council. Secondly, the peoples' treaty on governance considers that UNEP should be upgraded to an agency and renamed the World Environment Organisation (WEO) that would be funded with compulsory financial commitments from all member states.¹⁷¹ A WEO could also be granted enforcement powers with authority to make 'WEO Conventions' in a similar manner to the International Labour Organisation.¹⁷²

In fact, the suggestion that a WEO be set up is similar to the proposal for the establishment of the UNEO. However, the functions of the WEO are different because this organisation could be granted powers to ensure that states implement their commitments as well as dispute settlement functions in a similar manner to those granted the World Trade Organisation. So, a WEO could provide a 'multilateral rules-based system for the global environment'.¹⁷³ If a WEO is created with adequate enforcement powers, it could ensure sustainable development goals are met and an associated tribunal could be established to resolve international environmental disputes.

There are diverging views about the range of functions that could be granted to the WEO but scientific, political, regulatory and economic functions are likely to be included. One of the main reasons for the development of an international institution with authority over environmental matters is that it can provide effective leadership on issues concerning the environmental pillar that has been the most overlooked area of sustainable development.¹⁷⁴ A WEO could provide opportunities for participation to representatives of NGOs and other members of civil society in decision-making as occurred in the CSD,¹⁷⁵ and these opportunities could be extended to an ombudsman for future generations if one is appointed in the future. The representatives of NGOs and civil society could be selected based upon their previous record of commitment to sustainable development. Even though the establishment of a WEO has advantages this option is unlikely to be progressed, as the main instigators of change at the international level are state governments and some states would be unlikely to agree to grant such wide-ranging powers to an international organisation and others may be reluctant to provide the necessary financial commitments.

The ability of governments to make commitments to achieve sustainable development action depends upon a number of factors such as access to effective bureaucratic, scientific and

¹⁶⁸ The participants include the following organisations: The Association of Environmental Justice in Israel, Stakeholder Forum for a Sustainable Future, Center for Sustainability at Ramapo College of New Jersey.

¹⁶⁹ Peoples' Sustainability Treaties, *Peoples' Sustainability Treaty on Sustainable Development Governance* <<http://sustainabilitytreaties.org/draft-treaties/sustainable-development-governance/>>.

¹⁷⁰ Ibid part 3 (commitments).

¹⁷¹ Ibid.

¹⁷² Ibid

¹⁷³ Cruickshank, Schneeberger and Smith, above n 26, I51.

¹⁷⁴ Ibid 54.

¹⁷⁵ Ibid.

economic resources.¹⁷⁶ Many developing states do not have sufficient resources to support the necessary commitments and would require additional assistance to achieve changes. The following section discusses the proposal that states should negotiate sustainable development goals in order to ensure a coherent and uniform approach to sustainable development action.

IV SUSTAINABLE DEVELOPMENT GOALS

1 *Goals and targets*

States recognised that goals and targets can be set in priority areas of sustainable development to facilitate state progress within a reasonable period of time. In 2000 the UN General Assembly adopted the Millennium Declaration to set out goals including those for achieving peace, poverty eradication, protection of the environment and human rights as well as a number of specific targets, most of which are to be achieved by 2015.¹⁷⁷ This Declaration contains a number of general commitments to seek to protect the environment for future generations.¹⁷⁸ States reaffirmed their support for sustainable development and the program for action in *Agenda 21* in this declaration.¹⁷⁹ However there were no specific environmental goals stated in the Millennium Declaration with the exception of the entry into force of the *Kyoto Protocol to the United Nations Framework Convention on Climate Change*¹⁸⁰ and this target has been achieved. In *The Future We Want*, national governments agreed to remain committed to the achievement of the Millennium Development Goals¹⁸¹ and appreciated that the development of a new set of goals could be useful for consistent action on sustainable development.¹⁸²

The Future We Want indicates that states will specify a limited number of global goals that focus on priority areas for the achievement of sustainable development that will apply to all countries taking into account their differing circumstances.¹⁸³ These sustainable development goals will address all three pillars of sustainable development and are likely to be incorporated into the UN program post 2015.¹⁸⁴ An intergovernmental process that involves all stakeholders, civil society and the scientific experts will determine the sustainable development goals.¹⁸⁵ Part of the goal setting process will include the negotiation of targets and indicators taking into account the differing capabilities of countries.¹⁸⁶ States are also likely to make provision for the transfer of technical and financial assistance to developing countries.

¹⁷⁶David Downie, 'Global Environmental Policy: Governance Through Regimes' in Regina Axelrod, Stacy VanDeveer and David Downie (eds), *The Global Environment: Institutions, Law and Policy* (CQ Press, 3rd ed, 2011) 70, 82.

¹⁷⁷*Millennium Declaration*, GA Res 55/2, UNGAOR, 55th sess, Agenda Item 61(b), UN Doc A/Res/55/2 (5 September 2000) <<http://www.un.org/millennium/declaration/ares552e.pdf>>

¹⁷⁸Ibid [21]-[23].

¹⁷⁹Ibid [22].

¹⁸⁰Ibid [23]. *Kyoto Protocol to the Framework Convention on Climate Change* opened for signature 11 December 1997, 37 ILM 22 (1998) (entered into force 16 February 2005).

¹⁸¹*The Future We Want* above n 2, [245].

¹⁸²Ibid [246].

¹⁸³Ibid [247].

¹⁸⁴Ibid [246].

¹⁸⁵Ibid [248].

¹⁸⁶Ibid [250].

The problem is that with so many involved in the negotiation process the bargaining parties will find it difficult to agree on the areas of sustainable development where targets are most necessary. The draft version of *The Future We Want* indicated that the targets should include the following areas: sustainable consumption and production, oceans, food security, agriculture, energy, water access, sustainable cities, green jobs and disaster risk reduction.¹⁸⁷ In these international negotiations there is a risk that the goals will be broadly worded, lack clarity and contain a number of qualifications and exceptions leading to a failure to commit a large number of states to take action to achieve these goals.

Given that sustainable development covers a large number of diverse areas (as outlined in *Agenda 21*)¹⁸⁸ it is a good idea to include a limited number of key goals in areas of the most serious global concern such as poverty, climate change and loss of biodiversity.¹⁸⁹ Alternatively, if agreement cannot be reached on global goals through these negotiations, states should rely on setting effective targets under existing international environmental conventions in these areas.

2 Peoples' Sustainability Treaty on Sustainable Development Goals

The *Peoples' Sustainability Treaty on Sustainable Development Goals* suggests that states build upon the Millennium Development Goals by introducing new goals in similar areas referred to in *The Future We Want*.¹⁹⁰ This peoples' treaty has an overall focus on poverty eradication¹⁹¹ and proposes that clear indicators be established with both short-term and long-term goals.¹⁹²

Clearly, international and national targets would encourage states to make progress on sustainable development action. However, the proposal for sustainable development goals and targets is unlikely to succeed unless there is global political and legal commitment to implement them within a set timeframe and adequate provision of financial resources for developing countries to have the capacity to implement these goals.¹⁹³ The success of sustainable development goals will also depend upon the effectiveness of the other international governance reforms because it will be necessary to have supervision carried out by an international institution.

3 Recent Proposals

In 2013, the Report of High Level Panel of Eminent Persons on the post-2015 Development Agenda suggests that new goals should build upon the Millennium Development Goals so that there is an end to poverty and making sustainable development part of the development agenda.¹⁹⁴ The proposed twelve new goals are set out in the first annex to this report and

¹⁸⁷ *Draft The Future We Want*, above n 99, [170].

¹⁸⁸ *Agenda 21*, above n 20.

¹⁸⁹ See Dernbach, above n 64, 90.

¹⁹⁰ Peoples' Sustainability Treaties, *Peoples' Sustainability Treaty on Sustainable Development Goals* <<http://sustainabilitytreaties.org/draft-treaties/sustainable-development-goals/>>.

¹⁹¹ *Ibid* principle 2.

¹⁹² *Ibid* principle 5.

¹⁹³ Dernbach, above n 64, 81.

¹⁹⁴ United Nations Department of Economic and Social Affairs Division for Sustainable Development, *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development The Report of High Level Panel of Eminent Persons on the Post-2015 Development* (2013) <<http://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=893&menu=35>>.

include goals to end poverty, manage natural assets sustainably, provide good governance and catalyse long-term finance.

This high-level panel considers that the Millennium Development Goals failed to integrate economic, social and environmental aspects of sustainable development and particularly the environment and development aspects.¹⁹⁵ In order to avoid the problem of the post 2015 proposal for sustainable development goals becoming an unproductive process it has been suggested that these goals could form part of a global compact and effective implementation strategies could be adopted.¹⁹⁶ The Open Working Group of the General Assembly will produce a proposal on sustainable development goals for the sixty-eighth session of General Assembly.¹⁹⁷

4 Monitoring

Monitoring the progress achieved by states on a regular basis enables the data to be collected to form a global record of action on sustainable development. An international institution could carry out the monitoring role and share the data that is collected from states with the public. If states are not meeting their commitments these results could be released to the public who may express their disapproval.¹⁹⁸ It is also possible for consumers to take direct action by refusing to purchase products from that state¹⁹⁹ or some states could possibly impose sanctions such as a trade embargo on those states refusing to honour their commitments.

States also agreed in *The Future We Want* that a regular review be carried out of the state of the planet to provide information about the rate of resource loss²⁰⁰ and the degree of environmental degradation occurring. This data is essential for effective action to prevent irreversible deterioration of the environment. So, programs such as the Global Environmental Outlook are to be continued in the future to enable informed decision-making.²⁰¹ An improved governance structure is necessary at both the national and international level to collect and disseminate information about whether the sustainable development goals are successful. The problem is that if international negotiations result in poorly worded targets, the goals for sustainable development will probably not be achieved. The adoption of watered-down language in the drafting of the sustainable development goals would provide little incentive for states to take action on these goals. State governments may also develop methods of avoiding commitments by relying upon unclear or ambiguous terminology.²⁰² Compliance mechanisms can be developed to ensure that the implementation of sustainable

¹⁹⁵ Ibid.

¹⁹⁶ See 'Post-2015: Framing a New Approach to Sustainable Development' (Policy Paper, Independent Research Forum on Post-2015 Sustainable Development Agenda, March 2013) 5 <<http://sustainabledevelopment.un.org/index.php?page=view&type=400&nr=874&menu=35>>.

¹⁹⁷ United Nations Department of Economic and Social Affairs Division for Sustainable Development *Post-2015 Process* <<http://sustainabledevelopment.un.org/index.php?menu=1561>>.

¹⁹⁸ Salim Nakhjavani, 'Sustainable Development Compliance-Building' in Marie-Claire Cordonier Segger and Ashfaq Khalfan, *Sustainable Development Law Principles, Practices and Prospects* (Oxford University Press, 2004) 252.

¹⁹⁹ See Catherine Giraud, 'French Nuclear Testing in the Pacific and the 1995 International Court of Justice Decision' 1996 (1) *Asia Pacific Journal of Environmental Law* 125, 133.

²⁰⁰ *The Future We Want* above n 2, [90].

²⁰¹ Ibid [88(d)].

²⁰² See Dernbach above n 64, 89.

development goals occurs. The difficulty with the current proposals for reform to international governance in *The Future We Want* is that there is no provision for effective implementation and compliance institutions. A powerful global institution (or a WEO) could supervise states so that action to reach the targets and goals for sustainable development is carried out within a specific timeframe.²⁰³

V CONCLUSION

Instead of setting out specific action on sustainable development, the agreement in *The Future We Want* is couched in general terms with non-binding commitments. More needs to be accomplished at the international level to negotiate sustainable development goals and timetables to implement them. These goals could be aligned with specific international standards developed by an independent organisation that will ensure adequate protection of the environment for future generations. It is also possible to establish targets to achieve sustainable development goals that all states must abide by within time limits so that greater progress is achieved during the next 10 years. The rate of progress should be sped-up to ensure that more sustainable development objectives are achieved before the end of the next decade in light of the dire predictions for the global environment in OECD *Environmental Outlook to 2050* report.²⁰⁴

The three dimensions of the common concern of humankind could be taken into account to integrate the environmental pillar into the operation of sustainable development. So, in the temporal dimension, states should appoint an international ombudsman to protect the interests of future generations and develop a green economy where natural resources are used sustainably. Secondly, in the spatial dimension all states should act cooperatively to protect their own environment as well as the commons. This area needs attention and was not comprehensively addressed in *The Future We Want*. A new more powerful organisation is necessary to ensure that states cooperate to protect the global environment so the establishment of a WEO should remain on the international agenda for the future reform of international governance. A WEO could coordinate the work of the secretariats of multilateral environmental conventions and establish compliance systems for states.²⁰⁵ The operation of the common concern of humankind concept indicates that states should no longer be permitted to rely upon the doctrine of sovereignty over natural resources to avoid adhering to international commitments to take action on sustainable development.

Other major areas for action on sustainable development set out in *The Future We Want* include food security, water, energy, cities, green-jobs, oceans and seas, risk reduction of natural disasters, climate change, forests and biodiversity, land degradation and desertification, mountains, chemicals and waste, sustainable consumption and production, education and gender equality.²⁰⁶ A WEO, if established as an international rule-making body with adequate financial support could administer the vast amount of work that will need to be carried out in these areas.²⁰⁷

²⁰³ See Cruickshank, Schneeberger and Smith, above n 26, 87.

²⁰⁴ OECD *Environmental Outlook*, above n 44, 26.

²⁰⁵ *The Belgrade Process*, above n 50, 9.

²⁰⁶ *The Future We Want*, above n 2, [186]-[236].

²⁰⁷ See *The Belgrade Process*, above n 50, 9.

Thirdly, in the social dimension of the common concern of humankind, all groups in society must play a role in sustainable development action and have the right to information and to participate in environmental decision-making. The development of the peoples' movement at the Rio+20 conference indicates that civil society is dissatisfied both with the slow response of state governments to progress sustainable development action and with state reluctance to make major reforms to international governance of institutions.²⁰⁸ These peoples' treaties are providing a platform for the public to participate in sustainable development initiatives however; an avenue for active participation should also exist within the international institutional framework for sustainable development. Unfortunately, the plan for the establishment of a Sustainable Development Council was not adopted in final version of *The Future We Want*; instead it was decided to establish a high-level political forum²⁰⁹ as a new leadership body that would eventually replace the CSD. This is a lost opportunity to develop a similar body to the Human Rights Council that could have authority to consider complaints from members of civil society or NGOs against states that failed to meet their commitments to sustainable development action. It could also be possible to enable members of civil society to participate in a system of review of state action.

Clearly, there has been inadequate progress on the achievement of sustainable development to date even though there are a number of international agreements on this topic. In the draft version of *The Future We Want* there were indications that more significant governance reforms could have been introduced. However, the commitments in the final agreement, *The Future We Want*, tend to be reduced to the lowest common denominator probably as a result of the failure of efforts in negotiations to gain agreement from those states less concerned about the need to achieve sustainable development. So, it is likely that the pace of change towards the achievement of sustainable development will continue to be very slow.

The concept of sustainable development has been developed in soft law instruments and its implementation has suffered for a lack of political will, financial resources and appropriate policies, methods and regulation. However, over time this position may change, state practice on sustainable development will increase and this will create a basis for *opinio juris* (the understanding that there is a legal obligation) that can form customary international law in this area. Arguably, as sustainable development and the common concern of humankind could become legal principles, they will further contribute to global action by states on sustainable development.

Edith Brown Weiss considered there is an almost global understanding amongst communities of an obligation to protect the natural and cultural heritage for future generations²¹⁰ and that the present generation should at the very least provide future generations with an environment in no worse a condition than it is at present.²¹¹ However, the present reforms set out in *The Future We Want* are clearly inadequate and further reform is necessary so that a quality of life will be achieved in the future that present and forthcoming generations will want.

²⁰⁸ See Peoples' Sustainability Treaties, *Peoples' Sustainability Manifesto* <<http://sustainabilitytreaties.org/pst-manifesto/>> Declaration.

²⁰⁹ *The Future We Want* above n 2, [84].

²¹⁰ Edith Brown Weiss, 'The Planetary Trust: Conservation and Intergenerational Equity' (1984) 11 *Ecology Law Quarterly* 495, 500.

²¹¹ Brown Weiss, above n 132, 22-24.