The purpose of this chapter, in celebration of the retirement of Judge Thomas A. Mensah, is to assess the contributions of developing countries in the development of international environmental treaties, focusing particularly on the 1980s and especially the period immediately before the 1992 Rio United Nations Conference on Environment and Development (UNCED). It will assess how developing country viewpoints were taken into account during the respective negotiations, review key issues of concern to them as weighed against those of developed countries, and consider whether the global community achieved an appropriate balance in its decisions. Most importantly, in the final part of this chapter, given the increasingly critical nature of global environmental-related issues, it will offer a plan of action for how developing countries can enhance their negotiating capabilities for the future.

1 Judge T.A. Mensah is a long-standing family friend of the writer. He was Acting Dean of the Law Faculty of the University of Ghana when the author entered law school in 1968 and, later on, he had the distinct honour and privilege to request his services as a consultant to the World Bank to write a background paper on international environment for the World Development Report of 1992. His distinguished career as an international lawyer and international environmental lawyer is an inspiration to all. This chapter’s proposed plan of action and suggestions for how developing countries prepare and engage in international negotiations in the future is intended as a contribution to the celebration of Judge Mensah’s life as a path-breaker for developing country lawyers. The vast contributions of this notable scholar should galvanise all concerned lawyers to participate in a process of assisting developing countries, which are otherwise outmatched during international negotiations in terms of resources and capacity. The views expressed in this chapter are those of the author and do not represent those of the World Bank Group.
While recognising that significant progress has been made in developing country participation in international negotiations covering all sectors, in particular in trade negotiations as researched and demonstrated by Sheila Page and her colleagues in the Overseas Development Institute’s studies financed by the Department of International Development of the United Kingdom, there is still considerable room for improvement. In particular, it would seem appropriate to harness the talents, knowledge and experience of developing country luminaries in the legal, environmental, scientific and other fields for the benefit of developing countries in their participation in future environment-related global negotiations.

I. Introduction

Prior to the United Nations Conference on the Human Environment held in Stockholm in 1972 which, inter alia, established the United Nations Environment Programme (UNEP), there were only a few truly noteworthy international treaties dealing with environment-related issues. Those in force were adhered to by only a few countries, mainly countries that now belong to the European Union, as well as the United States and Canada. Most of these agreements had limited coverage and were binding in a large part through the operation of law in the colonial territories. Most agreements focused on issues related to the use of natural resources, especially where they crossed national borders. And, special focus was placed on the use of international waterways rather than on pollution or ecological issues.

This state of affairs changed significantly in the early 1970s, particularly after the Stockholm Conference and with the realisation by the scientific community in the world that the rapid deterioration of the environment would in the long run be harmful to the sustainability of the human race. It was recognised that the uncontrolled pollution of the atmosphere and international waters and the haphazard use of the natural resources would seriously undermine the ecological resources of the world. For many developing countries that gained independence from their colonial powers in the late 1950s and throughout the 1960s, their respective national interests was to take advantage of the natural resources that

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2 Page, S., Developing Countries in GATT/WTO Negotiations, Overseas Development Institute Study, February 2002; Page, S., Developing Countries: Victims or Participants? Their Changing Roles in International Negotiations, Globalization and Poverty Programme, Overseas Development Institute, 2003; Lecomte, H.-B., Effectiveness of Developing Country Participation in ACP-EU Negotiations, Overseas Development Institute Study, October 2001.