

# ELR

## NEWS & ANALYSIS

### Learning From the President's Council on Sustainable Development: The Need for a Real National Strategy

by John C. Dernbach

"Sustainable development begins at home."<sup>1</sup>

—Paula J. Dobriansky, U.S. Undersecretary of State for Global Affairs, to U.N. Economic Commission for Europe Regional Ministerial Meeting for the World Summit on Sustainable Development, Sept. 24, 2001

Sustainable development can be understood not as a new issue but as a new way of looking at all issues.<sup>2</sup> The name of the 1992 conference at which nations first endorsed sustainable development—the United Nations Conference on Environment and Development (UNCED)—indicates that the point of sustainable development is to integrate environment and development concerns. At UNCED, which was also known as the Earth Summit, countries specifically endorsed the principle of integrated decisionmaking—ensuring that the environment is considered and protected in all decisions.<sup>3</sup> This principle has profound consequences for national governance, because it suggests the need for a coherent across-the-board approach to environmental matters. Indeed, when the world's nations met in 1997 for a five-year review of progress toward sustainable development since the Earth Summit, they agreed to have national sustainable development strategies in place by 2002.<sup>4</sup>

Does the United States have such a strategy? Does it matter? These questions are less about individual issues than about overall national policy coherence and national institu-

tions that might provide a basis for making sustainable development happen across a range of issues and problems. The short answer is that the United States has no coherent overall strategy for sustainable development, and that it matters a great deal. Through much of the Clinton Administration, the President's Council on Sustainable Development (PCSD) provided the basis for such a strategy through a rich variety of policy recommendations, but relatively little effort was made to implement them within the executive branch of the federal government. While committed individuals were working within some specific agencies, there was no individual or organizational entity at the helm to steer the executive branch, or any charted course by which to steer.

The congressional effort to foster sustainable development during this period was even more meager. There appears to have been little if any strategic thinking within the U.S. Congress as a whole about how the United States can and should chart and sail a course for sustainable development.<sup>5</sup>

To be sure, national governments were encouraged at the Earth Summit to delegate sustainable development responsibilities "to the lowest level of public authority consistent with effective action."<sup>6</sup> Thus, state and local governments should play a considerable role in fostering sustainable development in the United States. But there are issues for which the lowest effective level is the national level, including issues for which the United States has treaty obligations. The number and quality of state and local sustainable development efforts is thus not an answer to the absence of a national strategy. For those issues on which a national effort needs to be coordinated with state and local efforts, moreover, the national government needs to play a leading role even if many of the decisions are made at the state or local level.

The United States should thus commit to the development and implementation of a strategy for achieving sustainable development. The strategy should include goals, deadlines for achieving those goals, public education about the importance of the strategy, and public participation in its implementation. Within the executive branch, there should be a

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The author is a Professor of Law at Widener University Law School. Sandy Gaines, Randy Solomon, and Marty Spitzer provided insightful comments on an earlier draft. Dayna Mancuso provided helpful research assistance. I am, of course, responsible for any remaining errors.

[Editors' Note: In June 1992, at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, the nations of the world formally endorsed the concept of sustainable development and agreed to a plan of action for achieving it. One of those nations was the United States. In August 2002, at the World Summit on Sustainable Development, these nations will gather in Johannesburg to review progress in the 10-year period since UNCED and to identify steps that need to be taken next. In anticipation of the Rio + 10 summit conference, Professor Dernbach is editing a book that assesses progress that the United States has made on sustainable development in the past 10 years and recommends next steps. The book, which is scheduled to be published by the Environmental Law Institute in June 2002, is comprised of chapters on various subjects by experts from around the country. This Article will appear as a chapter in that book. Further information on the book will be available at [www.eli.org](http://www.eli.org) or by calling 1-800-433-5120 or 202-939-3844.]

1. PAULA J. DOBRIANSKY, GOVERNANCE AS A FOUNDATION FOR SUSTAINABLE DEVELOPMENT (2001), available at <http://www.state.gov/g/rls/rm/2001/index.cfm?docid=5083> (last visited Feb. 15, 2002).

2. John C. Dernbach, *Sustainable Development as a Framework for National Governance*, 45 CASE W. RES. L. REV. 1 (1998).

3. Rio Declaration on Environment and Development, U.N. Conference on Environment and Development (UNCED), U.N. Doc. A/CONF.151/5/Rev. 1, 31 I.L.M. 874 (1992), princ. 4 [hereinafter Rio Declaration] ("In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.").

4. See *infra* note 18 and accompanying text.

5. This Article will not address actions by the judiciary, in part because the role of the courts in developing and implementing a sustainable development strategy is secondary to that of the executive and legislative branches. Courts can play both a positive and a negative role in helping a nation move toward sustainability. By ensuring adherence to laws designed to foster sustainable development, they can play a supporting role. But courts, including the U.S. Supreme Court, also have the ability to undermine the environmental objectives of the executive and legislative branches. See Richard J. Lazarus, *Restoring What's Environmental About Environmental Law in the U.S. Supreme Court*, 47 UCLA L. REV. 703 (2000).

6. UNCED, Agenda 21, U.N. Doc. A/CONF.151.26 (1992), ¶ 8.5(g) [hereinafter Agenda 21].

coordinating entity or mechanism for this strategy as well as for the integration of sustainable development concepts into its day-to-day activities. A parallel mechanism or entity should exist within Congress.

The September 11, 2001, terrorist acts reinforced rather than diminished the importance of sustainable development. Because peace and security are embedded in the definition of sustainable development, such an effort is necessary for sustainable development. Moreover, sustainable development is premised on the interconnected nature of security, economic, social, and environmental issues. The sustainable development framework would suggest that a full and effective response to terrorism must address the role that economic, social, and environmental conditions may play in contributing to terrorism.

A national sustainable development strategy would lead to a stronger and more efficient country that provides greater opportunities and quality of life for its citizens. The United States would be stronger and more efficient because it would be pursuing social, economic, environmental, and security goals in ways that are more and more mutually reinforcing or supportive over time, not contradictory or antagonistic. A national strategy would ensure that the health of the nation's natural environment improves at the same time that other goals are accomplished. A national strategy would also engage all sectors of society in the work of sustainable development, which is essential because sustainable development cannot be accomplished by government alone.

This Article begins by surveying the Earth Summit agreements concerning a national strategy for sustainable development, including the work that has since been done by other international organizations. It then reviews the six-year history of the PCSD (1993-1999), the primary U.S. effort that attempted to respond to these agreements. Finally, it makes recommendations for a U.S. strategy for sustainable development, building on the lessons learned from the PCSD experience.

### Sustainable Development and National Governance

Effective and supportive national governance is an essential requirement for sustainable development. None of the four broad goals of sustainable development—peace and security, environmental protection and restoration, economic development, and social development or human rights—can be achieved unless national governments work effectively to achieve those goals within their own borders. To be sure, effective national governance will not solve these problems by itself; international cooperation, for instance, is needed on a variety of issues. But in a world of sovereign nations, sustainable development will not happen to any significant extent unless it happens at the national level. It thus is not surprising that the texts agreed to at the UNCED repeatedly state the importance of strengthening the effectiveness of national governments. The ultimate responsibility for sustainable development, Agenda 21 says, rests “first and foremost” with national governments.<sup>7</sup> Agenda 21 is the global plan of action for sustainable development that was adopted at UNCED.<sup>8</sup>

Much of what is required for national governance for sustainable development is also required for good governance in general. As described by the U.S. Department of State (State Department) at a September 2001, meeting in preparation for the World Summit on Sustainable Development (WSSD) in Johannesburg, the components of good governance include effective governmental institutions and national laws, a favorable investment climate, public access to information, “informed and science-based decision-making,” public participation in governmental decision-making, and access to justice.<sup>9</sup> These components of national governance are all stated and supported in Agenda 21 as well as the Rio Declaration, a statement of 27 principles adopted at the 1992 Earth Summit.<sup>10</sup> As Undersecretary of State Paula J. Dobriansky stated at this meeting, “good governance is the indispensable foundation for sustainable development.”<sup>11</sup>

But that is not all that the Rio texts, especially Agenda 21, have to say about national governance for sustainable development. When countries agreed to Agenda 21, they each agreed to integrate sustainable development into national governance, and to establish and carry out a dynamic strategy for doing so. A strategy requires goals or objectives and some kind of planning process for defining and achieving them. But it is more than that. A sustainable development strategy also requires active support by a country's governmental leaders, a capable governmental implementing or coordinating agency or entity, and an effective means of involving and educating the public. More generally, a meaningful strategy requires a level of national effort and support that corresponds to the problems and opportunities of sustainable development.

National governments, Agenda 21 says, “should adopt a national strategy for sustainable development.”<sup>12</sup> Agenda 21 then adds: “Its goals should be to ensure socially responsible economic development while protecting the resource base and the environment for the benefit of future generations. It should be adopted through the widest possible participation.”<sup>13</sup> While Agenda 21 gave countries relatively little guidance on what those strategies were to constitute, the Rio Declaration principles suggest some key elements. Perhaps foremost among them is integrated decisionmaking.<sup>14</sup> They also include intergenerational equity, public participation in the development and implementation of governmental decisions, and, for the United States and other developed countries, developed country leadership.<sup>15</sup>

The recommended content of national strategies has been developed more fully since the Earth Summit. In 1996, the Organisation for Economic Cooperation and Development (OECD) issued a report that has had, and may continue to have, significant consequences for the role of national sus-

9. U.S. DEPARTMENT OF STATE, GOVERNANCE AND SUSTAINABLE DEVELOPMENT (2001), available at <http://www.state.gov/g/rls/rm/2001/index.cfm?docid=6340> (last visited Mar. 15, 2002).

10. See generally Dermbach, *supra* note 2.

11. DOBRIANSKY, *supra* note 1.

12. Agenda 21, *supra* note 6, ¶ 8.7.

13. *Id.*

14. Rio Declaration, *supra* note 3, princ. 4.

15. *Id.* princs. 3 (intergenerational equity), 10 (public participation), and 7 (developed country leadership).

7. *Id.* ¶ 1.3. When appropriate, the term “governments” includes the European Economic Community. *Id.*

8. Agenda 21 is a political agreement; while it is not legally binding, the United States and other countries agreed at UNCED to carry it out.

tainable development strategies.<sup>16</sup> The OECD report recommended a global partnership to accomplish ambitious but achievable economic, social, and environmental goals. For the environment, it proposed the “implementation of national strategies for sustainable development in all countries by 2005, so as to ensure that current trends in the loss of environmental resources are effectively reversed at both global and national levels by 2015.”<sup>17</sup>

At its five-year review of progress since the Earth Summit, the United Nations (U.N.) General Assembly—with the support of the United States—lent additional emphasis to national strategies when it set a 2002 deadline for establishing them. “By the year 2002, the formulation and elaboration of national strategies for sustainable development that reflect the contributions and responsibilities of all parties should be completed in all countries . . . .”<sup>18</sup> The Programme for the Further Implementation of Agenda 21 describes these strategies “as important mechanisms for enhancing and linking national capacity so as to bring together priorities in social, economic, and environmental policies.”<sup>19</sup> The “formulation and adoption” language indicates that these strategies are to have been adopted but not necessarily implemented by the time of WSSD (August 26–September 4, 2002). Thus, it has been suggested that the WSSD set 2005 as a date by which such strategies are to “be in a process of implementation,” and 2015 as a date by which nations would have reversed the loss of environmental resources.<sup>20</sup>

The core elements of such strategies are set out in, or based on, Agenda 21 and the Programme for the Further Implementation of Agenda 21, and also have been described in recent reports. In preparation for the WSSD, the OECD and others have articulated guidelines for developing national strategies<sup>21</sup> as well as criteria for evaluating their effectiveness.<sup>22</sup> In addition, the U.N. Department of Economic and

Social Affairs convened a forum of experts in Accra, Ghana, in November 2001, which issued a report concerning best practices for national sustainable development strategies, and making recommendations.<sup>23</sup> The following characteristics of a national strategy are among those most important to the United States.<sup>24</sup>

### *Means of Integrating National Objectives*

The most important thing about these strategies is that they need to “integrate environmental and development decision-making processes.”<sup>25</sup> The problem, Agenda 21 says, is that national governments have tended to treat economic, environment, and social aspects of development as separate and unrelated in their decisionmaking processes.<sup>26</sup> A strategy is to “build upon and harmonize the various sectoral economic, social and environmental policies and plans that are operating in the country.”<sup>27</sup> Governments should thus review existing policies and, in accordance with their own situation, achieve the needed integration on a “progressive” basis.<sup>28</sup> That suggests using the strategy to achieve deeper, more comprehensive, and more systematic integration over time.

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OF CRITERIA TO ASSESS THE EFFECTIVENESS OF NATIONAL STRATEGIES FOR SUSTAINABLE DEVELOPMENT (2001) [hereinafter EFFECTIVENESS CRITERIA], available at [http://www.johannesburgsummit.org/web\\_pages/monitoring\\_paper\\_ghana.pdf](http://www.johannesburgsummit.org/web_pages/monitoring_paper_ghana.pdf) (last visited Mar. 15, 2002).

16. DEVELOPMENT ASSISTANCE COMM., OECD, SHAPING THE 21ST CENTURY: THE CONTRIBUTION OF DEVELOPMENT COOPERATION (1996), available at <http://www1.oecd.org/dac/pdf/stc.pdf> (last visited Mar. 15, 2002).

17. *Id.* at 2. See also *id.* at 10-11. This recommendation implies the existence by 2015 of national capacity to effectively address environmental problems. *Id.* at 11.

18. Programme for the Further Implementation of Agenda 21, U.N. GAOR, 19th Special Sess., Annex, U.N. Doc. A/S-19-29, ¶ 24(a) (1997).

19. *Id.* ¶ 24.

20. United Nations, *Earth Summit 2002, What Are National Strategies for Sustainable Development?*, at [http://www.earthsummit2002.org/es/national-resources/about\\_nssd.htm](http://www.earthsummit2002.org/es/national-resources/about_nssd.htm) (last visited Feb. 21, 2001).

21. OECD, STRATEGIES FOR SUSTAINABLE DEVELOPMENT: PRACTICAL GUIDANCE FOR DEVELOPMENT COOPERATION (2001) [hereinafter PRACTICAL GUIDANCE]. The OECD defines a strategy for sustainable development as follows: “A co-ordinated set of participatory and continuously improving processes of analysis, debate, capacity-strengthening, planning and investment, which integrates the economic, social and environmental objectives of society, seeking trade offs where this is not possible.” *Id.* at 8.

See also DEVELOPMENT ASSISTANCE COMM., OECD, STRATEGIES FOR SUSTAINABLE DEVELOPMENT (2001), available at <http://www.nssd.net/References/KeyDocs/SusDe.pdf> (last visited Mar. 15, 2002) (endorsing PRACTICAL GUIDANCE); GUIDANCE IN PREPARING NATIONAL SUSTAINABLE DEVELOPMENT STRATEGIES (rev. draft 2001), available at [http://www.johannesburgsummit.org/web\\_pages/nsds\\_guidance\\_final\\_ghana.pdf](http://www.johannesburgsummit.org/web_pages/nsds_guidance_final_ghana.pdf) (last visited Mar. 15, 2002).

22. COLIN KIRKPATRICK ET AL., INSTITUTE FOR DEVELOPMENT POLICY AND MANAGEMENT, UNIVERSITY OF MANCHESTER, DEVELOPMENT

23. U.N. Dep’t of Economic and Social Affairs, Report of the International Forum on National Sustainable Development Strategies, Accra, Ghana, Nov. 7-9, 2001 (copy on file with author); *Summary of the International Forum on National Sustainable Development Strategies, 7-9 November 2001*, SUSTAINABLE DEVELOPMENTS, Nov. 11, 2001, available at <http://www.iisd.ca/linkages/download/pdf/sd/sdvol62num1.pdf> (last visited Dec. 15, 2001).

24. See PRACTICAL GUIDANCE, *supra* note 21, at 9 and EFFECTIVENESS CRITERIA, *supra* note 22, for somewhat similar lists.

25. Agenda 21, *supra* note 6, ¶ 8.4.

26. *Id.* ¶ 8.2 (explaining that this separation “has important implications for the efficiency and sustainability of development”). Agenda 21 thus makes integrated decisionmaking perhaps the foundational principle for sustainable development. In many ways, this is self evident. The whole point of sustainable development, after all, is to integrate environment and development. See, e.g., *id.* ¶ 1.1. See also Rio Declaration, *supra* note 3, princ. 4. Yet much of the growing literature on sustainable development focuses on other principles, particularly the precautionary principle (see, e.g., REINTERPRETING THE PRECAUTIONARY PRINCIPLE (Timothy O’Riordan et al. eds., 2001); PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT: IMPLEMENTING THE PRECAUTIONARY PRINCIPLE (Carolyn Raffensperger & Joel Tickner eds., 1999); INTERPRETING THE PRECAUTIONARY PRINCIPLE (Timothy O’Riordan & James Cameron eds., 1994); Christopher D. Stone, *Is There a Precautionary Principle?*, 31 ELR 10790 (July 2001); James E. Hickey Jr. & Vern R. Walker, *Refining the Precautionary Principle in International Environmental Law*, 14 VA. ENVTL. L.J. 423 (1995)) and intergenerational equity (see, e.g., AVNER DE-SHALIT, WHY POSTERITY MATTERS: ENVIRONMENTAL POLICIES AND FUTURE GENERATIONS (1995); EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY (1989)). Integrated decisionmaking has received relatively little attention. The precautionary principle, however, only comes into play when there has been an initial decision to integrate environmental concerns into a decisionmaking process; it is about the level of scientific certainty required in integrated decisionmaking. Intergenerational equity is a central goal of sustainable development, but it cannot be accomplished unless decisionmaking related to environment and development is integrated.

27. Agenda 21, *supra* note 6, ¶ 8.7.

28. *Id.* ¶ 8.4.



### Strategic Process

A national strategy is a strategic process, not a plan that will gather dust on a shelf. The strategic process envisioned by Agenda 21 is based on adaptive management. Adaptive management is a strategy for achieving natural resources protection and other goals in which decisionmakers and implementers are constantly monitoring and learning about the effects of their actions, correcting errors, improving their understanding, and making adjustments.<sup>29</sup> The limited information available to decisionmakers means that contingencies need to be prepared for, and that adjustments will need to be made over time based on new and perhaps unanticipated information and events. Agenda 21 thus recommends continued monitoring of decisions for their social, economic, and environmental impacts; and flexible planning approaches that enable adjustments based on new information or problems.<sup>30</sup> An incremental approach may be particularly attractive to developed countries because we cannot fully comprehend what a sustainable industrial society would be like. At each step, hopefully, it will come more clearly into view, and countries will have a better idea of what to do next.<sup>31</sup>

The need to change laws and policies in response to new information or different circumstances is necessarily part of the transition to a sustainable society, and it will continue even after the transition. The dynamic quality of both human activities and natural systems provides much of the reason. As human economic and social activities change over time, and as technology evolves, the actions needed to ensure sustainability also will change.<sup>32</sup> Sustainable development will thus need to become a permanent and integral part of each country's legal and institutional framework.<sup>33</sup> Natural systems, too, are dynamic and changing even in the absence of human intervention.<sup>34</sup> Sustainable management of natural resources means constantly anticipating and responding to population fluctuations for fish and animals, differences

in weather patterns and other manifestations of a changing environment. This challenge is complicated by human effects on those resources.<sup>35</sup> We do not know the precise manner, timing or severity of future environmental responses to various human actions.<sup>36</sup> Moreover, as scientific understanding of particular problems changes, our approach to dealing with them may also change.<sup>37</sup>

### Significant Real-World Results

A national strategy may be a strategic process, but it is more than that. It is also a means of developing and achieving specific objectives by particular times, and more broadly for creating a shared vision of what the country can and will achieve. The OECD goal of using strategies to reverse the loss of environmental resources in each country by 2015 underscores that point. Success here is measured by, and needs to be measured by, actual environmental protection and restoration, not by the enactment of laws, the writing of reports, or the initiation of projects.<sup>38</sup> Thus, it makes sense for a national strategy to set short- and long-term goals, to provide appropriate means of implementation, and to ensure that these goals are met. More generally, a national strategy worthy of the name would involve a level of national effort and commitment that is commensurate to the challenges and opportunities of sustainable development.<sup>39</sup>

### Country Specific

A national strategy is not to follow a generic blueprint that treats all countries the same. The countries that carry out Agenda 21 have "different situations, capacities and priorities."<sup>40</sup> They also have varying cultures, histories, forms of government, economic systems, and natural environments, and thus varying types of natural, human, and human-made capital that they should protect and enhance.

29. KAI N. LEE, COMPASS AND GYROSCOPE: INTEGRATING SCIENCE AND POLITICS FOR THE ENVIRONMENT 9 (1993). See also EFFECTIVENESS CRITERIA, *supra* note 22 (describing strategic planning as "an adaptive process, involving the management of change as it affects conditions, constraints and resources"). This process is also similar to that in the International Organization for Standardization (ISO) 9001 management process for international quality systems. *Id.* at 10-13.

30. Agenda 21, *supra* note 6, ¶¶ 8.4-8.7 (stressing cooperation, information collecting, and institution strengthening).

31. See generally CHARLES LINDBLOM, THE POLICYMAKING PROCESS (1968) (describing need for incremental development of policies based on experience). On the other hand, many of the problems that sustainable development addresses are so pressing that more far-reaching measures may be appropriate.

32. Kenneth L. Rosenbaum, *The Challenge of Achieving Sustainable Development Through Law*, 27 ELR 10455, 10458 (Sept. 1997) ("[S]ustainable development is a moving target [because as] our use of resources changes, the law will have to keep pace.").

33. Because sustainable development is a process of striving toward goals whose realization will require constant monitoring and adjustment, the domestic legal system supporting it can never be complete or final. *Id.* at 10459-61 (stating that feedback, flexibility, and continued commitment are essential to drafting and implementing laws for sustainable development). National strategies also require the use of a variety of policy and legal instruments for the achievement of national goals. See, e.g., Agenda 21, *supra* note 6, ¶ 8.4(f) (encouraging regular review and revision of legal and policy instruments to ensure their continuing effectiveness).

34. See generally DANIEL A. BOTKIN, DISCORDANT HARMONIES: A NEW ECOLOGY FOR THE TWENTY-FIRST CENTURY (1990).

35. See, e.g., P.A. Larkin, *An Epitaph for the Concept of Maximum Sustained Yield*, 106 TRANSACTIONS OF THE AM. FISHERIES SOC'Y 1 (1977) (explaining ecological limitations to managing fisheries for a constant yield).

36. See Harvey Brooks, *The Typology of Surprises in Technology, Institutions, and Development*, in SUSTAINABLE DEVELOPMENT OF THE BIOSPHERES 325 (W.C. Clark & R.E. Munn, eds., 1986). Actions to foster sustainable development may sometimes generate unpredicted and undesirable outcomes requiring correction. Among other factors, this would be due to their multidisciplinary and nonsectoral nature, their combination of monetary and nonmonetary factors, and their long-term ramifications. ANTHONY M.H. CLAYTON & NICHOLAS J. RADCLIFFE, SUSTAINABILITY: A SYSTEMS APPROACH 190-92 (1996).

37. Henry Lee, *Introduction*, in SHAPING NATIONAL RESPONSES TO CLIMATE CHANGE: A POST-RIO GUIDE 8-9 (Henry Lee ed., 1995).

38. PRACTICAL GUIDANCE, *supra* note 21, at 16.

39. David Crockett, who has played a major role in Chattanooga, Tennessee's sustainable development effort, tells a helpful story. According to the story, a test was once conducted on certain patients to determine whether they were mentally ill. A patient would be given a mop and a bucket, and placed alone in a room where a fire hydrant (or something like it) had just been opened. Those who immediately turned off the gushing volume of water from the hydrant were determined to be mentally fit. Those who kept mopping water while the hydrant gushed were not. The point, of course, is that people should recognize the magnitude of the challenges they face, and respond accordingly. I heard Mr. Crockett tell the story at the Second National Conference on Science, Policy, and the Environment, sponsored by the National Council for Science and the Environment and the Smithsonian National Museum of Natural History, in Washington, D.C. (Dec. 6, 2001).

40. Agenda 21, *supra* note 6, ¶ 1.6.

Quite plainly, sustainable development has a set of core meanings that countries said in Rio they would honor. On the other hand, the relatively high level of generality of Agenda 21 and the Rio Declaration means that countries can and should use the framework to realize sustainable development in their own circumstances. Ordinarily, too, a strategy does not need to be a brand new process. Rather, it can build on existing initiatives and the work of existing institutional structures, and operate as an umbrella for better coordination or integration.<sup>41</sup> That suggests the desirability of a uniquely American approach to sustainable development—one that honors the words and principles of the Rio texts, but on U.S. terms.

Agenda 21's emphasis on local or regional approaches whenever feasible<sup>42</sup> also suggests that a national strategy would focus primarily on issues best addressed at the national level. At the same time, it may be appropriate for a national strategy to expressly encourage or support state or local actions. It is also possible that a strategy would identify complementary and reinforcing roles for national, state, and local governments for specific issues.

### *Strong Political Support*

The initiation, adoption, and implementation of the strategy necessarily require support and commitment from the highest levels of the national government, including the president and Congress. Otherwise, it is likely to be an exercise in futility.

### *Governmental Implementing or Coordinating Entity*

National governments need to establish planning and management systems that are appropriate for integrated decisionmaking. This includes a policy framework and appropriate implementation mechanisms, determined by each government, to ensure that integrated decisionmaking actually occurs.<sup>43</sup> Governments also need to establish information systems that integrate economic, social, and environmental data, and set up analytical methods for the use of that data.<sup>44</sup> In addition, they should adopt monitoring systems or indicators for measuring progress toward economic, social, and environmental goals.<sup>45</sup>

All of this means that some national governmental agency or entity needs to be responsible for developing the strategy, for ensuring that its recommendations are carried out, and to coordinate actions among various national agencies.<sup>46</sup> Otherwise, there is no assurance that anything will get done. This entity would also guide the establishment of priorities. Quite plainly, integrated decisionmaking at the national level cannot be accomplished at once. There are too many issues, agencies, and programs for instant results.

41. PRACTICAL GUIDANCE, *supra* note 21, at 9.

42. Agenda 21, *supra* note 6, ¶ 8.5(g).

43. *Id.* ¶ 8.4(b)-(d).

44. *Id.* ¶ 8.5.

45. *Id.* ¶ 8.6.

46. Report of the International Forum on National Sustainable Development Strategies, *supra* note 23, ¶ 10 ("There is general consensus that this [single body] should be an authority with a cross-sectoral mandate . . ."). Other bodies as state and local levels also "could provide leadership." *Id.* See also PRACTICAL GUIDANCE, *supra* note 21, at 38 ("An effective strategy for sustainable development requires good management.").

### *Public Participation and Education*

The development and implementation of a strategy requires broad public participation.<sup>47</sup> Public participation provides the basis for the development of a consensus on key issues, introduces new perspectives and information to the decisionmaking process, and provides the basis for public and stakeholder "ownership" of a strategy that will enable it to succeed.<sup>48</sup> The group of experts who met in Ghana emphasized the importance of public participation:

A national sustainable development strategy should not be seen merely as a set of government plans, programmes and projects, but as an embodiment of commitments to action by all stakeholders concerned. A national sustainable development strategy should recognize that, ultimately, sustainable development is not something that governments do for people; it is something people achieve for themselves through individual and collective change.<sup>49</sup>

The need for public participation in the formulation of strategies means that countries need to begin a process of public involvement before the WSSD in August/September 2002. It will not be credible for countries, including the United States, to first announce the existence of a sustainable development strategy in Johannesburg.

Public education by and on behalf of the government is another necessary part of this strategy.<sup>50</sup> This public education effort is important not only to build a greater sense of personal responsibility, but also to conduct and enhance the kind of public understanding of, and debate about, sustainable development that is necessary in a democratic society.<sup>51</sup> Agenda 21 thus includes a commitment by national governments to promote public awareness of the importance of integrating environment and development issues.<sup>52</sup> An essential part of any national strategy, in other words, is government efforts to educate citizens about the importance of problems it addresses.<sup>53</sup> Another essential part of any national strategy is developing a set of indicators and using them to inform the public about progress toward goals.<sup>54</sup>

### *Capacity Building*

Sustainable development will require significant changes in how we think and behave, and how our institutions operate. We can identify some but not all of those changes at present.

47. Rio Declaration, *supra* note 3, princ. 10.

48. PRACTICAL GUIDANCE, *supra* note 21, at 29-35.

49. Report of the International Forum on National Sustainable Development Strategies, *supra* note 23, ¶ 42.

50. Agenda 21 recognizes a "lack of awareness of the interrelated nature of all human activities and the environment." It thus seeks to foster a "global education effort to strengthen attitudes, values and actions which are compatible with sustainable development." Agenda 21, *supra* note 6, ¶¶ 36.8, 36.9.

51. *Id.* ¶ 36.10. See also ¶ 23.2 ("One of the fundamental prerequisites for achievement of sustainable development is broad public participation in decision-making.").

52. *Id.* ¶¶ 8.11, 36.10.

53. See also MARK K. LANDY ET AL., THE ENVIRONMENTAL PROTECTION AGENCY: ASKING THE WRONG QUESTIONS 7 (expanded ed. 1994) ("Government has the obligation to provide the civic education that strengthens the capacity of citizens for successful self-government.").

54. PRACTICAL GUIDANCE, *supra* note 21, at 40-42.

We thus need to develop the capacity to make those and additional changes. Two large changes stand out. First, we need the ability to think and act over the long term, and past two-, four-, and six-year election cycles.<sup>55</sup> Sustainable development will not happen if every new president or Congress gets to start over from scratch. We thus need to develop the capacity to set and achieve long-term objectives, and create the institutions and political ownership necessary to realize them. Second, we need to develop the ability to more effectively and deeply integrate national decisionmaking concerning the economic, social, environmental, and security aspects of problems. This will require the development of integrated data; a better understanding of the relationships among economic, social, environmental, and security issues; better analytical tools; and better decisionmaking capability. While regulations and subsidies have the same types of environmental, social, and economic effects, for instance, we have considerable institutional ability to evaluate the effects of regulations before they are adopted, and almost none for subsidies.<sup>56</sup> More broadly, regulatory policy and fiscal policy are generally made by different decisionmakers with different agendas, even when they concern the same issues, and even though the decisions regarding them are often contradictory. Sustainable development requires greater integration of regulatory and fiscal policy, and thus in the information and institutional mechanisms needed to be able to understand and make decisions about them at the same time.

### Importance to the United States of a National Strategy

The United States agreed to Agenda 21 and the Programme for the Further Implementation of Agenda 21, which together recommend the establishment of national strategies by 2002. Adherence to our commitments, even those that are not legally binding, should provide sufficient justification for the United States to establish such a strategy. But there are several additional reasons why it is in the nation's self-interest to adopt and implement a sustainable development strategy.

The domestic and international challenges faced by the United States over the next 50 years promise to be among the most difficult and challenging the country has ever encountered. Chief among them are meeting the opportunities and risks of a world that has a human population 50% larger than the current one and an economy that is three to five times larger. A larger economy presents the opportunity for wealth creation and alleviation of poverty, but it also presents risks of worsening environmental degradation and widening the gap between rich and poor. In an increasingly crowded world, the causes and implications of America's current and future challenges are complex, and likely to become even more complex, and we need to understand and address the relationships among security, economic, social, and environmental aspects of priority issues. A national strategy would help ensure integrated analysis of the causes of these problems and more multifaceted and effective ac-

tion in addressing them.<sup>57</sup> The variety of these issues also means they need to be addressed strategically, not on an ad hoc basis.<sup>58</sup> Effective national action is particularly important because of the significant economic and military role that the United States plays in international affairs.

An effective national strategy would help mobilize both governmental and nongovernmental actors. Because sustainable development is not likely to happen unless all parts of society are fully engaged, a national strategy is essential to sustainable development. The purpose of a strategy is to "mobilize and focus a society's efforts to achieve sustainable development."<sup>59</sup> It would "help to encourage and facilitate institutional and behavioral change for sustainable development."<sup>60</sup> Like a strategy for national defense or economic development, it would ensure that the many needed actions are guided by an overall sense of purpose, that they reinforce or complement each other rather than undermine or contradict each other, that there are no significant gaps or omissions, and that its purposes are actually achieved. The problems presented by sustainable development are too important for the U.S. government, alone or in combination with state and local governments, to address. These problems require the active participation of all parts of American society, including the private sector.

A national strategy would ensure and improve integration among policy objectives.<sup>61</sup> Sustainable development cuts across artificial boundaries between economic, environmental, social, and national security issues. As a result, it involves several goals that need to be accomplished simultaneously, and it is important to find ways of furthering each goal that do not impede or interfere with the accomplishment of other goals. Without some strategic sense of how the nation's security, economic, environmental, and social objectives are related, and should be realized together, the country will be less able to effectively realize those objectives. Efforts by federal agencies that further social, economic, and environmental goals at the same time are likely to be more efficient than efforts directed at only one goal. An integrated approach is also likely to prevent problems that would cost much more to alleviate later. Most importantly, perhaps, the daunting scope of many of these problems means that they can be resolved only if the government and others act efficiently.

Finally, a national strategy is needed to ensure integration of domestic and international actions. This is hardly a novel objective. Sustainable development is neither totally domestic nor totally foreign, and the United States needs to ensure that its actions concerning sustainable development are coherent in both realms.

The nation's antiterrorism effort arguably provides a reason for not adopting and implementing a national sustainable development strategy. Yet the antiterrorism campaign has forced Americans to think collectively about their long-term national interest. It has also made Americans re-

55. *Id.* at 25.

56. See Doug Koplow & John Dernbach, *Federal Fossil Fuel Subsidies and Greenhouse Gas Emissions: A Case Study of Increasing Transparency for Fiscal Policy*, 26 ANN. REV. ENERGY & ENV'T 361 (2001).

57. Report of the International Forum on National Sustainable Development Strategies, *supra* note 23, ¶ 6(a).

58. PRACTICAL GUIDANCE, *supra* note 21, at 16.

59. JEREMY CAREW-REID ET AL., STRATEGIES FOR NATIONAL SUSTAINABLE DEVELOPMENT: A HANDBOOK FOR THEIR PLANNING AND IMPLEMENTATION 25 (1994).

60. Report of the International Forum on National Sustainable Development Strategies, *supra* note 23, ¶ 6(b).

61. *Id.* ¶ 6(c).



alize that they cannot separate themselves from problems that exist in the rest of the world. When we also realize that sustainable development requires an antiterrorism effort to achieve peace and security, and that the world's social, economic, security, and environmental problems are related, it makes sense to see that the antiterrorism campaign should be part of a broader sustainable development effort.<sup>62</sup> The purposes of sustainable development, after all, are human quality of life, opportunity, and freedom. Our nation has long stood behind these purposes.

The Rio Declaration principle of developed country leadership provides another important reason for understanding the connections between domestic and foreign policy. Developed country leadership is premised on both the superior resources of developed countries and their relatively greater responsibility for creating many of the environmental problems that need to be addressed by sustainable development.<sup>63</sup> Strategic actions by the United States and other developed countries are likely to more effectively further economic, social, environmental, and security goals at the same time, and are more likely to achieve these goals more quickly, than piecemeal actions. In addition to the intrinsic value of such actions to the United States and the rest of the world, they are also more likely to encourage developing countries to follow suit. Since the founding of the Republic, U.S. leaders have often recognized that domestic actions have foreign policy implications, and vice versa. "[T]o the generation that founded the United States, designed its government, and laid down its policies," Prof. Walter McDougall has written, "the exceptional calling of the American people was not to *do* anything special in foreign affairs, but to *be* a light to lighten the world."<sup>64</sup> While U.S. foreign policy has long been much more active,<sup>65</sup> the idea that the United States can have a positive international role through its domestic actions is still alive and well, and is relevant here. U.S. domestic actions that make significant progress toward sustainable development would encourage or nudge other countries to also make significant progress. The failure of the United States to take domestic actions is understood by countries with fewer resources as an excuse to do nothing.

The advantages of national strategies are evident to U.S. states and to other countries that are already employing them. Three states, Minnesota, New Jersey, and Oregon, have relatively advanced "green planning" efforts that embody, at the state level, many attributes of a national strategy.<sup>66</sup> More than one-half of the states issue state-of-the-environment reports, and a slightly lesser number engage in

statewide planning.<sup>67</sup> New Jersey's effort was explicitly directed by former Gov. (now U.S. Environmental Protection Agency (EPA) administrator) Christine Todd Whitman toward making New Jersey a "sustainable state."<sup>68</sup> She said that a sustainable state encourages "economic, social and environmental goals that meet the needs of the present without compromising the ability of future generations to meet their own needs."<sup>69</sup> In 1999, then-Governor Whitman issued an executive order directing all state agencies to work together to achieve 11 specific sustainable development goals, and to annually report on their progress toward attaining those goals.<sup>70</sup> These 11 goals include economic vitality, strong and safe communities, quality education, good governance, decent housing, healthy people, reduced pollution, and "natural and ecological integrity."<sup>71</sup> In early 2001, the state issued a report that described progress the state has made in meeting these 11 goals.<sup>72</sup> Positive trends included the high rate of open space acquisition, decline in infectious diseases, and growing per capita income. In late 2001, the state issued a companion report describing the strategies that agencies are pursuing to make New Jersey a sustainable state, including recommended next steps.<sup>73</sup> Major initiatives described in the report include the state's greenhouse gas action plan, brownfields redevelopment, and an office of sustainable business. Oregon has a similar process.<sup>74</sup>

67. *Id.* at viii.

68. Executive Order No. 96, Governor Whitman (May 20, 1999), at <http://www.state.nj.us/infobank/circular/eow96.htm> (last visited Feb. 20, 2001).

69. *Id.* This echoes the famous definition of sustainable development in *Our Common Future*. See *infra* note 85 and accompanying text.

70. *Id.*

71. NEW JERSEY FUTURE, LIVING WITH THE FUTURE IN MIND: GOALS AND INDICATORS FOR NEW JERSEY'S QUALITY OF LIFE (1999), available at [http://www.njfuture.org/pdf/NJF\\_SSR.pdf](http://www.njfuture.org/pdf/NJF_SSR.pdf) (last visited Feb. 20, 2002).

72. NEW JERSEY INTERAGENCY SUSTAINABILITY WORKING GROUP, LIVING WITH THE FUTURE IN MIND: GOALS AND INDICATORS FOR NEW JERSEY'S QUALITY OF LIFE, FIRST ANNUAL UPDATE TO THE SUSTAINABLE STATE PROJECT REPORT (2000), available at <http://www.state.nj.us/dep/dsr/sustainable-state/> (last visited Feb. 20, 2002).

73. NEW JERSEY INTERAGENCY SUSTAINABILITY WORKING GROUP: GOVERNING WITH THE FUTURE IN MIND: WORKING TOGETHER TO ENHANCE NEW JERSEY'S SUSTAINABILITY AND QUALITY OF LIFE (2001), available at <http://www.state.nj.us/dep/dsr/governing/governing.PDF> (last visited Feb. 20, 2002). The report, which builds on a sustainability initiative that the state began in 1995, is intended to inform the public about what the state is doing, foster public dialogue, and help integrate sustainable development into the core mission of state agencies.

74. In the 1980s, the state established a strategic planning process that resulted in the establishment of economic, social, and environmental health goals. The state uses these goals to help set policy, and issues a series of periodic reports assessing progress in meeting these goals. The most recent such report is OREGON PROGRESS BOARD, ACHIEVING THE OREGON SHINES VISION: THE 2001 BENCHMARK PERFORMANCE REPORT (2001), available at <http://www.econ.state.or.us/opb/2001report/2001new.html> (last visited Feb. 20, 2002) [hereinafter 2001 BENCHMARK REPORT]. The state uses letter grades, like a report card, that measure both recent and long-term progress on 25 key benchmarks. This most recent report gave the state a "C+," up from its 1998 grade of a "C," primarily because of improvements in public safety. In response to an executive order by Gov. John Kitzhaber (Exec. Order No. E0-00-07, 39 OR. ADMIN. R. BULL. 4 (July 1, 2000)), the state evaluated these goals in light of sustainable development principles, found them broadly consistent with sustainable development, and established a process for their refinement. 2001 BENCHMARK REPORT, app. E.

62. The potential impact on the United States of environmentally damaging actions by other countries, e.g., emission of greenhouse gases, provides another connection between U.S. domestic and foreign policy related to sustainable development.

63. Rio Declaration, *supra* note 3, princ. 7.

64. See, e.g., WALTER A. McDUGALL, PROMISED LAND, CRUSADER STATE: THE AMERICAN ENCOUNTER WITH THE WORLD SINCE 1776, at 20 (1997).

65. *Id.* See also WALTER RUSSELL MEAD, SPECIAL PROVIDENCE: AMERICAN FOREIGN POLICY AND HOW IT CHANGED THE WORLD (2001).

66. RESOURCE RENEWAL INST., THE STATE OF THE STATES: ASSESSING THE CAPACITY OF STATES TO ACHIEVE SUSTAINABLE DEVELOPMENT THROUGH GREEN PLANNING vii (2001), available at [http://www.rri.org/SOS\\_Full\\_Report.pdf](http://www.rri.org/SOS_Full_Report.pdf) (last visited Feb. 20, 2002).

Other countries have effectively used strategic planning processes to integrate environment into national decision-making. In 1997, five years after the Earth Summit, about 100 countries had established processes that had at least some elements of a national strategy.<sup>75</sup> While the best known national effort may be that employed by the Netherlands,<sup>76</sup> the European Union (EU) adopted a sustainable development strategy for its Member countries in 2001.<sup>77</sup> The strategy emphasizes the positive role that sustainable development is expected to play: “Sustainable development offers the [EU] a positive long-term vision of a society that is more prosperous and more just, and which promises a cleaner, safer, healthier environment—a society which delivers a better quality of life for us, for our children, and for our grandchildren.”<sup>78</sup> A staff paper developed to support the strategy emphasizes the opportunities that sustainable development may provide. “Policies for sustainable development,” it says, “could increase economic growth by boosting our rate of innovation, and may eventually lead to goods that are cheaper to buy and use than their ‘dirty’ predecessors.”<sup>79</sup>

As experience in U.S. states and other countries indicates, persistence, tenacity, and vision over a long period of time will be needed to accomplish a transition toward sustainable development. A strategy—albeit one that is constantly evolving and adapting to new and changed conditions—is a productive and necessary way to channel the country’s energy and sense of purpose over the long haul. Such a strategy, in sum, is in the national self-interest.

## The PCSD

The predominant national effort relevant to a national strategy in the 10-year period following the 1992 Earth Summit was the PCSD. Indeed, the PCSD has often been described as the U.S. national strategy or the basis for that strategy. President William J. Clinton created the PCSD by Executive Order in 1993, and terminated it by executive order in 1999.<sup>80</sup> President Clinton’s initial executive order specifically charged the PCSD to “develop and recommend to the President a national sustainable development strategy that will foster economic vitality.”<sup>81</sup> Significantly, the PCSD was established as an advisory committee<sup>82</sup>; it did not have any statutory authority of its own, nor was it located within an agency that had any statutory authority. President Clinton appointed to the PCSD 25 highly talented people from the leadership ranks of corporations, environmental groups, African American and Native American organizations, organized labor, and government agencies. Over its six-year life, the PCSD held public meetings throughout the country. The last major event in the PCSD’s short life was a National Town Meeting in Detroit in May 1999, which was attended by more than 3,200 people.<sup>83</sup> The National Town Meeting featured speakers and workshops, and was intended to highlight ongoing efforts in the United States to foster sustainable development.

The PCSD’s primary work product is embodied in a series of reports by the PCSD or by its task forces. In early 1996, the PCSD issued its first and most important report, *Sustainable America: A New Consensus for Prosperity, Opportunity, and a Healthy Environment for the Future*.<sup>84</sup> The report recommended 154 specific actions in 38 policy areas, including reform of pollution control laws, natural resources stewardship, education, international policy, energy, and communities. These recommendations were not directed solely toward the federal government; they were aimed at all sectors.

The report began by restating the definition of sustainable development from *Our Common Future*, the 1987 report of the World Commission on Environment and Development that first brought the world’s attention to the subject—“to meet the needs of the present without compromising the ability of future generations to meet their own needs.”<sup>85</sup> The PCSD then stated its vision of a sustainable society:

75. WORLD BANK, FIVE YEARS AFTER RIO: INNOVATIONS IN ENVIRONMENTAL POLICY 5-7 (1997). A common model is a national council for sustainable development, of which the PCSD is an example. These councils, which are usually advisory in nature, use persons representing a variety of stakeholders to develop recommendations on issues of national concern. They are forums for national dialogue and debate, but are not ordinarily used for decisionmaking. For these and other reasons, explained more fully below in the context of the PCSD, national councils for sustainable development do not necessarily lead to national sustainable development strategies. See generally EARTH COUNCIL, NCSD REPORT 1999-2000: NATIONAL EXPERIENCES OF INTEGRATIVE, MULTISTAKEHOLDER PROCESSES FOR SUSTAINABLE DEVELOPMENT (2000), available at <http://www.ncsdnetwork.org/knowledge/ncsdreport2000.pdf> (last visited Feb. 20, 2002) (summarizing experience of 26 countries with national councils for sustainable development, including the United States).

76. See Duncan Liefferink, *The Dutch National Plan for Sustainable Society*, in THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW, AND POLICY 256 (Norman J. Vig & Regina S. Axelrod eds., 1999) [hereinafter GLOBAL ENVIRONMENT].

77. Joe Kirwin, *EU Leaders Agree on Plan to Integrate Environment Concerns Into Future Activities*, Int’l Env’t Daily (BNA), July 6, 2001. The strategy is COMMISSION OF THE EUROPEAN COMMUNITIES, A SUSTAINABLE EUROPE FOR A BETTER WORLD: A EUROPEAN UNION STRATEGY FOR SUSTAINABLE DEVELOPMENT, available at [http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001\\_0264en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0264en01.pdf) (last visited Feb. 20, 2002) [hereinafter EU STRATEGY].

78. EU STRATEGY, *supra* note 77, at 2.

79. COMMISSION OF THE EUROPEAN COMMUNITIES, CONSULTATION PAPER FOR THE PREPARATION OF A EUROPEAN UNION STRATEGY FOR SUSTAINABLE DEVELOPMENT 11 (2001), available at [http://europa.eu.int/comm/environment/eussd/consultation\\_paper\\_en.pdf](http://europa.eu.int/comm/environment/eussd/consultation_paper_en.pdf) (last visited Feb. 20, 2002) [hereinafter CONSULTATION PAPER]. It adds that specific sustainable development policies “are likely to have a positive impact on economic growth” by, for example, improving the efficiency with which natural resources are used, providing opportunities for all citizens, and encouraging the use of cleaner technologies that could create jobs and foster greater energy security. *Id.* at 11-12.

80. Exec. Order No. 12852, 58 Fed. Reg. 35841 (June 29, 1993), ADMIN. MAT. 45058.

81. *Id.* §2(b), ADMIN. MAT. at 45058.

82. *Id.* §4(a), ADMIN. MAT. at 45058.

83. The PCSD’s life was extended several times by Executive Order. The final extension was to June 30, 1999. Executive Order No. 13114, §3(f), 64 Fed. Reg. 10099 (Mar. 1, 1999). See also Executive Order No. 13138, 64 Fed. Reg. 53879 (Oct. 4, 1999) (revoking Executive Order No. 12852, which created the PCSD, because its “work is completed”).

84. SUSTAINABLE AMERICA: A NEW CONSENSUS FOR PROSPERITY, OPPORTUNITY, AND A HEALTHY ENVIRONMENT FOR THE FUTURE (1996) [hereinafter SUSTAINABLE AMERICA]. In preparing this report, the PCSD reviewed proposed recommendations by more than 450 experts who worked in small task forces in specific subject areas. See also Jonathan Lash, *The Process and People Behind the Report of the President’s Council on Sustainable Development*, 3 WIDENER L. SYMP. J. 456, 460 (1998) (describing the report as both “extraordinarily optimistic and pragmatic”).

85. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE 43 (1987).



Our vision is of a life-sustaining Earth. We are committed to the achievement of a dignified, peaceful, and equitable existence. A sustainable United States will have a growing economy that provides equitable opportunities for satisfying livelihoods and a safe, healthy, high quality of life for current and future generations. Our nation will protect its environment, its natural resource base, and the functions and viability of natural systems on which all life depends.<sup>86</sup>

This vision is supported by certain beliefs that PCSD members said they held in common. These beliefs show the extent to which the PCSD worked to find middle ground on many issues, including the relationship between economic growth and environmental protection. For example: “To achieve our vision of sustainable development, some things must grow—jobs, productivity, wages, capital and savings, profits, information, knowledge, and education—and others—pollution, waste, and poverty—must not.”<sup>87</sup>

The PCSD then recommended 10 interdependent goals for the United States concerning health and the environment, economic prosperity, equity, conservation of nature, stewardship, sustainable communities, civic engagement, population, international responsibility, and education. These goals are stated in general terms. The first goal, concerning health and the environment, is to “[e]nsure that every person enjoys the benefits of clean air, clean water, and a healthy environment at home, at work, and at play.”<sup>88</sup> These goals are accompanied by suggested indicators for measuring progress in meeting them, e.g., fewer people living in areas where air quality standards are violated; reduced releases of toxic materials.<sup>89</sup>

Most of the report is devoted to specific proposals in six areas—building a new regulatory and legal framework for sustainable development, information and education, strengthening communities, natural resources stewardship, U.S. population, and international leadership. Each of these sections includes policy recommendations, an explanation of the recommendations, and examples of current activities that are consistent with the recommendations.

The report recommended that the framework for environmental regulation be more cost-effective, more performance-based, and more flexible. “The United States made great progress in protecting the environment in the last 25 years, and must continue to make progress in the next 25 years,” the PCSD said. The report posited “the ideal of a zero-waste society,” and suggested that progress toward that goal be measured by increased efficiency in materials use, reduction in energy consumption per dollar of economic activity, and reduction in the generation and disposal of waste. The PCSD also recommended the development and adoption of a voluntary program of shared product responsibility among manufacturers, retailers, consumer groups, and others. To extend the tools available for sustainable development, the PCSD promoted a thorough review of national taxes and subsidies.

*Sustainable America* also encouraged the development of indicators to measure progress toward national sustainability goals. “If the United States is serious about sustain-

able development, it needs to generate better tools for measuring the public value—including the economic value—of the things that are important to the nation.” These tools include changes in gross domestic product (GDP) and business accounting practices to better account for environmental effects. The PCSD supported improving education for sustainability, so that all students understand the relationships among environmental, economic, and social issues.

In addition, the PCSD recognized that sustainability issues become concrete and recognizable at the community level, in the specific places where people live, work, and play. The report thus contained recommendations for strengthening communities by community-driven planning, growth management, use of environmental protection as a tool for creating jobs, and the redevelopment of brownfield sites. “Sustainable communities are cities and towns that prosper because people work together to produce a high quality of life that they want to sustain and constantly improve.” The redevelopment of Chattanooga, Tennessee, was cited as an example.<sup>90</sup>

Another set of recommendations dealt with natural resources stewardship. Stewardship, the PCSD concluded, is particularly important for natural resources, including agriculture, fisheries, forestry, and biodiversity. Collaborative problem solving among the many interested parties living or working in a particular area is essential if conflicts over the use of these resources are to be properly resolved. Limits on the diversion of water to Los Angeles from the Mono Lake watershed, for example, occurred because the parties worked out methods for the city to conserve water.<sup>91</sup> Throughout the report, moreover, the PCSD stressed the need for a personal stewardship ethic.

The PCSD also addressed population. Echoing many of the themes of the 1994 International Conference on Population and Development in Cairo, the PCSD recommended that the United States “move toward voluntary population stabilization.” To prevent unintended pregnancies, the PCSD said, reproductive health services as well as opportunities for women should be expanded.<sup>92</sup>

Finally, the PCSD recommended that the United States participate actively in international efforts to foster sustainable development around the world. This should include greater financial support to the United Nations and other international organizations, Senate approval of the Biodiversity Convention (the United States being the only major country that has not ratified that convention), improved scientific research, and encouragement of global trading systems to support sustainable development.<sup>93</sup>

The PCSD’s second report, *Building on Consensus: A Progress Report on Sustainable America*,<sup>94</sup> focused primar-

86. SUSTAINABLE AMERICA, *supra* note 84, at iv.

87. *Id.* at v.

88. *Id.* at 12.

89. *Id.* at 14-23.

90. The city has achieved economic prosperity, greater social equity, and a higher quality environment by using a broad-based citizen involvement process to set and achieve goals. *Id.* at 89. See also Steve Lerner, *Brave New City? Chattanooga, Belle of the “Sustainable Cities”* Ball, AMICUS J., Spring 1995, at 22.

91. For a discussion of the Mono Lake controversy, see ENVIRONMENTAL LAW INST., BEYOND LITIGATION: CASE STUDIES IN WATER RIGHTS DISPUTES 155 (Craig Anthony (Tony) Arnold & Leigh A. Jewell eds., 2002).

92. SUSTAINABLE AMERICA, *supra* note 84, at 147. The PCSD did not take a position on abortion or immigration.

93. *Id.* at 161-62.

94. PCSD, BUILDING ON CONSENSUS: A PROGRESS REPORT ON SUSTAINABLE AMERICA (1997) [hereinafter BUILDING ON CONSENSUS].

ily on implementation of the recommendations in the first report. It included a description of progress in fostering local, state, and regional approaches to sustainable development; a progress report on PCSD efforts to articulate a new environmental regulatory framework for the United States; and a task force report on international leadership for sustainable development.<sup>95</sup> In this report, which was issued in 1997, the first year of President Clinton's second term in office, the PCSD recommended that the president "fully integrate sustainable development" into his second term agenda.<sup>96</sup>

The PCSD's third and final report, *Towards a Sustainable America*, was issued in May 1999, shortly before the PCSD closed up shop.<sup>97</sup> The report included one chapter on a new issue for the PCSD (climate change), and three that built on its first and second reports (environmental management, strategies for sustainable communities, and international leadership). The climate change chapter was based on the same kind of collaborative, multistakeholder process that the PCSD used in its other work. "The risk of accelerated climate change in the next century, the PCSD said, "has emerged as one of the most important issues we will face as we seek to achieve our sustainable development goals."<sup>98</sup> The PCSD concluded that climate change should be incorporated into "any national agenda for economic growth, environmental protection, and social justice." Because actions to reduce greenhouse gas emissions can also have other economic, social, and environmental benefits, there should be incentives for early action to reduce greenhouse gas emissions. The PCSD added that the rapid deployment of "climate friendly technology" will be a necessary part of any national climate change strategy.<sup>99</sup>

Regarding environmental management, the PCSD encouraged greater use of "information on environmental performance and conditions" as well as expansion of "environmental management systems, environmental accounting practices, and appropriate market mechanisms that will improve environmental performance."<sup>100</sup> The PCSD found that sustainable community initiatives are "gaining momentum," and identified specific "strategic opportunity areas for sustainable community development" as well as ways of overcoming major obstacles.<sup>101</sup>

Finally, the PCSD stressed that the "United States must use its leadership role to help chart a path toward sustainable development both at home and abroad."<sup>102</sup> Among other things, it recommended that multilateral agreements "recognize and address economic, environmental, and equity considerations."<sup>103</sup>

In addition to these reports by the full PCSD, it divided itself into task forces to examine specific problems. These task forces, comprised of both PCSD members and non-members, issued reports on public education,<sup>104</sup> energy and transportation,<sup>105</sup> sustainable communities,<sup>106</sup> population and consumption,<sup>107</sup> eco-efficiency,<sup>108</sup> and sustainable agriculture.<sup>109</sup> Each of these reports contains a description of specific problems as well as numerous policy recommendations to the federal government and other sectors. While the PCSD used these task forces to solicit ideas and information from several thousand experts, these task force reports were not endorsed by the PCSD itself. The work of the PCSD also led a federal interagency working group to draft a set of sustainable development indicators for the United States.<sup>110</sup>

### Evaluation of U.S. National Strategy Efforts

Neither the PCSD nor its recommendations created or led to the development of a national strategy—when the PCSD was in existence or afterwards. In 2002, the United States has no evident national strategy for sustainable development, even though the United States and other nations agreed in 1997 to have strategies in place by late summer 2002.<sup>111</sup> While the PCSD's recommendations could provide the objectives of a national strategy, sustainable development is not actively supported by the nation's leaders, there is no strategic thinking or action on behalf of the federal government, there is no governmental coordinating or implementing mechanism for a strategy, and there is little public education. The national effort falls far short of that needed to adequately respond to the challenges and opportunities of sustainable development.

The failure of the United States to develop a strategy lies partly in the continuing battle between more regulation and less regulation that has characterized environmental disputes over the past decade and more. Unfortunately, despite sustainable development's ability to bring more tools and

95. *Id.*

96. *Id.* at 53. Another recommendation was to extend the life of the PCSD. *Id.* This recommendation was accepted.

97. PCSD, *TOWARDS A SUSTAINABLE AMERICA: ADVANCING PROSPERITY, OPPORTUNITY, AND A HEALTHY ENVIRONMENT FOR THE 21ST CENTURY* (1999) [hereinafter *TOWARDS A SUSTAINABLE AMERICA*].

98. *Id.* at 10.

99. *Id.* at 11.

100. *Id.* at 35.

101. *Id.* at 59. The opportunity areas are "green infrastructure, land use and development, community revitalization and reinvestment, rural enterprise and community development, and materials reuse and resource efficiency." *Id.*

102. *Id.* at 87.

103. *Id.*

104. PCSD PUBLIC LINKAGE, DIALOGUE, AND EDUCATION TASK FORCE, *PUBLIC LINKAGE, DIALOGUE AND EDUCATION TASK FORCE REPORT* (1997). See also PCSD, *EDUCATION FOR SUSTAINABILITY: AN AGENDA FOR ACTION* (1996).

105. PCSD ENERGY AND TRANSPORTATION TASK FORCE, *ENERGY AND TRANSPORTATION TASK FORCE REPORT* (1996).

106. PCSD SUSTAINABLE COMMUNITIES TASK FORCE, *SUSTAINABLE COMMUNITIES TASK FORCE REPORT* (1997).

107. PCSD POPULATION AND CONSUMPTION TASK FORCE, *POPULATION AND CONSUMPTION TASK FORCE REPORT* (1996).

108. PCSD ECO-EFFICIENCY TASK FORCE, *ECO-EFFICIENCY TASK FORCE REPORT* (1996). See also PCSD, *ECO-INDUSTRIAL PARK WORKSHOP PROCEEDINGS, OCTOBER 17-18, 1996, CAPE CHARLES, VIRGINIA* (1997).

109. PCSD, *SUSTAINABLE AGRICULTURE TASK FORCE, SUSTAINABLE AGRICULTURE TASK FORCE REPORT* (1996).

110. U.S. INTERAGENCY WORKING GROUP ON SUSTAINABLE DEVELOPMENT INDICATORS, *SUSTAINABLE DEVELOPMENT IN THE UNITED STATES: AN EXPERIMENTAL SET OF INDICATORS* (1998). Another paper prepared for the PCSD developed preliminary economic accounts for agricultural sectors as well as natural resource accounts for the Upper Mississippi River watershed. See DENNIS M. KING ET AL., *NATURAL RESOURCE ACCOUNTING AND SUSTAINABLE WATERSHED MANAGEMENT: WITH ILLUSTRATIONS FOR THE UPPER MISSISSIPPI RIVER WATERSHED* (1995).

111. Even if one was begun at this late stage, the country would have to explain why it took so long to put a strategy in place. And, almost certainly, any explanation would have to describe this new U.S. strategy as an outgrowth and extension of the PCSD.

ideas (and better environmental and economic results) to the table, both sides are to a large degree fighting the same battle over and over again with yesterday's weapons and strategies.<sup>112</sup> In addition, political leaders have been unwilling to discuss the broader issues raised by sustainable development, including consumption of materials and energy. These issues raise the promise of greater efficiency and thus economic, social, and environmental benefits in an increasingly crowded world. But they are also easily portrayed and understood to imply the existence of limits on American freedom and opportunity. When that happens, of course, they are considered to be political nonstarters.<sup>113</sup> As Prof. Barry Boyer has observed in discussing sustainable development, ideas are not power-neutral.<sup>114</sup>

There are other reasons for the U.S. failure to adopt a strategy. Sustainable development falls outside the left-right political spectrum that most people use to think about environmental politics. Among other things, it is premised on the importance of private efforts and the removal of subsidies—two points that are consistently emphasized by the right (but not exclusively by the right). But it is also founded on an ambitious and broad set of environmental goals and a desire to eradicate large-scale poverty—two points that are consistently emphasized by the left (but not only by the left). Because sustainable development is neither left nor right, liberal nor conservative, and because it is not primarily environmentalist or primarily business-oriented, it does not fit into the traditional left-right spectrum.<sup>115</sup> Moreover, the emphasis of sustainable development on thinking and acting for the long term is hard to fit into political election cycles.<sup>116</sup>

It needs to be said that the PCSD's achievements are significant, and that the PCSD's history provides lessons for any future national strategy. What the PCSD failed to achieve is also significant, however. Its achievements and failures are best evaluated in the context of the elements of a national strategy described above. Because the PCSD is no longer in existence, this evaluation necessarily also includes a broader assessment of U.S. efforts to date.

### *Means of Integrating National Objectives*

The PCSD showed what sustainable development could mean for the United States, and showed that sustainable development makes economic, environmental, and social sense. But it did not provide a means for making integration happen to a greater degree than it already is, and the national government in 2002 possesses no systematic or strategic

means for doing so. The difficulty in the United States is not the adequacy of a strategy; the problem is that none exists.

As the subtitle to its first report indicates, the PCSD developed compelling evidence that sustainable development provides the basis for a "new consensus" for maintaining and achieving "prosperity, opportunity, and a healthy environment" in the United States. The PCSD's work shows that sustainable development cuts back and forth across Republican/Democratic as well as liberal/conservative views. It combines personal responsibility with social concerns, a healthy respect for the power of the market and private decisionmaking with a desire to steer that market in a sustainable direction.

A key lesson of the PCSD, in fact, is the critical importance of "making markets work for sustainability."<sup>117</sup> As the PCSD saw over and over, in a variety of contexts, it is often possible for business to do better economically by, for example, using environmental management systems and more efficient processes. Its final report concluded that "we have just begun to tap the opportunities of using markets to drive sustainable development."<sup>118</sup>

The PCSD's work also shows that individual issues are related to each other in a variety of ways. Community redevelopment and the reduction of greenhouse gas emissions, for instance, can and should be mutually reinforcing. Done properly, actions to further one could also advance the other.<sup>119</sup> Because of the relationship between social, economic, and environmental issues, "old approaches designed to solve one problem at a time" should give way "to new policies designed to solve several problems at the same time."<sup>120</sup> The PCSD's policy and legal recommendations would further integrate the nation's economic, social, environmental, and even security agendas.<sup>121</sup> As these recommendations indicate, there are a great many policy and legal choices for the United States that would advance all of these goals at the same time.

But there is little evidence that the PCSD's recommendations have been implemented to any significant extent. Those recommendations directed at the national government were not taken particularly seriously by the executive branch during the Clinton Administration, including those for a national set of sustainable development indicators. The recommendations directed at other actors, including those in the private sector, have been taken seriously by some and not others. Thus, it cannot be said that the PCSD provided an

112. Gary C. Bryner, *Agenda 21: Myth or Reality?*, in *GLOBAL ENVIRONMENT*, *supra* note 76, at 157, 172.

113. *Id.* at 172 (describing Jimmy Carter, whose bid for re-election was soundly defeated by Ronald Reagan in 1980, as "the last major political leader to talk about limits and restraints").

114. Remarks given at symposium entitled "Environmental Law and Stewardship for a Sustainable Society," University of Buffalo Law School (Oct. 13, 2001).

115. Because important constituencies and campaign contributors continue to think along the traditional spectrum, most political leaders fall in line.

116. Still, there appears to be a substantial consensus supporting the broad objectives of sustainable development—peace and security, economic development, social development or human rights, environmental protection and restoration, and supportive national governance. So there is reason to hope that it can provide a basis, as the PCSD suggested in its first report, for a new political consensus.

117. TOWARDS A SUSTAINABLE AMERICA, *supra* note 97, at 7.

118. *Id.*

119. *Id.*

120. *Id.*

121. See Kristina M. Tridico, *Sustainable America in the Twenty-First Century: A Critique of President Clinton's Council on Sustainable Development*, 14 J. NAT. RESOURCES & ENVTL. L. 205, 250 (1998-1999) ("The reports of the PCSD provide the contours of a new way to think of government's role in sustainability."). These reports were synthesized into a single volume for public consumption, *SUSTAINABLE AMERICA: AMERICA'S ENVIRONMENT, ECONOMY, AND SOCIETY IN THE 21ST CENTURY* (Daniel Sitarz ed., 1998). The PCSD's recommendations represent the work of competent and even visionary people, and they have additional stature because they came out of a presidential advisory council. As a result, interested persons and organizations can use the source of these recommendations to give them extra weight. See generally President's Council on Sustainable Development, at <http://clinton4.nara.gov/PCSD/index.html> (archive of all reports by the PCSD as well as other information relevant to the PCSD).



effective strategy for further integrating the nations' social, economic, security, and environmental goals.

It is, of course, true that more than three decades of environmental laws have moved the United States a fair way toward integrating the environment and natural resources into governmental decisionmaking. But on virtually all matters addressed by environmental law there is a long way still to go. For many issues relevant to sustainable development, e.g., consumption of materials and energy, moreover, there is little law, and government subsidies often encourage unsustainable behavior.<sup>122</sup> The PCSD did not provide a means for deeper or progressive integration of environmental matters into national decisionmaking. Nor does any such means of systematically integrating national decisionmaking exist.

### *Strategic Process*

The United States does not now have an overall strategic process in place for sustainable development at the national level. The PCSD's recommendations may have come from a strategic process, but the documents in which they are contained do not constitute a process, nor does any comparable process currently exist. Individual agencies, states, companies, and others may be working toward sustainable development, but piecemeal or ad hoc efforts are no substitute for a strategic process.

It can be argued that the federal government has, or has had, a strategy, but that it is (or was) directed primarily at local and state governments, the private sector, and others, and not to the federal government. If there is such a strategy, it is a subtle one, for it is not explained or stated in readily available government documents, and can only be inferred from a pattern of activity, such as the PCSD's emphasis on sustainable communities. Other evidence comes from non-PCSD sources, such as the work of the U.S. Global Change Research Program, which has developed and reported information on the effect of climate change on various regions within the United States.<sup>123</sup> Local and regional information about climate change provides a better basis for action at the state and local level than more general information. Similarly, many of the PCSD's recommendations were directed at the private sector. The underlying premise of this view is that a top-down, federally oriented sustainable development strategy was politically impossible in 1993 (when the PCSD was established) and is politically impossible now. By this view, the most that the federal government can or should do is enable and encourage efforts by others, but not to require such efforts, or even to strongly encourage them.

It is unquestionably true that nonfederal actors need to play a significant role in any U.S. strategy to achieve sus-

tainable development. Indeed, as already suggested, it is difficult to conceive of an effective strategy that does not involve every level of government and every sector of society. But it does not follow that the federal government cannot, or should not, also have a major role. To begin with, some of the sustainable development commitments that the United States has agreed to are contained in treaties to which the United States is a party. The U.N. Framework Convention on Climate Change (UNFCCC) is an example. That convention specifically requires Parties, and especially developed country Parties, to develop a strategy to address climate change.<sup>124</sup> Few would argue that the federal government can fulfill that requirement by having others do all the work. Other sustainable development commitments are contained in Agenda 21 or similar texts, and thus are not legally binding. Yet those commitments can only be met if there is significant action at the national level. As the United States already knows from several decades of experience, for instance, it is difficult to protect air and water quality without a strong federal presence.

Moreover, a properly implemented national strategy would not simply have the federal government impose more "top-down" obligations through regulation. Much of the unsustainable development that occurs in the United States is driven by laws and subsidies whose modification or removal would have a positive and powerful effect on sustainable development. Much more sustainable development also would occur if the federal government set a better example in its own operations. In these and many other ways, the federal government can play a significant role without resorting solely or even primarily to more regulation.

In sum, if there is a "primarily nonfederal" strategy, it could not be described as an effective means of integrating national objectives. It may have symbolic value, but it does not address issues that need to be addressed at the national level, does not represent the level of effort or commitment we need to prevent things from getting worse, and does not take advantage of the economic and other opportunities provided by sustainable development.

### *Significant Real-World Results*

Several federal agencies appear to have taken the PCSD's recommendations more seriously, and committed individuals within the federal bureaucracy have been able to use the PCSD's recommendations in their own work. The PCSD also encouraged some local governments, corporations, and others to take actions to foster sustainable development.<sup>125</sup> In the years after the PCSD generated its initial report, it spent more time trying to get its recommendations imple-

122. See, e.g., Koplou & Dernbach, *supra* note 56, at 365-71 (surveying literature on fossil fuel subsidies in the United States and describing the extent to which these subsidies encourage the use of fossil fuels).

123. NATIONAL ASSESSMENT SYNTHESIS TEAM, U.S. GLOBAL CHANGE RESEARCH PROGRAM, CLIMATE CHANGE IMPACTS ON THE UNITED STATES: THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE—FOUNDATION (2001) (assessing potential effects of climate change on the United States, with separate chapters for the Northeast, Southeast, Midwest, Great Plains, West, Pacific Northwest, Alaska, and Pacific and Caribbean islands). In addition, these regions have each been divided into smaller sections, and reports are being prepared for these sections. See, e.g., MID-ATLANTIC REGIONAL ASSESSMENT TEAM, PREPARING FOR A CHANGING CLIMATE: THE POTENTIAL CONSEQUENCES OF CLIMATE VARIABILITY AND CHANGE—MID-ATLANTIC OVERVIEW (2000).

124. U.N. Framework Convention on Climate Change, arts. 4.1(f) & 4.2(a), *opened for signature* June 4, 1992, S. TREATY DOC. NO. 102-38 (1992), 31 I.L.M. 849 (1992) (entered into force Mar. 21, 1994).

125. It also publicized local sustainable development efforts that were already underway. See, e.g., NANCY SKINNER & BILL BECKER, PATTONSBURG, MISSOURI: ON HIGHER GROUND (1995) (case study for the PCSD describing effort by town of 200, which was nearly destroyed in a 1993 flood, to rebuild in a sustainable manner). For a national survey of community sustainable development efforts, see CONCERN, INC. & COMMUNITY SUSTAINABILITY RESOURCE INST., SUSTAINABILITY IN ACTION: PROFILES OF COMMUNITY INITIATIVES ACROSS THE UNITED STATES (rev./updated ed. 1998).

mented, and enjoyed some modest successes.<sup>126</sup> With the PCSD's support and federal financial assistance, for example, the National Association of Counties and the U.S. Conference of Mayors have established a Joint Center for Sustainable Communities.<sup>127</sup> The center's goals are smart growth, sustainable transportation, and development within cities (known as infill).<sup>128</sup> Among other things, the center provides technical assistance to communities and serves as a forum for sharing experience and information about community sustainability efforts.<sup>129</sup> Retail successes of this sort, however, do not and did not generate significant wholesale results. There is little if any data to show that real-world conditions in the United States changed or were influenced by the PCSD's activities.

### Country Specific

The PCSD was intended as a national response to the Earth Summit that focused on U.S. issues, and properly so.<sup>130</sup> To some degree, the PCSD's first report focused its sustainability lens on long-standing U.S. issues, such as environmental regulation and natural resources stewardship. The PCSD or its task forces also made an effort to address some of the hard issues raised for the United States by sustainable development, including population, consumption of materials and energy, and climate change. But the PCSD is gone, and there is no U.S. effort to replace it.

### Strong Political Support

There is no commitment to implementing the recommendations made by the PCSD within the national government, or to fostering sustainable development generally. There is and has been no executive commitment. President Clinton created the PCSD and charged it with the responsibility of developing and recommending a national strategy, but it is probably fair to say that Vice President Albert Gore was more committed to the PCSD than President Clinton. The PCSD's first and most important report, *Sustainable America*, received little overt presidential support, and the opportunity to develop a national strategy at that point was lost.<sup>131</sup> "There is a need to better connect and introduce the work of the PCSD into the policymaking process," Crescencia Maurer of the World Resources Institute wrote as the PCSD ended in 1999. An effort to "systematically redefine or re-

consider existing policy frameworks in light of the PCSD's recommendations" was "short lived."<sup>132</sup> The nation's anti-terrorism effort understandably has dominated the new president's agenda. But it is not clear how or whether the Bush Administration intends to use the PCSD's recommendations, or to move sustainable development forward in some other way.

Nor does there appear to be systematic support or commitment from Congress, although many individual members of Congress have been, and continue to be, supportive. The PCSD did not engage in significant outreach to, or encourage the involvement of, members of Congress, even though Congress writes legislation and funds the activities of government agencies. No members of Congress were appointed to the PCSD in 1993, when it was created. Although the Republican Congress that came into power in 1995 led to major partisan fights over the environment, and although the PCSD sought to avoid involvement in such disputes, the failure to reach out to Congress was an additional limitation on the effectiveness of the PCSD's work.<sup>133</sup>

In early 2002, the U.S. Code contained 23 separate references to sustainable development. It is true that legislation may further sustainable development in various ways without using the term, and that this count may therefore miss important statutes. At the same time, this term is a useful indicator of the extent to which sustainable development has permeated into congressional thinking and actions. About one-half of these laws simply identify sustainable development as a purpose or goal of the legislation.<sup>134</sup> But most of the rest go beyond that. Some of them identify sustainable development as a basis for governmental priority setting,<sup>135</sup>

132. *Id.*

133. *Id.* at 9-10.

134. 7 U.S.C. §1691(2) (stating U.S. policy to foster sustainable development in developing countries through use of agricultural commodities and local currencies); 7 U.S.C. §1727e(a)(1) (providing that the local currency proceeds of sales of agricultural commodities in least developed countries are to be used in such countries for sustainable development, among other purposes); 10 U.S.C. §4553(b)(9) (describing sustainable development as a goal of the Armament Retooling and Manufacturing Support Initiative); 15 U.S.C. §4728(h)(1) (permitting the establishment of international regional environmental initiatives to create environmental partnerships between the United States and geographic regions outside of the United States to promote sustainable development); 16 U.S.C. §4501(b)(1) (fostering sustainable development by providing assistance for forestry and related natural resources activities outside of the United States); *id.* §5304(e) (promoting sustainable development through programs aimed at conserving rhinoceroses and tigers); 19 U.S.C. §2576b(3)(C) (stating that objectives of trade legislation include sustainable development); 19 U.S.C. §3737(a) (implementing sustainable development assistance to promote economic growth under the Development Fund for Africa, a program providing development assistance to sub-Saharan Africa); 42 U.S.C. §13316(b)(8) (providing that one purpose of the renewable energy technology transfer program is to assist foreign countries in meeting their energy needs through the use of renewable energy in a manner consistent with sustainable development policies); 42 U.S.C. §13362(b)(9) (stating that one purpose of the clean coal technology transfer program is to assist foreign countries in meeting their energy needs through the use of coal in a manner consistent with sustainable development policies); 42 U.S.C. §13401(5) (promoting sustainable development by transferring environmentally sound advanced energy systems and technologies to developing countries).

135. 7 U.S.C. §1702(a)(2) (giving priority to agreements providing for the exportation of agricultural commodities to developing countries that are promoting sustainable development); *id.* §1727a(c)(4) (providing that developing countries with long-term plans for sustainable development are given priority over other developing countries with respect to agricultural commodities).

126. TOWARDS A SUSTAINABLE AMERICA, *supra* note 97, at 4. See also PCSD, THE ROAD TO SUSTAINABLE DEVELOPMENT: A SNAPSHOT OF ACTIVITIES IN THE UNITED STATES OF AMERICA (1997) (describing a range of activities, some related to the PCSD's work, and some not).

127. BUILDING ON CONSENSUS, *supra* note 94, at 4-5.

128. Joint Center for Sustainable Communities, *State of the Center—A Progress Report Covering the Period June 1, 1999–May 31, 2000*, at 2 (2000), available at [http://www.usmayors.org/USCM/sustainable/progress\\_report\\_0699\\_0500.pdf](http://www.usmayors.org/USCM/sustainable/progress_report_0699_0500.pdf) (last visited Feb. 20, 2002).

129. *Id.*

130. In fact, neither Agenda 21 nor the Rio Declaration is even mentioned in its first and most important report. Omitting references to the international texts helps provide a shield against the bogus but still politically potent argument that the United States is ceding sovereignty by taking actions to foster sustainable development. But ignoring the international background is also, to some degree, misleading.

131. Crescencia Maurer, *The U.S. President's Council on Sustainable Development: A Case Study 9* (updated May 1999), available at <http://www.wri.org/governance/pdf/ncsds-gfed/usa.pdf> (last visited Feb. 20, 2002) ("[T]he expectation that the Administration would take up the council's ideas more actively was not fulfilled.").

and a larger number identify sustainable development as a basis for other governmental decisionmaking.<sup>136</sup> Several provide other support or encouragement for sustainable development.<sup>137</sup>

Unfortunately, this legislation does not demonstrate a strong congressional commitment to either sustainable development or implementation of the PCSD's recommendations. Most basically, 23 is only a minute percentage of the statutes that Congress has enacted, even in the past decade. In addition, the overwhelming majority of these statutory provisions pertain to U.S. foreign policy, not domestic policy. There is no obvious relationship between these laws and the PCSD's recommendations, most of which focused on U.S. domestic policy. More hopefully, the use of sustainable development as a decisionmaking tool in about one-half of these 23 laws may indicate that Congress is beginning to move sustainable development past the point of being merely a goal.

#### *Governmental Implementing or Coordinating Entity*

There is no permanent institutional mechanism (in either the executive branch or in Congress) that is used to foster, encourage, or coordinate sustainable development activities or implement the PCSD's recommendations. While the PCSD emphasized implementation of recommendations in its last several years, it was terminated without any mechanism or agency to take over that role. As an advisory body, the PCSD operated outside of normal governmental decisionmaking processes. It had no legal authority to make or implement decisions within the federal government. Its reports were not plans of action; they were only recommendations that required implementation by others.

The PCSD did not even lead to the creation of any systematic tracking and public reporting mechanism for implemen-

tation of its own recommendations. Such a mechanism was discussed within the federal government, and the PCSD's second and third reports plainly attempt to show how its recommendations were being implemented. But no formal mechanism was put in place to monitor implementation on a continuing basis, and none exists now. Put another way, no political official was accountable for the PCSD's success or failure because no one publicly tracked achievement of the PCSD's recommendations. And there is no official or governmental entity in existence that tracks U.S. efforts concerning sustainable development, whether related to the PCSD or not.

More broadly, there is no governmental entity that consistently tracks or oversees U.S. progress in carrying out its commitments under Agenda 21 or the Rio Declaration.<sup>138</sup> The State Department collected information from various federal agencies in preparation for the Rio + 5 meeting in 1997, and is collecting similar information for the Rio + 10 summit meeting in Johannesburg. But this information simply describes what the U.S. government has done. There is no overall governmental effort to evaluate these efforts in light of national commitments. It may be true that the PCSD's core strengths—providing policy advice and developing collaborative approaches to sustainable development based on diverse stakeholders—were not suited to a monitoring role.<sup>139</sup> It is also true that the PCSD was set up simply as an advisory committee. But no other federal entity was performing that monitoring and oversight role when the PCSD was in existence, and none is now.

#### *Public Participation and Education*

The PCSD proved “the utility and value of a multi-stakeholder approach” to sustainable development.<sup>140</sup> From the perspective of its members, this was a huge achievement, given the diversity of their backgrounds and the relative freedom they were given in carrying out their work.<sup>141</sup> It thus demonstrated that collaborative, partnership-based stewardship efforts can be a valuable means of moving sustainable development forward.<sup>142</sup> Over and over, the PCSD involved people from a variety of perspectives and engaged them to identify common goals and mutually agreeable ways of achieving them. “Above all else,” the preface to the final report stated, “the [PCSD] has demonstrated the will and capacity of leaders from different sectors of American life to find agreement on issues of importance about our future.”<sup>143</sup> In so doing, the PCSD demonstrated that sustainable development is not a new and disingenuous way of expressing one side's interest in a particular controversy, but

136. *Id.* §1734(a) (ensuring that foreign countries are taking measures to promote sustainable development before the United States enters into agreements for the provision of commodities); 16 U.S.C. §6403(g)(1) (listing the implementation of coral conservation programs which promote sustainable development as one criterion for the approval of funding for projects aimed at the conservation of coral reefs); 22 U.S.C. §262m-2(a)(1) (stating that approval of multilateral development loans to a borrowing country is dependent upon whether those loans will contribute to the country's sustainable development); *id.* §283z-5(c)(1) (stating that the Secretary of State may not make certain payments for the Inter-American Development Bank unless that Bank has created an environmental unit responsible for developing and evaluating programs designed to promote sustainable development in borrower countries); *id.* §§286hh(a)(3) & (8) (requiring U.S. director of World Bank to advocate and support assistance programs to developing countries that, if implemented, would lead to sustainable development); *id.* §2151p-1(c)(15) (denying certain assistance to developing countries for specified activities unless the activities will be conducted in an environmentally sound manner which supports sustainable development).

137. 22 U.S.C. §2152a(c)(3)-(4) (requiring a monitoring system for microenterprise grant assistance in developing countries to enhance its sustainable development impact); *id.* §2283(b)(2) (encouraging eligible countries under the debt-for-nature exchange program, which cancels the foreign debt of the government of a country in exchange for that government making available local currencies to be used for eligible projects involving the conservation or protection of the environment of that country, to propose exchanges promoting the feasibility and benefits of sustainable development); 25 U.S.C. §4301(b)(2) (encouraging sustainable development of resources of Indian tribes and Indian-owned businesses); 46 U.S.C. app. §1279e(d)(1)(B) (providing that the term “advanced shipbuilding technology” includes novel techniques and processes designed to promote sustainable development);

138. Maurer, *supra* note 131, at 10; John Dernbach and the Widener University Law School Seminar on Law and Sustainability, *U.S. Adherence to Its Agenda 21 Commitments: A Five-Year Review*, 27 ELR 10504, 10507-09 (Oct. 1997) [hereinafter Dernbach et al.].

139. Maurer, *supra* note 131, at 10.

140. *Id.* at 7.

141. *Id.* at 10.

142. *Id.* at 6-7.

143. Ray Anderson & Jonathan Lash, *Preface*, in *TOWARDS A SUSTAINABLE AMERICA*, *supra* note 97, at ii. See also Lash, *supra* note 84, at 456 (contrasting the PCSD process with other policy processes; “[i]t has been my experience, particularly for the set of issues that comprise the discussion of the environment and development, that we in the United States have kept them pretty well segregated in our debates”).



rather is a framework for protecting and furthering the legitimate goals of all stakeholders. Indeed, when the *New York Times* broke the story about the first report, it emphasized that the agreements in the report had occurred among traditional adversaries.<sup>144</sup>

The PCSD also brought together people other than its members who do not ordinarily communicate directly with one another. It thus helped foster personal relationships among leaders from a diversity of backgrounds.<sup>145</sup> The effect of that on sustainable development in the United States is hard to assess, but it is real. The members of the interagency work group on sustainable development indicators, for instance, found each other through the work of the PCSD.

But the PCSD did not lead to widespread public awareness of its work, the importance of its work, or sustainable development in general. Nor did it exercise significant outreach to include the public, and particularly interested stakeholders, in its work. The PCSD brought in about 450 people to work on its various task forces, and some 800 people commented on proposed PCSD documents.<sup>146</sup> Several thousand more people were involved in PCSD activities in other ways, including attendance at various meetings. Without question, the PCSD process engaged interested professionals in a conversation about sustainable development and what it could mean for the United States. But the Clinton Administration involved relatively few people in the dialogue, and did little to share the results of the PCSD's efforts with a broader audience.<sup>147</sup> Nor has the Bush Administration made a comparable effort.

### Capacity Building

Very little national institutional capacity building occurred under the PCSD, and there has been little if any such capacity building since. The basic legal foundation for a capacity-building effort does exist, though, and a major part of it was enacted after the Earth Summit.

The National Environmental Policy Act of 1969 (NEPA)<sup>148</sup> could provide a mechanism for further integration. But while use of environmental impact statements (EIS) under the Act broadened somewhat in the past decade (to include, for example, trade agreements), NEPA's overall implementation has not changed significantly. In NEPA, Congress declared the "continuing policy of the Federal Government" to "create and maintain conditions under which man and nature can exist in productive harmony, and to fulfill the social, economic, and other requirements of present and future generations of Americans."<sup>149</sup> This and other language in the statute endorse what is now called sus-

tainable development.<sup>150</sup> NEPA is most widely known for requiring federal agencies to prepare an EIS before conducting any major actions that may significantly affect the environment. But its essential lesson—that agencies must integrate environmental thinking into their decisionmaking processes—goes to the core meaning of sustainable development. In addition to preparing such statements, NEPA requires agencies to propose any changes necessary to their existing statutory authority to harmonize their activities with the purposes of the Act.<sup>151</sup>

NEPA also created the Council on Environmental Quality (CEQ),<sup>152</sup> an entity that could provide an institutional basis for further integration of social, economic, and environmental policy in the United States, but that has not been used for that purpose. The CEQ is located in the executive office of the president and was originally intended to serve as an analogue to the president's Council of Economic Advisors.<sup>153</sup> Until 1995, it was charged with the task of issuing an annual report on the condition of the nation's environment and the effectiveness of environmental protection and conservation programs, including recommendations.<sup>154</sup> It is also charged with the responsibility of reviewing federal programs in light of NEPA's objectives, and "to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation."<sup>155</sup>

Because of the president's constitutional authority to supervise executive agencies, the CEQ is in a powerful position to ensure the further or progressive integration of environment into national decisionmaking. Unfortunately, it has not been used that way. President George W. Bush's three predecessors so underfunded the CEQ that it has not produced annual reports, much less quality reports. Nor has the CEQ had much effect on national decisionmaking in the 10 years since the 1992 Earth Summit, and even in many of the years preceding it.<sup>156</sup>

The United States does, however, have somewhat better institutional ability to think and act over the long term than it did in 1992, thanks to the Governmental Performance and Results Act of 1993 (GPRA).<sup>157</sup> The Act obligates federal agencies to develop and implement multiyear strategic plans, to establish specific performance goals and performance indicators showing progress in achieving them, and to report annually on their progress in meeting these goals under the plans.<sup>158</sup> The basic idea of the GPRA was to im-

144. John H. Cushman, *Adversaries Back the Current Rules Curbing Pollution: But Flexibility Is Urged*, N.Y. TIMES, Feb. 12, 1996, at A1.

145. "We hardly knew each other when we started," wrote Jonathan Lash of the World Resources Institute, and David T. Buzzelli of Dow Chemical Co., co-chairs of the PCSD. *Preface*, in SUSTAINABLE AMERICA, *supra* note 84, at ii. But they built mutual trust and friendship over time. "We have sometimes lost track of which of us was the executive and which the environmentalist, and, indeed, after one speech to a Rotary Club even our audience was confused." *Id.*

146. Letter from Molly H. Olson, Executive Director, PCSD, to "Dear Colleagues" (Feb. 26, 1996) (on file with author).

147. Dernbach et al., *supra* note 138, at 10510.

148. See generally 42 U.S.C. §§4321-4370d, ELR STAT. NEPA §2-209.

149. *Id.* §4331(a), ELR STAT. NEPA §101(a).

150. James McElfish, *Back to the Future*, ENVTL. F., Sept./Oct. 1995, at 4.

151. 42 U.S.C. §4333, ELR STAT. NEPA §103.

152. *Id.* §§4341-4346b, ELR STAT. NEPA §§201-208.

153. *Id.* §4342, ELR STAT. NEPA §202; Nicholas A. Robinson, *Legal Systems, Decisionmaking, and the Science of Earth's Systems: Procedural Missing Links*, 27 ECOLOGY L.Q. 1077, 1103 (2001).

154. 42 U.S.C. §4342, ELR STAT. NEPA §202.

155. *Id.* §4344(3), (4), ELR STAT. NEPA §204(3), (4).

156. Robinson, *supra* note 153, at 1103-04 & n.68.

157. Pub. L. No. 103-62, 107 Stat. 285 (codified in various sections of U.S.C.).

158. 31 U.S.C. §1115(a). The Clinton Administration's effort to foster more efficient government, based primarily on the National Performance Review, is also relevant. The basic premise is that government should work better and cost less. By integrating and harmonizing often inconsistent or incompatible decisionmaking processes, sustainable development could play a significant role in making government more efficient.

prove the effectiveness and efficiency of government agencies by forcing them to think strategically about their overall goals and the best ways of achieving those goals.<sup>159</sup> For agencies such as EPA that are governed by multiple statutes with seemingly conflicting mandates, the process mandated by the act is also a way of moving toward greater coherence in program design and implementation.<sup>160</sup> In addition, the GPRA is a means of ensuring coherent implementation of goals that involve many different administrative agencies. The U.S. government can use this statute to ensure that these agency strategies consistently and progressively foster sustainable development. Indeed, some agencies, such as the U.S. Forest Service, are already expressly using the GPRA for that purpose.<sup>161</sup>

The integration of strategic long-term objectives into national decisionmaking, though, continues to be challenged by the problem of political ownership and election cycles. If anyone “owns” the PCSD’s work, for instance, it is only the now-ended Clinton Administration. Even the GPRA, and planning under the GPRA, is subject to the views and priorities of each succeeding president. There is no institutional mechanism, analogous in some ways to an independent federal agency, that is capable of ensuring any kind of long-term thinking or action for sustainable development.

### Next Steps

Both the WSSD and the United States should take action concerning national strategies. The WSSD would add significant value to the national strategy process if countries were to agree that implementation of national sustainable development strategies should begin no later than 2005. If the WSSD does not do that, or something like it, the 1997 agreement to have developed national strategies by 2002 would be meaningless. It would also help if countries at WSSD would agree that national trends for the degradation and loss of natural resources should be reversed by 2015. That commitment, or something akin to it, would provide a specific and basic environmental goal for all national strategies. Beyond its value to the national strategy process, moreover, the latter goal would incorporate a specific and easily understood goal into the meaning of sustainable development. This goal would help focus national and international efforts, and help galvanize citizens, nongovernmental organizations, and corporations in countries around the world.

159. OFFICE OF INSPECTOR GENERAL, U.S. EPA, GOVERNMENT PERFORMANCE AND RESULTS ACT (GPRA) REVIEW GUIDE 2-3 (1999).

160. Robert M. Sussman, *The Government Performance and Results Act and the Future of EPA: A Second Look*, 29 ELR 10347, 10356-59 (June 1999).

161. Robert L. Fischman, *Stumbling to Johannesburg: The United States’ Haphazard Progress Toward Sustainable Forestry Law*, 32 ELR 10291 (Mar. 2002). See also UNITED STATES, UNITED STATES OF AMERICA—COUNTRY PROFILE 43 (Jan. 9, 2002 “final version”) (to be submitted to United Nations as part of preparation for the WSSD) (on file with author):

A number of strategic plans put out by Agencies since 1992, including the National Oceanic and Atmospheric Administration, the Department of Energy, EPA, agencies within the Department of the Interior, and the Department of Agriculture, emphasize sustainable development as a conceptual framework for their activities. The GPRA requirements enabled EPA and others to work across the federal government, with other government agencies and the public on overall goals for environmental protection and sustainable development.

The United States should also adopt and implement a national strategy for sustainable development. The strategy should include meaningful goals; indicators of progress toward those goals; legal and institutional mechanisms for achieving those goals; and public education. The federal government should provide a framework for public discussion and action, and should encourage all parts of a society and all levels of government to play a role in sustainable development. The strategy cannot be the responsibility of the president or executive branch alone. Congress, after all, writes the laws as well as the federal budget. Without a mutual understanding between the two branches, implementation of a national strategy will be impossible. What follows is not intended to set out that strategy in detail, or to reiterate the necessary elements of a national strategy, but rather to emphasize some particularly important points.

### *The Strategy Should Build on Existing Efforts and on Existing Legal Authority*

It should operate as an umbrella to coordinate and strengthen these efforts, and to strengthen their legal authority where appropriate. It should not replace or undermine these existing efforts. Thus, all federal agencies should integrate sustainable development into their strategic planning process under the GPRA.<sup>162</sup> This use of the GPRA would require continuing dialogue between the executive branch and Congress on both legislative and budget issues, and it would provide a means of reshaping existing programs in ways that would result in economic, social, and environmental progress within the United States.<sup>163</sup> It could also provide greater coherence among agencies with different or overlapping missions, thereby improving their effectiveness and perhaps reducing their cost.

Another approach, similar to but broader than the GPRA process, is to build on domestic legal arrangements that already exist. This approach would be based on recognition that aspects of sustainable development are already incorporated into the nation’s natural resource and pollution control laws, and thus are supported by significant administrative machinery at every level of government and a substantial number of persons with expertise. Under this approach, Congress and/or the relevant administrative agencies would move the direction of these programs to greater achievement in sustainable development. This process is already underway in the United States to some degree, with greater attention being paid to recycling, pollution prevention, and biodiversity protection on private lands. Under this approach, those efforts would be accelerated and broadened in scope.

It is also important not to reinvent the wheel. The EU’s sustainable development strategy incorporates two priorities—addressing poverty and an aging population—that were already in place when the strategy was adopted.<sup>164</sup> Similarly, the U.S. antiterrorism strategy would necessarily

162. NEPA could be an important additional source of legal authority and guidance in this effort.

163. The GPRA is not a panacea, though; it can be implemented in ways that are antagonistic to environmental protection. See, e.g., Rena I. Steinzor, *Reinventing Environmental Regulation Through the Government Performance and Results Act*, 29 ELR 10074 (Feb. 1999). But see Sussman, *supra* note 160 (responding, in part, by explaining ways of avoiding such problems).

164. EU STRATEGY, *supra* note 77, at 10.

be part of a broader sustainable development strategy. In addition, a substantial consensus exists concerning many of the issues the PCSD addressed, and it would be relatively easy for the Bush Administration to use them to initiate proposals to Congress and within federal agencies. It would be more efficient and productive to use those recommendations as a starting point than to start over. An important example of that is the community sustainability efforts that were highlighted and encouraged by the PCSD.

### *The Strategy Should Have Priorities*

It is probably not appropriate to develop a single strategy that applies to all aspects of sustainable development in the United States. Rather, the strategy should be based on national priorities. Among other things, priorities bridge the gap between the “ambitious vision” of sustainable development and “practical political action.”<sup>165</sup> The EU’s sustainable development strategy, for example, is addressed to six priority problems: greenhouse gases, severe threats to public health, poverty, aging of the population, loss of biodiversity, and transport congestion.<sup>166</sup> Each of these problems is considered to “pose severe or irreversible threats to the future well-being of European society.”<sup>167</sup> These priorities also have common roots, according to a paper supporting the strategy. These include governmental and market incentives for unsustainable behavior, policies for particular sectors that are made and implemented without regard for the impact of those policies on other parts of society, the short-term perspective of decisionmakers, policy inertia, a limited understanding of the causes and effects of these problems, and poor communication among decisionmakers, scientists, and the public.<sup>168</sup>

The United States could set priorities using a similar approach. It could, for instance, identify those areas involving the greatest risks to the country from unsustainable development.<sup>169</sup> Climate change and loss of biodiversity would likely be priorities under that approach.<sup>170</sup> Another method is to identify sustainable development problems for which the United States has treaty commitments.<sup>171</sup> Under this method, climate change would also be among U.S. priorities

because the country is a Party to the UNFCCC.<sup>172</sup> Still another is to identify cross-sectoral issues or issues with wide implications. This is somewhat different from focusing on risk or legal obligation. Two dominant and recurring concerns are consumption of materials and consumption of energy. They are important in their own right, but they contribute to a variety of problems, including pollution and global warming. Somewhat similarly, the need to protect species and ecosystems is a dominant issue in a variety of environmental protection fields—forestry, fresh water, oceans and estuaries, agriculture, and even air quality. Under this approach, the United States would prioritize reductions in consumption of materials and energy as well as protection of biodiversity. Of course, this strategy would have to be accomplished without putting human prosperity or well being at risk.

These approaches, taken together and in concert with the importance of building on existing efforts, appear to suggest that climate change and biodiversity should be among the major themes of any U.S. strategy to foster sustainable development. Climate change presents significant risks to the United States, we have a treaty commitment to address climate change, and unsustainable patterns of energy production and consumption (and to a lesser extent, materials production and consumption) contribute to greenhouse gas emissions. To some degree, climate change is also an issue on which the United States already has a program in place.

Biodiversity also presents significant risks to the United States, and is a recurring and significant issue in many environmental programs. Biodiversity is also an issue on which the United States already has a significant regulatory program under the Endangered Species Act. The collaborative stakeholder-based decisionmaking processes suggested by the PCSD are already being used to protect biodiversity; further use and refinement of those processes would likely produce greater benefits.

### *The Strategy Should Have Meaningful Goals*

To the greatest extent possible, the strategy should be accompanied by specific goals to be achieved by particular dates. These goals should be measurable, and progress toward them should be measured. The public should be kept apprised of progress toward these goals through the media and online resources. These goals should be created for both the short term and the long term. Long-term targets are required to adequately provide for future generations, to help companies and individuals plan effectively for the long term, and to reduce costs of a transition to a sustainable society.<sup>173</sup> The EU’s sustainable development strategy uses this overall approach, setting dates by which certain actions should be taken or certain results achieved. Objectives for natural resources, for instance, include establishing a system of biodiversity indicators by 2003 and halting the loss of biodiversity by 2010.<sup>174</sup> The PCSD’s vision statement and its statement of 10 national goals could be used as starting points in developing U.S. priorities.

165. *Id.* at 3.

166. *Id.* at 2-4.

167. *Id.* at 3. These problems are described in detail in CONSULTATION PAPER, *supra* note 79, at 14-43.

168. *Id.* at 44-47.

169. OECD, POLICIES TO ENHANCE SUSTAINABLE DEVELOPMENT 22 (2001) [hereinafter POLICIES TO ENHANCE SUSTAINABLE DEVELOPMENT].

170. U.S. EPA, REDUCING RISK: SETTING PRIORITIES AND STRATEGIES FOR ENVIRONMENTAL PROTECTION (1990) (identifying climate change and loss of biodiversity as among the greatest risks presented to the United States); POLICIES TO ENHANCE SUSTAINABLE DEVELOPMENT, *supra* note 169, at 22.

171. That approach would separate the Rio commitments that are based only on Agenda 21 and the Rio Declaration, which are not legally binding, from those commitments that are also contained in treaties that the country has ratified or is likely to ratify. By agreeing to Agenda 21, however, states have acknowledged that the issues it addresses are a legitimate subject of international concern. Indeed, by providing information to the U.N. Commission on Sustainable Development concerning actions they have taken under Agenda 21, the United States and other nations confirm that conclusion. *See, e.g., UNITED NATIONS, EARTH SUMMIT + 5: COUNTRY PROFILE—UNITED STATES* (1997) (summarizing U.S. activities that are said to be consistent with Agenda 21).

172. Because this country has signed but not ratified the Convention on Biological Diversity, biodiversity would have a lower priority, although probably higher than a problem for which no multilateral environmental agreement is in place.

173. CONSULTATION PAPER, *supra* note 79, at 49.

174. EU STRATEGY, *supra* note 77, at 12.



As the PCSD and the GPRA both suggest, the establishment of goals and the use of indicators are essential parts of any national strategy. Sustainable development goals, if adopted in a publicly accepted manner, would provide the United States with a more precise and focused understanding of what it is trying to achieve through sustainable development.<sup>175</sup> Sustainable development indicators would allow a public understanding of how the United States is actually doing, and would encourage efforts to ensure that the objectives are met. “If the United States is serious about sustainable development,” the PCSD said, “it needs to generate better tools for measuring the public value—including the economic value—of the things that are important to the nation.”<sup>176</sup> Both goals and indicators are essential. Indicators without national goals measure things that people may not care about, but goals without indicators cannot credibly be achieved.

*An Institutional Mechanism Must Coordinate Administration Actions Concerning Sustainable Development*

Wherever that entity is located within the executive branch, it should have the legal authority to do the job. Whatever else might be said of the CEQ, it already has that authority. An individual with significant stature, experience, and expertise—and no other major responsibilities—should be in charge of that entity.<sup>177</sup> Although many changes would require legislative approval, unifying the executive branch on this existing framework would be an important step in the right direction.

At a minimum, that entity should be responsible for developing, and coordinating the development of, proactive U.S. government positions on a variety of domestic and international sustainable development issues. It should also be capable of facilitating interagency coordination on sustainable development issues that apply to several agencies. The entity should review major proposed legislation, including budget and appropriations legislation, for its potential to further or impede sustainable development goals, with particular emphasis on subsidies and taxes. It should facilitate and ensure coordination and consistency between the development and implementation of domestic and foreign policies relating to sustainable development. In addition, it should oversee development and implementation of a national strategy for sustainable development. And this entity should monitor and report to the public on U.S. progress in meeting

commitments under Agenda 21, the Rio Declaration, and other international agreements, including identification of gaps between U.S. domestic policy and the commitments contained in those agreements.

Some kind of parallel mechanism or committee should also be created in Congress. One possibility would involve a new or modified committee structure. A second possibility would involve the establishment of some kind of entity within Congress, broadly similar to the Congressional Budget Office, that would have coordinating, investigating, and reporting responsibilities for sustainable development.

*The Public Must Be Fully Involved*

To some degree, or course, the public participation required for the development and implementation of such a strategy will depend on the particular issues being addressed and on the public participation provisions in the government’s existing legal authority to address these issues. If sustainable development is truly to work in the United States, the federal government needs to enlist and harness the full energy of every sector of society, particularly but not only the private sector.

An essential component of any national strategy is public education about the reasons for the strategy and its importance. Part of public education is framing sustainable development in a way that people can understand. Sustainable development will not happen unless individuals, corporations, governments, and others do the right thing for their own personal or organizational reasons.<sup>178</sup> As the PCSD experience teaches, the president needs to be a visible and active part of the public education effort. A defining characteristic of

175. If the scientific and technological community is to be fully engaged in a national sustainable development effort, for example, the goals toward which that effort is addressed must be more clearly articulated. In the absence of a coherent overall strategy, and the public and private funding that would accompany such a strategy, the country’s impressive scientific and technological capability will not be fully engaged. Reducing greenhouse gas emissions, for example, will require a substantial and coordinated technological development effort.

176. SUSTAINABLE AMERICA, *supra* note 84, at 67.

177. This is precisely the approach taken by President Bush in response to the threat of international terrorism. He created an Office of Homeland Security within the White House to oversee the nation’s coordinated response to terrorism. The office is responsible for coordinating the efforts of many federal agencies. In addition, President Bush appointed Pennsylvania Gov. Tom Ridge, who is widely respected, to head that office.

178. Apart from the particulars of any strategy, the federal government needs to share some extremely important general messages with the American public. These include the following:

1. As a nation, we must find ways to achieve our social, economic, security, and environmental goals at the same time, both for our quality of life and for that of future generations. The public appears to recognize this, at least intuitively, although few would recognize the “sustainable development” label. That is probably why the American public has resisted approaches to energy policy which emphasize economic development over environmental protection and energy conservation.

2. We have more choices than we think we do. Once we agree on our goals, we can usually see that there are many ways to achieve them. Environmental policy gridlock in the United States occurs because debates about means (regulatory versus voluntary) are used as stand-ins for a reasoned discussion about the goals we should be seeking. As the PCSD reports make clear, there are numerous reasonable approaches to sustainable development that have not been tried. Instead of immediately assuming there will be trade offs among environmental, social, and economic goals, we should look for ways to avoid or minimize conflicts, examine ways to minimize the consequences of conflicts that do occur, and seek to avoid future conflicts.

3. Most of the problems we face have economic, social, and environmental costs. They do not fall into simply economic, merely social, or only environmental categories. The best approaches to these problems also have economic, social, and environmental benefits. There is not, and should not be, merely one kind of benefit.

4. The United States can exercise international leadership on sustainable development by what it does at home, by the example it sets within its own borders.

5. We all have a role to play, in our personal and work lives, in fostering sustainable development.

the American presidency, of course, is the ability to educate the public and enlist support for important goals, such as putting an end to terrorism.<sup>179</sup> Government agencies should also play a key role in educating the public about sustainable development in the context of existing and proposed programs.

*The CEQ's Annual Reporting Function Should Be Transferred*

The CEQ's annual reporting duties should be transferred to an independent and properly funded entity, either in or out of the federal government. The point here is to ensure continuity in reporting from administration to administration, rather than selective reporting on issues or indicators of interest to, or advantageous to, a particular administration.<sup>180</sup> While it is neither possible nor desirable to turn over decisionmaking to such an entity, its consistent reporting would ensure that a long-term perspective is at least brought to bear in national decisionmaking.

179. See Gregg Easterbrook, *The Producers*, NEW REPUBLIC, June 4, 2001, at 27, 31 ("The underlying conundrum (of energy policy) will not change until some national leader takes up the task of educating the public about the hard choices . . . . Voters must understand that either mpg [miles per gallon required in automobiles] and energy efficiency rise or prices do—these are the options.")

180. Australia and New Zealand provide two examples of what countries can do when they take periodic national environmental reporting seriously. STATE OF THE ENVIRONMENT ADVISORY COUNCIL, STATE OF THE ENVIRONMENT AUSTRALIA: 1996 (1996); Environment Australia, State of the Environment Australia homepage, at <http://www.ea.gov.au/soe/> (last visited Feb. 4, 2002); NEW ZEALAND MINISTRY FOR THE ENVIRONMENT, THE STATE OF NEW ZEALAND'S ENVIRONMENT: 1997 (1997).

It would also be important to seek uniformity in data to the extent possible, so that information can be compared across municipalities and states, and so that U.S. information can be compared to that from other countries.

## Conclusion

Undersecretary Dobriansky is right; sustainable development does begin at home. The evident desire of the U.S. government to focus on national governance as a major part of its preparations for the WSSD, however, presents both opportunities and risks. It is surely true that much of the unsustainable development that occurs around the world can be laid at the feet of national governments.<sup>181</sup> Thus, there is no question but that national governance is an appropriate issue. It also appears that the U.S. approach helps put the country in a constructive position at the WSSD. The governance issues raised by the State Department, such as public participation and access to justice, are great strengths of the United States. But these are not the only governance issues relevant to sustainable development. Sustainable development in the United States is not likely to occur in any meaningful way unless we approach it systematically and with purpose. At present, there is no national strategy for sustainable development.

In the wake of the tragic September 11, 2001, terrorist acts, people pointed to prior warning signs about the threat of global terrorism, many of which had been ignored.<sup>182</sup> Similarly, the problems addressed by sustainable development—growing poverty and environmental degradation—are real and are getting worse. If the United States has learned anything from its recent experience, it should not wait for a tragedy or crisis before we take those problems seriously. The United States should develop and implement a national strategy for sustainable development—now.

181. See, e.g., WILLIAM ASCHER, WHY GOVERNMENTS WASTE NATURAL RESOURCES: POLICY FAILURES IN DEVELOPING COUNTRIES (1999) (examining 16 case studies in developing countries, and making recommendations); Parvez Hassan, *Elements of Good Environmental Governance*, 6 ASIA PAC. J. ENVTL. L. 1 (2001) (explaining importance of good governance, using Pakistan as example).

182. See, e.g., Judith Miller, *Planning for Terror but Failing to Act*, N.Y. TIMES, Dec. 20, 2001, at A1.