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Our Planet

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www.ourplanet.com, with an
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on climate and justice.

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UNEP

From the desk of

KLAUS TOEPFER

**United Nations
Under-Secretary-General
and Executive Director,
UNEP**

This issue of *Our Planet* is dedicated to the Millennium Development Goals and the rule of law.

While much can be achieved by voluntary action, from tackling extreme poverty to delivering safe and sufficient drinking water, the achievements will be even greater if underpinned by a sound legal structure and a vibrant judiciary. Nowhere is this more important than for the environment which, with economic and social development, forms part of the virtuous trio of pillars on which sustainable development depends.

Natural capital

Some may still view the environment as a luxury: they see a river or a forest as only worth conserving for its beauty when all other development-related issues have been resolved. But this natural capital is, along with the financial and human variety, the very foundation of health and wealth because of the 'ecosystem services' it provides. Some experts have calculated that these nature-based services – from the atmosphere and ozone layer to the globe's wetlands and

grassland – are worth \$33 trillion a year, nearly twice the 'world' GNP of human-made goods and services of around \$18 trillion.

Paper tigers

Until recently, the laws designed to protect this natural wealth – and its vital role in fighting poverty – have either been inadequate or patchily implemented. There are, of course, more than 500 international and regional agreements, treaties and arrangements covering everything from the protection of the ozone layer to the conservation of the oceans and seas. Almost all countries have national environmental laws. But unless these are enforced and complied with then they are little more than symbols, tokens or paper tigers.

Part of the problem has been that legal experts' awareness of environmental law – particularly, but not exclusively, in developing countries and the nations of the former Soviet Union – has not kept pace with the growth in agreements and with the recognition of the crucial importance of balancing environmental, developmental and social considerations in judicial decision making. Sometimes it is also due to a lack of resources, sometimes to downright apathy; but, whatever the cause, many environment-related cases fail to reach or succeed in court.

Increasing awareness

This goes to the heart of the Millennium Development Goals, as it affects billions of people. We are increasingly aware that what happens in one part of the world can affect other areas – be it toxic pollutants from Asia, Europe and North America contaminating the Arctic, or the greenhouse gases of the industrialized regions triggering droughts or the melting of glaciers in developing ones.

In 2002 UNEP convened a symposium of more than 100 senior judges from around the world to boost the training, knowledge and awareness of the world's judiciary. They adopted the Johannesburg Principles on the Role of Law and Sustainable Development, which were presented

to that year's World Summit on Sustainable Development (WSSD). The judges have since formed a Global Judicial Alliance with UNEP, giving greater attention to their role in advancing the Millennium Development Goals through the rule of law.

We have all been striving to realize the Johannesburg principles, and I am happy to report key successes. Only a few weeks ago, chief justices and legal experts from the Arab world met in Cairo and adopted the statute of the Arab Judges Union for the protection of the environment. A similar meeting involving the francophone countries will take place in Paris in February 2005, chaired by Guy Canivet, the chief justice of France. A European Union Judges Forum on the environment has been established, and comparable ones set up in Latin America, Asia, southern Africa and the Pacific. And the Government of Egypt is taking steps to establish a judicial training centre in Cairo.

Crucial development

At WSSD, Arthur Chaskalson, Chief Justice of South Africa, who co-hosted the symposium, said: 'Our declaration and proposed programme of work are, I believe, a crucial development in the quest to deliver development that respects people and that respects the planet for current and future generations and for all living things. The rule of law is the basis for a stable country and ultimately stable world.'

I believe that, as a result of this two-year effort, the environment pillar of sustainable development is a little stronger and better able to carry forward the Millennium Development Goals ■

YOUR VIEWS

*We would really like to receive your feedback on the issues raised in this edition of **Our Planet**. Please either e-mail feedback@ourplanet.com or write to:*

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STRENGTHENING THE RULE OF LAW

KOFI ANNAN,
UNITED NATIONS
SECRETARY-GENERAL



UN Photo by Mark Garten

NO ONE IS ABOVE THE LAW, and no one should be denied its protection....

The rule of law starts at home. But in too many places it remains elusive. Hatred, corruption, violence and exclusion go without redress. The vulnerable lack effective recourse, while the powerful manipulate laws to retain power and accumulate wealth....

At the international level, all states – strong and weak, big and small – need a framework of fair rules, which each can be confident that others will obey. Fortunately, such a framework exists. From trade to terrorism, from the law of the sea to weapons of mass destruction, States have created an impressive body of norms and laws. This is one of the United Nations proudest achievements.

And yet this framework is riddled with gaps and weaknesses. Too often it is applied selectively, and enforced arbitrarily. It lacks the teeth that turn a body of laws into an effective legal system....

Just as, within a country, respect for the law depends on the sense that all have a say in making and implementing it, so it is in our global

community. No nation must feel excluded. All must feel that international law belongs to them, and protects their legitimate interests.

Rule of law as a mere concept is not enough. Laws must be put into practice, and permeate the fabric of our lives....

Throughout the world, the victims of violence and injustice are waiting: waiting for us to keep our word. They notice when we use words to mask inaction. They notice when laws that should protect them are not applied.

I believe we can restore and extend the rule of law throughout the world. But ultimately, that will depend on the hold that the law has on our consciences. The organization was founded in the ashes of a war that brought untold sorrow to mankind. Today we must look again into our collective conscience and ask ourselves whether we are doing enough.

Each generation has its part to play in the age-long struggle to strengthen the rule of law for all – which alone can guarantee freedom for all. Let our generation not be found wanting.

Taken from the Address to the General Assembly, New York, 21 September 2004.

The boundaries of environmental law are expanding rapidly. The Millennium Declaration pledged to spare no effort to free all humanity from the threat of living on a planet irredeemably spoiled by human activities and whose resources would no longer be sufficient for its needs. It builds on the first principle of the Stockholm Declaration which, more than 30 years ago, recognized our fundamental right to adequate conditions of life and an environment of a quality that permits dignity and well-being. We also owe corresponding obligations to ourselves and to future generations to protect and improve the environment.

There are fundamental issues that we need to address: the tension between development and protection of the environment, particularly acute in the poorer developing countries, but present throughout the world; the tension between short-term needs and long-term concerns; the tension between developing frameworks of laws designed to protect the environment and implementing them; and the issue of globalization and the presence throughout the world of multinational corporations, which are often the source of development, but are also a source of environmental damage.

Securing respect

It may seem strange that judges, who have at times been considered somewhat aloof, should concern themselves about these matters. But they do. More than 100 senior judges from around the world, including 32 chief justices, held a conference in Johannesburg at the time of the 2002 World Summit on Sustainable Development and acknowledged the existence of these rights and obligations. They also acknowledged the important role that civil society has in securing respect for these rights and compliance with these obligations.

Rights are not self-executed. We have learned from bitter experience that unless they are vigorously and assertively enforced, they may have no substance. Civil society has a crucial role in promoting

The more vibrant civil society, the greater the likelihood is that rights and freedoms will be respected

Partners in law

ARTHUR CHASKALSON describes how the judiciary is increasingly working with civil society and the international community to secure and enforce environmental rights and freedoms

respect for and asserting fundamental rights and freedoms. As a South African, I have lived in a society in which there was no respect for rights, freedoms and human dignity. I know from my own experience the absolutely crucial role that civil society played in the struggle for them in my country and how much we owe it for the rights and freedoms that we have now in our country today and the extraordinary Constitution in which they are entrenched.

Right to the environment

One of the rights and freedoms entrenched in our Constitution is the right to the environment. It says that everyone has the right to an environment which is not harmful to healthy well-being, and to have it protected for the benefit of present and future generations through reasonable legislation and other measures that prevent pollution and ecological degradation, promote conservation, and secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development.

It is one of a series of socio-economic rights in our constitution, which also include the right to access to health care,

the right to access to housing, the right to access to education and children's rights. All these rights are 'justice seeable' and our courts are being called upon on occasion to enforce them. In doing so, they have occasionally told the Government that it is not complying with its obligations under the Constitution.

Central cases

The really central cases are almost always brought to court by organs of civil society. They have the expertise, the knowledge and the commitment to assemble facts in a coherent way and to identify the crucial issues – and to present a case which brings to the fore these rights and the suffering of the people being denied them, and explains the reasons why the court should intervene. Great suffering can occur if those cases are not brought before the court – or worse are brought, but not properly, so that important evidence is left out and important arguments not raised, causing the case to fail through lack of preparation.

Civil society is therefore the engine for asserting these rights and freedoms, but the judiciary also has an important role to play in upholding them. In this sense, the ▶

Henry M. Nyaga/UNEP/Topham





James Hong Yit Wai/UNEP/Topham

judiciary and organs of civil society are partners in securing compliance with the law. Those who suffer the most when rights are not protected, and freedoms are not upheld, are the poor. It is the poor, too, who are likely to suffer the most as a result of environmental degradation. But it is not only the poor and marginalized sections of the community who look to civil society to protect their rights and interests: all sections of society do so. It is the responsibility of governments and civil society to see these rights are not abused or ignored. The more vibrant civil society, the greater the likelihood is that rights and freedoms will be respected.

At the judges' symposium in Johannesburg, we recognized that the boundaries of environmental law are expanding rapidly, and that there is an urgent need for a concerted and sustained programme of work focused on education, training and disseminating information in this field. We recognized the importance of public participation in environmental

We must learn to act as equal members of a community with concern for the welfare of all

decision making; the need for access to justice for the settlement of environmental disputes and for the defence and enforcement of environmental rights; and the necessity for public access to relevant information. We acknowledged the important contribution of the whole of society and the need to strengthen the capacity of organizations and initiatives that seek to enable the public to focus attention – on a well-informed basis – on environmental protection and sustainable development issues.

Capacity building is important. The judges are committed to undertaking programmes to enhance their knowledge and skills in environmental law. They recognize that there is a need for civil society to do the same, and fully support initiatives to bring this about. A second meeting of senior judges, in Nairobi in January 2003 – called to give substance to the discussions in Johannesburg, and to plan for implementing some of the decisions taken there – also recognized the important role of civil society. It called on UNEP to develop and implement programmes of capacity building, not only for judges but for other legal stakeholders such as prosecutors, enforcement officers, lawyers, public-

interest litigation groups and others engaged in developing, implementing and enforcing environmental law in the context of sustainable development. The judges expressed their full support in cooperating with UNEP in developing and implementing such programmes – particularly in developing countries and countries in transition. They undertook themselves to contribute towards capacity building within the judiciary, and formed a committee of ten senior judges from all regions of the world to advise UNEP on developing and implementing the capacity building programme.

Being human and fallible, we all tend to think about ourselves more than others; about the present time, rather than the future. We must learn to act as equal members of a community with concern not just for our own welfare but for the welfare of all, for the welfare of our children and their children, and their children's children. If we aspire to sustainable development and a healthy environment, that is the commitment we must make ■

The Honourable Justice Arthur Chaskalson is Chief Justice of the Republic of South Africa.

JUSTICE can be shortsighted

CHRISTOPHER WEERAMANTRY outlines shortcomings in modern legal systems in the light of sustainable development and calls on judges to bring longer perspectives to the bench

Sustainable development is one of the most vibrant topics in both domestic and international law. Judges, as custodians of the law, have a major obligation to contribute perspectives that might otherwise pass unnoticed.

The gap between the world's rich and poor – which modern technology should enable us to narrow – unfortunately keeps widening. Development is the bridge by which we can cross it. Unfortunately, we tend to build this bridge with material stolen from future generations. Similarly, development is taking place all over the world without regard to environmental considerations. This hurts two groups in particular – the unborn and the poor. Neither has the ability to assert its rights. Neither is sufficiently vocal. The judiciary must hold the balance between powerful interests on the one hand and the voiceless on the other. This imposes an enormous role of trusteeship upon the judiciary, which has a delicate act to perform in balancing the rights and needs of those who are now alive with those of future generations.

African traditional wisdom teaches us that the human community is threefold: those who went before, those who are alive here and now, and those who are yet to come. No human problem can be completely considered without reference to all those three. Yet we tend to look at environmental matters with blinkers on. We do not look at the traditions that have come down to us from the past. We do not look at those who are going to be deprived in the future. We just concentrate on the present. Modern law is shortsighted. Who is better placed to supply the necessary correctives than the judiciary?

Developing concepts

There are many different principles within the principle of sustainable development. These include intergenerational rights, the trusteeship principle, the principle of collective duties, the emphasis on duties rather than rights, the precautionary principle, the concept of the interrelationship of rights and obligations, rights and duties *erga omnes* (ie towards the whole of the human community) and so on. All of those are concepts which judges are able to develop. The judiciary is at the centre of the development of the concept of sustainable development.

Humanity has lived with its environment for thousands of years. Out of that cohabitation, principles have evolved and become ingrained in the traditions of many cultures and civilizations. The law that judges administer must be a multicultural assemblage of the wisdom of the world. If we look at the wisdom of China, Japan, Europe itself before



Erna Lammers/UNEP/Topham



the Industrial Revolution, the Islamic civilizations, India, Sri Lanka, Africa and its outstanding examples of environmental conservation, Australia, the Native Americans and so forth, we will learn respect for the one common environment which we all inhabit. Modern law tends to lose sight of such ancient wisdom and the judiciary has a sterling role to play in bringing it into modern judicial discourse.

Sri Lanka was converted to Buddhism through the mission of the Emperor Asoka's son 23 centuries ago. He came to Sri Lanka as a monk and accosted the king when he was on a hunting expedition. 'What is this you are doing?' he asked. 'You are hunting these poor animals and behaving as if you are the owner of this land. You are not the owner of this land. You are only the trustee, bear that in mind. And you hold it in trust for all living creatures who are entitled to use it.' This is the first principle of modern environmental law. The trusteeship principle is as old as humanity, as old as human beings living together on the planet in a common environment.

We must devise similar concepts, and the procedures to deal with them, because we are interested not just in the development but also in the enforcement of environmental law. One concept is *continuous mandamus*, the question of standing. How can generations yet unborn appear before a court and state their case? Who stands for them? We have to develop that concept. We have to develop impact assessment procedures. We have to develop the precautionary principle. We also must look at some of the shortcomings of our modern legal systems.

Collective rights

There is, for example, an excessive emphasis on individual rights, rather than on collective ones. Collective rights are very important for living life together in a common environment. If you only think of individuals, you tend to think mainly of powerful individuals and those asserting their rights, which is not in the best collective interest of the community, or of the environment. There are excessive emphases on land and on law as a means of passive coexistence rather than of active cooperation. Law is not just

a means of keeping the peace but also a means of active cooperation for the benefit of the community.

There is also excessive emphasis, particularly under the influence of 19th century positivism, on the letter of the law. Yet all our great traditions say the letter of the law is not as important as the principles that lie behind it. Many tend to regard contractual rights as ones with which other people – the court, the state and so on – cannot interfere because they spring from a private arrangement between two parties. Yet this arrangement can concern the whole community. If somebody sells or leases his land to somebody else, that person cannot use it like an article of movable property to do with it what he will. Certain obligations towards the community follow from the ownership of land.

There is a concentration on the present generation rather than on all those yet to come. We also think of ourselves, human beings, as the only entities that have rights on this planet. And although the law tends to know no cultural bounds, we do not yet think of ourselves as multicultural. All this has led to much shortsightedness and many environmental problems.

Active cooperation

The law of the future must be a law of active cooperation, rather than of passive coexistence. No state has the prerogative to say that what happens within its borders is exclusively its concern. The highest custodians of justice, the judiciary, must be conscious of this because they are dealing with the highest concern of humanity, the custody of this planet.

Judges cannot achieve competence in their chosen work unless they keep abreast of developments in the law. They cannot keep abreast of these unless they concern themselves with international law and with the great currents of thought moving in the international sphere. Judges need to be sensitized to the problem, alerted to their responsibilities, and provided with the conceptual and procedural tools with which to achieve this momentous task ■

Justice Christopher Weeramantry is a former Vice President of the International Court of Justice.

In France, as elsewhere, many decisions have already been taken to administer environmental law by higher courts, administrative or judicial bodies. But these are just the beginning of a considerable judicial precedent that will shape our system in the future.

French judges are convinced that the balance between development (taking account of the planet's ecological functioning) and the maximum use of resources, combating inequality and eradicating poverty, are all to be seen as an extension of human rights. These are the most important activities, the most innovative activities that will be noticed in years to come.

Universal legal values

Sustainable development brings together all the debates on law – international law, public law, international private law, comparative law and the philosophy of law – to contribute to the emergence of universal legal values: a sort of common law for sustainable development. These legal instruments should make mutual recognition of decisions possible in different jurisdictions – within the limits of authorities and separation of powers – ensuring their application in countries other than those where the sentences were actually handed down. It should also make it possible to bring these decisions into line, to ensure the convergence of national and international law on sustainable development. Judges whose states have the means must organize procedures to allow the implementation of sustainable development law, in terms of environmental governance, taking account of the different jurisdictions in their respective areas.

Edwin C. Tuyay/UNEP/Topham

FORCE OF LAW

GUY CANIVET

suggests practical steps that need to be taken to make environmental and sustainable development law effective

Each state should be given a judicial authority, independent of both political authorities and of all private interests, sufficiently strong to hand down its decisions to both. States must also organize competent, informed bodies to produce judges who are well aware of environmental law. There is a need for individual and collective action on constitutional, public, private and criminal law, making it possible for ordinary people to ensure that justice is administered effectively. In particular, states must create procedures (or allow them to be created) to make it possible to control and verify the legality of decisions taken on environmental matters, and enable ordinary people to oblige the state to take positive action.

The principles of sustainable development go much further than private interests, so there must also be national recognition of the general nature of what can be protected under sustainable development and environmental law. Among the public agencies that could be set up would be a prosecutor's office to ensure that the law is applied. Lawyers and counsel must also be

properly trained in environmental and sustainable development law, while ordinary people must be well informed of their rights, and have access to the necessary legal aid, in order that they can undertake actions.

Issues of sustainable development require complex technical, scientific and social analyses. But there is usually an imbalance of forces in the technical machinery for expertise: pressure is exerted by the most powerful parties. So it is important that independent, neutral and objective expert bodies are established.

The judiciary's debate and discussion, as currently organized, is not sufficiently prepared to take into account all the interests of local communities and citizens. Decisions lack credibility if not made transparently and democratically. There is also a huge gap between environmental protection law and the reality of the situation on the ground. Environmental trials take a long time to complete, and they are costly.

International cooperation

We often have to deal with cases following ecological catastrophes. We must try to put more stress on preventative measures, on controlling risks that might be dangerous for the environment – even using our power to ban risky activities which may cause irreparable damage. We must also boost international cooperation in the environmental field, particularly in research and investigation carried out between different states and in the transfer of evidence and proof ■

Justice Guy Canivet is Premier Président de la Cour de Cassation, France.

Benjamin Lang/UNEP/Topham



A matter of judgement

MAMDOUH MARIE emphasizes the importance of an informed judiciary on environmental law and makes a practical suggestion for increasing the awareness of judges in his region

Human rights have always attracted the attention of philosophers and intellectuals. World judiciaries, represented by supreme and constitutional courts in civilized countries, have established human rights principles whose precepts apply to citizens and state alike. The courts keep these rights in mind as they address the security requirements of their citizens and states.

The world suffers from many problems with environmental dimensions, including the protection of green spaces; the availability of clean water, unpolluted air and healthy food; the fight against desertification; and the fallout from human security issues, including weapons of mass destruction, chemical and biological warfare, and regional, individual and international terrorism. Their duration has prompted intellectuals and international organizations to pay attention to the relationship between pollution and human rights.

Similar solutions

Responses to environmental challenges are often highly localized and specialized due to the world's demographic and social diversity. The environmental challenges that face the Arab world bear much similarity and require similar, though not necessarily identical, solutions.

Implementing existing legislation is a necessary step in solving environmental problems, but requires a vigilant judge who is sensitive to the implications. It is vital to have a judiciary that is informed of the environmental challenges facing society, that comprehends – and is capable of applying – existing environmental regulations, and that can come up with suitable solutions for unregulated environmental problems.

Including the judiciary in the process of developing environmental law is essential to ensure its efficiency and practical functionality. This ensures that the law is not based merely on theoretical assumptions, but on particular realities – helping to harmonize environmental law with prevailing circumstances.

The Egyptian Ministry of Justice, with years of experience in preparing strong and appropriate legislation, has rendered environmental legislation at a level comparable to the highest legislative standards in the world. Last May the Supreme Constitutional Court of Egypt hosted an Arab Chief Justices' meeting in Cairo in collaboration with UNEP. There



Jose Phtassilgo/UNEP/Topham

It is vital to have a judiciary that is informed of the environmental challenges facing society

I suggested establishing a Union for Arab Judges concerned with the environment, so that we may find solutions that will allow our citizens to live in peace, in a society based on liberty and justice. I am delighted to say that the Statute of the Union was adopted and signed by the Chief Justices of Arab Nations at a meeting held in Cairo in collaboration with UNEP on 23-24 November 2004.

Exchange of information

The Union – to be located in Egypt, and executed in coordination with UNEP – will seek to develop environmental awareness and facilitate the exchange of information among judges and other legal stakeholders through preparing a comprehensive database. It will also be in charge of organizing training programmes, encouraging scientific publications, bringing about the enforcement of international treaties and participating in the legislative efforts of member states.

Our aim is not only the achievement of a strong legislative base in Arab countries but, through the Union, to be aware of existing environmental problems and able to implement strong legislation ■

The Honourable Mamdouh Marie is Chief Justice, Supreme Constitutional Court, Egypt.

Dibartolo/UNEP/Topham



A law of energy

PIETER VAN GEEL says that poor people must have access to clean and sustainable energy if the Millennium Development Goals are to be met

Developing countries have a right to economic growth, and to achieve that they need energy. Without it they cannot bring about poverty reduction or meet the Millennium Development Goals. Two billion people have no access to modern forms of energy. Private enterprise cannot operate without it. Research shows that recurrent power outages inflict severe financial damage on businesses. And schools and health care institutions can clearly provide better services if they have access to power supplies.

At the same time, we have to realize that our growing energy consumption is already causing environmental and health problems and damaging our economies. Poorer populations tend to use wood and charcoal as their main energy sources, but indoor wood fires lead to health difficulties, especially among women and children. According to the World Health Organization (WHO), around 1.6 million people die every year as a result of indoor

air pollution. Use of fossil fuels for large-scale power generation and transport is also a source of air pollution, especially in cities in developing countries. According to the *World Energy Assessment* (2000), urban air pollution caused primarily by emissions from fossil fuels and motorized transport leads to around 800,000 deaths a year worldwide. Consumption of fossil fuels also leads to emissions of the greenhouse gases that cause climate change.

Knock-on damage

Moreover, health and environmental problems inflict knock-on economic damage. According to a recent World Bank estimate, pollution and associated health problems now cost China some 8-14 per cent of its annual GNP. Though the pollution is not caused solely by China's energy consumption, the figure suggests how great the economic damage can be.

This damage is set to increase, as

shown, for example, by recent scenarios published by the International Energy Agency (IEA). Based on its reference scenario, the IEA expects energy demand to rise by approximately 60 per cent by 2030 if government policies do not change. Since fossil fuels will be the main source of energy, the IEA expects carbon dioxide (CO₂) emissions to increase in parallel. These are worrying trends. But an alternative scenario is possible.

If governments take energy security and efficiency measures, worldwide energy demand could decline by 10 per cent and CO₂ emissions by 16 per cent. The potential for energy efficiency measures is enormous; for developing countries savings are estimated at 30-45 per cent. Governments can also encourage the major new advances in technology that will be necessary to reduce demand beyond that point.

More effort is needed to promote the use of renewable energy sources, so that they can eventually meet a greater proportion of our needs. For the next 30 to 50 years, however, there will be no realistic prospect of meeting all of our energy requirements through renewables. So we must also work on energy efficiency, cleaner fuels and modern fossil fuels.

To stimulate debate on this whole range of issues, I and my colleague Agnes van Ardenne, Minister for Development Co- ▶

operation, organized a World Conference on Energy for Development on 10-12 December 2004. It focused primarily on the energy needs of developing countries, with the aim of making energy a higher priority on the international development agenda.

Four years ago, government leaders around the world endorsed the Millennium Development Goals. Although these do not include a specific energy goal, the goals for poverty reduction, education and health will not be achieved without increased access to energy supply services. Yet many developing countries' national policy plans ignore the issue – especially the Poverty Reduction Strategy Papers drawn up to obtain loans from the World Bank and the International Monetary Fund (IMF).

Disappointing investment

Over the last 10 years, donor countries have also shown a less lively interest in the subject of energy. This has been partly due to a general belief that private investment would take their place. But the level of private investment remained disappointingly low in the run-up to the millennium: indeed it declined. The reasons were that, in general, the restructuring of the energy sector proceeded less rapidly than expected; it proved more difficult than anticipated to cover costs (partly because of the inability of local people to pay); and

More effort is needed to promote the use of renewable energy sources

the risks were significantly greater than foreseen. Increasing access to energy will require vast investment. According to the IEA, \$5 trillion will have to be invested in power generation, transmission and distribution between now and 2030 to meet the demand for electricity in developing countries. Two thirds of this demand will come from Asia. Clearly, this will exceed the resources of the public sector, even with the help of Official Development Assistance (ODA): total world ODA, after all, amounts to only around \$50 billion. So private sector investment will be essential.

The conference brought together the public and private sectors, non-governmental organizations and other relevant institutions to examine possible ways of increasing such investment. Success will crucially depend on evidence of good governance and sensible policies in the developing countries themselves. Private sector investment will not be attracted without a stable and transparent investment climate. The bulk of the investment capital will have to come from the local and international private sector. The performance of the energy sector must also be improved. Government must back off from markets so that companies can generate the cash flow they need to make the necessary investments.

Public sector finance in both developing and donor countries can be used more effectively to attract private sector capital. Developing countries can cut their spending in other areas to provide microcredit for households and small businesses. There are countless examples of success: the Grameen Bank in Bangladesh is probably

the best-known lender to the poor, but similar systems are also operating successfully in other countries. If they are to work, however, governments must create conditions that enable banks to operate; otherwise, cuts in their spending will not have the desired effect. International organizations, like UNEP and the World Bank, are also supporting and launching projects of this kind.

ODA can be used more effectively to attract private capital, for example through public-private partnerships. Donor countries can do more to provide guarantee capital for businesses. The challenge is to combine available public and private sector resources more effectively to create sustainable power supply services. Carbon-finance initiatives should be expanded so that they can be used to finance environmentally friendly forms of power generation and energy consumption. Emissions trading and associated instruments – such as Joint Implementation and the Clean Development Mechanism – should be used more widely.

Smarter subsidies

Meanwhile, experience shows that subsidies on energy consumption in developing countries more frequently benefit the rich than the poor, for whom they are intended. Subsidies can be useful in encouraging certain developments, but they must be used in such a way that they benefit the right target groups and do not have too many unintended side effects. Industrialized countries also need to learn this lesson, and can also use subsidies in smarter ways to achieve sustainable energy provision.

The Kyoto Protocol – about to come into effect since Russia's welcome ratification – is a major step forward, but it will not lead to significant reductions in CO₂ emissions without further steps. We hope that the results of the World Conference on Energy for Development will work in parallel to Kyoto, helping to produce a greater awareness of the issues, more synergy between development and environmental goals, and creative approaches and solutions ■

Pieter van Geel is State Secretary for Housing, Spatial Planning and the Environment in the Netherlands.



Banson

PEOPLE

Wangari Maathai has become the first environmentalist – and the first African woman – to win the Nobel Peace Prize, in a remarkable acknowledgement of the close relationship between environmental protection and global security.

Professor Maathai – who founded the **Green Belt Movement** and is now **Kenya's Assistant Minister for the Environment and Natural Resources** – was presented with the prize in early December for 'her contribution to sustainable development, democracy and peace'.

The citation by the **Norwegian Nobel Committee** said: 'Peace on earth depends on our ability to secure our living environment. Maathai stands at the front of the fight to promote ecologically viable social, economic and cultural development in Kenya and in Africa. She has taken a holistic approach to sustainable development that embraces democracy, human rights and women's rights in particular. She thinks globally and acts locally.'

Klaus Toepfer, UNEP's Executive Director, said: 'Understanding is growing throughout the world of the close links between environmental protection and global security, so it is most fitting that the Nobel Peace Prize has been awarded to Africa's staunchest defender of the environment...'

'For decades she has been a fearless opponent of the grabbing of public land and the destruction of forests, and a vigorous advocate for democracy and environmental protection.'

Professor Maathai was one of the first people to be awarded a **UNEP Global 500 award**, in 1987, and is a long-standing jury member of the **UNEP Sasakawa Environment Prize**.

Shortly after the announcement she spoke of the importance of UNEP to her work in a statement to the opening of **Women As the Voice for the Environment (WAVE)** – the conference of women ministers for the environment and the global women's assembly on environment – at its headquarters in Nairobi.



UNEP

From left to right: Wangari Maathai; Klaus Toepfer, Executive Director of UNEP; and Anna Tibaijuka, Executive Director of UNHABITAT.

She said: 'Since the early 1970s, these grounds of UNEP, respective **executive directors** and now **Klaus Toepfer**, and their wonderful staff have provided a fertile ground for us to develop ideas and strategies on how to make the environment a priority for all citizens and governments, but especially African governments.'

'The path we have travelled together has been marked with trials and triumphs, but this institution has encouraged and supported us to be brave, persistent and consistent in our pursuit of a holistic approach to achieve sustainable development.' ■



Martinez Pallares

Bianca Jagger is one of three recipients of this year's **Right Livelihood Cash Award**, for having 'shown over many years how celebrity can be put at the service of the exploited and disadvantaged'. The prize jury cited 'her long-standing commitment and dedicated campaigning over a wide range of issues of human rights, social justice and environmental protection'.

In the 1990s she spoke out on behalf of the rights of indigenous people in Latin America, and to save the tropical rainforests where they live. She has campaigned against logging and forest clearance – and oil pollution in the Ecuadorian Amazon – and helped to demarcate the ancestral lands of Brazil's Yanomami people against an invasion of gold miners.

She shared the prize with **Raúl Monte-**

negro of Argentina, who was honoured for showing 'how much one committed scientist and activist can do to raise ecological awareness and prevent environmental degradation'. Professor Montenegro – the president of **FUNAM (Environment Defense Foundation)** and its principal founder 22 years ago – is credited with helping to establish six national parks, stopping the deforestation of at least 500,000 hectares, preventing the construction of a nuclear reprocessing plant, forcing the clean-up of toxic waste dumps, exposing pollution and running campaigns against dams and for the provision of clean water.

The third participant in the \$270,000 cash prize was the group **Memorial** for its work to protect civil liberties in Russia and surrounding countries ■

Rule of man, or rule of law?

TOMMY KOH describes the importance of the rule of law in protecting the environment and promoting free trade

Let me first confess my prejudices. I am a lawyer and a law teacher. One of my lifelong quests is to promote the rule of law in the world. I believe that it will be a better place if opacity is replaced by transparency, if arbitrariness is replaced by accountability, and if the rule of man is replaced by the rule of law. I believe that a country's capacity to protect its environment and its prospects of achieving sustainable development are enhanced if its adherence to the rule of law is strong.

Say, for example, Country X has laws in its book criminalizing the use of fire to clear land. Yet, year after year, logging companies and plantations set fire to large tracts of it, spewing smoke and dust into the atmosphere, which are carried by the wind to its neighbours. Satellite photographs show precisely where the fires are, so it is not difficult to identify the culprits. Why are they not brought to justice? Why does the problem recur in spite of the promises to resolve it? It is because the rule of law is weak in Country X. This illustrates my point that a country's capacity to protect its environment and its prospects for achieving sustainable development are enhanced if its adherence to the rule of law is strong and the quality of its governance is good.

My involvement with the environment goes back to the early 1970s, when Singapore was a member of the preparatory committee for the 1972 United Nations Conference on the Human Environment in Stockholm. Eighteen years later, in 1990, I was elected to chair the preparatory committee for the United Nations Conference on Environment and Development (UNCED). After two arduous years of preparation, the Conference was held in Rio in June 1992, where I was elected Chairman of the main committee.

Important contributions

UNCED, popularly known as the Earth Summit, has made several important contributions to the world. One of the most important was to raise the world's consciousness of the urgent need for humankind to do much better in looking after our environment, and of the imperative of reconciling our quest for economic progress with care for the environment. The concept of sustainable development was coined to capture that reconciliation. Among Rio's successes have been leading almost every country to set up a ministry in charge of the environment or an environment protection agency, and inscribing sustainable development on every national agenda.

Formidable environmental challenges face several Asian countries, but I am optimistic about the future. Asian governments today are much more conscious of the need to address them. With growing prosperity, they are better endowed to deal with the problems. Their peoples are rising up and demanding that the state do something to clean up the environment and afford them a higher quality of life. They are no longer willing to breathe polluted air, to drink contaminated water, and to allow their natural environment to be destroyed. Asia must change. Asia will change.

Transparency and non-discrimination

When Singapore hosted the first WTO Ministerial Conference in 1996, I was part of the Chairman's team that worked closely with the Secretariat to make the Conference succeed. Subsequently, the WTO has appointed me to three dispute panels, twice as Chairman. I regard it as one of the world's most important international organizations, because I believe that the facts show that free trade produces prosperity. Those developing countries – such as those in Northeast and Southeast Asia – who have plugged themselves into the world trading system, have succeeded in increasing prosperity and reducing poverty. The WTO is very important because it has developed multilateral rules that govern trade among the world's economic entities, and upholds and enforces them. These rules promote fairness, and curb the instinct of states to act arbitrarily. Its two governing principles are transparency and non-discrimination.

I find no contradiction in my support for UNEP, the WTO and the rule of law. Indeed, the rule of law is important to both bodies. The real question is whether there are contradictions between the governing principles of the WTO and some features of some of the multilateral environmental agreements. The honest answer to that is yes. There are approximately 200 multilateral environmental agreements, about 20 of which contain trade provisions – including the Montreal Protocol, the Basel Convention and the Convention on International Trade in Endangered Species, or CITES. Some of these trade provisions contradict the WTO's principle of non-discrimination because they restrict trade of certain products between parties and non-parties of the agreement, and because they impose a ban on trade.

Schools of thought

The WTO is currently examining Article XX of the General Agreement on Tariffs and Trade (GATT), which provides for general exceptions to the agreement. There are two schools of thought on this: that the article should be clarified – for example, through an amendment – to make clear the scope of the exceptions; and, conversely, that there is no need for this since, to date, no conflict has arisen between WTO provisions and trade measures taken pursuant to multilateral environmental agreements. While this is being discussed the scope of the article is actually being clarified by WTO jurisprudence, resulting from the decisions of the WTO's Appellate Body. My own view is that any accom-



Akio Ogata/UNEP/Topham



Walter Alfaro Borges/UNEP/Topham



Stanislav/UNEP/Topham

A country's capacity to protect its environment and its prospects of achieving sustainable development are enhanced if its adherence to the rule of law is strong

modation of environmental concerns by the WTO should be accompanied by safeguards to ensure that they could not be used for protectionist purposes. We should not support any

move to amend the rules that would allow members to restrict imports on the basis of some unilaterally determined standards. Contrary to perception in some quarters, countries do not lower their environmental standards in order to gain trade advantage ■

Professor Tommy Koh is Ambassador-At-Large, Ministry of Foreign Affairs, Singapore and Chairman of the Institute of Policy Studies.

AT A GLANCE: THE RULE OF LAW

Environmental law has been a priority for UNEP since its establishment in 1972. It has played a pioneering role in the development of multilateral environmental agreements (some of the most important of which are featured on this spread) and continues to do so, constantly providing support for updating conventions and developing new protocols. It also promotes the development of voluntary instruments in areas not yet covered by legally binding ones, and prepares legal studies on emerging issues. The Law Programme also includes capacity building of legal stakeholders including judges, technical assistance for strengthening national legal regimes, and the provision of legal materials and information in the field of environment.

UNEP JUDGES HANDBOOK ON ENVIRONMENTAL LAW

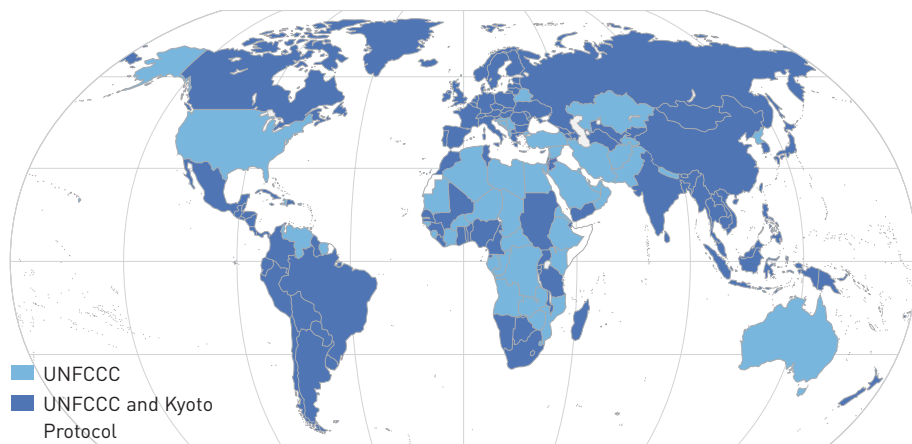
The *Handbook* provides judges in all types of tribunals, both civil and common law jurisdictions, with a practical guide to basic environmental principles and issues that are likely to arise in litigation. It includes information on environmental law and references to relevant cases. Judges in each particular country supplement this overview with more detailed information drawn from national experiences, laws and traditions.

The *Handbook* discusses legal issues likely to come up before national courts so that judges may be better equipped to discharge their key role in breathing life into those environmental requirements upon which the world's collective heritage depends.

The publication of the *UNEP Judges Handbook on Environmental Law*, in English and French in February 2005, and in Arabic later in the year, is a response to the request made by the chief justices and other senior judges from some 100 countries to the World Summit on Sustainable Development by the 2002 Global Judges Symposium held in Johannesburg.

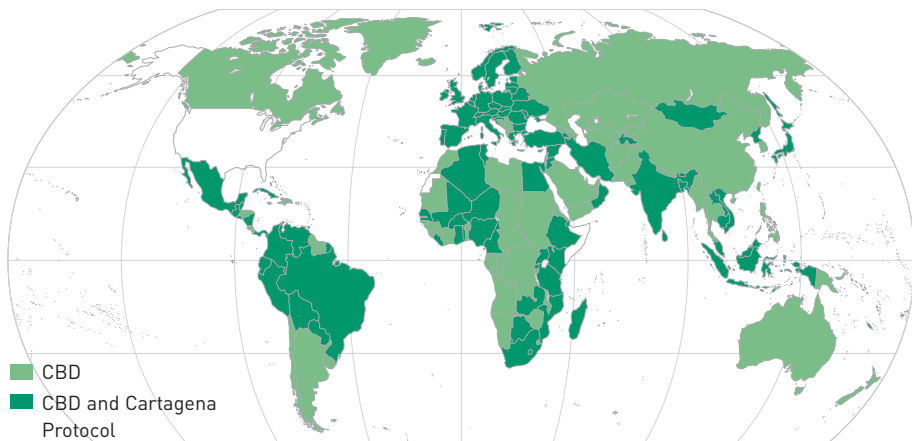
For further information contact
Lal.Kurukulasuriya@unep.org

Parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol



Source: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp>

Parties to the Convention on Biological Diversity (CBD) and the Cartagena Protocol on Biosafety



Source: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp>

Parties to the United Nations Convention to Combat Desertification (UNCCD)



Source: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/bible.asp>

Excerpts from landmark judgements in the field of environment

INDIA: Subhash Kumar v State of Bihar

The right to life enshrined in Article 21 (of the Indian Constitution), includes the right to enjoyment of pollution-free water and air for the full enjoyment of life. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Article 32. Public interest litigation envisages legal proceedings for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.

PHILIPPINES: Juan Antonio Oposa and others v the Honourable Fulgencio S. Factoran and another

As matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as State policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the State a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.

PAKISTAN: Ms Shehla Zia and others v Wapda

Where life of citizens is degraded, the quality of life is adversely affected and health hazards are created affecting a large number of people, the Supreme Court in exercise of its jurisdiction under Art. 184(3) of the Constitution of Pakistan may grant relief to the extent of stopping such activities that create pollution and environmental degradation.

INTERNATIONAL COURT OF JUSTICE

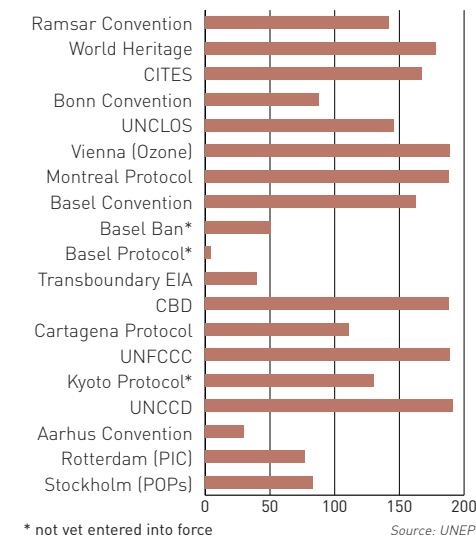
Legality of the threat or use of nuclear weapons, advisory opinion

The environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment.

Case concerning the Gabcikovo-Nagymaros project (Hungary/Slovakia)

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind – for present and future generations – of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, and set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.

Number of Parties to selected conventions



- 1971 Ramsar Convention on Wetlands
- 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage
- 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)
- 1979 Bonn Convention on the Conservation of Migratory Species
- 1982 United Nations Convention on the Law of the Sea (UNCLOS)
- 1985 Vienna Convention for the Protection of the Ozone Layer
- 1987 Montreal Protocol on Substances that Deplete the Ozone Layer
- 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal
- 1995 Basel Ban
- 1999 Basel Protocol on Liability and Compensation
- 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Transboundary EIA)
- 1992 Convention on Biological Diversity (CBD)
- 2000 Cartagena Protocol on Biosafety
- 1992 United Nations Framework Convention on Climate Change (UNFCCC)
- 1997 Kyoto Protocol
- 1994 United Nations Convention to Combat Desertification (UNCCD)
- 1998 Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- 1998 Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- 2001 Stockholm Convention on Persistent Organic Pollutants (POPs)

The world is in peril, both nature and humanity. Yet this cry of alarm is heard so often that it is now largely ignored. International conferences are routinely organized to debate global warming, sustainable development, water resources, destruction of forests, endemic poverty, the AIDS epidemic, housing needs and other facets of the global crisis. But the daily struggle for survival of the majority of humanity – and the appetite for comfort and profit of the minority – mean that, in practice, these fundamental problems are tackled only superficially. We have lost touch with the essence of life on Earth.

The modern notion that humanity and nature are somehow separate is absurd. Our relationship with nature – with ourselves – has broken down. As the most developed species, humanity may have a special, often dominant, relationship with nature, but is no less part of it. We cannot survive outside it. Yet accelerated urbanization over the past century has distanced humanity from the very animal and plant sources of life itself. We are living in disharmony with the elements that comprise the universe. We are disregarding the spiritual and instinctive qualities that until now have ensured our survival. We take grave risks when we distance ourselves from our natural roots, roots which in the past always made us feel part of the whole.

Only recently have we come to recognize the real possibility of nature's collapse. We live on a planet that can die. We use nuclear energy but do not fully understand the risks posed by secondary effects and by nuclear waste. We have accumulated unthinkable numbers of nuclear weapons that can be used in war or by terrorists. We are also threatened by environmental disaster. Industrial farming and large-scale cattle ranching are using techniques that decimate wildlife habitats. Soil and water are poisoned by excessive use of chemicals. What we produce is now merely a commodity to be traded. We are dam-



UNICEF/HQ01-0123/Nicole Toutoungi

Sebastião Salgado

Brazilian photographer Sebastião Salgado is embarking on another of his great photographic projects – seeking out places that are untouched by modern humanity. The Genesis project, supported by UNEP and UNESCO, is designed to highlight the beauty that still remains on the planet – and what will be lost if it is not looked after now.

aging the stratosphere and destroying the last portions of the tropical forests, with the parallel reduction of the photosynthesis that assures our survival. Our very existence is in danger.

This is tragically mirrored in the current state of humanity. Immense

wealth has been created through the labour of the entire world's population, but it is concentrated in the hands of all too few people, spawning tensions both within affluent societies and between a handful of rich countries and the rest of the world. We produce more food than ever and yet millions die of hunger. And in recent decades we have witnessed the worst acts of genocide of our history.

Throughout the 20th century, accelerating population growth and economic development destroyed the natural habitats of most of the temperate zones of the northern hemisphere. Now the focus of destruction has shifted to mega-diverse tropical regions. The 25 regions of the world (or 'hotspots', a concept developed by the British ecologist Norman Myers in the late 1980s) that account for more than half of the planet's species have already lost around 90 per cent of their natural habitat. And this extraordinary biodiversity is now facing its last stand in a mere 1.4 per cent of the world's land surface.

Only in wilderness zones does biodiversity still flourish. These drylands, coldlands and tropical forests, which represent around 46 per cent of the Earth's land area, contain as endemic only a tiny 1.6 per cent of the world's plants and 2.3 per cent of non-fish vertebrates. But they are crucial to maintaining regional ecosystems (such as water cycles) and even global ones (for example, carbon sequestration). These are also the last places on Earth where we can understand our origins as a species and find biological diversity in a pristine state.

Thus, for all the damage already caused to the environment, a world of purity, even innocence, can still be found in these wilderness areas. As an attempt to reconnect our species with our planet, I now intend to explore this world in order to record the unblemished faces of nature and humanity: how nature looked without men and women, and how humanity and nature long coexisted in what today we now call ecological balance ■



Top: Marine iguana (*Amblyrhynchus cristatus*), Rábida Island.

Above: Blue-footed boobies (*Sula nebouxi*), Roca Vicente, Isabela Island.

Right: Giant tortoise (*Geochelone elephantopus*) by the crater of Alcedo Volcano, Isabela Island.

These photographs were taken in January, February and March 2004, in the Galapagos, Ecuador.

Photographs by Sebastião Salgado/Amazonas images

Sustainable development

comes from Saturn!

DINAH SHELTON explains that the rule of law provides the gravitational pull that holds together economic and social development and environmental protection, like the rings of the planet

Just over two years ago representatives of more than 190 countries at the World Summit on Sustainable Development in Johannesburg adopted a Declaration affirming their will to 'assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development'. They identified these inseparable pillars as: economic development, social development and environmental protection.

The language of the Declaration on Sustainable Development reflects a reality encountered throughout the world. Economic development and environmental protection require social development – efforts to promote and protect internationally guaranteed civil, political, economic, social and cultural human rights. Neither economic development nor environmental protection can be fully assured in the absence of respect for fundamental rights and freedoms. Certain rights – such as access to environmental information, public participation in governance and redress for environmental harm – may have particular importance in achieving environmental protection. Economic development also benefits from respect for specific human rights – especially rights to property, freedom of contract and the right to work. Recent economic studies reveal higher wages in developing countries that respect human rights.

Healthy resource base

Similarly neither economic nor social development is possible over the long term without environmental protection that assures a healthy and sustained natural resource base, because all humankind depends upon the Earth's living and non-living resources. Human rights and economic development cannot be secured when the environment is degraded, threatening safe water, health, adequate food and housing – and life itself.

In turn, economic development is needed to realize social development and environmental protection, not least



because poverty involves denials of basic rights and is a major cause of environmental degradation.

Perhaps the tripartite and interrelated dimensions of sustainable development can be observed most easily when unsustainable development occurs – for example, when indigenous or local communities are deprived of their traditional lands and resources. Such events may not just violate the human rights of members of the group, but lead to harm or destruction of the ecosystem and the economic base of the region, causing impoverishment rather than development.

A further dimension – the rule of law – provides the indispensable foundation for achieving all three of these essential and interrelated aspects of sustainable development. If economic development, social development and environmental protection are visualized as the rings of the planet Saturn, then the rule of law forms the planet itself: its gravitational pull holds the rings together and ensures their continued existence, stability and functioning. No aspect of sustainable development can be achieved without a basic normative framework, properly functioning judicial and administrative bodies, and transparent and open procedures



Dedlev van Ravenswaay/Science Photo Library

The protection of the environment has become a vital part of contemporary human rights law and doctrine

forth such a right, adding in the former instance that the guaranteed environment is one suitable for development.

Right to remedy

It is part of the rule of law that 'Where there is a right, there is a remedy'. This legal maxim finds support in the separate guarantee contained in constitutions and treaties that there is a right to a remedy when any legal right is violated. It appears not just in human rights texts, but in Principle 10 of the Rio Declaration on Environment and Development and in various environmental treaties.

The right to a remedy has two aspects: access to justice and substantive redress. Access to justice requires the existence of independent and impartial bodies capable of affording redress after a hearing that complies with due process guarantees. The role of the judiciary in this respect cannot be overemphasized.

A growing number of administrative and judicial bodies throughout the world are giving effect to the right to a remedy and other guarantees by enforcing laws related to the three pillars of sustainable development. Judges are increasingly hearing cases alleging violations of constitutional rights to a sound environment, sometimes relating the guarantee to the right to life or to health and providing a range of remedies to address environmental conditions. Judges are also educating each other about common problems that arise in environmental rights litigation – UNEP has been instrumental in facilitating such exchanges of judicial experience.

Gravitational pull

Besides the work of national tribunals, regional human rights bodies like the African Commission on Human Rights, the Inter-American Commission and Court, and the European Court of Human Rights have issued decisions and judgements insisting that environmental conditions and economic development can and must be compatible with human rights. Serious pollution has been found to violate one or more guaranteed rights, and environmental laws have been upheld against complaints that they violate property rights. In such cases, the tribunals have held that property use must be balanced with environmental protection.

The Johannesburg Declaration correctly described the indivisibility of the three components of sustainable development. Meanwhile the global jurisprudence that has emerged demonstrates the strong gravitational pull of the rule of law and its centrality to achieving the aims set forth in the Declaration ■

Dinah Shelton is Research Professor of Law at the George Washington University Law School, Washington DC.

providing for public participation in environmental decision making and redress when harm is done.

The very terms 'protection' and 'rights' suggest recourse to a system of law. A rights-based approach to environmental protection seeks to ensure through legal guarantees that environmental conditions do not deteriorate to the point where the right to life, the right to health, the right to a family and private life, the right to culture and the right to an adequate standard of living are seriously impaired. This can be done in two ways. First, the rights to information, participation and remedy can be made part of the laws concerning environmental protection, ensuring that the public plays a role in sound environmental decision making. That participation should be based on information about environmental conditions, activities and potential threats to resources. Second, environmental protection can itself become a right. In fact, the protection of the environment has become a vital part of contemporary human rights law and doctrine. In most countries, the list of constitutionally guaranteed rights includes a right to a safe and healthy, or satisfactory, ecologically balanced environment. Regional human rights treaties in Africa and the Americas also set

The poor and the rich share at least one inescapable common fate: they live on the same planet and depend on the same natural resources for their survival. Nevertheless they live in two separate worlds. The poor – who to a large extent operate outside the money-based economy – have close ties with the environment, especially in rural areas. The rich – who ‘create’ and use the money-based economy – exploit the resources of the environment without really being part of it. The rich contribute with varying degrees of violence to the destruction of our natural habitat; the poor depend on it to survive.

In recent years the links between poverty and the environment have been a key concern of UNEP. Studies clearly demonstrate how important environmental factors are in the fight against poverty. If we fail to integrate ecosystem usage and protection in national, regional and global poverty reduction strategies they will be doomed to failure.

Clear link

In a major UNEP initiative seeking to establish links between the Millennium Development Goals, the rule of law, and the development and implementation of environmental law, more than 100 chief justices and senior judges – including 32 chief justices – from some 67 countries representing all regions and legal systems of the world gathered in Johannesburg in August 2002 on the eve of the World Summit on Sustainable Development (WSSD) to participate in a Global Judges Symposium on Sustainable Development and the Role of Law. They there unequivocally affirmed their commitment to the pledge made by world leaders in the Millennium Declaration adopted by the United Nations General Assembly in September 2000 to spare no effort to free all of humanity – above all our children and grandchildren – from the threat of living on a planet irredeemably spoilt by human activities, with resources no longer sufficient for their needs. They drew a clear link between poverty and the environment, recognizing that the poor are the most affected by environmental degradation and that, therefore, there is an urgent need to strengthen their capacity – and that of their representatives – to defend environmental rights. The judges will work towards ensuring that the weaker sections of society

ONE PLANET

different worlds

BAKARY KANTE describes UNEP’s work in advancing the Millennium Development Goals through the rule of law

are not prejudiced by environmental degradation and are enabled to enjoy their right to live in a social and physical environment that respects and promotes their dignity.

The judges emphasized that the rule of law is not an abstract legal notion but fundamental to ensuring the sustainable use of the Earth’s resources within its carrying capacity. They unanimously declared that the fragile state of the global environment requires the judiciary, as the guardian of the rule of law, boldly and fearlessly to implement and enforce applicable international and national laws. These will help alleviate poverty, sustain an enduring civilization, and ensure that the present generation enjoys and improves the quality of life of all peoples without compromising the inherent rights and interests of succeeding ones.

The judges recognized the key role that they play in integrating the human values set out in the United Nations Millennium Declaration – freedom, equality, solidarity, tolerance, respect for nature and shared responsibility – into global civilization, and committed to translating them into action through strengthening respect for the rule of law at all levels.

Crucial partner

The judiciary is clearly a crucial partner in developing, interpreting, implementing and enforcing environmental law. It plays a key role in promoting sustainable development, by balancing environmental, social and developmental considerations in judicial decisions. Courts of law in many countries have demonstrated sensitivity to promoting the rule of law in sustainable development through judgments and pronouncements. More than 200 of these judgements have been summarized and published in the

UNEP Compendium of Summaries of Environment-related Cases.

UNEP’s work focusing on the judiciary began in 1996 with a modest meeting of magistrates from some ten African countries. Spurred by the growing support for this programme among judges from all regions of the world, UNEP went on to convene, in association with several global, regional and national partners, seven regional chief justices symposia on environmental law, sustainable development and the role of the judiciary. These took place in South Asia (1997), Southeast Asia (1999), Latin America (2000), the Caribbean (2001), the Pacific (2002), Eastern Europe (2003) and the Arab countries (2004). A meeting of chief justices of the francophone countries will be convened in Paris on 3 and 4 February 2005, in partnership with the President of the Cour de Cassation of France and the Organisation Internationale de la Francophonie.

Major initiative

The symposium in Johannesburg was a direct result of a call made to the Executive Director of UNEP at the regional chief justices meetings. Its outcome, the Johannesburg Principles on the Role of Law and Sustainable Development, was presented to the United Nations Secretary-General and to the WSSD by its Chair, the Honourable Justice Arthur Chaskalson, Chief Justice of South Africa.

The outcomes of this major UNEP initiative are, in summary:

■ The creation of a Global Alliance of Chief Justices and Senior Judges from more than 100 countries, fully supportive of the UNEP Judges Programme, and the commitment to carry out capacity building of judges at the national level with the support of UNEP and its partner agencies.

■ The adoption by the UNEP Governing Council of Decision 22/17IIA on Follow-up to the Global Judges Symposium focusing on capacity building in the area of environmental law, which called on the Executive Director of UNEP to carry out a programme of work aimed at ‘improving the capacity of those involved in the process of promoting, implementing, developing and enforcing environmental law at the national and local levels such as judges, prosecutors, legislators and other relevant stakeholders’.

■ Creating Regional Judges Forums for the Environment in Europe, the Pacific, southern Africa, eastern and West Africa, the Arab States, the Caribbean and the francophone countries in Africa.

■ Developing and publishing a UNEP Judges Handbook and other manuals and case law books, in response to a call from judiciaries of the developing world for urgently required books on environmental law.

■ Mobilizing a consortium of partners for the UNEP capacity-building programme

on environmental law of judiciaries, prosecutors and other legal stakeholders. Organizations and institutions that have collaborated with UNEP include UNDP, World Bank Institute, United Nations University, UNITAR, IUCN and its Academy of Environmental Law, Commonwealth Secretariat, Francophone Secretariat, Commonwealth Magistrates and Judges Association, Asia Foundation, Hanns Seidel Foundation, Secretariat of the Pacific Regional Environment Programme (SPREP), South Asian Cooperative Environment Programme (SACEP), Environmental Law Foundation of the United Kingdom, Environmental Law Institute, and Centre for International Environmental Law.

■ Commencing systematic training of judges through national judicial institutions with the support of UNEP and partner agencies. In 2004 national judges training programmes were held in South Africa, Uganda, Tanzania, Viet Nam, Cambodia and Laos – and plans are under

way to hold similar national training workshops in more than 30 countries during 2005.

Full participation

Success in tackling environmental degradation relies on the full participation of everyone in society. The judiciary, as the final arbiter in human affairs, plays a key role in promoting the effective application and enforcement of environmental law, and in strengthening respect for the rule of law and principles of governance. The ultimate objective of this broadly conceived programme is to address not just the judiciary but all legal stakeholders who play a key role in developing, implementing and enforcing environmental law, as one of the principal instruments for translating environment and development policies into action ■

Bakary Kante is Director, Division of Policy Development and Law, UNEP.



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Fidli Savetiev/UNEP/Topham

NATURE'S WISDOM

MORE than 120 countries and international organizations are to participate in the first World Exposition of the 21st century, which has the theme of 'Nature's Wisdom'. One of the most important purposes of Expo 2005 – which will be held in Aichi, Japan, from 25 March to 25 September 2005 – is to provide people with an opportunity to think about such global issues as ecology and poverty. Some 15 million people are expected to attend.

The Japan Association for the 2005 World Exposition says: 'In order to create a new interface between nature and life in the 21st century, the global community needs to invent a new way of life – one which is compatible with the remaining natural environment.' It adds: 'Japan intends to make this exposition a laboratory for addressing global issues and to experiment with re-establishing the relationship between human beings and nature.'

Environmental policies are being introduced to cover every aspect of the Expo, including the development of the site, the operation of exhibitions, and the sale of food and products. It will be the first Expo to assess more than 200 issues identified by an environmental impact assessment report to conserve ecology and suppress carbon dioxide emissions.

3R (reduce, reuse and recycle) guidelines have been used to define targets for managing and operating the exposition, for constructing buildings and for developing the site.

The site, which is set in unspoiled natural surroundings, will be full of practical examples of how the relationship between people and nature can be forged. Non-polluting fuel cell buses will carry visitors to and from it. Tableware at its food courts will be made from plants and other recyclable environmentally friendly materials.

The outer shell of the Japanese pavilion will be made of bamboo, long used as a natural insulating material in Japan, while its roof will be sprinkled with waste water, another traditional way of keeping down internal temperatures.

A 360° spherical 'Earth Vision' will help visitors understand how the planet works, while an extinct mammoth, recently excavated from thawing Russian soil, will remind them of the realities of global warming. And, in a taste of the future, robots will roam the site, cleaning it up.

Most importantly, advanced technology and renewable energy will be used to demonstrate their future contribution. A 'new energy system' will power much of the site, including the



Dome of leaves.

Japan Association for the 2005 World Exposition

entire Japanese pavilion. Solar power will be backed up by special sodium sulphur battery storage. Fuel cells will power a combined heat and power plant to provide both electricity and air conditioning to pavilions.

Some trees will have to be felled to make way for buildings, but both they and plastic bottles collected from the site will be ground to powder to provide fuel. And food waste from restaurants will be fed to a methane fermentation system to provide fuel gas and fertilizer.

The Japan Association for the 2005 World Exposition says: 'Expo 2005 represents a determined effort by Japan to develop new modalities of life for the 21st century. It is an ambitious attempt to rediscover Nature's Wisdom – science and technology inherent in our surroundings that together foster a sound balance between human life and the environment.' ■

ECOLOGICAL DECLARATION

The Japan Association for the 2005 World Exposition has drawn up a seven-point Ecological Declaration to guide both its work and that of future expos.

1. Implementation of conservation measures identified in the environmental impact assessment report.
2. Development of site planning with environmental consideration.
3. Introduction of advanced technology promoting an eco-community.
4. Introduction of the 3Rs (reduce, reuse, recycle).
5. Promotion of transportation with minimal environmental impact.
6. Providing enjoyable educational opportunities through events and exhibitions.
7. Promotion of the efforts for environmental consideration by the people involved.



Japanese Pavilion under construction.

Japan Association for the 2005 World Exposition



Kathy Lipicus/UNEP/Topham

Kickback **fightback**

PETER EIGEN describes how corruption deepens poverty and damages the environment, and shows how the fight against it is intensifying

The Millennium Development Goal of halving the number of people living in extreme poverty by 2015 is attainable only if the world's governments seriously tackle corruption.

Nepotism, patronage and corruption do not just block development and deepen poverty. They also hold back the development of a private sector in developing countries, and deprive a new generation of the education and health care they need to be able to participate in economic development.

Corruption diverts public funds to promising opportunities for rent-seeking, such as large infrastructure projects, which benefit certain well-connected individuals. It also deepens a country's indebtedness for gener-

ations to come: estimates put the cost of corrupt projects in developing countries at more than one third of the debt burden of the developing world. Wasteful projects generate recurring costs, and are often poorly implemented because tenders are allocated to bidders who pay kickbacks instead of those offering quality and value for money.

It is a particular problem in the area of public contracting. The Organisation for Economic Co-operation and Development (OECD) puts government expenditure on procurement at \$3.5 trillion worldwide. A conservative estimate puts the amount lost due to bribery in government procurement at \$400 billion worldwide.

Corruption erodes freedoms and

causes significant economic losses. The World Bank's *World Development Report 2005* gives central prominence to the message that corruption is one of the most important determinants in the investment climate for everyone.

It also exacerbates destruction of the natural environment. The 2001 Environmental Sustainability Index (ESI), launched at the World Economic Forum in Davos, found that, of its 67 variables, corruption was the most negatively correlated to countries' level of environmental sustainability. Marc A. Levy, the ESI's director of research, concluded: 'Corruption deserves a stronger role on the environmental sustainability agenda'.

There are two main reasons for corruption's devastating impact on the environment: environmental safeguards are often overcome with its help; and large, environmentally damaging selection and overdesign of projects tends to offer better opportunities for kickbacks. Hence the developing world is dotted with environmentally harmful power dams, roads, pipelines and ports, mainly driven by corruption. They often have a ▶



M. H. Haadad/UNEP/Topham

Corruption erodes freedoms and causes significant economic losses

expectations, they must also provide some quick wins before the citizenry loses patience.

From Georgia to Kenya to Indonesia, new governments elected on an anti-corruption platform should be supported with expertise to strengthen governance. Much depends on political leaders' vision, as well as on their skills in designing the right sequence of reforms and on their ability to build coalitions behind the reforms. Good judgement is needed to strike a balance between short-term and long-term goals, and to prosecute corrupt actors and call guilty politicians to account without generating a political witch-hunt. Leadership skills are needed for introducing tough reforms without losing popular – or indeed international – support.

New governments must also deal decisively with the past as transparently as possible. Indecision in bringing firm sanctions to bear or in implementing forceful restitution mechanisms, for example, can quickly lead to deepening popular disillusionment and a gradual erosion of the authority of leadership.

Propitious climate

Increased global awareness of the impact of corruption has created a propitious climate for leaders in many parts of the world to fight it. Major international institutions, such as the World Bank, are now active partners in controlling corruption. International business and civil society organizations have united around a global consensus, reflected in the adoption in June this year of an anti-corruption principle by the more than 1,500 corporations worldwide who are signatories to Kofi Annan's UN Global Compact.

There is no single recipe, but any solution requires political vision and sustained political will to engage all partners ■

Peter Eigen is Chairman of Transparency International.

devastating impact on traditional communities.

It is not only the politicians and public officials who create the problem: bankers, lawyers, accountants and engineers working on public contracts are also responsible.

Good governance, however, is now firmly on the agenda of governments, the private sector and intergovernmental organizations worldwide. This is not just the view from and in development aid ministries in the West, but also at the World Bank and increasingly among governments in the developing world.

It is a priority for an increasing number of new governments around the world, even though enormous challenges persist. As this year's Nobel Peace Prize winner, Wangari Maathai, says, it is now clearer than ever that the challenge facing much of Africa is to move from an age of conflict, hunger and corruption to one of good governance and economic development.

Road map to reform

Last October the Government of Kenya, together with Transparency International, organized a meeting in Nairobi on New Anti-corruption Governments: The Challenge of Delivery – seeking to offer solutions for an effective road map to reform

in a country where corruption is rampant.

Industrialized countries and multinational corporations bear a major responsibility. Until the OECD Anti-Bribery Convention came into force in 1999, the political and commercial elites of the developed world condoned active bribery by their exporters abroad. In some countries, indeed, bribes were tax deductible.

The United Nations Convention against Corruption, signed in Merida, Mexico, in December 2003, provides new scope for effecting mutual legal assistance between countries – making it easier, in particular, to facilitate the return of assets stolen by corrupt leaders. This complements the African Union Convention on Preventing and Combating Corruption, adopted in July 2003, which also provides for greater cooperation on the return of stolen assets.

John Githongo, Permanent Secretary for Governance and Ethics in the office of Kenyan President Mwai Kibaki, says that in searching for assets appropriated by corrupt elites, Kenya's new government has already traced roughly \$1 billion believed to have been stolen from the country.

But changing the rules of the game is no easy matter. Reform-minded governments must not only confront entrenched corrupt political and commercial networks. Having raised

CONFLICT *and* cooperation

PATRICIA BIRNIE assesses how far international law has helped to resolve disputes over shared watercourses

International lawyers have long played a role in resolving conflicts arising from rivers, lakes and groundwater shared by two or more states, exercising their skill in, for example, developing applicable codes and principles, as drafters of treaties or codes, or as judges or advocates at international tribunals. Some commentators suggest that, in the light of experience to date, we must ask whether the principles of international law now developed provide effectively for environmental protection and sustainable use of international watercourses, or whether they merely serve to prolong disputes.

Concern about the environmental and developmental aspects of use of international watercourses is relatively recent in the international community – as is the encapsulation of these aspects in the amorphous goal of ‘sustainable development’. Historically, the evolution of watercourse law, and emerging codes and treaties, show that many riparian states accept some degree of overuse and pollution, evidenced by their concern to establish sovereignty over ‘their’ waters. They thus appropriate the use of rivers and lakes they border regardless of the effect on other riparians.

After the defeat of Napoleon in 1815, states bordering the Rhine cooperated at the Congress of Vienna in establishing a Rhine Commission to administer a regime of navigational freedom. This led to the institution of river police, levying of fines and Rhine courts to implement the rules and to settle disputes. The same

approach was followed in 1856 by Danube states. These have now been replaced by modern treaties revised to accord with modern concepts of environmental protection and sustainable development.

For most of its subsequent history international law has been primarily concerned with providing for agreements on access and the equitable apportionment of water from cross-boundary sources. This has always presented problems, and still does. The difficulties have been exacerbated, despite their laudable aims, by the series of United Nations conferences addressing and enunciating principles for protection of the human environment and related developmental issues. It began with the 1972 Stockholm Conference on the Human Environment and its Action Plan. Then the 1992 Rio United Nations Conference on Environment and Development and its Agenda 21 addressed the need to promote both environmental protection and development within the aegis of the concept of ‘sustainable development’. Finally the 2002 Johannesburg World Summit on Sustainable Development (WSSD) provided a stronger focus on developmental goals. These conferences have addressed many of the issues and developed guiding principles and action plans.

Growing problems

WSSD endeavoured to balance all the factors inherent in the ‘sustainable development’ concept. This has been made more difficult to achieve, since water problems have been exacerbated by failure to act effectively to achieve the other goals laid down in Stockholm and Rio – which extended the concept to include alleviating poverty and ill health, the establishment of the rule of law and good governance, and other challenging concerns. The 2001 Stockholm Water Symposium highlighted the still growing problems faced by many developed and developing states bordering transboundary watercourses, arising from lack of effective policies, principles and mechanisms for managing water resources. It highlighted over-extraction, pollution, excessive use for irrigation, the possible effects of climate change, building dams ►

Ha Tuong/UNEP/Topham



for hydroelectric power, and increasing demand for water deriving from population growth and rising living standards. But – whether faced with fights for survival or demands for improved living standards – some governments remain reluctant to cooperate in concluding treaties limiting their freedom of use of watercourses despite growing problems and conflicts, even though water was a priority at WSSD.

The difficulties involved in achieving sufficient international cooperation to resolve transboundary issues have to be faced sooner or later. Resort to internationally binding rules cannot be permanently avoided. In 1997, the United Nations Convention on the Law of the Non-navigational Uses of International Watercourses was concluded. Its Article 5 sets out the principles required to sustain use – equitable and reasonable utilization and participation. Its principles are necessarily very general but provide the international standard against which to measure past and future watercourse treaties.

During the treaty's negotiation several delegations urged that it should reflect contemporary developments in international law aimed at better protection of the environment – but the only change that could be agreed was to add 'and sustainable' to Article 5. This consequently reads: 'In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal *and sustainable* utilization thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse.' The wording still leaves considerable scope for interpretation, since the obligation is already weakened by the need only 'to take into account' other states' interests, even though states must work together under another article in determining the manner of this 'cooperation'. Even this requirement is limited: they 'may consider' establishing joint mechanisms of commissions 'as deemed necessary by them to facilitate cooperation' in the light of cooperative experience in the other regions.

Catalyst for cooperation

A recent publication, *Conflict and Cooperation on South Asia's International Rivers* by Salman and Uprety (senior legal advisers at the World Bank), has established how these rivers have become 'a source of conflict as well as a catalyst for cooperation' between India and Pakistan, India and Nepal and India and Bangladesh – who have negotiated six treaties addressing complex and different relationships on these watercourses. Despite the difficulties involved, the authors see an emerging worldwide trend to resolve watercourse conflicts, spurred by the development of new global, regional and bilateral legal instruments. This is reflected in a reference in the India-Nepal Mahakali River Treaty to their 'determination to cooperate in development of water resources and by agreement', and in the Indus Water Treaty, which divides, rather than shares, the waters between India and Pakistan.

A salutary reminder of the difficulties of resolving or regulating conflicts in managing shared watercourses is provided by a curious solution in the Agreement on the Cooperation for the Sustainable Development of the Mekong River Basin concluded between Cambodia, Laos, Thailand and Viet Nam in 1995. The fundamental problem under this treaty is not whether the parties will implement it in a manner that achieves sustainable development, but whether they will give full effect to the Mekong Agreement requirements as



T. Yoh/UNEP/Topham

The difficulties involved in achieving sufficient international cooperation to resolve transboundary issues have to be faced sooner or later

a whole. Curious evidence of their willingness to cooperate is found in its Article 29, which offers the option of relocating the permanent office of the Mekong Secretariat. Its pre-treaty headquarters had been situated in Bangkok for some 40 years. In 1998 the four parties concluded a separate Headquarters Agreement, which laid down that it would be rotated between Cambodia and Laos every five years. It is doubtful whether this roundabout solution will benefit the Secretariat's operations. Ongoing projects are likely to be disrupted; books, documents and equipment will need to be packed and transferred; officials of one state will be substituted by ones from the other, involving changes in official language and, presumably, administrative disruption as new staff grapple with working practices and materials; and completion of projects is likely to be delayed, and their quality affected as new staff are trained. The move to Cambodia has already presented difficulties for academic researchers. Each rotation will also be costly and likely to deter prospective funding bodies.

This brief and very cursory survey of the historic processes of developing international law to regulate use of international water resources, and adapting it to meet the United Nations aims of sustainable development, has established that a great deal has been accomplished since the 19th century, but that a great deal still needs to be done. The 'hard law' approach of the Rhine agreement of 1815 is unlikely to be repeated today in many developing countries. The growth in world population, its adverse impact on water quality and the availability of clean water supplies still remains to be resolved – it is to be hoped more speedily. The regulatory process to date has been one of both conflict and cooperation ■

Professor Patricia Birnie is co-author of Birnie and Boyle, International Law and the Environment, Oxford University Press (second edition).

The Convention on Biological Diversity is considered a landmark in the international community's approach to environment and development. It adopts a holistic approach to the conservation and sustainable use of the Earth's natural resource base and recognizes that protecting its wealth of living organisms and ecosystems in an integrated way is essential for sustainable development.

As the key international legal instrument for conserving biological diversity and using it sustainably, and for fairly and equitably sharing the benefits from using genetic resources, the Convention is an essential element in the international legal framework underpinning sustainable development.

The Convention has contributed to the development of international law in this area. It reaffirms the principle that states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond national jurisdiction. It notes the validity of the precautionary approach as a basis for action: indeed its Cartagena Protocol on Biosafety was the first international instrument to apply it in decision making. The Convention also reflects the principles of notification, exchange of information and consultation on activities originating under a Party's jurisdiction or control which present imminent or grave danger to the biological diversity of other states or areas beyond the limits of national jurisdiction.

Important agent

The Convention has been an important agent in developing 'soft law'. Its broad goals, general principles and norms must be translated into action through practical measures. Governments are encouraged to develop policies, programmes and legislation to



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Holistic landmark

HAMDALLAH ZEDAN assesses the role of the Convention on Biological Diversity in the rule of law on environmental sustainability

implement their commitments. The Conference of the Parties to the Convention has adopted a number of guidelines and guiding principles to assist Parties in implementing their obligations. Though not legally binding, these constitute international consensus on appropriate implementation measures.

Ecosystem approach

The Conference of the Parties has adopted the ecosystem approach as the primary conceptual framework for action. In 2000 it endorsed principles to provide guidance in applying this approach, a strategy for the integrated management of natural resources that promotes conservation and sustainable use equitably. It has also adopted guidelines that seek to ensure the development of rules-based and predictable national frameworks to facilitate access to genetic resources and promote the sharing of benefits from their use. Meanwhile guidelines for the sustainable use of biological diversity consist of practical principles, operational guidelines and implementation tools calculated to balance the need to maximize human livelihoods against the necessity of conserving the underlying natural resource base.

These guidelines also contain important principles critical for sustainability and effective local implementation for:

- the participation of stakeholders in developing policies and legislation, and in environmental decision making;
- developing national biodiversity strategies and action plans;
- integrating biodiversity concerns into sectoral and cross-sectoral plans and programmes;
- developing, and making operational, environmental impact assessment procedures;
- protecting the rights of local-level environmental resource managers.

Thus, for the past 12 years, the Convention on Biological Diversity and the international processes to which it gave birth have played an active role as a source of international legal norms and principles essential for environmental sustainability. It will continue to provide an effective forum for international consensus building on key sustainability issues ■

Hamdallah Zedan is Executive Secretary of the Convention on Biological Diversity.

Governments are encouraged to develop policies, programmes and legislation to implement their commitments

Empowering the poor

HAMA ARBA DIALLO describes the work of the United Nations Convention to Combat Desertification in addressing a threat to some of the world's poorest people, through an international legal instrument

Desertification – the degradation of land into desert-like conditions – threatens to shrink arable land by a fifth in South America, one third in Asia and two thirds in Africa. Many of the poorest people on all three continents will face even greater food insecurity, malnutrition and disease, and many will be forced to leave their homes to survive.

Poverty is a central cause of desertification, forcing people to overexploit land for food, energy, housing and income. Unsustainable land-use practices have greatly disrupted the vital cycle of self-restoration in the world's drylands.

The United Nations Convention to Combat Desertification (UNCCD), which entered into force in 1996, is the only international legal instrument that addresses this threat. It promotes a holistic approach, fully taking into account the intricate social and economic aspects of the process.

Action Programmes

The Convention commits its Country Parties – 191 as of December 2004 – to promote techniques and strategies for sustainable land management, while addressing such issues as land ownership, education and capacity building. Its backbone is its Action Programmes. These long-term policy frameworks are prepared by countries at the national, subregional and regional levels. They identify key factors contributing to desertification, devise long-term preventive and rehabilitation strategies, and specify the roles of government, non-governmental organizations and local communities. The Parties to the Convention are now moving

Those directly affected are no longer ignored or blamed for desertification

from preparing these programmes to implementing them.

The Global Environment Facility designated land degradation as its fifth focal area in October 2002 to ensure that the Action Programmes had sufficient resources. This will provide a critical impetus for sustainable rural development: implementing the Convention has been hampered and delayed for many years by a lack of predictable financial resources. In addition, industrialized countries are to

provide 'substantial financial resources and other forms of support', including grants and concessional loans, through both bilateral and multilateral channels. Simultaneously, affected developing countries are to allocate adequate resources to these activities, given their circumstances and capabilities.

The Convention can only be put into practice, and benefit the poorest, if founded on the principle of partnership. It therefore advocates the spirit of a two-way partnership between all stakeholders. Only if affected developing countries and the donor community join efforts and respect each other as allies can the fight against desertification be won. Programmes and priorities are hence to be defined jointly, to ensure efficient, more equitable and democratic coordination – and to avoid duplication.

Coalition building

The Convention also promotes coalition building through stakeholders' participation. Traditional top-down approaches have failed; but its participatory, bottom-up approach has ensured enduring and effective changes on the ground. It emphasizes the participation of all stakeholders – including local communities, non-governmental organizations, international organizations and donor countries – in the entire process, from decision making to implementation. Those directly affected are no longer ignored or blamed for desertification – but viewed, with their understanding of the land, as prime resources. Indeed, it is primarily through the empowerment of the world's poor that the fight against desertification and rural poverty can be won ■

Hama Arba Diallo is Executive Secretary of the United Nations Convention to Combat Desertification.

Narciso Saraiva/UNEP/Topham



The evolution of the United Nations Framework Convention on Climate Change, including negotiations on its Kyoto Protocol, has played a major part in advancing the role of the rule of law in achieving sustainable development. Its ultimate objective – to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human interference with the world's climate system – has to be achieved to enable economic development to proceed sustainably. General commitments in Article 4 of the Convention provide that all Parties – while taking appropriate measures to mitigate climate change and to facilitate adequate adaptation to climate change – take into account national and regional development priorities, objectives and circumstances. Under Article 2 of the Kyoto Protocol, industrialized countries with limitation and reduction commitments are to elaborate policies and measures to promote sustainable development.

Level playing field

The compliance procedures and mechanisms under the Kyoto Protocol – with their automaticity, timetables and power to take final decisions – are expected to prove a major step in developing rule-based arrangements through which Parties can be confident that others are fulfilling their commitments. This assurance of a 'level playing field' is critical in meeting concerns about competitiveness. The Delhi Declaration on Climate Change and Sustainable Development – adopted by the Conference of the Parties at its eighth session, in November 2002 – incorporates themes adopted at the Johannesburg World Summit on Sustainable Development, three months earlier. It stresses that, besides mitigation measures, urgent action is needed to adapt to climate change. It emphasizes promoting international cooperation in developing and disseminating innovative technologies – particularly in the energy sector – through investment, market-oriented approaches, private-sector involvement and supportive public policies.

New areas

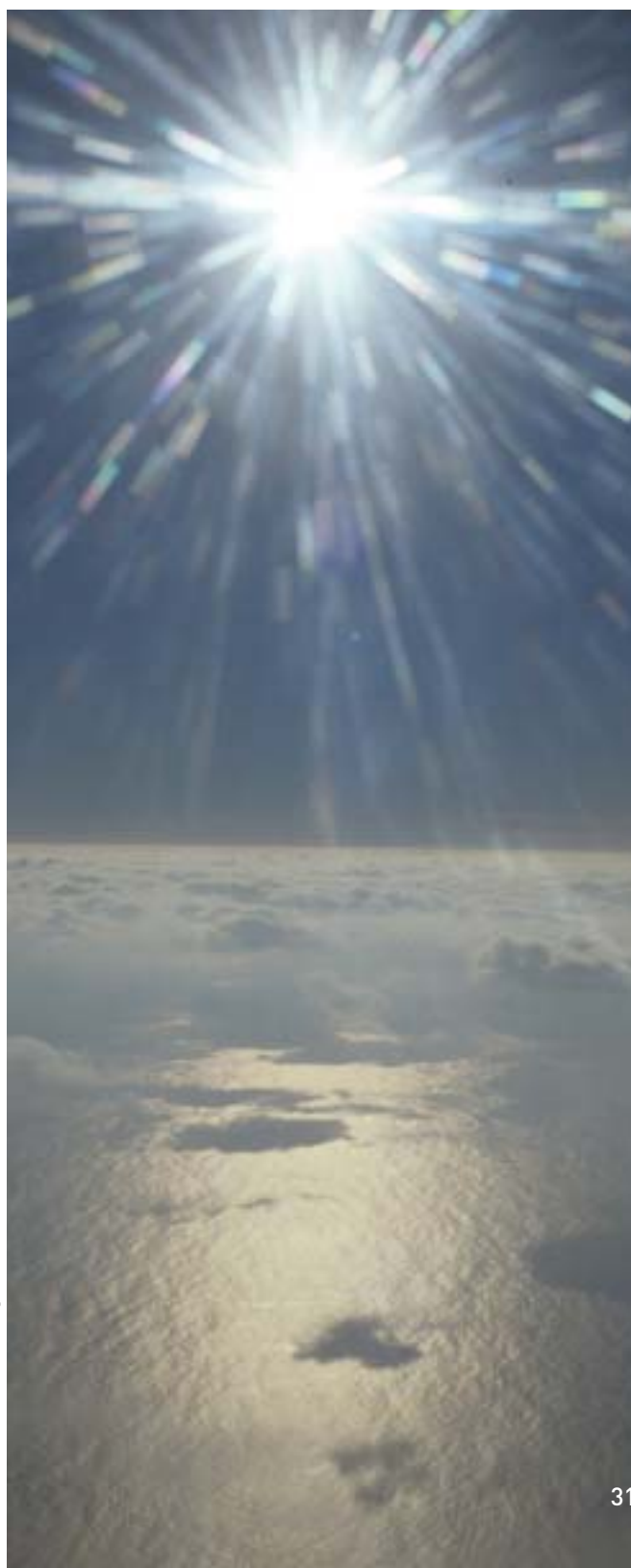
The provisions, procedures and mechanisms, and declarations collectively serve to operationalize the general principles of 'soft' law in the 1992 Rio Declaration on Environment and Development. Its Principle 27 stipulates that states and people shall cooperate in good faith, and in a spirit of partnership, in fulfilling the principles embodied in the Declaration and in further developing international law in the field of sustainable development. The multilateral cooperation in the Convention on Climate Change, responding to the current phase of globalization, has advanced the role of the rule of law in achieving sustainable development into areas not foreseen in 1992 when both it and the Rio Declaration were negotiated ■

Joke Waller-Hunter is Executive Secretary of the United Nations Framework Convention on Climate Change.

Besides mitigation measures, urgent action is needed to adapt to climate change

Legal climate

JOKE WALLER-HUNTER describes the contribution that the United Nations Framework Convention on Climate Change is making to international sustainable development law



Small is effective

Young people pay most attention to fashion, pop music, computers and sports. But we must also find out about the state of the environment and then start thinking of solutions.

We may not be able to do big things to change the environment, like adults, but there is no need to think that only big things are worth doing. There is a saying, 'Many a little makes a mickle': if everyone does small things, we believe it can change a lot.

Both the natural environment and the one created by humans are important to us in our everyday lives, but if we are not careful the man-made will destroy the natural.

We were affecting the Earth's natural environment for a long time before we realized what we were doing. We now understand that some things are particularly damaging – such as deforestation. Japan has many typhoons and earthquakes each year. In the past, forests have helped protect us from the effects of these disasters, preventing the erosion that often leads to landslides. Global warming and air pollution are also caused by our human environment.

Pursuing convenience

The human environment is made by us. There are automatic drink vending machines everywhere in Japan. You can buy drinks whenever you want to, and you can choose to have them hot or cold. We have pursued convenience, and once we get used to it, we pursue more convenience. What is the result? A waste of energy and lots of cans! We must care about the natural environment first.

Once we destroy the environment, it takes thousands of years to recover. So we should respect it and be at one with nature. The relationship of convenience and environmental destruction is a see-saw.

There are many ways that we can contribute to the health of the environment. Three simple actions are 'Save energy, save water and recycle!'

Children's event

Next summer the Children's World Summit for the Environment, organized by UNEP, will be held during the Aichi World Exposition in Japan, from 26 to 29 July 2005. Its Board has decided that it should focus on water, recycling, forests and energy. About 1,000 children and adults from all over the world will gather and share in the experience, and think about the environment. It will be an enormous environmental event created by children! Isn't that amazing? ■

Shoko Takahashi (13) and Ryota Sakamoto (14) are Board members of the Children's World Summit for the Environment.