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# India's Approach to International Environmental Law in Reference to Ancient Ideology in Comparison to Politico-Legal Thought of Present Public International Law with Reflective Attitude

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## ABSTRACT

*In the world history, 17 century had profound impact on the Earth and its nations as it concerned with the Industrial Revolution. The industrial revolution had a mammoth impact on the environment in terms of shift from green environment to black environment. The year 1972, the United Nations and countries of the world had convened a conference for the Human Environment. The actions initiated in the Conference had been the foundation for the protection and sustenance of the environment for the human species. The year 1987, the United Nations published report on Environment and Development: Our Common Future for International Environmental Law on environment as fountainhead to safeguard and sustainable development. The subsequent years followed the United Nations and countries of North and South joining hand and feet together for the common objective of Save Environment and Save Earth. The expression of the objective to save environment reflected in the subsequent United Nations undertaken agreements, conferences and the programmes in terms of United Nations Environment Program, 1992, 2002, 2012 conferences on Human environment and Program on Climate Change. The current stream of international environmental law seeks establishing relation between rights and needs of man and rights of environment. In the matrix of international agreements for environmental protection, environment serves as means to an end to man's goal to progress. The ancient Indian literature comprising of Mandukya Upanishad, suggests nothing is outside man, that there is no separate entity. The Isavasya Upanishad tells there is no separation between man and other beings in the Universe. This paper focuses on the Indian approach to understanding environment in ancient jurisprudence and its significance to human life and attempts to bring two times and spaces. The paper engages with the theme to establish the link between Indian environmentalism and Western environmental approach.*

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**Keywords :** *Ancient Indian Jurisprudence ; Environment protection ; Public International Environmental Law; Bhagvad Gita ; Upanishads, International conventions.*

## I. INTRODUCTION

The environmental pollution recently has been recorded as the World's fourteen cities as the "nongreen" in India<sup>2</sup> and the Taj Mahal turning into brown<sup>3</sup> and yet Laws on environment in India sustaining environment - development also India being signing member to the substantive Law on environment. The 17<sup>TH</sup> century created the most profound impact called as industrial revolution. The ripple effect on the economies of the nations of the world resulted in industrialization, factorization with repercussions such as mobility of people, expansion of space and urbanization. Of course the development and growth being the objective in the mind of the States in mind had led into existence development with loss of "Green" but to justify the march of a society towards and what are the solution for depletion of the "green" was the institutionalization in the "Sustainable development" as a result to recover the "green". In India there has been protests and demand from the civil society groups for the environment and sustenance of green in terms of "Green" movements since 1970s and till recent years manifesting in Chipko movement<sup>4</sup>, Appiko movement in the Karnataka region of Uttar Kanada<sup>5</sup> curtailing deforestation and restore sustainability of ecology and people's livelihood<sup>6</sup>. Despite matrix of Municipal legislations for preservation of environment and averting its further withering, in India, there have been movements to save environment. The various legislations in charting India on the path of environmentalism to National Green Tribunal Act since formulation of Environment Protection Act, forms the teachings and internalization of concept of sustainable development into the context of India.

Reading through the pages of history culminating in the ancient literature in India tells the Indian story about environment a reality which was inseparable from the social, political and economic life<sup>7</sup> and yet a metamorphosis into a separate practical towards life of which one of the component is environment. In ancient Indian literature earth is honored as mother.

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<sup>2</sup> TIMES NEWS NETWORK, 14 Of World's 15 most polluted Cities in India, THE TIMES OF INDIA, Wed, May 2018, at, pg 1

<sup>3</sup> Amit Anand Choudhary, ASI: Taj Turning brown & green, can't do much & Rope in International Experts To Save Taj, THE TIMES OF INDIA, Wed, May 2018 at pg1 & 15

<sup>4</sup> www.britannica.com/topic/Chipko-movement visited on 18 Mar, 2018

<sup>5</sup> Swtabahen Mesaria & Neerja Jaiswal. Environment Protection Movements in India. Scientificresearchjournal.com/wp-content/uploads/2015/Home-Science-Vol2\_A-114 in International Journal of Applied Home Science Volume2, Mar&Apr 2015.

<sup>6</sup> Jayanta Bandopadhyay and Vandana Shiva. The Evolution, Structure And Impact of the Chipko Movement Mountain Research And Development, Volume 6, No2, May 1986, pg 133-142.

<sup>7</sup> S.R.MYENI. ENVIRONMENTAL LAW. Asian Law House. 2008 pg 83.

According to Atharvaveda, earth is to be respected and protected like a mother “bhoomi mata putroham prithivyah”<sup>8</sup>. In many parts of India, communities have inherited the rich tradition of love and reverence for nature through the ages. Religious preaching’s, traditions and customs played a prominent role in this reference. All Indian religions are the great supporter and promoter of environmentalism.<sup>9</sup> This paper encapsulates the Environmental Law of the World political geography and seeks to understand and present the paradigm on the environment and its concern in the ancient Indian literature. It can be an interplay between international environmental law and ancient jurisprudence in the context of India and may be the sustainable development or the any other concept in attempt to “green” may require ancient assistance.

## **II. FIRST, SECOND WORLD AND WORLD NATIONS ON ENVIRONMENT**

Environmentalism, garnered world attention camouflaged into sustainable development, a concept laid down during initial years of 1970 on the inter-sectionality of environment and development at the 1972 Conference on environment and development. What was happening in 1973 in India at the domestic level was forging rights and duties horizontally and vertically with regard to environment, the rights of the people, forest dwellers rights – duties of the government State and Centre for environment, resulting in environmental conservation in Year 1973 where women in the Himalayan region hugged trees deterring felling<sup>10</sup>. Further culminating in the world context the World Commission on Environment and Development followed by subsequent Conferences during 1990 at the United Nations Conference on Environment and Development 1992 Conference, World Summit on Sustainable Development 2002 and United Nations Conference on Sustainable Development 2012. The agenda being the preservation and enhancement of environment.

The relationship between environmentalism and development conceptualized and structuralized in these conferences paving the path of internationalization of sustainable development to walk upon by the nations when before the 20<sup>th</sup> century the ancient paradigm in India was not without environment and progress. The vows taken at the Conference of 1972 on Human Environment were environment negligence poses a threat to the development of the nations to include man’s right to life is effected by the environmental degradation and that the healthy environment can make exist right to life<sup>11</sup> further manifestation of interlinkage between

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<sup>8</sup> Dr Benudhar Patra. Environment In Early India : A Historical Perspective. Environment : Traditional & Scientific Research, Vol 1. Issue 1, Jan – June 2006.

<sup>9</sup> [www.scribd.com/doc/24708420/Global-SustainabilityFrom-Vedas](http://www.scribd.com/doc/24708420/Global-SustainabilityFrom-Vedas).

<sup>10</sup> Arvind Singhal and Sarah Lubjuhn, The Chipko Environmental Conservation Movement in India, John Downing (Ed) Encyclopedia of Social Movement Media, [www.rareplanet.org/sites/rareplanet.org/files/Singhal-Lubjuhn](http://www.rareplanet.org/sites/rareplanet.org/files/Singhal-Lubjuhn)

<sup>11</sup> [www.un-documents.net/aconf48-14r1.pdf](http://www.un-documents.net/aconf48-14r1.pdf).

development and environment, although the Commission lacked in luster to establish relation between man and his environment at the localized level in the nations<sup>12</sup>. The 1992, United Nations Conference on Environment and Development in the journey of environment sustenance coupled with right to development was the charter on increasing consumption and production ecologically sustained as the solution to environmental degradation<sup>13</sup>. Further forging relation between environment and development in the 2002 Declaration on Environment and Development<sup>14</sup>. The Declaration affirms development to be achieved conformity with environment need and need for development<sup>15</sup>. Also recognizing the nations own environmental solutions. However, the Agenda 21 1992 Conference recognized the role of civil society in environment protection as a concept percolating at the local level<sup>16</sup>. In a whole different time and space thousands of decades earlier in India, the Arthshastra, directed the King to establish forests and recognition of forest dwellers rights to shelter and livelihood as many stakeholders<sup>17</sup>. Now, the Municipal Central Legislation also recognizes the forest rights in in forest dwelling Scheduled Tribes as the Scheduled Tribes (Recognition of Forest Rights) Act, 2006<sup>18</sup>. The environmental law at the world level speaks the language of the rights of the Man, capability of man expressed through development and capability of environment and that the capability of man to develop to progress economically to revolutionize be conveniently consistent with the environment correlating the development and environment and development bring sustainability of environment.

### **III. THIRD WORLD APPROACH: IN REFERENCE TO ANCIENT INDIAN JURISPRUDENCE**

India to preserve and protect nature how and what had been the public policy towards “green”. In the ancient Jurisprudence in context of India what does it entail on the concept of environment and paradigm toward environment incorporating the various stakeholders and their needs. In the world political platform it was the year 1962 Resolution, General Assembly stated the environmental needs of the developing nations in the relevancy and the inter-section of environment and development and that capability of societies in terms of progress an environmental solution<sup>19</sup> so when development not solely an independent variable and even

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<sup>12</sup> [www.un-documents.net/our-common-future.pdf](http://www.un-documents.net/our-common-future.pdf).

<sup>13</sup> [www.un.org/documents/ga/conf151](http://www.un.org/documents/ga/conf151)

<sup>14</sup> The Rio Declaration on Environment And Development, [www.unesco.org/education/pdf/RIO\\_E.PDF](http://www.unesco.org/education/pdf/RIO_E.PDF).

<sup>15</sup> Ibid 11.

<sup>16</sup> Supra 9.

<sup>17</sup> Manubendu Banerjee. Kautilyan Arthashastra On Forestry (Apr. 6, 2018, 8:00PM), [www.sanskrit.nic.in/Svimarshu/V6/c9.pdf](http://www.sanskrit.nic.in/Svimarshu/V6/c9.pdf).

<sup>18</sup> The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forests Rights) Act, 2006.

<sup>19</sup> 2849 (XXVI) Development And environment, <https://documents-dd-ny.un.org/doc/RESOLUTION/GEN/NR>

there are other collateral issues with the variables out of many, one is development variable. When the Chandogya Upanishad contemplates the infinity and finity and infinity is beyond thought and beyond man, is forever<sup>20</sup>.

The concept sustainable development arguing for reconciliation of development and environment protection born in postcolonial world, required the post colonial countries to internalize demands sought by sustainable development and imposition of these demands on the countries of South. As the concept sustainable development is the approach right to life incorporating right to healthy environment and development and the formulation of environmental jurisprudence in the nations of the South in terms of public policy and judicial role in making successful environment protection policies decisions seeks to balance right to life including environment and development. Thus environment conservation through various municipal legislations<sup>21</sup>. The Judiciary in India observing sustainable development part of customary law in array of cases<sup>22</sup>.

The ancient literature from Upanishads, Rig Veda encompass the view the world as the “One Reality” that is the man, earth’s resources stems from the same source; they constitute the same, premising on “Dharma”. In the Rig Veda, that fundamental intrinsic was one single entity and everything is part of it<sup>23</sup>. In the Mahabharata, its not the position where the society had not tasted the progress with agriculture as the predominant mode of economy coexisting with the spiritual attitude<sup>24</sup>.

The environmental law currently premising on man’s right to development and progress on the other hand environment protection rights that is rights of forests, rights of rivers and that development contradicts environment protection. Emphasizing on the rights, The 1992 Declaration On Environment And Development observes as healthy and productive life as the right of a man coupled with the healthy environment under Article 1<sup>25</sup>. Although Article 2 of the Declaration balances right to environment resources coupled with the obligation of the States towards their environment<sup>26</sup>.

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O/328/65/IMG32865.pdf.

<sup>20</sup> 108 Upanishads-International Gita Society, (May.14, 2018, 11:00PM) at Chandogya Upanishad7:24:1,2,<https://www.gita-society.com/108Upanishads.pdf>.

<sup>21</sup> Shyami Fernando Puvimanasinghe, *Toward a Jurisprudence of Sustainable Development In South Asia: Litigation In The Public Interest*. Environmentportal.in/files/PIL.pdf.

<sup>22</sup> Ibid 13.

<sup>23</sup> [www.vidyavrikshah.org/THERIGVEDA.pdf](http://www.vidyavrikshah.org/THERIGVEDA.pdf), page No 20.

<sup>24</sup> C.Rajagopalachari, *Mahabharata Retold*, Ed Jay Mazo, International Gita Society. [www.gita-society.com/pdf2011/Mahabharata.pdf](http://www.gita-society.com/pdf2011/Mahabharata.pdf).

<sup>25</sup> <http://sustainabledevelopment.un.org/content/Agenda21.pdf>.

<sup>26</sup> Ibid.

It is not the case that the life in ancient times in society of India was devoid of economic activities and development was absent, it was not the case the man's capability to economic progress had been unacknowledged. The ancient literature reflects life on Earth harmonious balanced between development and conservation of the "green" with spiritual element. As the life took a leap from the Vedic to Upanishad to Arthashastra time the conservation acknowledging development and environment in terms of public policy and pertinent to consider that metamorphosis of the paradigms within the India towards less spiritual nonetheless the "green" had been the concern always with the ancients.

The Rig Veda reverses Earth and Heaven as the spiritual cosmic entities and not mere the physical objects, thus prohibited indiscriminate abuse of Earth and its resources<sup>27</sup>. ( Rig Veda :VI-51-8). The way of life incorporated worship the Earth and resources its undenyng the fact that materialistic aspect in the life was missing, the economic activities were the other side of the life with the spiritual paradigm, displaying life as combining of spiritual and materialistic elements.

In the "Mundakya Upanishad", there is merging of One with all the consciousness, rather creating different realities and focus on non – duality. The understanding is sought to limit one's desires and to surrender the understanding of the world rather than senses or its desires<sup>28</sup>. Hence, if there is no different reality or different nature of rights in the form of rights of life and need to develop, thus not requires the need to balance two of them and thus free from development and sacrifice of the "green" or sacrifice of development to sustain environment. The Mundakya Upanishad argues on the merger of the One with all the other entities and rejoining with the Brahman. The Upanishad premised on the importance to be given to the spiritual rather than material, fulfillment rather than greed.<sup>29</sup>

The Mundka Upanishad, observes values in life are the most significant and to be followed by each individual. ( Mundaka Upanishad 1: 2:12 ). The values can be inferred as the development of the inner self in terms of spiritual aspects of life. In contradiction, the International Environmental law takes significance of development in the life of the nation however seeking to sacrifice neither environment nor progressiveness of the society. It is to understand commonsensically that development economic would lead to repercussions on the "Green." The Manusmriti has the basis upon the duties of a man and its fulfillment. The Manusmriti

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<sup>27</sup> [www.vidyavikshah.org/THERIGVEDA.pdf](http://www.vidyavikshah.org/THERIGVEDA.pdf).

<sup>28</sup> II-ii-7 Katha Upanishad.

<sup>29</sup> <http://shodhganga.inflibnet.ac.in/bitstream/10603/145973/12/m.chapter-v%20evolution%20of%20the%20law%20relating%20to%20environmental%20p.pdf>.

observes the law in the Veda as the primary source of law in life of an individual<sup>30</sup> and the one who is diligent support both movable and immovable creation<sup>31</sup> and throwing of garbage in open spaces or throwing of impure substances in air were prohibited<sup>32</sup>.

Further, the significance of environment and environment protection are not new to India. It is traced to 300 B.C. The principles of environment protection are found in Arthashastra written by Kautilya. During the period of Ashoka the 5th pillar edict lays down that killing different species of animals and birds which are harmless, which are of utility and are not eaten. Those animals which are with younger ones and are giving milk should not be killed and during fast days and full moon days deforestation must be prohibited. The forests maintain ecological balance; they are reserve of food, and to sustain cultivation on hilly areas and products of medicinal plants. The great emperor Chatrapati Shivaji also ordered not to injure animals and plants. Plantations were made by the road sides to help travelers to have rest. He commanded the people to protect forests and preserve the water resources without polluting.<sup>33</sup> In the 5th pillar edict, King Ashoka directed animals to be protected certain of them and even forests to be protected<sup>34</sup>. The Asoka 5 pillar Edict illustration of humanity towards all creatures and empathy for all life<sup>35</sup>.

It is pertinent to note that pages of ancient history from Vedas, Upanishad to Manusmriti to Arthashastra to Asoka suggest that environment and development around the environment had been into the public policy of the Kings and the law makers and percolated down the base in the people lives and recognized the progress of a society and its environment.

The 1992 Agenda 21 of Rio Conference on Environment and Development, argues to evolve new concept of production and consumption in developing nations and more focus on developed nations and less dependency on renewable resources<sup>36</sup>. The point in discussion is that the United Nations and international law is moving towards evolving paradigm in thinking and implementation on environment and development. But in the process the international law seek to put more pressure to change standard of living and production and consumption levels. The “Katha Upanishad” argues on curtailing of all longings. The “Katha Upanishad” believes

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<sup>30</sup> [www.islamawareness.net/Hinduism/manusmriti.pdf](http://www.islamawareness.net/Hinduism/manusmriti.pdf) visited on 6 Apr 2018.

<sup>31</sup> Ibid 27. Pg 14.

<sup>32</sup> Sachidananda Padhy, Santosh Dash & Ratnaprava Mohapatra, Environmental Laws of Manu. J. Hum. Ecol, 19(1):1 – 12(2006). [krepublishers.com/02-Journals/JHE/JHE](http://krepublishers.com/02-Journals/JHE/JHE).

<sup>33</sup> ARMIN ROSENCRANZ & SHYAM DIWAN, “ENVIRONMENTAL LAW AND POLICY IN INDIA-CASES, MATERIALS AND STATUTES”, 1991, p.27.

<sup>34</sup> Ven.S. Dhammika, The Edicts of King Asoka. The Wheel Publication No 386/387(Kandy:Buddhist Publication Society, 1993). [www.buddhanet.net/pdf\\_file/edicts-asoka6.pdf](http://www.buddhanet.net/pdf_file/edicts-asoka6.pdf).

<sup>35</sup> Ibid 28.

<sup>36</sup> Supra 9.

in physical and spiritual refinement through aparigraha signifying non possessiveness, greed and acquisitiveness.<sup>37</sup> Most importantly, the change in production, consumption, to have environmentally sustained technologies and to have consumer products environmental sustained would ultimately require issue of balancing of rights of people already in engagement in such livelihood and on the other hand sustainable development.

The idea that man and environment work together has been talked in the most earlier in Taittiriya Upanishad and that there is no conflict between man, environment and forests. ( I – I – 1 ) The idea dealt on life and aspects of life of man, is that man should restrict his desires so that the sustenance of both man, his needs and environment can be made possible together, so that there may not arise conflict between realities. The interconnectivity between man and environment and earth has been put forth in the Taittiriya Upanishad that from the earth herbs are born resulting food and thus man from herbs.(II-i-1).

The responsibility at the Conference on environment and development taken in 1972 or the vows at the Rio Conference 1992 delegating duty to conserve green on the nations of the world, in the ancient literature in Indian ecosystem Upanishads Mundaka, Taittiriya already has the focal on the duties and performance of duties, so does the Gita as “it is better to do your own duty however imperfectly”. The word for duty in ancient paradigm is the “dharma” associating with spiritual aspect. The post industrial revolution language in the world has been economic and social advancement and the leap to achieve it and establish all kinds of aspects and relations around development and advancement incorporating paradigm of rights, however the ancient literature tells us duties would lead to fulfillment of life, duties are the means to an end. In the Constitution Of India, 1950 the fundamental duty manifests under Article 51(A)(g) “to protect and improve the natural environment including forests, lakes, rivers and wild life” for every citizen of India<sup>38</sup>.

Although the Conference on Human Environment, 1972 incorporates the obligation of the States towards protection of wildlife and habitat under Article 4 and Article 5 duty to sustain natural resources of non renewable nature.

#### **IV. CONCLUSION**

The appropriation of earth, its resources including environment have been subject to man’s activities for the past hundred decades further appropriation and consumption continues

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<sup>37</sup> 108 Upanishads- International Gita Society, Katha Upanishad-2-I-2 (May 15, 2018, 10:00PM), <https://www.gita-society.com/108upanishads.pdf>.

<sup>38</sup> The Constitution Of India, 1950 Article 51A, PART IV A.

inevitably environmental degradation has been and continues to be real. The alternative approach in the ancient literature in India is being called upon to seek solutions from the different paradigm. Ancient Indian texts like Arthashastra, Sathapatha Brahmanas, Vedas, Manusmriti, Ashoka 5 pillar Edicts Brihat-Samhita, Ramayana, Mahabharata reflected the concepts of forest ecology and conservation in a sustainable manner. The quality of water and purity of rivers upheld by Atharva Veda<sup>39</sup>. The quality and preservation of rivers in India was a serious note in the year 1986, to preserve Ganga from pollution by wastes and the water of the river in the name of the Ganga action plan.<sup>40</sup> And the recent initiative by the Uttar Pradesh administration in the Ghaziabad towards improving the river Hindon through planting of saplings.<sup>41</sup> In the Indus valley civilization, several characteristics of the city planning and social structure showed environmental awareness. The Arthashastra premises on the duties of king as the protection of territory<sup>42</sup>, the role of government and governance and its effect on life of the people. It contains various other subjects on the urban planning and urbanization based on population size and resources<sup>43</sup> and use of land classified for settlement for forests for elephant forests for wasteland.<sup>44</sup>

The international environmental law giving lesson on sustainable development which seeks to establish coexistence between development and environment. The idea similar to peaceful coexistence of man, his needs, ambitions to a certain extent has been the core forming Upanishads, the ancient text on Life, understanding of different realities of man, providing knowledge and understanding of how life should be, what it shall be consist, how it should be lived, what it requires to life a good life linking with spirituality and that spirituality should enrich one 's life. The core theme of ancient literature however is harmonious relationship and sustenance of relationship between man and environment, an idea forms expression in 20<sup>th</sup> century in development in the form of treaties and conventions by the efforts of international community on environment sustenance for future generations. The perusal of International instruments in terms of World Commission on Environment and Development: Our Common

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<sup>39</sup>Dr Benudhar Patra. Environment in Early India : A Historical Perspective. Environment: Traditional & Scientific Research Volume 1, issue1 January - Jun 2016.

<sup>40</sup> GANGA ACTION PLAN, Madhya Pradesh Pollution Control Board(May, 16, 2018, 9:00PM), [www.mppcb.nic.in/gap.htm](http://www.mppcb.nic.in/gap.htm).

<sup>41</sup> Abhijay Jha, 1 Lakh saplings will be planted along Hindon, says DM, THE TIMES OF INDIA, MAY 16, 2018, at pg 11.

<sup>42</sup> <http://idsa.in/system/files/momograph20.pdf>.

<sup>43</sup> Sameer Deshkar. Institute Of Town Planners, India Journal 7-1, 87-95, Jan-Mar, 2010 Kautilya Athashastra and its relevance to urban planning [www.itpi.org.in/uploads/journalfiles/jan8\\_10.pdf](http://www.itpi.org.in/uploads/journalfiles/jan8_10.pdf).

<sup>44</sup> Ibid.

Future<sup>45</sup> and 1992 Rio Conference on Environment and Development<sup>46</sup> deals with macro level environment sustainability micro level or intra country environment challenges. Although the Rio Conference<sup>47</sup> is not silent on the role of indigenous communities in sustainable development in terms of recognizing significance of their knowledge. ( 26.3.iii).

It can be concluded from the perusal through Indian Jurisprudence had the foundation to protect the “green” principle, the principles and elements of sustainable development had been existential in India, which can be acknowledged in scholarly discussions on environmental problems solutions and cite by the international forums in dialogue and could gain from ancient jurisprudence. By accepting the divinity in all beings, living and non-living, Indian thought and philosophy view the universe as a family. It helps in solving specific environmental problems and the modern principles of sustainability were adopted at that time.

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<sup>45</sup> [www.un-documents.net/our-common-future.pdf](http://www.un-documents.net/our-common-future.pdf).

<sup>46</sup> <http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.

<sup>47</sup> Ibid.