

Workshop 2B

Sustainable Development and Right to Health

*Sumudu Atapattu**

The structure of the paper:

- Introduction
- Environmental protection and human health
- What is sustainable development?
- Right to health
- Relationship between sustainable development and right to health.
- Tobacco as a case study
- The role of education and other procedural rights.

1. Introduction

There is no doubt that a close relationship exists between environmental protection (or degradation) and health issues. A separate branch of medical science has emerged called environmental health and warnings of health problems caused by environmental degradation now abound.

This close relationship envisages the interaction of several branches of law as well as other disciplines. Environmental protection, international law, human rights law as well as economic development and medical science. What is the role of sustainable development in relation to these issues? Is it the point of convergence between all these issues and disciplines?

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Many techniques and principles have also emerged in order to deal with the ever-increasing impact of environmental degradation on human health. The environmental impact assessment process and the precautionary principles are good examples. Although called an *environmental* impact assessment report, it is often a much wider report and also discusses the sociological impact of the proposed project. While not advocating an anthropocentric approach to environmental protection, we cannot escape the reality that the human beings are the most important species on earth, who also have a tremendous capacity to destroy the world's environment.¹ At the same time, it is the human being alone that can take measures to save the environment. Thus, the emphasis on human beings, both present and future generations, is understandable and, indeed, inescapable.

Thus, my starting point would be Principle 1 of the Rio Declaration: Human beings are at the center of sustainable development

2. Environmental protection and human health

Many environmental law instruments deal with the link between environmental degradation and human health. Starting with the Stockholm Declaration, these instruments affirm the notion that the quality of the environment must be improved, so that its impact on human health would be minimal and in order to ensure an adequate standard of living for human beings.

Principle 1 of the Stockholm Declaration provides as follows: "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being ." While not affirming a right to environment as contended by some commentators, this principle confirms that an environment of a particular quality is necessary for man to enjoy his rights to freedom, equality and adequate conditions of life. It is not, however, clear what is meant by "adequate conditions of life" although it seems to imply an adequate standard of life, in which event, it is clearly related to human health.

¹ This is reflected in the Stockholm Declaration. The Preamble notes that "Of all things in the world, people are the most precious. It is the people that propel social progress, create social wealth, develop science and technology and, through their hard work, continuously transform the human environment."

Principle 7 affirms the protection of human health in the context of marine pollution. It urges states to take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life. The World Charter for Nature of 1982 - the first ever document to lay down rights of nature - follows an ecocentric approach and as such emphasizes the integrity of nature, and does not refer to human beings as such. It does, however, refer to areas degraded by human activities and provides that such areas shall be rehabilitated for the well-being of the population. The Rio Declaration on Environment and Development of 1992 in Principle 14 calls upon states to cooperate 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.

The Draft Declaration of Principles on Human Rights and the Environment of 1994 - the first of its kind - specifically refers to human health and the environment in several of its provisions. Principle 7 provides that all persons have the right to the highest attainable standard of health free from environmental pollution. This document also affirms the right of all persons to a secure, healthy and ecologically sound environment and notes that human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.

Finally, the Earth Charter of 2000,² noting that environmental, economic, political, social and spiritual challenges are interconnected, calls upon states to ensure the guarantee the right to potable water, clean air, food security, uncontaminated soil, shelter and safe sanitation. It also calls upon states to ensure that information of vital importance to human health and environmental protection, including genetic information, remains available in the public domain.

2. What is sustainable development?

Sustainable development itself has evolved as a mechanism (concept/principle) to deal with the "conflict" between economic development and environmental protection. While a precise

² This is a document prepared by civil society groups and has not been endorsed by the international community. Although an Earth Charter was proposed to be adopted at the UN Conference on Environment and Development, this did not happen; instead, the Rio Declaration was adopted.

definition of sustainable development is difficult, it is generally considered as encompassing both substantive and procedural elements.³ The substantive elements include:

- The principle of equity;
- Intra and inter generational rights;
- Principle of integration.

The procedural elements include:

- Right to information;
- Right to participate in the decision-making process (public participation);
- The EIA process; and
- The right to effective remedies.

The principle of equity (though not confined to the environmental field) is closely related to the principle of intra and inter generational equity. These principles seek to ensure that those of the present generation as well as generations to come have an equitable share of the natural resources in relation to their development as well as in relation to environmental protection.

3. Human rights provisions that are relevant

While international human rights instruments do not yet recognize a right to environment, several of their provisions have been invoked in relation to environmental issues. Regional instruments, on the other hand, have addressed this issue. The human rights provisions that have been invoked are: the right to life; right to health, right to privacy and the right to an adequate standard of life. There is no doubt that in certain instances, even the right to life would be threatened as a result of environmental problems. Although these are admittedly extreme instances, they are not impossible.

³ See Sumudu Atapattu, *Sustainable Development, Myth or Reality?: A Survey of Sustainable Development under International Law and Sri Lanka Law*, 14 Georgetown International Environmental Law Review 265 (2001).

Article 11 and 12 of the ICESCR are relevant. Article 11 deals with the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. (Article 27 of the CRC deals with the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development).

Article 12 deals with the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (Article 24 of the Convention on the Rights of the Child is similar), and refers to the improvement of all aspects of environmental and industrial hygiene. Article 24 (c) of the CRC - refers to the dangers and risks of environmental pollution.

While international human rights instruments have been slow to adopt provisions in relation to environmental rights, General Comment No 14 of the UN Committee on Economic, social and Cultural Rights which monitors the implementation of the International Covenant on Economic, social and cultural Rights, clearly identifies the link between right to health and environmental degradation. Recognizing that the right to health is closely related to and dependent upon the realization of other human rights, the General Comments proceed to note that food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions **and a healthy environment** are indispensable for the realization of the right to health.

The General Comments also note the general right to healthy natural and workplace environments and the need to prevent and reduce exposure to harmful substances such as radiation, harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health.

The Committee interprets the right to health as an inclusive right, extending not only to appropriate health care but also to the underlying determinants of health - access to safe and potable water and adequate sanitation, food, nutrition and housing, healthy occupational and environmental conditions. Thus, the Committee has recognized that a healthy environment is a prerequisite to enjoy the right to health.

Environmental instruments, on the other hand, have consistently recognized the link between environment and health and, more recently, between health and development. Agenda 21 contains a separate chapter on protecting and promoting human health and notes that health and development are intimately interconnected. It further notes that "the linkage of health, environmental and socio-economic improvements requires intersectoral efforts."⁴ It identifies the addressing of primary health needs of the population is integral to the achievement of sustainable development. The Climate Change Convention, the Convention for the Protection of the Ozone Layer and the Rio Declaration, all identify the link between environment and health.

In one of its resolutions, the UN General Assembly recognized that "all individuals are entitled to live in an environment adequate for their health and well-being."⁵ The WHO too has recognized this link and works on the impact of environmental degradation, chemical contamination etc., on human health. Its present work on a Framework Convention on Tobacco Control, while primarily aimed at protecting human health, also addresses the issue of environmental degradation caused by tobacco as well as the health impact of environmental tobacco use (passive smoking) as well as air pollution caused by tobacco smoke.

4. The relationship between sustainable development and the right to health

While the link between environment and health is obvious, one may wonder about the link between sustainable development and health. As noted above, sustainable development seeks to reconcile environmental protection and economic development. One aspect of it is the principle of integration - integrating environmental concerns into the development process. There is ample evidence of the health problems caused by unsustainable development. Thus, sustainable development would mean developing in such a way that there are minimal adverse effects on, *inter alia*, human health. However, protecting human health is not the only objective of sustainable development.

⁴ Agenda 21: Earth's Action Plan 56 (Nicholas A. Robison, ed, 1993).

⁵ GA Res 45/94, 4th December 1990.

Several documents also note the link between sustainable development and human health. The 1997 Declaration of the Environment Leaders of the Eight on Children's Environmental Health states that "The protection of human health remains a fundamental objective of environmental policies to achieve sustainable development. We increasingly understand that the health and well-being of our families depend upon a clean and healthy environment."

As noted above, the present analysis should not be taken as advocating an anthropocentric approach to environmental protection. Sustainable development has been criticized precisely because of its emphasis on human beings. It has been said that sustainable development is frankly anthropocentric in nature. While this cannot be denied, in order for development to be sustainable, protecting the environment (which includes protecting other species) becomes imperative. It does, however, convey the message that a healthy environment is necessary in order that human beings can "develop."

In order to reconcile the present debate on the right to development and right to a healthy environment, it seems that a right to sustainable development must be recognized which in turn would protect many other human rights, such as right to life, right to health and right to an adequate standard of living. A reference was made, for the first time, to the *right to sustainable development* in the UN Framework Convention on Climate Change. This is a significant development. The Rio Declaration on Environment and Development does not contain a definition of sustainable development, although several of its principles refer specifically to it and seems to underlie the whole Declaration. It does, however, endorse the link between human health and environmental protection. Principle 1 notes that "Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature."⁶ It remains to be seen whether the World Summit for Sustainable Development scheduled for later this year would endorse a right to sustainable development.

The International Law Association's Principles of International Law Relating to Sustainable Development, adopted recently, are also important in this regard. While not going as far as

⁶ This formulation has been heavily critiqued for its manifestly anthropocentric nature. See Marc Pallemmaerts, *The Future of Environmental Regulation: International Environmental Law in the Age of Sustainable Development: A Critical Assessment of the UNCED Process*, 15 J OF LAW & COM 623 (1996).

articulating a distinct right to sustainable development, it does recognize the link between environmental protection, development and respect for human rights and notes that sustainable development should be integrated into all relevant fields of policy. Noting that the realization of economic, social, cultural rights, civil and political rights and peoples' rights is central to the pursuance of sustainable development, the Principles further lays down the objective of sustainable development as follows:

Expresses the view that the objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations.

Without educating the public, whether they are in developing countries or developed countries, on the possible effects of unsustainable practices, it is not possible to achieve sustainable development. Thus, education and access to information play an important role in the struggle for sustainable development. These rights, in turn, feed into another important right, the right to participate in the decision-making process, all of which form part of international human rights law. This will be discussed in the next section.

5. Tobacco as a case study

Tobacco poses a particular threat to human health and environment. The medical community is grappling with the pandemic caused by tobacco. The statistics in relation to tobacco are staggering. Apparently about 4 million die per year as a result of tobacco related illnesses. The situation is more tragic, given that it is a preventable problem. While the medical community is grappling with the enormous task of treating tobacco related diseases, the legal community is

grappling with the complex legal issues posed by tobacco. They have to deal with concepts such as voluntary assumption of risk, freedom of choice, and freedom of expression (on the part of tobacco companies), on the one hand and the ensuing public health problem on the other.

Tobacco is a legal product, which is intended to kill when used for the purpose for which it is produced. Since it is a legal product, and since its producers are huge multinational corporations making billions of dollars, banning it completely might be problematic. The Framework Convention on Tobacco Control (FCTC) being drafted under the auspices of the WHO, thus aims at controlling it. It gives leeway to the states to take measures at the national level, controlling advertising, banning the sale of tobacco to children, targeting children etc. ETC is another problem where the victim, often children, do not consent to the smoke, who have no control over it, which is a clear violation of his human rights. It also contributes to air pollution. Tobacco cultivation, too, has resulted in much environmental degradation, leading to deforestation and soil erosion in countries. Thus, tobacco poses a particular challenge to environmental lawyers, public health personnel and since it is also related to trade, to trade lawyers as well.

With regard to environmental tobacco smoke the Declaration notes that it is a significant public health risk to young children and such children are more likely to suffer from reduced lung function, lower respiratory tract infections and respiratory irritations. It also discusses the link between global climate change and health effects and points out that "Our children and future generations face serious threats to their health and welfare from changes in the Earth's climate due to the build up of greenhouse gases in our atmosphere Future generations will face many potential impacts of climate change with serious health, environmental and economic consequences."

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due to the build up of greenhouse gases in our atmosphere... Future generations will face many potential impacts of climate change with serious health, environmental and economic consequences."

This document, although non-binding, clearly makes a link between sustainable development and human health, particularly children's health. It urges member states to take action to protect children and future generations within the context of poverty alleviation and economic and social development in the global transition to sustainable development.

Subsequent to this Declaration, the WHO convened an international consultation on Environmental Tobacco Smoke (ETS) and Child Health in 1999. It concluded that ETS is a substantial threat to child health, causing severe health problems, including death in certain instances, and that almost half of the world's children are exposed to ETS. The Consultation recognized the need to take swift action and strong public policies which should aim to ensure the right of every child to grow in an environment free of tobacco smoke. The report of the Consultation points out that children's exposure to ETS is involuntary and can be taken as a violation of the human rights recognized in Articles 6 (right to life) and 24 (right to health) of the UN Convention on the Rights of the Child (CRC). The report calls for a two-pronged approach to this problem: legislation and education which should be complementary. With regard to smoking in private homes, the report recognizes the limited utility of legislation and calls upon states to carry out a comprehensive awareness-raising program on the health impact of ETS.

6. The role of education and other procedural rights

The right to education is embodied in Article 13 of the ICESCR which states that the right of everyone to education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. Similarly, Article 28 of the CRC deals with the right of the child to education. Furthermore, the UN Decade for Human Rights Education also endorses this right.

The right to receive and impart information and the right to participate in the decision making process are recognized in the ICCPR. They are also recognized in environmental instruments. The Rio Declaration, for example, endorses these rights in Principle 10:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy shall be provided.

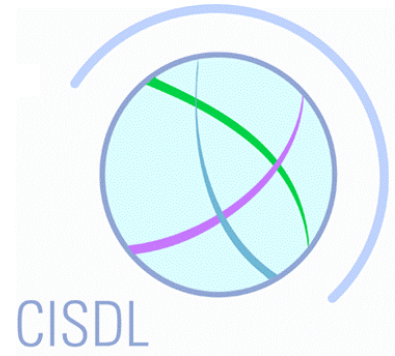
Moreover, General Comments No 14, referred to above, notes the relevance of these principles in relation to right to health and provides: "A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels. Information and participation are rights which are inter-related: without adequate information (timely and accurate), people are not in a position to take informed decisions and if no forum is provided for them to participate in the decision-making process, having access to information may be inadequate as they will be unable to influence the decision-making process. Thus, they are twin rights which are intrinsically inter-related and encompass the entire gamut of other rights.

7. Conclusion: Sustainable health law?

Thus, there is no doubt that a close relationship exists between environmental protection, human health and human rights, and economic development and the point of convergence is sustainable development. It is within a framework of sustainable development that one should seek to achieve environmental protection, human rights protection (social rights) and economic development. If there is no healthy population caused as a result of environmental degradation or due to issues such as tobacco consumption, is it possible to achieve economic development?

Who is to benefit from such development? Thus, the answer lies in trying to seek a balance between these competing claims by achieving sustainable development.

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Date & Time: 2002-06-14	Speaker: Taillant
Rapporteur: [Aida Abraha]	Language: English



Montreal, 14 June 2002

Mr. Daniel Taillant, Center for Human Rights and Environment (CEDHA), Argentina

§ Presentation focus: human rights and financial institutions– World Bank and IMF and donor countries as well. I have paraphrased the articles of agreement of the IMF and World Bank.

IMF [See power point notes]

- § To promote international monetary co-operation;
- § To facilitate the expansion of international trade;
- § To establish a multisystem of payment...

World Bank [See power point notes]

- § Promote foreign investment
- § Balance growth, international trade...

§ Clearly from the article agreement the IMF is not a social development organization. Its interest is in fiscal responsibility and stability. There is little reference made on issues concerning social development and human rights. Similarly, the World Bank was created to reconstruct Europe.

§ We need to remember that by mandate the IFI were not intended to address human right or social development issues. However, they have moral responsibilities. They have taken far more development role than originally intended and this generates some responsibilities. It is to be recalled that they were created along side the UN Declaration of Human Rights. So while human rights is not part of the IFI mandate, their mandates cannot be understood separate from the principles of the UDHR. In practice, their mandates have effects – far beyond the mandate that guide their operation. So, while they may not be created in political circumstances, they have important role to play, and as such, the IFI should be assigned certain degree of moral responsibility.

§ IFI Reaction to pressure for Rights Approach: The IFI is resistant to social development programs. They are not willing to undertake responsibility for human rights. They are not willing to police for compliance. However, they do understand the need to look at the impact of their lending programs.

§ Also recipient governments see human rights compliance as placing further restriction on their economic growth. These countries are rejecting the human rights based approach.

§ International law entitles rights to individuals and at the same time obligates states. The focus on obligation is however problematic. Entitlement is far more interesting way of approaching the issue. I believe that the IFI would actually look at entitlement more favourably than state obligation.

§ World Bank Project - Poverty Reduction Strategies PRSPS [See power point notes] - instrument started 1999 for the poorest of the nation. Fifty countries have tested this procedure. This is a country driven exercise. Poverty issues have become visible in the agenda (access to health, education). Donors like this process. It's good for harmonizing various assistance programs.

§ Critic of PRSPS: There is no mention of human rights in the framework and the participatory effect is not known. Very little link between policy and action. At this point, it is not clear what the real outcome of this policy is.

§ Can we expect more? Yes. It all has to do with the way programs are designed. If we want a positive outcome as a result, there should be some measurement towards entitlement of rights. Rights based targets and indicators (design phase and evaluation – participatory); learning of relationship policy impact (reflection of Asian Tigers and Argentina for example); training for staff on human rights and project impact; at a minimum, a selective rights focus; supervision mission to consult with civil society; guidance on transparent effective participation (inspection panel); some guidelines on how to co-ordinate participation;

mechanisms to involve civil society in design of program and collaboration between international agencies.

§ Some argue that World Bank should be destroyed. We need to revisit the articles of agreements.

CISDL Doc. #: W2B-C1N.E	Session: Workshop 2B
Date & Time: 2002-06-14	Speaker: Hamilton
Rapporteur: [Aida Abraha]	Language: English

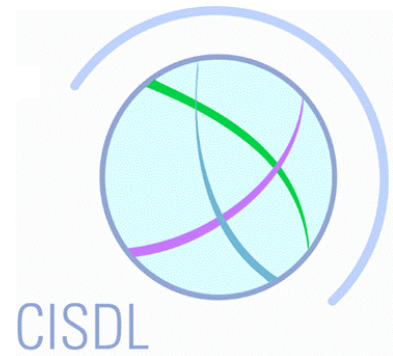


Montreal, 14 June 2002

Mr. Ian Hamilton, Canadian Human Rights Foundation

- § I would like to begin by commenting on the last speaker. The question asked in the concluding remark was – “Should we destroy the IMF and World Bank”? I think the real challenge is how to hold these institutions accountable. It remains to be seen any meaningful participation of recipients in donor programs.
- § When we look at the topic of International Human Rights Law and Poverty Eradication in International Sustainable Development Law, I think what we’re really talking about is economic, social and cultural rights (ESC). Governments have not fully come to terms with this.
- § There is a need to develop capacity to implement ESC. Need to build capacity to empower marginalized groups.
- § Our organization is currently holding human rights training program for practitioners in developing countries. They tell me that most of the disputes in developing countries concern disputes over land, competition over natural resources or degradation of environment. Clearly then there is a need to link economic development and human rights. This is not reflected in our current legal framework.
- § These rights [ESC] imply serious obligation on states. We need to work with these rights and develop our capacity to enforce these rights. At the World Conference on ESC in 1993, it was recognized that all rights were interdependent and are based on core values – protection of human dignity, gender equality and non-discrimination. This is being recognized in international human right law.
 - § We need to look at the jurisprudence of UN committee on human rights.
 - § We need mechanisms to protect these rights [ESC]. We often look at the court for primary mechanism to enforce these rights. But courts are not necessarily capable – they are inaccessible, too expensive and their procedures are too cumbersome. We have judges and lawyers who still don’t necessarily understand the justiciability of ESC.
 - § One of the mechanisms I propose for enforcing ESC is to establish a national human rights institution. It will have an advisory and monitory function and will ensure accessibility for marginalized groups. The institution will act as an intermediary and be able to dialogue between government and civil society. Also, it can act as friends to the court where they think there is an important human rights issue.
- § Again, I would like to say that marginalized groups must be able to claim their rights. Knowledge of ESC must be at the grassroots level, so that marginalized groups could use the legal mechanisms to protect themselves. It’s not enough to place extensive legal framework to protect rights. Human rights law should not be reserved to lawyers only. Education and awareness raising should be part of process. It needs to be about changing attitudes.

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Date & Time: 2002-06-14	Speaker: Singh
Rapporteur: [Aida Abraha]	Language: English

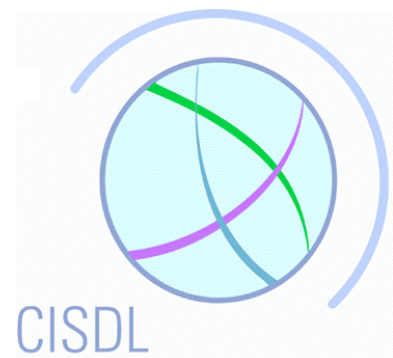


Montreal, 14 June 2002

Mr. Naresh Singh, Canadian International Development Agency

- § Poverty is multi-dimensional. Two types of poverty - cases of pocket of poverty and mass poverty. What I am thinking of is mass poverty.
 - § When we try to do sustainable development and human rights, we don't seem to get development right. We can never get development right. But what we can try do is to do it better. To do it better, we need to change the deterministic and linear development model. We need to find models that deal with complexity and uncertainty. We must begin to work with theory of chaos and complexity.
 - § The nature of state party is important (fractured states; anti-poor states) and our approach to each state party must be different.
 - § Proposed framework: a livelihood model that considers the social and economic activities carried out by individuals and the entitlement that people have to rights. It's an integrated framework that will encompass sustainable development.
 - § Development co-operation: Since I'm working for CIDA, I will say few things about our program. I am pleased with CIDA's program. We are moving away from donor-recipient towards partnership model. Cabinet has agreed this is the way we'll do business with developing countries - local ownership, policy coherence between trade and human rights, debt relief and aid programs.
 - § We are also moving away from individual projects, to broader program approaches.
 - § There are, however, few challenges: 1) development programming is complex and does not fit in the academic and law framework. 2) We have no experience integrating a human rights framework into development. 3) Limited resources (i.e.) if rights are indivisible how do we choose one over the other. 4) Lack of understanding on human rights issues among development aid workers. There is a need to build capacity of program designers.
 - § The most progressive development work is being done in Bangladesh (i.e.) the success of the Grameen Bank etc. A decade later, however, Bangladesh reduced its poverty rate by only 1%. This tells us that we do not need to consider new instruments. It says we have enough and that we need to evaluate the ones we have.
 - § International development law: it has limited set of principles. I think it will bring about marginal success. Even if this approach fails, I believe the attempt to apply international development law will bring new insights in this area.
- Finally, to achieve sustainable development, we must work with the 2-3 billion poor people of the world. It's with their knowledge and their assets that we make this work.

CISDL Doc. #: W2B-QN.E	Session: Workshop 2B
Date & Time: 2002-06-14	Speaker: Questions
Rapporteur: [Aida Abraha]	Language: English



Montreal, 14 June 2002

Questions and Discussion

Q1: This question is directed to Mr. Hamilton. You spoke about alternative mechanisms, your example being creating national institutions to protect human rights. 1) What about affirmative actions? I think without practical measures this can't be solved. 2) How about the use of Inter-American Court of Human Rights for consultative opinions?

R1: Hamilton: I was not suggesting that national institutions are the only alternatives. National institutions are one those mechanisms that can respond to the need to protect human rights.

Q2: To Mr. Hamilton: Many countries at the moment are formulating human rights institutions. In the case of Nepal, the commission was formulated in three years and has become powerful. For the last two years, however, the commission has been accused for not providing... My question to you is, can we have an ideal commission which can be functional, especially in developing countries?

R2: Hamilton: There is no ideal human rights institution. They are institutions that continuously evolve. They provide us with opportunities, if we strengthen them. This means there is a need to create space for mobilization of resources into civil society.

Q3: To Taillant: Would you not agree that the PRS poses additional conditionality on developing countries, including further restriction to access to trade? Wouldn't the PRS create the same objection from poor states?

R3: This is the principle resistance — human rights seen as another (fear that human rights would be used incorrectly); but there is two sides to this coin; the more we focus on obligation, the more resistance; the IMF's duty is to work towards the entitlement of the rights; for instance: access to education. We are pointing at the Bank and not the government.

Do we have indicators for policy results? The answer is no, we don't have strong indicators on human rights. We need ways we can measure human rights compliance. ESC needs to be measured.

Comment 1 [audience]: RE Rights and duties: We seem to forget that the conceptual framework of rights is correlative to duties. Without duties, rights become claims and that won't work. We need to give particular attention to the language we use. If we want to make progress in ESC, we must realize that duties must go along with those rights.

Comment 2 [audience]: The US is aggressively campaigning against the justiciability of ESC. Canada is following along. It would appear that we must look at South Africa for some direction on this issue.

Comment 3 [Singh]: It's sustainable development at issue here — over-consumption and under-consumption, not law. Law should be a means to meet an end. Need to think about complimentary things to make law work.

Comment 4 [Hamilton]: I don't claim to be an expert on sustainable development. However, I do know that lack of participation for those who are the object of development is a human rights issue. Human rights are a means towards an end. Human rights education is important. Human rights are a means towards development.

**Statement by Ambassador Lionel Hurst
of Antigua and Barbuda at the McGill University
Symposium on Sustainable Justice 2002
*Implementing International Sustainable Development Law***

Sustainable International Climate Change Law and Vulnerability

June 14, 2002
Montreal, Canada

1. I am never unaware of the small size of my country and hence always consider this kind of invitation to speak as an honour. I thank the organizers for this invitation and plan to engage you for ten short minutes, which I hope will be worth your time. Our interest here is more than academic and I will tell you how and why.

2. To do that, I will divide my ten minutes of speaking time into two five-minute segments. In the first five minutes, I will tell how a speck of land in the Caribbean, called Antigua and Barbuda, became a free, sovereign and independent state, enjoying the same privileges as Canada in international organizations like the UN, where international law is made.

I will show how small island-states try to enhance our effectiveness by creating coalitions in multilateral fora, and thus how we view sovereignty. Then I will show how dangerous our world has become by the success of industrial civilization and how we try to overcome these dangers.

In my second five-minute period, I will address the question of international climate change law. I am far from buoyed by my thirteen-year experience as a maker of international law as it pertains to climate change. Hence, I will tell of our inability to compel compliance of existing law, and of the resistance to introducing new international law.

Finally, I will call upon you to take some very specific actions that will help to release civilization from the trap of dependence on fossil fuels, which threatens to suffocate even the least vulnerable after mangling small islands around the globe.

A short history

3. Every state in this hemisphere can trace its modern beginnings back to October 1492, when Christopher Columbus became the first European tourist to the Caribbean. The history of the countries of the Americas and the Caribbean thereafter is full of gore and glory, cowardice and courage, plunder and profit. My own Antigua and Barbuda, beginning in 1634, was peopled overwhelmingly by humans from Africa, forcibly brought to be beasts of burden, to produce sugar for the tables of Europe.

4. I tell this story of our beginning because, in 1815, at the Congress of Vienna, the British, who then ruled the waves, tried to persuade the French, the Portuguese, and the Spanish to declare the trade in African slaves unlawful. It was by force of arms that the trade was eventually ended,

despite the treaty which the warring powers signed. International law, two hundred years ago, had no teeth without the claw of military might. Not until 1888 did slavery in this hemisphere end when Brazil outlawed the practice.

THIS IS THE HISTORY OF HUMAN BEINGS. BLOOD AND GLORY, FREEDOM AND SLAUGHTER

RELATIONSHIP BETWEEN MORAL DEPRAVITY AND STATE ACTION

- ex. Congress of Vienna to end trade of slavery (1815)
- was the might of Britain that brought an end to slavery
- end of slavery did not occur until 1888 (outlaw by slavery in Brazil)

The end of an era

5. Fast forward seven decades, to 1957 (year when Ghana gains independence first colonized country to gain independence). The world was divided into two groups of peoples: the colonizers and the colonized. Antigua and Barbuda's people were among the colonized. But in 1960, the United Nations at the urgings of newly independent African and Asian states, adopted Resolution 1514/XV declaring colonialism unlawful.

Actually, the United States had made it clear to the Europeans, following the Great War, that it would not sink billions of US taxpayers' dollars into their reconstruction (i.e. the Marshall Plan) only to enable them to engage in a deadly competition once more for colonies. The Europeans were obliged to end their control of colonies. Besides, the natives were restless. By 1962, large number of states were on the scene.

6. By 1981, the year of Antigua and Barbuda's admittance to UN membership, the world was now divided into developed and underdeveloped countries. International law had not only succeeded in creating scores of new states, but the very classification of countries and peoples was changed.

In the final decades of the twentieth century, new states were compelled to conclude that the world was also divided into two categories of states: the powerful and the powerless. Those with the least chances of ever gaining power were the smallest of states — the island-states. However, they decided that although powerless, they wanted to increase their leverage: so created the AOSIS

AOSIS created

7. In 1989, the 41 island-states at the United Nations created the Alliance of Small Island States (AOSIS). Although we are without power, as states, we understood that we could exercise leverage, as a group. In preparation for the 1992 Earth Summit, and to ensure maximum influence in the negotiation of the UN Framework Convention on Climate Change, the diplomats from the motley collection of small and vulnerable island-states from around the planet pooled our sovereignty, under the leadership of Vanuatu. (so created to promulgate the climate change convention)

The Framework Convention on Climate Change and its Kyoto Protocol are proudly the leadership output of 41 island-states at the UN, determined to disallow history to cast them into extinction.

8. Having gained our independence and sovereignty, wisdom dictated that we employ this newfound status to improve our people's lives and to save ourselves from destruction. We did not view sovereignty in classical terms anyway. We thought of our newfound status as an asset to be subdivided, conjoined or wielded for the benefit of our peoples.

We learned that the continuous dumping of billions of tons of greenhouse gases into the atmosphere each year, was threatening islands and their citizens more severely than three hundred continuous years of oppression. The extreme weather events made our interest more than academic.

The PROBLEM that we have created is our dependence on PETROLEUM. Petroleum is a huge business, an industry with many resources that can influence even the USA. **So must ask how do we reverse this problem: the use of petroleum and its impact on the environment and very negative detrimental effects on small states such as those in the Caribbean, and the relative powerlessness of these states that are being affected.**

You must persuade your own government to act! Otherwise cannot achieve sustainable development. Persuade own government to persuade the USA government and the people of the US to do the same to change its practices and stop dumping billions of tons of CO2 and other greenhouse gases into the atmosphere, which is the COMMONS OF THE EARTH, and which the governments of these countries do not have the right to do.

In three generations, we have overcome the disabilities of an ignominious history. Unless the developed countries quickly find and employ new, non-polluting technologies to power your cars and trucks, provide electricity to your homes and factories, your universities and office buildings, you will cause small and vulnerable islands to become buried under a swollen ocean.

Innovative issues and instruments

9. What then are the innovative instruments or principles that can be imported into climate change law in the near future? I do not believe that it is possible to change the course of history at this time by reliance upon new law. I share the view expressed by Minister Gillwald yesterday that public opinion has to become the primary source of change, especially in the area of climate change.

I am led to this view by my experience in the United States where the population, though literate and well-informed, are engaged in denial and they are led down that path by their leadership. I am also certain that without the wealth, ingenuity and prestige of the United States Government, the effort to alter history's course is doomed.

The solution to climate change lays in introducing new technologies for energy production. That effort will prove fruitless unless US scientists dedicate themselves to the effort in the same they were encouraged to so do following the Russian success with Sputnik and the determination to outdo their rival.

The petroleum industry is acting much like our slave masters of a prior age. That \$4 billion dollar a day industry has brought its considerable wealth and influence to bear on US policymaking. It is therefore necessary for each and every one of us to begin sending a clear message that our

earth does not belong to those who produce and sell petroleum products. I ask you to be absolutist and to focus exclusively on the petroleum industry, for without a fundamental shift from this polluting source to non-polluting energy sources the fate of a small island state like mine is predetermined. I thank you.

French, Duncan: power point presentation (no changes)

Taylor

- 1) Presentation comes from the direction of the private law firm for which Taylor works
- 2) Point of view: private sector lawyer (head of environmental sector), not an academic or governmental worker
- 3) Focus on the connection between private sector and important goals of SD and climate change
- 4) Clients don't talk of sustainable development. They speak of making and keeping money. These are the decisions that business are properly mandated to make. This is not to say, however, that businesses don't recognize that the Sustainable Development principles affect their reputation but the bottom line is cost saving reasons, employee satisfaction, competitive advantage
- 5) They incorporate Sustainable Development principles not because it's the right thing to do, but because it's part of their business mandate
- 6) Contradiction for business people: mandated to manage Sustainable Development and required to maximize shareholder value; thus it's difficult to take Sustainable Development into account. So must make principles of Sustainable Development consistent with what businesses do each day. Climate change shows us that this has not been done
- 7) Climate change document is linked strongly with development (talking of Kyoto Convention). Tries to merge climate change and ensuring of development that is sustainable
 - a) **Convention does not set out a role for businesses: their views not well reflected in the convention**
 - b) Even the Kyoto protocol did not carve out a role for businesses: private entities only mentioned in one area. Protocol has not been designed for implementation by the business sector.
- 8) What can be done?
 - a) Ask businesses to incorporate sustainable development in the way they carry on business
 - i) And because businesses are made up of people, who often share views of sustainable development, that if the cost is low and reputational advantage is high, things will be done
 - b) Enforce laws regarding sustainable development. This is not popular
 - c) Permit business to act in the right way. Remove obstacles to sustainable development, such as board of governors
 - d) Provide incentives to act sustainably (tax incentives, etc.)

Emissions trading is taking place even in the absence of Kyoto. Private sector is moving to deal with the risk of climate change. Can learn from voluntary actions of private sector and implement these to Kyoto

Questions

- 1) Challenges: how countries (particularly developing) address climate change in an ostensible manner while at the same time dealing with economic perils?
- 2) What can be done by the international community regarding the vulnerability of small developing countries to the adverse aspects of climate change?
- 3) **Ralph Oosterveld (CIDA) (directed at Hurst)**
 - a) Might there be a role of law: to mobilize change of persuasion. Is it too little too late? And are there other processes that could help persuade USA to come on board?
 - b) **Hurst:** USA continues to pollute as freely as wishes. Does not mean should not abandon effort to encourage other nations to pollute less, and encourage further research and development efforts regarding green energy. But more importantly, we must compel the PUBLIC to force the government to change, and to move in ways that are morally correct and to force the government to enforce more sustainable policies, etc. So PUBLIC INVOLVEMENT is key to force the American government to change. Need an approach on all fronts
 - c) **Canadian speaker:** We must exercise leadership ourselves first before we can bring on the Americans. Example of acid rain movement: forced America to come in and the Clean Air Act that Bush's father signed. The more we isolate the Americans, the best way of getting them to come in.
 - d) **Wang:** agrees with Canadian speaker. And developing countries such as China and India can also take a leadership role.
 - e) **French:** the job of getting the Americans on board is huge, especially considering that Kyoto was drafted along American-desired lines.
- 4) **Brazilian speaker (directed at Taylor)**
 - a) In what measure do you think the American businessmen can put pressure on the American government to comply with Kyoto when their main responsibility is the bottom line
 - b) **Taylor:** NOT optimistic that Canada should go the way of Kyoto. Instead, maybe should do a deal with USA and Mexico to at least make the USA accountable to something
 - c) **Response: a Canadian:** we should DEMAND that Canada ratify immediately. There are many Americans that want these agreements signed. We cannot go along with industries such as the automobile industry that keeps pushing out SUVs and other like-minded industries. We must go ahead. We must insist that the right thing is done!
- 5) **? (to French)**
 - a) Disappointed that French said that international law can only provide for the process, not a sustainable result. Speaker hopes that can use international law to pressure nations to conform to Kyoto. Wants to know what more ISDL can do to force nations to conform. Does not think that we should resign ourselves
 - b) **French:** international law is constrained by the use by states, whereas the importance of Sustainable Development is not so constrained
- 6) **Rachael VanDam, CISDL**
 - a) We should begin moving to mobilize the people to feel and understand the actual problem. It's not so much a question of getting the politicians on board but getting the people know what needs to be accomplished. So should turn to EDUCATION
- 7) **Ann Kerr, a Canadian**

- a) We must look at ourselves and OVERCONSUMPTION. We are the ones spurring on businesses to make SUVs, and to expend energy, etc. CONSUMER BEHAVIOUR is key.

8) ? **(Directed at Taylor)**

- a) Disagrees with Taylor that business has not been taken into account. Business only listens when it can take advantage of international rules.
- b) Taylor said that the business will voluntarily accept some restrictions. Should not have an adversarial attitude. However, we cannot reduce human lives to COST BENEFITS. This is a fundamental issue, as well as consumerism and economic development. Cost benefits do not take into account human life. Is unsure whether we can wait for business to come into play when business accounting procedures do not take into account human life
- c) Conclusion of OECD report that already corporations enjoy a very substantial reduction regarding environmental degradation.

9) ?

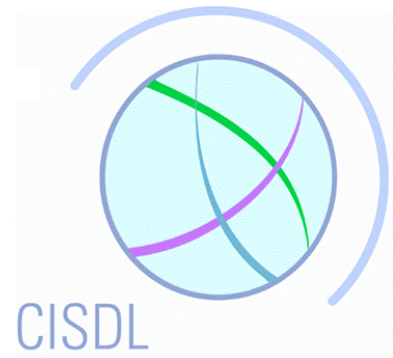
- a) While some businesses are sustainable, not all are
- b) It is important to play with incentives. These are not only tax deductions. Also related to DEMANDS of PEOPLE.. So must move public opinion in a certain direction. Then business will react to people's demands, because this is the way business operates.
- c) It is also important to define who creates wealth. We must create real, distributed wealth or else we won't have anything to distribute and won't be able to reach sustainable development
- d) Jobs: how we can create jobs for millions of people and youngsters? Where is this going to come from and who is going to pay for? Or else: we have increased poverty. Challenge is how to balance need for people to work, consumer goods, etc, with sustainable development that we do want, and to take care of the environment for mankind. Cannot lose sight of all these angles.

10) **Marsha Ackman, president of BS Development**

- a) Business is the PROBLEM. We must separate business and state: combination of business together with the state is killing us

??: consumer habits have changed incredibly in the past 30 years, especially in developing countries. We must consider WHO has spurred on this change.

CISDL Doc. #: W3B-S1N.F	Session: Workshop 3A
Date & Time: 2002-06-14	Speaker: Attaran
Rapporteur: [Aida Abraha]	Language: English

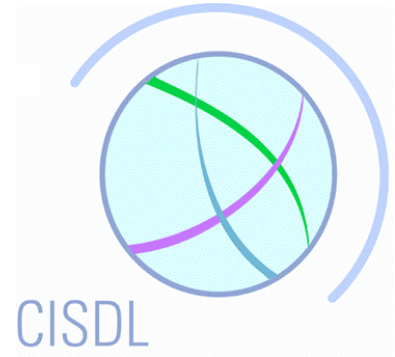


Montreal, 14 June 2002

Dr. Amir Attaran, Harvard University [Please SEE POWER POINT notes]

- § Presentation: why efforts to weaken patent protection will do little to help people with HIV in the poorest nations obtain the drugs they need and why it will undermine the investment in medicines that can save lives and reduce medical spending where the human and economic burden is the greatest
- § Conventional wisdom is that patents are the leading reason why developing countries cannot access the life-saving drugs that they need
- § But recent studies by (Dr. Attaran – Journal of the American Medical Association) finds that the role of patents is eclipsed by the much larger failure of wealthy governments
- § Economics, law and finance are under the microscope. Correlation between health and poverty is clear[See power point notes] SSA – HIV/AIDS and US.
- § Where does problem lie for developing countries? Legal, financial, ecological
- § Tropical disease – malaria transmission has stalled economic development.
- § Another theory relates to patent. Percent of medication that are essential defined by WHO are not frequently patented. But for those that have patents if we ask, they're vertically access... What is significant is the per -capital income. But patent or not patent it does not matter. Why? There is no money and the rich countries do not help.
- § AIDS is out control because there is no money being spent on it.
- § We don't even deal childhood vaccination. Fifty percent of children in Africa go without being vaccinated. Canada gives 2 million for vaccination while Bill Gates earns 150 million
- § We need to ask where is the money is going

CISDL Doc. #: W3B-S2N.F	Session: Workshop 3A
Date & Time: 2002-06-14	Speaker: Atapattu
Rapporteur: [Aida Abraha]	Language: English

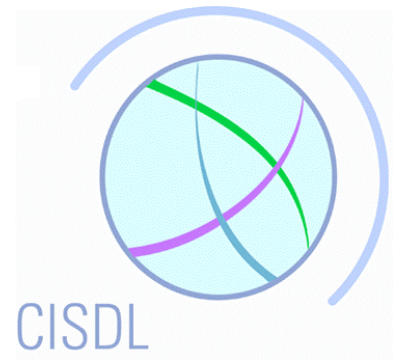


Montreal, 14 June 2002

Prof. Sumudu Atapattu — Law and Society Trust, Sri Lanka

- § Presentation: difficulty of regulating the tobacco industry.
- § Human rights are to be indivisible. Yet we have seen gap in the protection of economic, social and cultural rights and civil and political rights. The argument that often follows from countries is that we need to prioritize in certain instances. I see the need to strike a balance and bridge this gap.
- § Right to health is enshrined in the convention of Economic, Social and Cultural rights. Not too many national governments have incorporated right to health in their domestic law. South Africa is an exception.
- § Sustainable development and right to health: how does it relate? To me sustainable development is an umbrella encompassing procedural and substantive rights. The issue is, if you have a population that does not enjoy right to health, can they enjoy development? (i.e.) if they are suffering from AIDS, cancer, where do we draw line between health and economic development?
- § Environmental degradation causes so many health issues. So, the link between environmental degradation and health is clear.
- § Tobacco has created problems both for the legal and medical community. This is an area where the two communities can collaboratively work together.
- § Tobacco is a legal product so banning tobacco will not be an issue. But on the other hand, the medical community has shown that approximately 4 million people die as a result of tobacco related illnesses.
- § In the 1960 s the tobacco industry was hiding the effects of tobacco (i.e.) effects such as addiction and other tobacco related health problems. Legally it was difficult to deal with these issues. It was argued that consumers smoked because they wanted to smoke. But, the truth of the matter is, consumers were addicted, and so their right of choice was taken away from them. The industry has been hiding the effects, so consumers have not been exercising their freedom of choice.
- § In the case of those exposed to second-hand smoking, the legal issues are clear. You are not exposed to second-hand smoking by choice (especially in public places). Children are especially vulnerable to second-hand smoking. Presently, a lot of work is being done in this area. It will be the first public health international treaty to be done by the World Health Organization.
- § There is a need to educate people on the effects of tobacco on their health. The framework of convention has broad principles. There is an attempt to control the tobacco industry, especially when it concerns children. Studies have shown that most smokers start during their teenage years. So we need to control advertisements. We are hoping the Convention will be adopted and be ready for signature by next year.
- § Key component of the convention is on corporate social responsibilities. Recently, WHO organized a meeting of experts to see if liability and compensation could be incorporated in the framework. The experts pointed out that states will not be willing to sign the convention because they do not wish to be held accountable for the actions of multi-national corporations (MNC). It seems, when it comes to MNC the issue is complex.
- § But what's key is that we are dealing with something that's preventable. So we must note the importance of awareness raising. We need to educate the public about the dangers of tobacco use.

CISDL Doc. #: W3B-S2N.F	Session: Workshop 3A
Date & Time: 2002-06-14	Speaker: Benatar
Rapporteur: [Insert Name]	Language: English



Montreal, 14 June 2002

Prof. Solly R. Benatar, University of Cape Town

- § Despite achievements in science, technology and health care in the 20th century, and unprecedented economic growth, the 21st century is marked by global instability and associated with widening disparities in wealth and health.
- § Disparities recently described as “perfect crimes”.

Some facts about our unstable world:

- § **The global economy:** globalization is a complex and ambiguous concept with social and ecological manifestations. Globalization reflects a long interwoven economic and political history in which peoples, economies, cultures and political processes have been subject to increasingly pervasive transnational influences. Only 20% of the world’s population have benefited maximally from globalization.
- § Negative aspects of globalization must be considered and addressed. In 1900 the wealthiest 20% of the world’s population were 9 times richer than the poorest 20%. Ratio has grown progressively to 30 times by 1960, 60 times by 1990 and to over 70 times by 1997.
- § Today almost half the world’s population lives on less than US \$2 per person per day and more than a billion people live on less than US \$1 per day.
- § World debt grew from \$0.5 trillion in 1980’s to \$1.9 trillion in 1994 and to 2.2 trillion in 1997.
- § Although third world debt accounts for a small portion of total world debt, it has reached obscene levels in relation to income levels.
- § All the adverse effects of progress are felt most severely by 80% of the world’s population.
- § In 1973, global market exchange amounted to \$15 billion daily and 70% of all money that exchanged hands on a daily basis was payment for work, while speculative financial transactions accounted for 30%.

- § By 1998, daily global market transactions had escalated to \$ 1.5 trillion daily of which about 5% was payment for work while speculative transactions accounted for 95%,
- § Economic disparities have become so marked and their adverse effects so apparent that a significant degree of incompatibility has arisen between neo-liberal economic policies and the goals of democracy.

War, displacement of people and economic aid for development

- § New patterns of war and ethnic conflict have resulted in displacement and migration of millions of people.
- § Arms trade has contributed significantly to the escalating numbers of wars, conflict and widespread torture since the second World War that have rendered over 25 million people to refugee status and displacement – with profound disruptive effects on life and health.

World health and health care expenditure

- § Health and health care profoundly affected by the complex interaction between economic, social and political forces as well as by behavioural patterns and modern medical practices.
- § The WHO estimated that in 1998, 11 million children and adults of working age died of six infectious diseases that could have been prevented by \$20 per life saved.
- § Poor countries bear over 80 percent of the global burden of disease in disability adjusted life years.
- § Poverty directly accounts for almost one third of the global burden of disease.
- § Poverty leads to poor health, which in turn aggravates poverty.
- § Tens of millions of people, including many children die every day of starvation.
- § Since the 1960's major advances in medicine and technology have been associated with escalating expenditure on health care – most of this in highly industrialized countries.
- § Annual per capita expenditure on health care ranges from \$4000 in the US down to less than \$10 in the poorest countries in Africa
- § It is now well established that there is a definite relationship between economic status and health and life expectancy, although this relationship is complex and not linear.
- § Among the developed countries it is not the richest societies that have the best health but rather those with the smallest income differentials between rich and poor.
- § Half the world's population lives in countries that cannot afford annual per capital health expenditures of more than \$5-10, and many people do not have access to even such basic drugs as penicillin.
- § Some parasitic disease could be controlled by mass treatment campaigns using inexpensive drugs, but the infrastructure required to provide such coverage is inadequate.
- § TB, leprosy and HIV/AIDS require more complex infrastructures.

Threat of infectious diseases

- § Growing inequalities in wealth and health, and other development related problems have resulted in global instability characterized by such new security threats as the emergence/ spread of new disease and multi-drug resistant infections and possibility of biological warfare.
- § Such pandemics cannot be dealt with through a narrow biomedical approach.
- § A more complex systems approach is essential for sustainable development and improved global health.

Ecological degradation

- § Loss of biodiversity, global warming, damage to the ozone layer, soil erosion, pollution of the air and the sea have all been allowed to escalate without sufficient attention to their implication for future of life on our planet
- § Future generation will pay the price in terms of disease, impaired quality of life and reduced longevity.

Dominant underlying values driving the modern world

- § Belief that scientific knowledge, economic growth through the operation of free-market forces and propagation of the concept of human rights as civilizing moral agenda will provide solutions to problems within an unstable complex system
- § Ideas are sustained by promoting a high degree of *individualism*; a narrow perspective on human rights (limited to civil and political rights) and a market that drives production and consumption of private goods while devaluing public goods.
- § Dominant concept of security here is based on *geopolitical realism* in international relations.
- § Widening disparities reflect the amorality or worse the moral depravity of the world
- § They imply threats to the self-interest of all through political terrorism, infectious diseases and other biological threats

Solutions through new paradigms of thinking and acting

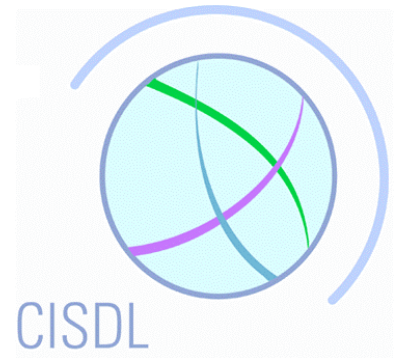
- § Expanded discourse on ethics could serve as a vital step towards altering the required redistribution of resources for improvement of population health.
- § New conception of sustainable development will have to be coupled to an expanded discourse on ethics that goes beyond a narrow conception of human rights/ interpersonal ethics/ health of individuals to include the ethics of public health and of international relations that play such important roles in determining the health of whole populations.
- § Must have greater concern for the common good with commitment to a **broader perspective on human rights (inclusive social, economic, cultural and environmental rights)**
- § Security should be sought through **co-operation and moral power** in addition to economic and military power.
- § Redistribution, overpopulation and overcompensation must all be addressed.
- § Such a **moral agenda could promote human potential** required to deal with threats from poverty, conflict and demographic and environmental changes. Failure to acknowledge and act on this reflects a state of moral insensitivity at the least and moral depravity at worst.

Recommendations

- § Improving global health in a sustainable manner requires that:
 - § Respect is fostered for the whole range of human rights specified in the International Bill of Rights (including the right to equitable access to health care)
 - § Changes should be made to global economic policy and international trade relations in order to reduce inequity and eliminate profound poverty
 - § All nations have responsibilities that are common and differentiated in working towards the goal of global solidarity (developing and testing new drugs and vaccines and making these available to all in need).
 - § Public participation to shape the setting of health care priorities and in resource allocation through processes that are accountable and reasonable
 - § Good governance of nations, transnational co-operations and health care systems is fostered as illustrated by failures and success in dealing with the HIV/AIDS pandemic
 - § The principle of precaution is exercised in relation to means of advancing health (for example in relation to creating transgenic animals)

§ Deeper insight is achieved in understanding the inter-relationship of health, well-being and social injustice.

CISDL Doc. #: W3B-S4N.E	Session: Workshop 3A
Date & Time: 2002-06-14	Speaker: Love
Rapporteur: [Aida Abraha]	Language: English



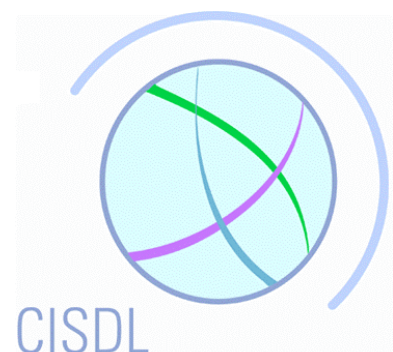
Montreal, 14 June 2002

Dr. Jamie Love, Centre for the Study of Responsive Law, Washington

- § What is the WHO essential drug list; cheap drugs reflects cost effective criteria; patent protection drives drugs off the WHO; essential b/c they are cost effective drugs; its misleading to throw out
- § Bangkok – over million AIDS affected; US pressure for monopoly of drugs;
- § In Thailand, much of the access to medicine depends on access to patent
- § South Africa – best candidate – good infrastructure;
- § Competition is important in determining prices for medicines; in Africa, people will die in masses;
- § Bringing the drugs down is unhindered by competition;
- § Changes in prices for F-Zole in Thailand, following the introduction of competition in 1998
- § 3TC and D4T required in Aid cocktail; Brazil made a decision to buy or manufacture the drug; the prices have failed; there is link between what Brazil did and opportunities that are available in Africa
- § Annual cost of Nevirapine / 3TC/ D4T – were lowered to 0.67 cents;
- § Seven antiretroviral drugs widely patented in Africa
- § Drugs that were patented were difficult to market = what is compulsory licensing? – When the government or a judge issues a non-voluntary license to use a patent. It was not helpful to bringing the price down; it should not be underestimated.
- § The campaign to solve this problem is to move towards being effective against patent problems; FDR established an advisory committee, in 1917, for military and civilian use of patent; patent committee recommended – met with Wright brothers = Manufacture Association - after 7 month – created a patent pool for aircraft manufacturing;
- § When they want to fix the problems, they fix them; the WHO debate in 1999 lead to first public demand for compulsory licensing;
- § To fix this problem the Aids activists are working tirelessly - the biggest mover of the Senate is Jess Helms.

French 's speech is in two different workshops to correct

CISDL Doc. #: K7-S1N.E	Session: Legal Experts Keynotes
Date & Time: 2002-06-14	Speaker: McNally
Rapporteur: [Moses Kiiza]	Language: English



Montreal, 14 June 2002

I am a product of the British Empire and have lived in Africa all my life.

Human rights - The people in the third world were desperate to make the world aware of their poverty and suffering.

Collective rights are quite different. In a developing country how can you go to a court and say you have a right to food, shelter, etc? These third generation rights are a bit complicated as far as implementation is concerned.

When Zimbabwe attained independence, we were told that we were mature now and that we had to abide by our own Bill of rights.

I would like to see a wider understanding of human rights.

Economic social and cultural rights require political action. There are occasional flashes of recognition but a lot remains to be done.

We in Africa belong to the pre-modern world and we have to be very careful about that.

On the issue of denying countries aid due to lack of development there is a need for flexibility. Development should come first and democracy will follow.

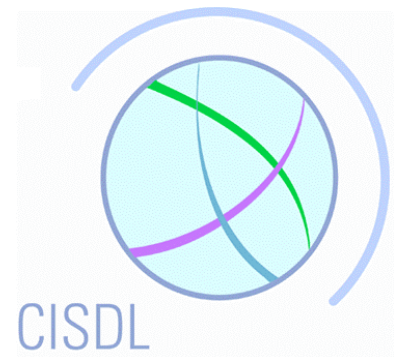
Poverty is a very big problem in Africa.

Denmark is a small country but their income is that of 48 poor countries in Africa.

The culture of poverty leads to a culture of dependency. You find that people are controlled by their environment instead of the opposite. This characterizes many parts of Africa.

There is also the problem of the land system. This is partly attributed to the absence of democracy.

CISDL Doc. #: K7-S2N.E	Session: Legal Experts Keynotes
Date & Time: 2002-06-14	Speaker: Banerjee
Rapporteur: [Moses Kiiza]	Language: English



Montreal, 14 June 2002

The supreme court and the high court in India have dealt with the issue of SD in a very favourable manner. There should be development but this development should be in harmony with the environment. Nature will not tolerate us after a certain degree of destruction.

Time has come to check and control the problem of environmental degradation. There should be a proper balance between development and environmental protection without one taking precedence over another.

He was in charge of the environment report in the Jakarta parliament.

In New Delhi we passed an order to burn buses that produced black smoke. The pollution level came down by a significant percentage and the people were highly relieved.

If there is to be sustainable development, population and education should be managed well. Education is necessary to increase awareness among the people of the importance of environmental protection.

Human rights are another sphere that is necessary to attain full development. It is now time to recognize human rights. Empowerment of women for instance will have to be considered in the context of the contemporary times.

Thinking futuristically, our attention may be focused on 4 aspects, Implementation of the one global village theory and introduction of modern law — most national laws in different countries have introduced the UNCITRAL method of arbitration for instance.

Fiscal and economic laws among others will play an important role.

If the relevant laws can be incorporated into the national laws, an environment conducive for the realization of SD will be created.

De saadeler: nothing

Questions: nothing

Launching reception

CISDL Doc. #: L1-S1N-F	Session: Focus 2002 Launch
Date & Time: 2002-06-14 18h00	Speaker: Singh
Rapporteur: [Insert Name]	Language: English



Launch of U.N. Treaty Section's 'Focus 2002: Sustainable Development'

Montreal, 14 June 2002

N Singh s book launch introductory speech (Only some key points mentioned)

The Book was written as a belief that there was already enough writing but not enough action

Christin — prizewinning journalist — was asked to write for Choices magazine and wrote an article on the area. She liked the subject so much that she wanted to write a book, and this is reason N. Singh is the co-author.

Mr Singh wanted to acknowledge the IISD s role as they have papers which showed the policy linkages to sustainable livelihoods.

What is philosophy of the book?

Due to background of having a first degree in chemistry — was offered job as chemical salesperson. One of chemicals killed weeds in canals. Then, someone asked me what about impact on fish — said I didn t know. Reflected on the persons who had lost theilivelihoods. Classic example of how the chemicals related to sustainable livelihoods. Good political governance

In book: putting into action what all agreed with, in a real way. Begins with crisis, shock and stress — brings out innate talent: we should begin by understanding people s adaptive strategies. IISD published how people adapt to such shocks.

If we talk about needs, about analysis of problem, we set up dependency syndrome, and can t proceed with empowerment. This is nonsense work — nobody gives power when they have it — only self-empowerment can take place. If we look at asset approach, what people have —what they consider to be sustainable livelihood — people would articulate and define what they mean by sustainable livelihoods. We should not assume outside agencies have a role — first determine what the people can do by themselves — might be policy, governances, pro-credit institutions, technology/ investment. Need to take into account adaptive strategies.

Agents of change should be themselves not us.

Speech of Hon. Dr. Kezimbira Miyingo
Minister of State for Environment of the Republic of Uganda at the Conference for
Implementing International Sustainable Development Law, Sustainable justice 2002, Montreal,
Canada, 13-16 June 2002

INTERNATIONAL ENVIRONMENT GOVERNANCE

Mr. Chairman, efforts to reform International Environment Governance is historical yet in a sense, new. It is historical because it dates back to the year 1972 when the first conference on Human Environment was held in Stockholm — Sweden. That time 113 countries attended and for the first time the International Community came together to address the relationship between the environment and development with man at the centre. The theme for that conference was Only on earth. Priority issues were identified but unfortunately, the implementation of environment and economic sector policies continued to proceed on parallel for the decades that followed.

In the late 1980s, the World Commission on Environment and Development (WCED) attempted under the theme Our Common Future, to reconcile environment and development but still governance continued to remain a problem in that internationally agreed policies and agendas lacked implementation. What was the way forward?

Was Mother Earth destined to perish? These questions raised serious concern so that in 1992, twenty years after Stockholm, the United Nations (UN) decided to hold in Rio de Janeiro another conference on environment which was called The Earth Summit. It was obvious at this conference that the problem of Environmental Governance still existed. There was inadequate implementation of the previous declarations and agreements already entered into. The world leaders seriously recommitted themselves to saving Mother Earth by pledging individually to each implement good environmental practices at home and together to abide by all international accords and multilateral agreements.

Three very vital conventions came into force namely: United Nations Convention to Combat Desertification (UNCCD), United Nations Framework Convention on Climate Change (UNFCCC) and United Nations Convention for Biological Diversity (UNCBD). Agenda 21 was adapted as the blue print of the Summit that humanity was to follow to ensure sustainable development.

Agenda 21 and the Rio principles supported the strengthening of the institutional structures for International and National Environmental Governance. Many multilateral protocols and agreements have subsequently come into force. In the UN system which comprise UNEP, the Commission for Sustainable Development, Secretariats of Conventions and funding mechanisms e.g. the Global Environment Facilities (GEF) have all been set up in an effort to have effective International Environment Governance.

Mr. Chairman, the United Nations General Assembly continued to note non-implementation of many decisions while the Environment continued to deteriorate. Through resolution 53/242, the United Nations called for a more focused attention on the Environment. The Global Ministerial Environment Forum (GMEF) was created to meet yearly and review the state of the Environment.

The first meeting of the GMEF was held in Malmö, Sweden in the year 2000. The forum like the General Assembly noted with deep concern an increasing rate of deterioration of the Environment and Natural Resource base. We, the Ministers of Environment, noted also an

alarming discrepancy between commitments and action, an inadequate level of integration of environmental considerations into the mainstream of decision-making in economic and social development. There were indeed great challenges to the implementation of multilateral environment agreements.

In M lmo, Mr. Chairman, a Ministerial Declaration was adapted which recommended ACTION NOW to implement decisions previously taken. As a follow up on the M lmo declaration, in Nairobi in 2001 during the Governing Council/Global Ministerial Environment Forum (GC/GMEF) meeting resolution 21/21 was adapted to set up an Open Ended Intergovernmental Group of Ministers or their Representatives to totally review International Environment Governance. In addition, the Committee of Permanent Representatives to UNEP was tasked also to examine International Environment Governance.

Meetings went on for a whole year. All in all, the Open Ended Inter-government Group met six times under the Chairmanship of the President of UNEP Governing Council/Global Ministerial Environment Forum Hon. David Anderson the Minister of Environment of Canada.

A number of weaknesses were noted in the system of International Environmental Governance namely:

- (i) Inadequate international institutional set up.
- (ii) Weak support of the existing institutional and oversight mechanisms.
- (iii) Inadequate coordination
- (iv) Gaps in international policy formulation
- (v) Incoherent decision making structures.
- (vi) Lack of meaningful coordination
- (vii) Unbalanced approach to the three pillars of sustainable development
- (viii) Inadequate authority of UNEP.

The review of IEG were to lead to comprehensive inputs into the preparation for WSSD and under decision 2001/PC/1, the Commission on Sustainable Development (CSD) acting as a Preparatory Committee for WSSD invited the Governing Council to submit its progress report results to the Preparatory Committee (PrepCom II) and its final results to PrepCom III for full consideration. This process has gone on well but of course it had some tough times to meet especially from some members from the UN system itself who mistakably deemed the process a threat to the strength of the CSD.

It was believed that strengthening UNEP would undermine CSD. Some attempts were made to derail the process but the firm determination of the Bureau of UNEP and the Ministers could not be overcome by any force. We were fulfilling decision 21/21 which was an answer to the Mulmo Ministerial Declaration and therefore a reply to the General Assembly Resolution 53/242.

Mr. Chairman, let me now turn to the decision of the Cartagena GC/GMEF meeting on IEG. The report of the Open Ended Inter-governmental Group of Ministers or their Representatives on International Environment Governance (IGM/IEG) was tabled before the GMEF in Cartagena in February 2002. The report in its background noted that the international community had become increasingly concerned with not only establishing a strengthened framework for coordinating

international action but also in ensuring that the limited resources available are deployed in the best possible manner for optimal effect. In Rio Agenda 21 had reaffirmed the role of UNEP as the principal body in the UN system in the field of Environment. The report noted that further strengthening of the current system had been done by the Secretary General when he established the United Nations Task Force on Environment and Human Settlement as part of the overall reform of the UN. In his action the Secretary General noted the formidable challenge facing the international community in achieving a sustainable equilibrium between economic growth, poverty reduction, social equity and the protection of the Earth's resources in order to have sustainable development. Like GMEF, the Environment Management Group (EMG) was created through General Assembly Resolution 53/242.

The IEG report indicated that 6 well-attended meetings of IMG/IEG had been held between April, 2001 and February 2002. Two working groups were created. Working group 1 addressed the role and structure of GMEF and the role, authority and financial situation of UNEP. Working group II addressed improved coordination and coherence among multilateral environmental agreements and coordination across the UN system including the role of the Environment Management Group (EMG). This later group is the one I had the opportunity to chair. Mr. Chairman, the process of IGM/IEG was from start agreed to be evolutionary and decisions were to be arrived at by consensus. The strengthening of UNEP was unanimous and linked to an adequate, stable and predictable financing mechanism. UNEP headquarters had to remain in Nairobi and be strengthened as a centre for international meetings on Environment. The recommendations of the IEG process were holistic and aimed at effective implementation of the many multilateral agreements (MEAs). They are here summarized.

Æ International Environment Policy Making — the role and structure of GC/GMEF.

The GC/GMEF should be a high-level environment policy forum which should be utilized more effectively both in promoting international cooperation in the field of environment, in providing broad policy advice and guidance, identifying global environmental priorities and making recommendations following General Assembly resolution 2997. Such an approach should respect the independent legal status and governance structures of other entities. This of course, Mr. Chairman, is an area that may desire the input of the distinguished law experts like the ones in today's audience.

Æ The IGM/IEG process recommended universal participation of member states of the UN and members of its specialized agencies in the work of GC/GMEF. It was, however, pointed out that the issue of universal membership was complex and needed to be further discussed in the preparatory process of WSSD and be reviewed by the 22nd Session of GC/GMEF discussing the outcome of WSSD. Uganda supports Universal Membership of UNEP, and we believe it will strengthen IEG. UNEP will be strengthened and become more authoritative and be able to draw up policies in the Environment Sector and offer guidance to COPs and Secretariats of Multilateral Agreements while respecting their individual autonomy and mandates.

Æ The role and mandate of UNEP were reaffirmed as contained in the Nairobi Declaration and as derived from General Assembly resolution 2997 (XXVII) and elaborated in Agenda 21.

Æ GC/GMEF as a high level environmental policy forum of the UN will:

(i) Keep under review the world environment situation and develop policy

response.

(ii) Provide general policy guidance.

(iii) Promote international cooperation in the field of environment

(iv) Strengthen further the coordination in the field of environment and recommend appropriate policy in view of outcome of WSSD and in light of the M lmo declaration.

Æ GC/GMEF should identify ways and means to improve and strengthen interrelationship with autonomous decision-making bodies e.g. Conference of Parties and Multilateral Agreements.

Æ GC/GMEF should promote meaningful participation of representatives of major groups, NGOs including private sector. Civil society from developing countries should be afforded priority to participate.

Æ Consideration be given to having GC/GMEF meet every other year at UNEP headquarters in Nairobi. Consider also back to back meetings of GC/GMEF and MEAs with due regard to their legal status and governance structures. Here again the expertise of lawyers is required for harmony.

Æ GC/GMEF should institute a regular dialogue to address apparent disconnect between policy and funding with multilateral financial institutions including GEF. In this regard GC/GMEF should pay a stronger environmental policy advisory role and strengthen UNEP to enhance its relationship with GEF through the Action plan on Complementarity between GEF activities and its programme of work.

Æ GC/GMEF should enable Ministers to concentrate on policy issues and have the opportunity to promote international cooperation.

Strengthening the role and financial situation of UNEP

Mr. Chairman, it was noted that UNEP has fallen short of its expectation expressed in the Nairobi Declaration primarily because it remains hampered by insufficient and unpredictable resources. It is therefore, recommend by the GC/GMEF that:

Æ The UN funds all administrative and management costs of UNEP

Æ There is an urgent need to improve the financial situation of UNEP Environment Fund

Æ Several steps be taken to address to overall financial position of UNEP

Æ More predictable funding from all member states and specialized agencies

Æ More efficient and effective use of available resources including using external management review

Æ Strong focus in agreed priorities of UNEP and review of on going priorities

Æ Greater mobilization of resources from private sector and other major groups in accordance with UN rules and procedures

Æ Contribution to the Environmental Fund remains voluntary but all member states taking into consideration their economic and social circumstances will be encouraged to contribute to the fund either on basis voluntary Indicative Scale of Contributions (ISC) or on basis of any of the following:

- Biannual pledges

- UN scale of assessment
- Historical level of contributions
- Any other basis identified by a member state.

Improved coordination among and effectiveness of Multilateral Environmental Agreements

There is increased burden to government especially those of developing countries to participate meaningful in the proliferated meetings of multilateral environmental agreements despite the benefits of being able to concentrate on issues specific areas. There is growing potential for overlap making it difficult to gain from potential synergies and linkages between the various agreements. Enhancing synergies and linkages between MEAs with comparable areas of focus or of regional character was supported but while respecting the authority and autonomy of the governing bodies of COPs and accountability of their Secretariat to their respective governing bodies. UNEP should continue the close cooperation with Secretariat of MEAs to enhance such synergies and linkages.

Periodic review of the effectiveness of MEAs is critical to their success. Capacity building, and for some MEAs technology transfer and provision of financial resources to developing countries to facilitate compliance is of great importance to the effectiveness of MEAs.

Without undermining their individual authority and autonomy, considerable benefit could accrue from more coordinated approach e.g. in scheduling and periodicity of meetings of COPs, reporting, scientific assessment on matters of common concern, capacity building and transfer of technology. Biannual meetings, shorter duration of COPs, back to back or side to side meetings should be considered. Co-location of future MEA secretariats should be encouraged.

Capacity Building, Technology Transfer and Country Level Coordination for the Environment Pillar of Sustainable Development

Mr. Chairman, Environmental Governance should be considered in a multilateral approach i.e. international, regional, sub-regional and national. The ability of developing countries and those with economies in transition should be strengthened especially on issues related to poverty. Strengthening national institutions including Ministries of Environment in developing countries should be promoted for sustainable development.

Mr. Chairman, the IEG process considered Africa's plight and appreciated its new innovation. The New Partnership for Africa's Development (NEPAD) should be supported as a framework for sustainable development in Africa. It should be supported as a framework that could bring improved Environment Governance in Africa through effective and coordinated implementation of Environmental Agreements.

There is need for developing an intergovernmental strategic plan for technology support and capacity building for developing countries. Such a strategic plan could be implemented through enhanced coordination of UNEP and other relevant bodies including GEF and UNDP. It could include an increased role of UNEP in country level capacity delivery through greater

link with UNDP. Strategic partnership between UNEP and GEF should be fostered based on decision of their governing bodies.

In addition to mobilization of domestic resources, developing countries require access to financial, technological and technical resources from international community in their capacity building programmes and in fulfilling the implementation of MEAs. This has been the request of the G77 and China throughout the Prepcom IV negotiations.

Future perspective

The M lmo Ministerial Declaration states that the World Summit on Sustainable Development (WSSD) should review the requirements for a greatly strengthened institutional structure for International Environment Governance based on an assessment of future needs for an institutional architecture that has capacity to effectively address wide-ranging environmental threats in a globalized world.

Bali outcome of the Fourth Preparatory Committee

The process of International Environment Governance (IEG) has had unanimous approval in Bali and the outcome of the Cartagena meeting have been recommended for full approval by WSSD. This is a major step forward. This means that if endorsed in Johannesburg then it will be considered by the General Assembly for possible approval for implementation. Since NEPAD is included in the Cartagena outcome, Africa will gain because NEPAD will be endorsed as part of a package of IEG.

Prepcom IV ended without reaching a final paper without brackets. We will strive harder and continue to negotiate till we reach consensus but without retrogressing to a level below Agenda 21.

Conclusion

Mr. Chairman, Conventions and multilateral agreements are legal entities and therefore the success of these international arrangements will depend on how they are drafted not to contradict or conflict with other laws. It is therefore very important that this meeting of mainly the learned people lawyers and Judges meets to contribute to effective International Environment Governance as we more to the Johannesburg Summit on Sustainable Development.

I understand that this meeting will lead to another bigger and higher level meeting of lawyers and Judges in Durban, South Africa, just few days before the Summit. This obviously demonstrate the importance and intricate linkage of the rule and role of law in Sustainable Development

I wish you a successful process as you add more value to the World Summit on Sustainable Development.

FOR GOD AND MY COUNTRY