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Rajeesh Kumar

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Rajeesh Kumar

Introduction

When the United Nations (UN) was founded, environmental issues were not seen as a significant threat. Now, seventy-five years since the UN first came into existence, environmental issues, from being of peripheral concern, have become mainstream and are defining many multilateral deliberations. The growing environmental concerns – particularly since the 1960s – resulted in the emergence of hundreds of multilateral and bilateral agreements along with international and national institutions. The contributions of the UN in all these developments were critical. From Stockholm to Paris, the UN, particularly UNEP and UNFCCC, played a vital role in making the environmental concerns genuinely global. This Essay appraises the role and contributions of the UN in the evolution of global environmental governance.

When the United Nations (UN) was founded in 1945 in the backdrop of the ravages of the Second World War, the core concerns before the delegates of fifty nations gathered in San Francisco, were peace and security, human rights, and development. Consequently, the UN Charter had no mention of the word ‘environment.’ However, today the UN is the foremost forum for setting the global agenda on environment and promoting sustainable development goals. Since the last five decades and more, the UN has been delivering leadership, encouraging multiple partnerships and designing programmes for the protection of the environment. It is hard to imagine effective responses to environmental problems without a decisive role of the UN. In the 21st century with greater interconnection of the geophysical to the geo-economic and the geopolitical, the environment is now an existential concern and is increasingly being integrated into almost all the UN programmes as ‘green mandate.’

This Essay focuses on: the UN as a venue for collective action, including negotiating global environmental agreements; critical milestone conferences such as Stockholm (1972), Rio (1992) and Paris (2015); and the role of the United Nations Environment Programme (UNEP) as well as the United Nations Framework Convention on Climate Change (UNFCCC) and its Conference of the Parties (COP). It also looks at how the 75th anniversary offers a unique opportunity for the UN to bolster multilateral approaches to environmental emergencies and restore global confidence in multilateralism.

Dr. Rajeesh Kumar is Associate Fellow at MP-IDSA, New Delhi.

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UN and the evolution of global environmental governance

Concerns for the environment are age-old. Ancient societies recognized the depravity of the environment, forewarning their leaders about its harmful effects.¹ However, until the second half of the 20th century, there were few international agreements to deal with environmental challenges. Most of these were focused primarily on transboundary waters, navigation, fishing rights, etc.² Subsequently, some conventions and agreements on marine pollution and conservation of natural resources were concluded; none of them, however, could result in a global environmental regime based on rules and principles.

Now, seventy-five years since the UN first came into existence, the fate of over 7.8 billion people hangs in the balance. Environmental issues, from being of peripheral concern, have now become mainstream and are defining many multi-lateral deliberations. The growing environmental concerns—particularly since the 1960s—resulted in the emergence of hundreds of multilateral and bilateral agreements along with international and national institutions. The contributions of the UN in all these developments were critical. From Stockholm in 1972 to Paris in 2015, the UN—particularly the UNEP and UNFCCC—played a critical role in mainstreaming environmental concerns at a global level.

The Stockholm Conference on human environment—1972

The Stockholm Conference on Human Environment held in 1972, was a significant breakthrough in the history of global environmental governance. It was the first inter-governmental conference highlighting environmental problems and subsequently resulted in the creation of the UNEP. The origin of the Stockholm Conference can be traced back to the 1967 Swedish proposal for an international conference under the aegis of the UN. It came against the backdrop of the UN's plan to convene the fourth international conference on the peaceful use of atomic energy. Inga Thorsson, the Swedish diplomat at the UN and an ardent supporter of disarmament, desired to thwart the expensive nuclear energy conference. Under her influence, the Swedish delegation led by Sverker Astrom and Borje Billner proposed an alternative international conference 'to facilitate coordination and to focus the interest of member states on problems of the human environment.'³ The Swedish delegation also sent a letter to the UN Secretary-General, Dag Hammarskjöld, which stated that the changes in the natural surroundings, caused by man, had become an urgent problem for developed as well as developing countries and these could only be solved through international cooperation.⁴

Following the Swedish proposal, the UN General Assembly, in December 1968 adopted a Resolution that requested the Secretary-General to prepare a report in consultation with member states, various organs and specialized agencies of the UN as well as non-governmental organizations, on the possibility of a UN conference on environment.⁵ In December 1969, the General Assembly adopted another Resolution to establish a Preparatory Committee for the proposed conference.⁶ From its inception to the conference, the Committee met four times in three years and agreed upon a draft Preamble and principles of a declaration on the human environment.⁷ Finally, representatives of 113 nations assembled in Stockholm, from June 5–6, 1972, and adopted the Declaration on the Human Environment that included 26 principles and

109 recommendations for environmental action at the national and international levels.⁸

The dispute between developed and developing countries was very intense at the Conference in Stockholm. Diplomats from across the global south argued that unlike the developed world, poor countries suffered from a 'pollution of poverty' rooted in underdevelopment. Many of them blamed the developed world for the environmental problems and also urged industrialized countries to be more responsible in mitigating the environmental crisis. The Indian Prime Minister, Indira Gandhi's speech at the Conference, showcased the developing countries' overall approach and brought people and development into the discourse on environmental protection. It stated: 'We do not wish to impoverish the environment any further, and yet we cannot for a moment forget the grim poverty of large numbers of people. Are not poverty and need the greatest polluters? The environment cannot be improved in conditions of poverty. Nor can poverty be eradicated without the use of science and technology.'⁹ Indira Gandhi captured international attention as the most prominent face for the global south and her view reflected in the final declaration of the Conference as well.

Nonetheless, the Stockholm Conference accomplished unparalleled success in terms of both its process and outcome. In Stockholm, for the first time, the international community acknowledged the link between the environment and development and recognized the responsibility of governments in protecting the environment. Second, it carefully managed the conflict between the developing and developed countries over the right to environment and the right to development. Third, the Conference was a catalytic event that put forth a new philosophy and guideline for managing global environmental problems through international cooperation. Fourth, it created institutional and financial edifices for environmental governance both at the national and international level. Finally, the Conference also acknowledged the role of non-governmental organizations as stakeholders in dealing with ecological issues.

In short, as the Conference's Secretary-General, Maurice Strong observed, Stockholm was 'the first step on a new journey of hope' where the international community under the leadership of the UN put environment on the global agenda.¹⁰ Most of the later developments related to global environmental governance, including the Rio Declaration, had their foundation in Stockholm. The Declaration was a constitutional moment of international environmental law and a catalyst for domestic environmental legislation. The foundation of the UNEP was the most significant outcome of the Conference.

United Nations Environment Programme (UNEP)

When the participants gathered at Stockholm in 1972, creating an institutional landscape dedicated to environmental governance was not on their mind. In fact, the predominant opinion at that time among governments was that no new institution for the environment was needed in the UN system, since many 'specialized agencies had constitutional responsibilities in large areas of the human environment.'¹¹ However, during the Conference, the participants realized that a coordinated approach to environmental issues in the UN was necessary, and no progress would be possible without such robust institutional arrangements. Shortly afterwards, the General Assembly Resolution 2997 (XXII) established the UNEP as a subsidiary

body governed by a General Council of 58 triennially elected member states.¹² Since then the UNEP has been the leading authority that sets the global environmental agenda.

The UNEP's objective is to promote international cooperation and to provide policy guidance for environmental programmes within the UN system.¹³ Keeping these goals in view, the UNEP appears to have accomplished considerable success in coordinating global environmental concerns through a number of Multilateral Environmental Agreements (MEAs) and treaty monitoring bodies. The Montevideo Programmes and Regional Seas Programmes (RSPs) are well-appreciated efforts of the UNEP. Likewise, the global treaties on 'ozone layer protection, regulation of chemicals and hazardous waste, climate change, desertification and biodiversity were all created and concluded with UNEP's engagement.'¹⁴ Presently, the UNEP's role is largely associated with sustainable development, and its key responsibility is to ensure that the environmental dimension is integrated into every sustainable development policy in the UN system.

The Rio Conference on environment and development—1992

In the two decades following the Stockholm Declaration in 1972, the world witnessed wide-ranging environmental agreements and action plans. This period saw systemic changes in both the theme and scope of international environmental negotiations. Consequently, a range of issues such as marine and air pollution, depletion of the ozone layer, protection of world heritage sites, ecosystems and wildlife, etc., drew global attention.¹⁵ In addition, the period saw the emergence and evolution of the concept of 'sustainability' and its integration into global trade, development and financial policies. The GATT Group on Environmental Measures and International Trade, the World Bank's environmental department and the Global Environmental Facility (GEF) are examples. However, the most significant development was the organization of the Rio Conference on Environment and Development (UNCED) in 1992.

The UNCED, popularly known as the 'Earth Summit' held in Rio de Janeiro, from June 3–14, 1992 was an unprecedented global gathering of heads of state and government representatives from over 170 countries representing the UN. It also included the participation of civil society and inter-governmental organizations.¹⁶ The Summit produced half-a-dozen major outputs, chiefly among them the Rio Declaration, Agenda 21, the Framework Convention on Climate Change, the Convention on Biodiversity, Forest Principles and Sustainable Development Commission. The Conference also took stock of past developments in environmental protection while, at the same time, providing a framework of principles for future actions.

The foundation for both the Rio Conference and its major outcome document, the Rio Declaration, was the 1987 Report of the World Commission on Environment and Development (WCED) titled, *Our Common Future*. The WCED, often called the Brundtland Commission, was established under the General Assembly Resolution 38/161 of December 19, 1983. In its four-year-long consultations and studies, the Commission recognized that decisive and urgent global action is vital to protect the ecological balance of the earth. It also set forth a vision for the future based on the idea of 'sustainable development'.¹⁷

Not surprisingly, 11 out of the 27 principles of the Rio Declaration mention the term ‘sustainable development.’

In addition to the WCED Report, a couple of General Assembly Resolutions were just as significant. While Resolutions 43/53 and 44/207 urged the governments, IGOs and NGOs to treat climate as a priority issue, Resolution 44/228 called for a global meeting to devise integrated strategies to tackle the adverse impact of human behaviour on the environment and to promote sustainable development across the world.¹⁸ The Rio Declaration and Agenda 21 were negotiated mostly in five sessions of the preparatory committee, between 1990 and 1992. Likewise, The Rio Declaration was endorsed by the UNGA in Resolution 47/190 of December 22, 1992.

Many view the Rio Declaration and its compromise on development and environmental issues as two-steps-forward-one-step-back when compared to its predecessor the Stockholm Declaration. Criticism apart, principles such as the common but differentiated responsibilities and respective capabilities (Principle 7), public participation in environmental matters (Principle 10) and the polluters-pay (Principle 12) provided a bold framework for future environmental negotiations. Similarly, the precautionary approach (Principle 15) and impact assessment (Principle 17) have operative significance in many national environmental regulations. Most significantly, the Declaration put human beings at the core of sustainable development concerns by stating that ‘humans are entitled to a healthy and productive life in harmony with nature.’¹⁹ It also provided a framework of principles for further advancement in the protection of the environment, without hindering development and progress in the field of economic, social, and cultural rights.

Climate change, UNFCCC and its Conference of the Parties

Climate change became one of the primary foci of many multilateral meetings after the 1979 World Climate Conference. Following the Conference, world leaders as well as the scientific community met several times in different parts of the world—including Villach in 1985, Toronto in 1988, and Noordwijk in 1989—to discuss the looming challenge. In addition to this, climate change became the subject of many UN General Assembly Resolutions as well. Resolution 45/212 in December 1990, for instance, initiated negotiations for a new global agreement on climate change.²⁰ After two years of deliberations, in 1992, at Rio, states agreed on the terms of the United Nations Framework Convention on Climate Change (UNFCCC). The Convention entered into force in March 1994, and at present, it has near-universal membership, with 197 countries having ratified it.

In its 25 years, the UNFCCC has evolved reputably, and its efforts have produced many significant outcomes. First, the Convention established global objectives related to climate change, codified key principles and a number of basic commitments and provided platforms for climate negotiations. Second, it affirmed the principle of ‘common but differentiated responsibilities and respective capabilities (CBD&RC).’ This has become a bedrock principle in global climate negotiations. Third, the treaty also established a Conference of the Parties (CoP) to adopt decisions, review progress and consider further actions through regular meetings. Though the UNFCCC sets no binding limits on greenhouse gas emissions and contains no execution tools, it provides a framework for negotiating specific global

agreements, called ‘protocols to the convention’ that determine enforceable limits on greenhouse emissions.

The primary objective of the UNFCCC is ‘stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.’²¹ The first step towards fulfilling this was the Kyoto Protocol, adopted at the third session of the CoP 3 in Kyoto, Japan, on December 11, 1997. In Kyoto, 37 industrialized countries and the European Union pledged to reduce their emissions upto 5 per cent below their 1990 levels, for the period 2008–2012.²² The Protocol also established various ‘flexible mechanisms’ such as emissions trading, the clean development mechanism (CDM) and joint implementation to achieve the target. The Protocol entered into force on February 16, 2005, and to date, it has been ratified by 192 parties.

The Kyoto Protocol was the first systematic approach under the UN climate regime to address the problem of global warming. It was a ‘hard law’ since it is legally binding, however, was ‘soft’ as well, owing to its flexible mechanisms. Following the Kyoto Protocol, the UN convened many Conferences of the Parties (CoPs), which were dedicated to finalizing the operational details of the Protocol and also discussing post-Kyoto commitments. The Buenos Aires Action Plan, the Marrakesh Accords, the Montreal Conference and the Bali Action Plan are some important developments in this period. However, the most significant turning point was the 2009 Copenhagen Accord. It set a long-term target of limiting global temperatures to 2°C above pre-industrial levels. It also agreed to review this commitment in 2015 to take account of new scientific evidence and also created a mechanism to provide the financial resources for mitigation and adaptation activities in developing countries.

Nonetheless, many consider the Copenhagen Accord as a failure and the end of UN mega-multilateralism and its universal approach to environmental treaty-making. The conference was expected ‘to formulate the basis for a comprehensive and legally binding climate treaty that would replace the Kyoto Protocol by the end of December 2012.’²³ However, it produced a non-binding treaty and state pledges were vague. Moreover, the agreement offered only a few mechanisms to ensure that promises would be fulfilled.²⁴ The Copenhagen conference also highlighted the gravity of distrust and division between and within industrialized and developing countries. These divisions became more visible when governments met at Cancun in 2010.

However, at Copenhagen, two changes were noticeable. First, the summit witnessed BASIC countries (Brazil, South Africa, India and China) pursuing negotiating strategies independent of the G-77. These countries began to be termed ‘emerging economies’ and distinguished as different from the G-77 bloc based on their economic power and carbon footprint.²⁵ Emerging economies also opened dialogues with the developed countries outside the UNFCCC process and began to coordinate their climate policies with each other more closely. This realignment was apparent in India’s negotiation strategies as well. For instance, Jairam Ramesh, then Environment Minister of India, expressed the view that India should ease itself out from the G-77 and engage more with the G-20.²⁶ He also opined that India should review its earlier negotiating position based on CBDR&RC.

Second, at Copenhagen, a new paradigm for climate diplomacy emerged and the global community’s pursuit for a more effective successor to the Kyoto Protocol was evident. At CoP-17 in Durban (2011), CoP-19 in Warsaw (2013) and CoP-20 in

Lima (2014), deliberations focused on voluntary pledges and individual targets for countries instead of top-down treaty obligations. Elements of a new model began to take shape out of these debates and the result was the Paris Agreement of 2015.

Paris and beyond

After adopting the UNFCCC in 1992, the global community spent over two decades negotiating legally binding rules on global emissions.²⁷ Though the Kyoto Protocol was agreed upon in 1997, the subsequent CoPs failed to create a legitimate successor treaty to the Protocol. The Paris Agreement in 2015, which the then UN Secretary-General Ban Ki-moon described as ‘a monumental triumph for people and our planet’ represented a remarkable shift from the persistent ‘gridlock’ of UN-sponsored climate negotiations. At Paris, one hundred and ninety-six parties to the UNFCCC struck a new legally binding climate deal that pledged to curb emissions, strengthen resilience and take collective climate action. It also ended the more than two decades of UN negotiations focused on establishing mandatory emission cuts. The Paris Agreement allows countries to set their own level of ambition for climate change mitigation under the principle of ‘intended nationally determined contributions’ (INDC). Nonetheless, parties to the Agreement are obliged to report periodically on their emissions and implementation efforts.

The Paris Agreement was path-breaking in many ways. First, it embraced a bottom-up approach for emission targets, balanced by top-down provisos for definite global emission targets and liability provisions, such as reporting and review. Second, emphasizing scientific evidences, the Agreement for the first time, established a global warming goal of well below 2°C on pre-industrial averages and proposed to limit the temperature increase to 1.5°C.²⁸ Third, it included all countries in its mitigation efforts, a significant break from the regulatory approach of the Kyoto Protocol that placed obligations to reduce emissions only on industrialized countries.²⁹ Fourth, the Agreement also provided a provision for securing consistent finance to support poor countries’ climate change actions. One of the most innovative features of the Agreement was an obligation regarding the reporting not only of actions undertaken but also of support provided and received.³⁰ Finally, the Agreement also provided a greater role for NGOs, including in shaping and monitoring NDCs submitted by the governments.

Most of the CoPs prior to Paris failed to achieve their expected goals or were compelled to agree on some face-saving deals, mainly due to the conflict between developing and developed countries over migratory obligations as well as differences over climate finance. Countries were also hesitant to fully embrace a top-down international treaty obligation. However, through a combination of mandatory and non-mandatory rules, bottom-up and top-down features, and setting up of ambitious targets that applied to both developed and developing countries, the Paris Agreement managed to break the so-called ‘global warming gridlock.’ The alignment of international climate policy with the realities of global politics was evident in the fast-track ratification of the Agreement in November 2016. To this date, 189 parties have ratified the treaty. This is attributable, in part ‘to the agreement’s legal design, which is both highly structured and flexible where needed, setting an ambitious direction of travel while reducing sovereignty cost to the greatest extent possible.’³¹

The Paris Agreement and the subsequent COPs have reaffirmed the role and place of the UNFCCC as the core of a polycentric global climate regime, which has evolved in several stages since 1992. In addition to the COPs, echoing the urgency of climate actions, the UN General Assembly also passed a number of Resolutions and convened multiple meetings and summits. For instance, in May 2018, the General Assembly adopted Resolution 72/277, which established an *ad hoc* open-ended working group ‘to consider a technical and evidence-based report and [assess] possible gaps in international environmental law and environment-related instruments to strengthen their implementation.’³² Similarly, in September 2019, to boost ambition and accelerate actions to implement the Paris Agreement, the UN Secretary-General convened the Climate Action Summit. The Summit set a clear direction for climate action in order to achieve the 1.5-degree celsius target by the end of the 21st century.

The Paris Agreement has, however, in its short time-frame, met many challenges. The first such was President Trump’s announcement of the US withdrawal from the Agreement in June 2019. This raised concerns about the sustainability of the Agreement and many predicted a domino effect, prompting other signatories of the Paris Agreement to reconsider their efforts of cutting carbon emissions. In his ‘America First’ budget blueprint in March 2017, Trump proposed a 20 per cent cut in US funding to the UNFCCC. At Paris, the Obama administration had not only promised a 28 per cent cut in US greenhouse emissions by 2025 but also pledged US \$ 3 billion to the Green Climate Fund (GCF). The second significant challenge to the Paris Agreement is the continuing deadlock amongst states to agree on the implementation guidelines, known as the ‘Paris Rulebook’, which gives the parties the autonomy and flexibility to define their NDCs. In the coming years, this could turn to be an obstacle. States could choose ‘to exploit this discretion and create a drag in the process.’³³ Though the CoP-24 in 2018 finalized the Katowice Climate Package, the differences over many issues are yet to be resolved.³⁴

The latest CoP at Madrid (CoP-25) in December 2019 ended without any significant progress, and many denounced its outcome as one of the worst in a quarter-century of climate negotiations. CoP-25 was the last conference before 2020, a pivotal year for the Paris Agreement. It was expected to finalize the rules for the global carbon market, carryover of carbon credits, and compensate for the loss and damage of climate emergency. Similarly, 2020 was also the deadline for providing US\$100 billion in finance to the developing countries, a promise made by the developed countries in Paris. The central purpose of CoP-25 was to scale-up ambitions and foster the decarbonization targets set under Article 6 of the Paris Agreement.³⁵ However, Article 6 has become one of the most significant casualties, with parties failing to reach an agreement. The CoP-25 also failed to make any progress on Article 8, the ‘third pillar’ of global climate policy, along with mitigation and adaptation as the other two. Article 8 focuses on loss and damage by unavoidable and irreversible impacts of climate change on developing countries and how these losses will be compensated. On failing to deliver agreement on a finance facility for loss and damage, many developing countries remain worried and frustrated over the lack of progress.

Conclusion

In January 2019, the UN published the first global report on environmental rule of law. The report focuses on the implementation gap between environmental laws and regulations and it concurred that since the 1972 UN Conference on Human Environment (Stockholm Conference), there is a 38-fold increase in environmental legislation. However, failure to fully implement these laws is one of the most significant challenges to mitigating climate change.³⁶ The Stockholm Conference brought global environment into the public consciousness, leading to the creation of the UNEP. Following the 1992 Rio Conference, many countries made a concerted effort to enact environmental laws and establish environment ministries and agencies. Today, more than 175 countries have environmental framework laws, and roughly 150 countries have enshrined the right to a healthy environment in their constitutions. Besides, 164 countries have created cabinet-level bodies, responsible for environmental protection.³⁷

However, at the global level, since the adoption of the Kyoto Protocol in 1997, numerous environmental negotiations have concluded without any significant progress, underlining the fact that successful implementation cannot be achieved in isolation or without the collective participation of varied stakeholders. The 2015 Paris Agreement was indeed path-breaking with efforts to create an enabling environment for development and maintaining a delicate balance of bottom-up and top-down approaches to protect the environment. The UNEP, UNFCCC and CoP meetings, all have had a significant role in unravelling the complex climate system and aligning lives and livelihood with the principles of sustainability. However, as Secretary-General Antonio Guterres pointed out in September 2019, the climate emergency is a race we are still losing. Multilateral cooperation, not only in the field of climate change but across the range from security to development, is facing unprecedented crises. Interest-based politics and opportunism are ruling almost all the multilateral institutions.

The commemoration of the 75th anniversary of the UN is a significant landmark but also gives an opportunity to ask how the world would deal with the climate emergency. Carbon dioxide concentration is at its highest (412 parts per million), a level that last occurred about 3 million years ago. Temperatures have been rising between 0.2 and 0.4 degrees centigrade per decade, with a current average annual temperature which is 1.2 degree centigrade higher. The overall carbon in the atmosphere, roughly 47 billion tonnes, remains a burden. The past shows that it is not the absence of rules and institutions, rather the lack of political will and problems of coordination and implementation that weakens global climate governance. The apathy of great powers—particularly the US—towards multilateral climate governance and the conflict within the UN system among various organs over the roles and responsibilities have stymied concrete climate action.

Seventy-five years ago, the delegates seized the opportunity for a better world. As climate change insidiously grips the world in a series of interlinked crises, the UN, drawing inspiration from its founders, can become a pivot for global climate governance, based on effective multilateralism and achieving sustainable development goals.

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