

# INTERNATIONAL LAW ASSOCIATION

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### INTERNATIONAL LAW ON SUSTAINABLE DEVELOPMENT

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#### First Report

##### Introduction

This is the first report of the International Committee on International Law on Sustainable Development. The purpose of this initial report is to set out the mandate of this recently established committee, to provide a historical context to that mandate and to act as a springboard from which the committee will develop its own specific work programme.

The committee was formed in May 2003, with Professor Nico Schrijver as chair and Drs. Ximena Fuentes and Duncan French as co-rapporteurs.

The Executive Committee appointed the majority of initial committee members in November 2003. Further members were appointed in May 2004.

The Committee on International Law on Sustainable Development is clearly heavily dependent upon and owes a great debt of gratitude to the work of the Committee on Legal Aspects of Sustainable Development, chaired by Dr Kamal Hossain with Nico Schrijver as rapporteur, which completed its work in 2002.

In particular, the adoption by the International Law Association at its seventieth conference (New Delhi, 2002) of the ILA New Delhi Declaration on Principles of International Law relating to Sustainable Development<sup>1</sup> was not only recognition of the significant contribution that that committee had made to this area of the law, but it will continue to provide this committee with both the impetus and focus for its own work.

Moreover, it is quite apparent that the possibilities and challenges of utilising international law to promote sustainable development are far from settled, both intellectually and pragmatically. As the preamble to the ILA New Delhi Declaration notes, 'the application and, where relevant, consolidation and *further development* of the following principles of international law relevant to the activities of all actors involved would be instrumental in pursuing the objective of sustainable development in an effective way'.<sup>2</sup>

One might also add that the contribution of international law to the objective of sustainable development is not limited to the elaboration of general principles, but involves the development of an

<sup>1</sup> ILA resolution 3/2002, annex as published as UN Doc. A/57/329.

<sup>2</sup> Emphasis added. See also *Report of the Seventieth Conference, New Delhi (2002)* 861-862: citing Nico Schrijver: 'The body of the Declaration contained in the Report did not claim to be exhaustive'.

entire legal framework,<sup>3</sup> including institutional arrangements, international standards, decision-making procedures, procedural techniques, international regulatory techniques, financial mechanisms and resources, and compliance and enforcement as well as general principles.<sup>4</sup>

In short, whilst the new committee builds upon the work of the previous committee (as well as earlier work done within the ILA, specifically in the area of the new international economic order<sup>5</sup>), it has been given a specific mandate, and from which an individualised work programme will emerge.

This report is divided into five parts. Part A sets out the agreed mandate of this committee. For completeness, Part B provides a short outline of the history of international law on sustainable development, together with a summary of the 2002 ILA New Delhi Declaration. Part C outlines the continuing challenges and tensions inherent within the evolution of the international law of sustainable development. Part D presents a review of recent developments, with particular reference to the 2002 World Summit on Sustainable Development, held in Johannesburg and the 2003 Cancún Ministerial meeting of the World Trade Organization. Part E returns to the mandate of the committee and considers further its scope and indicates the core elements of the work programme of the committee.

### **Part A: Mandate**

The mandate of the committee reads as follows:

“The objective of the Committee is to study the legal status and legal implementation of sustainable development. For this purpose the Committee’s mandate includes:

- (i) assessment of the legal status of principles and rules of international law in the field of sustainable development, with particular reference to the ILA New Delhi Principles (now also published as UN Doc. A/57/329), as well as assessment of the practice of States and international organizations in this field;
- (ii) the study of developing States in a changing global order, particularly the impact of globalization on the sustainable development opportunities of developing countries;
- (iii) in the light of the principle of integration and interrelationship, a re-examination of certain topics of the international law of development, including analysis of
  - a. the position of the least developed countries in international law,
  - b. the right to development, and
  - c. the obligation to co-operate on matters of social, economic and environmental concern.”

A more detailed analysis of this multi-faceted mandate will occur at Part E. For the moment, however, it may be worth noting three key features. First, there is recognition of the need to ascertain the legal status of core principles and rules of the international law of sustainable development as well as their implementation in the practice of States and international organisations. Second, there is clear recognition of the ‘changing global order’. The express reference to globalization is an unambiguous signal of important shifts in the debate over sustainable development.<sup>6</sup> Third, in the words of the

<sup>3</sup> This list is taken from *Report of a Consultation On Sustainable Development: The Challenge to International Law* (London, FIELD, 1993).

<sup>4</sup> A good example of the development of innovative sustainable development programmes within a wider policy framework can be seen in the work of UNCTAD; see the São Paulo Consensus adopted at UNCTAD XI (2004): ‘UNCTAD should continue to provide support to developing countries on issues at the interface between trade and environment, such as market access, agriculture, traditional knowledge, transfer of environmentally sound technology, environmental goods and services, environmentally preferable products, and issues concerning eco-labelling and certification costs, and follow up on trade-related issues contained in the Johannesburg Plan of Implementation. It should strengthen work on the BIOTRADE Initiative and the UNEP-UNCTAD Capacity Building Task Force on Trade, Environment and Development (CBTF)’ (paragraph 103).

<sup>5</sup> In particular, it should be noted that the ILA New Delhi Declaration explicitly reaffirms the ILA Declaration on Progressive Development of Principles of Public International Law relating to a New International Economic Order adopted by the ILA at its sixty-second conference held in Seoul in 1986.

<sup>6</sup> Within the context of globalization, there is a need, in particular, to investigate the ways that international economic law can better support sustainable development. The preamble to the 1994 Marrakesh Agreement Establishing the World Trade Organisation (33 ILM (1994) 15) recognises sustainable development as an objective of the world trading system, and WTO members have agreed to seek a mutually supportive relationship between international trade, environmental and development policies. Recent decisions from the Appellate Body of the WTO have attempted to show more sensitivity to the environmental and social (especially health) objectives of

mandate, there is to be a ‘re-examination’ of certain fundamental tenets of the international law of development in the light of the continued evolution of the concept of sustainable development. This is, arguably, long overdue.

Moreover, as will be noted further below, it has long been recognised that sustainable development is not simply about global environmental protection, though that continues to be a central feature of the wider agenda. Securing the necessary balance between the various topics of sustainable development remains – as it has always done – a fundamental focus of both the work of the ILA in this area and the wider intergovernmental debate. The mandate of this new committee seeks to reinforce this broader approach to sustainable development and, despite the obvious difficulties with such a wide remit, it is important that the ILA continues to reflect the comprehensive nature of sustainable development.

### **Part B: Sustainable Development and International Law**

This is not intended to be a detailed analysis of the history and status of sustainable development and its interaction with international law. If required, such detail can be obtained from, *inter alia*, the five reports of the ILA Committee on Legal Aspects of Sustainable Development.<sup>7</sup>

Rather, the purpose of this part is to provide simply a certain amount of historical context to both this committee’s mandate and its first report. In particular, there is a brief review of the ILA New Delhi Declaration and, especially, its seven principles.

The notion of sustainable development has been variously defined but, in many ways, the original version remains also the most compelling; ‘[s]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>8</sup>

A more recent and much more expansive definition can be found in the preamble to the ILA New Delhi Declaration: ‘the objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations’.

Thus, sustainable development is no ‘backwater’ of a topic; it raises some of the most fundamental issues currently facing the international community. As the ILA New Delhi Declaration again notes, at another point, ‘sustainable development is a matter of common concern both to developing and industrialised countries’. In more emotive language, the 2002 Johannesburg Declaration on Sustainable Development states ‘[w]e risk the entrenchment of [...] global disparities and unless we act in a manner that fundamentally changes their lives the poor of the world may lose confidence in their representatives and the democratic systems to which we remain committed, seeing their representatives as nothing more than sounding brass or tinkling cymbals’.<sup>9</sup>

The role of the international *legal* system in promoting sustainable development has been a central, if ambiguous, element of this political process since the notion of sustainable development was first introduced. The World Commission on Environment and Development noted, early on, that ‘[h]uman laws must be reformulated to keep human activities in harmony with the unchanging and universal laws of nature’.<sup>10</sup> In particular, the aim should be ‘to strengthen and extend the application of existing laws and international agreements in support of sustainable development’.<sup>11</sup> Alongside legal change,

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challenged trade measures. However, the problem of ‘reconciliation’ between international treaties in these different areas is far from being solved at the global level.

<sup>7</sup> Reports adopted between 1994-2002 inclusive.

<sup>8</sup> World Commission on Environment and Development (WCED), *Our Common Future* (Oxford, Oxford University Press, 1987) 43.

<sup>9</sup> Paragraph 15 (UN Doc. A/CONF.199/20 (2002)). The somewhat disappointing results of the Johannesburg Summit from the point of view of the progressive development of international law is discussed below.

<sup>10</sup> WCED, above, 330.

<sup>11</sup> *Idem*.

institutional reform was recognised as equally pivotal to improving the conditions for sustainable development.<sup>12</sup>

The role of international law in achieving sustainable development has been a theme throughout the intergovernmental discussions on sustainable development.<sup>13</sup> However, the precise modalities have never truly been agreed and progress remains both patchy and slow.<sup>14</sup> The work of the ILA and other non-governmental endeavours<sup>15</sup> in this regard has thus been significant in establishing the necessary legal framework.

In the absence of more specific internationally-agreed *legal* principles,<sup>16</sup> the ILA New Delhi Declaration is an important text. Though no substitute for a coherent approach at the intergovernmental approach, there is nevertheless a ‘need for a comprehensive international law perspective on integration of social, economic, financial and environmental objectives and activities’.<sup>17</sup>

Moreover, the ILA New Delhi Declaration does not seek to understand international law in this area in a political and ethical vacuum; it unashamedly sees international law playing a more proactive role within the political system; ‘**CONCERNED** about growing economic and social inequalities between and within States as well as about the ability of many developing countries, particularly least developed countries, to participate in the global economy’.

The ILA New Delhi Declaration is based on seven core principles:

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

Each principle is divided into various sub-points; the legal nature and status of which varies from the universally-accepted through *de lege ferenda* to those provisions that are ultimately aspirational.

Of particular significance is principle 7 – the principle of integration and inter-relationship. Just as principle 4 of the 1992 Rio Declaration<sup>18</sup> is arguably the most operationally-significant of the principles contained therein, paragraph 7.1 of the ILA New Delhi Declaration is equally fundamental.<sup>19</sup> It reads: ‘[t]he principle of integration reflects the interdependence of social, economic, financial, environmental

<sup>12</sup> Cf. WCED, above, 309: ‘the policy changes we have suggested have institutional implications, and it is to these we now turn – emphasizing that they are a complement to, not a substitute for, the wider policy changes for which we call’.

<sup>13</sup> Hereinafter referred to as the ‘Rio process’.

<sup>14</sup> See, in particular, chapter 39 Agenda 21 and principle 27 1992 Rio Declaration. Reference in the 1997 Programme for the Further Implementation of Agenda 21 (UN RES/S-19/2 (1997) was limited; ‘it is necessary to continue the progressive development and, as and when appropriate, codification of international law related to sustainable development’ (paragraph 109). Cf. paragraph 148(e) 2002 Johannesburg Plan of Implementation: ‘The Commission [on Sustainable Development] should...[t]ake into account significant legal developments in the field of sustainable development, with due regard to the role of relevant intergovernmental bodies in promoting the implementation of Agenda 21 relating to international legal instruments and mechanisms’.

<sup>15</sup> Specific mention may be made here of the *Draft International Covenant on Environment and Development* (Gland, Switzerland, World Conservation Union, 3rd ed. 2004).

<sup>16</sup> It is suggested that the text of the Rio Declaration has always been inchoate and has increasingly become in need of further elucidation at the intergovernmental level.

<sup>17</sup> Preamble, ILA New Delhi Declaration.

<sup>18</sup> Principle 4: ‘In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it’.

<sup>19</sup> This should not be understood as suggesting that, *substantively*, the principle of integration is presently sufficiently precise. It clearly remains somewhat vague in its practical implications. Thus, of major importance in the future will be the development and/or elaboration of further legal standards to operationalise the principle.

and human rights aspects of principles and rules of international law relating to sustainable development as well as of the needs of current and future generations of humankind’.

As Professor McGoldrick has noted, ‘[t]he critical importance of sustainable development is that it is an integrationist principle...The relative weighting of economic, environmental and human rights norms has become increasingly complex’.<sup>20</sup> The importance of this principle to sustainable development has also been supported by a number of decisions of international tribunals.<sup>21</sup> This interdependency of topics is also arguably a defining characteristic of ‘Third World’ approaches to the role of international law; it is based upon ‘an emphasis on interconnectedness of subject areas, illustrated by an unwillingness to draw rigid boundary distinctions between various areas of law’.<sup>22</sup>

It is this principle of integration that arguably holds together what might otherwise be both an overloaded political objective and, more importantly for our purposes, an unmanageable project. As outlined more specifically in Part E, it is intended that the principle of integration becomes a key focus of this committee’s work programme. By using the principle of integration as a central point of reference, it is hoped that an internal coherency can be retained that might otherwise be lost in studying such broad issues and formidable challenges.

Two other points might be drawn from the ILA New Delhi Declaration. First, there is a conscious attempt to bring together sustainable development with the rhetoric and substance of human rights. As its preamble notes, ‘the realization of the international bill of human rights, comprising economic, social and cultural rights, civil and political rights and peoples’ rights, is central to the pursuance of sustainable development’.

The relationship between sustainable development and human rights has found support within the UN Commission on Human Rights which, in 2003, ‘[r]eaffirm[ed] that peace, security, stability and respect for human rights and fundamental freedoms, including the right to development, as well as respect for cultural diversity are essential for achieving sustainable development and ensuring that sustainable development benefits all, as set forth in the Plan of Implementation of the World Summit on Sustainable Development’.<sup>23</sup> More is said on the relationship between sustainable development and human rights below.

Second, in a move that reflects a paradigmatic shift in international relations more generally, the ILA New Delhi Declaration ‘**AFFIRM[S]** that consideration should be given to the interaction of States, intergovernmental organizations, peoples and individuals, industrial concerns and other non-governmental organizations as participants in multilateral development co-operation’.

This is supported, later on, in a number of specific principles, including the duty of States to ensure sustainable use of natural resources (principle 1),<sup>24</sup> the principle of common but differentiated

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<sup>20</sup> D. McGoldrick, ‘Sustainable Development and Human Rights: An Integrated Approach’ 45 *International and Comparative Law Quarterly* (1996) 818. See also M. Fitzmaurice, 293 *Recueil des Cours* (2001) 47: ‘Very broadly, sustainable development can be defined as a concept which attempts to integrate environmental considerations into economic and other development and which takes into account other than environmental needs while formulating the principles of environmental protection’.

<sup>21</sup> See *Case Concerning Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* ICJ Report (1997) 7, 140: ‘This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development’ and *United States – Import Prohibition of Certain Shrimp and Shrimp Products (Shrimp-Turtle case)* WT/DS58/AB/R, 12 October 1998 paragraph 153: ‘We note once more that this language demonstrates a recognition by WTO negotiators that optimal use of the world’s resources should be made in accordance with the objective of sustainable development. As this preambular language reflects the intentions of negotiators of the *WTO Agreement*, we believe it must add colour, texture and shading to our interpretation of the agreements annexed to the *WTO Agreement*, in this case, the GATT 1994’.

<sup>22</sup> K. Mickelson, ‘Rhetoric and Rage: Third World Voices in International Legal Discourse’ 16 *Wisconsin International Law Journal* (1998) 397.

<sup>23</sup> UN Commission on Human Rights (Resolution 2003/71) (‘Human rights and the environment as part of sustainable development’) paragraph 1.

<sup>24</sup> Paragraph 1.2: ‘All relevant actors (including States, industrial concerns and other components of civil society) are under a duty to avoid wasteful use of natural resources and promote waste minimization policies’.

responsibilities (principle 3),<sup>25</sup> the principle of the precautionary approach (principle 4), the principle of public participation and access to information and justice (principle 5), the principle of good governance (principle 6)<sup>26</sup> and the principle of integration and interrelationship (principle 7). In particular, paragraph 7.2 states that '[a]ll levels of governance – global, regional, national, sub-national and local – and all sectors of society should implement the integration principle...'. This is not to take anything away from the primacy of the State – it continuing to be both the foremost actor in international affairs as well as the best means through which the global and the local can be synthesised – but is recognition of the responsibilities of a broader range of participants in securing sustainable development.

In terms of its historical context, this committee has begun its work at a pivotal time in the evolution of the concept of sustainable development. A point has been reached where the discussion is no longer simply about what sustainable development – as a concept – means, but rather how sustainable development is to be implemented in practice. What are the political and legal ramifications, both at the domestic and international level, of sustainable development? The aim of this committee must therefore be, as recognised in its mandate, to examine the role of international law and international institutions in this process of implementation and change. However, one cannot discard the past entirely; taking the debate forward in terms of the practical implementation of sustainable development is only possible by also acknowledging the underlying challenges and tensions that persist within the concept itself. This, in turn, requires a renewed interest in the ethical dimensions of sustainable development. In fact, this appeal to ethics is not as impractical as many might think. In cases of conflict and tension between the various values that sustainable development has traditionally encompassed, a greater appreciation of the ethical perspective will hopefully provide a much clearer perspective as to how the integration process should operate and, more specifically, how potentially contrasting and competing values should be considered.

### **Part C: Challenges and Tensions in the Evolution of the International Law of Sustainable Development**

As will be confirmed by more recent developments, summarised in Part D, there remains a chasm between the ideological rhetoric and the reality of sustainable development. Whether considered in the light of current North-South relations, the state of the global/local environment or the attainment of the UN's Millennium Development Goals (MDGs) and, whether such things are quantifiable or not, the global situation is showing few signs of improvement and in many cases seems to be continuing in a generally negative direction. It is therefore important to maintain a sense of healthy scepticism in relation to what sustainable development has so far achieved.

There remains considerable uncertainty as to what is, and how to achieve, the balance between the necessary elements of sustainable development. Environmental protection, social improvement, economic development, gender empowerment and promotion of respect for human rights, are amongst a range of other factors that clearly have a role to play, though the precise relationship between them remains obscure.<sup>27</sup> It has led some to suggest that law's principal function is not substantive, but is, in fact, procedural; '[a] more plausible argument is that although international law may not require development to be sustainable, it does require development decisions to be the outcome of a process which promotes sustainable development'.<sup>28</sup> Whether one agrees with this understanding of

<sup>25</sup> Paragraph 3.1: 'International organizations, corporations (including in particular transnational corporations), non-governmental organizations and civil society should co-operate in and contribute to this global partnership. Industrial concerns have also responsibilities pursuant to the polluter pays principle'.

<sup>26</sup> Paragraph 6.2: 'Civil society and non-governmental organizations have a right to good governance by States and international organizations. Non-state actors should be subject to internal democratic governance and to effective accountability'.

<sup>27</sup> For instance, as the secretariat to the Convention on Biological Diversity noted, '[a]chieving the Millennium Development Goals as such is not necessarily a threat to biodiversity, but the implementation of specific development activities may well be' (The Programme of Work of the Convention and the Millennium Development Goals – Note by the Secretariat (UNEP/CBD/COP/7/20/Add.1, 30 November 2003) paragraph 37). See also Decision VII/32 (2004) (UNEP/CBD/COP/7/21, 13 April 2004).

<sup>28</sup> A. Boyle and D. Freestone (eds.), *International Law and Sustainable Development* (Oxford, Oxford University Press, 1999) 17. Cf. It has also been suggested that a discrete 'sustainable development law' is emerging, which consists of a 'group of congruent norms, a corpus of international legal principles and treaties which address the areas of intersection between international economic law, international environmental law and international human rights law' (M-C. Cordonier Segger and A. Khalfan, *Sustainable Development Law: Principles, Practices and Prospects* (Oxford, Oxford University Press, forthcoming)).

sustainable development or not,<sup>29</sup> it still fails to answer with sufficient certainty what weight to give to the various factors.

There are some who argue that sustainable development must therefore encompass whatever local communities actually want to achieve; that sustainable development should be a bottom-up process reflecting the needs and interests of those most directly affected. This has become an increasingly powerful aspect of the sustainable development debate. The risk, however, is that '[d]oes sustainability now mean...whatever emerges from appropriately participative and multi-stakeholder socio-political processes, whether or not these are ecologically sustainable?'<sup>30</sup> The danger is that whilst answering 'yes' to this question undermines the collective and global nature of the sustainable development endeavour, answering 'no' sounds imperialistic and technocentric.

A further challenge is the role of human rights law within the sustainable development process. These are two topics that are clearly complementary – both reflect a wider and more inclusive understanding of the international community. However, beyond the level of political language – reference may be made here to the 2003 resolution of the Commission on Human Rights, quoted above – there may be less commonality between them than is first imagined. For instance, emphasis upon a human right to a healthy environment risks the marginalisation of developmental considerations, if not appropriately implemented.<sup>31</sup> Questions also remain as to whether sustainable development should be seen as a right of peoples, akin to self-determination, rather than at the level of the individual?; this obviously mirroring earlier discussions concerning the right to development. Moreover, the recent decision by the European Court of Human Rights in *Hatton & Others v. UK*<sup>32</sup> has reopened the debate over human rights and environmental protection, more generally. Though it is one thing to say that human rights and sustainable development are mutually supportive,<sup>33</sup> as lawyers, it is surely incumbent upon us to go beyond such rhetoric and to try to discern what this actually means.<sup>34</sup>

A final challenge is to continue to be creative in both our thinking and our proposals as to how international law can facilitate sustainable development. International law is an incredibly rich framework for setting out both general norms and specific regulations through which the international community can operate. On the other hand, the political structure that international law supports is also capable of systematising great social, economic and environmental inequalities. To what extent is the international legal and political structure institutionalised against the achievement of sustainable development? The ILA New Delhi Declaration is an extremely worthy text, but its utility is ultimately hampered if the international system is pushing in another direction entirely. This is not to suggest that there is not a need for such texts (in fact, quite the opposite); rather, it is intended to act as a reminder

<sup>29</sup> Note the suggestion in Part E as to the necessity of further investigation into the principle of integration.

<sup>30</sup> M. Jacobs, 'Sustainable Development as a Contested Concept' in A. Dobson (ed.), *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford, Oxford University Press, 1999) 35.

<sup>31</sup> X. Fuentes, 'International Law-Making in the Field of Sustainable Development: The Unequal Competition between Development and the Environment' 2 *International Environmental Agreements: Politics, Law and Economics* (2002) 126: 'The establishment of a human right to a healthy environment is controversial in many respects...through the establishment of a human right to a healthy environment, environmental considerations may be given priority over mere economic and social interests. In this context, the very idea of environmental rights can defeat the central nucleus of sustainable development: the achievement of integration between development and the environment'.

<sup>32</sup> (2003) 37 EHRR 28 (Application 36022/97) paragraph 122: 'Environmental protection should be taken into consideration by Governments in acting within their margin of appreciation and by the Court in its review of that margin, but it would not be appropriate for the Court to adopt a special approach in this respect by reference to a special status of environmental human rights'.

<sup>33</sup> See generally, S. Giorgetta, 'The Right to a Healthy Environment, Human Rights and Sustainable Development' 2 *International Environmental Agreements: Politics, Law and Economics* (2002) 173-194. See also United Nations Development Programme, *Integrating Human Rights with Sustainable Human Development* (New York, UNDP, 1998). More recently, the report of the 2004 World Commission on the Social Dimension of Globalization noted that '[w]e reaffirm the value of values, and the importance of human rights in guiding the governance of globalization, and in defining the responsibilities of its actors' (<http://www.ilo.org>).

<sup>34</sup> One recent, if controversial, example of where human rights and developmental issues intersect was the International Court of Justice's Advisory Opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004). In particular, the Court noted that '[t]o sum up, the Court is of the opinion that the construction of the wall and its associated régime...impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child' (paragraph 134).

that there is a larger picture in which such texts must operate, a context that should never be lost sight of. The significance – actual and potential – of the international law-making process, in this regard, should thus be emphasised.

These, and other, challenges will continue to dominate the sustainable development discussion. As far as possible, this committee must acknowledge these issues and seek to develop a work programme that begins to tackle them.

#### **Part D: Recent Developments**

The period between the ILA's seventieth conference in 2002 and its seventy-first conference in 2004 was heralded, in advance, as a momentous time for the international community's commitment to sustainable development. Of singular importance was the convening of the World Summit on Sustainable Development in late August / early September 2002 in Johannesburg. As the Johannesburg Declaration, adopted at the World Summit notes:

'Thirty years ago, in Stockholm, we agreed on the urgent need to respond to the problem of environmental deterioration. Ten years ago, at the United Nations Conference on Environment and Development, held in Rio de Janeiro, we agreed that the protection of the environment and social and economic development are fundamental to sustainable development, based on the Rio Principles. To achieve such development, we adopted the global programme entitled Agenda 21 and the Rio Declaration on Environment and Development, to which we reaffirm our commitment. The Rio Conference was a significant milestone that set a new agenda for sustainable development'.

'Between Rio and Johannesburg, the world's nations have met in several major conferences under the auspices of the United Nations, including the International Conference on Financing for Development, as well as the Doha Ministerial Conference. These conferences defined for the world a comprehensive vision for the future of humanity'.

'At the Johannesburg Summit, we have achieved much in bringing together a rich tapestry of peoples and views in a constructive search for a common path towards a world that respects and implements the vision of sustainable development. The Johannesburg Summit has also confirmed that significant progress has been made towards achieving a global consensus and partnership among all the people of our planet.'<sup>35</sup>

In the event, the World Summit – like most global conferences – failed to fulfil expectations. This is not to say that significant progress in certain areas was not made; rather, it is argued that the World Summit is better seen as simply part of the ongoing Rio process. As many have noted, if the international community made progress in some areas at Johannesburg, its failure to resolve certain perennial tensions as well as find consensus on new areas of difficulty was a continuing reminder as to the underlying politics that characterise the intergovernmental debate in this area.<sup>36</sup> Disagreements over the setting of targets and timetables for the achievement of certain minimum goals bedeviled the conference. Issues such as access to energy, targets for renewable energy and sanitation, new ways of ensuring corporate responsibility, the link between trade, environment and social development, and the necessity of reducing subsidies were all among the main points of debate.<sup>37</sup>

In some ways, the World Summit was little more than a jamboree of almost every environmental and developmental issue one could possibly imagine. For some, sustainable development has lost its initial focus and has merely become an umbrella term for a host of disparate issues.<sup>38</sup> Whilst the texts of the documents agreed at the Rio Conference in 1992 and the review summit in 1997 considered sustainable development primarily in terms of a binary relationship between economic development and

<sup>35</sup> Paragraphs 8–10. Footnotes removed.

<sup>36</sup> K. Gray, 'World Summit on Sustainable Development: Accomplishments and New Directions?' 52 *International and Comparative Law Quarterly* (2003) 267: 'Aware of the difficulties in implementation and the general lack of goodwill...the parties adopted a more realistic approach on what can be accomplished'.

<sup>37</sup> For an extremely useful brief, see Earth Negotiations Bulletin, *Summary of the World Summit on Sustainable Development* Vol. 22 No. 51 (2002).

<sup>38</sup> Jacobs, above, 37: 'Fear is often expressed that once the concept has gone beyond the environment, it will cease to be useful, merely becoming a new term for generalized 'progress', its objectives a mere wish list of desirable social goods'. See also *Report of the Seventieth Conference, New Delhi (2002)* 861: citing Nico Schrijver: 'there was a danger that sustainable development could be a catch-all phrase'.

environmental protection, the Plan of Implementation adopted in Johannesburg in 2002 presents, in many ways, a new conceptualisation of sustainable development. As it states, 'efforts will also promote the integration of the three components of sustainable development – economic development, social development and environmental protection – as interdependent and mutually reinforcing pillars. Poverty eradication, changing unsustainable patterns of production and consumption, and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for, sustainable development'.<sup>39</sup>

Though there is a danger of placing too much emphasis on such rhetoric, two things are immediately apparent. First, the international community has now endorsed a broader conception of sustainable development than previously envisaged, by including social development as one of the fundamental 'pillars'. Whilst there was some recognition of this aspect both in *Our Common Future* and at Rio, it is largely due to the 1995 World Summit for Social Development in Copenhagen that the social implications of sustainable development have been more fully appreciated, and the above wording is largely a reflection of that agreed at Copenhagen. As the international community noted at the World Summit in 1995, the interrelated nature of sustainable development provides the 'framework for our efforts to achieve a higher quality of life for all people'.<sup>40</sup> What, of course, constitutes social development is a matter of some debate.<sup>41</sup>

Two key additions to the sustainable development agenda since 1992, and which arguably fall more clearly within the social than any other pillar, are the issues of human rights and good governance.<sup>42</sup> The inclusion of these issues, and arguably a greater prioritisation of poverty eradication and health,<sup>43</sup> have shifted the focus of the sustainable development agenda. The elaboration of the Millennium Development Goals has further changed the nature of the wider debate. However, this extension of sustainable development remains controversial and not without conceptual and practical difficulties. As Gray again notes, '[n]o longer a defined environmental issue, the concept of sustainable development was enlarged to include broader concerns...However, these linkages are still far from complete'.<sup>44</sup>

Whilst the scope of sustainable development – as noted above – has been broadened, the international community has concurrently sought to identify key prerequisites for a more sustainable international society. As the Johannesburg Plan of Implementation notes, the eradication of poverty, changing unsustainable patterns of production and consumption, and the management and protection of natural resources are 'overarching objectives...and essential requirements'. The choice of these – arguably still very broad – issues does nevertheless represent a more deliberate step in seeking to elaborate priorities for the achievement of sustainable development. In the same way, the identification by the UN Secretary General of 'WEHAB' – water, energy, health, agriculture and biodiversity – as strategic issues at the Johannesburg Conference indicates a similar trend. However, one must be aware that by simply endorsing these as priorities does not guarantee effective action internationally. One need only think about the reluctance of developed States to deal seriously with the issue of unsustainable consumption and production patterns to realise the enormity of tackling these priorities.<sup>45</sup> Moreover,

<sup>39</sup> 2002 Plan of Implementation, paragraph 2.

<sup>40</sup> 1995 Copenhagen Programme of Action, paragraph 6.

<sup>41</sup> For a detailed description of social development, see paragraph 26 1995 Copenhagen Declaration on Social Development which does not define the term but which provides a list of issues that comprise a 'framework for action'. See also the earlier, yet still very pertinent, UN Declaration on Social Progress and Development, GA Res. 2542 (XXIV), 11 December 1969.

<sup>42</sup> 2002 Plan of Implementation, paragraph 4: 'Good governance within each country and at the international level is essential for sustainable development'. See generally, K. Ginther, E. Denters and P. De Waart (eds.), *Sustainable Development and Good Governance* (Dordrecht, Kluwer Academic Publishers, 1995).

<sup>43</sup> *Ibid* at paragraph 53: 'The goals of sustainable development can only be achieved in the absence of a high prevalence of debilitating diseases...There is an urgent need to address the causes of ill health, *including* environmental causes'. Emphasis added.

<sup>44</sup> Gray, above, 267.

<sup>45</sup> Cf. the recently established 'Marrakech process' taken from the location of the first international expert meeting in 2003, the purpose of which is to '[e]ncourage and promote the development of a 10-year framework of programmes in support of regional and national initiatives to accelerate the shift towards sustainable consumption and production to promote social and economic development within the carrying capacity of ecosystems by addressing and, where appropriate, delinking economic growth and environmental degradation through improving efficiency and sustainability in the use of resources and production processes and reducing resource degradation, pollution and waste' (Plan of Implementation, paragraph 15).

by describing them as ‘overarching objectives’, the Plan of Implementation surely affirms the argument that these are the very issues that, in the long-term, are likely to be the most difficult to achieve.

Of particular significance was the discussion on principles of international law pertaining to sustainable development.<sup>46</sup> It has already been noted that the Johannesburg Plan of Implementation failed to renew the call for the further elaboration and codification of international law in this area – this being somewhat surprising as the focus of the summit was supposedly implementation. On this basis alone, the Johannesburg summit was disappointing.<sup>47</sup> Nevertheless, the inevitable legal implications of much of the policy discussions were not lost on delegates.<sup>48</sup>

Two principles particularly contentious at Johannesburg were the principle of common but differentiated responsibilities (principle 7 Rio Declaration) and the precautionary principle/approach (principle 15 Rio Declaration). The arguments over both principles reflected underlying tensions within the sustainable development debate, and their ‘resolution’ at Johannesburg must be taken as an interim and fragile consensus, at best. The issue over both principles was the extent to which they should be extended beyond what had previously been considered the ‘natural’ territory of each. In the case of the principle of common but differentiated responsibilities that concerned, in particular, whether it should be understood beyond global environmental concerns to incorporate also broader developmental considerations?<sup>49</sup> And in the case of the precautionary principle, the debate centred around two axes, first, to what extent should precaution apply to international policy areas beyond the environment such as for example health care, and second, the ever returning issue of the role of scientific research in determining the threshold for precautionary action.<sup>50</sup>

The debate over Principle 7 was particularly vociferous. Whereas developing States were keen to stress the necessity of differentiation in promoting developmental opportunities, developed States were unwilling for the principle to be – in their eyes – abused as an ‘open cheque’. It was one thing to apply the principle in the broad, but still ultimately defined, context of global environmental protection. It was quite another for it to be used as a general principle of international development law. Both sides used the text of principle 7 to justify their approach, which unsurprisingly was unable to provide a definitive answer to the debate. The final approach was, in anyone’s terms, messy; at the various points it was referred to it was often expressed in the following language: ‘To this end, we commit ourselves to undertaking concrete actions and measures at all levels and to enhancing international cooperation, taking into account the Rio principles, including, inter alia, the principle of common but differentiated responsibilities as set out in principle 7 of the Rio Declaration on Environment and Development’.<sup>51</sup>

By including principle 7 within the context of the Rio Declaration, the sense was that this satisfied both the position of developing States that differentiation was a key aspect of achieving sustainable development whilst respecting the developed State approach which did not wish to emphasise principle

<sup>46</sup> See M-C. Cordonier Segger and A. Khalfan, above and M. Pallemmaerts, ‘International Law and Sustainable Development: Any Progress in Johannesburg?’ *12 Review of European Community and International Environmental Law* (2003) 1-11, at 7: ‘[the 2002 Plan of Implementation] will provide little, if any, impetus for the further development of binding international standards in the field of environmental protection’. More generally, see L. Rajamani, ‘From Stockholm to Johannesburg: The Anatomy of Dissonance in the International Environmental Dialogue’ *12 Review of European Community and International Environmental Law* (2003) 23-32.

<sup>47</sup> Cf. 2002 Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Global Judges Symposium held in Johannesburg, 18-20 August 2002.

<sup>48</sup> Statement by the United States made at the World Summit on Sustainable Development (UN Doc. A/CONF.199/20 (2002) 146): ‘The United States highlights the importance of the Plan of Implementation and the Johannesburg Declaration and notes that, like other such declarations and related documents, these documents adopted at this conference contain important political goals and coordinated plans of action, but *do not create legally binding obligations on States under international law*’. Emphasis added.

<sup>49</sup> See generally, Y. Matsui. ‘Some Aspects of the Principle of “Common but Differentiated Responsibilities”’ *2 International Environmental Agreements: Politics, Law and Economics* (2002) 151-171.

<sup>50</sup> The final wording reflected the continued uncertainty over both the status and scope of principle 15. Paragraph 109(f) 2002 Plan of Implementation notes that the international community should ‘[p]romote and improve science-based decision-making and reaffirm the precautionary approach as set out in principle 15 of the Rio Declaration on Environment and Development [followed by the text of principle 15 itself]’. Interestingly, as Pallemmaerts, above, notes, the debate over precaution was no simple North-South divide, but was a much more nuanced debate.

<sup>51</sup> For instance, paragraph 2 2002 Plan of Implementation.

7 over-and-above the other principles of the Rio Declaration. Nevertheless, this is an issue that will not go away and the express inclusion of the principle of differentiation within the context of the Plan of Implementation's section on 'means of implementation'<sup>52</sup> must be recognized as significant.

Beyond the World Summit, another notable event in the period under review was the 2003 Cancún WTO ministerial meeting, acting as a midway staging post in the negotiations under the Doha Development Declaration. The ministerial meeting was always going to be a difficult encounter; negotiations are usually particularly fragile at such an interim stage. Superficially however, the omens had been good prior to the ministerial meeting, with WTO members adopting a Decision implementing paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health,<sup>53</sup> which concerned finding an 'expeditious solution to the problem of the difficulties that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face in making effective use of compulsory licensing'.<sup>54</sup>

Nevertheless, at Cancún, it became increasingly apparent that not only were the United States and the European Union, in particular, not ready to make the sincere 'developmental' concessions necessary to 'kick-start' the negotiations, but that the EU, especially, was singularly determined to force onto the agenda the Singapore issues (investment, competition, transparency in government procurement, and trade facilitation), much to the exasperation of developing countries. Cancún was also notable for the way that a number of developing countries (commonly referred to as the G-21) managed to present – and in the face of concerted pressure, maintain – a common position on many of the most important key issues. Of particular significance was the failure of the US and EU to enter into serious discussions about their agricultural subsidies and import tariffs, despite the clear statements in the Doha Declaration on these matters. Ultimately, the failure – until the very last minute – of the EU to drop its insistence on the commencement of negotiations on the Singapore issues, proved to be the death knell to progress in Mexico, and has stymied subsequent negotiation, with full momentum still to be regained in Geneva. What is clearly true is that there is no possibility now – if there ever was – of agreement by 1 January 2005, as originally desired.<sup>55</sup>

Though beyond the scope of this report, the political implications of the 'formation' of the G-21 group of developing countries<sup>56</sup> – if it continues – is likely to be significant. However, whilst a more coherent voice for developing countries within the WTO is a welcome development, two points should be kept in mind. First, one should not presume that the group speaks for all developing countries; as hopefully this committee will explore in subsequent detail in later reports, the G-77 is arguably now a highly fragmented movement, with only the minimal of internal agreement. The needs and interests of developing countries are, in many ways, as different as they are similar, and this difference must be increasingly recognised. Second, there is a very great risk that developing country 'obstinacy' (however 'virtuous') merely encourages the EU and, more particularly, the US to move beyond the WTO and conduct bilateral and/or regional trade relations outside the formal scope of the GATT and the other WTO disciplines. This would, in the end, prove counter-productive for developing States, and international development, more generally.

As this is only a brief review of recent developments, much is left unsaid. However, a few points are particularly worth noting. First, the international interest in and the pressure to achieve the Millennium Development Goals has continued. Unlike other UN initiatives that have often fallen by the wayside, the continued and explicit endorsement of the MDGs by numerous international and regional bodies as well as individual States is most encouraging. The Johannesburg Plan of Implementation placed the MDGs at the heart of its understanding of sustainable development.<sup>57</sup> The express support of the World Bank and the International Monetary Fund, in particular through the continued development of

<sup>52</sup> Paragraph 81 2002 Plan of Implementation.

<sup>53</sup> Adopted on 30 August 2003.

<sup>54</sup> *Ibid*, preamble.

<sup>55</sup> The adoption by the WTO Members of the July 'package' (WT/GC/W535, 31 July 2004) of understandings and modalities on the completion of the Doha round is a significant step forward, particularly in the area of agriculture. However, much remains contested and inchoate, and success in achieving a single undertaking is not ensured. The General Council decision also makes clear that 1 January 2005 is no longer a viable date by which the negotiations will be completed.

<sup>56</sup> Also variously referred to as the G-20-plus group and, less often, the G-22 group.

<sup>57</sup> 2002 Plan of Implementation, paragraph 1: 'We also commit ourselves to achieving the internationally agreed development goals, including those contained in the United Nations Millennium Declaration'.

the World Bank's Comprehensive Development Framework and the operationalisation of poverty reduction strategy papers (PRSPs), has so far failed to ensure a much firmer basis for international action in this area. The MDGs remain, however, challenging targets; past developmental failures would suggest achieving these goals will require much greater levels of political support than currently exist.<sup>58</sup> The World Bank was also particularly instrumental in the adoption of the 2003 Rome Declaration on Harmonization,<sup>59</sup> the purpose of which is to 'harmonize the operational policies, procedures, and practices of [multilateral and bilateral development institutions and the IMF] with those of partner country systems to improve the effectiveness of development assistance, and thereby contribute to meeting the Millennium Development Goals'.

Second, there have also been important developments within multilateral environmental agreements, particularly the climate change and biodiversity regimes. Both treaty regimes have continued to tie their individual work programmes with the wider goal of sustainable development. In the aftermath of Johannesburg, for instance, the climate change Conference of the Parties adopted the 2002 Delhi Ministerial Declaration on Climate Change and Sustainable Development.<sup>60</sup> Though there was broad rhetorical acceptance at the international level of the mutual-supportive between sustainable development and the climate change regime, the text of the Delhi Ministerial Declaration highlighted the very real difficulty of securing a balance between the various issues, most especially between developed and developing States. As one commentary noted, '[w]hile delegates reached agreement on the Delhi Declaration, it did not dispel the dichotomies'.<sup>61</sup>

On a more substantive level, progress has been made, particularly as regards the access and benefit sharing provisions of the biodiversity convention.<sup>62</sup> The Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits arising out of their Utilization (the 'Bonn Guidelines') were adopted in May 2002.<sup>63</sup> Subsequently, the Johannesburg Plan of Implementation recommended that 'within the framework of the Convention on Biological Diversity, bearing in mind the Bonn Guidelines [the international community should adopt] an international regime to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources',<sup>64</sup> this recommendation being acted upon at the seventh session of the Conference of the Parties in 2004, which has initiated a fresh round of negotiations.<sup>65</sup>

Third, in the light of the central role played by the notion of good governance within the sustainable development debate, passing mention should be made of the adoption of the 2003 UN Convention against Corruption.<sup>66</sup> It is particularly interesting to note that this connexion between corruption, good governance and sustainable development is explicitly recognised within the text itself. As it states in the preamble, 'Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law'.

The period under review (2002-2004) has been a pivotal period for the international law of sustainable development. The 2002 Johannesburg World Summit both highlighted the increased urgency of promoting sustainable development within the international community and, concurrently, the continued difficulties that exist as regards meaningful implementation. Other developments within this period – some of which have been mentioned in this brief review – also reflect the discrepancy between the scope of what needs to be achieved and the chances of this occurring within a relevant time period.

<sup>58</sup> Cf. the Group of 8 at its meeting in Evian, France in June, 2003: 'We reaffirmed our commitment to address the challenge of global poverty and our support for the Millennium Development Goals and the Monterrey consensus. We noted that achieving these ambitious goals would require considerable efforts from both developed and developing countries, including increased resources' (Chair's Summary).

<sup>59</sup> Adopted on 25 February 2003 (see <http://www1.worldbank.org/harmonization/romehlf/>).

<sup>60</sup> FCCC Decision 1/CP.8 (2002).

<sup>61</sup> Earth Negotiation Bulletin, *Summary of the Eighth Conference of the Parties to the UN Framework Convention on Climate Change* Vol. 12 No. 209 (2002) 15.

<sup>62</sup> Other notable progress includes the conclusion of the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity, (CBD Decision VII/12 (2004) annex II).

<sup>63</sup> CBD Decision VI/24 (2002) part A, annex.

<sup>64</sup> 2002 Plan of Implementation, paragraph 44(o).

<sup>65</sup> CBD Decision VII/19 (2004) part D. What is clear from the wording of the decision, however, is that there is very little consensus amongst the parties as to what this regime should look like. It is noted that the regime might actually be comprised of a number of instruments, some or all of which may be non-binding in nature.

<sup>66</sup> GA Res. 58/4, 21 November 2003.

The challenge remains formidable. It cannot be put much more starkly than the 2002 Johannesburg Declaration, itself; ‘The deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, security and stability’.<sup>67</sup>

#### **Part E: Key Elements of the Work Programme**

The elements of the work programme can clearly be discerned from the committee’s mandate. In fact, the detail in which the mandate is set out provides explicit guidance as to the principal topics to be considered. Nevertheless, it is still worthwhile drawing out certain key themes. The objective of the committee is to ‘study the legal status and legal implementation of sustainable development’. Though the scope of the mandate is wide, this reflects the pervasive nature of the topic. For instance, the phenomenon of globalization raises a plethora of issues, some which are relevant, some of which are not. What this committee is particularly interested in is where such issues intersect with sustainable development.<sup>68</sup> The focus upon sustainable development therefore provides a ‘lens’ through which such issues can meaningfully be discussed.

Work on section (i) of the mandate (assessment of the legal status and rules of international law in the field of sustainable development as well as assessment of the practice of States, international organizations, but also of non-state actors in this field) will continue throughout the lifetime of this committee, acting, in many ways, as a backbone to the work on the more detailed topics specified below.

Moreover, as noted above, a key feature of the approach of this committee should be its reliance on the principle of integration, not only as a substantive principle of international law in this area<sup>69</sup> but also as a practical tool by which issues relevant to sustainable development can be synthesised.<sup>70</sup> Integration is thus pivotal to the promotion of sustainable development. It is the principle of integration that both brings together the many challenges confronting the international community and, at the same time, provides the most realistic chance of their resolution. Nonetheless, the principle of integration itself remains inchoate and is in need of further study. In particular, this committee is well placed to assess the legal implications of current State practice and the further implementation of the integration principle. It is therefore suggested that out of the seven legal principles put forward in the ILA New Delhi Declaration, the principle of integration should be the focus of the most concerted attention. A recommendation as to how this might proceed is contained below.

The mandate specifically seeks to address the *legal* implications of two aspects of sustainable development arguably marginalized so far in the debate; first, the impact of globalization upon the ‘sustainable development opportunities’, particularly of developing countries, and second, a re-examination of key aspects of the international law of development, including the position of least developed countries and the right to development.

It is therefore recommended that the following topics constitute the principal – though not the exclusive – areas of international legal study for this committee (together with an indication as to which ILA conference substantive remarks will be made thereon):

- (i) the current status in international law and further implementation of the principle of integration as a key aspect of the international law-making process in the field of

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<sup>67</sup> Johannesburg Declaration, paragraph 12.

<sup>68</sup> The committee is likely to find it necessary, during the course of its work, to determine for itself those aspects of globalization that are particularly pertinent to sustainable development. As already noted, one aspect of globalization that will clearly be of continuing interest is trade liberalization, with particular attention on the ongoing Doha negotiations.

<sup>69</sup> See, for instance, article 32.1 Cotonou Agreement between the EU and ACP States: ‘Co-operation on environmental protection and sustainable utilisation and management of natural resources shall aim at: (a) mainstreaming environmental sustainability into all aspects of development co-operation and support programmes and projects implemented by the various actors’.

<sup>70</sup> In particular, in ensuring that the principle of integration is implemented as fully as possible, the committee is likely to wish to pay specific consideration to the development and/or refinement of the techniques within international law (including judicial techniques) to resolving conflicts within the context of sustainable development. Such conflicts are potentially both of a substantive and of a jurisdictional nature.

- sustainable development, both in substantive and institutional terms (substantive report at the seventy-second conference (2006));
- (ii) the study of developing States in a changing global order, particularly the impact of globalization on the sustainable development opportunities of developing countries, from an international law perspective (substantive report at the seventy-third conference (2008)); and
  - (iii) in view of the findings of the 2006 and 2008 reports, selected aspects of the international law of development in the light of sustainable development (substantive report at the seventy-fourth conference (2010)).

It would be the aim to hold working groups/seminars on each of these issues in the year preceding each conference. As a first step, it is hoped that a seminar will be held on 'Sustainable Development and the Principle of Integration' sometime in 2005.

In this way, the committee will hopefully balance exploring the specific topics of its mandate with the more general aspects of sustainable development, which themselves remain equally in need of study.<sup>71</sup>

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<sup>71</sup> The work of this Committee will be supported by a new partnership that has emerged between the ILA, the International Development Law Organisation (IDLO) and the Centre for International Sustainable Development Law (CISDL). This 'Type Two' Partnership, launched at the World Summit for Sustainable Development in Johannesburg and appropriately titled 'International Law on Sustainable Development', is recognised by the United Nations Commission on Sustainable Development, and provides a further opportunity for the work of this committee to feed into ongoing international legal and policy debates, as well as ongoing scholarly endeavours and capacity-building efforts of Members.