



Selecting Best Policies and Law for Future Generations

LEGAL WORKING PAPER AND WORKED EXAMPLES

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FINAL VERSION¹

**10 May 2008
Montreal, Canada**

¹ This Working Paper explores the criteria or principles that could be used to select a 'best policy' or 'best law' for future generations. It is intended as a scholarly research initiative, and not as specific legal advice. The views expressed remain the views of the authors and contributors, and are not a position taken by the CISDL.

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Summary

How can we identify the ‘best practices’ among hundreds, indeed millions, of local, national and international policies and laws that are being set in place to promote sustainability, development and human rights? What kind of criteria or principles might be used to select leading examples of laws and policies?

A “Best Policy” or a “Best Practice Law”, to promote future justice, should embody the highest standard of sustainability, respect for human rights, and respect for the environment. It should, in both its intention and its actual effect on the ground, work to defend the interests of future generations. It should, however, be pragmatic – rather than serving as a ‘gold standard’, it should lay out clear future justice oriented criteria which become the norm for drafting laws and policies in the interests of present and future generations.

In the last three decades, several important global-scale processes have been undertaken to develop principles of international law on sustainable development. The processes (and debates) have been intense, engaging experts and grassroots leaders from all corners of the world, and building on decades of careful, rigorous analysis. The most important undertakings ran parallel to several global policy making processes. These included the process of elaborating the 1972 *Stockholm Declaration*,² the 1987 Brundtland Commission’s *Report of the Legal Experts Group on Principles of International Law for the Protection of the Environment and Sustainable Development*,³ the 1992 *Rio Declaration and Agenda 21*⁴ of the United Nations Conference on Environment and Development, the 2002 *Johannesburg Plan of Implementation*⁵ of the World Summit on Sustainable Development, and the 2002 *New Delhi Declaration*⁶ of the International Law Association.

Out of these processes, and hundreds of international treaties signed in recent years, a body of rules of international law is now emerging to defend the rights and needs of future generations and to promote sustainability. Out of these global and local policy-making processes can be distilled seven principles which, together, make up a starting point for criteria to select ‘best practice’ laws and policies that can protect the interests of future generations.

² ‘Stockholm Declaration’ UN Conference on the Human Environment (16 June 1972) UN Doc A/Conf 48/14/Rev.1, 11 ILM 1461 (1972); for discussion, see, e.g., G. D. Meyers & S. C. Muller, ‘The Ethical Implications, Political Ramifications and Practical Limitations of Adopting Sustainable Development as National and International Policy’ (1996) 4 Buffalo Environmental LJ 1; see A. Geisinger, ‘Sustainable Development and the Domination of Nature: Spreading the Seed of the Western Ideology of Nature’ (1999) 27 British Columbia Environmental Affairs L Rev 43.

³ ‘Our Common Future’ UN World Commission on Environment and Development Rep (4 August 1987) UN Doc A/42/427.

⁴ ‘Rio Declaration on Environment and Development (Annex 2)’, Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I), (1992) 31 ILM 874; ‘Agenda 21 (Annex 2)’ in Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I).

⁵ The official documents from the World Summit for Sustainable Development (WSSD) are available at: WSSD Documents <http://www.un.org/jsummit/html/documents/summit_docs.html> accessed 1 January 2008; see also ‘Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation’ in Report of the World Summit on Sustainable Development (4 September 2002) UN Doc A/CONF.199/L20.

⁶ See “ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development” (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, “Editorial Introduction” (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

The following draft Future Justice Best Laws / Policies Standard lays out a series of objective and inter-related questions, based on the universal 2002 *New Delhi Declaration Principles of International Law on Sustainable Development*⁷ that were developed through a decade of consultation and study by the International Law Association.

A practical demonstration Standard is provided below, together with questions that, while not a 'check-list', can clarify how a law or policy might embody these principles. These 'principled criteria' are not meant to let 'the best become the enemy of the good.' Rather, they seek to help policy-makers, civil society and others to evaluate or draft new laws and policies carefully, and to ensure they have taken into account important universal principles. This way, 'best practice policies and laws' can be shared successfully and appropriately, taking into account surrounding legislation and policy contexts which contributed to their success, and potentially overcoming existing and very legitimate regional, cultural and technological differences.

The Future Justice 'Best Policies/Laws' Standard

First, a screen would be applied to ensure that candidate laws and policies can be weighed, seeking the ones that contribute the most clearly to global justice for future generations. The screen will consider candidate laws and policies that can contribute to the achievement of the Millennium Development Goals and other globally agreed objectives. In essence, this standard seeks to answer the following fundamental question:

What are the actions, practices and policies whose adoption could radically enhance the prospects of sustainability of life on our planet, to promote the integrity of future generations?

1. The duty of countries to ensure sustainable use of natural resources

- 1.1 Does the law/policy help to ensure that the Earth's scarce resources will be used in a more sustainable way?
- 1.2 Does it help to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks)?
- 1.3 Does it respect natural areas, artifacts and traditional knowledge, all of which are the common heritage of humankind?

2. The principle of equity and the eradication of poverty

- 2.1 Does the law/policy help to address pressing poverty and human rights challenges?
- 2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?
- 2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for the rights of

⁷ See "ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development" (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, "Editorial Introduction" (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

indigenous peoples and local communities, eradication of poverty and less discrimination among species?

3. The principle of the precautionary approach to human health, natural resources and ecosystems

- 3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?
- 3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?
- 3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

4. The principle of public participation and access to information and justice

- 4.1 Does the law/policy provide for public consultation and genuine engagement, in both its design and implementation?
- 4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?
- 4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

5. The principle of governance and human security

- 5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?
- 5.2 Does it promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?
- 5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption, bribery or unethical conduct, and provide appropriate penalties for abuse of rights, or for mis-implementation?

6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

- 6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?
- 6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?
- 6.3 Does it provide or enhance benefits for the environment, and the society?

7. The principle of common but differentiated obligations

- 7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations, and provide avenues to redress such inequalities where possible?
- 7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?
- 7.3 Does it avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

These 'principled criteria' are not exhaustive, nor will all questions apply to every law or policy. However if, on the balance of considerations, a policy or law can be said to meet

most these standards where they are relevant, it could easily and indeed naturally be held up as a shining universal or regional best practice.

The 'best future justice law or policy' would, in intention and *in effect*, reflect the duty of policy-makers to ensure sustainable use of natural resources, promote the principle of equity and the eradication of poverty, respect the principle of the precautionary approach to human health, natural resources and ecosystems, comply with the principle of public participation and access to information and justice, demonstrate the principle of good governance in practice, respect the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives, and reflect the principle of common but differentiated obligations.

The law or policy would, in essence, be worthy of the designation 'best future justice policy/law' by the World Future Council, to be promoted in its region and globally as a best practice.

¹⁷³ 'Stockholm Declaration' UN Conference on the Human Environment (16 June 1972) UN Doc A/Conf 48/14/Rev.1, 11 ILM 1461 (1972); for discussion, see, e.g., G. D. Meyers & S. C. Muller, 'The Ethical Implications, Political Ramifications and Practical Limitations of Adopting Sustainable Development as National and International Policy' (1996) 4 Buffalo Environmental LJ 1; see A. Geisinger, 'Sustainable Development and the Domination of Nature: Spreading the Seed of the Western Ideology of Nature' (1999) 27 British Columbia Environmental Affairs L Rev 43.

1. Introduction: Proposed Principles for Identifying Best Policies and Law in the Interests of Future Generations

There exists a growing body of international law on sustainable development. Indeed, a body of rules of international law is now emerging to defend the rights and needs of future generations, and to promote sustainability. How can we identify the ‘best practices’ among hundreds, indeed millions, of local, national and international policies and laws that are being set in place to promote sustainability, development and human rights? What kind of criteria or principles might be used to select leading examples of laws and policies?

2. The Process of Developing Global Principles of Law to Protect the Interests of Future Generations

In the last three decades, several global-scale processes have been undertaken to develop principles of international law on sustainable development. These processes (and debates) have been intense, engaging experts and grassroots leaders from all corners of the world, and building on decades of careful, rigorous analysis. The most important undertakings ran parallel to several global policy making processes. (See Annex 1: A Sustainable Development Timeline). These included the process of elaborating the 1972 *Stockholm Declaration*,¹⁷³ the 1987 Brundtland Commission’s *Report of the Legal Experts Group on Principles of International Law for the Protection of the Environment and Sustainable Development*,¹⁷⁴ the 1992 *Rio Declaration and Agenda 21*¹⁷⁵ of the United Nations Conference on Environment and Development, the 2002 *Johannesburg Plan of Implementation*¹⁷⁶ of the World Summit on Sustainable Development, and the 2002 *New Delhi Declaration*¹⁷⁷ of the International Law Association.

One important starting point was the Legal Annex to *Our Common Future*,¹⁷⁹ which was the outcome of years of high level and grassroots global consultations by the World Commission on Environment and Development, and built on the Stockholm Declaration but included a considered legal analysis, commentary and a clear normative proposal for each of their proposed Principles.

Our Common Future proposed the adoption of 22 legal principles, divided in four groups, meant to address the challenges identified in the report and guide the future law-making in the areas of environmental protection and sustainable development. The first group, named “General Principles, Rights, and Responsibilities”, includes the recognition of the right to a

¹⁷⁴ ‘Our Common Future’ UN World Commission on Environment and Development Rep (4 August 1987) UN Doc A/42/427.

¹⁷⁵ ‘Rio Declaration on Environment and Development (Annex 2)’, Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I), (1992) 31 ILM 874; ‘Agenda 21 (Annex 2)’ in Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I).

¹⁷⁶ The official documents from the World Summit for Sustainable Development (WSSD) are available at: WSSD Documents <http://www.un.org/summit/html/documents/summit_docs.html> accessed 1 January 2008; see also ‘Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation’ in Report of the World Summit on Sustainable Development (4 September 2002) UN Doc A/CONF.199/L20.

¹⁷⁷ See “ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development” (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, “Editorial Introduction” (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

healthy environment as a human right.¹⁸⁰ In this section, sustainable development is expressed as a means to ensure that the conservation of natural resources must be integrated into any development activity.

The second group, “Principles, Rights and Obligations Concerning Transboundary Natural Resources and Environmental Interferences” lays the foundations of inter-state obligations related to sustainable development. These include the principles of non-discrimination and equitable use of transboundary resources; and of cooperation in the protection, prevention and abatement of environmental problems. The last two sections, comprising one principle each one, deal with State Responsibility and Compensation, and the peaceful settlement of environmental disputes.

The 1992 *Rio Declaration* echoes many of the Principles recommended by the Brundtland Report, and was clearly directly influenced by its findings. Widely accepted as ‘soft law’¹⁸¹ the central concept of the 1992 *Rio Declaration* is sustainable development, as defined by the *Brundtland Report*. These views are also reflected in Principle 1, which states that “[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.” Principle 2, as mentioned above, reaffirms that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. Principle 3 states that “The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.” Principle 4 states that “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.” Further, Principle 10 maintains that “States shall facilitate and encourage public awareness and participating by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.” Principle 14 reads “States should effectively cooperation to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.” Principle 15 states that “the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” And Principle 16 states that “National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments,

¹⁸⁰ This right was later recognized by the Organization of American States as a fundamental human right in a Protocol to the American Convention on Human Rights: Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, “Protocol of San Salvador” (adopted 17 November 1988, entry into force 16 November 1999) O.A.S. Treaty Series No. 69 (1988) art 11.

¹⁸¹ Gabčíkovo-Nagymaros (n 24) [70]-[71]. See also A Boyle, ‘Soft Law in International Law-Making’ in M Evans, ed *International Law* (2nd ed OUP, Oxford 2006) 142; MC Cordonier Segger and A Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (OUP, Oxford 2005); D French, *International Law and Policy of Sustainable Development* (Manchester University Press, Manchester 2005) and FAO, *Law and Sustainable Development Since Rio: Legal trends in agriculture and natural resource management* FAO Legislative Study 73 (FAO, Rome 2002).

¹⁸³ Division for Sustainable Development, Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development (Geneva, Switzerland, 26-28 Sept 1995) Background Paper for the UN CSD New York, 18 April - 3 May 1996 <www.un.org/documents/ecosoc/cn17/1996/background/ecn171996-bp3.htm> (last accessed Feb 01 2008).

taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.” These principles are reaffirmed and specifically mentioned throughout the 1992 Agenda 21.

The Rio Declaration was followed by the *Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development*, which was commissioned by the UN Division for Sustainable Development in accordance with a request by States at the second session of the UN Commission on Sustainable Development in 1994, and released in September, 1995.¹⁸³ This early Report identifies nineteen principles and concepts of international law for sustainable development in the context of the Rio Declaration, Agenda 21, international treaties and other legal instruments at that time. As noted in the Report, the principles are organized in five clusters, focused on one fundamental principle of interrelationship and integration (which the experts considered, in their view, “forms the backbone of sustainable development”); then eight principles and concepts related to the environment and development (including several of the principles highlighted above); three principles related to international cooperation; three principles related to participation, decision-making and transparency; and four techniques of dispute avoidance, resolution procedures, monitoring and compliance. An additional eight ‘sub-principles’ are also discussed, and the Report notes that their study is not exhaustive. The Report did not resolve international debates on these questions.

In 1997, in light of the recommendations of the Report, States noted in the *Programme of Action for Further Implementation of Agenda 21* at 14 that:

“Progress has been made in incorporating the principles contained in the Rio Declaration on Environment and Development - including the principle of common but differentiated responsibilities, which embodies the important concept of and basis for international partnership; the precautionary principle; the polluter pays principle; and the environmental impact assessment principle - in a variety of international and national legal instruments. While some progress has been made in implementing United Nations Conference on Environment and Development commitments through a variety of international legal instruments, much remains to be done to embody the Rio principles more firmly in law and practice.”

In 2002, the International Law Association’s Committee on the Legal Aspects of Sustainable Development released its New Delhi ILA *Declaration on Principles of International Law relating to Sustainable Development* as a Resolution of the 70th Conference of the International Law Association in New Delhi India, 2-6 April 2002.¹⁸⁴ Adopting the approach mentioned above, the Declaration notes that “sustainable development is now widely accepted as a global objective and that the concept has been amply recognized in various international and national legal instruments, including treaty law and jurisprudence at international and national levels...” It outlines seven principles of international law on sustainable development. These principles were highlighted in the Brundtland Report and the 1992 Rio

¹⁸⁴ See “ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development” (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, “Editorial Introduction” (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

Declaration, are central principles of most international treaties related to sustainable development, and are recognized and reaffirmed throughout the 2002 Johannesburg Plan of Implementation. Detailed analysis is beyond the scope of this chapter and can be found elsewhere.¹⁸⁵ However, given the comprehensive and balanced decade of study and analysis conducted by the Committee and the relative normative clarity of their findings, the 2002 *New Delhi Declaration* provides the most current benchmark of the important principles of international law on sustainable development.¹⁸⁶ Indeed, this Declaration, though essentially a recommendation of a global legal experts committee after ten years of study and review, was included as a submission from the Netherlands in the outcomes of the 2002 World Summit on Sustainable Development.

These seven principles, reflecting as they do important advances in international and national law in the interests of future generations, provide a good starting point for any attempt to develop criteria for the selection of best ‘future justice’ policies or laws. In particular, the universal principles provide a useful set of benchmarks that, ideally, a ‘best policy’ could meet.

3. Proposed Future Justice Principles to Select Best Laws and Policies in the Interests of Future Generations

The New Delhi Declaration starts by recognizing the need to further develop international law in the field of sustainable development, with a view to according due weight to both the developmental and environmental concerns, in order to achieve a balanced and comprehensive international law on sustainable development, as called for in Principle 27 of the Rio Declaration and Chapter 39 of Agenda 21 of the UN Conference on Environment and Development. Then, seven ‘principles’ are highlighted.

3.1 The duty of states to ensure sustainable use of natural resources

Communities form countries, which have sovereign rights over their natural resources, and a duty not to cause (or allow) undue damage to the environment of others in the use of these resources. Future ‘best laws and policies’ should promote the management of natural resources, including natural resources within their own territory or jurisdiction, in a rational, sustainable and safe way so as to contribute to the development of their peoples, with particular regard for the rights of indigenous peoples, and to the conservation and sustainable use of natural resources and the protection of the environment, including ecosystems. Further, ‘best laws and policies’ should take into account the needs of future generations in determining the rate of use of natural resources, working to fulfill a community or country’s duty to avoid wasteful use of natural resources and promote waste

¹⁸⁵ N Schrijver and F Weiss, *International Law and Sustainable Development: Principles and Practice* (Martinus Nijhoff, Lieden 2004) 1-152, 699-706; Cordonier Segger and Khalfan (n 241) 95 - 191; D French, *International Law and Policy of Sustainable Development* (Manchester University Press, Manchester 2005).

¹⁸⁶ M C Cordonier Segger, ‘Significant Developments in Sustainable Development Law and Governance: A Proposal’ (2004) 28 Natural Resources Forum 61; FAO, *International Law and Sustainable Development Since Rio* (FAO, Rome 2002); M C Cordonier Segger and others, ‘Prospects for Principles of International Sustainable Development Law after the WSSD: Common but Differentiated Responsibilities, Precaution and Participation’ (2003) 12:1 RECIEL 54.

¹⁸⁸ Cordonier Segger and Khalfan (n 241) 109 – 122 argues that both central norms highlighted by this principle have been recognised as rules of customary international law. See also K Bottriel and D French, ‘The Duty of States to Ensure Sustainable Use of Natural Resources’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisd.org/pdf/sdl/SDL_Sustainable_Use.pdf> (last accessed Feb 04 2008).

minimization policies. The actual meaning of ‘rational, sustainable and safe ways’ of management, and how the needs of future generations can be taken into account, likely depends on the actual resources in question, and the limits of present technology and science of the managers. However, the ‘best law or policy’ should recognize that certain resources may be ‘common concerns of mankind’ (e.g. the climate system, biological diversity and fauna and flora of the Earth) or part of the ‘common heritage of mankind’ (e.g. the resources of outer space and celestial bodies, sea-bed, ocean floor and subsoil beyond the limits of national jurisdiction).¹⁸⁸

This principle has been reflected and strongly reaffirmed in several international treaties on sustainable development with extremely broad membership in the past two decades. In the UN Framework Convention on Climate Change, at the Preamble, Parties recognize the rights of sovereignty over natural resources and related responsibilities to protect the world’s climate system. Similar recognition is found in the Preamble of the UN Convention on Biological Diversity, and is highlighted as a principle of sustainable use of biological resources in Article 3 and Article 10. Similarly, in the UN Convention to Combat Desertification and Drought, at Art 3(c), Parties agree on a principle to work toward sustainable use of scarce water and land resources and in Art 10.4 on national action plans, Art 11 on regional and sub-regional actions, Art 17.1(a) on research and development, and Art 19.1(c) and (e) on capacity-building, the principle is reaffirmed. The WTO Agreement also recognizes, in its Preamble, the need to ensure optimal use of the world’s resources in accordance with the objective of sustainable development. And the FAO Seed Treaty, at Art 1.1, sets the conservation and sustainable use of plant genetic resources for food and agriculture, making the commitment operational in Art 6 which lays out a series of specific law and policy measures that States should adopt to ensure sustainable use of plant genetic resources.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy respects the duty of countries to ensure sustainable use of natural resources, the World Future Council will assess:

- whether the law/policy helps to ensure that the Earth’s scarce resources will be used in a more sustainable way,
- whether it helps to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks), and
- whether it respect natural areas and artifacts which are common heritage of humankind.

3.2 The principle of equity and the eradication of poverty

As part of sustainable development, laws and policies shall promote a just distribution of resources among members of the present generation, and shall take into account the needs of future generations in making decisions about allocations of resources. Furthermore, all

law and policy-makers have a duty to progressively reduce poverty. The principle of equity refers to both *inter-generational equity* (a right of future generations to enjoy a fair level of the common patrimony) and *intra-generational equity* (a right of all peoples within the current generation of fair access to the current generation's entitlement to the Earth's natural resources). The definition of 'fair' is open to interpretation, but inter-generational equity evokes an obligation to take into account the long-term impact of activities and to sustain the resource base and the global environment for the benefit of future generations. The law or policy should recognize, where appropriate, the right to development, though this right should be implemented so as to meet developmental and environmental needs of present and future generations in a sustainable and equitable manner. In essence, a law or policy that respects the principle of equity includes a duty to cooperate to secure development opportunities of developed and developing countries and communities, and a duty to co-operate for the eradication of poverty, as noted in Chapter IX on International Economic and Social Co-operation of the Charter of the United Nations. Whilst it is the primary responsibility of a law or policy-maker to secure conditions of equity in their own communities or countries, all actors which are in a position to do so have a responsibility to assist.¹⁹⁰

This principle is also clearly reflected in international treaty law on sustainable development. In the UN Convention on Biological Diversity, the principle is reflected in Article 15.7 on access to the benefits of biological resources and related obligations to ensure that the benefits are equitably shared. In the Preamble of the 1992 UN Framework Convention on Climate Change, Parties commit to take into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty, while also noting their determination to protect the climate system for present and future generations. Indeed, the first two principles of the treaty, as laid out in Article 3, state an intention to "protect the climate system for the benefit of present and future generations of humankind, on the basis of equity..." and commit that accordingly, "developed country Parties should take the lead in combating climate change..." The second principle notes that "the specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration." In the UN Convention to Combat Desertification and Drought, Parties included provisions on poverty eradication and intra-generational equity at Article 16(g) on the sharing of traditional knowledge sharing, at Article 17.1(c) on research and development related to traditional knowledge, and in Article 18.2(b) on technology transfer. Further, a responsibility for inter-generational and intra-generational equity in sharing the benefits of plant genetic resources is recognised in the Preamble of the FAO Seed Treaty, as well as at Article 1.1 as an objective of access and benefit-sharing provisions, and Articles 10, 11, 12, 13 which operationalize the principle by establishing a multilateral system of access and benefit sharing for plant genetic resources.

¹⁹⁰ Cordonier Segger and Khalfan (n 241) 122 – 132 argues that while this principle guides a significant number of social and other treaties related to sustainable development, it has not yet been recognised as a customary rule, due in part to difficulties in identifying with certainty the needs of future generations and a lack of consensus between States on actual obligations related to distributional justice. See also J Hepburn and A Khalfan, 'The Principle of Equity and the Eradication of Poverty', *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Equity.pdf> (last accessed Feb 04 2008).

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy realises the principle of equity and the eradication of poverty, the World Future Council will assess:

- whether the law/policy help to address pressing poverty and human rights challenges,
- whether it demonstrates respect among generations, by including provisions that take into account the needs and aspirations of future generations of life,
- whether it promotes respect within the present generation of life, by promoting social justice, equity for all peoples, an end to poverty and discrimination among species.

3.3 The principle of the precautionary approach to human health, natural resources and ecosystems

In order to protect the environment, natural resources and human health, the precautionary approach shall be widely applied by law and policy makers, according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent degradation. The precautionary principle shifts the burden of proof to those proposing activities which might cause serious harm. It favours prevention over re-mediation, focuses on the relevance and robustness of scientific data to development decision-making and carries an obligation to use precautionary measures in proportion to potential damage and the likelihood or degree of risk involved in each case.¹⁹¹

This principle is reflected in *UN Convention on Biological Diversity* in its Preamble, and made operational through Article 14.1(b) which addresses likely adverse impacts and Article 8(g) on transboundary movement of living modified organisms (LMOs). It is also central to the *Cartagena Protocol on Biosafety*, both through explicit reaffirmation of the principle in its Preamble, at Article 1 that lays out the precautionary objective of the Protocol, and in the way that it is operationalised at Article 7 on advanced informed agreement requirements that must be fulfilled prior to the first transboundary movement of an LMO, at Article 10.6 with regards the decision-making procedures that will be followed in implementation of the Protocol, at Article 11.8 which establishes simplified procedures for LMOs destined for food, feed and processing uses, at Article 15 on risk assessment which references Annex III.4 in which precautionary decision-making is explicitly permitted. Precaution also appears in the *UN Framework Convention on Climate Change* at Article 3 as a Principle of the treaty. The precautionary principle is outlined in the 1998 *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, which requires exporters of certain hazardous substances to obtain the prior informed consent of importers before proceeding. The 2001 *Stockholm Convention on Persistent Organic Pollutants* acknowledges, at its Preamble, that “precaution underlies the concerns of all the Parties and is embedded within this Convention.” At Article 1, Parties note that they are mindful of the precautionary approach as set forth in Principle 15 of the *Rio Declaration* in setting their objective to protect

¹⁹¹ Cordonier Segger and Khalfan (n 241) 143 – 155 suggests that a good argument can be made that this principle is emerging as an international customary rule to address certain specific problems related to health, ecosystems and natural resources. See also J Hepburn, MC Cordonier Segger and M Gehring, ‘The Principle of the Precautionary Approach to Human Health, Natural Resources and Ecosystems’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Precaution.pdf> (last accessed Feb 04 2008).

human health and the environment from persistent organic pollutants. At Article 8, making precaution operative, Parties agree to use “a precautionary manner” when deciding which chemicals to list in the Annexes of the Convention, where lack of full scientific certainty shall not prevent a proposal to list from proceeding. Further, Part V(B) of Annex C specifies that “precaution and prevention” should be considered when determining the best available techniques. In the 1995 *Agreement for the Implementation of the Provisions of the U.N. Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* at Article 6, Parties agree that “States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks... States shall be more cautious when information is uncertain, unreliable, or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.” The *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*, according to the WTO Appellate Body,¹⁹² enshrines the precautionary in Article 5.7 which permits provisional measures to be taken to restrict trade where scientific data is uncertain, though this does not exhaust its relevance in WTO law.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy provides for the principle of the precautionary approach to human health, natural resources and ecosystems, the World Future Council will assess:

- whether the law/policy promotes prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm,
- whether it places the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture,
- where there is insufficient scientific evidence, whether it ensures that those most affected by a project can set the acceptable level of risk or threat.

3.4 The principle of public participation and access to information and justice

Future justice issues are best handled with participation of all concerned citizens, at the relevant level. According to this principle, law and policy-makers have a duty to ensure that individuals have appropriate access to “appropriate, comprehensible and timely” information concerning sustainable development that is held by public authorities, and the opportunity to participate in decision-making processes. Best laws and policies shall facilitate and encourage public awareness and participation by making relevant information available. Effective access to judicial and administrative proceedings, including redress and remedy, shall also be provided, in a way that respects privacy, confidential business information and does not impose undue financial burdens. This principle is founded upon universal rights related to expression and association. There are three main elements. First, a best law or policy will defend that people should be able to participate in decision-making processes which affect and impact their lives and well-being. Second, in order to participate fully, the best law or policy will ensure that the public has access to adequate information. And third, the law or policy will ensure that citizens can have access to independent review if their concerns are

¹⁹² *EC – Measures Concerning Meat and Meat Products (Hormones) (Compliance USA and Canada)* (13 February 1998), WTO Doc WT/DS26/AB/R, WT/DS48/AB/R (Appellate Body Report) [124].

not addressed.¹⁹³ The 1992 Agenda 21 highlights this point. With regards to the establishment of judicial and administrative procedures, at 8.18 it notes that: “Governments and legislators, with the support, where appropriate, of competent international organizations, should establish judicial and administrative procedures for legal redress and remedy of actions affecting environment and development that may be unlawful or infringe on rights under the law, and should provide access to individuals, groups and organizations with a recognized legal interest.” And with regards to the provision of legal reference and support services, they stated at 8.19 that “Competent intergovernmental and non-governmental organizations could cooperate to provide Governments and legislators, upon request, with an integrated programme of environment and development law (sustainable development law) services, carefully adapted to the specific requirements of the recipient legal and administrative systems.”

The 1998 *Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters*¹⁹⁴ is an example of an international legal instrument based on this principle. Many international human rights instruments also provide specifically for public participation, access to information, and access to justice, including through the UN Commission on Human Rights itself, which has public participation procedures similar to those of the UN Commission on Sustainable Development. Provisions to ensure public participation in the international treaty-making processes are also reflected in *UN Convention on Biological Diversity* at Article 13 on public education and awareness, and Article 14.1(a) on participation in impact assessment. The *Cartagena Protocol on Biosafety* contains similar provisions at Article 23 on public awareness and participation; and the *UN Convention to Combat Desertification and Drought* reaffirms the principle in Article 3 (a), and in Article 10.2(f) which recommends public participation in the development of national action plans. Even the *WTO Agreement* contains provisions on consultation with non-governmental organizations at Article V.2, and the *North American Agreement on Environmental Cooperation*, which runs parallel to the *North American Free Trade Agreement*, allows citizens to make claims under Article 14 and 15 processes to prompt the investigation of non-enforcement of environmental laws. Furthermore, the *FAO Seed Treaty*, at Article 9.2(c), has specific provisions to recognize farmers rights to participate in decision-making concerning the sustainable use of plant genetic resources.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy respects the principle of public participation and access to information and justice, the World Future Council will assess:

- whether the law/policy provides for public consultation and genuine engagement, in both its design and implementation,
- whether it specifically provides for transparency and access to information for concerned citizens, local communities, and others who might be affected, and
- whether it provides avenues for appeal and redress for citizens, communities and others?

¹⁹³ Cordonier Segger and Khalfan (n 241) 156 – 166 notes that participation, including access to information and justice, is one of the most recognized and operationalized principles of treaty law on sustainable development, but may only be emerging as an international customary obligation between States, as consensus has mainly focused on its relevance in national decision-making. See also K Bottriel and MC Cordonier Segger, ‘The Principle of Public Participation and Access to Information and Justice’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisd.org/pdf/sdl/SDL_Participation.pdf> (last accessed Feb 04 2008).

¹⁹⁴ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (open for signature 25 June 1998, entry into force on 30 October 2001) 2161 UNTS 447, (1999) 38 ILM 517.

3.5 The principle of governance and human security

In principle, best laws and policies should include measures to combat corruption, taking into account the negative effects of corruption on future justice and on future generations. Good governance is based on respect for the rule of law, democracy, political accountability, government flexibility and responsiveness for its citizens. Best laws and policies, *inter alia*, should help responsible authorities to adopt democratic and transparent decision-making procedures and financial accountability; to take effective measures to combat official or other corruption; to respect the principle of due process in their procedures and to observe the rule of law and human rights. The coin has two sides, though. Best laws and policies will also recognize that non-state actors should be subject to internal democratic governance and to effective accountability, and encourage corporate social responsibility and socially responsible investment among private actors. Furthermore, it is fundamental for human security to promote the prevention and peaceful resolution of conflicts, so that humanity can live in freedom from need, and freedom from fear.

Good governance is specifically noted as a priority in the *Johannesburg Plan of Implementation*, and the *Commission on Human Rights Resolution 2001/72 on the Role of Good Governance in the Promotion of Human Rights* has also underlined the importance of this principle.¹⁹⁶ While an international organization or government that did not meet any of the ‘good governance’ criteria described above would certainly be subject to critique, international treaties are only just beginning to incorporate such obligations. The main treaty in this area is the *UN Convention Against Corruption*,¹⁹⁷ which is founded on international support for good governance. This Convention notes in its Preamble that corruption threatens the political stability and sustainable development of States, and obliges, as noted at Article 5.1, all State Parties to, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.” Further, Article 62.1 commits that with regards economic development and technical assistance, States will take measures to implement the Convention in their international cooperation, taking into account “the negative effects of corruption on society in general, in particular on sustainable development.” A commitment to good governance is also prominent in *UN Convention to Combat Desertification and Drought* at Article 3(c) which lays out the principles of the treaty, and Article 10.2(e) on establishing institutional frameworks for national action plans, as well as in Article 11 on sub-regional and regional action plans, and Article 12 on international cooperation.

¹⁹⁶ Cordonier Segger and Khalfan (n 241) 166 – 170 argues that while this principle is becoming increasingly influential in international discourse, it is doubtful that it would be recognized as a customary rule due to lack of consensus among States on its actual meaning, normative character and practical implications. See also N Chowdry and CE Skarstedt, ‘The Principle of Good Governance’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Good_Governance.pdf> (last accessed Feb 04 2008).

¹⁹⁷ *United Nations Convention against Corruption* (adopted 31 October 2003, entry into force 14 December 2005) (2004) 43 ILM 37, art 62.1.

As such, this principle can be used to inform the selection of domestic or international ‘best policies’ or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy reflects the principle of good governance, the World Future Council will assess:

- whether the law/policy establishes adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions,
- whether the law/policy includes provisions to ensure that its intentions are not thwarted by corruption or unethical conduct, and
- whether it provides appropriate penalties for abuse of rights, or for mis-implementation.

3.6 The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

Principle 4 of the Rio Declaration states that “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.”¹⁹⁸ This principle strongly emphasizes the need to recognise the social and human rights pillar of sustainable development, essentially by advocating an integration principle which requires laws and policies to take social and human rights, as well as environmental priorities, into account in the development process. It further notes that in the interest of sustainable development, law and policy-makers should strive to resolve apparent conflicts between competing economic and financial, social and environmental considerations.¹⁹⁹ One corollary of this principle that is enshrined in the 1972 *Stockholm Declaration*, and is central to the 1992 *Rio Declaration*, which is also recognized in the Preambles of both the *UN Framework Convention on Climate Change* and the *UN Convention on Biological Diversity*, involves the explicit recognition that “States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.” This recognition, like the right to promote sustainable economic development that is enshrined as a principle of the *UN Framework Convention on Climate Change*, is important to understand the implications of integrating environmental protection with social and economic development – while there is a commitment to take priorities into account in decision-making, and seek mutually supportive, balanced solutions, this principle is not a trump card for the environment. It is a commitment to compromise in good faith.

The principle is core to international treaties on sustainable development. It is reflected in the Preamble of the *UN Convention on Biological Diversity* and at Article 6 on integrating conservation and use objectives in policies and plans; in the *Cartagena Protocol on Biosafety* at the Preamble where trade and environment regimes are referred to as mutually supportive, and set in practice by Articles 2.4 and 2.5 on the relationship of the Protocol to other

¹⁹⁸ Rio Declaration (n 45).

¹⁹⁹ Cordonier Segger and Khalfan (n 241) 102 – 109 suggests that if formulated as a norm to regulate sustainable development-related decision-making processes, such as that States “must ensure that social and economic development decisions do not disregard environmental considerations and not undertake environmental protection without taking relevant social and economic implications into account”, this principle is highly likely to be recognized as a rule of customary international law. See also S Jodoin, ‘The Principle of Integration’, *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Integration.pdf> (last accessed Feb 04 2008).

international instruments. The principle also governs the *FAO Seed Treaty*, in the Preamble of which Parties note the need for synergies between environment and development objectives, and in Article 5.1 they commit to promote an integrated approach to the use of plant genetic resources for food and agriculture. Arguably, the GATT at Article XX provides exceptions for health, environment and the conservation of natural resources in order to take social and environmental objectives into account, and the NAFTA through Articles 103, 104 and 104.1, which govern the relationships with other accords, as well as Article 1114 on not lowering environmental standards to attract investment, and Article 2101 on general exceptions, also seeks to take environmental protection into account the development process related to trade.

As such, this principle can be used to inform the selection of domestic or international 'best policies' or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy realises the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives, the World Future Council will assess:

- whether the law/policy integrates social justice and environmental protection into economic development plans and projects,
- whether it ensures that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation, and
- whether it provides or enhances benefits for the environment, and the society.

3.7 The principle of common but differentiated obligations

According to this principle, law and policy-makers have a common responsibility for the protection of the environment and defense of the rights of future generations at the national, regional and global levels. However, this responsibility is balanced by the need to take account of different circumstances, particularly in relation to each country or community's historical contribution to the creation of a particular problem, as well as its ability to prevent, reduce and control the threat. For instance, developed countries bear a special burden of responsibility in reducing unsustainable patterns of consumption and providing assistance to developing countries to meet global sustainable development goals.²⁰⁰

This principle is reflected in *UN Framework Convention on Climate Change* at its Preamble, as well as in Article 3 on Principles and Article 4 on commitments which establishes the differentiated obligations of Annex 1 and non-Annex 1 Parties. Parties also affirm and operationalise the principle in the *Kyoto Protocol* at Article 10, which recognizes common but differentiated responsibilities to establish inventories and programmes to abate greenhouse gas emissions, and Article 12 which operationalizes the principle by establishing a Clean Development Mechanism to help cover the costs of low emission technologies and energy systems. The principle is also prominent in *UN Convention to Combat Desertification and Drought*, where Parties reaffirm, in Article 3 on principles, the need to respect the common but differentiated responsibilities of States, in Articles 4 through 6, which lay out the obligations

²⁰⁰ Cordonier Segger and Khalfan (n 241) 132 – 143 argues that while this principle guides a significant number of treaties related to sustainable development, it has not yet been recognised as a customary rule, due in part to a lack of consensus between States on the extent of greater responsibility by developed countries. See also I Ahmad, 'The Principle of Common but Differentiated Responsibilities', *CISDL Legal Working Papers on Recent Developments in International Law Related to Sustainable Development* (CISDL, Montreal 2005) <http://www.cisdl.org/pdf/sdl/SDL_Common_but_Diff.pdf> (last accessed Feb 04 2008).

for affected and developed country Parties, and in Article 7 which includes specific provisions for Africa. The principle is also prominently reaffirmed and made operational in the FAO *Seed Treaty* at Article 7.2(a) which provides for developing country's different capabilities, at Article 8 which commits to technical assistance, at Article 15.1(b)iii which grants special benefits to least developed countries and to centres of diversity, and in Art 18.4(d) on financing implementation of the treaty.

In the context of selecting domestic or international 'best policies' or laws in the interests of future generations of life, this principle links, in particular, to ways to ensure that in each region, best policies and laws will be particularly appropriate to the cultural, social, technological and other characteristics of the region itself (both in terms of *sui generis* nature, a sense of ownership of the peoples themselves, and duplicability in local conditions).

As such, this principle can be used to inform the selection of domestic or international 'best policies' or laws in the interests of future generations of life. In particular, to demonstrate that a law or policy respects the principle of common but differentiated obligations, the World Future Council will assess:

- whether the law/policy takes into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations,
- whether the law/policy is appropriate and well-adapted to the society or region's present levels of technology, scientific knowledge, human/financial resources, cultural values and traditions, and
- whether it avoids placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them.

4. Conclusions

These functional principles guide the main international treaties on future generations, and are gaining recognition by States. The norms identified by the Brundtland Report, the UN Commission on Sustainable Development and by the International Law Association, among others, are not exhaustive. Several are not yet recognized as binding rules of customary international law. In some cases, they might never be. However, they are increasingly made operational in binding international treaties, forming part of international law and policy in the field sustainable development, and providing normative context for best policies and laws in the field.

The following draft Future Justice Best Laws / Policies Standard lays out a series of objective and inter-related questions, based on the universal 2002 *New Delhi Declaration Principles of International Law on Sustainable Development*²⁰¹ that were developed through a decade of consultation and study by the International Law Association.

²⁰¹ See "ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development" (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, "Editorial Introduction" (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

The following draft Future Justice Best Laws / Policies Standard lays out a series of objective and inter-related questions, based on the universal 2002 *New Delhi Declaration Principles of International Law on Sustainable Development*²⁰² that were developed through a decade of consultation and study by the International Law Association.

A practical demonstration Standard is provided below, together with questions that, while not a ‘check-list’, can clarify how a law or policy might embody these principles. These ‘principled criteria’ are not meant to let ‘the best become the enemy of the good.’ Rather, they seek to help policy-makers, civil society and others to evaluate or draft new laws and policies carefully, and to ensure they have taken into account important universal principles. This way, ‘best practice policies and laws’ can be shared successfully and appropriately, taking into account surrounding legislation and policy contexts which contributed to their success, and potentially overcoming existing and very legitimate regional, cultural and technological differences.

The Future Justice ‘Best Policies/Laws’ Standard

First, a screen would be applied to ensure that candidate laws and policies can be weighed, seeking the ones that contribute the most clearly to global justice for future generations. The screen will consider candidate laws and policies that can contribute to the achievement of the Millennium Development Goals and other globally agreed objectives. In essence, this standard seeks to answer the following fundamental question:

What are the actions, practices and policies whose adoption could radically enhance the prospects of sustainability of life on our planet, to promote the integrity of future generations?

1. The duty of countries to ensure sustainable use of natural resources

- 1.1 Does the law/policy help to ensure that the Earth’s scarce resources will be used in a more sustainable way?
- 1.2 Does it help to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks)?
- 1.3 Does it respect natural areas, artifacts and traditional knowledge, all of which are the common heritage of humankind?

2. The principle of equity and the eradication of poverty

- 2.1 Does the law/policy help to address pressing poverty and human rights challenges?
- 2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?
- 2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species?

²⁰² See “ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development” (2002) 2 Intl Environmental Agreements 209; N Schrijver and F Weiss, “Editorial Introduction” (2002) 2 Intl Environmental Agreements 105; see also International Law Association, *Report of the Expert Group on Identification of Principles of International Law for Sustainable Development* (ILA, London 1995); International Law Association, *Report of the Sixty-Second Conference* (ILA, Seoul 1987) 1-11, 409-87.

3. The principle of the precautionary approach to human health, natural resources and ecosystems

- 3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?
- 3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?
- 3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

4. The principle of public participation and access to information and justice

- 4.1 Does the law/policy provide for public consultation and genuine engagement, in both its design and implementation?
- 4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?
- 4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

5. The principle of governance and human security

- 5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?
- 5.2 Does it promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?
- 5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption, bribery or unethical conduct, and provide appropriate penalties for abuse of rights, or for mis-implementation?

6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

- 6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?
- 6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?
- 6.3 Does it provide or enhance benefits for the environment, and the society?

7. The principle of common but differentiated obligations

- 7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations, and provide avenues to redress such inequalities where possible?
- 7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?
- 7.3 Does it avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

These 'principled criteria' are not exhaustive, nor will all questions apply to every law or policy. However if, on the balance of considerations, a policy or law can be said to meet most these standards where they are relevant, it could easily and indeed naturally be held up as a shining universal or regional best practice.

The ‘best future justice law or policy’ would, in intention and *in effect*, reflect the duty of policy-makers to ensure sustainable use of natural resources, promote the principle of equity and the eradication of poverty, respect the principle of the precautionary approach to human health, natural resources and ecosystems, comply with the principle of public participation and access to information and justice, demonstrate the principle of good governance in practice, respect the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives, and reflect the principle of common but differentiated obligations.

The law or policy would, in essence, be worthy of the designation ‘best future justice policy/law’ by the World Future Council, to be promoted in its region and globally as a best practice.

ANNEX 1

A WORKED EXAMPLE of the Application of the WFC 'Future Justice' Principled Criteria for Best Future Policies and Laws

GERMANY'S RENEWABLE ENERGY SOURCES ACT (Feed-in Tariff Law), 2004

1. The duty of countries to ensure sustainable use of natural resources

1.1 Does the law/policy help to ensure that the Earth's scarce resources will be used in a more sustainable way?

Yes, it grants priority to renewable energy sources(hydropower including wave power, tidal power, salt gradient and flow energy, wind energy, solar radiation, geothermal energy, energy from biomass including biogas, landfill gas and sewage treatment plant gas as well as the biodegradable fraction of municipal and industrial waste) for generation of electricity. It makes it compulsory for operators of power grids to give priority to feeding electricity from renewable energies into the grid and to pay fixed prices for this.

1.2 Does it help to address a common concern of humankind (such as climate change, global extinction of species, collapse of world fish stocks)?

Yes, the purpose of the Act is to facilitate a sustainable development of energy supply for the sake of protecting climate, nature and the environment. It avoids conflicts over fossil fuels and promote the further development of technologies for the generation of electricity. It makes a huge contribution to reducing prices and increasing efficiency of renewable technologies. This makes the use of clean energy more accessible for more of the world's population.

1.3 Does it respect natural areas, artifacts and traditional knowledge and wisdom which are common heritage of humankind?

It provides different tariffs for electricity drawn from different renewable sources and provides for respect of common heritage and natural areas. Such as:

- a. specific tariff for hydroelectric power plants which has 'demonstrably' brought about a good ecological status or substantial improvement in relation to the previous status.
- b. specific tariff for electricity produced from plants which have originated from agricultural, silvicultural or horticultural operations or during landscaping activities and which have not been treated or modified in any way other than for harvesting, conservation or use in the biomass plant. It also requires biomass plants not to use any other substances in production of electricity. It requires "Bundestag" to define by ordinance 'biomass' - and which technical processes may be used to produce electricity and which environmental standards must be complied with.

2. The principle of equity and the eradication of poverty

2.1 Does the law/policy help to address pressing poverty and human rights challenges?

The generation of electricity from biomass (excluding landfill and sewage treatment plant gas) has substantially helped to boost incomes for populations in rural areas. Further, 134,000 jobs resulted from the Renewable Energy Sources Act where wind energy accounted for the major share around 82,000 jobs, followed by photovoltaics with 27,000 and 22,000 in bio energy power generation.

The technological development that goes along with market development has also improved the prospects for access to electricity in rural areas. For lower income populations, education, work and respiratory health gain support, as light is available later into the night, without burning fuelwood.

2.2 Does it demonstrate respect among generations, by including provisions that take into account the needs and aspirations of future generations of life?

Yes, the German government's target is to increase renewable source of energy to 27% by 2010 and 45% by 2030. The law, if widely adopted among the world's major economies, and well implemented, could trigger a tipping point in energy use, so that our energy system of the future is powered by free, clean energy (except biomass). Resource conflicts become less likely as more nations become energy independent.

2.3 Does it promote respect within the present generation of life, by promoting social justice, equity for all peoples, an end to gender discrimination, respect for the rights of indigenous peoples and local communities, eradication of poverty and less discrimination among species?

Yes, the law promotes respect for the natural environment, including our climate and resource use. It also opens eco-farming opportunities for new small renewable energy producers, which provides further benefits to the natural environment and prevents land degradation. It promotes social justice helping to maintain the social structure of rural communities. It could increase prices for electricity, which could have an equity impact on poorer urban constituencies. This is weighed against the advantages for the poorer rural constituencies, though, and it is likely that urban energy prices will improve again as renewable energy production becomes more competitive.

The law also allows all persons of sufficient means to become an independent energy producer. Other support schemes are tilted in favour only of large, sufficiently credit-worthy companies.

3. The principle of the precautionary approach to human health, natural resources and ecosystems

3.1 Does the law/policy promote prevention and precaution in the face of scientific uncertainty about a threat of serious or irreversible harm?

Yes. It takes a clearly preventative and precautionary approach to dealing with climate change. It has resulted in reduction of Co2 emissions by around 44 million tonnes through the promotion of renewable in the electricity sector. Many other instruments have not resulted in such high CO2 reductions. Further, to prevent (in a precautionary way) potential harm through development of excessive wind energy, this Act does not apply to German's exclusive economic zone or coastal waters where protected areas are found. It also does not apply to sites of European Community natural or heritage importance or European bird sanctuaries, even prior to their declaration as protected areas.

3.2 Does it place the burden of proof for demonstrating that a project or activity is safe, or that risks are reasonable, on the proponent of the venture?

Yes, in the case of electricity produced from biomass, the burden of proof is on the supplier to show that environmental standards (as defined by the Bundestag through ordinances) are complied with, and that no other substances are used for production of electricity in that biomass plant and any other biomass plant in similar situation.

3.3 Where there is insufficient scientific evidence, does it ensure that those most affected by a project can set the acceptable level of risk or threat?

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Federal Ministry of Consumer Protection, Food and Agriculture and the Federal Ministry for Economics and Labour are obliged by German law and policy to work together in defining environmental, health and consumer standards. The Act requires that a progress report be prepared every year by these government departments to monitor the effect and priorities set by the Act. This ensures that the groups who are affected by a project will have a voice in the implementation of the law. Further, German zoning, municipal planning and other policies which surround this Act ensure that communities and others who might be affected by a project will have a voice in setting acceptable levels of risk, in cases of uncertain science.

4. The principle of public participation and access to information and justice

4.1 Does the law/policy provide for public consultation and genuine engagement, in both its design and implementation?

The Act seems to be silent about public consultation. However it may be that different government departments have established separate public consultation before issuing an ordinance. This Act builds upon support from governmental departments. Planning laws were made more flexible for renewable energy, to give priority to them. However, as the Act ensures that a producer only gets paid for energy actually generated, it is in the interest of operators and investors to find sites which are a good resources (wind, etc) and have high

levels of public acceptance. Furthermore, German zoning, municipal planning and other policies which surround this Act ensure that communities are consulted and engaged in making decisions related to the Act.

4.2 Does it specifically provide for transparency and access to information for concerned citizens, local communities, and others who might be affected?

Yes, for example, in order to increase transparency and to simplify the nation-wide equalization mechanism, a public register has been established under the Act through an ordinance, in which installations for the generation of electricity from renewable energy sources and mine gas are registered (register of installations). This public registry facilitates transparency and access to information for citizens and others who are affected by the Act.

4.3 Does it provide avenues for appeal and redress for citizens, communities and others?

Yes. For instance, the Act provides for a clearing house to settle any disputes and issues of application arising under this Act, which may involve the parties concerned. Further, it provides for an annual public forum and review, resulting in a publicly available report, in which issues of concern can be raised and addressed.

5. The principle of good governance

5.1 Does the law/policy establish adequate institutions to ensure transparent, prompt, effective and fair implementation of its provisions?

The law essentially mandates large energy companies to buy renewable energy from small and medium producers. The prices are predetermined and thus transparent. The small producers are protected against the market power of the large energy companies. As such, the law has a strong fairness aspect. The institutional oversight is also strong, since the energy market remains regulated in Germany.

5.2 Does it prevent and promote peaceful resolution of conflict, and help to ensure that human beings are able to live in freedom from fear, and freedom from want?

The law does prevent conflicts over the use of energy resources, and contributes to a society where human beings live in freedom from want. By making renewable energy more available, and creating incentives for investment into renewable energy, it helps to ensure that more people have access to light, heat and other basic needs from an environmentally and socially sustainable source.

5.3 Does the law/policy include provisions to ensure that its intentions are not thwarted by corruption or unethical conduct, and provide appropriate penalties for abuse of rights, or for mis-implementation?

There are no provisions as such to control or limit corruption and unethical conduct, though the law itself can be seen as a tool to prevent unethical conduct by the larger companies who

otherwise control the power grid in Germany. Further, the surrounding German legislation and policies on corruption apply to this Act and its related institutions. As such, in the case of Germany, producers can be reasonably certain that independent certifiers and others will ensure that renewable energy being sold to the grid is actually renewable energy, that projects are obtaining proper licenses prior to development, and that criminal and civil sanctions are being applied when a producer or purchaser does not follow the law.

As the Act primarily regulates private behavior, and grants the weaker parties (small producers) better access rights, it facilitates more ethical conduct. The powerful large energy companies which control the grid do not face great dangers of abuse of rights from these smaller actors. Penalties are mainly governed by the market. If the small renewable producer becomes too large, the company loses the privileges of a guaranteed market share, as the law has certain amount restrictions for the feed-in privilege.

6. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

6.1 Does the law/policy integrate social justice and environmental protection into economic development plans and projects?

Yes, the law is a good example of integration. It serves an environmental purpose, by regulating economic relations of energy producers, and providing for social objectives by protecting small and medium producers who are guaranteed a revenue stream and can thus maintain their small farming businesses (or convert them in to eco-farms, which in turn serves an environmental purpose). It also helps to maintain social structures in rural communities.

6.2 Does it ensure that development decision-making takes environmental and social impacts into account, providing for mitigation, modification or cancellation if necessary?

The law itself does not touch on development decision-making or planning, but it is accompanied by a planning act which prioritises rural communities and open lands for windmills and other renewable energy production.

6.3 Does it provide or enhance benefits for the environment, and the society?

Yes, the law provides benefits to the environment by reducing green-house gas emissions and aiding conversion to eco-farming. It benefits society by helping to maintain the social structure of rural communities.

7. The principle of common but differentiated obligations

7.1 Does the law/policy take into account historical and other inequalities, including who has benefited from past activities and policies, when imposing obligations?

Given the history of energy production through quasi-monopolistic structures, the law can address the historical inequalities between the large producers and new small renewable producers. It could be further improved by provisions to ensure better access or additional subsidies. Further, by dramatically reducing the CO₂ emissions that Germany, as a developed country, generates, it does help to redress global inequalities in relation to the impacts and costs of climate change.

7.2 Is the law/policy appropriate and well-adapted to the society or region's present level of technology, scientific knowledge, human/financial resources, cultural values and traditions?

The law is very appropriate to the society and even the different regions of Germany because it does not prescribe a specific source of renewable energy; there is more wind in the north and more geo-thermal energy in the south. It also does not prescribe the technology and thus allows small producers to experiment and increase the level of scientific knowledge. It is however restricted to Germany, even though the energy market in the European Union is becoming increasingly integrated. This law could be a 'WFC Best Policy' for Europe. It is unclear whether this Act would be appropriate for other regions of the world. Even in North America or Australia/New Zealand, it might need to be accompanied by a stronger set of supporting regulations or measures to ensure that some of the WFC principled criteria, such as those relating to abuse of rights, precaution or poverty eradication, are fully addressed.

The differences between countries with regulated and deregulated energy markets need to be taken into account. Further, the status of a country's legal and administrative system, and the state of surrounding legislation and policies on environmental impact assessment, public participation in decision-making and planning, anti-corruption controls, and other elements are crucial aspects of policy's success. These issues might, in some regions, not be real impediments, as other simple mechanisms can be implemented to spread the burden equally, and ensure that the appropriate technologies, cultures and human/financial resources are activated in support of the policy.

7.3 Does it avoid placing inappropriate burdens on vulnerable groups, or imposing costs on those least equipped to bear them?

Yes, it provides huge benefits for rural communities, and only increases costs for urban consumers by a small amount. Furthermore, globally, it helps make sure that changes to the global energy system take place in the countries that are best equipped to bear the burden of facilitating those changes, and that reductions in CO₂ take place in developed countries which have contributed most to the problem. Costs are mainly carried by the large power producers whose market share is reduced through this Act, and it can be argued that this is appropriate placing of the burden.

ANNEX 2

A Brief Timeline of Global Sustainable Development Debates

Sustainable development discourse focused at first on the need to preserve natural resources, flora and fauna. In 1962, the UN General Assembly, building upon an earlier 1961 UNESCO statement, passed a Resolution that called for natural resource, flora and fauna protection measures to be taken at the earliest possible moment simultaneously with economic development, noted that such development may jeopardize irreplaceable natural resources, flora and fauna, underlined the importance of economic development and the need for ‘rational use’ of natural resources, and called for fullest technical assistance and cooperation to be provided to developing countries in this respect.²⁰³ Concern continued to build.

In 1972, the United Nations called an international Conference on the Human Environment (UNCHE), which resulted in the *Stockholm Declaration on the Human Environment*,²⁰⁴ the creation of the United Nations Environment Programme, and increased impetus to agree on certain multilateral environmental agreements (MEAs) such as the 1973 *Convention on International Trade in Endangered Species* (CITES).²⁰⁵ The Stockholm Declaration recognizes, in Principle 14, the need to reconcile conflicts “between the needs of development and the need to protect and improve the environment.” Several elements of the Declaration underline the deep divides between developed and developing countries on a global environmental protection agenda. For instance, States agreed in Principle 11 that the “environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries...” and in Principle 23 that “...it will be essential in all cases to consider the systems of values prevailing in each country, and the extent of the applicability of standards which are valid for the most advanced countries but which may be inappropriate and of unwarranted social cost for the developing countries.”²⁰⁶

The *World Charter for Nature*, adopted by the UN General Assembly a decade later, calls for ‘optimum sustainable productivity,’ affirming that in “formulating long-term plans for economic development, population growth and the improvement of standards of living, due account shall be taken of the long-term capacity of natural systems to ensure the subsistence and settlement of the populations concerned, recognizing that this capacity may be enhanced through science and technology.”²⁰⁷

In 1983, responding to increasingly heated debates between developed and developing countries, the United Nations General Assembly established the World Commission on the

²⁰³ ‘Economic Development and the Conservation of Nature’ UNGA Res 1831 (XVII) (18 December 1962) UN Doc A/Res/XVII/1831.

²⁰⁴ ‘Stockholm Declaration’ UN Conference on the Human Environment (16 June 1972) UN Doc A/Conf 48/14/Rev.1, 11 ILM 1461 (1972); for discussion, see, e.g., G. D. Meyers & S. C. Muller, ‘The Ethical Implications, Political Ramifications and Practical Limitations of Adopting Sustainable Development as National and International Policy’ (1996) 4 Buffalo Environmental LJ 1; see A. Geisinger, ‘Sustainable Development and the Domination of Nature: Spreading the Seed of the Western Ideology of Nature’ (1999) 27 British Columbia Environmental Affairs L Rev 43.

²⁰⁵ Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 U.N.T.S 243, 12 I.L.M. 1085.

²⁰⁶ *Stockholm Declaration* (n 30).

²⁰⁷ ‘World Charter for Nature’ UNGA Res 37/7 (28 October 1982) UN Doc A/Res/37/7, (1983) 22 ILM 455 [8].

Environment and Development (WCED). UN GA Resolution A/38/161 mandated the Commission:

“[t]o propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond...” and to “recommend ways in which concern for the environment may be translated into greater co-operation among developing countries and between countries at different stages of economic and social development and lead to the achievement of common and mutually supportive objectives which take account of the interrelationships between people, resources, environment and development;”²⁰⁸

In 1987, the WCED, chaired by Prime Minister Gro Harlem Brundtland of Norway, delivered its Report to the UNGA, *Our Common Future*.²⁰⁹ The most generally accepted definition of sustainable development is found in this ‘Brundtland Report’ where it is defined as “...development that meets the needs of the present without compromising the ability of future generations to meet their own needs,”²¹⁰ which was drafted by a small working group of the World Commission in two hours.²¹¹ This definition of sustainable development, and the contents of the Report, were accepted by the UNGA in Resolution 42/187, ‘Report of the World Commission on Environment and Development’, which reiterates the concerns of the UNGA about the “accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development,” and states that:

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

The Resolution noted the importance of “a reorientation of national and international policies towards sustainable development patterns” and emphasized “the need for a new approach to economic growth, as an essential prerequisite for eradication of poverty and for enhancing the resource base on which present and future generations depend.” It called upon the “governing bodies of the organs, organizations and programmes of the United Nations system to review their policies, programmes, budgets and activities aimed at contributing to sustainable development” and upon “other relevant multilateral development assistance and financial institutions to commit their institutions more fully to pursuing sustainable development in establishing their policies and programmes in accordance with the national development plans, priorities and objectives established by the recipient Governments themselves...”

In 1992, in response to the *Brundtland Report*, the UN convened a global conference in Rio de Janeiro – the *United Nations Conference on Environment and Development* (UNCED, or the Rio ‘Earth Summit’).²¹² In 1992, public awareness about environmental issues had reached an extremely high level, and it was also becoming clear that traditional strategies for development were not yielding adequate results in developing countries. Developed country

²⁰⁸ ‘Process of preparation of the Environmental Perspective to the Year 2000 and Beyond, Meeting no. 102’ UNGA Res. 38/161 (19 December 1983) UN Doc A/RES/38/161.

²⁰⁹ World Commission on Environment and Development, *Our Common Future* (OUP, Oxford 1987) ix.

²¹⁰ *Ibid* 43.

²¹¹ Interview with Prof. Hans-Christian Bugge, University of Oslo Faculty of Law, and former legal staff to the World Commission, notes on file with author.

²¹² A Kiss and D Shelton, *International Environmental Law* (2nd edn Transnational Publishers, New York 1994) 67.

leaders were anxious to show their political concern, and developing country leaders were increasingly frustrated with what was perceived as attempts to limit their sovereign decisions concerning the use of natural resources for development. A scene of high tensions, vigorous debates and extremely active participation from civil society, scientists, business leaders and many others, the UNCED was broadly viewed as a global success. Specific outcomes included the 1992 *Rio Declaration*, a short consensus declaration agreed by the Heads of State assembled in Rio; the 1992 *Agenda 21*, which is annexed to the Declaration and contains an extensive global action plan on specific environment and development issues; and three international treaties signed by a record number of countries: the 1992 *United Nations Framework Convention on Climate Change*,²¹³ the 1992 *United Nations Convention on Biological Diversity*,²¹⁴ and the 1994 *United Nations Convention to Combat Desertification*,²¹⁵ which was only released two years later but had been negotiated in the framework of UNCED.

The 1992 *Rio Declaration*,²¹⁶ a short document of twenty-seven principles, affirms the focus on human development that is central to the concept of sustainable development, and lays out a series of ‘principles’ which can help to achieve sustainable development. Drawn from Principle 21 of the 1972 Stockholm Declaration, Principle 2 recognizes both the sovereign right of States to exploit their own resources pursuant to their own environmental and developmental policies, and their responsibility to ensure they do not cause damage to the environment of others. By focusing on the need for financial and technological assistance, and economic stability, Principles 9 and 10 in the Stockholm Declaration located “the debate on the environment clearly in the context of the international economy.”²¹⁷ The Rio Declaration builds on this recognition, recognizing that developed and developing countries bear common but differentiated responsibilities for sustainable development. Indeed, Principle 4 notes that “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.” The Declaration also focuses on procedural techniques, such as building scientific knowledge, undertaking impact assessment and promoting public participation in decision-making, which permit governments to take environmental concerns into account in development planning. And Principle 27 declares that “States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.”

Agenda 21, which was negotiated by the States engaged in the UNCED process, complements the *Rio Declaration* by providing an 800 page ‘blueprint’ for sustainable development. It contains hundreds of recommendations, specific to various different sectors of economic and other activities that States can undertake in order to turn the principles

²¹³ United Nations Framework Convention on Climate Change (opened for signature 4 June 1992, entered into force 21 March 1994) 1771 UNTS 107, 31 ILM 849.

²¹⁴ United Nations Convention on Biological Diversity (opened for signature 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79, 143; 31 ILM 1004.

²¹⁵ United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (opened for signature 14 October 1994, entered into force 16 December 1996) 1954 UNTS 3, 33 ILM 1328.

²¹⁶ ‘Rio Declaration on Environment and Development (Annex 2)’, Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I), (1992) 31 ILM 874; ‘Agenda 21 (Annex 2)’ in Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I).

²¹⁷ V. Lowe, *International Law* (OUP, Oxford 2007) 253.

agreed in the Declaration into strategies and programmes.²¹⁸ The purpose of this ‘blueprint’ was to halt and reverse the effects of environmental degradation and to promote sustainable development in all countries.²¹⁹ The text of *Agenda 21* comprises four sections and a preamble. Its four sections are entitled “Social and Economic Dimensions,”²²⁰ “Conservation and Management of Resources for Development,”²²¹ “Strengthening the Role of Major Groups,”²²² and “Means of Implementation.”²²³ As will be discussed in greater detail below, Agenda 21 also noted, as means of implementation of sustainable development, the need for international action to codify and develop “international law on sustainable development.”²²⁴ When they left the Earth Summit, States had agreed on many broad recommendations and policy directions which, it was hoped, could guide environment and development decision-making in the future. However, most of the details on sustainable development goals and standards, as well as commitments meant to achieve this objective, remained to be worked out through the specific conventions signed at the UNCED, and the new institutions recommended by the Conference.²²⁵ In particular, the global treaties signed at the UNCED became one of the principal areas where new standards, rules and regimes helped to clarify the content of a commitment to sustainable development.

The Earth Summit, therefore, contributed to global understanding of the concept of sustainable development. The package of outcomes (Rio Declaration, Agenda 21 Plan of Action and three treaties), taken together, present considerable guidance for key sectors of national economies, containing commitments from developed countries to provide cooperation and technical assistance in these areas. This premise and promise underpinned the consensus on sustainable development in Rio.

Two important follow-up mechanisms were recommended by the Brundtland Report and Agenda 21. First, through the UN, States created a Global Environment Facility (GEF), hosted by the World Bank, the UNEP and the UNDP (as implementing agencies) and funded by voluntary contributions from States. They also created the United Nations Commission for Sustainable Development (CSD) on November 25, 1992.²²⁶ Its membership was limited to 53 countries each year on a rotational basis among all UN Members States, with non-members of the Committee having observer status.²²⁷ Meeting on a yearly basis, the UN CSD reviewed implementation of the *Agenda 21* at national, regional and

²¹⁸ M McCoy & P McCully, *The Road From Rio: An NGO Action Guide to Environment and Development* (Utrecht International Books, Amsterdam 1993) 29.

²¹⁹ Nicholas A. Robinson, ed., “Agenda 21: Earth’s Action Plan” IUCN Environmental Policy & Law Paper No. 27 (1993).

²²⁰ Containing chapters on international co-operation to accelerate sustainable development in developing countries, poverty, consumption patterns, demographic dynamics, human health, human settlements, and integrating environment and development in decision-making.

²²¹ This section deals with the more traditional environmental problems and contains chapters concerning atmosphere, land resources, deforestation, desertification and drought, mountain ecosystems, sustainable agriculture and rural development, biological diversity, biotechnology, oceans and seas, fresh waters, toxic chemicals, hazardous wastes, solid and sewage wastes, and radioactive wastes.

²²² Section 3 contains chapters pertaining to the roles in achieving sustainable development to be played by women, children and youth, indigenous people, non-governmental organisations, local authorities, workers and trade unions, business and industry, science and technology, and farmers.

²²³ This section addresses financing mechanisms, technology transfers, science, education, capacity building in developing countries, international institutional arrangements, international legal instruments, and information for decision-making.

²²⁴ See in particular, *Agenda 21*, (n 45) [39.1] – [39.10].

²²⁵ Brown (n 39) 200.

²²⁶ McCoy & McCully (n 47) 45; Robinson (n 48) 655.

²²⁷ The allocation of seats is 13 from Africa, 11 from Asia, 6 from Eastern Europe, 10 from Latin America and the Caribbean and 13 from Western Europe and North America. The Secretariat is the Division of Sustainable Development in the UN Department of Economic and Social Affairs (DESA). One of the interesting aspects of elections to the CSD is that they have been actively pursued by countries, unlike some other UN Commissions.

international levels.²²⁸ If an issue required a stronger legal framework, initial discussions might take place at UN CSD, but the question is then designated to an appropriate body to negotiate legally binding actions. After Rio, the UN CSD mandate was fairly broad.²²⁹ The UN CSD faced many challenges, but also made some progress over the next decade. Between 1992 and 2002, many countries also began to implement specific commitments on sustainable development from the Rio outcomes. For instance, dozens of governments from all regions of the world developed national or sub-national *Agenda 21s*, authorised special bodies to implement *Agenda 21*,²³⁰ or even negotiated regional blueprints for sustainable development, such as the 1996 *Santa Cruz de la Sierra Summit of the Americas on Sustainable Development* for the Organization of American States, or indeed the complex treaty processes of the European Union. Further, international organisations adopted sustainable development policies or objectives through their own internal decision-making procedures. These included international economic development institutions such as the World Bank, the Organisation for Economic Cooperation and Development, the United Nations regional economic commissions, and the regional development banks, in addition to environmental organisations such as the World Conservation Union (IUCN) and the UNEP. Many of these institutions began actively working to implement particular recommendations from the UNCED, undertaking programmes on the identification of scientific “indicators” for measuring progress towards sustainable development;²³¹ on the design of operational guidelines which can curb worst excesses in development processes; on identification and marketing of more ‘sustainable’ goods and services; and helping to define the ‘needs’ of present and future generations.

In 1997, a special session of the United Nations General Assembly, the ‘Earth Summit+5’, was held in New York to review progress toward the objectives set in Rio. The resulting Declaration, the *Programme of Further Action to Implement Agenda 21*, called on governments, international organizations and major groups to renew their commitment to sustainable development. Priorities were focused on assessing progress since Rio, and calling attention to areas where implementation of Agenda 21 recommendations was faltering. Rather than States identifying sustainable development as a bridge between environment and development priorities, the texts began to emphasize that economic development, social development and environmental protection are three interdependent and mutually reinforcing ‘pillars’ of sustainable development.²³² In identifying the priorities for action to

²²⁸ Ibid.

²²⁹ See ‘Establishment of the Commission on Sustainable Development’ UNESC Res 1993/207 (12 February 1993) UN Doc E/1993/207; ‘Institutional arrangements to follow up the United Nations Conference on Environment and Development’ UNGA Res 47/191 (29 January 1993) UN Doc A/RES/47/191 [3]–[5]; the mandate includes: to monitor progress on the implementation of *Agenda 21* and activities related to the integration of environmental and developmental goals by governments, NGOs, and other UN bodies; to monitor progress towards the target of 0.7% GNP from developed countries for Overseas Development Aid; to review the adequacy of financing and the transfer of technologies as outlined in *Agenda 21*; to enhance dialogue with NGOs, the independent sector, and other entities outside the UN system, within the UN framework; and to provide recommendations to the General Assembly through the Economic and Social Council (ECOSOC). McCoy & McCully (n 47) 45.

²³⁰ UN CSD, ‘National Information Report of the Secretary-General’ UNSEC Rep (5 March 1996) UN Doc E/CN.17/1996/19 (This document consists of a table summarising national level co-ordination of actions pursuant to Agenda 21, and a matrix summarising national priorities assigned to the various issues and current status. According to CSD, nations having taken these steps towards implementation include Australia, Benin, Belgium, Cameroon, Cuba, Canada, China, Egypt, Germany, Italy, Korea, Malaysia, Mongolia, New Zealand, Netherlands, Norway, Niger, Philippines, Portugal, Peru, Senegal, Switzerland, Sweden, United Kingdom, and Zaire. In addition, over 55 nations are submitting reports to the CSD on Agenda 21 implementation).

²³¹ It is not always clear that ‘needs’ are self-evident or capable of being discerned, and it is extremely difficult to discern how development can take place without compromising the ability of future generations to meet these needs; T. C. Trzyna (ed), *A Sustainable World: Defining and Measuring Sustainable Development* (California Institute of Public Affairs, Sacramento 1995) 23.

²³² ‘Programme for the Further Implementation of Agenda 21’ UNGA Res S-19/2 (19 September 1997) UN Doc A/Res/S-19/2.

promote sustainable development worldwide, the need to further strengthen and codify international law related to sustainable development was highlighted.²³³

Parallel to the global policy-making events described above, a track of legally binding negotiations on specific sustainable development challenges began to crystallise international law on sustainable development. Over 180 States Parties to the 1992 *UN Framework Convention on Climate Change*, after five years of extremely arduous negotiations held in the context of annual Conferences of the Parties (COPs), in 1997 adopted the *Kyoto Protocol* for the reduction of greenhouse gases. The commitment to develop and adopt binding targets for such reductions was one of the important Rio Earth Summit outcomes. Similarly, over 180 States Parties to the 1992 *UN Convention on Biological Diversity* negotiated and adopted, through a parallel series of Conferences of the Parties, the *Cartagena Protocol on Biosafety* in 2000. This was another key commitment from Rio. And in the Conferences of the Parties to the 1994 *UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa* negotiated and adopted a series of regional and national Action Plans to define and address major challenges in this area, linked to national Poverty Reduction Strategies. Further, another three international agreements were negotiated and entered into force. In particular, the *UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* was finally signed in 1995 and entered into force in 2001. The 2001 *Stockholm Convention on Persistent Organic Pollutants* and the 1998 *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* were also agreed, and both entered into force in 2004. These agreements, and their contributions to our understanding of the concept of sustainable development in international law, will be discussed in further sections of this chapter.

The global Conferences, hosted by the United Nations, focused on building global consensus on a new meaning of ‘development for all.’ As part of the re-conceptualization of ‘development’, the United Nations negotiated and adopted the 2000 *Millennium Development Goals* which provided a series of specific social, economic and environmental targets as reference points for achieving global development goals.²³⁴ Further, the World Trade Organization (WTO) hosted a Meeting of World Trade Ministers in Doha, Qatar, launched a new round of trade and economic liberalisation negotiations, the so-called 2001 ‘Doha Development Agenda’, and while negotiations were not proceeding rapidly, many States were engaged in analysing the potential impacts and opportunities of these plans.²³⁵ Finally, the International Conference on Financing for Development in Monterrey, Mexico in 2002

²³³ Ibid [109] – [110].

²³⁴ ‘United Nations Reform: Measures and Proposals; and Strengthening of the United Nations System’, UNGA Res 53/239 (5 September 2000) UN Doc A/Res/53/239; See also *Millennium Development Goals* (n 15).

²³⁵ The results of the WTO 2002 Ministerial Meeting in Doha, Qatar included the Ministerial Declaration, a Declaration on the TRIPS Agreement and Public Health, a Decision on implementation-related issues and concerns, a Decision on Subsidies related to procedures for extensions under Article 27.4 (of the Subsidies and Countervailing Measures Agreement) for certain developing country members, a Decision on a waiver for EU-ACP Partnership Agreement, and a Decision on the EU transitional regime for banana imports; see Ministerial Declaration (14 November 2001) WT/MIN(01)/DEC/1 <<http://docsonline.wto.org>>; Declaration on the Trips Agreement and Public Health (20 November 2001) WT/MIN(01)/DEC/2 <<http://docsonline.wto.org>>; Implementation-Related Issues and Concerns (20 November 2001) WT/MIN(01)/17 <<http://docsonline.wto.org>>; Procedures for Extensions under Article 27.4 for Certain Developing Country Members (20 November 2001) G/SCM/39 <<http://docsonline.wto.org>>; European Communities - The ACP-EC Partnership Agreement (14 November 2001) WT/MIN(01)/15 <<http://docsonline.wto.org>>; European Communities - Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas (14 November 2001) WT/MIN(01)/16 <<http://docsonline.wto.org>>.

led to concrete commitments for new and additional developed country resources, earmarked for development spending.²³⁶ As noted informally by one leading international expert, in the lead-up to the 2002 World Summit on Sustainable Development (WSSD), “Monterrey committed new resources, but the WSSD still needs to decide how to spend them.”²³⁷

Hence, in 2002, the World Summit on Sustainable Development brought together an estimated 45,000 participants in Johannesburg, South Africa. Over 100 heads of state, and 12,625 accredited government delegates, international experts and non-governmental organisations and media representatives attended the Summit itself, from more than 189 countries.²³⁸ Another 32,000 were represented at parallel events for business, scientists, civil society, lawyers, judges and others.²³⁹ The United Nations objectives for the Summit were to review the 1992 UN Conference on Environment and Development (UNCED) and reinvigorate global commitment to sustainable development.²⁴⁰

States hoped to focus on how best to *implement* sustainable development in a context of globalization and renewed commitments to international development assistance. Outcomes included a 2002 *Johannesburg Declaration*, and a *Johannesburg Plan of Implementation*. The Johannesburg Declaration, rather than laying out principles like the Declarations from Stockholm and Rio, simply provides a political commitment to sustainable development from heads of State.²⁴¹ It outlines the path taken from UNCED to the WSSD, highlights present challenges, expresses a commitment to sustainable development, and then underscores the importance of multilateralism and emphasizes the need for States (and their international institutions), in partnership with civil society, the business community and others, to focus on the implementation of more sustainable development policies and programmes.

The 2002 *Johannesburg Plan of Implementation* (JPOI) is designed as a framework for action to implement the commitments originally agreed at UNCED, and to address a few additional challenges that had arisen since 1992. It includes eleven chapters. After an introduction,

²³⁶ Report of the International Conference on Financing for Development, UNGA Rep 198/11 (18-22 March 2002) UN Doc A/Conf.198/11; See also UNDESA, ‘Financing for Development’ <<http://www.un.org/esa/ffd/>> accessed 31 December 2007.

²³⁷ Notes from interview with Mr. Richard Ballhorn, Director General, Environment and Sustainable Development Affairs Bureau, Canadian Department of Foreign Affairs and International Trade, on file with author.

²³⁸ The official documents from the World Summit for Sustainable Development (WSSD) are available at: WSSD Documents <http://www.un.org/jsummit/html/documents/summit_docs.html> accessed 1 January 2008; see also ‘Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation’ in Report of the World Summit on Sustainable Development (4 September 2002) UN Doc A/CONF.199/L20.

‘Agenda 21 (Annex 2)’ in Report of the UN Conference on Environment and Development Vol. I (13 June 1992) UN Doc A/CONF.151/26 (Vol I).

²³⁹ A full report is available at: ‘Earth Negotiations Bulletin’ <<http://www.iisd.ca/linkages/2002/wssd/>> accessed 1 January 2008.

²⁴⁰ In December 2000, the UN General Assembly (UNGA) decided to convene a ten-year review of progress since UNCED (A/RES/55/199). Despite ongoing efforts since the Stockholm Conference in 1972 to protect the environment and natural resources, the UNGA expressed concern about continuing deterioration. Therefore, UNGA called for the World Summit on Sustainable Development to focus on the status of Agenda 21’s implementation and the other Earth Summit outcomes. The WSSD’s mandate was to identify further measures to implement the Rio agreements, accomplishments and areas where more effort and action-oriented decisions were needed, as well as new challenges and opportunities. The WSSD was to ensure balance among economic, social and environmental concerns and reinvigorate the global commitment to sustainable development. ‘Ten-year review of progress achieved in the implementation of the outcome of the United Nations Conference on Environment and Development’ UNGA Res 55/199 (20 December 2000) UN Doc A/RES/55/199.

²⁴¹ The official documents from the World Summit for Sustainable Development (WSSD) are available at: WSSD Documents <http://www.un.org/jsummit/html/documents/summit_docs.html> accessed 1 January 2008; see also ‘Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation’ in Report of the World Summit on Sustainable Development (4 September 2002) UN Doc A/CONF.199/L20 [5].

substantive chapters cover poverty eradication; consumption and production; the natural resource base; health; small island developing States (SIDS); Africa; other regional initiatives; means of implementation; and the institutional framework (governance). The JPOI contains over thirty specific time-bound targets for action (including reaffirmations of target agreed in the *Millennium Development Goals* and other instruments).²⁴² New resources were committed to the Global Environment Facility (GEF) and States agreed that efforts to address desertification would be henceforth funded by the GEF as a new focal area. Specific attention was focused on certain important priorities identified by the UN Secretary-General, in the areas of water and sanitation, energy, health, agriculture and biodiversity (the so-called 'WEHAB' issues). By the end of the Summit a number of the WEHAB commitments set out in the JPOI had been linked to new 'voluntary' partnerships and financial commitments.²⁴³ In particular, the Johannesburg outcomes built on the 1992 and 1997 changes in the procedural aspects of development decision-making. Johannesburg witnessed the launch of 180 'Type II Outcomes.' These were specific sustainable development partnerships between governments, civil society and industry, agreed under the auspices of the WSSD process and supported by the UNCSD, to achieve a set of measurable objectives and results focused on the implementation of sustainable development in specific areas. The number of registered implementation-focused partnerships has nearly doubled in the past five years, to 334.

The 2002 WSSD process did accomplish a further task. It set in place a broadened institutional architecture for sustainable development, to further implement Agenda 21 and the WSSD outcomes, and to meet emerging sustainable development challenges.²⁴⁴ The framework of this sustainable development regime is organised on three principal levels. First, the international structure includes the United Nations General Assembly (UNGA), the Economic and Social Council (ECOSOC), and the United Nations Commission for Sustainable Development (UN CSD), but also other agencies and international organisations.²⁴⁵ Second, the regional and sub-regional institutions include the United Nations Regional Commissions and other regional and sub-regional bodies, and the regional development banks), and third, national actors include different governments ministries, sub-national and local authorities. The JPOI emphasized the need to strengthen and better

²⁴² The other significant commitments from the meeting include: using and producing chemicals in ways that do not harm human health and the environment; reducing biodiversity loss by 2010; restoring fisheries to their maximum sustainable yields by 2015; establishing a representative network of marine protected areas by 2012; improving developing countries' access to environmentally-sound alternatives to ozone depleting chemicals by 2010; and undertaking initiatives by 2004 to implement the Global Programme of Action for the protection of the Marine Environment from Land Based Sources.

²⁴³ For example, a number of initiatives publicized at the Summit will support the JPOI commitment to halve the proportion of people without access to sanitation by 2015 together with the Millennium Declaration Goal to halve the proportion without access to safe drinking water by 2015. The US has announced US\$970 million in investments on water and sanitation projects; the EU announced its "Water for Life" initiative; and the UN has received an additional 21 water- and sanitation-related initiatives worth at least US\$20 million. Similarly, the JPOI commitment on energy access will be accompanied by financial commitments from the EU (US\$700 million), the US (US\$43 million), and 32 separate partnership initiatives worth up to US\$26 million.

²⁴⁴ This process was initiated pursuant to a mandate from the United Nations General Assembly: 'Ten-year review of progress' (n. 73). 'Draft Plan of Implementation of the World Summit on Sustainable Development' UN Word Summit on Sustainable Development (4 September 2002) UN Doc A/CONF.199/L.3/Add.1-13/Corr.2; see also Ositadinma Anaedu & Lars-Goran Engfeldt 'Sustainable Development Governance' <<http://www.un.org/jsummit/html/documents/prepcom3docs/governance30.3.rev1.doc>> accessed 1 January 2008; this section shares thoughts with M. C. Cordonier Segger & M. Ivanova, 'Sustainable Development Governance: Take Two', a concept paper prepared at the request of the South African Chair of CSD 11, April - May, 2003, on file with author.

²⁴⁵ Further information on the United Nations Commission on Sustainable Development and its relationship to other international organisations can be found at: UN CSD website <<http://www.un.org/esa/sustdev/csd.htm>> accessed 1 January 2008; further information on the broader United Nations system of agencies, and their relationship to other international organisations, can be found at: UN website <<http://www.un.org>> accessed 1 January 2008.

integrate the social, economic and environmental dimensions of sustainable development into policies and programmes on all these levels.

In re-structuring international sustainable development governance, States made several changes to the struggling UN CSD in the JPOI. The WSSD mandated the UN CSD to focus on reviewing and monitoring progress in implementation of Agenda 21, and on fostering coherence of implementation, initiatives and partnerships.²⁴⁶ The UN CSD still develops 'soft law' policy recommendations, but negotiations are limited to every two years, and a limited number of themes are debated in each session. As such, after Johannesburg, the UN CSD was effectively re-focused on a few clarified functions, and its new work program reflects these developments.²⁴⁷

Unlike in the 1992 Rio 'Earth Summit', the Johannesburg Summit process did not produce new international treaties. Indeed, in the JPOI States specifically named over 60 existing international agreements in economic, environmental and social fields, at bi-lateral, regional and international levels – including trade agreements – all of which play a role achieving sustainable development, and mentioned more than 200 others. A focus on technical implementation in specific areas rather than general principles was evident in the international legal outcomes of the Summit. Ratifications announced at the Summit permitted the entry into force of the 1997 *Kyoto Protocol* for the implementation of the 1992 *United Nations Framework Convention on Climate Change*. As mentioned above, specific commitments in the JPOI resulted in the development of a dedicated area of funding within the Global Environment Facility for the implementation of the 1994 *United Nations Convention to Combat Desertification and Drought*, as well as the launch of negotiations within the 1992 *United Nations Convention on Biological Diversity* for a new regime on access to genetic resources and the sharing of its benefits, and reinforcement of the sustainable development elements of FAO negotiations on plant genetic resources for food and agriculture which later led to the FAO *International Treaty on Plant Genetic Resources for Food and Agriculture*. Further, the WSSD process likely provided impetus for States to complete negotiations and ratify other international agreements on sustainable development which entered into force before and after the Summit.

The Johannesburg Summit gave strong emphasis to the need to “advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels.” The package of outcomes (Declaration, Plan of Action and hundreds of concrete 'Partnerships') taken together, were clearly designed to influence not only economic and environmental authorities, but also those in charge of social issues such as human health, in a balanced way. In particular, in Johannesburg, partly at the insistence of the South African and other governments, the social and human rights aspects of the sustainable development agenda were recognised and strongly affirmed. The JPOI

²⁴⁶ 'Governance for Sustainable Development'

<<http://www.earthsummit2002.org/es/issues/Governance/governance.html#Sustainable%20Governance>> accessed 1 January 2008; for more civil society and expert reviews of the functioning of the UN CSD see: The International Institute for Sustainable Development World Summit for Sustainable Development Briefing Papers <<http://www.iisd.org/pubs/search.php?s=WSSD>> accessed 1 January 2008; see also IISD website <<http://www.iisd.org>> accessed 1 January 2008; CISDL website <<http://www.cisd1.org>> accessed 1 January 2008; for the official structure, see Johannesburg Plan of Implementation (n. 71).

²⁴⁷ 'Follow-up to the World Summit on Sustainable Development and the future role of the Commission on Sustainable Development: the implementation track' UNESC Rep 2003/2 (21 February 2003) UN Doc E/CN.17/2003/2.

shifts the focus of sustainable development towards a more integrated social agenda, one which highlights strategies to address poverty eradication, sanitation and health, not just environmental protection and development. The Johannesburg Summit also reinforced international recognition of certain key principles of international law on sustainable development, including the principles of common but differentiated responsibility, and openness, transparency and public participation. While efforts in the JPOI negotiations to ensure a clear and unequivocal recognition of precaution and other principles from the 1992 Rio Declaration as customary rules of international law were blocked by the USA, Australia and other persistent objectors, the JPOI does reaffirm these principles in numerous ways, and also highlights international instruments and techniques to ensure they are put into practice.

In sum, therefore, over the past thirty years, there has been an extensive policy-making process related to sustainable development, including the debates and outcomes of the 1992 UNCED and the 2002 WSSD, which has engaged nearly all 192 States of the world. Where does this review of global policy-making processes leave us? The United Nations sought a bridge between developed and developing countries in order to resolve serious problems of environmental degradation and lack of social and economic development. The concept of sustainable development provided that bridge.

In recent global policy-making processes, especially through the Summits in Rio and in Johannesburg, States have not agreed on one definition for sustainable development. Rather, they have focused on developing greater global consensus on how to achieve it, signing and ratifying international treaties where necessary. The world's thousands of societies have diverse traditions and cultures, livelihoods, climates and living conditions. Economists, scientists and development scholars have only begun work on the necessary indicators and instruments which might help to answer these questions in diverse conditions and contexts. And international development objectives continue to evolve, as does our understanding of sustainability for different sectors, societies and conditions. It seems highly unlikely that there is one globally recognised and eternal definition for what constitutes 'sustainable development'. However, especially in the context of specific treaty regimes, there may still be an emerging international law on sustainable development.