

[COVER]

Law and Sustainability

A Protest

F A R Bennion

In the name of sustainable development, the United Nations is unreasonably demanding huge sums of money from Britain and other developed countries in order to raise every needy person to their own high living standards and eradicate world poverty. This is different from the praiseworthy original meaning of the term, which involved protecting the planet and encouraging responsible use of its resources so that it could pass to our successors unimpaired. Sustainable development has now become a meaningless term, which Britain has unwisely adopted for its own planning laws. This book examines the problems and suggests solutions.

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[Title page]

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Chapter 1 Introduction

This is the final version of my draft paper previously headed ‘Deficiencies of the National Planning Policy Framework’ (NPPF).¹ The NPPF was published on 7 March 2012 by Mr Greg Clark MP, Minister for Planning in the UK Coalition Government.² It is a directive relating to the system of Town and Country Planning in England and Wales and is part of a British response to the expressed desire of the United Nations that member states should further what it calls ‘sustainable development’. An earlier such response, which was added to the law by Tony Blair’s Government, is the Planning and Compulsory Purchase Act 2004 s. 39(2), which says that any body or person listed in s. 39(1) must exercise its functions ‘with the object of contributing to the achievement of sustainable development’. Neither in the NPPF nor in the 2004 Act is there any definition of the key term ‘sustainable development’. This caught my attention as a retired Parliamentary Counsel who retains an interest in such terminological problems.

I produced the present version of this report after considering responses to earlier drafts (for which I am grateful), and carrying out further research. Since this has developed into a substantial enquiry on a vitally important matter I will give a brief account of my relevant qualifications. I spent many years as a drafter of legislation in Britain and the Commonwealth, and continue to specialise in statute law, statutory interpretation and legislative drafting.³ I am not a specialist in town and country planning but in writing this report I have consulted the well-known textbook *Town and Country Planning in the UK* by Cullingworth and Nadin⁴ and numerous other sources which are identified in the following treatment. I am a life member of the Campaign to Protect Rural England (CPRE) and a member of the National Trust. However this paper is my own independent work, and no one else has any responsibility for it.

For this final version I changed the title of this paper to suit the enlarged content. That emerged when I realised that it is necessary to trace the deficiencies of the NPPF and the 2004 Act back to the problems raised by the undefined term ‘sustainable development’. The underlying United Nations stimulus was originally the obvious and imperative need only to use (and sometimes use up) the resources of the earth in a manner which respects our planet and pays due regard to the needs of the current generation of human beings and their successors as its inhabitants. This includes the need to ensure for example that over-population is avoided; that as fossil fuels are consumed they are replaced by other forms of energy, preferably renewable; that carbon emissions into the atmosphere are not such as to effect deleterious climate change; the need to preserve fish stocks at reasonable limits; and so forth.

As I studied the matter in more depth I began to realise that work on the project labelled sustainable development for the past half century has led the UN personnel concerned to cast its projection more and more widely. It now includes extraneous matters such as the need to remove, or at least substantially reduce, poverty, malnutrition, ill-health, and other forms of human suffering. Some would even include animal suffering.

Comparatively few of these good causes involve what might be accurately called sustainable development. In the present context the term ‘development’ is usually restricted to changes in

¹ Published 21 May 2012 on my website www.francisbennion.com2012/012.htm

² <http://www.communities.gov.uk/planningandbuilding/planningsystem/planningpolicy/planningpolicyframework>.

³ My published writings include *Bennion on Statutory Interpretation* (LexisNexis), 5th edition 2008; *Bennion on Statute Law* (Longman) 3rd edition 1990; *Understanding Common Law Legislation* (Oxford University Press) 2001 (hardback), 2009 (paperback). For details and texts of my books, articles etc. see www.francisbennion.com. Most texts are freely downloadable.

⁴ Routledge, 14th edition 2006. I refer to this book as *Cullingworth and Nadin*.

land or land use, but there are many other human activities which the ever-wider United Nations meaning is intended to cover. The fact is that both the term 'sustainable' and the term 'development' are ambiguous. The business of a projected supermarket may be thought sustainable because many potential shoppers live nearby or because the modern building erected for its purposes is of advanced design. An activity may be described as 'development' when it has no resemblance to the activities defined as 'development' in town and country planning legislation.

Here is an actual example. The head office of the giant Hongkong and Shanghai Bank (HSBC) decided to close its branch in the Lincolnshire village of Woodhall Spa, even though it was the last bank in town, because it was 'not achieving the type and level of custom it needs to make it sustainable'.⁵ There was nothing wrong with the building's physical condition.

When such dubious terms are used in legislation or quasi-legislation the practice is to clarify the intention by use of definitions. I have found no definition provided, whether by the United Nations or anyone else, for the expanding and difficult term 'sustainable development'. *Cullingworth and Nadin* says: 'Words cast a spell which can, at one and the same time command respect and create great confusion. No word illustrates this better than the ubiquitous 'sustainability'.⁶ The word 'development' is equally fraught with difficulties of meaning. Together they form a troublesome combination.

Chapter 2 The Future We Don't Want

The official bulletin *The Future We Want*, which gives the conclusions reached at the 2012 United Nations Conference on Sustainable Development, says with doubtful accuracy:

Eradicating poverty is the greatest global challenge facing the world today and an indispensable requirement for sustainable development. In this regard we are committed to freeing humanity from poverty and hunger as a matter of urgency. We therefore acknowledge the need to further mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognizing their interlinkages, so as to achieve sustainable development in all its dimensions. We recognize that poverty eradication, changing unsustainable and promoting sustainable patterns of consumption and production and protecting and managing the natural resource base of economic and social development are the overarching objectives of and essential requirements for sustainable development.

The *Oxford English Dictionary* defines eradicate as to pull or tear up by the roots; to root out, to remove entirely, extirpate, get rid of. According to *The Future We Want* over one billion people on the planet now live in extreme poverty and the planetary population will reach nine billion by 2050. To raise the poverty-stricken planetary population to the prosperity level of those who do not live in poverty would cost trillions of dollars. To this would be added further huge sums needed to meet other United Nations requirements concerned with sustainable development.

All British people were represented at the 2012 Rio Conference and are taken to support its conclusions. But I do not believe they are really willing to endure the dramatic lowering of their standard of living that would be necessary. I challenge the United Nations to organise a referendum in Britain to test the truth of this. I have no doubt the result would be an emphatic popular rejection of these United Nations demands. There would no doubt be a similar rejection in other developed countries such as the United States of America. The

⁵ *The Mail on Sunday*, 1 July 2012.

⁶ *Ibid.*, p. 250. Their entire section on Sustainability (pp. 250-265) is useful on this topic.

United Nations ought not to pursue demands that would be rejected by the populations of the richer countries who are called on to satisfy the bulk of its exorbitant demands.

Chapter 3 Towards One World

To show I am not just a heard-hearted inhabitant of one of these richer countries, namely the United Kingdom, it is opportune to disclose that I once cherished the belief that world government should be encouraged. So on 17 January 1979 I set up with my wife Mary a body called Towards One World (TOW). Its objects were:

to carry out research into individual poverty and the methods by which such poverty may be relieved.

to devise and execute means by which the results of the foregoing research may be communicated to citizens of all democratic states and in particular, to people in the United Kingdom.

to provide for the educational needs of indigent persons and in particular, young people in the developing countries.

to undertake and execute any trusts which would further the above objects.

TOW was officially registered as a charity with the registration number 277261. According to the Charity Commission website www.charity-commission.gov.uk TOW was registered on 2 April 1974 but this is a mistake. I did not meet my wife Mary until 7 July 1977.

I gave TOW the slogan 'Looking to tomorrow in aid of today' and wrote a pamphlet publicising TOW entitled 'Freedom and Equality in the Year of the Unborn'. It coined the term *futurism*. Money was contributed to provide TOW with working funds, but it undertook no active work and attracted no supporters.

Soon after the foundation of TOW I came to realize that that the concept of world government carried grave dangers for the British way of life. We could not tolerate a world government that was not securely based on a democratic framework. Yet the British would be very heavily outnumbered by undemocratic populations such as the Chinese, who would not agree to such a framework. So I had second thoughts about TOW. It was dissolved on 7 October 1991. Its funds were transferred to the Statute Law Trust, which I had also founded. It was removed from the register of charities on 24 April 1992.

Despite the sad fate of TOW I feel that the pamphlet I wrote for it is worth preserving. It was written in all sincerity, and I reproduce it next.

Freedom and Equality in the Year of the Unborn

We all worry about nuclear war

1. Science has invented nuclear weapons. They exist, and cannot be uninvented. All of us worry about them. What exists will be used. Every human being feels the threat. It does not matter where one lives: people the world over know this fear. To be human is to dread nuclear annihilation.

Disarmament is not the answer

2. Politicians seek to avert the threat of nuclear war by talking endlessly about disarmament. They are prompted to do this by all the frightened people they are elected to serve. Unhappily disarmament, though superficially attractive, is not the answer. It puts the cart before the horse. Salvador de Madariaga, a former chairman of the League of Nations Disarmament Commission, said in 1973:

‘The trouble with disarmament was (and still is) that the problem of war is tackled upside down and at the wrong end . . . nations don’t distrust each other because they are armed; they are armed because they distrust each other.’

3. De Madariaga added that to want disarmament before achieving a minimum of common agreement on fundamentals is as absurd as to want people to walk about undressed in the frosts and chills of winter.

We also worry about malnutrition

4. Another global worry is about the plight of the starving. If a child starves outside my house I rush to feed it. When it starves a thousand miles away I do not care. Let it die say I. It is no concern of mine
5. But it is my concern, and deep down I know it. I am human, like the starving child. We humans cling together. Like goes with like. So what must I do?

What can we do about these two problems?

6. What can I or any of us do about these two human problems of nuclear war and starvation? The nature of humans is to want to do something. We are made to be problem solvers. How can we solve these?
7. We know they are immediate and pressing problems. They confront us today, not tomorrow. (No doubt they will confront us tomorrow as well, but still they confront us today.) The problems concern what action we should take *now*. We are all involved. Not one of us can escape, much as we would like to.
8. Durrenmatt said that what concerns all must be solved by all. We humans need to agree on fundamentals. Can that be achieved? There are thousands of millions of us dwelling together on this planet. Can we all agree about the very basis of our common existence? It would be strange if we could not. After all it is our planet.

How to solve problems

9. The long-term future of the world concerns us all, but not one person in the world knows what to do about it. The rule whenever we do not know what to do next is to take an imaginative leap into the future.
10. You protest at once. Imagination is not your strong suit; you are a down-to-earth person. You are practical, and demand a practical solution. Tell me, you say, what I must do now. Forget the airy dreaming of the seer or prophet. If you can’t be practical I have no time for you. Get thee gone.

A confession of inadequacy

11. Here the present author is obliged to confess that he cannot be practical in this sense. He has not the least practical idea what may be the instant solution of these two pressing world problems concerning nuclear war and world starvation. All he knows is that the human race is on the wrong track. We love each other, but cannot show our love.
12. So grasp at a desperate expedient. For one moment forget your practical virtues and look coolly and deliberately far into the future. It must be an imaginative look, for we have no other way. The imagination is our only access to what lies ahead. So how can we use human imagination as a problem-solving force?

Using Futurism

13. I must leap into the future not as a prophet or clairvoyant, for none of us is truly that. Nor as a designer of Utopias, for in this grim predicament we are determined to be realistic. We seek to grasp what might be, if the human race should manage to be sensible and lucky. Once we have understood it, *we may be able to work out how to get there*. This simple trick I call Futurism.
14. Futurism helps humans to be ready. Dostoevsky once warned that great events could come upon us and catch us intellectually unprepared. We are given brains and imagination to enable us to work out our salvation.
15. Futurism can be used in any difficulty which requires us to take a voyage. First you suppose that, without a map, you are embarked on a journey to a *known* destination. You come to an unsignposted junction on the way. You cannot stay where you are, but do not know which to take of the roads you see branching ahead. So you make a mental jump. You imagine yourself at the end of your journey. The destination is known to you. The only problem is to discover in which direction it lies from where you stand (or in which direction you lie from where it stands). Perhaps you have a compass to help determine this, or you can use the sun or the pole star. There may be a passer-by, whom you can ask. Whatever aids you have or have not, you know where you are heading.
16. Next suppose, as with our present problem, that the destination is not known. It lies in the distant future. What will the condition of humanity be a century or two from now? We do not know. If you don't know what your destination is, you certainly won't be able to decide which road to take in order to reach it.

World unity

17. Here we must beware of a trap. It is easy to answer that our communal destination is 'world unity'. That may be deceptive. On an ordinary journey we can choose our destination. This is not an ordinary journey. Whether the journey is ordinary or not, it is no use picking a destination that does not exist. No matter how hard you try, you will never reach it. So we must first ask ourselves whether world unity is a realistic objective.
18. Today we have a helpless feeling about world unity. We are not at all sure whether there is a solution to these two problems of peace and poverty. We have a nasty suspicion that the destination marked 'human togetherness' is located nowhere.

A jump into the distant future

19. Just for a moment let us forget our present situation. We will return to it later. First we need to take that jump into the future. If we can see what the position about world unity might hopefully be at some distant time, the only problem is how to get there.
20. Let's pick on a year which is just beyond the lifetime of people living now. That way we will not be obsessed by our own selfish interests. We might call this the Year of the Unborn.
21. On a literal meaning, we who are now gathered in anxious debate will never know what goes on in the Year of the Unborn: we have fixed it at a time after our own deaths. But we are not here concerned with such literal meanings. We care about the world beyond our lifetime because we are human beings, who look to the future. We care not only about ourselves but about our children, and their children. We are so made as to feel like that.
22. What is more, as on any journey the ultimate destination governs our next step. That will certainly be taken in our lifetime. So now let us take an imaginative leap into the Year of the Unborn.

The lead-up to One World

23. Here we are. This is the Year of the Unborn. We have made the great imaginative projection, and now look about us. What do we find? We may find nothing. Mankind has annihilated itself, or starved itself to death. The globe is an arid spinning wilderness. If so the seekers will not know it. The human experiment will be over.
24. We are not interested in that. We are not looking for ways of getting to *that* situation. For our present purposes the Year of the Unborn is located in a successful time for mankind. The holocaust has somehow been avoided. We don't know how this was managed: we are hoping to find out. All we are able to do at the present moment is to take in the outlines of what in the Year of the Unborn has become the human success that is One World.

Unity is inevitable

25. Now that we live in One World we realise how silly it would be with our present advantages to regard planet Earth in any other way. This is after all a single globe, spinning in its lonely orbit around the sun. Mankind is in charge of it, not through merit but because of innate faculties. (The metaphysics of how humans came to possess these faculties do not concern us here: we have enough to cope with for one essay.)
26. Looking back from the unified present, we do not despise those men and women who came before us. They were unable to inhabit One World, but it was not their fault. Time is an ever rolling stream, and for them it had not rolled far enough. The reason for their inadequacy lies in a single word: *communications*. Only when humans are closely in touch with each other can their latent shame awake into action, along with their latent power.

The path to One World

27. The history of mankind has been towards larger units. One man fought another over a cave or a mate. Later, one settlement fought the next when each was self sufficient and there were no made roads between them. As human time moved on, one town or one tribe fought another. Then countries, each recently united, fought; and finally alliances.
28. The seeds of conflict sprang from the beginning. To obtain and keep a meal or a mate or a cave one had to fight. That meant being aggressive by nature. The best fighters are those who love fighting. So man's nature was warlike. He felt an urge in the blood to side with his comrades and battle against the stranger. It became natural everywhere for people to like their own kind. Each group developed its culture. An attachment sprang up to land, to language and to the gods of the family or tribe.
29. The need was for self reliance, in aid of self preservation. Blood was shed readily against the outsider: but within the tribe blood became thicker than water. For continuance of the race, people favoured the advancement of their kith and kin. There was a liking and a preference for one's own kind. Charity, it was said, begins at home. Outside the home there is fear, the unknown, and the lurking savage enemy.

The unfinished world

30. Yet all the time there was the movement of ideas. A larger view gained ground. Great civilisations sprang up, with a global vision. The proper business of mankind, said Alexander Pope in the eighteenth century, is man. In his prospectus for *The Liberator*, William Garrison wrote in 1803: 'My country is the world; my countrymen are mankind'. In 1953 William Faulkner exclaimed:

‘What’s wrong with this world is, it’s not finished yet. It is not completed to that point where man can put his final signature to the job and say: It is finished. We made it, and it works.’

31. In 1963 President Johnson complained that the world of mankind had narrowed to a neighbourhood before it had broadened to a brotherhood. Man had perfected his communications. All he had to do was catch up with them.

Life in One World

32. Now, in the Year of the Unborn, mankind has caught up. The world has at last broadened to a brotherhood. In Faulkner’s sense, it is finished. What is life here like?
33. The first thing we notice is a strange psychic silence. Our planet is at last truly peaceful. The clash of arms has ceased. International tensions are no more. Power blocks do not exist, and the armaments industry is a thing of the past.
34. We now see the culmination of that process which so often in man’s history led to larger political groupings. Think of England at the time of the Heptarchy, divided up among warring petty kingdoms. Mercia fights Wessex on one hand and Northumbria on the other. Kent wars with Sussex. Cornwall strives to maintain its independence both against Irish invaders and the fighting men from the east.
35. The same story was repeated in many countries that later enjoyed centuries of undisturbed unity. Now the world itself has unity. The cycle is complete.
36. There are still racial antagonisms. Human nature has not changed. People continue to prefer their own kind, and nurse prejudice against ‘foreigners’. But now it happens rather in the way the inhabitants of an English village used to refer to those of the hamlet across the valley as ‘foreigners’. The political content of prejudice has drained away. Nationalism is dead.

Freedom

37. Mankind is lucky in another respect. One World is a place of freedom. It is good to live in a free country, and now all countries are free. Arbitrary official action is forbidden by law. This law means what it says. It is enforced. The secret police, or the military patrol, do not make sudden and capricious arrests in the small hours - or at any other time of day or night. They are not allowed to. There is such a thing as due process of law. It is rigorously enforced. The world is now a good place to be arrested in (this being, as John Vincent has said, the best test of civilisation). No political victims become, like thousands in late twentieth-century Argentina, ‘the disappeared’.
38. It is true that in One World freedom has practical limits. Liberty is not equivalent to licence, much less to anarchy. Men and women would need to be angels if they could produce decent life without institutions. In One World the inhabitants are not angels. This is not heaven, but earth. It is no Utopia. It is just a safe homeland for ordinary people.

Democracy

39. One World has fortunately been able to adopt an institution mankind has through long centuries painfully wrought against despotism and anarchy. It is known as government of the people, by the people, for the people - in other words democracy.
40. It is not practicable for the world’s inhabitants to govern themselves directly. Yet govern themselves they must. So it has to be done through the medium of free, secret elections. The people are treated as themselves present in their parliament. They debate and decide at one remove, by means of their elected representatives.

41. Thus the whole of mankind has arrived at representative government based on universal suffrage, a most ingenious and fair device. One does not have to prove that it is natural and right for civilised people to govern themselves in this way: provided the mechanism is efficient, it most plainly *is* natural and right.
42. As the happiness of the people is the sole end of government, said John Adams in 1774, so the consent of the people is the only foundation of it. Jefferson said:

‘I know of no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.’
43. The last word on this point may rest with Abraham Lincoln, who said that no man is good enough to govern another man without that other’s consent.

Equality

44. The world did not become truly One World until the long-delayed factual realisation of what President Woodrow Wilson demanded as long ago as 1917. He then said that the world must be made safe for democracy. Now at last it is.
45. This required among other things the achievement of *equality*. Once all men and women start to be governed in unity by the ballot box, before long they will have this benefit. When votes are equal, voters must be equal. If they are not equal to start with, they will very soon make themselves so by pressure on their elected representatives.
46. Votes are won by promises. If every elector must be given something, no elector can be given much. He certainly cannot be given much more than his neighbour. So democracy, if it is effective and lasts long enough, necessarily ends in equality.

Oppression of minorities

47. One of the greatest dangers of democracy is that the majority will so deploy their power as to oppress minorities. There have been minorities in every human society, from the Chinese in Malaysia to the Tamils in Sri Lanka, from the aborigines in Australasia to the Asians in East Africa, from the Catholics in Ulster to the Biharis in Bangladesh. Respect for minorities is the acid test of enlightened democracy.
48. This risk of oppression is inherent in the very concept of universal suffrage, and was used by Lenin to denounce it:
49. ‘A democracy is a state which recognises the subjection of the minority to the majority, that is, an organ-ization for the systematic use of violence by one class against the other, by one part of the population against another.’

Human rights

50. The answer people have found to the oppression of minorities lies in another fateful concept: human rights. It was delineated by Thomas Jefferson in the United States Declaration of Independence:
51. ‘We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of happiness.’
52. President Franklin D. Roosevelt saw these rights as the content of a social contract. The practice of self-government, he said, is a covenant among free men to respect the rights and liberties of their fellows.

53. There have been some notable formulations of this principle. I disagree with what you say, said Voltaire - but I will defend to the death your right to say it. Thomas Paine held that he who would make his own liberty secure must guard even his enemy from oppression.

John Rawls

54. The principle was generalized by Rawls in his theory of justice. Each person, he said, possesses an inviolability founded on justice such that even the welfare of society as a whole cannot override. Therefore in a just society the rights secured by justice are not subject to political bargaining or to the calculus of social interests.
55. How do we find out what these basic human rights are? How is the person who considers himself or herself to be oppressed by the majority to establish the fact?
56. Rawls postulates the taking up of an *original position*, placed behind a veil of assumed ignorance. Installed in this original position, we seekers of norms faithfully pretend ignorance of every aspect of our actual situation. Then, using our intuition, we ask ourselves what a free and rational person would accept as just if placed in such an original position. Presumed to have no knowledge of our actual endowments and handicaps, we are bound to decide according to what would be best for us *whatever those endowments and handicaps turned out to be*.
57. So the legal system prevailing in One World lays down and enforces such rights and duties as ensure that none of the world's minorities is tyrannized by the majority.

Economic rights

58. Before One World was at last set up, men prepared the way for it by establishing the United Nations. This body promulgated the Universal Declaration of Human Rights, article 25 of which said:
- ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’
59. Promulgated in 1948, this was the clarion call for a world welfare state. The concept of the welfare state is one of the most notable contributions made by British thought and practice to the advancement of mankind.
60. The British acted upon article 25 immediately, by setting up within their own country the first effective system of total human welfare ever implemented. It was criticised by many who felt that it sapped initiative and self reliance. That argument only goes to the way a welfare state is organized however. No humane person could deny the principle: that the hungry must not be left to starve, the sick to die untended, or the homeless to suffer exposure.
61. Some opponents of the British welfare state argued that charity was enough. The key feature of the welfare concept is however that the needy should be cared for not by indiscriminate charity, which may miss its mark, or be inadequate, or arouse feelings of inferiority. Their succour should be available to the needy *as of right*.

The world welfare state

62. Now, in One World, we have a world welfare state. Social benefits and medical services are available to everyone, under a framework of legal rights. Unrelieved famine and untreated disease are things of the past.
63. To understand how this has been achieved we may compare One World with conditions in England at the beginning and at the end of the twentieth century. At the beginning, there were great disparities in wealth. There was no national health service, no provision for old age pensions, no unemployment relief, no entitlement to supplementary benefit.
64. Yet by the end of the century all these things, and many more social benefits besides, were taken in England as a matter of course. There had been no bloody revolution to achieve this; all had been done by agreement. True, the process was accomplished with much grumbling. But then grumbling acquiescence in the inevitable is one more English contribution to world civilisation.
65. As it had been done in Britain by the end of the twentieth century, so it was done for the whole human community by the time New Year's Day dawned in the Year of the Unborn.
66. Now our first brief trip is over. We must step back into our real present.

Back to today

67. So that must suffice for a first glimpse of One World. Now we are back in our own time. What have we learnt?
68. You probably feel more inclined to ask endless questions than admit to having learnt anything at all. How is this Utopia governed? Is it not in the grip of the huge populations: the Indians, the Russians, above all the Chinese? Has not western influence been overwhelmed, as it was in many colonial territories once they had achieved independence? Have the masses of the world's serfs and peasants really achieved release from their overlords? And so on.
69. This is to miss the point. One World is not a Utopia. Nor is it a prophecy. It is a projection into the future of the more optimistic of current trends. The only resemblance it has to a Utopia is that, while remaining practical, it concentrates on what is favourable to human happiness and wellbeing. Darker, uglier tendencies may in the end prevail. Not being soothsayers or clairvoyants, we cannot say.
70. What we do know is that the present affects the future. The things we say and do today alter the way things are tomorrow. The normal human method is to go step by step into an unknown territory. I do not ask to see the distant scene, said the pious John Henry Newman: one step enough for me. But how in our blindness can we know in which direction to take that step?

Developing Futurism

71. It makes sense to take a little time off from the present and use the technique of Futurism. After a good deal of preliminary groping of the kind set out above, we may learn to be more precise. Perhaps we should take a specific date as the Year of the Unborn - say the year 2200. People from many different countries and cultures have the ability to contribute ideas about how One World might hopefully be operating at that time. We need insights that are practical and realistic, yet give hope of happy and fruitful lives for all who will then be alive.
72. You may think it absurdly altruistic to spend time and trouble over the state the world will be in long after all of us are dead. It is not altruistic at all, because it concerns us

- closely. If the present inhabitants of this planet could first agree on how it should be governed as One World in the year 2200, they might then see more clearly how it should be governed as a still fragmented world in the year 2000.
73. We already know that the way we do things now is not good enough. This paper began with the two human problems of nuclear war and world poverty. In One World, as we have seen, those problems have disappeared. It is not so much that they have been solved as that they just do not arise any more. That is the best way to get rid of problems: make them irrelevant.
 74. The NATO countries arm themselves to the teeth against the Warsaw Pact countries, and vice versa. The overfed people of the north guiltily try to forget the underfed people of the south. Both scenarios are absurd and intolerable. They deny the true humanity of people, who deep down want not to kill each other but to stop each other from dying.
 75. It is time to leap the chasm we call the immediate future, and learn what to do next from the things our imagination finds on the other side.

Francis Bennion, 17 January 1979.

Chapter 4 The United Nations and Earth Summits

The concept of sustainable development is worldwide and goes back a long way. On a Google search I had over eleven million hits. The United Nations has taken the lead here.⁷ In 1972 the United Nations Environment Programme (UNEP) was created by the UN General Assembly. In 1983 the General Assembly welcomed ‘the establishment of a special commission that should make available a report on environment and the global *problématique* to the year 2000 and beyond, including proposed strategies for sustainable development’.⁸ The Earth Summit RIO+20, The 2012 United Nations Conference on Sustainable Development, provides the most up to date treatment of the topic. Its official summary, titled *The Future We Want*, runs to 283 paragraphs. I analyse this document below.

The concept of ‘sustainable development’ was first fully explained in a 1987 UN document, known as the Brundtland Report.⁹ This said: ‘The satisfaction of human needs and aspirations is the major objective of development. The essential needs of vast numbers of people in developing countries for food, clothing, shelter, jobs - are not being met, and beyond their basic needs these people have legitimate aspirations for an improved quality of life. A world in which poverty and inequity are endemic will always be prone to ecological and other crises. Sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for a better life.’

The Brundtland Report went on: ‘Living standards that go beyond the basic minimum are sustainable only if consumption standards everywhere have regard for long-term sustainability. Yet many of us live beyond the world’s ecological means, for instance in our patterns of energy use. Perceived needs are socially and culturally determined, and sustainable development requires the promotion of values that encourage consumption standards that are within the bounds of the ecologically possible and to which all can reasonably aspire.’

⁷ See Stockholm Declaration of the United Nations Conference on the Human Environment adopted at Stockholm on 16 June 1972.

⁸ UN resolution 38/161 of 19 December 1983: see <http://www.un-documents.net/a42-427.htm>.

⁹ *Our Common Future: Report of the World Commission on Environment and Development*, paras. 4-15, <http://www.un-documents.net/ocf-02.htm#I>.

The Brundtland Report continued: ‘Meeting essential needs depends in part on achieving full growth potential, and sustainable development clearly requires economic growth in places where such needs are not being met. Elsewhere, it can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment. Hence sustainable development requires that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all.’

What I have set out in paragraphs 15 to 17 above reproduces paragraphs 4 to 6 of the Brundtland Report. Its explanation of the concept of sustainable development continues in paragraphs 7 to 15 of the document, which need to be read to get the whole picture. I ought to give paragraph 9 in full: ‘Settled agriculture, the diversion of watercourses, the extraction of minerals, the emission of heat and noxious gases into the atmosphere, commercial forests, and genetic manipulation are all examples of human intervention in natural systems during the course of development. Until recently, such interventions were small in scale and their impact limited. Today’s interventions are more drastic in scale and impact, and more threatening to life-support systems both locally and globally. This need not happen. *At a minimum, sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings.*’¹⁰

To complete the depiction of the Brundtland Report I give the following citations: ‘sustainable development can only be pursued if demographic developments are in harmony with the changing productive potential of the ecosystem;’¹¹ ‘large sections of the [world’s] population may be marginalized by ill-considered development;’¹² ‘the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the [population] pressure’;¹³ ‘most renewable resources are part of a complex and interlinked ecosystem, and maximum sustainable yield must be defined after taking into account system-wide effects of exploitation’;¹⁴ ‘sustainable development requires that the rate of depletion of non-renewable resources should foreclose as few future options as possible’;¹⁵ ‘sustainable development requires the conservation of plant and animal species’;¹⁶ ‘sustainable development requires that the adverse impacts on the quality of air, water, and other natural elements are minimized so as to sustain the ecosystem’s overall integrity’.¹⁷

Brundtland winds up the discussion by saying: ‘In essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations’.¹⁸ The Brundtland Report continues with an extended discussion of the factors which impede the spread of sustainable development, with suggestions about how they may be overcome.

Later in 1987 the General Assembly of the United Nations passed the following resolution:

¹⁰ Emphasis added.

¹¹ Paragraph 7.

¹² Paragraph 8.

¹³ Paragraph 10.

¹⁴ Paragraph 11.

¹⁵ Paragraph 12.

¹⁶ Paragraph 13.

¹⁷ Paragraph 14.

¹⁸ Paragraph 15.

‘The General Assembly . . . Believing that sustainable development, which implies meeting the needs of the present without compromising the ability of future generations to meet their own needs, should become a central guiding principle of the United Nations, Governments and private institutions, organizations and enterprises,

‘Recognizing, in view of the global character of major environmental problems, the common interest of all countries to pursue policies aimed at sustainable and environmentally sound development,

‘Convinced of the importance of a reorientation of national and international policies towards sustainable development patterns,

‘Recalling that, in its resolution 38/161 of 19 December 1983 on the process of preparation of the Environmental Perspective to the Year 2000 and Beyond to be prepared by the Governing Council of the United Nations Environment Programme, it welcomed the establishment of a special commission, which later assumed the name World Commission on Environment and Development, to make available a report on environment and the global *problematique* to the year 2000 and beyond, including proposed strategies for sustainable development . . .

‘Emphasizing the need for a new approach to economic growth, as an essential prerequisite for eradication of poverty and for enhancing the resource base on which present and future generations depend . . .

‘Notes with appreciation the important contribution made by the Commission to raising the consciousness of decision-makers in Governments, intergovernmental and non-governmental international organizations, industry and other fields of economic activity, as well as of the general public, in regard to the imperative need for making the transition towards sustainable development . . .

‘Concurs with the Commission that the critical objectives for environment and development policies which follow from the need for sustainable development must include preserving peace, reviving growth and changing its quality, remedying the problems of poverty and satisfying human needs, addressing the problems of population growth and of conserving and enhancing the resource base, reorienting technology and managing risk . . .

‘Calls upon all Governments to ask their central and sectoral economic agencies to ensure that their policies, programmes and budgets encourage sustainable development and to strengthen the role of their environmental and natural resource agencies in advising and assisting central and sectoral agencies in that task . . .

‘Reaffirms the need for additional financial resources from donor countries and organizations to assist developing countries in identifying, analysing, monitoring, preventing and managing environmental problems in accordance with their national development plans, priorities and objectives . . .¹⁹

At the Earth Summit known as Rio+20, a conference of Heads of State and Government and high-level representatives which was held at Rio de Janeiro 20-22 June 2012, it was resolved to take urgent action to achieve sustainable development. The resolution continued:

‘We therefore renew our commitment to sustainable development, assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on sustainable development and addressing new and emerging challenges. We express our

¹⁹ United Nations General Assembly A/RES/42/187 (11 December 1987).

determination to address the themes of the [2012] United Nations Conference on Sustainable Development, namely, a green economy in the context of sustainable development *and poverty eradication*, and the institutional framework for sustainable development.’

I have italicized the words ‘and poverty eradication’ because they are highly significant. The resolution places poverty eradication *outside* the reference to sustainable development, thus stressing that the latter term does not include it despite many references to the contrary in documents emanating from the United Nations. This creates serious doubt.

The truth is that, because of the difficulty in securing multi-nation agreement to such resolutions, those responsible for the wording of them tend to be inexact and inconsistent, as is notorious with diplomatic texts generally. This is an important consideration when concepts originating in the diplomatic arena are used for legislative instruments such as Acts of Parliament.²⁰

Chapter 5 The UN 2012 manifesto *The Future We Want*

The 283-paragraph document *The Future We Want*, which summarises the outcome of Rio+20, the 2012 United Nations Conference on Sustainable Development, is highly confused and difficult to analyse. It starts saying that the assembled Heads of State and Government and high-level representatives, ‘renew our commitment to sustainable development and to ensuring the promotion of an economically, socially and environmentally sustainable future for our planet and for present and future generations’.²¹ The wording of this is typically irritating. The term ‘sustainable development’ is used without reference to any definition, as though its meaning were clear and obvious. In fact it is not. Nor is the meaning of ‘sustainable’ by itself either clear or obvious. Nor again is the meaning of ‘development’ by itself. It is extraordinary that such an important document should begin in such an obscure way; it vitiates the entire operation.

Then comes a paragraph saying that eradicating poverty is ‘an indispensable requirement for sustainable development’.²² This again is irritating. It cannot mean that no individual development can be regarded as ‘sustainable’ unless it is linked to some specific project for alleviating poverty. So what does it mean? I suspect that it has nothing whatever to do with so-called sustainable development, and that the eradication of poverty, though no doubt praiseworthy, is an entirely separate aim.

Next there is another piece of confusion. There is to be ‘mainstream’ sustainable development ‘at all levels’.²³ It is to integrate ‘economic, social and environmental’ aspects. This throws a dim light on the meaning of ‘development’. What is a ‘sustainable’ way of integrating a social with an environmental aspect of something? The mind boggles at these abstract notions.

It is impractical to continue this painstaking analysis through 283 paragraphs. The whole adds up to a monumental piece of confusion. What has happened is that a large number of different aims, each worthy in its own way, have been bundled up in a single concept which does not have a hope of accommodating them. This might not matter so much if specific legal obligations had not been imposed on such a wildly insecure foundation.

List of national obligations imposed on Member States by the United Nations

²⁰ See my criticism above of the lack of a definition of ‘sustainable development’ in s. 39 of the 2004 Act. The Bennion Code p. 684 says of treaty drafting: ‘One inconvenience is that the interpreter is likely to be required to cope with disorganised composition instead of precision drafting. The drafting of treaties is notoriously sloppy—usually for very good reason. To get agreement, politic uncertainty is called for’.

²¹ Paragraph 1.

²² Paragraph 2.

²³ Paragraph 3.

Note The wording of the following section (including headings) is taken verbatim from the 2012 UN document *The Future We Want*. Figures in square brackets are the relevant paragraph numbers of *The Future We Want*. The aim is to reduce that document to manageable length for reading and study, omitting repetitive or less important provisions. The effect is to reduce the original 24,500 words of *The Future We Want* to 7,500. To show the undue prominence given by UN to the term ‘sustainable development’ it is printed in capitals.

I. Our common vision

Renew our commitment to SUSTAINABLE DEVELOPMENT. [1]

Ensure an economically, socially and environmentally sustainable future for our planet and for present and future generations. [1]

Free humanity from poverty and hunger as a matter of urgency. [2]

Further mainstream SUSTAINABLE DEVELOPMENT at all levels, integrating economic, social and environmental aspects. [3]

Accelerate the achievement of the internationally agreed development goals, including the Millennium Development Goals, by 2015. [5]

Promote sustained and inclusive economic growth, social development and environmental protection. [6]

Respect all human rights, including the right to development and the right to an adequate standard of living, including the right to food. [8]

Take urgent action to achieve SUSTAINABLE DEVELOPMENT including poverty eradication [12]

II. Renewing political commitment

A. Reaffirming the Rio Principles and past action plans

Bear in mind the Stockholm Declaration of the United Nations Conference on the Human Environment adopted at Stockholm on 16 June 1972. [14]

Fully implement the Rio Declaration on Environment and Development, Agenda 21, the Programme for the Further Implementation of Agenda 21, the Plan of Implementation of the World Summit on SUSTAINABLE DEVELOPMENT (Johannesburg Plan of Implementation) and the Johannesburg Declaration on SUSTAINABLE DEVELOPMENT of the World Summit on SUSTAINABLE DEVELOPMENT, the Programme of Action for the SUSTAINABLE DEVELOPMENT of Small Island Developing States (Barbados Programme of Action), the Mauritius Strategy for the Further Implementation of the Programme of Action for the SUSTAINABLE DEVELOPMENT of Small Island Developing States, the Programme of Action for the Least Developed Countries for the Decade 2011-2020 (Istanbul Programme of Action), the Almaty Programme of Action: Addressing the Needs of Landlocked Developing Countries within a New Global Framework for Transit Transport Cooperation for Landlocked and Transit Developing Countries, the political declaration on Africa’s development needs, and the New Partnership for Africa’s Development. [16]

Fulfil our commitments in the outcomes of all the major United Nations conferences and summits in the economic, social and environmental fields, including the United Nations Millennium Declaration, the 2005 World Summit Outcome, the Monterrey Consensus of the International Conference on Financing for Development, the Doha Declaration on Financing for Development, the outcome document of the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals, the Programme of Action of the International Conference on

Population and Development, the key actions for the further implementation of the Programme of Action of the International Conference on Population and Development and the Beijing Declaration and Platform for Action. [16]

Implement the three Rio conventions for advancing SUSTAINABLE DEVELOPMENT and implementing the commitments under the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. [17]

Move the SUSTAINABLE DEVELOPMENT agenda forward, through the achievement of the internationally agreed development goals, including the Millennium Development Goals, and implement other relevant internationally agreed goals in the economic, social and environmental fields since 1992, taking concrete measures that accelerate implementation of SUSTAINABLE DEVELOPMENT commitments. [18]

B. Advancing integration, implementation and coherence: assessing the progress to date and the remaining gaps in the implementation of the outcomes of the major summits on SUSTAINABLE DEVELOPMENT and addressing new and emerging challenges

Close development gaps between developed and developing countries, and seize and create opportunities to achieve SUSTAINABLE DEVELOPMENT through economic growth and diversification, social development and environmental protection. [19]

Accept the need for *an enabling environment* at the national and international levels, as well as continued and strengthened international cooperation, particularly in the areas of finance, debt, trade and technology. [19]

Feel deep concern over the fact that one in five people on this planet (over 1 billion people) live in extreme poverty, and that one in seven — or 14 percent — is undernourished. [21]

Acknowledge that with the world's population projected to exceed 9 billion by 2050 we need to increase our efforts to achieve SUSTAINABLE DEVELOPMENT including the eradication of poverty, hunger and preventable diseases. [21]

Support developing countries in their efforts to eradicate poverty and promote empowerment of the poor and people in vulnerable situations, including removing barriers to opportunity, enhancing productive capacity, developing sustainable agriculture and promoting full and productive employment and decent work for all, complemented by effective social policies, including social protection floors, with a view to achieving the internationally agreed development goals, including the Millennium Development Goals. [23]

Acknowledge that climate change is a cross-cutting and persistent crisis and that the scale and gravity of the negative impacts of climate change affect all countries and undermine the ability of all countries, in particular, developing countries, to achieve SUSTAINABLE DEVELOPMENT and the Millennium Development Goals. [25]

Take urgent and concrete action to address the vulnerability of small island developing States, including through the sustained implementation of the Barbados Programme of Action and the Mauritius Strategy. [33]

Assist the least developed countries with the implementation of the Istanbul Programme of Action as well as in their efforts to achieve SUSTAINABLE DEVELOPMENT. [34]

Fully implement the internationally agreed commitments related to Africa's development needs, particularly those contained in the United Nations Millennium Declaration, the United Nations Declaration on the New Partnership for Africa's Development, the Monterrey Consensus, the

Johannesburg Plan of Implementation and the 2005 World Summit Outcome, as well as the 2008 political declaration on Africa's development needs. [35]

Address the special development needs and the challenges faced by landlocked developing countries through the full, timely and effective implementation of the Almaty Programme of Action. [36]

Support middle-income countries in their efforts to eradicate poverty, reduce inequalities and achieve their development goals, including the Millennium Development Goals, and to achieve SUSTAINABLE DEVELOPMENT in a comprehensive manner integrating the economic, social and environmental dimensions. [37]

C. Engaging major groups and other stakeholders

Close the technological gap between developing and developed countries and foster international research collaboration on SUSTAINABLE DEVELOPMENT. [48]

Accept the United Nations Declaration on the Rights of Indigenous Peoples in the context of global, regional, national and subnational implementation of SUSTAINABLE DEVELOPMENT strategies. [49]

Recognize the central role of the United Nations in advancing the SUSTAINABLE DEVELOPMENT agenda and the contributions of other relevant international organizations, including international financial institutions and multilateral development banks. [54]

III. Green economy in the context of SUSTAINABLE DEVELOPMENT and poverty eradication

Treat green economy in the context of SUSTAINABLE DEVELOPMENT and poverty eradication as one of the important tools available for achieving SUSTAINABLE DEVELOPMENT and eradicating poverty in accordance with all the Rio Principles, Agenda 21 and the Johannesburg Plan of Implementation and contribute towards achieving relevant internationally agreed development goals, including the Millennium Development Goals. [56] [57]

Avoid unwarranted conditionalities on official development assistance (ODA) and finance and strive for inclusive, equitable development approaches to overcome poverty and inequality. [58]

Recognize the importance of financing, technology, capacity-building and national needs for SUSTAINABLE DEVELOPMENT policies. [66]

Support developing countries to achieve SUSTAINABLE DEVELOPMENT, including through green economy policies. [68]

Mobilize public financing complemented by the private sector. [71]

Implement the provisions on technology transfer, finance, access to information, and intellectual property rights as agreed in the Johannesburg Plan of Implementation, in particular its call to promote, facilitate and finance, as appropriate, access to and the development, transfer and diffusion of environmentally sound technologies and corresponding know-how, in particular to developing countries, on favourable terms, including on concessional and preferential terms. [73]

IV. Institutional framework for SUSTAINABLE DEVELOPMENT

A. Strengthening the three dimensions of SUSTAINABLE DEVELOPMENT

Recognize that effective governance at the local, subnational, national, regional and global levels representing the voices and interests of all is critical for advancing SUSTAINABLE DEVELOPMENT, and that that an improved and more effective institutional framework for

SUSTAINABLE DEVELOPMENT at the international level should be consistent with the Rio Principles, build on Agenda 21 and the Johannesburg Plan of Implementation and its objectives on the institutional framework for SUSTAINABLE DEVELOPMENT, contribute to the implementation of our commitments in the outcomes of United Nations conferences and summits in the economic, social, environmental and related fields and take into account national priorities and the development strategies and priorities of developing countries. [76]

B. Strengthening intergovernmental arrangements for SUSTAINABLE DEVELOPMENT

General Assembly

Accept the role and authority of the General Assembly on global matters of concern to the international community, as set out in the Charter, and the central position of the General Assembly as the chief deliberative, policymaking and representative organ of the United Nations. [80, 81]

C. Environmental pillar in the context of SUSTAINABLE DEVELOPMENT

Strengthen the role of the United Nations Environment Programme (UNEP) as the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of SUSTAINABLE DEVELOPMENT within the United Nations system and serves as an authoritative advocate for the global environment, accepting resolution 2997 (XXVII) of 15 December 1972 which established UNEP and other relevant resolutions that reinforce its mandate, as well as the 1997 Nairobi Declaration on the Role and Mandate of UNEP and the 2000 Malmö Ministerial Declaration. [88]

D. International financial institutions and United Nations operational activities

Recognize that SUSTAINABLE DEVELOPMENT should be given due consideration by the programmes, funds and specialized agencies of the United Nations system and other relevant entities such as international financial institutions and the United Nations Conference on Trade and Development, in accordance with their respective existing mandates. [91]

Recognise that increasing the financial contributions to the United Nations development system is key to achieving the internationally agreed development goals, including the Millennium Development Goals, and assisting developing countries in eradicating poverty and achieving sustained economic growth and SUSTAINABLE DEVELOPMENT. [94]

E. Regional, national, subnational and local levels

Recognise the need to ensure long-term political commitment to SUSTAINABLE DEVELOPMENT taking into account national circumstances and priorities and, in this regard, the encouragement of all countries to undertake the necessary actions and measures to achieve SUSTAINABLE DEVELOPMENT. [103]

V. Framework for action and follow-up

A. Thematic areas and cross-sectoral issues

Poverty eradication

Note that, while there has been progress in reducing poverty in some regions, this progress has been uneven and the number of people living in poverty in some countries continues to increase, with women and children constituting the majority of the most affected groups, especially in the least developed countries and particularly in Africa. [105]

Recognize that sustained, inclusive and equitable economic growth in developing countries is a key requirement for eradicating poverty and hunger and achieving the Millennium Development Goals. [106]

Recognize the need to accord the highest priority to poverty eradication, addressing the root causes and challenges of poverty through integrated, coordinated and coherent strategies at all levels. [106]

Recognize that social protection systems that address and reduce inequality and social exclusion are essential for eradicating poverty and advancing the achievement of the Millennium Development Goals. [107]

Food security and nutrition and sustainable agriculture

Recognize the right of everyone to have access to safe, sufficient and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger. [108]

Recognize the need to revitalize the agricultural and rural development sectors, notably in developing countries, in an economically, socially and environmentally sustainable manner by access to credit and other financial services, markets, secure land tenure, health care, social services, education, training, knowledge and appropriate and affordable technologies. [109]

Enhance sustainable livestock production systems, including through improving pasture land and irrigation schemes. [112]

Take action to enhance agricultural research, extension services, training and education to improve agricultural productivity and sustainability. [114]

Water and sanitation

Commitments made in the Johannesburg Plan of Implementation and the Millennium Declaration regarding halving by 2015 the proportion of people without access to safe drinking water and basic sanitation and the development of integrated water resource management and water efficiency plans, ensuring sustainable water use. [120]

Need to mobilize financial resources and investment in infrastructure for water and sanitation services. [121]

Need to adopt measures to significantly reduce water pollution and increase water quality, significantly improve wastewater treatment and water efficiency and reduce water losses. In order to achieve this, we stress the need for international assistance and cooperation. [124]

Energy

Recognize the critical role that energy plays in the development process, as access to sustainable modern energy services contributes to poverty eradication. These services are essential to social inclusion and gender equality. Commit to support access to these services by 1.4 billion people worldwide who are currently without them. Recognize that access to these services is critical for achieving SUSTAINABLE DEVELOPMENT. [125]

126. Mobilize adequate financial resources, so as to provide sustainable modern energy services in a reliable, affordable, economically viable and socially and environmentally acceptable manner in developing countries. [126]

Support national and subnational policies and strategies, based on individual national circumstances and development aspirations, using an appropriate energy mix to meet developmental needs, including through increased use of renewable energy sources and other low-emission technologies, the more efficient use of energy, greater reliance on advanced energy technologies, including cleaner fossil fuel technologies, and the sustainable use of traditional energy resources. [127]

Recognize that improving energy efficiency, increasing the share of renewable energy and cleaner and energy-efficient technologies are important for SUSTAINABLE DEVELOPMENT, including in addressing climate change. [128]

Make sustainable energy for all a reality and, through this, help to eradicate poverty and lead to SUSTAINABLE DEVELOPMENT and global prosperity. [129]

Sustainable tourism

Accept that well-designed and managed tourism can make a significant contribution to the three dimensions of SUSTAINABLE DEVELOPMENT, has close linkages to other sectors, and can create decent jobs and generate trade opportunities. [130]

Recognize the need for enhanced support for sustainable tourism activities and relevant capacity-building in developing countries in order to contribute to the achievement of SUSTAINABLE DEVELOPMENT. [130]

Encourage the promotion of investment in sustainable tourism, including eco-tourism and cultural tourism, which may include creating small and medium-sized enterprises and facilitating access to finance, including through microcredit initiatives for the poor, indigenous peoples and local communities in areas with high eco-tourism potential. [131]

Sustainable transport

Recognize that sustainable transportation can enhance economic growth and improve accessibility. It achieves better integration of the economy while respecting the environment. [132]

Recognize the importance of the efficient movement of people and goods, and access to environmentally sound, safe and affordable transportation as a means to improve social equity, health, resilience of cities, urban-rural linkages and productivity of rural areas. In this regard, we take into account road safety as part of our efforts to achieve SUSTAINABLE DEVELOPMENT. [132]

Sustainable cities and human settlements

Recognize that, if they are well planned and developed, including through integrated planning and management approaches, cities can promote economically, socially and environmentally sustainable societies. [134]

Recognize the need for a holistic approach to urban development and human settlements that provides for affordable housing and infrastructure and prioritizes slum upgrading and urban regeneration. [134]

Commit to work towards improving the quality of human settlements, including the living and working conditions of both urban and rural dwellers in the context of poverty eradication so that all people have access to basic services, housing and mobility. [134]

Commit to promote SUSTAINABLE DEVELOPMENT policies that support inclusive housing and social services; a safe and healthy living environment for all, particularly children, youth, women and the elderly and disabled; affordable and sustainable transport and energy; promotion, protection and restoration of safe and green urban spaces; safe and clean drinking water and sanitation; healthy air quality; generation of decent jobs; and improved urban planning and slum upgrading. [135]

Support sustainable management of waste through the application of the 3Rs (reduce, reuse and recycle). [135]

Recognize the importance of increasing the number of metropolitan regions, cities and towns that are implementing policies for sustainable urban planning and design in order to respond effectively to the expected growth of urban populations in the coming decades. [136]

Recognize the important role of municipal governments in setting a vision for sustainable cities, from the initiation of city planning through to revitalization of older cities and neighbourhoods, including by adopting energy efficiency programmes in building management and developing sustainable, locally appropriate transport systems. [136]

Recognize the importance of mixed-use planning and of encouraging non-motorized mobility, including by promoting pedestrian and cycling infrastructures. [136]

Recognize that partnerships among cities and communities play an important role in promoting SUSTAINABLE DEVELOPMENT to advance the coordinated implementation of the Habitat Agenda with the active involvement of all relevant United Nations entities and with the overall aim of achieving sustainable urban development. [137]

Recognize the continuing need for adequate and predictable financial contributions to the United Nations Habitat and Human Settlements Foundation so as to ensure timely, effective and concrete global implementation of the Habitat Agenda. [137]

Health and population

Recognize that health is a precondition for and an outcome and indicator of all three dimensions of SUSTAINABLE DEVELOPMENT. Understand that the goals of SUSTAINABLE DEVELOPMENT can only be achieved in the absence of a high prevalence of debilitating communicable and non-communicable diseases, and where populations can reach a state of physical, mental and social well-being. [138]

Further the full realization of the right to the enjoyment of the highest attainable standard of physical and mental health. [138]

Recognize the importance of universal health coverage to enhancing health, social cohesion and sustainable human and economic development. Involve all relevant actors for coordinated multi-sectoral action to address urgently the health needs of the world's population. [139]

Commit to redouble efforts to achieve universal access to HIV prevention, treatment, care and support, and to eliminate mother-to-child transmission of HIV, as well as to renewing and strengthening the fight against malaria, tuberculosis and neglected tropical diseases. [140]

Acknowledge that the global burden and threat of non-communicable diseases constitutes one of the major challenges for SUSTAINABLE DEVELOPMENT in the twenty-first century. We commit to strengthen health systems towards the provision of equitable, universal coverage and promote affordable access to prevention, treatment, care and support related to non-communicable diseases, especially cancer, cardiovascular diseases, chronic respiratory diseases and diabetes. We also commit to establish or strengthen multi-sectoral national policies for the prevention and control of non-communicable diseases. We recognize that reducing, inter alia, air, water and chemical pollution leads to positive effects on health. [140]

Affirm the right to use, to the full, the provisions contained in the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Doha Declaration on the TRIPS Agreement and Public Health, the decision of the WTO General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and, when formal acceptance procedures are completed, the amendment to article 31 of the Agreement, which provides flexibilities for the protection of public health, and, in particular, to promote access to medicines for all, and encourage the provision of assistance to developing countries in this regard. [142]

Ensure further collaboration and cooperation at the national and international levels to strengthen health systems through increased health financing, recruitment, development and training and retention of the health workforce, through improved distribution and access to safe, affordable, effective and quality medicines, vaccines and medical technologies, and through improving health Infrastructure. [143]

Support the leadership role of the World Health Organization as the directing and coordinating authority on international health work. [143]

Commit to systematically consider population trends and projections in our national, rural and urban development strategies and policies. Through forward-looking planning, we can seize the opportunities and address the challenges associated with demographic change, including migration. [144]

Promote the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development, and the outcomes of their review conferences, including the commitments leading to sexual and reproductive health and the promotion and protection of all human rights in this context. [145]

Emphasize the need for the provision of universal access to reproductive health, including family planning and sexual health, and the integration of reproductive health in national strategies and programmes. [145]

Commit to reduce maternal and child mortality and to improve the health of women, men, youth and children. [145]

Ensure that health systems provide the necessary information and health services addressing the sexual and reproductive health of women, including working towards universal access to safe, effective, affordable and acceptable modern methods of family planning [146]

Recognize that poverty eradication, full and productive employment and decent work for all, and social integration and protection are interrelated and mutually reinforcing, and that enabling environments to promote these need to be created at all levels. [147]

Address the global challenge of youth employment by developing and implementing strategies and policies that provide young people everywhere with access to decent and productive work, as over the coming decades decent jobs will need to be created to be able to ensure sustainable and inclusive development and reduce poverty. [148]

Recognize the importance of job creation by investing in and developing sound, effective and efficient economic and social infrastructure and productive capacities for SUSTAINABLE DEVELOPMENT and sustained, inclusive and equitable economic growth. [149]

Recognize the importance of job creation by adopting forward-looking macroeconomic policies that promote SUSTAINABLE DEVELOPMENT and lead to sustained, inclusive and equitable economic growth, increase productive employment opportunities and promote agricultural and industrial development. [150]

Stress the need to provide social protection to all members of society, fostering growth, resilience, social justice and cohesion, including those who are not employed in the formal economy. [156]

Strongly encourage national and local initiatives aimed at providing social protection floors for all citizens and support global dialogue on best practices for social protection programmes that takes into account the three dimensions of SUSTAINABLE DEVELOPMENT. [156]

Oceans and seas

Recognize the importance of the conservation and sustainable use of the oceans and seas and of their resources for SUSTAINABLE DEVELOPMENT, including through their contributions to poverty eradication, sustained economic growth, food security and creation of sustainable livelihoods and decent work, while at the same time protecting biodiversity and the marine environment and addressing the impacts of climate change. [158]

Commit to protect, and restore, the health, productivity and resilience of oceans and marine ecosystems, and to maintain their biodiversity, enabling their conservation and sustainable use for present and future generations. [158]

Commit to address, on an urgent basis, the issue of the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. [162]

Considering that the health of oceans and marine biodiversity are negatively affected by marine pollution, including marine debris, especially plastic, persistent organic pollutants, heavy metals and nitrogen-based compounds, from a number of marine and land-based sources, including shipping and land run-off, commit to take action to reduce the incidence and impacts of such pollution on marine ecosystems. [163]

Commit to implement measures to prevent the introduction, and manage the adverse environmental impacts, of alien invasive species. [164]

Considering that sea-level rise and coastal erosion are serious threats for many coastal regions and islands, particularly in developing countries, commit to enhancing efforts to address these challenges. [165]

Commit to intensify our efforts to meet the 2015 target as agreed to in the Johannesburg Plan of Implementation to maintain or restore fish stocks to levels that can produce maximum sustainable yield on an urgent basis. [168]

With regard to illegal, unreported and unregulated fishing, cooperate with developing countries to systematically identify needs and build capacity, including support for monitoring, control, surveillance, compliance and enforcement systems. [170]

Commit to the Johannesburg Plan of Implementation to eliminate subsidies that contribute to illegal, unreported and unregulated fishing and overcapacity. [173]

Note decision X/2 of the tenth Meeting of the conference of the Parties to the Convention on Biological Diversity, that by 2020 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are to be conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures. [177]

Small island developing States

Affirm that small island developing States remain a special case for SUSTAINABLE DEVELOPMENT in view of their unique and particular vulnerabilities, including their small size, remoteness, narrow resource and export base, and exposure to global environmental challenges and external economic shocks, including to a large range of impacts from climate change and potentially more frequent and intense natural disasters. [178]

Commit to continued and enhanced efforts to assist small island developing States in implementing the Barbados Programme of Action and the Mauritius Strategy, and to a strengthening of United Nations System support to small island developing States in keeping with the multiple ongoing and emerging challenges faced by these States in achieving SUSTAINABLE DEVELOPMENT. [179]

Agree to speed up further the implementation of the specific actions in the five priorities agreed upon in the Almaty Programme of Action in a better coordinated manner, in particular for the construction, maintenance and improvement of transport, storage and other transit-related facilities, including alternative routes, completion of missing links and improved communications and energy infrastructure, so as to support the SUSTAINABLE DEVELOPMENT of landlocked least developed countries. [182]

While acknowledging that some progress has been made towards the fulfilment of international commitments related to Africa's development needs, accept that significant challenges remain in achieving SUSTAINABLE DEVELOPMENT on the continent. [183]

Agree to support African countries in strengthening human capacities and democratic institutions, consistent with their priorities and objectives, with a view to furthering Africa's development at all levels, including through facilitating the transfer of technology needed by African countries. [184]

Agree to make continued efforts to increase the flow of new and additional resources for financing which will support development efforts by African countries. [184]

Disaster risk reduction

Commit to the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, accepting that disaster risk reduction and the building of resilience to disasters should be addressed with a renewed sense of urgency in the context of SUSTAINABLE DEVELOPMENT and poverty eradication. [186]

Accept the importance of stronger interlinkages among disaster risk reduction, recovery and long-term development planning, and more coordinated and comprehensive strategies that integrate disaster risk reduction and climate change adaptation considerations into public and private investment, decision-making and the planning of humanitarian and development actions, in order to reduce risk, increase resilience and provide a smoother transition between relief, recovery and development. In this regard, accept the need to integrate a gender perspective into the design and implementation of all phases of disaster risk management. [188]

Climate change

Affirm that climate change is one of the greatest challenges of our time, and feel profound alarm that emissions of greenhouse gases continue to rise globally, with the risk of persistent drought and extreme weather events, sea-level rise, coastal erosion and ocean acidification, further threatening food security and efforts to eradicate poverty and achieve SUSTAINABLE DEVELOPMENT, accepting that adaptation to climate change represents an immediate and urgent global priority. [190]

Forests

Recognize the need for enhanced efforts to achieve the sustainable management of forests, reforestation, restoration and afforestation, and commit to improving the livelihoods of people and communities by creating the conditions needed for them to sustainably manage forests, including through strengthening cooperation arrangements in the areas of finance, trade, transfer of environmentally sound technologies, capacity-building and governance. [193]

Biodiversity

Affirm the intrinsic value of biological diversity, as well as the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its critical role in maintaining ecosystems that provide essential services, which are critical foundations for SUSTAINABLE DEVELOPMENT and human well-being. [197]

Commit to the achievement of the three objectives of the convention on Biological Diversity and call for urgent actions that effectively reduce the rate of, halt and reverse the loss of biodiversity. In this context, affirm the importance of implementing the Strategic Plan for Biodiversity 2011-2020 and achieving the Aichi Biodiversity Targets adopted by the Conference of the Parties to the Convention at its tenth meeting. [198]

Commit to the strategy for resource mobilization in support of the achievement of the three objectives of the Convention on Biological Diversity, including the commitment to substantially increasing resources from all sources in support of biodiversity, in accordance with decisions taken at the Conference of the Parties at its tenth meeting. [200]

Encourage investments, through appropriate incentives and policies, which support the conservation and sustainable use of biological diversity and restoration of degraded ecosystems, consistent and in harmony with the Convention on Biological Diversity and other relevant international obligations. [201]

Welcome the United Nations Decade on Biodiversity, 2011-2020, for the purpose of encouraging active involvement of all stakeholders in the conservation and sustainable use of biodiversity, as well as access to and the fair and equitable sharing of benefits arising from the utilization of genetic resources, with the vision of living in harmony with nature. [202]

Feel deep concern for the devastating consequences of cyclical drought and famine in Africa, in particular in the Horn of Africa and the Sahel region, and accept the need for urgent action through short-, medium- and long-term measures at all levels. [205]

Accept the need for urgent action to reverse land degradation and achieve a land-degradation neutral world in the context of SUSTAINABLE DEVELOPMENT, believing this should act to catalyse financial resources from a range of public and private sources. [206]

Reaffirm our resolve in accordance with the United Nations Convention to Combat Desertification to take coordinated action nationally, regionally and internationally, to monitor, globally, land degradation and restore degraded lands in arid, semi-arid and dry sub-humid areas, including through mobilizing adequate, predictable and timely financial resources and by preserving and developing oases, restoring degraded lands, improving soil quality and improving water management, in order to contribute to SUSTAINABLE DEVELOPMENT and poverty eradication. [207]

Mountains

Recognize that the benefits derived from mountain regions are essential for SUSTAINABLE DEVELOPMENT. Mountain ecosystems play a crucial role in providing water resources to a large portion of the world's population; fragile mountain ecosystems are particularly vulnerable to the adverse impacts of climate change, deforestation and forest degradation, land use change, land degradation and natural disasters; and mountain glaciers around the world are retreating and getting thinner, with increasing impacts on the environment and human wellbeing. [210]

Recognize that mountains are often home to communities, including indigenous peoples and local communities, who have developed sustainable uses of mountain resources. These communities are, however, often marginalized, and we therefore stress that continued effort will be required to address poverty, food security and nutrition, social exclusion and environmental degradation in these areas. [211]

Chemicals and waste

Recognize that the sound management of chemicals is crucial for the protection of human health and the environment and that growing global production and use of chemicals and their prevalence in the environment calls for increased international cooperation. [213]

Reaffirm our aim to achieve, by 2020, the sound management of chemicals throughout their life cycle and of hazardous waste in ways that lead to minimization of significant adverse effects on human health and the environment, as set out in the Johannesburg Plan of Implementation. [213]

Commend the increased coordination and cooperation among chemical and waste conventions, namely the Basel Convention, the Rotterdam Convention and the Stockholm Convention, and encourage continued enhanced coordination and cooperation among them and with the Strategic Approach to International Chemicals Management. [216]

Recognize the importance of adopting a life cycle approach and of further development and implementation of policies for resource efficiency and environmentally sound waste management and therefore commit to further reduce, reuse and recycle waste (3Rs), and to increase energy recovery from waste, with a view to managing the majority of global waste in an environmentally sound manner and, where possible, as a resource. [218]

Acknowledge that sustainable and adequate long-term funding is a key element for the sound management of chemicals and waste, in particular in developing countries. In this regard, we welcome the consultative process on financing options for chemicals and waste, initiated to consider the need for heightened efforts to increase the political priority accorded to sound management of chemicals and waste, and the increased need for sustainable, predictable, adequate and accessible financing for the chemicals and waste agenda. [223]

Sustainable consumption and production

Considering the commitments made in the Rio Declaration on Environment and Development, Agenda 21 and the Johannesburg Plan of Implementation on sustainable consumption and production and, in particular, the request in chapter 3 of the Plan of Implementation to encourage and promote the development of a 10-year framework of programmes, recognize that fundamental changes in the way societies consume and produce are indispensable for achieving global SUSTAINABLE DEVELOPMENT. [224]

Reaffirm commitments made to phase out harmful and inefficient fossil fuel subsidies that encourage wasteful consumption and undermine SUSTAINABLE DEVELOPMENT. [225]

Adopt the 10-year framework of programmes on sustainable consumption and production patterns, as contained in document A/CONF.216/5. [226]

Mining

Acknowledge that minerals and metals make a major contribution to the world economy and modern societies, and acknowledge that in the interest of SUSTAINABLE DEVELOPMENT mining activities should maximize social and economic benefits, as well as effectively address negative environmental and social impacts. [227]

Call on governments and businesses to promote the continuous improvement of accountability and transparency, as well as the effectiveness of the relevant existing mechanisms to prevent the illicit financial flows from mining activities. [228]

Education

Commit to achieve universal access to primary education, particularly for developing countries, and reaffirm that full access to quality education at all levels is an essential condition for achieving SUSTAINABLE DEVELOPMENT, poverty eradication, gender equality and the empowerment of women. [229]

Resolve to improve the capacity of our education systems to prepare people to pursue SUSTAINABLE DEVELOPMENT, including through enhanced teacher training, the development of sustainability curricula, the development of training programmes that prepare

students for careers in fields related to sustainability, and more effective use of information and communications technologies to promote access to quality education at all levels. [230]

Commit to promote SUSTAINABLE DEVELOPMENT awareness among youth, inter alia by promoting programmes for non-formal education in accordance with the goals of the United Nations Decade of Education for SUSTAINABLE DEVELOPMENT, 2005-2014. [231]

Commit to improve access to education, including through building and strengthening education infrastructure and increasing investment in education, particularly investment to improve the quality of education for all in developing countries. [232]

Strongly encourage good practices in sustainability management on campuses and in their communities with the active participation of, inter alia, students, teachers and local partners, and teaching SUSTAINABLE DEVELOPMENT as an integrated component across disciplines. [234]

Underscore the importance of supporting educational institutions, especially higher educational institutions in developing countries, to carry out research and innovation for SUSTAINABLE DEVELOPMENT, including in the field of education, to develop quality and innovative programmes, including entrepreneurship and business skills training, professional, technical and vocational training and lifelong learning, geared to bridging skills gaps for advancing national SUSTAINABLE DEVELOPMENT objectives, gender equality and the empowerment of women. [235]

B. SUSTAINABLE DEVELOPMENT goals

Underscore that the Millennium Development Goals are a useful tool in focusing achievement of specific development gains as part of a broad development vision and framework for the development activities of the United Nations, for national priority-setting and for mobilization of stakeholders and resources towards common goals. We therefore remain firmly committed to their full and timely achievement. [245]

Recognize that the development of goals could also be useful for pursuing focused and coherent action on SUSTAINABLE DEVELOPMENT and the importance and utility of a set of SUSTAINABLE DEVELOPMENT goals, based on Agenda 21 and the Johannesburg Plan of Implementation, which fully respect all the Rio Principles, taking into account different national circumstances, capacities and priorities [246]

Underscore that SUSTAINABLE DEVELOPMENT goals should be action-oriented, concise and easy to communicate, limited in number, aspirational, global in nature and universally applicable to all countries while taking into account different national realities, capacities and levels of development and respecting national policies and priorities. [247]

Recognize that the goals should address and be focused on priority areas for the achievement of SUSTAINABLE DEVELOPMENT, being guided by the present outcome document and that Governments should drive implementation with the active involvement of all relevant stakeholders. [247]

Resolve to establish an inclusive and transparent intergovernmental process on SUSTAINABLE DEVELOPMENT goals that is open to all stakeholders, with a view to developing global SUSTAINABLE DEVELOPMENT goals to be agreed by the General Assembly. [248]

Recognize that there is a need for global, integrated and scientifically based information on SUSTAINABLE DEVELOPMENT and request the relevant bodies of the United Nations system, within their respective mandates, to support the regional economic commissions in collecting and compiling national inputs in order to inform this global effort. [251]

Commit to mobilizing financial resources and capacity-building, particularly for developing countries, to achieve the previous endeavour. [251]

VI. Means of implementation

Reaffirm that the means of implementation identified in Agenda 21, the Programme for the Further Implementation of Agenda 21, the Johannesburg Plan of Implementation, the Monterrey Consensus of the International Conference on Financing for Development and the Doha Declaration on Financing for Development are indispensable for achieving the full and effective translation of SUSTAINABLE DEVELOPMENT commitments into tangible SUSTAINABLE DEVELOPMENT outcomes. [252]

Reaffirm that developing countries need additional resources for SUSTAINABLE DEVELOPMENT and recognize the need for significant mobilization of resources from a variety of sources and the effective use of financing, in order to promote SUSTAINABLE DEVELOPMENT. [252]

Acknowledge that good governance and the rule of law at the national and international levels are essential for sustained, inclusive and equitable economic growth, SUSTAINABLE DEVELOPMENT and the eradication of poverty and hunger. [252]

A. Finance

Call on all countries to prioritize SUSTAINABLE DEVELOPMENT in the allocation of resources in accordance with national priorities and needs, and recognize the crucial importance of enhancing financial support from all sources for SUSTAINABLE DEVELOPMENT for all countries, in particular developing countries. [253]

Recognize the importance of international, regional and national financial mechanisms, including those accessible to subnational and local authorities, to the implementation of SUSTAINABLE DEVELOPMENT programmes, and call for their strengthening and implementation. New partnerships and innovative sources of financing can play a role in complementing sources of financing for SUSTAINABLE DEVELOPMENT. [253]

Recognize the need for significant mobilization of resources from a variety of sources and the effective use of financing, in order to give strong support to developing countries in their efforts to promote SUSTAINABLE DEVELOPMENT, including through actions undertaken in accordance with the outcome of the 2012 United Nations conference on SUSTAINABLE DEVELOPMENT and for achieving SUSTAINABLE DEVELOPMENT goals. [254]

Agree to establish an intergovernmental process under the auspices of the General Assembly, with technical support from the United Nations system and in consultation with relevant international and regional financial institutions and other relevant stakeholders. The process will assess financing needs, consider the effectiveness, consistency and synergies of existing instruments and frameworks, and evaluate additional initiatives, with a view to preparing a report proposing options on an effective SUSTAINABLE DEVELOPMENT financing strategy to facilitate the mobilization of resources and their effective use in achieving SUSTAINABLE DEVELOPMENT objectives. [255]

Recognize that the fulfilment of all commitments related to ODA is crucial, including the commitments by many developed countries to achieve the target of 0.7 per cent of gross national product (GNP) for ODA to developing countries by 2015, as well as a target of 0.15 to 0.20 per cent of GNP for ODA to the least developed countries. We strongly encourage all donors to establish, as soon as possible, rolling indicative timetables that illustrate how they aim to reach their goals, in accordance with their respective budget allocation process. We stress the importance of mobilizing greater domestic support in developed countries towards the fulfilment

of their commitments, including through raising public awareness, providing data on the development impact of aid provided and demonstrating tangible results. [258]

Welcome increasing efforts to improve the quality of ODA and to increase its development impact, and recognize the need to improve development effectiveness, increase programme-based approaches, use country systems for activities managed by the public sector, reduce transaction costs and improve mutual accountability and transparency and, in this regard, we call upon all donors to untie aid to the maximum extent. [259]

Invite the international financial institutions, within their respective mandates, to continue providing financial resources, including through specific mechanisms for the promotion of SUSTAINABLE DEVELOPMENT and poverty eradication in developing countries. [261]

Reiterate the importance of ensuring that developing countries have steady and predictable access to adequate financing from all sources to promote SUSTAINABLE DEVELOPMENT. [262]

Recognize the need to assist developing countries in ensuring long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring. [263]

Stress the need for adequate funding for the operational activities of the United Nations development system, as well as the need to make funding more predictable, effective and efficient as part of wider efforts to mobilize new, additional and predictable resources. [264]

Consider that innovative financing mechanisms can make a positive contribution in assisting developing countries to mobilize additional resources for financing for development on a voluntary basis and call for a scaling-up of present initiatives. [267]

Will work to improve income growth and distribution, inter alia through raising productivity, empowering women, protecting labour rights, and taxation. [268]

B. Technology

Emphasize the importance of technology transfer to developing countries and recall the provisions on technology transfer, finance, access to information and intellectual property rights as agreed in the Johannesburg Plan of Implementation, in particular its call to promote, facilitate and finance, as appropriate, access to and the development, transfer and diffusion of environmentally sound technologies and corresponding know-how, in particular to developing countries, on favourable terms, including on concessional and preferential terms, as mutually agreed. [269]

Stress the importance of access by all countries to environmentally sound technologies, new knowledge, know-how and expertise and the importance of cooperative action on technology innovation, research and development. [270]

Underline the need for enabling environments for the development, adaptation, dissemination and transfer of environmentally sound technologies. In this context, we note the role of foreign direct investment, international trade and international cooperation in the transfer of environmentally sound technologies. [271]

Engage in our countries as well as through international cooperation to promote investment in science, innovation and technology for SUSTAINABLE DEVELOPMENT. [271]

Recognize the importance of strengthened national, scientific and technological capacities for SUSTAINABLE DEVELOPMENT. [272]

C. Capacity-building

Emphasize the need for enhanced capacity-building for SUSTAINABLE DEVELOPMENT and, in this regard, we call for the strengthening of technical and scientific cooperation, including North-South, South-South and triangular cooperation. [277]

Reiterate the importance of human resource development, including training, the exchange of experiences and expertise, knowledge transfer and technical assistance for capacity-building, which involves strengthening institutional capacity, including planning, management and monitoring capacities. [277]

Call for the continued and focused implementation of the Bali Strategic Plan for Technology Support and Capacity-building, adopted by UNEP. [278]

D. Trade

Reaffirm that international trade is an engine for development and sustained economic growth, and also reaffirm the critical role that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system, as well as meaningful trade liberalization, can play in stimulating economic growth and development worldwide, thereby benefiting all countries at all stages of development, as they advance towards SUSTAINABLE DEVELOPMENT. In this context, we remain focused on achieving progress in addressing a set of important issues, such as, inter alia, trade-distorting subsidies and trade in environmental goods and services. [281]

E. Registry of commitments

Welcome the commitments voluntarily entered into at the United Nations conference on SUSTAINABLE DEVELOPMENT and throughout 2012 by all stakeholders and their networks to implement concrete policies, plans, programmes, projects and actions to promote SUSTAINABLE DEVELOPMENT and poverty eradication. [283]

Invite the Secretary-General to compile these commitments and facilitate access to other registries that have compiled commitments, in an Internet-based registry. The registry should make information about the commitments fully transparent and accessible to the public, and it should be periodically updated. [283]

Chapter 6 Rejecting *The Future We Want*

As illustrated by the preceding section which gives extracts from the 2012 United Nations document *The Future We Want*, that organisation is demanding on a continuing basis from the United Kingdom, along with other developed countries, the expenditure of huge sums of money for the benefit of poorer countries. Having regard to the severe economic depression which is currently afflicting the developed countries, this is grossly unreasonable and would never be agreed to by their populations. So it is wrong to try to impose these burdens, especially in the elaborate and expensive way that has prevailed in recent years. The UK Government should put an end to its participation in and support for this process.

These sums are what is alleged by UN spokespersons to be needed to eradicate poverty and raise every poor person on earth to the developed world's high standard of living, a controversial socialistic philosophy which most UK people do not support. An additional objection is that the UN insists throughout the 283 paragraphs of *The Future We Want* (to the bafflement of most readers) on using the unsatisfactory term 'sustainable development' - which the UK has unwisely inserted into in its own planning laws.

The following points from *The Future We Want* are particularly objectionable (paragraph numbers are in square brackets).

- We are required to give a triple meaning to the phrase 'sustainable development', ensuring 'an *economically, socially and environmentally* sustainable future for our planet,

for present and future generations’ and ‘promoting sustained and inclusive *economic* growth, *social* development and *environmental* protection at all levels’. [1, 3, 6, 76]

- We are required to feel deep concern over the fact that one in five people on this planet (over 1 billion people) live in extreme poverty, and that one in seven — or 14 percent — are undernourished. Many of us do in fact feel deep concern over those worrying facts but no UK law compels the expensive and impractical course of rectifying this situation. The UN ought not to advocate a policy which it knows would never be agreed to by the electorate of the countries on which the burdens would fall.[21]
- The UN says that with the world’s population projected to exceed 9 billion by 2050 we need to increase our efforts to achieve sustainable development ‘including the eradication of poverty, hunger and preventable diseases’. This suggests that the meaning of the term ‘sustainable development’ includes the eradication of poverty. Yet throughout *The Future We Want* eradication of poverty is treated as something entirely different from sustainable development and needing to be separately mentioned. This is just one indication of the confusion of terminology in this document. [21]
- Most people would say that over-population is the reason why many thousands of people are starving. A couple should not deliberately give birth to a child when they know they lack the means to nourish and rear it. The Chinese government have imposed laws to limit the number of children permitted to any family. Many countries use planning laws to ban use of unsuitable land for housing and food production. [21, 136]
- *The Future We Want* says there is a human right to food, but no such right is given by UK law. [8, 108]
- We are required to close the technological gap between developing and developed countries, but this would cost billions we cannot afford.[48]
- We are required to avoid ‘unwarranted conditionalities’ on official development assistance (ODA) and finance, but no one knows what this means. [58]
- We are required to recognise that increasing the *financial contributions* to the UN development system is key to achieving the internationally agreed development goals. Under current economic conditions meaningful increases are impracticable. [94]
- We are required to recognize a supposed (and highly expensive) need to revitalize the *agricultural and rural development* sectors, notably in developing countries, in an economically, socially and environmentally sustainable manner by access to credit and other financial services, markets, secure land tenure, health care, social services, education, training, knowledge and appropriate and affordable technologies. [109]
- We are required to enhance sustainable *livestock production* systems, including through improving pasture land and irrigation schemes. [112]
- We are required to halve by 2015 the proportion of people without access to safe drinking water and basic sanitation. [120]
- We are required to support access to modern energy services by 1.4 billion people worldwide who are currently without them. [125]
- We are required to recognize the need for enhanced support for sustainable tourism in order to contribute to the achievement of sustainable development. [130]
- We are required to promote sustainable development policies that support inclusive housing and social services; a safe and healthy living environment for all, particularly

- children, youth, women and the elderly and disabled; affordable and sustainable transport and energy; promotion, protection and restoration of safe and green urban spaces; safe and clean drinking water and sanitation; healthy air quality; generation of decent jobs; and improved urban planning and slum upgrading. [135]
- We are required to recognize that the global burden and threat of non-communicable diseases constitutes one of the major challenges for sustainable development in the twenty-first century and commit to strengthen health systems towards the provision of equitable, universal coverage and promote affordable access to prevention, treatment, care and support related to non-communicable diseases. [140]
 - We are required to strengthen health systems through increased health *financing*, recruitment, development and training and retention of the health workforce, through improved distribution and access to safe, affordable, effective and quality medicines, vaccines and medical technologies, and through improving health infrastructure. [143]
 - We are required to recognize the importance of *job creation* by investing in and developing sound, effective and efficient economic and social infrastructure and productive capacities for sustainable development and sustained, inclusive and equitable economic growth. (This suggests that ‘sustainable development’ does not include ‘sustained, inclusive and equitable economic growth’) [149, 150]
 - We are required to recognize the need to provide social protection to all members of society, fostering growth, resilience, social justice and cohesion, including those who are not employed in the formal economy. (This is a good example of muddle. So-called social protection has nothing to do with whatever ‘sustainable development’ means.) [156]
 - We are required to support *African countries* in strengthening human capacities and democratic institutions, consistent with their priorities and objectives, with a view to furthering Africa’s development *at all levels*, and to make continued efforts to increase the flow of new and additional resources for financing which will support development efforts by African countries. (This is not limited to *sustainable* African development.) [184]
 - We are required to make enhanced efforts to achieve the sustainable management of *forests*, reforestation, restoration and afforestation, and commit to improving the livelihoods of people and communities by creating the conditions needed for them to sustainably manage forests, including through strengthening cooperation arrangements in the areas of finance, trade, transfer of environmentally sound technologies, capacity-building and governance. (Note confusion here between management and development, which are two different things.) [193]
 - We are required to feel deep concern for the devastating consequences of cyclical *drought and famine in Africa* and accept the need for urgent action through short, medium and long-term measures at all levels. (This can have no application to ‘sustainable development’) [205]
 - We are required to acknowledge that sustainable and adequate long-term *funding* is a key element for the sound management of *chemicals and waste*, in particular in developing countries. [223]
 - We are required to improve the capacity of our *education systems* to prepare people to pursue sustainable development, including through enhanced teacher training, the development of sustainability curricula, the development of training programmes that

- prepare students for careers in fields related to sustainability, and more effective use of information and communications technologies to promote access to *quality education* at all levels. (The final part suddenly broadens to include all types of education.) [230]
- We are required to promote sustainable development awareness among youth, inter alia by promoting programmes for non-formal education in accordance with the goals of the United Nations Decade of Education for Sustainable Development, 2005-2014. (See <http://unesdoc.unesco.org/images/0014/001416/141629e.pdf>) [231]
 - We are required strongly to encourage good practices in sustainability management on campuses and in their communities with the active participation of, inter alia, students, teachers and local partners, and teaching sustainable development as an integrated component across disciplines. (The mind boggles at this one.) [234]
 - We are required to underscore the importance of supporting educational institutions, especially higher educational institutions in developing countries, to carry out research and innovation for sustainable development, including in the field of education, to develop quality and innovative programmes, including entrepreneurship and business skills training, professional, technical and vocational training and lifelong learning, geared to bridging skills gaps for advancing national sustainable development objectives, gender equality and the empowerment of women. (At this point I give up! For further provisions dealing with finance see above.) [235]

Chapter 7 The British Planning System

When town and country planning law was introduced into the UK there was a remarkable omission. The new law said, without defining it, that ‘development’ now required the permission of some authority such as the appropriate minister or a local council. But it did not say, as would be the usual legislative procedure, on what the grounds were to be upon which a grant or refusal of planning permission should be based.

The nearest *Cullingworth and Nadin* can get to this in relation to years before 2004 is that planning decisions must serve the public interest.²⁴ Over the years, the UK gap over the legal meaning of ‘development’ has been gradually filled by detailed guidance documents framed by the executive (the Government of the day as advised by the impartial Civil Service). These were said not to be law, but this is misleading. If not actually law they were very like law because they were acted on, by officials such as civil servants and planning inspectors, exactly as if they were law. The same applies to development plans. *Cullingworth and Nadin* says ‘plans in the UK are not part of the law but are made under the law’.²⁵ The latter might be said of delegated legislation, but no one doubts it is law.

The British system has been basically administrative rather than legislative or judicial, though courts have a part to play – especially in the growing use of judicial review as a check on administrative action. Government bodies such as the Environment Agency have contributed in attempts to give meaning to the United Nations term ‘sustainable development’. For example in 2000 that body said:

‘Sustainable development is not simply about creating wealth and protecting the environment. It is also about caring for people and their quality of life. It is about ensuring that the quality of life of future generations will be as good as, or better than, it is for us.’²⁶

²⁴ Page 2.

²⁵ Page 3.

²⁶ Cited *Cullingworth and Nadin*, p. 251.

These three sentences are hardly more than vague waffle. The first tells us (very inadequately) what sustainable development is not, rather than what it is. The second is absurdly wide, with little meaningful content. The third is all about ‘quality of life’, a concept that again is ridiculously wide in a legal context.

It is scarcely worth publishing such pap, which is typical of this topic. As I have tried to show in the above treatment of the UN use of the phrase ‘sustainable development’, it has become little more than an incantation which has taken an unhealthy hold on our lives, goodness knows why. It is muttered semi-automatically, as though possessing the power of a magic spell or charm. The study of this term is really a matter for psychologists.

The purpose of contributing to the achievement of sustainable development was added to the law of England and Wales by the Blair Government’s Planning and Compulsory Purchase Act 2004 s. 39(2), which says that any body or person listed in s. 39(1) must exercise its functions ‘with the object of contributing to the achievement of sustainable development’. No definition of this term is given. It is not clear whether or not it is intended to correspond to the United Nations meaning of the term, explained in detail above. An official explanatory note to s. 39 says the persons or bodies concerned ‘must have regard to policies and guidance on sustainable development issued by the Secretary of State or the National Assembly of Wales’. In view of the uncertain meaning of this important term it is scandalous that a definition was not attempted in s. 39, as would normally be expected to be done with a problematic statutory term.

The relevant UK Government Department is the Department for Environment, Food and Rural Affairs (Defra). It was formed in June 2001 when the Ministry of Agriculture, Fisheries and Food (MAFF) was merged with part of the Department of Environment, Transport and the Regions (DETR) and with a small part of the Home Office. Defra’s *Sustainable Development in Government*²⁷ gives what it calls ‘A very brief history of sustainable development’, which I now reproduce without changing the wording.

Chapter 8 Defra’s *Sustainable Development in Government*

The concept of sustainable development emerged from the post-War environmental movement, which recognised the negative impacts of human growth and development on the environment and communities. Since publishing the first ever national strategy for sustainable development in 1994, the UK Government has played a lead role in promoting sustainable development at home and overseas.

1972: Limits to Growth

Commissioned by the Club of Rome, *Limits to Growth* attempts to model the consequences of a growing human population in a world of finite resources, concluding that current patterns of growth cannot be sustained indefinitely.

1987: Our Common Future

The term sustainable development came to prominence through the United Nations Brundtland Commission. The commission’s 1987 report, *Our Common Future* defined sustainable development as ‘development which meets the needs of the present without compromising the ability of future generations to meet their own needs’.

1992: Rio conference

The concept received further attention at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992, the first international attempt to develop strategies for a

²⁷ <http://sd.defra.gov.uk/what/history>.

more sustainable pattern of development. Representatives of 178 national governments, including more than 100 heads of state, and many organisations representing civil society attended the conference. The world had never previously witnessed a larger gathering of national leaders. At the summit, governments around the world committed to sustainable development. The UK government was the first to produce its national strategy in 1994.

1999: A Better Quality of Life

In 1999, the UK government outlined how it proposed to deliver sustainable development in *A Better Quality of Life*. This set out a vision of simultaneously delivering economic, social and environmental outcomes as measured by a series of headline indicators.

2002: Johannesburg summit

The World Summit on Sustainable Development (WSSD) took place in Johannesburg from 26 August to 4 September 2002. The summit delivered three outcomes: a political declaration, the Johannesburg Plan of Implementation and the establishment of numerous partnership initiatives. Key commitments covered sustainable consumption and production, water and sanitation, and energy. The outcomes complemented the Millennium Development Goals, reinforced Doha and Monterrey agreements and set challenging global goals and targets on accessing water, sanitation and modern energy services; increasing energy efficiency and use of renewable energy; sustainable fisheries and forests; reducing biodiversity loss on land and in our oceans; chemicals management; and decoupling environmental degradation from economic growth – that is, achieving sustainable patterns of consumption and production.

The UK's international priorities on sustainable development have principally been framed by the Millennium Development Goals, the Doha Development Agenda of the World Trade Organisation, the Monterrey Consensus on Financing for Development and the Plan of Implementation of the 2002 World Summit on Sustainable Development (WSSD).

2005: Securing the Future

The year 2005 saw the publication of *Securing the Future*, a revised UK Government strategy for sustainable development. At the same time, a strategic framework was agreed by the UK Government and the devolved administrations in Scotland, Wales and Northern Ireland, providing a consistent approach and focus across the UK for the period up to 2020.

Chapter 9 British views on Sustainability

In 1999 the UK Labour government set out their strategy to help deliver a better quality of life through sustainable development. In 2005 they reviewed that strategy to take account of certain changes within the UK – devolution to Scotland and Wales, and delegation to regional bodies and local government. Sustainable development was explained in 2005 by Prime Minister Tony Blair in *The UK Government Sustainable Development Strategy*²⁸ He said:

‘Make the wrong choices now and future generations will live with a changed climate, depleted resources and without the green space and biodiversity that contribute both to our standard of living and our quality of life. Each of us needs to make the right choices to secure a future that is fairer, where we can all live within our environmental limits. That means sustainable development.

‘This is an agenda for the long-term. There is no magic wand that government or any one else can wave to make sustainable behaviour and activity the norm overnight. We will only succeed if we go with the grain of what individuals and businesses want, and channel their

²⁸ Cm 6467, March 2005.

creativity to confront the environmental challenges we face. Development, growth, and prosperity need not and should not be in conflict with sustainability . . .

‘Although climate change is the most serious global environmental threat, promoting new, modern, sustainable ways of living, working, producing and travelling also stand to achieve wider benefits to human health and well being. We need to maintain our duty of care towards our natural resources, for our own benefit and for the benefit of future generations.

‘. . . So the strategy includes clear actions to promote sustainability by involving people, leading by example and by demonstrating our commitment to deliver . . . We want to ensure that we spend your money sustainably, starting with a commitment to buy cleaner cars and by our new offsetting scheme to reduce the carbon impacts of unavoidable air travel . . . [we will] hand that task over to a strengthened Sustainable Development Commission, which will act as the independent watchdog of government progress²⁹.

‘This is a truly challenging agenda. It will involve working across departmental boundaries and through all levels of government – from the neighbourhood to the United Nations. It involves channelling the power of business by stimulating the market to innovate and to produce more cost effective and sustainable options for all purchasers. It needs the commitment of voluntary groups, and it involves influencing the individual everyday choices we all make. Most of all, it means focussing on long-term solutions, not short-term fixes . . . We have spent a long time getting to grips with the concept of sustainability . . . I want this new strategy to be a catalyst for action to secure our future.’

In Mr Blair’s above account we see the concept of sustainability applied not only to development but also to growth and prosperity, ways of living, working, producing and travelling, the running of communities, and the expenditure of money. The overall purpose is the defence of the environment, coping with climate change, not depleting natural resources unduly, protecting green spaces and biodiversity, etc. Behind it is the idea that we have a duty of care to the planet, keeping it in good condition for the benefit of our heirs and successors as well as our present generation. For obvious political reasons connected with the UK electorate, Mr Blair plays down the United Nations aspect, which stresses the need to consider the less developed nations of the world.

Turning to the *Oxford English Dictionary* (2nd edition), we find that the most helpful of three definitions of ‘sustainable’ is: ‘Capable of being maintained at a certain rate or level’. There is a quotation from the 1965 *McGraw-Hill Dictionary of Modern Economics*: ‘Sustainable growth, a rise in per capita real income or per capita real gross national product that is capable of continuing for a long time. A condition of sustainable economic growth means that economic stagnation will not set in.’ Another aim is: ‘The achievement of a sustainable, stationary population’.³⁰

UK planning law defines ‘development’ as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.³¹ This is clear enough. What is not clear is the meaning of ‘sustainable’ as used in the United Nations formula. Many criteria which are embodied in that formula do not involve sustainability in its normal meaning. Moreover many development projects also require criteria to be considered which are plainly outside the United Nations formula.

²⁹ This was not in fact done.

³⁰ *The Times*, 4 August 1976.

³¹ Town and Country Planning Act 1990, s. 55(1).

In 1995 the House of Lords Select Committee produced a lengthy report on the meaning of sustainable development. *Cullingworth and Nadin* devotes considerable space to the concept.³² and box 7.2 sets out various definitions of ‘sustainability’.³³ The authors more or less admit defeat with this passage:

‘Words cast a spell which can, at one and the same time, command respect and create great confusion. No word illustrates this better than the ubiquitous ‘sustainability’. There is a view that the word has been so badly abused and misused that it has lost any useful meaning; it now serves to obscure rather than reveal the real issues. General public awareness and understanding of the concept remains low.’³⁴

The authors conclude that the concept is ‘political, vague and uncertain’.³⁵

My own conclusion is that ‘sustainable’ as used in the United Nations formula is intended to be given a special meaning. This is not unusual in legislation, where what counts is the legal meaning of the term in question, which may be different to its ordinary meaning. But it has to be asked why it was thought sensible to adopt a term which has to be used in a special way, and which has caused much confusion and misunderstanding, when more suitable terms are available. It would be much closer to the intention behind the United Nations formula to refer instead to ‘responsible development’ or ‘ethical development’. Another possible term is ‘smart development’.³⁶

Here I need to draw on my textbook *Bennion on Statutory Interpretation* (referred to below as the Bennion Code). This is in terms of ‘enactments’, that is parts of an Act of Parliament. The same interpretative principles apply to delegated legislation and to official guides, such as the NPPF, which are intended to be acted on in the same way as law, though always subject to actual law.

The Bennion Code says ‘The interpreter’s duty is to arrive at the legal meaning of the enactment, which is not necessarily the same as its grammatical meaning. This must be done in accordance with the rules, principles, presumptions and canons which govern statutory interpretation (in this Code referred to as the interpretative criteria, or guides to legislative intention).’³⁷

The Bennion Code goes on to say that if the term in question is ambiguous in its application to the facts of the instant case, the legal meaning will be in doubt. Two possible and conflicting meanings of the term ‘sustainable development’ are shown by *Cullingworth and Nadir* in discussing a comment by Shiva³⁸.

Even where the term is not ambiguous, there may be real doubt as to the legal meaning because the relevant factors drawn from the criteria laid down by law as guides to the legislative intention tend in different directions.³⁹ This requires a balancing exercise. The basic rule of statutory interpretation is that ‘the legislator’s intention is taken to be that in any case of doubtful meaning the enactment shall be construed in accordance with the general guides to legislative intention laid down by law; and that where these conflict the problem shall be resolved by weighing and balancing the interpretative factors concerned’⁴⁰.

³² See chapter 7, pp. 248-287.

³³ See p. 251.

³⁴ Page 250.

³⁵ Ibid.

³⁶ <http://www.smartdevelopmentsolutions.co.uk/>

³⁷ Bennion Code s. 2(1).

³⁸ See pages 250-251.

³⁹ Bennion Code s. 150. For a fuller explanation see the Comment on s. 150 at pp. 441-443.

⁴⁰ Bennion Code s. 193.

Chapter 10 The National Planning Policy Framework (NPPF)

On 27 March 2012 Mr Greg Clark MP, Minister for Planning in the UK Coalition Government, published the National Planning Policy Framework (NPPF) which, following United Nations initiatives dating back at least to 1972, lays great stress on the concept of sustainable development. It includes a summary which reads: ‘The NPPF is a key part of our reforms to make the planning system less complex and more accessible, to protect the environment and to promote sustainable growth’. Following the precedent of s. 39(2) of the Planning and Compulsory Purchase Act 2004, no definition of ‘sustainable development’ is given in the NPPF, except for the inadequate comment: ‘Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations’.⁴¹

Forty-three pre-NPPF guidance documents are listed in Annex 3 to the NPPF. They are replaced by the thirteen sections appearing under the heading ‘Achieving sustainable development’.

These key provisions of the NPPF relating to sustainable development are set out next, retaining the exact wording of the NPPF (including numbering, headings, etc.). For the NPPF footnotes see the end of this extract.

Achieving sustainable development

[*Preamble*] International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy *Securing the Future* set out five ‘guiding principles’ of sustainable development: living within the planet’s environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly

6. The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.

7. There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:

- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and

- **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

8. These roles should not be undertaken in isolation, because they are mutually dependent. Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities. Therefore, to achieve sustainable development, economic, social and environmental gains should be sought jointly and

⁴¹ Page i.

simultaneously through the planning system. The planning system should play an active role in guiding development to sustainable solutions.

9. Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life, including (but not limited to):

- making it easier for jobs to be created in cities, towns and villages;
- moving from a net loss of bio-diversity to achieving net gains for nature;⁶
- replacing poor design with better design;
- improving the conditions in which people live, work, travel and take leisure; and
- widening the choice of high quality homes.

10. Plans and decisions need to take local circumstances into account, so that they respond to the different opportunities for achieving sustainable development in different areas.

The presumption in favour of sustainable development

11. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.⁷

12. This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

13. The National Planning Policy Framework constitutes guidance⁸ for local planning authorities and decision-takers both in drawing up plans and as a material consideration in determining applications.

14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking. For plan-making this means that:

- local planning authorities should positively seek opportunities to meet the development needs of their area;
- Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless: - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or - specific policies in this Framework indicate development should be restricted.⁹ For decision-taking this means:¹⁰

- approving development proposals that accord with the development plan without delay; and
- where the development plan is absent, silent or relevant policies are out of date, granting permission unless: - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or - specific policies in this Framework indicate development should be restricted.

15. Policies in Local Plans should follow the approach of the presumption in favour of sustainable development so that it is clear that development which is sustainable can be approved without delay. All plans should be based upon and reflect the presumption in favour of sustainable development, with clear policies that will guide how the presumption should be applied locally.

16. The application of the presumption will have implications for how communities engage in neighbourhood planning. Critically, it will mean that neighbourhoods should:

- develop plans that support the strategic development needs set out in Local Plans, including policies for housing and economic development;
- plan positively to support local development, shaping and directing development in their area that is outside the strategic elements of the Local Plan; and
- identify opportunities to use Neighbourhood Development Orders to enable developments that are consistent with their neighbourhood plan to proceed.

NPPF Footnotes

⁶ Natural Environment White Paper, *The Natural Choice: Securing the Value of Nature*, 2011.

⁷ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

⁸ A list of the documents revoked and replaced by this Framework is at Annex 3. Section 19(2)(a) of the Planning and Compulsory Purchase Act 2004 states, in relation to plan-making, that the local planning authority must have regard to national policies and advice contained in guidance issued by the Secretary of State.

⁹ For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.

That is the end of the verbatim extract from the NPPF.

Chapter 11 My Criticisms of the NPPF

The following comments are given in the same order as the provisions of the above extract.

Preamble The ‘broad principles’ set out by ‘international and national bodies’, as exemplified by Resolution 42/187, are uniformly vague and unsatisfactory. The five guiding principles in *Securing the Future* are open to the following criticisms. ‘Living’ within the planet’s means goes much wider than ‘development’. ‘Ensuring a strong, healthy and just society’ is quite different from ‘sustainability’ and ‘development’. ‘Promoting good governance’, and ‘using sound science responsibly’ are again far removed from ‘sustainability’ and ‘development’. Whoever thought up these five principles as equated with ‘sustainable development’ did not understand the meaning of simple words or did not care about adhering to their meaning. ‘Development’ is not ‘living’. ‘Sustainable’ simply means ‘capable of continuing’. We are not living in the world of *Alice in Wonderland*, where Humpty Dumpty’s words meant whatever he decided they meant, however far removed from their true meaning.

Paragraph 6 The first sentence is simply untrue. The second sentence confronts the hapless enquirer with the prospect of scouring two hundred complicated paragraphs in order to discover the elusive meaning of ‘sustainable development’.

Paragraph 7 This is copied from the UN effusions on sustainable development and is unsatisfactory. The first element puts too much weight on ‘sustainability’, which is only part of the story. There is nothing ‘social’ about sustainable development if the component words are taken literally. There is no merit in the fact that a proposed development is ‘sustainable’ if it is otherwise objectionable. A factory built in a green field may be ‘sustainable’ in the business sense while nevertheless being a blot on the landscape from the environmental viewpoint.

Paragraphs 8 to 10 Largely waffle.

Paragraphs 11 to 16 There is little here that is worthy of comment. Considering the sloppy imprecision of the phrase ‘sustainable development’ as used in the NPPF and elsewhere, paragraph 14’s ‘golden thread’ is highly dangerous. It might plausibly cover anything. On the contrary if used according to its literal meaning it plainly should not be regarded as a useful guide. As I say in my comments on paragraph 7, there is in truth no merit in the fact that a proposed development is ‘sustainable’ if it is otherwise open to objection.

Chapter 12 Analysing the NPPF

In a foreword to the NPPF the Minister for Planning says:

‘The purpose of planning is to help achieve sustainable development.⁴² Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations . . . Our natural environment is essential to our wellbeing, and it can be better looked after than it has been. Habitats that have been degraded can be restored. Species that have been isolated can be reconnected. Green Belt land that has been depleted of diversity can be refilled by nature – and opened to people to experience it, to the benefit of body and soul.

‘Our historic environment – buildings, landscapes, towns and villages – can better be cherished if their spirit of place thrives, rather than withers. Our standards of design can be so much higher. We are a nation renowned worldwide for creative excellence, yet, at home, confidence in development itself has been eroded by the too frequent experience of mediocrity. So sustainable development is about positive growth – making economic, environmental and social progress for this and future generations. The planning system is about helping to make this happen.

‘Development that is sustainable should go ahead, without delay – a presumption in favour of sustainable development that is the basis for every plan, and every decision.⁴³ The NPPF sets out clearly what could make a proposed plan or development unsustainable.⁴⁴ In order to fulfil its purpose of helping achieve sustainable development, planning must not simply be about scrutiny. Planning must be a creative exercise in finding ways to enhance and improve the places in which we live our lives.

‘This should be a collective enterprise. Yet, in recent years, planning has tended to exclude, rather than to include, people and communities. In part, this has been a result of targets being imposed, and decisions taken, by bodies remote from them. Dismantling the unaccountable regional apparatus and introducing neighbourhood planning addresses this.

‘In part, people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities. This NPPF changes that. By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning.’⁴⁵

⁴² This is grossly misleading. Often a development proposal lacks any element relating to sustainability, for example one for temporary use. Again, many other important factors may enter into the planning decision, for example public opposition, lack of need for the development, wasteful use of land, despoiling of a view, intrusion on privacy, etc.

⁴³ This is an obvious nonsense: see previous footnote.

⁴⁴ This is untrue.

⁴⁵ This is a very doubtful proposition. The ‘thousand pages of national policy’ consist of detailed guidance that has been carefully worked out from experience over many years. To replace them with ‘fifty pages written simply and clearly’ is likely to rob those concerned of precise answers to their particular problems.

The NPPF goes on to say that Resolution 42/187 of the United Nations General Assembly defined sustainable development as ‘meeting the needs of the present without compromising the ability of future generations to meet their own needs’⁴⁶. The NPPF says that its wording ‘must be taken into account in the preparation of local and neighbourhood plans, and is a material consideration in planning decisions’.⁴⁷ The NPPF points out that it ‘does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant’.⁴⁸

Later the NPPF switches to a concept described as ‘sustainable economic growth’ as if this were equivalent to ‘sustainable development’, which it plainly is not.⁴⁹ It uses vague language such as ‘an economy fit for the 21st century’ (as though a mere calendar change had substantial significance).

Chapter 13 Other Reactions to the NPPF

Extracts from article by Edward Fennell in The Times Law 5 April 2012

‘The publication by Planning Minister Greg Clark of the final version of the NPPF was greeted positively by both sides in the long-running planning policy saga. Champions of the environment expressed relief that the right kind of safeguards were in place while developers seemed satisfied that they could start investing again in commercial and housing projects. Had gregarious Greg magically managed to square the circle of pleasing all parties?’

‘Not quite. Predictably, it was the lawyers who were the awkward squad, pointing out that while the NPPF had quite a lot to commend it, there were still major issues that had been glossed over. As Tim Johnson, of DAC Beachcroft, observed: The NPPF seeks to achieve a balance . . . however, we continue to wonder whether it has resulted in policies that, in trying to satisfy all, will end up satisfying nobody. It is potentially a document that will need to be subject to some quick revisions.’

‘Christopher Stanwell, of Nabarro, agrees that there is a danger that the broad and fastidiously balanced terms in which the framework is expressed means that each side can read their own interpretation into it: That there was backing from both developers and environmentalists did worry me. Already the framework’s usefulness is being challenged in the context of next month’s local elections.’

‘Local councils will have to check that every decision they make complies with the new NPPF, says Denis Archdeacon, a Labour activist and a candidate for a seat on Winchester City Council. It takes effect immediately and could well hinder the local plan process already under way. Reducing more than 1,000 pages of planning guidance to just 50 pages may sound helpful, but the inevitable ambiguities in this slimmed-down document will create a lawyers’ paradise. It will lead to more planning matters being determined by the courts instead of being decided by local people. This is the exact opposite of what had been intended.’

It is like the delusion that complex statute law can be painlessly replaced by much shorter formulations written in so-called ‘plain English’.

⁴⁶ Page 2.

⁴⁷ Page 1.

⁴⁸ Ibid. This illustrates the fact that so-called ‘sustainable development’ is far from being the only consideration in most planning decisions.

⁴⁹ Page 6.

‘The threat of an escalation of cases going to appeal and then judicial review — at least during a transition period — is a concern. The Government maintains that there should be a powerful presumption in favour of sustainable development that underpins all local plans and decisions. But, says Stanwell: It’s totally up for grabs what ‘sustainable development’ means. Or as Tim Taylor, of Forsters, puts it, By simplifying the rules you are opening up the scope for wider disputes . . . It is all about the weight that you attribute to the various factors.

‘Alistair Watson, of Taylor Wessing, says that three or four major test cases will be required before it is possible to see how the NPPF will shape the planning landscape in the medium-to-long term. The main focus of interest will be on how the economic, social and environmental factors are calculated in the evaluation of sustainability.

‘But Ian Trehearne, of BLP, observes: Sustainability is a very elastic concept — there’s a real problem in how to define it. It may well boil down to subjective judgments made by judges who, as Tim Johnson says (given the shortage of specialist planning judges) could adopt individualistic approaches.

‘Alistair Watson, of Taylor Wessing, says that large infrastructure projects such as power stations, ports and airports will not be covered by the NPPF; they will have their own specific National Policy Statements. Local communities should not, therefore, take the NPPF to mean that it is a policy document that can overrule or overcome National Policy Statements on large infrastructure projects.

‘So it is all more complicated than the original reactions last week suggested. But perhaps to imagine that any Government could come up with a simple cure-all for our planning problems was always going to be illusory. As Tim Johnson put it: says: Britain is a small country with great pressures on land and there is inevitable conflict between those who want to conserve and those who want to develop. There is never going to be an easy answer to these conflicts so matters have to be resolved by discussion and in some cases the legal process.

Letter from Francis Bennion published in The Times on 9 April 2012

‘Praise should be given to the article by Edward Fennell (Law, 5 April) on the new NPPF. It ably shows the wide disquiet felt about this document, particularly its reliance on the faulty concept of ‘sustainable development’. With wide experience as a parliamentary draftsman accustomed to framing statutory definitions, I am astonished that heavy weight should be placed on such an inadequate term. It will cause prolonged argument at almost every future planning hearing.

‘The NPPF contains no proper definition of the term ‘sustainable development’. It says ‘Sustainable means ensuring that better lives for ourselves don’t mean worse lives for future generations’. What sort of definition is that?

‘The NPPF also says ‘Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs.’ That is no better as a definition.

‘The NPPF adds: ‘The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system.’ Are planning hearings really going to have to plough through over two hundred paragraphs of this document every time there is argument about whether a proposed development is ‘sustainable’?

‘The government should think again.’

Letter from various bodies published in The Times on 13 April 2012

‘In our letter (‘Planning for a sustainable future’, 14 March 2012), we anticipated the publication of the Government’s proposals for planning reform, and called for these to move away from the sterile and misleading debate that pits growth against the environment. We set out a number of yardsticks for success, which would make the difference between a strong, sound and sustainable planning policy and one that would open the way for rancour, dispute and the degradation of our priceless natural and historic environments.

‘We are therefore pleased that the Government has listened to many of our concerns. In the NPPF the definition of sustainable development has been strengthened⁵⁰, protection for designated sites is retained, there is recognition for local wildlife sites and the intrinsic character and beauty of the countryside⁵¹, and a new emphasis on environmental enhancement and restoration. The importance of development taking place on previously developed (brownfield) sites, provided they are not of high environmental value, is recognised, alongside strengthened policies to bolster town centres.

‘The ultimate proof of the NPPF will be how it works in practice, and whether it allows for the sustainable development the Government wants while protecting what Greg Clark, the Planning Minister, rightly described as what we hold dear in our matchless countryside and in the fabric of our history. Our organisations will work across the country to try to ensure that it does.’

Peter Waine, Campaign to Protect Rural England

Paula Ridley, Civic Voice

Loyd Grossman, The Heritage Alliance

Simon Jenkins, National Trust

Ian Darling, RSPB

Paul Wickham, The Wildlife Trusts

Letter dated 13 April 2012 from Francis Bennion to The Times (not published)

‘The joint letter (Letters, 13 April 2012) by Campaign to Protect Rural England, Civic Voice, The Heritage Alliance, National Trust, RSPB, and The Wildlife Trust says approvingly that in the NPPF the definition of sustainable development has been strengthened. Evidently the text of the joint letter was agreed among these six bodies before publication of my letter of 9 April and the article by Edward Fennell (Law, 5 April) to which I refer in it. Both these contain strong adverse criticisms of the definition, which require an answer from the Government. So far no answer has been forthcoming, which suggests the criticisms are justified.

‘There is a further question about the status of the NPPF. It lists 43 policy documents which it says it replaces.⁵² All these, and the NPPF itself, are worded as if they were law. But they are not law, and their origins have none of the safeguards provided by proper law-making procedure. The rule of law requires that what is effectively law should not be disguised in this way.’

Letter dated 25 April 2012 from Francis Bennion to Campaign to Protect Rural England

‘I am a life member of CPRE.

‘I am writing about the joint letter in *The Times* of 13 April last which was signed on behalf of the CPRE, of which my wife and I are members. The letter says approvingly that in the NPPF the definition of sustainable development has been ‘strengthened’. However a few days earlier *The Times* had published my letter of 9 April. This, and the article by Edward Fennell (Law, 5 April)

⁵⁰ This is untrue. There is no proper definition of sustainable development.

⁵¹ This is disputable, since development is encouraged by the NPPF.

⁵² Those concerned with planning should not lose sight of these 43 documents. Their significance remains, and they are likely to remain highly relevant in planning disputes.

to which I refer in it, both contain strong adverse criticisms which require an answer from the Government. So far no answer has been forthcoming, which suggests the criticisms are justified.

‘I am an experienced parliamentary draftsman, and am very unhappy about the concept of sustainable development. It seems to me to have virtually no meaning, and yet it is intended to use it extensively in deciding planning appeals. I would like to be put in touch with someone on the CPRE staff who is competent to discuss this difficult matter with a view to persuading the CPRE to try and get it remedied.

‘I would like to expand the argument given above by giving the following example based on a local case in Exmouth.

‘The East Devon District Council wish to procure the building of a supermarket on the rugby ground near the Exe Estuary which is adjacent to the Imperial Recreation Ground. This brings into play paragraphs 73 and 74 of the NPPF, which run as follows.

73. Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.

74. Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

‘Building a supermarket on this site would only be sustainable development within the intended meaning of that term if the requirements of these two paragraphs are met. But in ordinary language the question whether a supermarket on this site would be sustainable has nothing to do with paragraphs 73 and 74. It depends on whether Exmouth needs and can support another supermarket in its centre. That illustrates the fact that the term sustainable development is highly misleading and should be replaced.

‘The above does not embrace all the complexities that surround this issue, but is intended as a broad statement. Detailed work would be needed to translate it into actual amendments to the NPPF.

‘I would be happy to assist CPRE in taking the matter further if desired.’⁵³

Extract from letter from Francis Bennion published in Private Eye on 17 May 2012

‘Stewart Baseley of the Home Builders Federation says it was a rival trade association, the House Builders Association, and not his own lot that described the Government’s NPPF as a mish-mash. I am reluctant to intrude on a private argument, but I have to side with his rivals. The NPPF really is a mish-mash, and a particularly horrible one at that.

⁵³ A letter in similar terms was sent to Sir Simon Jenkins, Chairman of the National Trust (of which I am also a member). Discussions have proceeded with the CPRE, but nothing meaningful has followed with the National Trust.

‘I also have to find fault with Baseley’s outfit for asking the government to introduce the presumption in favour of sustainable development immediately. As a parliamentary draftsman of many years’ experience I can say that it is a lousy concept, empty of meaning.’

Chapter 14 A Welsh initiative

The concept of sustainable development has become highly fashionable in many quarters. For example in 2011 the Welsh Government published the following on its website:

‘Our aim is to become a one-planet nation, putting sustainable development at the heart of government . . . Our goal is to ensure that we make the best possible use, in the wider public interest, of our ultimate resources as a nation: Welsh land, water and air. We will support this through measures to greatly increase the efficiency with which resources, including energy, are used. To achieve this we will improve and integrate the way in which we manage and regulate our use of land, sea, air and water, and will work with others across Wales to deliver our commitment to sustainable development as the central organising principle of Government.’

If development of a particular area is wise and sensible it is as well that it should be capable of being maintained, at least until something more suited to the site is thought up (as one day it probably will be). But not all developments are wise and sensible, and sustainability is no guarantee of this. We would prefer it if an unsuitable development were not sustainable, then it could be got rid of more easily.

The Welsh Government proposes to legislate to secure sustainable development. The current definition of ‘sustainable development’, agreed by the Welsh Cabinet, is:

‘enhancing the economic, social and environmental wellbeing of people and communities, achieving a better quality of life for our own and future generations in ways which promote social justice and equality of opportunity; and enhance the natural and cultural environment and respect its limits – using only our fair share of the earth’s resources and sustaining our cultural legacy’.⁵⁴

This goes far beyond any notion of the development (including use) of land. It illustrates the tendency for any discussion of sustainable development to end in equating it to improved quality of life in all its aspects – something akin to the Utopia of Sir Thomas More (1478-1535).

Section 79 of the UK’s Government of Wales Act 2006, which applies to the Welsh Government, contains a duty to make a scheme setting out how Welsh Ministers propose to promote sustainable development ‘in the exercise of their functions’. Sustainable development is not defined in the Government of Wales Act 2006. In commenting on the proposals mentioned in s. 79 the Campaign for the Protection of Rural Wales (CPRW) points out that the concept of sustainability is problematic. It argues that ‘it is essential that the forthcoming Sustainable Development Bill includes a succinct and unambiguous definition of the term sustainable development’. It suggests the following:

Sustainable Development would be defined as: ‘the outcome of any process or conscious decision which maintains or enhances a resource’s sustainability credentials and functional qualities, for the benefit of improving public well being’.

This has the objection of using the term it purports to define, namely ‘sustainability’. Since that is the core difficulty, the proposed definition is not helpful.

⁵⁴ *One Wales: One Planet* A Welsh Government Discussion Paper - Sustainable Development Bill, November 2011, <http://wales.gov.uk/docs/desh/publications/111201susdevdiscussionen.pdf>

Chapter 15 A Better Approach in New South Wales

In Australia they have toned down the absurdities by adding the modifying term ‘ecologically’, to ‘sustainable development’. This is in the Protection of the Environment Administration Act 1991 of New South Wales, the long title of which is ‘An Act to constitute the Environment Protection Authority and to make provision with respect to its general responsibilities and management . . .’

This Act treats the concept of sustainable development more appropriately by giving it a relatively minor position limited to matters concerning the environment and restricting its legal meaning. This is done by stating that the objectives of the Authority include ‘to protect, restore and enhance the quality of the environment in New South Wales, *having regard to the need to maintain ecologically sustainable development*.⁵⁵ For this purpose ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes’.⁵⁶ This is a considerable improvement, though some difficulties remain over the precise meaning of the term ‘sustainable development’.

Chapter 16 Should This be Part of our Law?

There are several references in what I have said above to the fact that, in the United Kingdom, Government pronouncements on planning that largely have the effect of law are not in fact part of our law. This is anomalous, indeed unconstitutional. It has deleterious effects.

We pride ourselves on living under the rule of law, a situation that has recently been confirmed by Act of Parliament.⁵⁷ Lord Phillips of Worth Matravers, President of the new UK Supreme Court, said ‘The rule of law is a principle that applies in all situations’.⁵⁸

Lord Hope of Craighead (Deputy President of the Supreme Court) said:

It’s not very difficult to understand that if the rule of law were not there then the pressures would go on pressing and the extent of the invasion of liberty would widen . . . it’s our job to see that that simply does not happen . . . [We hope] for a future where the executive is more aware of what can be done and what can’t be done and the way in which it should go about its affairs . . . We have to fulfil the function we have as the guardians of the rule of law . . .⁵⁹

Chapter 17 The term Sustainable Development as ‘Soft Law’

Mr Stephen Tromans QC has suggested to me that ‘sustainable development’, though unsatisfactory as a legal term of art because of its uncertainty of meaning, has its uses as a ‘soft law’ concept⁶⁰ and a non-legal tool. When I challenged him on this he gave a reply which I reproduce with his permission:

‘The term sustainable development was never intended to be used in the way that the NPPF seems bent on doing . . . I think its possible usefulness as a soft law concept is actually by virtue of its meaninglessness! It provides an aspiration to take a long-term view and to try

⁵⁵ Section 6(1)(a). Emphasis added.

⁵⁶ Section 6(2). This adds that ecologically sustainable development can be achieved through the implementation of specified principles and programs which are too elaborate to be listed here. They are set out in the Appendix below.

⁵⁷ See Constitutional Reform Act 2005 s. 1, which says that the Act does not adversely affect ‘the existing constitutional principle of the rule of law’. Section 17(1) of the Act requires the Lord Chancellor to swear to respect the rule of law.

⁵⁸ ‘The Highest Court in the Land’, *Justice*, BBC 3 TV, 27 and 31 January, 2011.

⁵⁹ *Ibid.*

⁶⁰ This is a concept I reject as illegitimate, for reasons explained below.

and integrate environmental considerations into policy making decisions which might otherwise turn on the economics only. To that extent, it has been in some cases a sort of springboard for harder-edged initiatives in renewables, waste management, etc.

‘There has also developed a sort of sustainability industry which advises companies etc. on improving their environmental performance, and where again the general concept has been translated into processes for assessing whether a company is improving in terms of its ‘sustainability’ - but these really only have meaning when put in terms of things like water usage, energy efficiency, waste generated etc. The UK Sustainable Development Commission before it was abolished did some quite good work on advising government how to approach matters such as procurement in a sustainable way. It did not need the concept to give that advice, but if there had never been the concept then maybe the advice would never have been forthcoming.

‘In those ways I think the concept has been useful, but remains meaningless! It only gains meaning when translated into specific initiatives.’

This opinion from a distinguished expert in the field throws a valuable light on the controversy with which the present report is concerned. The trouble with it is that the true meaning of ‘sustainable’ is relatively narrow and does not equate to the wide meaning which some people have given that adjective even in the British setting. What is certain is that an enormous amount of confusion has been caused, as the present report amply testifies.

The expression ‘soft law’ has been defined as ‘rules issued by law-making bodies that do not comply with procedural formalities necessary to give the rules legal status yet nonetheless may influence the behaviour of other law-making bodies and of the public’.⁶¹ This is misleading and illegitimate because what is called ‘soft law’ is not law at all and therefore cannot be, in a legal context, ‘rules’. Other types of rule, such as rules of grammar, are binding only in the sense given by the medium to which they relate. Thus it infringes the rules of grammar to attempt to distort the meaning of a substantive (‘law’) by affixing an inappropriate modifier (‘soft’). Such infringements can cause damage, as has happened with the term ‘sustainable development’.

Chapter 18 Conclusions

The conclusions I draw from the above discussion are as follows.

Conclusions regarding the United Nations

My conclusions regarding the United Nations amount to a threefold protest:

- (1) The UN is demanding on a continuing basis from the United Kingdom, along with other developed countries, the expenditure of huge sums of money for the benefit of poorer countries. Having regard to the severe economic depression which is currently afflicting the developed countries, this is grossly unreasonable and would never be agreed to on a vote by their populations. So it is wrong to try to impose these burdens, especially in the elaborate and expensive way that has prevailed in recent years. The UK Government should put an end to its participation in and support for this process.
- (2) From at least 1972 the UN has been justifiably concerned about irresponsible development that endangers the planet. To meet these concerns it has adopted a policy of encouraging what it calls ‘sustainable development’. As a separate matter the UN is also concerned about world poverty and unjustified inequalities between nations. Over the years the perceived need to deal with these latter problems has mistakenly been treated as also calling for ‘sustainable development’.

⁶¹ Jacob E. Gerson and Eric A. Posner, ‘Soft Law’, 61 Stanford Law Review 25 March 2008, p. 1.

(3) The term ‘sustainable development’ as now used by the United Nations is unsatisfactory because it is undefined, ambiguous and misleading, and does not accurately convey the actual objectives. It is unsatisfactory as respects both terms used. The term ‘development’ is a substantive or noun. The term ‘sustainable’ is a modifier or adjective. Since both are vague in meaning each requires its own definition.

UK planning law defines ‘development’ as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.⁶² A possible definition of ‘development’ in the United Nations sense is:

‘A new or changed use of any of the resources of the planet as the environment within which all living and future human beings dwell or will dwell, and from which they draw or will draw their sustenance and support’.

A possible definition of ‘sustainable development’ in the UN sense is:

‘Development (as so defined) which respects and conserves the planet in a manner which can be continued for as long as the development in question lasts. In particular, but without prejudice to the generality of the foregoing, sustainable development:

- i) does not deplete or damage unreasonably the living beings, atmosphere, waters, rocks, metals, soils, and other natural resources of the planet (allowing for any replacement resources which have been, or are to be, provided);
- ii) uses appropriate energy resources, and does so to a reasonable extent and in an acceptable manner, having regard to the need to protect the climate;
- iii) provides for economic growth to the extent that may be requisite;
- iv) has regard to the need to avoid over-population of the planet.’

My protest regarding UN use of the term ‘sustainable development’ is twofold:

(1) It does not always comply with the definitions suggested above but is often varied and illogical, thus giving rise to a great deal of puzzlement and confusion.

(2) Not all relevant activity amounts to ‘development’ as defined above. A great deal of activity which harms the planet simply consists of continuing an *existing* improper use of its resources. The frequent UN urging in favour of ‘sustainable development’ alone tells only half the story of needed improvement and thus causes confusion.

My suggestion is that where (as so frequently) the UN urges ‘sustainable development’ without definition it should instead urge (1) that where development (as defined above) is carried out it should be sustainable development (as so defined) and (2) that where an improper use of the planet’s resources is being carried on it should cease.

Conclusions regarding the United Kingdom

As applied in United Kingdom town and country planning law the term ‘sustainable development’ has been dismissed by *Cullingworth and Nadin* as ‘political, vague and uncertain’.

This report is mainly concerned with the legal meaning of ‘sustainable development’ in the law of England and Wales and in the NPPF (which has the effect of law).

The NPPF is defective in a number of ways:

⁶² Town and Country Planning Act 1990, s. 55(1).

- a) It uses the objectionable term ‘sustainable development’ without defining it or attempting to explain its intended meaning in the NPPF, which is not the same as the United Nations meaning (expressed in the suggested definition given above);
- b) In paragraph 12 it notes that the Planning and Compulsory Purchase Act 2004 s. 39(2) says that any body or person listed in s. 39(1) must exercise its functions ‘with the object of contributing to the achievement of sustainable development’ but does not clear up the doubt about the legal meaning in s. 39(2) of the term ‘sustainable development’. In practical terms, the position is that existing Local Plans, while they should comply with s. 39(2) and mention the need for sustainable development, are using a term whose legal meaning is wholly uncertain.
- c) It creates a legal presumption in favour of ‘sustainable development’ which is unjustified considering its uncertain meaning;
- d) It is a mish-mash which mixes up the term ‘sustainable development’ with other concepts such as ‘sustainable economic growth’;
- e) It boasts of ‘allowing people and communities back into planning’ because it has ‘replaced over a thousand pages of national policy with around fifty. This is likely to rob those concerned of precise answers to their particular problems, a highly dangerous thing to do.

I invite comments on this report. Please email your comment by email to fb@fbennion.com. I propose to amend this report in the light of comments received by 31 December 2012 and forward the result to the Minister for Planning, Mr Greg Clark MP, with a request that the NPPF be suitably amended in the light of the report, and that a definition of ‘sustainable development’ in the British sense be provided for general use in legislation etc.

APPENDIX -Protection of the Environment Administration Act 1991 of New South Wales, s. 6(2)

Note For an explanation of this Appendix see chapter 15 above.

(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:

(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,

(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,

(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

20 September 2012.

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