

“IN COUNTLESS WAYS AND ON AN UNPRECEDENTED
SCALE”: REFLECTIONS ON THE STOCKHOLM DECLARATION
AT 50

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In 2022, the Stockholm Declaration will be 50 years old.¹ Mid-life is a good time for stocktaking; for reflection and analysis. This article will begin with an overview of the many well-known successes that followed from the 1972 United Nations Conference on the Human Environment.² But like any other reflection, the article elucidates two major omissions in the Stockholm proceedings and its progeny.³ The first such omission grows from lack of focus on reducing overconsumption in the very anthropocentric Stockholm Conference on the Human Environment, and the ensuing Stockholm Declaration. The second omission emerged from the unrelenting focus on states, rather than all “organs of society”⁴ as the actors of concern for international environmental law. The article then shows how these two major omissions at Stockholm produced an international environmental framework unable to “see” environmental integrity as an independent imperative for international law, and in the process limited international law’s ability to

¹ U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14 (June 16, 1972) (hereafter Stockholm Declaration); see also G.A. Res. 2994 (XXVII) (Dec. 15, 1972).

² The UN authorized the conference in G.A. Res. 2398 (XXIII) (Dec. 3, 1968).

³ Because this article has a lot of criticism in it, I want to start with a brief story to put that critique in context. My child is a 10th grade student. In New York City’s public schools, the 10th grade history and English curriculum is built around the Universal Declaration of Human Rights (UDHR). G.A. Res. 217 (III) A, Universal Declaration of Human Rights, (Dec. 10, 1948). According to my child, the class spent the first month of school “dunking” on the UDHR—criticizing it and pointing out its weaknesses. While critique is an important process, to focus only on critique as these 10th graders seem to be doing, rather misses the point. The UDHR was revolutionary—it redefined and limited the contours of state sovereignty in previously unfathomable ways. Specifically, the UDHR established that the “domestic affairs” of nations did not include the state power to abuse, torture, and kill residents, and that people—just by existing—had certain rights that the sovereign could not abridge. And, perhaps just as significantly, that it was the business of the world to pay attention. Of course, the UDHR has a multitude of flaws. But to focus on the flaws and miss that core transformative moment seems misguided (though explaining this on a subway ride into school did not go over well . . .). That is the spirit in which this article approaches the Stockholm Declaration. Please read this critique of its limits and shortcomings in a context that acknowledges its powerful import.

⁴ The Preamble to the Universal Declaration of Human Rights proclaims that:

[E]very individual and every organ of society . . . shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

G.A. Res. 217 (III), *supra* note 3, at 3; See generally Rebecca Bratspies, *Organs of Society: A Plea for Human Rights Accountability for Transnational Enterprises and Other Business Entities*, 13 MICH. ST. J. INT’L L. 9 (2005).

respond to systemic environmental problems like climate change, species extinction, and/or the rights of environmental defenders.

I. BACKGROUND

The United Nations Conference on the Human Environment held in Stockholm, Sweden in June 1972 was in many ways a transformative moment for international law. It launched the first salvo in what has become a multi-decade struggle to facilitate the international cooperation necessary to keep the Earth as a livable planet.⁵

When 113 nations gathered in Stockholm in 1972, the world was a very different place. The human population was half its current level,⁶ the atmospheric carbon concentration was roughly 326 ppm,⁷ and animal populations were nearly 70% less vulnerable.⁸ The Vietnam war was raging as a proxy war between the United States and the USSR,⁹ East and West Germany were on the cusp of being admitted simultaneously in to the UN,¹⁰ Bangladesh was a newly sovereign state,¹¹ Rhodesia and South Africa were ruled by minority white governments,¹² and the People's Republic of China just reclaimed China's UN seat, ousting the Republic of China (Taiwan).¹³

Despite many political hurdles,¹⁴ the delegates gathered at Stockholm managed to create a consensus around an “inspirational, informative, and

⁵ The Stockholm Conference resulted in the plan to convene a second conference which became the Earth Summit, held in Rio de Janeiro in 1992. Stockholm Declaration, *supra* note 1, at IV.4(I); *see also* G.A. Res. 2994 (XXVII), *supra* note 1, ¶ 5. *See also* U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992).

⁶ World Population by Year, WORLDOMETER <https://www.worldometers.info/world-population/world-population-by-year/> (last visited Feb. 15, 2022).

⁷ The atmospheric concentration of carbon is currently 416 ppm. Ian Tiseo, *Historic Average Carbon Dioxide (CO2) Levels in the Atmosphere Worldwide from 1959 to 2020 (in parts per million)*, STATISTA (Jan. 27, 2022) <https://www.statista.com/statistics/1091926/atmospheric-concentration-of-co2-historic/>.

⁸ INGER ANDERSON, ET AL., *THE LIVING PLANET REPORT 2020: BENDING THE CURVE F BIODIVERSITY LOSS*, 16 (Rosamunde Almond et al. eds. 2020).

⁹ *See generally* BERNARD FALL, *THE TWO VIETNAMS: A POLITICAL AND MILITARY ANALYSIS* (2d ed. 1963).

¹⁰ U.N. S.C., Practice Relative to Recommendations to the General Assembly Regarding Membership in the United Nations, Repertoire of S.C. Practices at 73 (1972-1974).

¹¹ *Bangladesh Celebrates 50 Years of Independence*, BBC (Mar. 26, 2021) <https://www.bbc.co.uk/newsround/56511514> (stating that Bangladesh Proclamation of Independence was on the 26th day of March, 1971); The Constitution of the People's Republic of Bangladesh, Act No. of 1972).

¹² *Issue on Southern Rhodesia*, 2 Decolonization 5, at 3 (July 1975).

¹³ G.A. Res. 2758 (XXVI) (Oct. 25 1971).

¹⁴ The Soviet Union boycotted the conference, and many developing nations initially assumed that “developed nations were using environmental doomsday predictions as a

educational” declaration about environmental problems.¹⁵ It began the process of building an international infrastructure for states to respond collectively to the problems of environmental degradation. As such, the Stockholm Conference was a formative moment of environmental governance. It put environmental protection on the United Nations’ agenda for the first time.¹⁶ It resulted in the creation of the United Nations Environmental Programme (UNEP),¹⁷ and contributed to the negotiation and adoption of many of the multilateral environmental treaties adopted in its wake.¹⁸ Many state environmental ministries trace their existence back to Stockholm,¹⁹ and both the United Nations and Conference Secretary General, Maurice Strong, made concerted efforts to facilitate participation by developing countries (which made up a majority of the attendees).²⁰ And, of course, it produced the Stockholm Declaration, which established once and for all that environmental concerns transcended national borders and were an appropriate issue of concern for international law.²¹ Indeed, as this 50th anniversary conference convened in virtual space, the United Nations Human Rights Council voted 43-0-4 to recognize the right to a safe, clean, and healthy environment.²² That

racist device to keep the non-white third world at a relatively low levels of development.” WADE ROWLAND, *THE PLOT TO SAVE THE WORLD* 47 (1973).

¹⁵ Louis B. Sohn, *The Stockholm Declaration on the Human Environment*, 14 HARV. INT’L L. J. 423, 434-37 (1973).

¹⁶ See U.N., Econ. & Soc. Council, Letter dated 20 May 1968 from the Permanent Representative of Sweden addressed to the Secretary General of the United Nations, UN Doc. E/4466/ADD.1 at 3 (22 May 1968) (asserting that “as the problems of [the] human environment grow more serious every day, many of them involving the risk of irreparable damage if not death with in time . . . [t]here is, therefore, an indisputable need to create a basis for comprehensive consideration within the United Nations of the problems of human environment.”).

¹⁷ Stockholm Declaration, *supra* note 1, at 29; see also Maria Ivanova, *Designing the United Nations Environmental Programme, a Story of Compromise and Confrontation*, 7 INT’L ENV’T AGREEMENTS: POL., L. & ECON. 337, 339 (2007) (describing the emergence of UNEP as an “anchor institution” for global environmental governance).

¹⁸ The Stockholm Convention laid the groundwork for the Earth Summit that was held in Rio in 1992. G.A. Res. 2994 (XXVII) (Dec. 15, 1972).

¹⁹ John W. Mayer et al., *The Structuring of a World Environmental Regime 1870-1990*, 51 INT’L ORG. 623, 638-39, 643 (1997).

²⁰ The UN Secretary General issued ‘Measures Designed to Secure Developing Countries’ Participation’; see GAOR, 24th Session, Fifth Committee, 1327th Meeting, 13 November 1969; Lars-Goran Engfeldt, *The United Nations and the Human Environment- Some Experiences*, 27 INTERNATIONAL ORGANIZATION 393 (1973).

²¹ The General Assembly voted overwhelmingly (112-0-10) to “note with satisfaction” the report of the Stockholm Conference and to draw the attention of governments to the Stockholm Declaration. Sohn, *supra* note 15, at 433.

²² Human Rights Council, *The Human Right to a Safe, Clean, Healthy and Sustainable Environment*, U.N. Doc. A/HRC/48/L.23/Rev. 1 (Oct. 5, 2021). The four abstentions came from China, India, Russia, and Japan. *Access to a Healthy Environment, Declared a Human*

long-overdue recognition is a huge victory and has its roots in the Stockholm Declaration.²³

In order to move ahead in our quest to protect our “only one earth,”²⁴ it makes sense to begin by looking back at Stockholm in order to appreciate what did and did not happen there. As indicated above, there were many important and laudable outcomes from the Stockholm Conference. However, this article focuses on what did not happen at Stockholm, specifically on two elements missing from the Stockholm Declaration: reducing overconsumption and reigning in transnational corporations. These omissions hampered the effectiveness of the international environmental law regime that emerged at Stockholm and continue to be stumbling blocks to concerted action to this day.

II. THE DECLARATION AND A CRITIQUE

Most readers of the Stockholm Declaration skip straight to the Declaration’s principles—the seemingly important, albeit non-binding, parts of the conference outcome document. However, to really understand this document in its context, it is necessary to “begin at the beginning,”²⁵ with the preamble.

Paragraph 1 of the Stockholm Declaration Preamble begins “Man is both a creature and moulder of his environment,”²⁶ and then acknowledges that “man has acquired the power to transform his environment in countless ways and on an unprecedented scale.”²⁷ These words frame the rest of the Declaration. As such, it is highly instructive in terms of understanding what was at the center of the conversation fifty years ago concerning “man and his

Right by UN Rights Council, UN NEWS (Oct. 8, 2021) <https://news.un.org/en/story/2021/10/1102582>.

²³ In an interview after the historic vote, UN Special Rapporteur for Human Rights and the Environment, David Boyd, made the connection explicit between this resolution and the Stockholm Declaration. See *The Right to a Clean and Healthy Environment: Six Things You Need to Know*, UN NEWS (Oct. 15, 2021) <https://news.un.org/en/story/2021/10/1103082>; see also Dinah Shelton, *Whiplash and Backlash—Reflections on a Human Rights Approach to Environmental Protection*, 13 SANTA CLARA J. INT’L L. 11, 12 (2015).

²⁴ BARBARA WARD, RENE DUBOIS, ONLY ONE EARTH: THE CARE AND MAINTENANCE OF A SMALL PLANET 1 (1972) (“An unofficial report commissioned by the secretary-general of the United Nations Convention on the Human Environment”).

²⁵ In Alice’s Adventure in Wonderland, the White Rabbit asks the King ““where should I begin, please your Majesty?”” The King replied gravely ““Begin at the beginning. . . and go on until you come to the end: then stop.”” LEWIS CARROLL, ALICE’S ADVENTURE IN WONDERLAND 182 (1998).

²⁶ Stockholm Declaration, *supra* note 1, ¶ 1.

²⁷ *Id.*

environment.”²⁸ It helps us understand what questions the world were and were not asking itself at the Stockholm Conference on the Human Environment. The organizers of this conference in 2021 adjusted the language of the Declaration, replacing “man” with “humankind” in order to be more inclusive.²⁹ While I appreciate the instinct toward inclusion, I think this rewriting does a disservice. Use of the word “man” is telling and important because it reflects the state of awareness in 1972.

This document, like the UN itself, is rooted in patriarchy.³⁰ Indigenous voices and female voices were almost entirely absent at Stockholm. I see no reason to erase that reality. It is important to understanding both the strengths and weaknesses in the Declaration and its legacy. It is part of a discounting of the critical roles that women play that continues to this day—as farmers, as scientists, as students, as citizens, as parents, as leaders, and as consumers. No UN declaration would be phrased like this now, but the fact is that gender mainstreaming is still a work in progress—so much so that gender equality is its own separate Sustainable Development Goals (SDG).³¹

III. COMMODIFICATION AND OVERCONSUMPTION

Once we get past the Preamble and into the substance of the Declaration, Principle 1 states:

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

²⁸ Sohn, *supra* note 15, at 438.

²⁹ “Stockholm Declaration at 50,” *October 8 Georgia Law Journal Conference, Will Feature Experts in International Environmental and Human Rights Law*, DEAN RUSK INT’L L. CTR. (14 Sept. 2021) <https://deanruskintl.com/2021/09/14/gjicl2021/>.

³⁰ The purpose identified in Article 1 of the UN Charter is “[t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” U.N. Charter Art. 1, para. 3. Nevertheless, stark gender-based disparities remain. Discriminatory laws and social norms negatively impact women and girls, and women remain underrepresented at all levels of political and social leadership. Indeed, the situation remains so unequal that the Sustainable Development Goals identifies achieving gender equity as a standalone goal. *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, U.N. (last accessed Mar. 24, 2022) <https://sdgs.un.org/goals/goal5>.

³¹ The Sustainable Development Goals were adopted by the United Nations in 2015 as a shared blueprint for peace and prosperity. There are 17 SDGs addressing a range of environmental and social issues. *The 17 Goals*, UN DEP’T ECON. & SOC. AFF. (last accessed Mar. 24, 2022) <https://sdgs.un.org/goals>; *Goal 5: Achieve Gender Equality and Empower All Women and Girls*, *supra* note 30.

environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.”³²

There is a lot packed into Principle 1. It contains the seeds of the still-emerging human right to a healthy environment,³³ and a clear articulation of both inter-generational and intra-generational equity.³⁴ Yet, the limits of international environmental law are equally on display. As framed in Principle 1, this document is entirely anthropocentric, focused not on the environment *qua* environment, but as the inhabitance of “man.” Principle 3 of the Declaration does focus more directly on the environment *per se*, stating that “the capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored or improved.”³⁵ But, even here the notion of the world as composed of resources—the essence of the extractive capitalist vision—remained uncontested. The object at Stockholm was not to turn away from commodification of the earth. Nor was it a rejection of an economy rooted in consumption—one resting on the inevitability and desirability of unending growth.

Although Stockholm occurred in the middle of the decolonial moment, the Declaration in many ways was a continuation of the colonial mindset—the exploitation mindset—albeit with different hands on the levers of power, and maybe different actors receiving the benefits. Thus Principle 21 famously declared sovereign control over natural resources,³⁶ codifying the

³² Stockholm Declaration, *supra* note 1.

³³ Progress on this front has been distressingly slow. Indeed, it was while we were celebrating the 50th anniversary of the Stockholm Convention at this University of Georgia Law School conference that the Human Rights Council adopted Resolution 48/13 recognizing “the right to a safe, clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights.” Human Rights Council Res. 48/13 A/HRC/48/L.23/Rev.1 (Oct. 5, 2021).

³⁴ For a discussion of intergenerational equity, see EDITH BROWN WEISS, *IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY* (1989). The demand for of intra-generational equity is the root of the decolonial and anti-racist imperative for environmental justice. Dire Tadli, *Intragenerational Equity: A New Name for Environmental Justice*, 9 *FUNDAMINA* 197, 197 (2003) (discussing the World Summit on Sustainable Development, a successor to the Stockholm and Rio conferences.) Demands for a just transition and for climate justice are intergenerational equity claims, as is the recognition of “common but differentiated responsibilities.” Christopher Stone, *Common But Differentiated Responsibilities in International Law*, 98 *AM. J. INT'L L.* 276, 278-80 (2004). For an exploration of what this might look like, see SHALANDA BAKER, *REVOLUTIONARY POWER* 134-137 (2021).

³⁵ Stockholm Declaration, *supra* note 1, at Principle 3.

³⁶ Principle 21 recognized that:

earlier General Assembly resolution on the same topic.³⁷ Given the history of colonial expropriation and exploitation, this principle was obviously a necessary cornerstone for any international agreement. However, it was hardly sufficient for responding to entwined, systemic environmental challenges. The incorporation of the Trail Smelter principle of state responsibility as a corollary principle to sovereign control over natural resources offered only the merest feint at altering the environmental trajectory of overuse and degradation.³⁸ It failed to acknowledge that many so-called developed states were in fact ecological debtor nations.³⁹ Their industrialization rested on a global system of colonial exploitation and extraction. The result was disproportionate benefits and vast wealth consolidated in these developed countries, but at the cost of overexploitation and degradation—the very environmental problems they were now asking developing countries to join in resolving.⁴⁰ This inequity remains true to this

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 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.

Stockholm Declaration, *supra* note 1.

³⁷ Permanent Sovereignty Resolution G.A. Res. 1803 (XVII) (Dec. 14, 1962).

³⁸ The Trail Smelter Arbitral Tribunal famously concluded that “no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the property of persons therein, when the case is of serious consequence.” *Trail Smelter (U.S. v. Can.)*, 3 R.I.A.A. 1905, 1965 (1941). *See also* *Trail Smelter Arbitral Decision*, 33 AM. J. INT’L L. 182, 182 (1939); *Trail Smelter Arbitral Decision*, 35 AM. J. INT’L L. 684, 684 (1941). This principle that states must regulate their territories adequately in order to prevent transboundary environmental disasters has since become a cornerstone of international law. For a detailed exploration of the *Trail Smelter Arbitration and its legacy*, see generally, REBECCA BRATSPIES & RUSSEL MILLER, *TRANSBOUNDARY HARM IN INTERNATIONAL LAW: LESSONS FROM THE TRAIL SMELTER ARBITRATION* (2006). Unfortunately, neither the *Trail Smelter Arbitration*, nor the ensuing edifice of international law did anything to limit a state’s ability to pollute or to allow pollution within its own borders. Catherine Prunella, *An International Environmental Law Case Study: The Trail Smelter Arbitration*, in *INTERNATIONAL POLLUTION ISSUES* (Michael Dorsch ed. 2014).

³⁹ When Americans alone consume the resources of five planet earths to continue their current lifestyles, the level of overconsumption makes a mockery of the idea of state sovereignty over natural resources. Those natural resources cannot possibly meet the demands placed upon them. Yet, at the United Nations Conference on the Environment and Development, United States President George H. W. Bush famously declared that “the American life-style is not up for negotiation.” Philip Elmer-DeWitt, *Summit to Save the Earth: Rich vs. Poor*, *TIME*, Jun. 1, 1992.

⁴⁰ MAHBUB UL HAQ, *THE POVERTY CURTAIN: CHOICES FOR THE THIRD WORLD* 39 (1976).

day and is part of the reason that the Global South has been unwilling to treat environmental concerns as separate from other global problems.⁴¹ One of the biggest sticking points in climate negotiations has been over the climate debt owed by the global North to the global South.⁴²

At Stockholm, many developing countries, especially those newly independent, viewed the (relatively) new Northern concern with environmental protection as a pretext intended to thwart the economic growth of the Global South—“a neat excuse for industrialized nations to pull the ladder up behind them.”⁴³ Indian Prime Minister Indira Gandhi reflected this view when she famously asked the Stockholm delegates “[a]re not poverty and need the greatest polluters?”⁴⁴ The assumption embedded in her question is that pollution is part of poverty alleviation rather than poverty perpetuation, a view that was a driving force in the Brundtland Commission’s subsequent Report *Our Common Future*.⁴⁵ This framing viewed increased consumption as an inherently desirable objective in itself, a way to address the intentional systemic underdevelopment that was a colonial legacy.⁴⁶ Unfortunately, this perspective too often embraced the pernicious notion that environmental protection is necessarily tied to wealth generation in the market.⁴⁷

These assumptions were at the core of the kind of decolonization embedded in the Stockholm Declaration. The Declaration acknowledged some of the obligations owed to developing countries by developed countries, but largely cabined that obligation to the providing of money⁴⁸ rather than to stopping overconsumption or ceasing to extract and co-opt an undue share of

⁴¹ Karen Mickelson, *The Stockholm Conference and the Creation of the South-North Divide in International Environmental Law*, in *INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH* 109, 110 (Shawkat Alam, Sumudu Atapattu, Carmen G. Gonzalez and Jona Razzaque, eds., 2015).

⁴² Somini Sengupta, *Calls for Climate Reparations Reach a Boiling Point in Glasgow Talks*, N.Y. TIMES, Nov. 11, 2021; Mohamad Adow, *Climate Debt Keeps Growing*, FOREIGN AFF. (Oct 28, 2021). See generally, Farhana Sultana, *Critical Climate Justice*, 188 GEOGRAPHICAL J. 118, 120 (Oct. 2021) (describing climate debt and linking it to neocolonialism and colonial legacies); SHALANDA BAKER, *REVOLUTIONARY POWER: AN ACTIVIST’S GUIDE TO THE ENERGY TRANSITION* (2021) (making the case for energy justice); Maxine Burkett, *Climate Reparations*, 10 MELBOURNE J. INT’L L. 509, 509 (2009).

⁴³ ROWLAND, *supra* note 14, at 47.

⁴⁴ Aside from Olaf Palme of host country Sweden, Gandhi was the only head of state to attend the Stockholm Conference. Pamela Chasek, *Stockholm and the Birth of Environmental Diplomacy*, IISD (Sept. 10, 2020) <https://www.iisd.org/articles/stockholm-and-birth-environmental-diplomacy>.

⁴⁵ U.N. World Comm’n for Env’t and Dev., Rep Our Common Future A/42/427, at 18 (Aug. 4, 1987).

⁴⁶ See generally WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* (1972).

⁴⁷ ROWLAND, *supra* note 14, at 50.

⁴⁸ For example, Principle 9 calls for “the transfer of substantial quantities of financial and technological assistance.” Stockholm Conference, *supra* note 1.

common resources. In her address to the delegates, Gandhi did call out overconsumption in the Global North as a driver of environmental degradation,⁴⁹ but that notion did not make it into the Declaration. Environmental problems were instead portrayed as a problem of one aspect of colonialism—the extraction of wealth and resources from the global South for the profit of the global North. That portrayal has some truth to it, but the root of our environmental problems go much deeper—the transgression of planetary boundaries is an inherent aspect of an extractive, industrialist and capitalist system based on excess consumption.⁵⁰ Unfortunately, from Stockholm to today, there has been little evidence that key Northern States have any appetite for reducing their overconsumption.⁵¹

In short, the Stockholm Declaration and its accompanying Action Plan⁵² focused on the symptoms rather than the root causes of environmental problems. There was a sense that we could develop our way out of an environmental crisis.⁵³ Today, as we hear calls to decolonize the academy, to decolonize our thinking, it is this greater, underlying problem that is targeted—the need to profoundly transform “man’s” highly racialized

⁴⁹ Specifically, Gandhi took direct aim at Northern claims that overpopulation in the Global South was driving environmental degradation by pointing out:

Countries with but a small fraction of the world’s population consume the bulk of the world’s production of minerals, fossil fuels, and so on. Thus, we see that when it comes to the depletion of natural resources and environmental pollution, the increase of one inhabitant in an affluent country, at his level of living, is equivalent to an increase of many Asian, Africans, or Latin Americans at their current material level of living.

Smt. Indira Gandhi, *Indira Gandhi’s Speech at the Stockholm Conference in 1972*, LASU – LAWS Env’t Blog (July 18, 2012) <http://lasulawsenvironmental.blogspot.com/2012/07/indira-gandhis-speech-at-stockholm.html>.

⁵⁰ Elke Pirgmaier, *Consumption Corridors, Capitalism, and Social Change*, 16 SUSTAINABILITY 274, 276-78 (2020).

⁵¹ See *Degrowth Declaration of the Paris 2008 Conference*, 18 J. CLEANER PRODUCTION 523 (2010) (recognizing that “[b]y using more than their legitimate share of global environmental resources, the wealthiest nations are effectively reducing the environmental space available to poorer nations and imposing adverse environmental impacts on them.”).

⁵² U.N. Conference on the Human Environment, *Stockholm Declaration Action Plan*, U.N. Doc. A/CONF.48/14/Rev.1 (June 5-16, 1972).

⁵³ For example, Principle 9 states in relevant part: “Environmental deficiencies generated by the conditions of under-development and natural disasters [sic] pose grave problems and can best be remedied by accelerated development. . . .” Stockholm Declaration, *supra* note 1.

division of the earth [as] a series of resources to be extracted, exploited, and consumed.⁵⁴

By contrast, Bolivia's Law of Mother Earth (*Ley de Derechos de La Madre Tierra*)⁵⁵ offers a radically different vision. This legislation defines "Mother Earth" as "a living dynamic system made up of the undivided community of all living beings, who are all interconnected, interdependent and complementary, sharing a common destiny."⁵⁶ From that starting point, the law establishes a series of specific rights for Mother Earth, including the right to maintain the integrity of living systems and natural processes that sustain them;⁵⁷ the right to pure water⁵⁸ and clean air;⁵⁹ the right to balance;⁶⁰ and the right not to be polluted.⁶¹ Rather than focusing on "man" or even humans as rights holders and actors, this Bolivian law centers the earth as a community of interconnected, interdependent living beings and directs that human activities should achieve a dynamic balance with natural cycles.⁶²

The Stockholm Declaration and the *Law of Mother Earth* offer profoundly different visions of the world—earth as a series of resources is very different from earth as a system. Where the Stockholm Conference focused on linking environmental protection and poverty elimination and emphasizing the obligations that developed countries owed developing countries, the *Law of Mother Earth* seeks to reestablish relationships among human beings,⁶³ between human beings and nature, and between the ancestral and the sacred. I think the latter is our future.

IV. TRANSNATIONAL ENTERPRISES: THE MISSING ACTORS

In a second, and related critique, the Stockholm Declaration largely sidestepped the role that nonstate actors, specifically transnational

⁵⁴ Carmen G. Gonzalez, *Racial Capitalism and the Anthropocene* 72, in ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT 72, 72 (Sumudu A. Atapattu, Carmen G. Gonzalez and Sara L. Seck, eds., 2021).

⁵⁵ Ley de Derechos de La Madre Tierra [Law of Mother Earth], 2010 (Ley No. 71/2010) (Bol.).

⁵⁶ *Id.* at Art. 3.

⁵⁷ *Id.* at Art. 7(1).

⁵⁸ *Id.* at Art. 7(3).

⁵⁹ *Id.* at Art. 7(4).

⁶⁰ *Id.* at Art. 7(5).

⁶¹ *Id.* at Art. 7(7).

⁶² *Id.* at Arts. 2(1), 3.

⁶³ This is not to suggest that no one at Stockholm was thinking in these more sweeping terms. To the contrary, Conference Secretary Maurice Strong characterized awareness of an urgent need "not only for a new perception of man's relationship with the natural world, but with man's relationship with man" as the most striking realization from the preparatory process for the Stockholm Conference. ROWLAND, *supra* note 14 at ix (Introduction by Maurice Strong).

corporations, play in promoting and perpetuating a culture of commodification and overconsumption. For example, Principle 6 of the Declaration states:

The discharge of toxic substances or of other substances and the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. The just struggle of the peoples of all countries against pollution should be supported.⁶⁴

The first sentence declares that “discharge of toxic substances must be halted.” The thrust of this otherwise sweeping statement is blunted by use of the passive voice. The wording leaves unspecified just who has this obligation to do the “halting.” The way that this first sentence of Principle 6 obscures the relevant actors is of vital importance. It is part of a broader pattern in international law—the unwillingness or inability to reign in the conduct of transnational companies, many of which wield power that rivals or exceeds that of states.⁶⁵ The lack of international legal consequences for corporate actions that either intentionally or negligently produce massive, unlawful discharges of toxic substances, like Union Carbide’s Bhopal disaster⁶⁶ and Trafigura’s toxic dumping in Côte d’Ivoire⁶⁷ only underscores how much this omission matters. The lack of accountability for polluters is particularly salient in the climate context, where roughly 100 companies, the so-called ‘carbon majors,’ are responsible for 70 percent of global carbon emissions.⁶⁸

The second sentence of Principle 6, which affirms “the just struggles of the people of all countries against pollution,” similarly misdirects attention. These struggles, which are at least as intense in 2021 as they were in 1972, are against *polluters*—the actors creating the pollution, who have co-opted the public’s space, the air, the water, the land, for their own purposes. That

⁶⁴ Stockholm Declaration, *supra* note 1, at 4.

⁶⁵ John Knox, *Horizontal Human Rights Law*, 102 AM. J. INT’L L. 1, 1 (2008); Rebecca Bratspies, *Organs of Society: A Plea for Human Rights Accountability for Transnational Enterprises and Other Business Entities*, 13 MICH. ST. J. INT’L L. 9, 12 (2005).

⁶⁶ Rebecca Bratspies & Sarah Lamdan, *The Human Right to Environmental Information*, in HUMAN RIGHTS AND THE ENVIRONMENT: INDIVISIBILITY, DIGNITY, AND LEGALITY (Erin Daly, ed., 2018).

⁶⁷ Rebecca Bratspies, *Corrupt at Its Core, How Law Failed the Victims of Waste Dumping in Côte d’Ivoire*, 43 COLUM. J. ENVTL. L. 417, 418 (2018).

⁶⁸ Paul Griffin, *The Carbon Majors Database*, CDP 8 (2017) <https://cdn.cdp.net/cdp-production/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1501833772>.

dynamic was not visible in the Stockholm Declaration. These actors were erased by intentional wielding of the passive voice. As a result, the Stockholm Conference did not produce a clear international mandate to end pollution, nor did it require that goods be produced in a manner that does not compromise the health and wellbeing of the planet and its inhabitants. Industrial actors were left free to double down on the worst possible version of business as usual, pitting countries against each other in a vicious race to the bottom for worker and environmental protections. Once again, a handful of extremely powerful corporate actors are responsible for the lion's share of that pollution.⁶⁹ They have spent the past half century externalizing costs of their activities while holding tight to the profits.

The Stockholm Declaration did not even hint at duties and responsibilities held by commercial actors, by corporate entities, or by businesses. There are only two mentions of "enterprises" in the entire Stockholm Declaration: one in the Preamble, and one in Principle 19. The Preamble calls on "enterprises" to accept responsibility alongside citizens, communities and institutions at every level of government for achieving environmental goals.⁷⁰ Principle 19 calls for education in environmental matters in order to promote "enlightened opinion and responsible conduct by individuals, *enterprises*, and communities. . . ."⁷¹ The international community has spent the half century since Stockholm repeating this call for businesses to take environmentally protective actions based on "enlightened opinion." It has not worked. Instead, those companies have done everything in their power to blunt initiatives aimed at reducing pollution,⁷² and peddled lies about the growing climate crisis.⁷³

The Stockholm Declaration otherwise had nothing to say about these powerful nonstate actors. Mired in an exploitation mindset, it did not even try to place checks on commercial actors, many of which rival states in wealth and influence. We should not be surprised by the proliferation of technocratic, market-based solutions that treat ecological crises as opportunities to develop new and innovative ways to commodify and expropriate nature.⁷⁴ These kinds of solutions do little to address the profound racism and inequality at the core

⁶⁹ Angelo Young, *20 Corporations Behind the Most Ocean Pollution*, 24/7 WALL ST. (Jan. 6, 2019) <https://247wallst.com/special-report/2019/06/06/corporations-behind-the-most-ocean-pollution/>.

⁷⁰ Stockholm Declaration, *supra* note 1, preamble at para. 7.

⁷¹ *Id.* at Princ. 19 (emphasis added).

⁷² *Climate Crimes*, THE GUARDIAN (last accessed Mar. 24, 2022) <https://www.theguardian.com/environment/series/climate-crimes>.

⁷³ See, e.g., Geoffrey Supran & Naomi Oreskes, *The Forgotten Oil Ads That Told Us Climate Change Was Nothing*, THE GUARDIAN (Nov. 18, 2021); Chris McGreal, *Exxon CEO Accused of Lying About Climate Science to Congressional Panel*, THE GUARDIAN (OCT. 28, 2021).

⁷⁴ For an exploration of this point, see Gonzalez, *supra* note 54.

of international legal and economic systems—the very systems that the decolonization moment was supposed to dismantle.

V. CONCLUSION

Using the usual metrics of international law, the international environmental law revolution launched at Stockholm has been a remarkable success. The conference defined the terms of what is now a continuing global environmental debate. It catalyzed a new era of multilateral environmental cooperation and treaty-making. Without it, UNEP would not exist, and many global environmental treaties might be unwritten. It contributed to the democratization of environmental debate and policy-making by facilitating developing state participation and by pioneering effort to incorporate what we now call “global civil society.”⁷⁵ Nothing like that had been attempted before. There is a direct line from Stockholm to the thriving NGO side meetings and civil engagement at COP26 in Glasgow.

Moreover, the Stockholm Conference legitimized “the environment” as an area of both national and international concern. International environmental law is now a full-fledged field of practice and study.

Yet, if we measure success by the standard of actually solving real-world problems, international environmental law has been a notable failure. The international environmental law system that emerged from the Stockholm Conference neither halted nor reversed the degradation of the planet’s life support systems. Even as global, regional, and multilateral agreements proliferated, the global environmental situation worsened. The international legal system is clearly better at producing environmental agreements than at solving environmental problems. Over those 50 years, a huge implementation and accountability gap accumulated, and environmental injustices compounded.

As it stands, no one can ensure that future generations will be able to meet their needs as past and present generations have done. We have failed to achieve the “solemn duty” announced in the Stockholm Declaration’s Principle 1. That failure to protect the earth is directly related to the same

⁷⁵ Participation by NGOs, and other non-state actors, as well as the proliferation of NGO-sponsored unofficial side-meetings, are now a taken-for-granted part of global environmental meetings. This began at Stockholm. *Environmental Conference Will Offer Some Sideshows*, N.Y. TIMES (June 5, 1972) (describing the Environmental Forum and the People’s Forum at the Stockholm Conference.). Indeed, Article 7(6) of the United Nations Framework Convention on Climate Change specifically addresses NGO participation in the Convention of the Parties meetings. For an explanation of the role of civil society in global environmental governance, see Barbara Gemmill and Abimbola Bamidele-Izu, *The Role of NGOs and Civil Society in Global Environmental Governance*, in GLOBAL ENVIRONMENTAL GOVERNANCE: OPTIONS & OPPORTUNITIES 77 (Daniel C. Esty & Maria H. Ivanova, eds., 2002).

economic and social order that condemns billions to wretched poverty and treats their sufferings as inevitable and unavoidable. The failures at Stockholm are at the core of the challenges today.

If there is one clear lesson to take from Stockholm for the next 50 years, it is that we cannot solve environmental problems using the same logic that created the problems in the first place. COVID-19 taught us that the world can change on a dime. We are seeing a growing call to action from young people, one that perhaps their elders are starting to heed. The civic society that Stockholm empowered is now poised to take charge. We need an all-out effort from every sector of society, one that reins in transnational corporations and commercial actors, one that changes the default of consumption. Over the past year and a half, we have seen every major news source keep a daily COVID tracker—how many dead, how many infected, how many vaccinations. Perhaps it is time for a daily climate tracker. We need a segment on the nightly news—every night—reporting on what we have lost, what we have done to stem those losses, and what happens next. Sustained attention and daily updating about the growing climate crisis might be a way to build support for the sweeping changes that will be necessary.