Human Rights, Environment, and Economic Development: Existing and Emerging Standards in International Law and Global Society

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V. Evolution of a New Tri-partite Approach

Three areas of international law: human rights, environmental protection and economic development, will be the principal sources of normative standards for the ECO. The following section provides an overview of these three areas with particular reference to their convergence under the rubric of sustainable development.

International Human Rights Law

Higgins has aptly characterized human rights as "right[s] held vis-a-vis the state, by virtue of being a human being." The types of rights identified under human rights law are generally divided into three categories: 1) political and civil rights ("1st generation human rights"); 2) social and economic rights ("2nd generation human rights"); and, 3) "solidarity" rights ("3rd generation human rights").

First generation rights refer to traditional civil and political liberties prominent in Western liberal democracies, such as freedom of speech, of religion, and of the press, and freedom from torture, which presuppose a duty of non-interference on the part of government towards individuals. These rights are the "classical" human rights contained in notable instruments such as the Bill of Rights of the United States Constitution. For many years, the dominant position in United States and other western states was that only these rights were genuine human rights. Non-western and socialist perspectives have been highly critical of this outlook, particularly because it ignores alternative conceptions of the meaning and substance of human rights. The leading international instrument codifying what are now known as first generation rights is the United Nations International Covenant on Civil and Political Rights (1966). First generation rights are also contained among the first 21 Articles of the United Nations Universal Declaration of Human Rights (1948).

Second generation rights have generally been considered as rights which require affirmative government action for their realization. Second generation rights are often styled as "group rights" or "collective rights", in that they pertain to the well-being of whole societies. They contrast with first generation rights which have been perceived as "individual entitlements," particularly the prerogatives of individuals contrary to those of collectivities. Principle advocates of collective rights have been developing countries and formerly the Socialist Bloc countries. Some countries supporting second

generation rights have argued for their realization first, as a pre-condition for the eventual realization of civil and political rights.

Additionally, some advocates for the pre-eminence of second generation collective or group rights have postulated that contrary to Western conceptions, the substance of human rights is not universal and that economic, social and cultural factors determine the applicability of particular rights in different countries. This has been used as a justification for denying civil and political rights or delaying their protection until group rights have been realized. Religious, cultural or socio-economic factors in a state therefore might be relied upon to preclude recognition of "alien" western ideas such as freedom of conscience or press freedom. Human rights advocates such as Higgins disagree with this line of reasoning:

"It is sometimes suggested that there can be no fully universal concept of human rights, for it is necessary to take into account the diverse cultures and political systems of the world. It is rarely advanced by the oppressed, who are only too anxious to benefit from perceived universal standards. The non-universal, relativist view of human rights is in fact a very state-centered view and loses sight of the fact that human rights are human rights and not dependent on the fact that states, or groupings of states, may behave differently from each other so far as their politics, economic policy, and culture are concerned."

The Vienna Declaration of 1993 disclaimed any priority of rights. It declared that "[w]hile development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights."

Examples of second generation rights include the right to education, to work, to social security, food, to self-determination, and to an adequate standard of living. These rights are codified in the International Covenant on Economic, Social and Cultural Rights (1966), and also in Articles 23-29 of the Universal Declaration of Human Rights (1948). Writers reluctant to recognize second generation rights as human rights have often based their arguments on the assumption that courts are unable to enforce affirmative duties on states and that therefore such rights are mere aspirational statements. Similarly, critics have opined that regardless of the political system or level of economic development, all states are able to comply with civil and political rights, but not all states have the ability to provide the financial and technical resources for the realization of affirmative oblations such as education and an adequate standard of living.

Higgins and others note, however, that both case law and scholarship increasingly recognize that the realization of first generation rights may also require affirmative action on the part of governments, thus blurring the traditional distinction between first and second generation rights based on negative and positive duties in governmental behavior. Additionally, the last

two decades have witnessed increasing emphasis on the "indivisibility and interdependence" of all human rights. This position was most recently affirmed in the 1995 Beijing Declaration and Platform for Action of the Fourth World Conference on Women.

Treating all human rights as universal and indivisible responds to the arguments regarding whether economic and social, or political and civil rights are paramount by advocating that all human rights are connected and equally important for their mutual realization. This viewpoint is also supported by advocates of third generation rights, who argue that the realization of third generation rights is dependent on the realization of first and second generation rights and also that the full expression of first and second generation rights is dependent on third generation rights.

Third Generation or "solidarity" rights is the most recently recognized category of human rights. This grouping has been distinguished from the other two categories of human rights in that its realization is predicated not only upon both the affirmative and negative duties of the state, but also upon the behavior of each individual:

"[Third Generation Rights]...may be both invoked against the State and demanded of it; but above all (and herein lies their essential characteristic) they can be realized only through the concerted efforts of all actors on the social scene: the individual, the State, public and private bodies and the international community."

Rights in this category include self-determination, as well as a host of normative expressions whose status as human rights is controversial at present. These include the right to development, the right to peace, and a right to a healthy environment. Some texts such as the Final Report of the United Nations Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection of Minorities appear to take it as given that there is already an existing right to environment recognized in international instruments. Others such as Higgins express serious reservations regarding the existence of a right to a healthy environment as well as the viability of other third generation rights. Higgins' main criticism concerns what she observes to be the indeterminacy regarding those who are obliged to effect the realization of these rights as well as the substantive content entailed by such rights. Specifically, regarding the "right to development" she states that

"...[I]t has been much supported by leading writers and there does exist a UN General Assembly Resolution on the subject, and it has been frequently invoked by various international bodies. But it is noticeably absent from the International Covenant on Economic, Social, and Cultural Rights...[F]ormidable problems remain about classifying it as a human right. The right-holders are presumably the peoples of developing territories. But what the right entails is for the moment very unclear. ...[M]uch of the

literature that proclaims the existence of the right ignores this question entirely..."

While noting the reservations expressed by commentators such as Higgins regarding the indeterminate content of the right, the "right to development" continues to be affirmed in major contemporary international instruments such as the Rio Declaration of 1992, the Vienna Declaration of 1993, and the Copenhagen Declaration of 1995. Additionally, in its 1994 Report the International Law Association appears to have accepted the validity of the right to development as a human right, and noted that "...[t]he right to development should be elaborated in the context of the other collective human rights and of all individual human rights..." Likewise, in the ILA report and in the UN declarations, the right to development is now linked with environmental protection. Examples of this include the Principle 3 of the Rio Declaration which states that " [t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." In its affirmation of the right to development , the Vienna Declaration expressly linked human rights to protection of the environment in stating:

"The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone."

An alternative perspective supported by "deep ecologists" discusses recognition of rights for the environment itself on the basis of the environment's intrinsic value, rather than as a means for promoting existing human rights. This view proposes that

"...to stop seeing nature as some kind of 'other' with whom we must learn to co-exist, and instead come to see gophers, trees and rivers as extensions of 'us', worthy of the same kind of care that we unreservedly bestow upon ourselves..."

This approach is encapsulated in the phrase "biospherical egalitarianism;" it diverges from labeling a right to a healthy environment as a human rights issue, and instead considers the possibility of environmental rights for the environment itself. Its adherents conclude that the concept of rights as utilized in legal discourse is an inadequate device.

"...[T]he granting of rights to the environment may in fact 'devalue' it...[because]...[o]nly isolated entities can have rights; relationships cannot. To ascribe rights to the environment is to engage in a project of dividing up nature, rather than respecting its ecological wholeness..."

It advocates an ontological transformation away from what it identifies as the "impoverished language of rights..[and instead toward]...a language of environmental protection that is 'ecologically conscious.'" Although this

approach may appear to be inappropriate for promoting the protection of human rights, its authors suggest that "biospherical egalitarianism" will facilitate overall human welfare by re-defining value priorities. This perspective will not be discussed further but is provided to highlight the existence of divergent methodologies on the use of "rights" in the context of human rights and environmental protection.

Environmental degradation is increasingly receiving international coverage within the context of human rights issues. A recent example of this is the execution by the Nigerian Government of the human rights activist Ken Saro-Wiwa, who had protested against serious environmental damage to the Ogoni homeland of his people that resulted from the petroleum extraction activities of the Shell Petroleum Development Company. Other recent examples demonstrating the relationship between human rights abuses and environmental degradation are the sterilization and other pesticide- related health and environmental consequences suffered by workers on banana plantations owned by transnational enterprises in Central America, and the industrial contamination of the fishing grounds and other resources of Iroquois communities along the St. Lawrence River in New York State and Quebec Province.

Recognition of the link between abuse of human rights of various vulnerable communities and related damage to their environment is expressed under the term "eco-justice" or "environmental justice." This issue was previously discussed in this paper the section on Intergenerational Equity. In both the industrialized and developing parts of the world a growing body of evidence demonstrates that poor and other disenfranchised groups have been the greatest victims of environmental degradation. The types of abuses documented include the location of toxic waste sites in areas primarily occupied by communities of color in the United States, the forced relocation of marginalized and aboriginal populations in India, China and elsewhere in order to build infrastructure projects and undertake other development activities, and the refusal of governments to recognize indigenous territorial rights as in the case of Amazonian Brazil and various Asian nations.

The concept of eco-justice embraces two objectives. The first is to ensure that rights and responsibilities regarding the utilization of environmental resources are distributed with greater fairness among communities both globally and domestically. This entails ensuring that poor and marginalized communities do not suffer a disproportionate burden of the costs of development of resources, while not enjoying equivalent benefits from their utilization. The second is to reduce the overall amount of environmental damage both domestically and globally. This latter aspect of eco- justice has been included in various international instruments including principle 7 of the Rio Declaration. It holds that: "To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption..." This proposition has been affirmed most recently in the Beijing Declaration which asserted that

"...[T]he major cause of the environmental deterioration of the global environment is the unsustainable pattern of consumption and production, particularly in industrialized countries, which is a matter of grave concern, aggravating poverty and imbalances..."

International Environmental Law

Modern environmental law has its origins in three primary areas: 1) national and international wildlife conservation regimes during the past century; 2) fisheries management regulations arising out of international law relating to the sea; and, 3) customary international law developed out of several international judicial and arbitration decisions dealing with state responsibility for transboundary activities.

The first treaty to address issues that now would fall under the rubric of "environmental law" was a multilateral convention of 1886 regulating fishing in the Rhine River Basin. Likewise perhaps the most progressive (in terms of addressing cross-sectoral issues such as human equity objectives and economic development) of the early regimes directed at environmental considerations also concerned wildlife, namely the Bering fur seal populations. Unlike many later conservation regimes, the Bering fur seal treaties sought to ensure what today would be characterized as "sustainable" benefits from the utilization of a living resources through integrating economic, conservation and social equity concerns. For example, as a means for sharing the benefits from utilization of the resource, the treaties provided compensation for those state Parties which abandoned unsustainable harvesting methods. They also provided exemptions for traditional subsistence use by local aboriginal communities.

Historically, wildlife conservation approaches have fallen into two major regime types:

1) "Preservationism": separating "pristine nature" from man thereby approximating a mythical "state of nature"; such schemes have proven largely ineffective especially in developing countries where conservation laws were imposed by colonial governments or other elites on disenfranchised local populations; or 2) treating living resources as if they were the products of a factory assembly line or crops in a garden, without properly considering the complex relationships between living resources, and the impacts of harvesting one resource on the viability of other resources. See preamble, Convention for the Preservation of Wild Animals, Birds and Fish in Africa of 19 May 1900, 94 BFSP. 715.

Another manifestation of this one-dimensional approach is typified by a number of fisheries treaties relying upon the concept of "maximum sustainable yield" ("MSY")

"...the level at which the greatest quantity of fish can be caught year after year without the total size of the stock being adversely affected [assuming no environmental factors upset the balance], from R. R. Churchill and A.V. Lowe, The Law of the Sea, Manchester University Press, 1988, p. 226. See R.D. Munro and J.G. Lammers (eds.), Environmental Protection and Sustainable Development. Legal Principles and Recommendations, Graham & Trotman/Martinus Nijhoff, London, 1986, p.47.

. For example, most fisheries agreements, such as the Convention for the Establishment of the Inter- American Tropical Tuna Commission of 1949, as well as the Convention on the Conservation of the Living Resources of the High Seas of 1958, stressed conservation only in so far as it related to obtaining the maximum catch possible of particular target species. They did not consider other social or ecological impacts of the harvesting of that resource.

One consequence of these earlier preservationist approaches was that the legal structures and accessibility restrictions created to realize these goals often had dramatic negative consequences for local communities, many of which had previously utilized the now "protected" floral and faunal resources for their livelihood.

During the past twenty years, scientists and policy-makers have been confronted with the fact that throughout much of the world the preservationist "state of nature" model for the protection of forests and other biological resources has become increasingly ineffective and inappropriate. Additionally, focusing exclusively on economic productivity without considering ecosystem and social impacts has all-too-often proven to be counter-productive. In the light of this, environmental organizations have shifted their focus concerning the conservation. This new attitude has been molded by increasingly severe environmental problems and socio-economic inequities, especially between developing countries and industrialized countries.

A growing body of field research indicates that the conservation and sustainable utilization of biodiversity, including forests both within and outside protected areas, cannot be effectively promoted unless the concerns, aspirations, and rights of local, natural resource-dependent populations are addressed. This observation has been confirmed by studies recommending diversification of local economies, improving access of communities to markets, investing in profitable and sustainable uses of natural resources and ensuring local access to economic and political decision-making processes.

There is now increased attention to the human component of conservation of biological resources. This new focus becomes evident when the Convention on International Trade in Endangered Species of Fauna and Flora (CITES) of 1973 is compared with the 1992 Convention on Biological Diversity, and the

1995 Straddling and Highly Migratory Fish Stocks Agreement (Straddling Fish Stocks Agreement").

The CITES contains no provisions concerning the rights and interests of local resource-dependent communities, despite the fact that a significant amount of the harvesting of species covered under the convention is traditionally conducted by local communities both for personal consumption as well as domestic and foreign markets. The CBD, by contrast, expressly mentions the important relationship between indigenous and other local communities, and sustainable utilization of biodiversity; it also suggests (but does not require) that these communities should share equitably in benefits derived from these resources. Likewise, although its subject matter is fish species that inhabit areas far from coastal waters and which are exploited primarily by industrial harvesting enterprises, the Straddling Fish Stocks Agreement contains provisions for the state Parties to: "take into account the interests of artisanal and subsistence fisheries..." as part of the duty to cooperate under the agreement to conserve and manage fish populations.

At the regional level, the recently drafted Lusaka Agreement on Co-operative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora, in Eastern and Southern Africa refers to participation of local communities as means for implementing its objectives:

" ...Each Party shall encourage public awareness campaigns aimed at enlisting public support for the objective of this Agreement, and said campaigns shall be so designed as to encourage public reporting of illegal trade."

Thus, international conservation regimes now recognize the need to address the rights and interests of local communities, which includes human development objectives in general, for facilitating conservation. This perspective is further supported in the Convention on Biological Diversity, which highlights the key roles played by women, and indigenous and other local communities in the conservation of biodiversity. The CBD's preamble makes clear that the convention "....[r]ecogniz[es]...that economic and social development and poverty eradication are the first and overriding priorities of developing countries." Conservation of resources of biological diversity is therefore now viewed holistically through the consideration of human needs as a vital part of conservation.

The other major source of material in the development of international environmental law is state practice recognizing legal principles articulated in several famous international arbitration and judicial decisions. These include the Trail Smelter arbitration, the Corfu Channel case and the Lake Lanoux arbitration.

The most widely accepted norm of international environmental law is principle 21 of the Stockholm Declaration of 1972. It provides that

"States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources, pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

The two-pronged principle set out in Stockholm Principle 21 (and discussed in the previous section) is probably both the most generally accepted component in international law relating to environmental protection, and widely considered a fully-fledged rule of customary international law.

Stockholm Principle 21 has been the most recognizable international environmental legal standard, although at present other normative standards such as inter-generational equity, public participation in decision-making and the precautionary principle have emerged in wide variety of contexts as recognized international legal norms of varying content. The language of Stockholm Principle 21 reflects a truly multinational input to the development of international law. It combines the perspectives of both the South and the North. This synergism symbolizes a new type of arrangement between developing and industrialized countries for agreeing on ccommon norms and strategies for conserving and utilizing environmental resources.

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International Economic Development Law

The Organization for Economic Cooperation and Development (OECD), the United Nations Conference on Trade and Development (UNCTAD) and the GATT/WTO ("World Trade Organization") have been the primary international organizations impacting on international economic development law. The three organizations reflect the often divergent agendas of developing countries and industrialized countries. The OECD is widely viewed as an exclusive club of major industrialized nations, and the guidelines and other instruments that it has produced reflect this orientation. UNCTAD was established to advocate for the economic agenda of the developing countries and to promote trade matters relevant to their economies, such as multilateral commodity agreements for primary products such as jute, rubber, sugar and tropical timber. Although it contains provisions for assisting in mitigating possible negative effects of liberalized trade on socio- economic conditions in developing countries the WTO structure is geared principally toward addressing complex trade concerns of advanced market economies. The GATT/WTO's principal concession to environmental concerns is a Ministerial Decision on Trade in Services and the Environment. It merely recommends that the WTO Committee on Trade and Environment examine whether there need to be provisions in addition to the existing Article XIV (b) of the GATT referring to measures necessary to protect human, animal or plant life or health, in order to address conflicts between trade and

environmental protection measures. The impact of trade and trade policies on human rights is not expressly addressed either in the GATT or in supplemental ministerial declarations. In the areas of environmental protection and human rights, the GATT/WTO structure does not adequately facilitate a symmetrical relationship with trade considerations.

Despite the fact that UNCTAD's instruments have evidenced concern over international inequities regarding terms of trade and use of resources between North and South, much of economic law produced by the industrialized states has related to regulating the flow of finance among private international banking institutions and has not addressed social equity or environmental impacts. The economic law instruments produced by the OECD have primarily addressed economic issues of importance to developed countries, such as the global movement of capital, the regulation of and standardization of international financial instruments, trade-policies concerning trade and financial services primarily in advanced industrialized markets.

Previous influential paradigms for economic development assumed that economic development entailed foregoing human rights priorities during the period that countries were on the road to achieving "development". A major corollary of this view was that curtailing civil and political rights, as well as equitable economic distribution, enhanced capital accumulation, infrastructural development and economic growth. Several Latin American countries including Brazil and Chile pursued this approach between the 1960s and 1980s. In the case of Brazil, the resulted has been the development of a nation with one of the most asymmetrical income distributions between rich and poor of any country in the world. Attempts at achieving economic development through this approach have also produced negative side-effects threatening the sustainability of long-term economic growth. These include contamination and other degradation of important natural resources such as soil, freshwater and forests as well as serious health consequences for human populations. It should be noted that the notion that civil and political rights are expendable in order to achieve economic growth has not been limited to countries pursuing capitalist development strategies. It was also employed extensively in the socialist bloc as evidenced by the collectivization policies of the Soviet Union in the pre-World War II period and China following 1948.

Emergence of North vs. South Equity Issues

The perspective of developing countries (the so-called "South") regarding international economic development has been reflected in the strategy supported by UNCTAD for the creation of a new international economic order. The position of the majority of the South throughout much of the past three decades concerning resource management and development was articulated in two major groups of documents in the period leading up to the agenda laid out in Our Common Future in 1987. The first of these is the series of United Nations General Assembly resolutions dealing with national sovereignty over

natural resources. These resolutions were aimed at changing politico-economic relationships by articulating new international normative legal standards.

By the early 1960s, many developing countries had just recently attained political independence from former colonial overseers. Important economic assets, however. such as mineral deposits in the new states were often still owned or controlled by interests of the former colonial ruling state or other foreign business entities. Under these circumstances, many intellectuals and leaders in developing countries believed that Third World formal de jure independence was a sham, and that developing countries could realize de facto political independence only if they also had effective sovereignty over all economic assets including natural resources, located within their jurisdictions.

The most well-known of these resolutions is UNGA 1803 of 1962, declaring "...the right of peoples and nations to permanent sovereignty over their natural wealth and resources in the interest of their national development." Its contents are generally considered to be reflective or declarative of existing customary international law. In a sense, this was a triumph for developing countries; they obtained recognition from the industrialized states that the South's position regarding ownership, management and use of natural resources as articulated in UNGA 1803 evidenced the accepted international law on the subject.

Subsequent UN General Assembly resolutions developed further the South's perspective regarding ownership and management of natural resources and expressed developing country objectives for restructuring international politico-economic relations. These included UNGA Resolution 3281: the Charter of Economic Rights and Duties of States; and 3201 (S-VI) (1974): Declaration on the Establishment of a New International Economic Order ("NIEO"). Both reaffirmed UNGA 1803 and, inter alia, proclaimed the right of states to nationalize their natural resources.

Many western writers, by contrast, argue that 3201 is not reflective of customary international law, particularly regarding 3201's standards for compensation for state-acquisition of foreign-owned property. The demands for restructured economic relations between the North and the South contained in UNGA 3201, however, continue to be made in the dialogue between developing and industrialized countries.

Various parts of the agenda promoted in UNGA 3201 have influenced the articulation of rights and duties of states under international legal instruments. These are observable in sections of recent environmental protection agreements, in the provisions relating to "common but differentiated responsibilities", and "equitable sharing" between states of the benefits for the use of environmental knowledge and other resources. Some developing countries used the agenda articulated in these resolutions to justify nationalization and expropriation of foreign-owned natural resource

concessions and other assets. These measures were the subject of a string of well-known arbitration decisions, several of which discussed at length both the legal validity of the nationalizations and the normative status of the General Assembly resolutions.

In addition to the General Assembly resolutions, key of note within the UN system that concerned North-South economic relations, and emphasize considerations of equity and the need to address global environmental problems arising out of the development process for both developing and industrialized countries. The other major group of materials are three important texts reflect this movement: the Founex Report in 1971, the Stockholm Declaration in 1972, and the Cocoyoc Declaration in 1974. Each of these texts sought to address in varying degrees greater equity in relations between North and South over utilization of natural resources and in drawing further attention to the serious socio-economic problems in developing countries that were contributing to environmental degradation. They provide the intellectual foundation for the Rio Declaration of 1992. **"Development" As Articulated In International Instruments**

The term "development" is widely used, but rarely specifically defined, in international agreements or other instruments. Two representative definitions for the term are provided by the World Conservation Strategy ("WCS") and the United Nations Declaration on the Right to Development. The definition provided by the WCS is directed at the relationship between conservation and development. According to the WCS, development is:

"... modification of the biosphere and the application of human financial, living and non-living resources to satisfy human needs and improve the quality of human life."

The United Nations Declaration on the Right to Development characterizes development as:

"...a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom."

Although both characterizations stress the improvement of human welfare, the WCS includes environmental resources in this process. The UN Declaration on the Right to Development does not refer at all to the environment despite its pronouncement six years after the publication of the WCS. The Declaration on the Right to Development was supported overwhelmingly by developing countries, and articulates their concerns with improving immediate socio-economic conditions in the Third World. The omission of any reference to the environment reflects both the low level of attention accorded to environmental issues until recently as well as

developing country fears that preoccupation by industrialized countries with environmental issues would jeopardize the South's development needs.

International Law on Sustainable Development

Despite many often conflicting concerns and goals, the Earth Summit (UNCED) in 1992 witnessed a remarkable forging of environmental protection, human rights, and economic concerns and strategies. This convergence is most accurately reflected in what has been called "international law of sustainable development." The UNCED documents suggest that sustainable development is already a part of the general body of international law and that a distinct area of law already exists covering its subject matter. Principle 27 of the Rio Declaration, proclaims that

"States and people shall cooperate in good faith and in a spirit of partnership in the fulfilment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development." [emphasis supplied]

Likewise, Agenda 21's Chapter 39, entitled "International Legal Instruments and Mechanisms" refers to "...[t]he further development of international law on sustainable development ..." as one of the "vital aspects of the universal, multilateral and bilateral treaty-making process..." [emphasis supplied]

Whether there actually exists a field of law known as the international law of sustainable development has been the subject at several meetings of international legal experts. The highlighted portions of the above texts suggest that there is an already existing corpus of international law, namely the "international law in the field of sustainable development." Assuming that there is an emerging corpus of legal components which comprise the law for achieving sustainable development, opinions are divided on its contents. Is "sustainable development" a body of law in its own right, or a subsidiary component to the established fields of environmental, human rights and development law? This question remains unanswered at the moment. However, it is suggested that the rights and principles discussed in Section(s) III and IV of this paper offer a useful normative framework for law in the field of sustainable development where human rights, environmental protection and economic development objectives clash and converge.

The meaning of "sustainable development" is discussed as follows. Chapter 2 of Our Common Future (the report of the Brundtland Commission) begins:

"Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

Although these words are often quoted in isolation, as if to imply that the Brundtland Commission had nothing more to say on the matter, the text is qualified by the following language:

"It [`sustainable development'] contains within it two key concepts:

* the concept of "needs", in particular the essential needs of the world's poor, to which overriding priority should be given; and

* the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs."

Two points, which constitute basic elements of sustainable development, stand out from the above language. The first is recognition that there are environmental limitations on how human needs can be met. In other words, development strategies need to complement and enhance the natural resource base; and development policies must be fully integrated with the maintenance of environmental quality. This is reflected in Principle 4 of the Rio Declaration and Chapter 8 of Agenda 21. It is made abundantly clear by the World Commission on Environment and Development in Chapter 2 of Our Common Future:

"...Sustainable development requires the promotion of values that encourage consumption standards that are within the bounds of the ecological possible and to which all can reasonably aspire ... At a minimum, sustainable development must not endanger the natural systems that support life on Earth: the atmosphere, the waters, the soils, and the living beings ..."

Second, is the emphasis on the ability of present and future generations to meet their own needs. This is a paraphrase of the related concepts of "inter-generational" (fairness between members of succeeding generations) and "intra-generational" equity (fairness among persons currently living). Each person and accordingly each society has a legal obligation to use the natural resources of the world in a manner which does not foreclose options for either future generations or for other persons currently alive to enjoy the benefits, both quantitatively and qualitatively, of the same existing natural resource base.

The idea is summarized in the work of the Legal Experts Group of the WCED ("Legal Experts Group") concerning conservation of natural resources:

"It obliges States to manage the environment and natural resources for the benefit of present generations in such a way that they are held in trust for future generations ... This implies, in the first place, a basic obligation for States to conserve options for future generations by maintaining, to the maximum extent possible, the diversity of the natural resource base ."

The international community agrees that states must pursue development which is environmentally, socially and economically sustainable. Perspectives differ, however, on how to best address current needs within this paradigm without also prejudicing future needs. Although ideally sustainability entails providing equal attention to environmental, social and economic needs, viewpoints diverge on the methodology for balancing the three phenomenon.

The difficult question is finding appropriate criteria to balance human rights, environmental, and economic considerations in an inter-temporal context. International instruments to date often do not provide clear and coherent guidance. As noted elsewhere in this paper, arguments are still heard that intergenerational equity and sustainability relate only to a state's own future citizens. The challenge of sustainability, however, is not restricted to activities within a state's own jurisdiction. It is manifest in the international arena with potentially serious transboundary consequences impacting on national sovereignty. For example, the U.S. Government's recent decision to permit oil exploration on the border between Canada and Alaska could have major negative effects on Canada's Arctic wildlife and dependent Guich'in aboriginal communities.

The inter-relatedness of the problems presented by the challenge of sustainable development mandates that decision-makers take more holistic approaches than in the past to solving human rights, environmental, and economic development problems. International law needs to be approached creatively and cross-sectorally. Contemporary international instruments concerned with human rights, economic development or environmental protection, such as the Convention on Biological Diversity, the Desertification Convention, and Vienna Declaration, reflect this emerging tripartite approach. Their texts seek to incorporate these three areas of concern within their scope. It is unlikely, however, that existing legal instruments sufficiently adequately address the serious challenges posed.

CONCLUSION

The Earth Council's environmental ombudsman function (ECO) is expected to address controversies having a transnational dimension, which involve human rights, environmental protection and economic development, and for which there are no other adequate means of redress or remedy. Until the proposed Earth Charter is promulgated, the ECO will need to refer to relevant normative standards to perform its mission. This paper provides an overview of existing and emerging legal norms which are relevant to the ECO's investigative and adjudicative/mediative functions. The paper has identified, on a preliminary basis, international rights, principles and other norms which are developing human rights, environmental protection and development objectives. In addition to offering an overview of key components of the emerging international law of sustainable development, this paper also is written to provide the ECO with a normative reference tool for subsequent research and analysis.

Human rights, environmental protection, and economic development are now increasingly viewed as complementary rather than as unrelated or opposing phenomena. Previous approaches in each of these three disciplines tended to view each category as separate, and at times even anti-thetical, to realization of the objectives of the others. For example, until very recently, human rights instruments in general accorded minimal attention to the environmental aspects of their subject matter. The current evolving consensus is that achievement of the objectives in each area is linked to achievements in the other areas. This realization results from a growing awareness of the inadequacies of previous efforts to deal with them separately. Recent scholarship is providing new insights into their systemic inter-relationships.

There is not only greater realization of the multi-dimensional nature of many conflicts, but also current realities demonstrate that global human demographic and consumption patterns place unprecedented demands on utilization of remaining ecosystems and their components. Often areas that are slated for industrial, agricultural or resource extraction are also especially important for conservation of biological diversity and are inhabited by indigenous and other long-term occupant communities. In these and other situations, development initiatives can have catastrophic impacts on the quality of environmental resources and on the lives of persons and communities. Those who are negatively affected are often from politically or economically marginalized populations. The ECO will be charged with investigating and mediating the land and resource access, occupational health and individual and group rights conflicts arising out of these types of circumstances.

The paper has identified important existing and emerging international legal rights and principles for invocation by the ECO, including permanent sovereignty over natural resources, the right to development, the right to environment, and the right to participation. Each of these rights and principles contains a rich array of components. In particular the right to development is elaborated by correlative rights: to an adequate standard of living, to cultural integrity, to education and access to adequate information. Each of these inform and support the right to development, and additionally each is arguably an international human right on its own account.

Within this framework, the paper has described the emergence of a "tri-partite" and holistic approach in international law as demonstrated by new and evolving international human rights such as the right to development and the right to environment. This multi-dimensional approach integrates human development, economic development and environmental stewardship components under the umbrella of the nascent body of international law in the field of sustainable development.

The paper has adopted a policy science approach toward understanding law and its function as a process of decision-making in conformity with the expectations of appropriateness by those who are politically relevant. In

viewing law as an ever changing normative system reflecting values in a social process for making decisions, policy science is an appropriate methodology for identifying and appraising existing and emerging normative standards and laws, and for evaluating trends in international law. These include the appearance of guidelines, recommendations and other "non-enforceable" texts, so-called soft-law, which play a significant role in the development of contemporary international law. In this context, the paper has also sought to identify broad constituencies of actors, both state and non-state, which shape international law and global society

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