

OBAFEMI AWOLOWO UNIVERSITY, ILE-IFE, NIGERIA.

Inaugural Lecture Series 133

**DYNAMICS OF A NEW WORLD
ENVIRONMENTAL LEGAL ORDER**

M.T. Okorodudu-Fubara
Professor of Law



OBAFEMI AWOLOWO UNIVERSITY PRESS LIMITED



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A. Preamble

Vice-Chancellor Sir, I regard it a singular honour and distinct privilege by divine grace of Almighty God, Creator of the universe, to be invited to deliver this inaugural lecture. My special privilege is that I have been invited to deliver this lecture in the distinguished and illustrious hall of the Obafemi Awolowo University, Ile-Ife, a place which has been the seat of learning for over three decades plus experience on the intellectual trail. I could not have asked for a better place to have the unique experience of this day. A little over three decades ago, in 1968 having passed out with distinction, a year earlier from the renowned girls Secondary School, Queens School (now Ibadan) I was admitted as a relatively young teenage undergraduate into the pre-law degree programme at this very citadel of learning - "University of Ife (now Obafemi Awolowo University). That spell the early beginning of my academic journey which was marked out to be a fulfilling career in the Ministry of Justice (in the Ministry of Justice where I transferred from as Principal State Counsel to join the service of this University as Lecturer I in December 1982). Fortuitously, in 1998, three decades later under your patronage, I was promoted to the rank of Professor. I appreciate the opportunity which confirmed my elevation to the professorial chair, to deliver this inaugural lecture barely a year from the date of the official announcement of my promotion to the rank of Professor.

DYNAMICS OF A NEW WORLD ENVIRONMENTAL LEGAL ORDER

By

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M.T. Okorodudu-Fubara

Professor of Law

An Inaugural Lecture Delivered at Oduduwa Hall,
Obafemi Awolowo University, Ile-Ife

on Tuesday, April 13, 1999

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B. Basic Facts

Placing my background academic experience in its proper perspective, a sound undergraduate programme in law at the University of Lagos (where I transferred to after completion of the one year pre-law programme at the University of Ife) prepared me for the study of law in the United Kingdom, U.K. and Harvard University, U.S.A. (1974/75 and 1976-1980, respectively) where I specialised mainly in Company Law, Labour Law, International Law, Law of International Trade

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A. Preamble

Vice-Chancellor Sir, I regard it a singular honour and distinct privilege by divine grace of Almighty God, Creator of the universe, supreme Architect of the "Environment" (my special field of intellectual interest), to stand before this distinguished audience and render an account based on my three decades plus experience on the intellectual trail. I could not have asked for a better place to have the unique experience of this day. A little over three decades ago, in 1968 having passed out with distinction, a year earlier from the renowned girls Secondary School, Queens School Ede, (now Ibadan) I was admitted as a relatively young teenage undergraduate into the pre-law degree programme at this very citadel of learning – "University of Ife (now Obafemi Awolowo University). That spelt the early beginnings of that which destiny had marked out to be a fulfilling career in legal intellectualism (in the Ministry of Justice where I transferred from as Principal State Counsel to join the service of this University as Lecturer I in December 1982). Fortuitously, in 1998, three decades later under your remarkable Vice-Chancellorship I was pronounced Professor of Law with effect from 1st October, 1995. I appreciate the opportunity afforded me by the Senate of the Obafemi Awolowo University which confirmed my elevation to the professorial chair, to deliver this inaugural lecture barely a year from the date of the official announcement of my promotion to the rank of Professor.

B. Basic Facts

Placing my background academic experience in its proper perspective, a sound undergraduate programme in law at the University of Lagos (where I transferred to after completion of the one year pre-law programme at Ife) prepared me for postgraduate studies at the University of London, U.K. and Harvard University, U.S.A. (1974/75 and 1976-1980, respectively) where I specialised mainly in Company Law, Labour Law, International Law, Law of International Trade

and United Nations Law. Incidentally, the aspect of the law which I make bold to profess today is not one of these, but rather a nascent field of the law and legal studies curriculum. The holistic impact of my legal training within the intellectual crucible of mentors of the likes of Professor Taslim Olawale Elias at the University of Lagos; Lord Wedderburn and Professors Ryder and Rideout at the University of London; Professors Roberto Unger, Detlev Vagts and Louis Sohn at the Harvard Law School, prepared me firmly as an independent legal researcher for the rare challenge of venturing into a new field of the law, ENVIRONMENTAL LAW, distinguishing myself in that field such that I am able to stand before this distinguished and erudite audience this evening to profess the Law of Environmental Protection under the topic: DYNAMICS OF A NEW WORLD ENVIRONMENTAL LEGAL ORDER.

In hindsight, Mr. Vice-Chancellor, permit me to recall that, in 1988 when Nigeria was embarrassed with the serious problem of toxic waste dump at one of the country's sea ports, Koko several knotty legal issues emerged for which the legal system was ill prepared. I was commissioned to present the legal discussion paper titled: REVIEW OF EXISTING LAWS AND STATEMENTS ON THE ENVIRONMENT IN NIGERIA, at an international workshop organised by the United Nations Environment Programme (UNEP) in collaboration with the Environmental Planning and Protection Division of the Federal Ministry of Works and Housing. This marked the first for me in a series of academic works and legal consultancies in the environment field.

The environment is simply the most dynamic issue in the last quarter of the 20th Century with the emergence of a sustained global appreciation of the vital nexus between a well-preserved environment and the survival of mankind (Okorodudu-Fubara 1997). In April 1996, Professor Richard Macrory, the UK's first Professor of Environmental Law based at the Imperial College Centre for Environmental Technology (ICCET), delivered the first of such inaugural lecture on the Environment

in the UK titled: ENVIRONMENTAL CITIZENSHIP AND THE LAW: REPAIRING THE EUROPEAN ROAD. Mr. Vice-Chancellor, I believe history is being made here in this hall today. I wish to congratulate you for being the first Chief Executive of a University in our country to preside over the first inaugural lecture on Environmental Law barely three years after the UK experience. Less than a month ago, Vice-Chancellor Sir, you were chief host at the launching of a pathbreaking textbook on this same subject – **LAW OF ENVIRONMENTAL PROTECTION: Materials and Text**, authored by the inaugural lecturer. I congratulate the Obafemi Awolowo University for its varied achievements and particularly the unrivaled opportunities it affords academics to excel and prove their mettle in their various fields of endeavour.

In addressing the inaugural lecture topic I shall consider the genesis of international environmental law — issues of international and inter-generational equities; define some of the major groundrules of international environmental law: reconcile the concept of sustainable development and emergent global environmental regime; reflections on the developing countries at the crossroads of global environmental politics; and finally, consider the way forward in foistering an enduring and effective global partnership that would yield a meaningful realisation of the goals and aspirations expressed in AGENDA 21 in the overall context of the ‘Dynamics of a New World Environmental Legal Order’.

C. Genesis of a Global Environmental Regime

“... law does not exist in isolation. It is one tool that we have, but the solutions to the environmental problems that we are facing would equally demand contribution by science, contribution by politics, as well as demanding sound economics.”

Elizabeth Dowdeswell, Executive Director UNEP 1994

Former Prime Minister of Great Britain Mrs. Margaret Thatcher (now Lady Thatcher), had asserted that "science holds the key" to the solution of the ozone depletion problem as well as to its definition. This is true to a large extent. I made the point in 1992 that it is important to appreciate the fact that we have to use the law through in-built mechanisms of legal institutions, legislative control measures, standards etc. to turn that 'scientific key', in order to get the desired break-through with the global environmental problems. I share the views of the former Prime Minister that national policies in this context must be based on sound science, if we are to avoid solving the wrong problems or solving the problems in the wrong way. A corollary to this thinking is that we must create the legal framework (i.e. appropriate regime) for an effective implementation of these policies founded upon sound science, politics or economics (Okorodudu-Fubara, 1993).

Chapter 39 of Agenda 21 which emerged from the 1992 United Nations Conference on Environment and Development recognized the imperative of the role of the law in maintaining the 'delicate balance between environment and developmental concerns' or socio-economic considerations. Dean Roscoe Pound of the Harvard Law School, is credited as being the American leader in the school of sociological jurisprudence, which is the most apt for the emergent environmental jurisprudence. According to Roscoe Pound, law is more than a set of abstract norms or a legal order – it is also a process of balancing conflicting interests and securing the satisfaction of the maximum of wants with the minimum of friction. To this end Pound had often utilized the analogy of 'social engineering' definition of law to advance his jurisprudential thoughts (Paton, 1972). In developing an international environmental regime the full realisation by the United Nations Environment Programme (UNEP), that "law provides order and confidence to the international community the order that civil societies look toward in resolving social tension", has a firm support in a well-tested jurisprudential school of thought.

The 20th Century has witnessed an inchoate international environmental law characterized by two major but paradoxical developments. First, the state of flux in the field in the early beginnings which delayed the build-up of a distinct subject known as international environmental law. Second, the establishment of the United Nations which marked a watershed in the development of international environmental law. With the UN breathing life into the subject, international environmental law began to mature and picked up momentum in 1972 when the first UN global meeting to consider the problems of the human environment was convened at Stockholm. This maturation grew with increased global environmental protection consciousness. (Okorodudu-Fubara, 1997).

In 1968, the UN General Assembly by Resolution 2398 (XXIII) 1968 (which convened the 1972 Stockholm Conference) noted that there was: "an urgent need for intensified action at national and international level to limit and, where possible eliminate the impairment of the human environment". The Preparatory Committee (PrepCom) established by UN General Assembly Resolution 2581 (XXIV) 1969 decided that the Declaration which would emanate from the global conference should be: "a document of basic principles calling mankind's urgent attention to the varied and interrelated problems of the environment, and to draw attention to the rights and obligations of man and the international community in regard thereto".

With that, the genesis of a global concerted effort towards a pragmatic development and codification of international environmental law can be traced to the Declaration of the United Nations Conference on the Human Environment, Stockholm, 1972 which emanated from the first UN Conference held specifically to consider the problems of the environment. Two decades after the Stockholm breakthrough, a second major UN Conference which met at Rio de Janeiro,

in 1992, adopted the Declaration of the UN Conference on Environment and Development, which fine-tuned the early achievements in development of legal precepts of international environmental law realised at Stockholm.

Issues of inter-national equity

The environmental protection concerns which emanated in the advanced industrial countries evoked suspicion from the developing nations. (Okorodudu-Fubara, 1988). These fears summarized and addressed at the 1972 Stockholm Conference, included:

- * Fear that the developed nations will create rigorous environmental standards for products traded internationally and generate a “neo-protectionism excluding non-conforming goods from poor lands”;
- * Fear that the emphasis on non-polluting technology and recycling may eliminate or reduce demand for some raw materials or agricultural products in which pesticide residues are found;
- * Fear that aid for development purposes will be delayed or curtailed if the rich lands focused largely on their own environmental problems;
- * Fear that developed lands will unilaterally dictate environmental standards to the developing land without considering how to relate those standards to the developing lands; and
- * Fear that the developed states will saddle the developing lands with their own definition of what are proper environmental concerns.

These fears which the Panel of Experts at the Stockholm Conference confirmed as legitimate but cautioned “should not be exaggerated, certainly border on issues of “international equity” and fairness amongst nations. In his opening address to the Stockholm Conference, the Prime Minister of Sweden, Olaf Palme saw it as “an inescapable fact that each individual

in the industrialized countries draws, on the average, thirty times more heavily on the limited resources of the earth than his fellow man in the developing countries ... these simple facts inevitably raise the question of equality, and more equal distribution between countries and within countries”.

Solutions to global environmental problems must forge an equitable balance between the countries of the world based on common principles of fairness and rules of collaboration among sovereign states, backed up by persuasion and negotiation (World Bank, 1992). We know that countries are responsible for varying degrees of diverse polluting activities which impact the global environment, for example the emission of greenhouse gases. The World Bank data reliably shows that the richer advanced countries have been emitting large amounts of greenhouse gases for several years thus contributing a disproportionate share of accumulated gases in the atmosphere – about 60 per cent of carbon dioxide from fossil fuel. By the mid-1980s world consumption of CFCs – the major substances that deplete the ozone layer – was about 1 million tons a year, and 80 per cent of this was found to be generated in the industrial countries. (World Bank, 1992). If developing countries perceive multilateral environmental agreements as bedrock of inequities between nations, the MEAs will not achieve the set objectives. What we observe in recent times are equity considerations naturally influencing the setting of priorities for international environmental policy and law-making. Nations are realising that if an MEA is to work, countries must be willing to give and take, that is, cooperate on the platform of global partnership. They rarely stand to gain or lose equally from this. Some concessions must be made on equitable basis to advance the goals of a particular MEA for dealing with an environmental “global bad”.

The Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 is a prime example of equitable fine-tuning under

the Protocol and subsequent revisions thereto. Developing countries (most of which generally fall within the categorisation of nations that consume less than 0.3kg of controlled substances per capita pursuant to Article 5 of the Protocol) are accorded special concessions under the Protocol. The consumption of CFCs in these countries may rise to specific ceilings and was to be frozen in 1996. The terminal date for phasing out the substance for these countries is fixed at 2010. The longer grace period accorded developing countries to phase out CFCs is to assist these countries to minimize the attendant burden of switching over to alternate technologies/substances. Added to this, the Protocol provides for (1) an Interim Multilateral Fund to help developing countries adopt replacements for CFCs if they cost more than what is being replaced and (2) transfer of technology under fair and most favourable conditions.

In recognition of the special circumstances of developing countries with economies in transition on the developmental scale, the United Nations Framework Convention on Climate Change in Article 3 Principle 1 refers to "common but differentiated responsibilities and respective capabilities". Thus, Article 6 of the CCC allows Parties undergoing the process of transition to a market economy a certain degree of flexibility in fulfilling their commitment. During the negotiation of the CCC serious considerations had been given to the fact that some countries (including Nigeria) are heavily dependent on exports of fossil fuel and are likely to suffer from policies that would reduce world demand. Suggestions have been made that countries may try to adopt by investing in assets that will mitigate the impact of any Climate change on economic and social activities. Moreover, since many developing countries subsidize consumption of commercial energy, eliminating such subsidies would reduce carbon dioxide emissions while yielding substantial economic gains. The experience so far in Nigeria does not seem to confirm this particular theory.

The Convention on Biological Diversity also expresses inbuilt international equity considerations through some new and innovative concepts such as the common concern of mankind, global partnerships, common but differentiated responsibility, funding and technology transfer. The CBD, however, does not go far enough in its equitable balancing. The intellectual property clause under the Convention does not adequately protect the developing countries. This is so, in spite of Article 8(j) which calls on contracting Parties, within their legislation to respect, preserve and maintain knowledge, innovations and the practices of indigenous and local communities. At the Second Session of the Inter-governmental Committee on the Convention on Biological Diversity, there was agreement on the importance of recognition of innovations of local communities and indigenous people. Several representatives called for adoption of new approaches to enable indigenous and local communities to be compensated for their contributions to the conservation and sustainable use of biodiversity. Thus on the basis of equity and fairness of all parties to the CBD, these recommendations would necessitate amendments to the CBD and the TRIPs agreement which weigh heavily against developing countries' interests. We shall get back to this point.

Intergenerational equity

“...emphasis on ‘Sustainable Development’ is vital to the well-being of humanity not only today but in the context of future generations. This aspect deserves to be fully appreciated not only in the legal domain but in terms of the physical world and its prosperity on which must depend the future of humanity.”

H.E. Judge Nagendra Singh

President, International Court of Justice, 1985

The criterion of "intergenerational equity" naturally flowed in with the development of international environmental law through the concept of "sustainable development" presented to the world in 1985 by the Commission on Environment and Development, chaired by former Prime Minister of Norway, Gro Harlem Brundtland, in its report: **OUR COMMON FUTURE**. This has been one of the most revolutionary concepts in contemporary history, virtually impacting every facet of human society, i.e. politics, economics, sciences, law and possibly the basic philosophies of law (jurisprudence).

The concept of sustainable development poses intricate issues for legal jurisprudence. The concept implies 'the judicious and planned use of natural resources for equitable development to meet the needs of the present generation without jeopardizing that of future generations' (National Policy on the Environment, 1989) also, 'the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations' (Article 2, Convention on Biological Diversity, 1992).

It has been canvassed that 'future generations', are not legal persons capable of being right-and-duty bearing unit under law, and therefore not entitled to recognition or even protection by law as such. The argument is that the unborn child has no right under the law, thus 'future generations' do not qualify for legal personality. It is true that under most legal systems, legal personality of the human being begins at birth and ends with death. Birth connotes complete separation of the newborn from the mother's body. The child in the womb is not a legal personality and has no rights under the law. Nonetheless, the strict rule of "cradle to grave" coverage of legal personality has yielded in some instances under some legal systems. For example, when the maxim *nasciturus pro iam nato habetur* applies under English law. Civil law invented the fiction that in all matters affecting the unborn child *in utero*, the child

should be regarded as already born. The fiction is applied only for the purpose of enabling the child if born alive to take a benefit. English law is not quite clear whether an infant born alive can recover for injuries inflicted before birth. Recovery is allowed in Canada, and the trend since 1949 in a number of courts in the United States of America is to allow recovery. What are the predictable trends for environmental litigation to redress environmental damages inflicted in the realm of public domain long before the birth of the plaintiffs (i.e. the "future generation")?

The concept of human personality will continue to generate intellectual controversy. I strongly believe that the opponents of a grant of legal personality (rights) and recognition to "future generation", in no time will defer to the emerging superior jurisprudential thinking that "future generations" of mankind deserve due protection and recognition under contemporary laws. The "interests" of this unit of legal personality, i.e. the 'unborn' 'future generation' deserve to be recognised and protected by the present generation. The world is beginning to appreciate a symbiotic relationship between the Present and Future generations and the maintenance of an imperative intergenerational equitable balance. The very criterion of "intergenerational equity" accords with what Kohler and Pound called "jural postulates" of contemporary times. The new values which modern civilization has evoked, such as global environmental protection consciousness and the attendant concept of sustainable development and the principle of intergenerational equity deserve to be protected by the legal system. Legal philosophy has a part to play in the articulation of the values and interests which the ideal legal system should protect. In evolving the concept of sustainable development law and the principle of intergenerational equity, justice is the goal of the evolving international environmental law, like municipal law with the end goal of justice and adjustment of smooth relations between men. Neither municipal nor evolving international environmental law can ignore ethics which

concentrate on the individual rather than society (Paton). Principle 1 of the Rio Declaration 1992 proclaims that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature". 'Human being', in this soft law is certainly not restricted to present generation. Article 3 states that: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations".

The Stockholm Declaration and the Rio Declaration (and of course the Report of the Brundtland Report: OUR COMMON FUTURE), like the Universal Declaration of Human Rights, are efforts to establish "juridical postulates which the civilization of our advanced technological developmental era calls for. These Declarations enunciate some interests and values which the global community believes deserves to be protected under municipal and international law. The world is changing very fast and cannot be pulled back or weighed down by philosophies, ethics or moral concepts of past era that are not in step with contemporary civilization. The visible trend is the evolution of international environmental law in the direction of sustainable development where new values and jurisprudential thinking are emerging, such that the unborn generation may actually be accorded the status of "right bearing entity" by law. Two major conventions which emanated from the United Nations Conference on Environment and Development, 1992 (Rio Summit) – the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, as well as AGENDA 21, and an earlier Convention, the Montreal Protocol on Substances that Deplete the Ozone Layer, 1987 (as amended by the 1990 London Conference) confirm this trend towards concern for present and future generation within the framework of the evolving ideal legal system.

D. Defining Groundrules of International Environmental Law

Emanating from the 1972 and 1992 major international conferences were documents referred to as "Declaration" not "Convention", and were not intended to be legally binding. In international law parlance they are seen as "soft law", which may be hardened by subsequent international practice. These Declarations have played very important role in the evolving groundrules of international environmental law. They provide the basic foundation for the development and codification of contemporary international environmental law. Professor Louis Sohn of the Harvard Law School, in analysing the Stockholm Declaration had said that: "The general tone is one of a strong sense of dedication to the idea of trying to establish the basic rules of international environmental law". (Sohn 1973). Significantly, the period since the 1970s has witnessed the evolution of some critical groundrules with significant implications for the development of international environmental law with a momentum for positive cristilization early in the next millenium or possibly sooner.

Fundamental right to a healthy environment

One of the most dynamic evolving 'jural postulates' for the new world environmental legal order is a call for an environment-oriented fundamental right. This has found expression in the Constitutions of some sovereign States such as Peru (Article 123), Spain (Article 45), Poland (Article 71), Portugal (Article 10), and some states in the United States of America including Florida, Illinois, Michigan, New York, Pennsylvania, Rhode Island and Virginia. Proposals for amendments to the Federal Constitution of the United States of America to guarantee the right to a healthful environment has not met with the desired success.

Efforts on the international level persists to this day; starting from the 1970s when intensive consideration was given

to the possibility of codifying an additional human right for the purpose of protecting private persons against the hazards of pollution, assuring an adequate supply of fresh water, and guaranteeing pure air, to assure man's continued existence on our planet (Gormley, 1976). Principle 1 of the Declaration of the first major international Conference on the environment, the 1972 UN Conference on the Human Environment held in Stockholm, declares that: ***“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations”***. This precept was reformulated in Principle 1 of the second seminal Conference on the environment in this century. The 1992 UN Conference on the Environment and Development, held in Rio de Janeiro, Principle 1 reads: ***“Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”***.

These soft law principles are not legally binding. However, before the Rio Reformulation, Principle 1 of the Stockholm Declaration had yielded some positive impacts based on the attributable influence on newly promulgated environmental rights under some national laws in the late Seventies (Okorodudu-Fubara, 1997). The Stockholm formulation was fine-tuned by the Experts Group on Environmental Law. The Experts Group on Environmental Law was established by the World Commission on Environment and Development, to prepare a report on legal principles for environmental protection and sustainable development, and proposals for accelerating the development of relevant international law, for consideration by the World Commission on Environment and Development. Specifically, one of its terms of reference was: ***“...to give special attention to legal principles and rules which ought to be in place now or before the year 2000 to support environmental protection and sustainable development within***

D. *and among states*". Consequent upon this mandate, an environment oriented fundamental right was formulated in the Legal Principles for Environmental Protection and Sustainable Development by the Experts Group on Environment Law in 1986. Article 1 thereof, subtitled "**Fundamental human right**" states: "*All human beings have the fundamental right to an environment adequate for their health and well-being*". This formulation is more pertinent as an environment specific fundamental right as opposed to the nebulous formulations under the two seminal Declarations. The point remains that neither of these Declarations is a legally binding instrument. The question we may ask is, how do we make any "legally meaningful sense" from the 'preferred' draft by the Experts Group on Environmental Law or the more recent efforts by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities which produced an elaborate Draft Declaration of Principles on Human Rights and the Environment. And how do we overcome the arguments against a specific environment oriented right? Those who are against such guarantee have said that the claims are difficult to realize because resources are restricted and have to be distributed according to many different goals and purposes. Such a political decision they believe, should not be prejudiced by legal guarantees (Steigner, 1980). There is also the obvious reluctance of States to be subjected to tribunals to answer for any infringement of such individual right in the citizen. This is clearly reminiscent of early attitude of sovereign states to the international law of human rights which celebrated its 50th year anniversary in 1998.

Be that as it may, although there is yet no international treaty which guarantees a fundamental right to a healthy environment all hope is not lost for the growing international acclamation for such guarantees. Remarkably, the concept of citizenship under the Maastricht Treaty clearly involves both rights and obligations, but the treaty as presently formulated does not provide "any legally expressed rights to a healthy environment

or indeed quality of life" (Macrory, 1996). However, procedural rights enshrined in the Treaty appears to have given leeway to the 'European citizen' to indirectly enjoy the fruits of seeming fundamental environmental rights, whether enforced directly by the individual or the Commission. For example in the 1991 case brought by the Commission against Germany. The court ruled that the 1980 Directive prescribing air quality standards for sulphur dioxide and smoke, in effect gave individuals the right to air meeting those standards. (Macrory, 1996). A complaint by a resident (the English house wife who had her laundry spread out on the line stained with black soot) in one of the United Kingdom's two non attainment areas with regard to the 1980 EEC Directive on Air Quality Limit Values and Guide Values for Sulphur Dioxide and Suspended Particulates triggered an investigation by the Commission resulting in infringement proceedings against seven member States. Article 155 of the Treaty of Rome which designates the EEC Commission as guardian of the treaty's implementation, and Article 169 which empowers the Commission to initiate proceedings against members state in case of infringements, in the European Court of Justice at Luxembourg have made it practicable to some extent indirectly to guarantee adequate environment for the European citizen.

The prospects are high and on the positive side for the realization of an international treaty or regional treaties and popular national constitutional provisions guaranteeing fundamental environment rights. The guarantee of such right transcends the individual benefit, it enures for the "common good". As rightly argued, "the legal protection of the individual environment implies at the same time a protection of the environment in general that goes beyond the individual protection because the guarantee to the individual of a certain quality of the environment will be beneficial to all who share this environment (Steigner, 1980). UNEP the principal body within the United Nations system in the field of the environment is devoting attention to the rights of private persons to be

assured a sound environment. Alluding to the argument that the right to a healthy environment is an extension of the right to life, a former Executive Director of UNEP said, "States are thus under a moral duty to pursue policies which are designed to ensure access to the means of survival for all individuals and peoples" (Dowdeswell, 1994). One can only hope that the enhanced and strengthened UNEP which Agenda 21 calls for, while actively embarking on the further development of international environmental law, in particular conventions and guidelines, i.e. one of the priority areas on which the organisation is required to concentrate, will initiate the process for the adoption of a universal treaty on fundamental environmental rights before the end of the first decade of the next millenium.

Limits to sovereignty

Controversy has arisen around new and inspiring concepts and principles emerging in the field of international environmental law, almost stalling adoption of some of the most critical international instruments for the alleviation of environmental degradation. A prime example is the issue of sovereignty in relation to the concept of common concern of mankind (Dowdeswell 1994). Thus the UNEP former boss has warned that: "We need to do some creative thinking about how to develop instruments that will be acceptable to countries and their notions of sovereignty and still be able to give us some cause for the protection of the global commons". The two most critical instruments in recent times that have brought the issue of sovereignty to the fore are: the Climate Change Convention and the Convention on Biological Diversity, in our response to the threat of: (1) global warming and (2) loss of bio-diversity. The question we may ask *ab initio* is: What are these notions of sovereignty? Should these be the determining factor – whether or not they are valid? Or should we be guided by the correct and rational perspectives of the principle of sovereignty in emerging international

environmental law? The issue is not so much as creating “instruments that will be acceptable to countries and their notions of sovereignty” as much as accepting and recognising the fact that there are or should be limits to state sovereignty in the face of global environmental crisis.

Sovereignty in international law implies the state as a repository of the ultimate supreme power – hence the sovereign state cannot subject this ultimate authority to a supra-power. This doctrine of sovereignty must not be over-stretched in the realm of the evolving international environmental law, nor the crystallized and already established international law. The Declarations adopted at the conclusion of the two major environmental conferences in 1972 and 1992 in almost identical provision affirmed the principle of sovereignty of states. Principle 21 of the Stockholm Declaration, reads: “*States have, in accordance with the Charter of the United Nations and the principle of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or areas beyond the limits of national jurisdiction*”. This principle is a mere restatement of international law and has been re-echoed as such in UN General Assembly Resolution 2996 (XXVII) 1972, as well as in a number of multilateral environmental treaties. It has influenced the decisions of the international court, regional courts and arbitration judges, as well as local judges since the early thirties – as shown in the *Trail Smelter Case*, a landmark environmental pollution case between the United States and Canada. Also in the 1957 Case of *Poro v. Lorraine Basin Coalmines*, involving air pollution from a power plant in France which caused damage to residents across the boarder in West Germany, that basic principle of international law was relevant to the decision of the court. The principle appeared again as Principle 2 in the Rio Declaration thus: “*States have, in accordance with the Charter of the United Nations and the*

principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies and developmental policies and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction”.

Let's face it, we are in the throes of looming global environmental crisis – threat of depletion of the ozone layer, climate change and loss of bio-diversity. World nations cannot tenaciously cleave to a rigid concept of sovereignty at the expense of the *global good* of the entire human race in this only life sustaining environment we have – Planet Earth. It is noteworthy that neither Principle 21 of the Stockholm Declaration, Principle 2 of Rio Declaration, UNGA Resolution 2996 (XXVII) 1972 nor the pertinent multi-lateral environmental treaties suggest absolute sovereignty. The two Declarations referred to the “sovereign right to exploit their own resources” (underline for emphasis). And even contains the caveat that this sovereignty would not extend to “the environment of other States or areas beyond the limits of national jurisdiction” (underline for emphasis). What this implies is that this sovereign right only extends to the State's own resources, not global resource nor the global commons. This is where the line must be drawn. We know that the effects of environmental degradation cuts across national boundaries. When this happens additional complexities set in. Moreover, the world is not just a global village, but it is one in which the entire world share certain global environmental resources such as the atmosphere and the deep oceans, aptly referred to as “global commons”. And, although not falling within the classification of “global commons”, biological diversity is a matter of international concern and the benefits from the protection of this will accrue not only to the local population but also, in different ways to people all over the world (World Bank 1992). Thus it is not possible to rely on a national regulatory body to devise and implement policies for addressing

these issues of global concerns. Solutions to these international environmental problems must continue to be on the platform of common principles and rules of collaboration among sovereign States. When states get together in their sovereign capacities, recognising the limitation on the part of the individual sovereign state to singularly address international environmental problems, it must be assumed that they volunteer to this "overall body of nations", collective power, enshrined in that "supra regime" to ensure that their common goal is served.

The limitation of the doctrine of sovereignty vis-à-vis State liability was addressed in the context of the environmental crime perpetrated by Iraq during the Persian Gulf War (Okorodudu-Fubara, 1991). Some legal analysts have argued that "doctrines of national sovereignty and autonomy are inconsistent with a thesis that in international law States may be held to act at their peril" (Goldie, 1971). In other words, neither strict nor absolute liability may be imposed on States. Oppenheim is frequently cited in support of this view, to wit: "An act of a State injurious to another State is nevertheless not an international delinquency if committed neither willfully and maliciously nor with culpable negligence. Therefore, an act of a State committed by right, or prompted by self-preservation in necessary self-defence does not constitute an international delinquency, no matter how injurious it may actually be to another State". (Oppenheim, 1955). On a strict analysis of this view, Oppenheim does not absolve a state of liability as an absolute rule of international law. After all, States and not individuals, are the subjects of international law. The privilege of sovereignty is vested by law, that is in accordance with the principles of international law. It cannot be an absolute privilege. Like fundamental human rights under municipal regime, a State's privilege of sovereignty terminates where that of another state begins, and we may add (against the backdrop of the pertinent provisions of the Stockholm and Rio Declarations) when the "global good" is threatened.

(Okorodudu-Fubara, 1991). Although international environmental law is a relatively nascent aspect of international law, it is generating in-depth legal thoughts that would revolutionize fundamental jurisprudence by the next millennium. We are fast moving to the point where jurisprudence can assert that sovereignty under international regime, especially in the evolving international environmental law, lies in the "world's peoples" – the present and future generations of mankind whose well-being is the end goal of this law.

Global Partnership

Fifty-seven years after the signing of the Charter of the United Nations and the formal establishment of an 'international organisation known as the United Nations, again peoples of the world met through their representative as sovereign states, on the platform of the United Nations Conference on Environment and Development, in Rio de Janeiro from 3 to 14 June 1992, as declared *inter alia* in the preamble to the ensuing Declaration, "*With the goal of establishing a new and equitable global partnership through the creation of new levels of cooperation among States, key sectors of societies and people*". Thus against the backdrop of the recognition of "*the integral and independent nature of the Earth, our home*", the world's nations agreed in principle to constitute a "**global partnership**". And thus Principle 7 of the Rio Declaration states: "*States shall cooperate in a spirit of global partnership to conserve, protect, and restore the health and integrity of the Earth's ecosystem. In view of the different contribution to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command*".

The emergent concept of "global partnership" is not merely

cosmetic. It is very much in consonance with the current dynamics on the global scale. The new trend in information technology, particularly the internet, has become a powerful tool in drawing the world nations closer – from the figurative “global village” to “global home”, and is fast forging this emergent vision of a “global partnership”. Virtually every country in the world is now connected through the World Wide Web (WWW) where people can gather information from cyber space on issues relating to every facet of human endeavour including education, health, commerce, development, world trade, politics, environment etc.

This “global partnership” must be comprehensively defined. Although Principle 7 of the Rio declaration gives some insight to the defining groundrules of this novel idea of “global partnership”, we can look on to international law to expand this definition. More pertinently within the specific vision of the Rio Declaration we can expect this definition to unfold as international environmental law develops across diverse fields including sustainable development, trade etc.; as well as in the course of the drawing up of multilateral environmental treaties and operations of the UNEP in the field of environmental law. Until such definition unfolds, in the context of this lecture I shall describe this “global partnership” as *an agreement between peoples of the world's sovereign states bound by common but differentiated responsibilities for the sustainable development of the world for the enduring benefit of present and future generations of mankind.*

The significance of this new concept lies in a shift of emphasis on mere “cooperation” amongst states, to that of “partnership” which spells a stronger relationship, in the envisaged context of inter-states relations. Cooperation was the ideal emphasized in the UN Charter (see Art. 1.3). UNCED realized that some galvanizing concept more far-reaching in implication is needed to pull the world nation's together in a pragmatic sense well before the next millenium to prevent any imminent environmental cataclysm. This new partnership will be defined

by common but differentiated responsibilities, precautionary principles, incentive approaches, disputes avoidance etc. The Montreal Protocol on Substances that Deplete the Ozone Layer, and the instruments which emerged from UNCED, i.e. Climate Change Convention, Convention on Biological Diversity and Agenda 21 are illustrative of this new trend towards actively cultivating the envisaged "global partnership".

The advantages of this "partnership" will be in giving meaningful realisation to the concept of sustainable development, and narrowing down areas of inequities in international trade and economic cooperation which often aggravate environmental degradation in developing countries. This is what will revolutionize the concept of sustainable development and make it, not just feasible but actually realisable. Global partnership is clearly an emergent international ethic which has found apt expression in the evolving international environmental law as an ideal of the legal unity of mankind at large. International environmental law has even gone beyond supporting the primacy of international law of cooperation among sovereign states which features in treaties including the Charter of the United Nations to evoking an ethical core which rests upon the ideal of global partnership founded upon the legal unity of mankind globally. Without "global partnership", honestly pursued, sustainable development of the world's nations will remain a mirage, a phantom, a figment of one's imagination.

We are presently witnessing this from the impacts of inequitable world trade on the environment. For instance the subsidies and tariff structures in Europe and the US and the terms of trade in primary commodities are grossly disadvantageous to the majority of developing countries which depend heavily on primary commodity exports. A prime example is the tropical timber industry. The higher tariff on plywood than on logs imposed by Japan and the EU to protect domestic timber industries led to increased environmental degradation in Third World exporting countries which had to pull down more logs

to generate the same amount of foreign exchange, since logs have a lower unit value than plywood.

Another fundamental problem with the trade in commodities which has been highlighted is the fact that many developing countries have little control over the prices of their commodity exports. According to the WWF “many of these countries only have five or ten per cent of the market share of commodities; as such, they are price-takers, not price-makers, they take whatever price the market gives them and it leaves them little or no room to internalise costs. There is a cut-throat competition between developing countries, which is destroying their environments, to supplying all the markets”. (U.K. House of Commons, Environment Committee, 1996).

The Brundtland Commission in its report “Our Common Future” had warned that people must change many of the ways in which they did business and lived or the world is bound to face terrible levels of human suffering and environmental destruction. This warning becomes all the more imperative in the spirit of the global partnership forged in Rio. The World nations must be committed to a rethinking that business cannot continue as usual we must change the ways we do business at the micro and macro levels of world trade and business politics. The global partnership, in short is an ideal “joint enterprise” which the world community must be fully committed to in all honesty, equity and fair play, if the world must realise the set goals of sustainable development.

Within this global partnership are existing “regional partnerships”, i.e. ECOWAS, OECD, NAFTA, ASEAN, APEC etc. Do these regional partnerships weaken or strengthen the UNCED envisioned global partnership, bearing in mind the warning by Elizabeth Dowdeswell, former UNEP Executive Director, that “the safeguarding of our global planet runs the danger of becoming subordinate to the safeguarding of narrow interests and shortsighted economic advantages”. All things being equal, the answer should be “No”, judging by

the regional trade agreements which incorporate environmental concerns into international trade policy.

The Rio Declaration which calls for a global partnership actually does not preclude regional partnerships. The pertinent preamble of the Declaration embraces the establishment of *this new and equitable global partnership through the creation of new levels of cooperation among states, key sectors of societies and people*. Thus to ensure that these regional partnerships do not weaken the global partnership and its all significant goal of common sustainable development, at each level of government – national, international and global, effort must be made to put into practice the commitment to integrate environmental considerations into every policy areas of endeavour – social, economical and political which is the core of the Rio Declaration and the ensuing Agenda 21.

E. The Third World Dilemma

For us in the Southern hemisphere there are the worrisome aspects of the evolving world environmental legal order. Not unexpectedly, developing countries find themselves entrapped in unenviable position at the crossroads of global environmental politics particularly within the trade-related aspects of environmental protection. Most developing countries are signatories to multilateral environmental agreements (MEAs) which incorporates diverse trade measures such as, import bans, quotas and tariffs, as enforcement mechanisms to tackle environmental problems. Out of a total of about 180 MEAs screened in 1996, eighteen contained trade restrictions. Three of these, i.e. the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); the Montreal Protocol on Substances that Deplete the Ozone Layer; and the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, actually rely on the trade restriction clauses for their success.

Trade measures in MEAs pose potential conflicts between fundamental international trade policy (specifically GATT/WTO rules under the provisions of Articles I and III concerning national treatment and non-discrimination and Article XI prohibiting quantitative restrictions on international trade) and global environmental objectives. The only plausible existing escape valve for MEAs is Article XX of GATT which grants exemptions from GATT/WTO principles of non-discrimination for trade measures which are taken to protect human, animal or plant life or health or to conserve natural resources.

There is no express reference to the environment or MEAs under this Article XX exemption clause, therefore its utility or effectiveness in securing trade measures under MEAs is instantly thrown into doubt; more especially in the light of the narrow interpretation of Art. XX adopted in the US/Mexican tuna-dolphin dispute. (Okorodudu-Fubara 1992). Some, particularly environmentalists, have argued for an amendment to Art. XX which would expressly allow trade measures in MEAs. The WTO, UNCTAD and the developing countries do not favour such amendment. The WTO and UNCTAD call for a "cautious approach" in this regard. The developing countries are worried that any amendment to Art. XX giving a leeway for trade measures could be exploited for protectionist purposes either through MEAs or national legislation, as well as unilateral trade measures based on Processes and Production Methods and eco-labelling schemes. The dilemma inherent in this development is the fact that some of the MEAs, most notably the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal which contain trade measures that are potentially incompatible with WTO rules, enured to the benefit of the developing countries. The trade measures in these MEAs have not been challenged in the WTO, if they were challenged and a similar narrow interpretation of Art. XX were adopted as was done in the tuna-dolphin dispute, this would be detrimental to developing countries which clamoured for an import ban on the shipment of hazardous wastes to non-OECD countries.

Developing countries should not jettison the proposal for an amendment to Art. XX. The proposal stipulates the addition of "the environment" to the list of protection of "human, animal or plant life or health" currently granted exemption under Art. XX(b). The UK House of Commons Environment Committee as part of its inquiry into World Trade and the Environment in its suggested amendment to Art. XX highlighted an explanatory note or understanding setting out the criteria for qualifying MEAs thus:

1. That the Agreement is subject to international law.
2. That the Agreement has as its objective the protection of the environment beyond national jurisdiction.
3. That the Agreement is or has been negotiated through the auspices of an inter-governmental organisation concerned with environmental matters.
4. That the effect of the MEA meeting these three criteria above would be to predetermine the necessity of any specific trade measure contained within the MEA or taken pursuant to the MEA.
5. That, nonetheless, the trade measure must satisfy the headnote in Art. XX in that it must not be arbitrary, unjustifiable or a disguised restriction on trade.
6. In order to deal with the transparency of trade measures, the Secretariat(s) of any satisfying MEA should communicate any existing or potential trade-related environmental measures to the WTO.

The following additional criteria were suggested by witnesses before the Committee for inclusion in the Understanding:

- there should be a sound scientific basis for the MEA;
- the MEA must be intended to counter a significant global problem;

- the trade measures would serve the environmental objectives of the MEA;
- the trade measures are essential to achieve the justified environmental objectives;
- the MEA must be global, not regional;
- trade measures should be considered as a last resort;
- the MEA should be open to participation by all parties concerned about the environmental objectives of the agreement.

These suggested additional criteria should safeguard many of the fears of the developing countries.

The TRIPs Agreement

Ironically, it is not just the MEAs which pose potential conflict with the GATT/WTO rules. A particular WTO Agreement may be potentially incompatible with one of the MEAs which emanated from the 1992 Rio Summit, to the chagrin of developing countries. The success of the United Nations Convention on Biological Diversity (CBD) may be compromised by the subsequent GATT Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). Whereas the CBD recognises knowledge, innovations practices of indigenous and local communities, such as the progressive development or manipulation of crop varieties by farmers or discoveries of specific tropical forest plants with medicinal value, TRIPs does not contemplate this within article 27 "Patentable Subject Matter". To be patentable under the WTO intellectual property regime, an invention must be new, involve an inventive step and be capable of industrial application (including agriculture). Art. 27.2 grants exclusion from patentability of certain inventions in the interest of public order and morality, including the protection of human, animal or plant life or health and the

prevention of serious harm to the environment. Furthermore, Art. 27.3 grants exclusion from patentability for "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes". This differential concept of patentable subject matter under the CBD vis-à-vis the TRIPs Agreement is what poses major concern for the developing countries.

The Third World is the natural habitat of, almost two thirds of the world's biological diversity. Despite this strategic position which it commands, the Third World benefits disproportionately less than the advanced countries, from its naturally sourced bio-diversity and related genetic resources. Moreover, it is a major concern for developing countries that due to the controlling global intellectual property regime, it has been very easy for multinational companies, particularly in the pharmaceutical industry, with expertise in genetic engineering to take unfair advantage of developing countries traditional knowledge and associated genetic resources with little or no consideration. An example is the agreement executed between the Institute of Biodiversity, Costa Rica and Merck & Co. of the United States of America. In exchange for the contract sum of US \$1 million, Merck obtained the franchise to carry out studies on domestic plants and animal extracts for potential drugs or other commercially viable products. Under the contract, if commercially saleable products were discovered Merck retained all patent rights, while the Costa Rican Institute of Biodiversity gets royalties ranging from 1% to 3%. Of course, the cost to Costa Ricans for procuring commercial drugs/products emanating from this contract, will over time exceed US \$1 million. This is the dilemma in which Third World countries will continue to find themselves until their technological situation improves and unless the CBD's provisions on technology transfers and fair and equitable sharing of the benefits arising from the use of genetic resources is faithfully adhered to by the rich advanced

countries who control these technologies. The prospect of that happening does not seem very encouraging, especially in the light of the fact that TRIPS was negotiated and concluded after the CBD, yet it displays utter disregard for the provisions of Art. 16.5 of the CBD which states that, "*The Contracting Parties recognising that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives*".

What are the options open to developing countries outside the "limited" protection provided for the protection of plant varieties either by patents or by an effective *sui generis* system, such as the existing UPOV (The Union for the Protection of New Varieties of Plants Conventions 1978 and 1992) patent system, to which some developing countries have subscribed. Considered from this perspective and from a strictly legal approach to a solution of this problem; there is abundant store of knowledge in the genetic resources encased in the vast biodiversity of the Third World. How do we tap this knowledge and information as saleable products. This is our basic problem in the Third World, the TRIPS Agreement which underrates our informal, communal system of innovation through which Third World farmers produce, select, improve and breed a diversity of crop and livestock varieties and in fact our own intellectual property regimes essentially derived from the Western intellectual property rights model, do not favour us. It is high time that developing countries develop their own endogenous systems of intellectual property rights.

Indeed, Third World countries can take a cue from Western jurisprudence, which has progressively blurred the distinction between natural plants and animals and genetically modified organisms, despite the exception of living material from patentability under Art. 27.3 of TRIPS and Art. 53(a) of the

European Patent Convention. The US Supreme Court *In Re Diamond v. Chakrabarty* (1980) ruled that the pseudomonas bacteria, a micro-organism is a patentable invention. It based its reasoning on an earlier German Court decision which rejected the general "living matter" exception from patent protection. The decisions of both courts were actually influenced by the scientific findings on gene structure by Watson and Crick inferring "that life obeyed regularities which could be calculable and should be open for manipulation ... gene manipulation and its results should be patentable" (Makuch, 1996). A more incisive decision expanding the patenting of life forms was in 1988 when the Harvard University 'onco mouse' (a genetically engineer mouse designed to be more susceptible to cancerous cells) was granted patent protection. The European Patent Office in approving the US onco mouse patent described it as a "transgenic non-human mammal", not concerning an animal variety (Makuch, 1996). Third World Scientists must step up efforts to work in concert with the lawyers and judges to evolve either through case law or amendment to the Patent laws, definition of patentable subject matter that would secure our bio-diversity heritage. Furthermore, there is no sacrosanct law binding on Third World countries requiring that patentable subject matter in their own peculiar circumstance must be capable of industrial application. Every country, particularly the developing countries should be free to evolve their own definition of knowledge of what constitutes innovation for patenting purposes. Any effort at global harmonisation of intellectual property regimes should take cognizance of this in the overall interest of the realisation of the goals of the CBD and the genuine promotion of global partnership advocated in the Rio Declaration.

Overview

Mr. Vice-Chancellor, in essence, in the course of this inaugural lecture, in wading through the currents of contemporary global environmental legal issues, I have pin-pointed some of the *hot potatoes* from the perspective of the law, such as – issues of sovereignty, legal personality of the unborn, equities,

fundamental rights sustainable development, global partnership and trade/environment conflicts; with apt reflections and suggestions proffered in each instance which I believe can advance the ongoing global environmental controversies to some logical conclusions on the respective issues.

I am a strong advocate of law as a vital link in the chain of measures for the solution of our pressing global environmental problems. Law exudes "order", the orderly management or regulation of the diverse facets of the human society. The mere fact that "environmental law" as a distinct branch of the law, is late in coming on-stream in comparison with other aspects of law, for example law of contract, property, torts, criminal law, commercial law, mortgages, restitution, conveyance etc., does not undermine the enormous importance of this lately "discovered" aspect of the law. No doubt, environmental law provides a useful tool for solving environmental problems. In attempting to check man's excesses through the power of modern technology which stresses the fragile web of our planetary environment, environmental law basically involves defining the relationship of human beings with the world they inhabit, that is, the limits to which man may impact upon the environment through his activities (Okorodudu-Fubara 1998).

A discovery of the second half of the 20th Century (the United States magna carta of environmental law, the National Environmental Policy Act, 1969, is credited as the first specific environmental statutory enactment in the world) environmental law or international environmental law can yet claim "supremacy" over and above other aspects of the law including Roman Law, elicited several centuries ago. Particularly bearing in mind the fact that the environment and the "natural law" of environmental protection which accompanied it preceded the emergence of man on this planet. The book of Genesis states that when God created the universe "He saw it was good". God said to Adam (the first man created) that He has given to

him all the animals, plants etc., that is, the natural resources of the earth, “to conquer”. Certainly, not for man to “destroy”, “pollute” or “degrade”. The Divine bequeathal of the earth’s natural resource is intended for the advancement of the well-being of man. The foremost Natural Law therefore enjoins the conduct of man towards this goal (Okorodudu-Fubara 1998).

With the proper laws in place at the national and international levels coupled with a more efficient Global Environmental Organisation to undertake the task of coordinated and well focused management of international environmental affairs, the world will surely survive the looming environmental crises more noticeable in the last quarter of the 20th Century, and maintain the earth as the “home” fit not only for human life but also our “co-tenants” – other living things i.e. animals, insects, plants, micro-organisms, within the ecosystem of the planetary environment that supports us.

However, the present diffuse set up for the management of international environmental affairs must be seriously addressed to ensure the realisation of the ultimate objective of the law on environment and sustainable development. This goes beyond the call for an enhanced and strengthened role for UNEP under Agenda 21. The existing management of international environmental affairs is spread among a number of inter-governmental bodies prominent among which are, UNEP, UNCTAD, UNCSD, OECD, World Bank and UNDP. I recommend that UNEP be extricated from this wooly network of global environmental management and the transfer of all matters relating to the environment and sustainable development currently exercised by these other inter-governmental bodies to a UNEP “reborn” as the new Global Environmental Organisation, with equal (or even greater) power and voice as the WTO and IMO.

This thinking finds support elsewhere. Many environmentalists are clamouring for a more effective international environmental

regime built around a new Global Environmental Organisation. The trade/environment conflicts issue is particularly a worrisome one as pointed out in this lecture. It has been suggested that the Global Environmental Organisation would be the ideal solution to several of the trade/environment conflicts, because it would ensure that the trade interest did not have the final say. The International Court of Justice would have the ultimate authority to resolve any policy disagreement between the proposed new GEO and the WTO on trade/environment disputes.

Mr. Vice-Chancellor, as a Third World citizen, I am naturally inclined, within the context of this inaugural lecture, to come up with some proposals for our peculiar position which can improve our lot in this country and other developing countries.

My experience as one of a 2-member Nigerian Delegation to the First Meeting of the Conference of the Parties (COP) to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, in Piriapolis, Uruguay in December 1992, impressed upon me the strong conviction that the Third World must look inwards and not capitalize too heavily on external aid for long term solution to its environmental problems. We cannot succeed by being at the receiving end of foreign aid all the time. I do not believe that the financial mechanisms in MEAs is the solution to the Third World environmental problems. Although financial mechanism has been one of the major incentives for many Third World countries becoming Parties to these environmental accords. To buttress my conviction, even the Global Environmental Facility (GEF) established to assist developing countries meet the environmental targets established under MEAs, is not adequately funded. Mr. Vice-Chancellor, in concluding permit me to make the following recommendations for:

- a constitutional guarantee for an adequate environment, i.e. an entrenched provision in the Constitution expressly

prescribing the "right to an environment adequate for health and well-being of the citizen. (The proposed Global Environmental Organisation – "reborn" UNEP, should initiate the process for the adoption of a Universal Treaty on Fundamental Environmental Rights before the end of the first decade of the next millenium;

- **amendment of the Patents and Designs Act, Cap. 344 LFN 1990, to reflect a homegrown system of intellectual property rights, that is, an intellectual property regime which accommodates and recognises innovation in the African traditional or informal sectors. Judges, with the assistance of lawyers should employ ingenious reasoning to establish legal basis for the patentability of pertinent traditional systems and knowledge through which our plant and animal breeders, produce, improve and breed a diversity of crop, plant and animal varieties. If we do not uplift the definition and value of our traditional knowledge, science and technology, the developed world will not do it for us. It pays them to downgrade this traditional systems, as TRIPs obviously did;**

- **trado-medics, plant and animal breeders to work in collaboration with expert scientists in our tertiary institutions to search for chemicals in animals, plants and insects for extracts for patentable drugs or other commercially viable products. Select universities/polytechnics should be identified as centres of excellence for this purpose;**

- **the Federal Environmental Protection Agency to embark on result-oriented collaboration with expert scientists in tertiary institutions in consonance with the provisions of the Decree establishing the Agency. The Federal Government must make the Agency financially viable to be able to function as recommended and in accordance with Sections 4 & 5 of the Decree;**

- the Federal Government to allocate 5% of the national budget annually to our tertiary and other research institutions, to promote scientific research that would sustain the country's technological development;
- well meaning rich Nigerians and philanthropists to actively support scientific research and any identified cause of the environment, i.e. protection of wild life, protection of birds, preservation of virgin forests etc., while they are alive and subsequently through bequeathal in their wills. We cannot rely solely on financial resources mechanisms provided under the international accords for our technological growth. It is endogenous efforts, sacrifices and support that would free developing countries from the shackles of technological backwardness;
- as a short term measure we may continue to subscribe to the clauses on technology transfers in MEAs, but as a long term measure we must plan to develop and build upon the intellectual resource for which this country is richly endowed, to invent the technology and device products for which patents are obtainable. The Federal Government should evolve well articulated ways and means to stop the incessant brain drain in the country, so that the nation can be the full beneficiary of this wealth of knowledge and expertise in our people that can set us up solidly on the path of technological development with its attendant improved standard of life;
- the Federal Ministry of Justice is to carry out an inventory of all MEAs to which Nigeria is party, and in consultation with FEPA, ensure compliance with Section 12(1) of the 1979 Constitution. Most of the treaties, including MEAs, to which Nigeria is party have not satisfied this constitutional provision although Nigeria is bound by any such treaty to which it is a party by virtue of customary international law

(Okorodudu-Fubara, 1988). Advantages and benefits accrue from compliance with S.12(1) of the 1979 Constitution and typical clauses in MEAs requiring legislative action at national level to ensure realisation of the goals and objectives of the MEAs. This gives an MEA force of law locally and sensitizes individuals and government functionaries to the existence of these MEAs acknowledging that all hands must be on deck to realise these environmental goals and objectives. We are all stakeholders of a well protected and safe national/global environment.

Mr. Vice-Chancellor, distinguished ladies and gentlemen thank you for your attention.

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Abbreviations

1. APEC Asia Pacific Economic Forum.
2. ASEAN Association of South-East Asian Nations.
3. CBD Convention on Biological Diversity.
4. CCC Climate Change Convention.
5. ECOWAS Economic Community of West-African States.
6. GATT General Agreement on Trade and Tariffs.

7. GEO Global Environmental Organisation.
8. IMO International Maritime Organisation.
9. MEAs Multilateral Environmental Agreements.
10. NAFTA North American Free Trade Agreement.
11. OECD Organisation of Economic Community and Development.
12. TRIPs Trade-Related Aspects of Intellectual Property Rights.
13. UNCED United Nations Conference on Environment and Development.
14. UNCSD United Nations Commission on Sustainable Development.
15. UNCTAD United Nations Conference on Trade and Development.
16. UNDP United Nations Development Programme.
17. UNEP United Nations Environment Programme.
18. UPOV Union for Protection of New Varieties of Plants Conventions 1978 and 1992.
19. WTO World Trade Organisation.
20. WWF World Wide Fund for Nature.