

INTERNATIONAL JURISTS MANDATE SIGNED BY 2002 INTERNATIONAL JURISTS

September 20, 2002

Sustainable Justice 2002: Implementing International Sustainable Development Law

INTERNATIONAL JURISTS MANDATE for the Implementation of International Sustainable Development Law

*launched for endorsement on June 14, 2002, at Montreal, Canada,
in the context of the 2002 World Summit for Sustainable Development*

At an international conference “Sustainable Justice 2002: Implementing International Sustainable Development Law” on June 14, 2002, in Montreal, Canada, international jurists gathered to discuss and agree a mandate for the implementation of sustainable development law on the global level.¹ The mandate was presented to the delegates of the 2002 World Summit on Sustainable Development by representatives from the Centre for International Sustainable Development Law (Marie-Claire Cordonier Segger and Ashfaq Khalfan, Directors), the International Law Association Committee on the Legal Aspects of Sustainable Development (Nicholas Schrijver, Committee Rapporteur), and the International Development Law Organisation (Pia Rodriguez, Programme Director), at the occasion of the launch of a new research and capacity building partnership for international law on sustainable development, on August 29, 2002.²

The text of the Mandate, which had been signed by over 2002 distinguished jurists, international law professors and scholars, legal professionals and judges, is reproduced below in its entirety, in order to guide the work of the next decade of sustainable development lawyers.

¹ See Centre for International Sustainable Development Law (CISDL), World Bank, United Nations Environment Programme and International Law Association of Canada, *Sustainable Justice 2002: Implementing International Sustainable Development Law Report* (Montreal: CISDL / World Bank / UNEP / ILA, 2002), available online: <http://www.cisdl.org/conference_report/>.

² See Centre for International Sustainable Development Law (CISDL), International Law Association Committee on the International Law on Sustainable Development (ILA) and International Development Law Organisation (IDLO), Johannesburg Legal Experts Event, available online: <<http://www.cisdl.org/press008.html>>. See also United Nations Commission on Sustainable Development, Outline of International Law for Sustainable Development Partnership, available online: <<http://www.un.org/esa/sustdev/partnerships/law/intlawsustdev.PDF>>.

The International Jurists Mandate for the Implementation of International Sustainable Development Law

We, justices, legislators, government officials, legal scholars, professionals and representatives of civil society organisations assembled 13-15 June 2002 in Montreal at the International Conference “Sustainable Justice 2002: Implementing International Sustainable Development Law”;

Acknowledging the serious social, economic and environmental challenges facing the peoples of the world;

Concerned with the continuing failure to implement universal human rights, deterioration of the global environment, and increase in the number of people living in absolute poverty;

Recognising that governance for sustainable development is not yet fully coherent, and that international courts, institutions, legal scholars and professionals need practical legal principles and tools to navigate overlapping and sometimes conflicting international human rights, economic and environmental legal obligations;

Recalling foundational and continuing work of other fora³;

Reaffirming Chapter 39 of 1992 Agenda 21, which recognises the need to continue progressive development and codification of international law related to sustainable development, and urges cooperation and coordination in this regard; which also recognises the need to improve the effectiveness of legal institutions, mechanisms and procedures; and to address actual or potential conflicts between environmental and social/economic agreements or instruments;

Reaffirming Section 3 of the 1997 Programme for the Further Implementation of Agenda 21, which recognises that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development; and equity, justice, and social and environmental considerations must guide that economic growth;

Recognising the need, in 2002, for a concerted and strengthened agenda to advance the understanding, development and implementation of international sustainable development law at the intersection of environment, economic and social regimes, on mutually agreed terms and with the full participation of those affected;

Supporting the leading efforts of the International Law Association’s Committee on the Legal Aspects of Sustainable Development, in the context of their debates on the relevant general principles of international law such as the rule of law in international relations, including international economic relations; the duty to cooperate for global development and protection of the environment; the principle of observance of human rights; and the principle of integration in particular;

³ Including the Brundtland Experts Group on Environmental Law (1987), the Rio Declaration of Principles on Environment and Development (1992) and the final documents of other UN Conferences, the Agenda for Development by the UN Secretary-General (1995); the Report of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, UN Secretariat (1995), the revised IUCN Draft Covenant on Environment and Development (2000), the UNEP Montevideo Programmes on International Environmental Law Aiming at Sustainable Development II (1997) and III (2000), the Limoges Declaration adopted by the World Meeting of Environmental Law Associations (1990), and other efforts.

Supporting in particular the 2002 New Delhi International Law Association Declaration on Principles of International Law relating to Sustainable Development, from the 70th Conference of the International Law Association, which calls for the application, consolidation and further development of the following principles of international law in the field of sustainable development;

- The duty of States to ensure sustainable use of natural resources;
- The principle of equity and the eradication of poverty;
- The principle of common but differentiated responsibilities;
- The principle of the precautionary approach to human health, natural resources and ecosystems;
- The principle of public participation and access to information and justice;
- The principle of good governance;
- The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.

Announce the Emergency of a New Global Partnership for the Implementation of International Sustainable Development Law

We call upon all partners to advance the understanding, development and implementation of international sustainable development law, through:

Interdisciplinary Partnerships: Build and strengthen interdisciplinary partnerships for international sustainable development law; and encourage key international economic, social and environmental institutions to collaborate, in cooperation with sustainable development bodies, to address priority sectors and issues.

Innovative Legal Instruments: Support innovative, integrated international sustainable development law instruments, including treaties, dispute settlement, national and international frameworks which address poverty eradication and sustainable development and contract law, to promote coherence in areas where international economic, environmental or human rights legal obligations can overlap or conflict.

Legal Research and Knowledge Networks: Develop further legal research and knowledge network programmes related to international sustainable development law through courts, legal and professional associations, and academic institutions.

Subsidiary Legal Regimes: Develop and strengthen international law related to sustainable development on the global, regional or sub-regional levels closest to those most affected.

Transparency, Accountability and Civil Society Participation: Ensure transparency and civil society involvement in international economic, environmental and human rights law, and particularly in the areas of integration or overlap.

Legal Capacity Building, Expertise and Technical Assistance: Develop and strengthen capacity building programmes, expertise networks and coordinated technical assistance, for more effective negotiation, implementation, enforcement, and governance of international sustainable development law, particularly among developing country lawyers.

Sustainable Development Dispute Settlement: Ensure transparency, access to relevant environmental, social or economic expertise, and civil society participation in deliberations of tribunals, courts and panels in disputes related to sustainable development.

Reporting, Compliance and Enforcement: Design innovative cooperative mechanisms for effective compliance with international sustainable development law, and strengthen monitoring, implementation and enforcement systems.

Legal Measures to Finance Sustainable Development: Ensure that conditions exist to fulfil legal obligations in economic, environmental and human rights law relating to financing and international assistance, leverage mutually agreed sustainable development support from socially responsible corporations, and increase investment in sustainable technologies, projects and systems.

International Sustainable Development Law in 2002: Launch a new research and implementation agenda for international sustainable development law in 2002 by building an integrated social, environmental and economic legal agenda for the WSSD, strengthening political and institutional support, and engaging all relevant actors in the implementation of international sustainable development law.

Best Practices in International Sustainable Development Law and Policy

We further call upon States, intergovernmental organisations, legal associations, academics, courts and legal professionals, to test, share and where appropriate further develop integrated sustainable development law and policy instruments, including:

- Community implementation and regional sustainable development law (as shown by the *UN Desertification Convention*);
- Use of civil, political, economic, social and cultural human rights mechanisms for poverty eradication and environmental protection (as indicated by the Committee on Economic, Social and Cultural Rights in General Comment No.14 (Right to Health) and its *Statement on Poverty* and the *International Covenant on Economic, Social and Cultural Rights*);
- International consultation and complaints procedures for citizen and civil society groups, which result in investigation, monitoring and factual reports, even potential financial penalties, in alleged instances of non-compliance with social, economic or environmental law (as established by the 1994 *North American Agreement on Environmental Cooperation*);
- Sustainable development impact assessment techniques, including integrated analysis of economic, social or environmental policies, programmes and projects (as carried out by the European Union for the proposed 'millennium round' of global trade liberalization negotiations);
- Domestic legal mechanisms to ensure corporate social and environmental accountability, including enforcement of foreign direct liability and civil responsibility claims, mandatory environmental and social reporting and new duties for corporate director to take account of environmental and social matters in decision-making;
- Domestic legal mechanisms to ensure government accountability for environment and sustainable development, including enforcement of government agencies to establish their sustainable development strategies, and implement them (as practised by Canada through Commissioners for environment and sustainable development);

- International alternative dispute resolution for environment and sustainable development (such as the International Court of Environmental Arbitration and Conciliation established in Mexico in 1995);
- Provisions in national laws that directly incorporate sustainable development, encouraging the mainstreaming of sustainable development practice in judicial decision-making by the highest courts;
- Advanced informed consent and prior informed consent regimes (as established by the 2002 *Cartagena Protocol on Biosafety* of the 1992 *UN Convention on Biological Diversity* and other instruments);
- Explicit endorsements of sustainable development in international jurisprudence (*Gabcikovo-Nagymaros case in the International Court of Justice*).
- An increasing emphasis on the practical implementation of sustainable development (for example, FCCC Frameworks on capacity-building and transfer of ESTs);
- Benefit-sharing provisions for sustainable natural resource use contracts (through the negotiation of an international regime in the 1992 *UN Convention on Biological Diversity* ad hoc working group on access to benefits);
- Increasing explicit institutional consideration of environmental and social factors in the operation of international economic institutions (such as the WB's newly updated Safeguard Policies);
- Debt sustainability analysis mechanisms linked to poverty eradication and environmental protection (Millennium Declaration - as recommended in the 2002 *Monterrey Consensus* document of the 2002 UN Conference on Financing for Development);
- Mechanisms to ensure appropriate harmonisation of standards (as established in the UN Economic Commission for Europe's 1999 *Water and Health Protocol* to ensure drinking water supply in adequate quantity and quality, prevention and control of water borne diseases);
- Mutually agreed trade and liability measures for environmental and social purposes with private sector involvement and responsibility (as provided by the 2002 *Rotterdam Convention on Persistent Organic Pollutants* to ensure environmentally sound trade in hazardous chemicals and pesticides, or the 2000 *Protocol on Liability and Compensation of the Basel Convention*);
- Global multilateral guidelines aimed at generating public rights of access to information, public participation in decision-making and access to justice, to be prepared with the participation of civil society and drawing upon existing experience, including regional initiative designed to implement Principle 10 of the Rio Declaration, such as the *Aarhus Convention on Access to Information*;
- Inspection panel mechanisms for communities to be heard concerning projects which might affect them (as practiced through the World Bank Inspection Panel mechanism);
- Provisions to facilitate the submission of *amicus curiae* briefs by interested groups in economic dispute settlement procedures (as attempted by the World Trade Organisation Appellate Body in the *EU-Asbestos* dispute).