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The United Nations Post-2015 Development Agenda

By *Richard L. Field and Ira R. Feldman*

The United Nations is halfway through the creation of a multi-decade agenda that will guide sustainable development efforts from 2015 to at least 2030. This is a major undertaking and a follow-up to the important but more limited Millennium Development Goals, which were meant to be in place from 2000 to 2015.

The agenda is global in coverage and universally applicable, and it reflects the complexity of sustainable development and poverty eradication. There have been numerous inputs into the agenda, including a report by an intergovernmental committee of experts on sustainable financing, General Assembly dialogues on technology facilitation, civil society input, and others. Perhaps the core input is a globally negotiated set of wide-ranging "Sustainable Development Goals," known as SDGs, hammered out by nations of the United Nations over 14 high-level working meetings during the past year. The 17 goals, listed in this issue, contain an additional 169 targets, each with a significant constituency and together meant

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The UN Call for Sustainable Development

CHAIR'S COLUMN

The Global Imperative: A Global Mindset

Happy New Year! Welcome to a new issue of our Section's publication, *ILN*, which deals with as global and important a topic as any.

You are probably aware that the United Nations Millennium Development Goals were to be developed between 2000 and 2015. These will soon be succeeded by the Sustainable Development Goals (SDGs), which are envisioned to be in place from 2016 to 2030. The current 17-point, draft SDGs are expected to be approved in September 2015 and to go into effect at the start of 2016. The SDGs no doubt address the most important topics of humanity and international relations.

Our distinguished contributors are keen on highlighting from different angles the importance of the Post-2015 SDG Agenda and demonstrating how the rule of law is one of the main cornerstones in its implementation. SDG aspects covered in this issue range from human development, social inclusion, economic growth, environmental care, trade law, sustainable energy and natural resources, and international security, among others. Two basic conclusions that I derive from this issue are: (1) the agenda sets out the most important topics that all nations have to deal with today, and (2) without the correct implementation of the SDGs through the rule of law, there is little hope that these goals can be achieved.

Interestingly, the concerns of humanity reflected in many of these goals date back to the days of the Magna Carta, and even more specifically to those of the Carta de Foresta, which addressed in its own way and 800 years ago some of the main challenges tackled today by the Post-2015 SDG Agenda. The

Agenda reflects, for example, the high concern of UN member states for environmental issues. When dealing with topics such as sustainable energy, hunger, and social inclusion, it also reflects the need to strike a balance between developed countries and countries in the process of development—a balance that is additionally necessary for the implementation of the different trade and international security goals also at the forefront of the agenda.

With such a vital and humanly important range of issues identified and put on the table, the main question from my perspective is how to effectively implement the Post-2015 SDG Agenda. Once the SDGs have been fine-tuned, considerations regarding the necessary financing and the timing for implementation come immediately to mind. Though a 15-year term seems a generous time span, it is certainly not for such an ambitious set of goals. Adequate and sufficient financing is a must (and we are speaking of trillions of dollars), as is coordinated implementation. The main points of focus for implementing this agenda with a certain degree of success, however, are to establish due respect for the rule of law by UN member states and their full and unconditional determination to move forward with the SDG agenda with a universal mindset.

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Upcoming deadlines and themes:

Summer 2015 *ILN*

Theme: Energy

Deadline: March 15, 2015

Fall 2015 *ILN*

Deadline: June 9, 2015

Theme: Border Disputes: Where Do They Arise
and How Do We Resolve Them?

Ideas for future themes and articles are welcome.



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Statement on UN 2015 Sustainable Development

By Amina J. Mohammed

In September 2000, when the leaders of the world adopted the Millennium Declaration, they made a promise to the world's poorest and most vulnerable to build a "more peaceful, prosperous and just world" based on the "principles of human dignity, equality and equity at the global level." The Millennium Development Goals (MDGs), which were subsequently introduced to reaffirm and monitor the implementation of this declaration, have mobilized governments as never before. They have catalyzed dynamic new partnerships and have brought about huge changes at both the national and global levels, helping to set global and national priorities and fuel action on the ground.

With the expiration of the MDGs in 2015, the United Nations and its partners have been engaged in consultations at an unprecedented scale at the country, regional, and global levels to define the blueprint of the Post-2015 Development Agenda. This new sustainable development agenda must first fulfil its commitments—to the fullest extent possible—to achieving the unfinished business of the MDGs. It will be strongly focused on human development, while addressing planetary boundaries, economic growth, and social inclusion in an integrated manner. It will reflect universality, integration, and transformative change, backed by accountability and supported by a data revolution.

Well-functioning institutions and the rule of law, including equal access to justice for all, have been underscored as key features of any sustainable development framework that seeks to build peace and consolidate development gains. I urge the American Bar Association to engage in this ongoing process to ensure that international human rights standards and principles remain the bedrock of our post-2015 goals and objectives. ♦

Amina J. Mohammed is the special adviser on Post-2015 Development Planning for the United Nations. She brings to the position more than 30 years of experience as a development practitioner in the public and private sectors, as well as civil society. She has been the CEO and founder of the Center for Development Policy Solutions, the senior special assistant to the president of Nigeria on the UN Millennium Development Goals, an advisor to three previous presidents of Nigeria, the executive director and founder of Afri-Projects Consortium, a coordinator of the Task Force on Gender and Education for the United Nations Millennium Project, and an advisor and board member for numerous high-level organizations.

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The United Nations Post-2015 Development Agenda

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to give measurability to the goals. They were crafted with considerable deliberation, but some remain contentious.

UN Secretary-General Ban Ki-moon announced on December 4, 2014, his *Synthesis Report*, which made clear how much work remains to be done on this post-2015 agenda. See U.N. Secretary-General, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet: Synthesis Report of the Secretary-General on the Post-2015 Sustainable Development Agenda*, U.N. Doc. A/69/700 (Dec. 4, 2014), http://www.un.org/ga/search/view_doc.asp?symbol=A/69/700&Lang=E. Much will turn on the desire and ability of states to resolve their differences, to develop means to measure successes, to adjust the UN internally to meet the agenda, to energize states and the private sector, and to successfully finance all of it. A major meeting on financing for development will take place in Addis Ababa, Ethiopia, in July 2015.

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The Secretary-General's report offers a way forward in organizing the agenda. It identifies six "essential elements" common to all the goals:

1. **Dignity:** to end poverty and fight inequalities;
2. **People:** to ensure healthy lives, knowledge, and the inclusion of women and children;
3. **Prosperity:** to grow a strong, inclusive, and transformative economy;
4. **Planet:** to protect our ecosystems for all societies and our children;
5. **Justice:** to promote safe and peaceful societies and strong institutions;
6. **Partnership:** to catalyse global solidarity for sustainable development.

A series of monthly, multiday working meetings have been scheduled through July 2015 to refine and to finalize the agenda. A special high-level UN summit is scheduled for the end of September 2015 to approve the final product, with plans for it to go into effect in January 2016.

While still a work in progress, the United Nations Post-2015 Development Agenda looks to be a game changer on many fronts. We at *ILN* believe that lawyers in developed as well as developing countries must be aware of these activities and will have a significant role to play in the years to come. Legal professionals and the ABA will be important contributors, not only to traditional "rule of law" concerns, but also to a full range of substantive sustainability topics.

We want to thank our expert authors for presenting a clear and wide-ranging picture of post-2015 development and the law. With their help, we offer this *ILN* as an introduction to a fast-growing topic. ♦



Open Working Group Proposal for Sustainable Development Goals and Targets

Division for Sustainable Development, UN Department of Economic and Social Affairs

Available at <https://sustainabledevelopment.un.org/sdgsproposal>; full text provided to ILN courtesy of the Division for Sustainable Development, UN Department of Economic and Social Affairs

Goal 1	End poverty in all its forms everywhere.
1.1	by 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than \$1.25 a day
1.2	by 2030, reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions
1.3	implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable
1.4	by 2030 ensure that all men and women, particularly the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership, and control over land and other forms of property, inheritance, natural resources, appropriate new technology, and financial services including microfinance
1.5	by 2030 build the resilience of the poor and those in vulnerable situations, and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters
1.a	ensure significant mobilization of resources from a variety of sources, including through enhanced development cooperation to provide adequate and predictable means for developing countries, in particular LDCs, to implement programmes and policies to end poverty in all its dimensions
1.b	create sound policy frameworks, at national, regional and international levels, based on pro-poor and gender-sensitive development strategies to support accelerated investments in poverty eradication actions
Goal 2	End hunger, achieve food security and improved nutrition, and promote sustainable agriculture.
2.1	by 2030 end hunger and ensure access by all people, in particular the poor and people in vulnerable situations including infants, to safe, nutritious and sufficient food all year round
2.2	by 2030 end all forms of malnutrition, including achieving by 2025 the internationally agreed targets on stunting and wasting in children under five years of age, and address the nutritional needs of adolescent girls, pregnant and lactating women, and older persons
2.3	by 2030 double the agricultural productivity and the incomes of small-scale food producers, particularly women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets, and opportunities for value addition and non-farm employment
2.4	by 2030 ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change, extreme weather, drought, flooding and other disasters, and that progressively improve land and soil quality
2.5	by 2020 maintain genetic diversity of seeds, cultivated plants, farmed and domesticated animals and their related wild species, including through soundly managed and diversified seed and plant banks at national, regional and international levels, and ensure access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge as internationally agreed

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The ABA Embraces Sustainability

From the Earth Summit to Rio+20 and Beyond

By Ira R. Feldman and John Dernbach

Parts of this article are adapted from “The Growing Importance of Sustainability to Lawyers and the ABA” by John C. Dernbach, Lee A. DeHihns, and Ira R. Feldman, originally published in the July/August 2013 issue of Trends, vol. 44, no. 6. They are printed with permission.

Sustainable development has become increasingly important to lawyers and their clients in a world with a growing economy and population in some places, widespread poverty in others, and growing environmental degradation and greenhouse gas emissions. As the United Nations moves toward finalizing a Post-2015 Development Agenda including new Sustainable Development Goals (SDGs), the American Bar Association is taking further steps in support of its long-standing commitment to sustainable development.

Through the efforts of a 20-member Presidential Task Force on Sustainable Development (the Task Force), which is now entering its second year of operation under the leadership of Chair Lee DeHihns, the ABA is acknowledging the enhanced significance of sustainability for the practicing bar. Not only will the Task Force offer recommendations for coordinating sustainability across all ABA sections and entities, but it also will address sustainability issues that arise in law firms, in government, and in legal education.

As indicated in ABA President William C. Hubbard’s letter to the United Nations, which appears on page 10 in this issue of *ILN*, the Task Force is also identifying opportunities for the ABA to engage in the international dialogue on sustainable development.

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The current Task Force is not the ABA’s first foray into sustainability issues. Several different ABA entities have long had sustainability-themed activities and initiatives. Moreover, ABA policy, as articulated in a series of resolutions on various topics by the House of Delegates (HOD), has consistently endorsed sustainability concepts and principles.

The ABA’s participation at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa, in 2002 and the HOD resolution in 2003 triggered a decade of ABA sustainability activities, especially within the Section of International Law (SIL) and the Section on Environment, Energy, and Resources (SEER), as summarized below.

The ABA approved a delegation to participate in the United Nations Conference on Sustainable Development (Rio+20) in Rio de Janeiro in June 2012, which was held 20 years after the original Rio Earth Summit. Several of the Rio+20 delegates now serve on the ABA Task Force.

HOD Resolutions

The HOD has enacted and approved a series of resolutions dating back to 1991 that have continuously reaffirmed the commitment of the ABA to sustainable development. These include, perhaps most prominently, a 2003 resolution (A108), available at <http://www.americanbar.org/content/dam/aba/migrated/intlaw/policy/environment/sustainabledevelopment.authcheckdam.pdf>, that was prompted by the ABA’s participation in the WSSD. The 2003 resolution recognized “that good governance and the rule of law are essential to achieving sustainable development.” It also encouraged “governments, including U.S. federal, state, local, tribal, and territorial bodies, as well as businesses, nongovernmental organizations, and other entities, to promote sustainable development, including by adopting and implementing appropriate measures with respect to their own facilities and activities.”

The concluding sentence in the report accompanying the 2003 resolution captures the ABA’s current position very well: “This resolution is important to the ABA because it positions the ABA to play a significant role in the United States and internationally in supporting efforts to achieve sustainable development, including through partnerships with governments and other entities.”



More recent resolutions have built on the foundation of the 2003 resolution, elaborating on the ABA's commitment to sustainability. For example, in 2008, the HOD urged "the United States government to take a leadership role in addressing the issue of climate change through legal, policy, financial, and educational mechanisms." The report for the climate change resolution (109), available at http://www.americanbar.org/content/dam/aba/directories/policy/2008_my_109.authcheckdam.pdf, explained that climate change presents not only environmental risks but also economic, security, and social risks, stating: "To foster sustainable development, the United States should play a leadership role in addressing climate change."

In 2012, the HOD passed a resolution that endorsed the Organisation for Economic Co-operation and Development (OECD) *Guidelines for Multinational Enterprises*. The OECD guidelines, available at <http://www.oecd.org/investment/mne/1922428.pdf>, call on companies to "[c]ontribute to economic, social and environmental progress with a view to achieving sustainable development."

Most recently, the 2013 ABA House of Delegates resolution on sustainable development (105), available at http://www.americanbar.org/content/dam/aba/administrative/office_president/2013_hod_annual_meeting_105.authcheckdam.pdf, "urges all . . . ABA entities to act in ways that accelerate progress toward sustainability."

SIL, SEER, and Sustainability

The Section of International Law's sustainability-related activities include a partnership in the Global Forum on Law, Justice and Development, http://www.americanbar.org/groups/international_law/initiatives_awards/world_bank_s_global_forumonlawjusticeanddevelopment.html, a new initiative intended to support the legal and institutional foundation for sustainable development. SIL is also involved in a wide variety of other sustainability-related activities. These include, but are not limited to, an ongoing commitment to the International Legal Resource Center in collaboration with the United Nations Development Programme; rule-of-law activities, as supported by the Section Support Fund through the ABA Fund for Justice and Education; and the development and implementation of ABA policy on the UN Guiding Principles on Business and Human Rights. Section members also participate in the International Legal Exchange Program (ILEX) and SIL's Corporate Social Responsibility Committee.

SEER has also been an ABA standard-bearer on sustainability for more than a decade. Upon their return from the Johannesburg WSSD in 2002, the SEER leadership saw the

What Is "Sustainability"?

Sustainability is best understood as a framework (or a perspective, lens, or approach) for the integration or balancing of environmental protection, economic development, and social justice. While these are the three pillars at the core of every sustainability discussion, the term is used in slightly different ways in different contexts.

- At the international level, where environmental protection and poverty reduction are twin goals, "sustainable development" provides a strong emphasis on the needs of less developed countries.
- In the business world, the term is usually "sustainable business practices" or the "triple bottom line"—implying that the traditional single economic bottom line must now be reconciled with social and environmental considerations.
- At the community level, sustainability is used to describe local approaches that focus on the quality of life, including "smart growth" in land use planning.
- In the financial sector, sustainability thinking and activity is organized around the label "ES&G" (environmental, social, and governance), a combination that equates to the three pillars of sustainability.

In all of these settings, moreover, the term includes but is broader than the "rule of law" and "good governance" discussions that have typically included the active participation of the legal community.

Sustainable development has its origins in the conservation and environmental movements in the United States and other countries and in the laws that were adopted because of those movements. Long before the UN Conference on Environment and Development (better known as the Earth Summit) in Rio de Janeiro in 1992 brought the term into more common usage, the National Environmental Policy Act of 1969 (NEPA) declared sustainable development to be national policy in the United States. NEPA specifically states the national policy "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a).



need to reinvigorate and restructure the committee responsible for climate change and sustainable development issues. Now known as the Climate Change, Sustainable Development, and Ecosystems (CCSDE) Committee, it has effectively raised sustainability awareness and literacy in the practicing environmental bar through a wide range of SEER activities, including webinars and Quick Teleconferences, panels at major SEER conferences, a special issue of *Natural Resources & Environment*, and dedicated sustainability roundtables. The CCSDE Committee has also coordinated a section-wide sustainability initiative and worked closely with SIL and other ABA entities, as well as external organizations, including the U.S. Department of State.

Other ABA Initiatives on Sustainability

The ABA's Law Practice Division provides online resources for "the sustainable law firm." See http://www.americanbar.org/groups/law_practice/resources/resources_sustainable_law_firm.html. Other ABA sections, including the Section of State and Local Government Law and the Section of Real Property, Trust and Estate Law, are producing books, teleconferences, and other information on a variety of sustainability topics.

The ABA, in partnership with the U.S. Environmental Protection Agency (EPA), created the ABA-EPA Law Office Climate Challenge, http://www.americanbar.org/groups/environment_energy_resources/public_service/aba_epa_law_office_climate_challenge.html, a program to encourage law offices to conserve energy and resources, as well as reduce emissions of greenhouse gases and other pollutants. The ABA-EPA Law Office Climate Challenge was endorsed by the ABA HOD in 2009. In a similar vein, SEER developed the ABA SEER Sustainability Framework for Law Organizations, http://www.americanbar.org/content/dam/aba/administrative/nr/projects/model_law_policy/aba_model_law_policy_rev17.authcheckdam.pdf, in which a law organization commits to take steps over time toward sustainability.

The Task Force on Sustainable Development

The ABA Presidential Task Force on Sustainable Development is in its second year, a signature initiative of Immediate Past President James R. Silkenat continued by President William C. Hubbard. The Task Force is to:

1. Provide a real world perspective both from Task Force member activities within their own organizations as well as their participation in the other sustainability-related initiatives;
2. Identify roles for lawyers to play to both educate key

decision makers and find ways to advance the tenets of sustainable development;

3. Review and make recommendations regarding the involvement of the ABA in implementing sustainable development matters world-wide; and
4. Submit recommendations with reports to the House of Delegates, as appropriate.

See FIRST-YEAR REPORT OF THE AMERICAN BAR ASSOCIATION TASK FORCE ON SUSTAINABLE DEVELOPMENT 9–10 (July 31, 2014), <http://acoel.org/file.axd?file=2014%2F9%2FABA+SD+TaskForceRpt+2014.pdf> [hereinafter FIRST-YEAR REPORT]. In its first year, the Task Force conducted significant outreach across the ABA sections, divisions, and forums; held educational events; and participated with outside entities such as the United Nations, the EPA, and state bars. Perhaps the most visible contribution of the Task Force thus far is an online Resource Center that provides tools, links, and other information for lawyers and law organizations. The Resource Center is available at http://www.americanbar.org/groups/leadership/office_of_the_president/sustainable_development_task_force/resources.html.

The *First-Year Report* recommends that the ABA strengthen its ability to provide leadership on sustainability by creating a sustainability entity within the ABA that is directly responsible to the ABA president. "First and foremost," the report states, the ABA "should establish a permanent infrastructure for integrating sustainability within the ABA over the long term." As recommended by the Task Force, the sustainability entity would "engage[] the entire organization and membership, and convey[] the ABA's ethic for economic, social and environmental responsibility" under a "leadership team that reports directly to the ABA President." Of course, the recommendations in this report are just that: recommendations. The ABA will decide how to respond to them by following its normal policymaking processes. However, the establishment of the Resource Center makes it easier for lawyers to obtain relevant information about sustainability. Keeping the Task Force active for a second year provides an opportunity for continued dialogue.

As a result of the first year of work, the Task Force has recognized that the legal community has been noticeably absent from meaningful participation in many sustainability "communities of practice." The Task Force is working to change that dynamic. The development of an ABA baseline of activity to assess and identify needs and opportunities for such involvement has been productive, but it is not complete. Task Force Chair Lee DeHihns explains:



We have worked to seek commitments to sustainability activities and begun to educate ABA members on the legal and economic importance of sustainability issues. We have also begun to take full advantage of the experiences of non-ABA Task Force members through briefings to the Task Force and inclusion of these non-ABA Task Force members in our work. We have also been using the networks of Task Force members to invite selected government, business and NGO leaders to attend Task Force meetings/calls to enhance the Task Force deliberations and refine the Task Force's recommendations.

FIRST-YEAR REPORT, *supra*, at 15.

In its second year, the Task Force plans to address three additional areas where greater effort is needed to foster sustainable development: the role of lawyers, assisting government, and infusing sustainability into legal education. On law practice, the Task Force will consider a number of recommendations, including one that the ABA encourage all lawyers to consider ways of incorporating sustainable development into their law practices. On government, the Task Force will consider specific ways of supporting the EPA in fostering sustainability, as provided by the EPA's new strategic plan. On legal education, the Task Force will consider, among others, a recommendation to "identify specific areas of knowledge and practice skills that current lawyers and law organizations should possess in order to assure the basic understanding of sustainability needed for the competent practice of law in the 21st century." It will also consider a recommendation for the development or endorsement of "sustainability education and certification programs (via law schools or [continuing legal education] providers)." *Id.* at 13–15.

Looking Ahead

Going forward, lawyers will have no choice but to become involved in an even broader range of sustainability issues.

Clients in business, industry, government, and nongovernmental organizations are increasingly committed to sustainability, and they increasingly expect their lawyers to have the same commitment and understanding. These clients are driven by many motives, including reputation, cost saving, anticipation of future regulation, profitability, new market opportunities, and moral or ethical concerns about the impact of their actions on present or future generations.

The transition to sustainability in both governmental and private sector decision making is inevitable and will profoundly affect the legal profession. Indeed, the report accompanying the ABA HOD's 2003 resolution made clear that sustainability is important not only to environmental lawyers but to all lawyers:

Applying sustainable development from a legal perspective means understanding, developing, and applying legal mechanisms that are relevant to the complex relationships among economic, social, and environmental priorities. This suggests a cross-functional approach . . . that integrates a variety of legal specialties, including environmental, labor, property, tax, corporate, finance, international trade and risk management.

As the UN process to develop the Post-2015 Development Agenda unfolds, the ABA is well-positioned to give voice to the legal community and provide input on the range of sustainability issues identified in the draft SDGs. (The proposed SDGs are printed in full in this issue of *ILN*, beginning on page 5.) A preliminary analysis by the Task Force comparing the SDGs to existing ABA policy indicates that the HOD has addressed many of the key issues. To be clear, while the ABA will continue to champion the importance of the "rule of law" in sustainable development, it is apparent that ABA expertise can be brought to bear on a panoply of topics—from corporate social responsibility and supply chains to climate change and ecosystems. ♦

In Memoriam: Julie Pasatiempo

On December 28, 2014, the Section of International Law lost a stalwart of the Section staff, Deputy Director Julie Pasatiempo, who passed away after a courageous battle with cancer. Julie worked in the ABA Washington, D.C., office for over 20 years, first in the Governmental Affairs Office and, for the past seven years, with the Section. Julie was a smiling and helpful presence at every Section meeting and a steadfast supporter of the leadership and fellow staff. Her big heart and caring nature will be sorely missed!

Letter from ABA President William C. Hubbard to UN Secretary-General Ban Ki-moon

December 12, 2014

His Excellency Ban Ki-moon
Secretary-General of the United Nations
United Nations Headquarters
New York, NY 10017

Dear Mr. Secretary-General,

I am writing to you today as the President of the American Bar Association (ABA), on behalf of its more than 400,000 members around the world, to inform you that the ABA is committed to working with the United Nations in its efforts to adopt Sustainable Development Goals (SDGs) and to implement the UN's broader Post-2015 Development Agenda. The ABA has long supported an effective United Nations as essential to achieving peace, promoting sustainable development, and advancing the rule of law.

The ABA is the largest voluntary professional association in the world. It regards human rights and the rule of law as cornerstones of a free and just society and is committed to strengthening them in the United States and internationally. As a nongovernmental entity with consultative status with the Economic and Social Council of the UN and as a civil society organization active in the field of the rule of law, the ABA strongly supports the UN's initiatives to enhance the rule of law at the national and international levels.

The rule of law is widely accepted as fundamental for advancing inclusive and sustainable development. Thus, this part of the ABA's core mission is fully consistent with the UN's efforts to promote sustainable development. Further, while the ABA will continue to champion the importance of the rule of law in sustainable development, the ABA has additional practical expertise that can be brought to bear on a wide range of sustainability topics—including human rights, gender equality, fair labor practices, corporate social responsibility, energy, infrastructure, climate change, and ecosystems.

Dating back to 1991, through its policy-making body the ABA House of Delegates (HOD), the ABA has made a series of commitments to support sustainable development. In particular, resolutions adopted in 2003 and 2013 in the aftermath of the UN global sustainable development conferences in 2002 and 2012 (to which the ABA sent delegations) provided additional momentum for sustainability activities across many ABA sections and entities. In 2003, the HOD recognized “that good governance and the rule of law are essential to achieving sustainable development,” and the ABA encouraged all governments “to promote sustainable development, including by adopting and implementing appropriate measures with respect to their own facilities and activities.” Again in a 2013 resolution, the ABA urged “all governments, lawyers, and ABA entities to act in ways that accelerate progress toward sustainability.”

On September 16, 2014, at the opening session of the General Assembly, you said: “Let us join forces to establish a set of sustainable development goals and a development agenda that wipe out poverty over the next 15 years. Let us commit to take on the climate change challenge and leave a cleaner and greener planet for posterity.” From a high-level review of the SDG draft, we believe that a majority of the 17 draft SDGs are covered in part by existing ABA policies adopted by the HOD, as well as the work of our Rule of Law Initiative (ROLI) and the World Justice Project.

Earlier in 2013, you met with my two immediate predecessors as ABA President, James Silkenat and Laurel Bellows, to express your desire that the ABA work more closely on sustainable development issues. And again, at our 2014 “ABA Day at the UN,” your senior staff made clear your desire that ABA lawyers should play a stronger role in the sustainable development field. I fully support that role for our members and, through various ABA activities in the coming year during my tenure as ABA President, we will engage with and support the UN as the Post-2015 Development Agenda and the SDGs are finalized.

I supported the continuation of the ABA Presidential Task Force on Sustainable Development established by Mr. Silkenat, and I have instructed Lee DeHihns, the Task Force Chair, to review the development of the SDGs to find a proper role for ABA involvement. Following up on the Rio+20 Conference and its outcome report, the Task Force is exploring ways that the ABA can provide leadership, nationally and internationally, on sustainability issues, as well as assist the UN in implementing *The Future We Want* outcome document.

After our preliminary review of the proposed SDGs, the Task Force observes that the assistance of ABA members may be helpful in providing legal meaning to the terms “ensure” and “inclusiveness” that appear prominently in several goals without elaboration. Similarly, with respect to “means of implementation,” the Task Force suggests that the ABA could offer advice on achieving certain goals through public-private partnerships.

The ABA recognizes that the SDGs integrate goals, targets, and implementation. The integration process is the key to successfully achieving the SDGs. We believe that this approach is precisely what the ABA envisioned in the 2003 and 2013 resolutions noted above.

The ABA is well-positioned to give voice to the legal community—an important and, we believe, an underrepresented group in the international sustainability dialogue on issues beyond our traditional strength in the rule of law—and provide input on the full range of sustainability issues identified in the draft SDGs. The ABA has started to pursue several pathways for input, which I summarize below. We welcome further suggestions from your staff regarding opportunities for us to engage.

Within UN leadership, we have been in contact with Mr. Thomas Gass, who has been responsible for the SDG process and Post-2015 Development Agenda. Mr. Gass spoke with us about the SDG process when we met with him at ABA Day at the UN on March 31, 2014. Similarly, members of our Task Force have closely worked with Ms. Amina Mohammed in connection with the UN's technical support team for the SDGs. We are also aware that the President of the General Assembly recently appointed co-leaders for the coordination of further discussions on the post-2015 agenda—Mr. David Donoghue of Ireland and Mr. Macharia Kamau of Kenya. In the interest of facilitating the effective input and coordinated support of the ABA, I have copied each of these individuals on this letter.

I also note that ABA members have contributed to ongoing UN initiatives such as the UN Global Compact and Sustainable Energy for All, and that we will continue to actively participate. The ABA is also in communication with other organizations focusing on the SDGs and the post-2015 agenda, such as the World Business Council for Sustainable Development (WBCSD) and the Global Reporting Initiative (GRI). In particular, by cooperating with these groups, we want to raise awareness of the SDGs and post-2015 agenda among not only lawyers but also across the broader business, finance, and governmental communities.

In the United States, the ABA will continue to use its dialogue with the State Department and at the U.S. Environmental Protection Agency as another conduit for our input to the UN post-2015 process. For example, several members of our Task Force have already had direct input into the U.S. government's consideration of the various draft SDGs.

Finally, we are copying U.S. Mission Ambassador Elizabeth M. Cousens on this letter to inform her of our commitment to advancing the SDGs and the post-2015 agenda. Earlier this year, the U.S. Mission to the UN indicated it would work with the ABA Task Force to identify a role for the ABA to review and perhaps have input on the U.S. position on the SDGs. We look forward to working with Ms. Cousens and her staff in New York City on these issues.

We appreciate that the final work product of the Open Working Group (OWG) on SDGs was styled as a “proposal” for the further consideration of the General Assembly. We also understand that the SDGs are but one component of the broader post-2015 agenda. It is clear that much work remains to be done before the process concludes in late 2015. I promise that the ABA and its members will actively engage through a multiplicity of activities to help ensure a successful outcome to these efforts.

Sincerely,



William C. Hubbard

cc:

Ms. Amina J. Mohammed, Secretary-General's Special Advisor for Post-2015 Development Planning

Mr. Thomas Gass, UN Assistant Secretary-General for Economic and Social Affairs

Hon. Elizabeth Cousens, Ambassador, U.S. Mission to United Nations

Mr. David Donoghue, Permanent Representative of Ireland

Mr. Macharia Kamau, Permanent Representative of Kenya

William C. Hubbard (abapresident@americanbar.org), a partner with the Columbia, South Carolina, office of Nelson Mullins Riley & Scarborough, is president of the American Bar Association.



Embedding the Rule of Law in the Post-2015 Development Agenda: The Only Way to Ensure Lasting Progress

By Irene Khan and Judit Arenas

Inadequate laws and policies, poor implementation by institutions, and the inability of the poor to assert their rights and contribute to society's progress are among the root causes of poverty, inequality, and environmental degradation, and are indeed major impediments to development and its sustainability. Without commitment to the rule of law, supported by specific measurement indices, investments in health, education, renewable energy, and climate change mitigation will not be effective or sustainable.

This article draws attention to the undeniable link between the rule of law and progress toward sustainable development, at a time of intense debate over the Post-2015 Development Agenda. It also provides real-life examples of how rule-of-law approaches can have a transformative impact on sustainable development, as illustrated in the report written by the International Development Law Organization (IDLO), *Doing Justice to Sustainable Development: Integrating the Rule of Law into the Post-2015 Development Agenda*, available at <http://www.idlo.int/insights/publications/doing-justice-sustainable-development>.

Inclusivity, equity, and justice are at the core of the sustainable development paradigm, driving our collective efforts to correct artificial and harmful imbalances in economic growth, to remedy the misery of lives spent in extreme poverty, and to ensure that resources and natural habitats are preserved for future generations. And the rule of law is key to all of this, as it places a much-needed focus on adopting sound and fair legislation and policies, on building the capacity of institutions, and on empowering the poor and marginalized through a greater awareness and realization of their rights.

There is no disputing the progress made toward achieving the Millennium Development Goals (MDGs) over the past decade. However, the progress has been insufficient and has occurred unevenly both between and within countries. At the same time, climate change, by undermining today's livelihoods and compromising tomorrow's, threatens to reverse any successes.

Broad consensus is emerging that sustainable development is the solution. But there is little agreement on what fits under this umbrella concept.

Still, it is clear that the rule of law is and should be seen as an integral part of sustainable development, underpinning social and economic progress and environmental protection with strong institutions and good governance, formal legal frameworks and legal empowerment of people, equal opportunities and equitable access to basic services, due process, and fair outcomes for all.

A quick glance at how some of the primary dimensions of sustainable development are inextricably linked to the rule of law will eliminate any doubts in this regard.

Economic Development

Under the economic component of sustainable development, strong legislative frameworks can provide for clarity, predictability, and certainty in commercial affairs, facilitating business transactions while discouraging predatory and corrupt behavior. Commercial and other disputes can be addressed through enhanced institutional capacity, providing for increased investor confidence and wider social cohesion. Moreover, legal empowerment efforts, including access to markets and financial services, help create a level playing field and thus ensure that the poor have opportunities to participate in the broader economy. Growing inequalities, unchecked by the rule of law, are now widely recognized as one of the key impediments to sustainable economic growth.

In order to promote equitable economic development, laws must be strengthened and policies put in place to ensure secure access to information and transparency, access to markets and financial services for the poor and marginalized has to be fostered, and measures need to be implemented to provide for secure land tenure and property rights.

One example of how access to information helped secure water for a community in South Africa is featured in *The World Bank Legal Review Volume 5: Fostering Development through*



Opportunity, Inclusion, and Equity (Hassane Cissé et al. eds., 2014), available at <https://openknowledge.worldbank.org/bitstream/handle/10986/16240/82558.pdf?sequence=1>. The Open Democracy Advice Centre (ODAC) empowered villagers facing drought in Emkhandlwini, KwaZulu-Natal, to use South Africa's freedom of information law to gain access to the minutes of council meetings on topics that included the provision and distribution of water. The information detailed plans to provide the village with access to clean water—plans that were never acted upon. The villagers used the information to publicize the issue, and the municipality was forced to install fixed water tanks and to deliver mobile water tanks to the community. When the supply became erratic, villagers again used the law to seek a service-level agreement between the municipality and the company delivering water. When the municipality failed to draw up the contract, constituting a breach of South Africa's public finance legislation, it was reported to the auditor general for investigation.

Social Progress

In the area of social development too, the rule of law provides for equitable progress through strong legal frameworks that promote social progress and social cohesion. Coupled with enhanced state capacity to implement related policies, laws, and regulations, the rule of law facilitates the functioning of transparent and participatory dispute resolution mechanisms, which in turn enable individuals and groups to claim their rights to equal opportunity, education, health, housing, and other economic and social rights.

Equitable social development can be ensured through according health care, education, and other social services priority in law and policy, as these relate to rights to which the poor are entitled; providing a legal identity to all; guaranteeing access to justice and redress; and promoting gender equality and women's empowerment.

Let us consider the example of how increased women's participation has resulted in improved gender-sensitive policymaking in Rwanda. In "Gender Balance and the Meanings of Women in Government in Post-Genocide Rwanda," published in *African Affairs*, vol. 107/428 (2008), the author describes the prominent leadership role that women play in the country's parliament. In the 2013 elections, women won 64 percent of the seats in the Lower House of Parliament, which has ensured the long-term meaningful participation of women in democracy. The article cites the Law on the Prevention, Protection and Punishment of Any Gender-Based Violence as an example of legislation that would likely not have been as strong, or even passed, had it not been for the

level of female representation in Parliament. Nor would the law's provisions relating to polygamy and marital rape have remained in the text if not for strong female leadership. The author points out that an increasing number of women in Parliament has been a result of both changing gender roles following the 1994 genocide and proactive laws and policies that promote women's leadership.

The rule of law is and should be seen as an integral part of sustainable development.

The Environmental Dimension

In addressing environmental issues, the rule of law facilitates efforts to tackle problems like climate change through robust legal frameworks aligned with international standards and enforced through effective government institutions. Responsible environmental stewardship is promoted through institutions that are held accountable to legal mechanisms with the help of civil society. Also for the poor and vulnerable, who are at the bottom of the pyramid, rule-of-law approaches are empowering tools that allow them to demand action when the environment around them is degraded, livelihoods are stolen, and land and water rights are violated.

The following measures would facilitate efforts to achieve environmental sustainability: strengthening legal instruments that safeguard the environment and integrating them in a broader law and policy framework; supporting greater access to information and ensuring that indigenous peoples, local communities, and civil society participate effectively in setting environmental regulation policies; and enhancing the capacity of institutions to fairly adjudicate natural resource and land use.

Legal Aspects of the Aichi Biodiversity Target 3: A Scoping Study, a forthcoming publication by the IDLO, provides examples of protection for indigenous peoples and their relationship with the environment. In India, for example, the 2006 Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act provided legal recognition to forest-dwelling communities and their right to live in harmony with their forests and to protect and manage their land. The Act includes the right to veto projects that would encroach upon their lands, a right that has recently been upheld in the Supreme Court of India. In a landmark case, the high court held that a foreign mining company, in partnership with a state-owned mining company, could



not continue operations in the Dongria Kondh's sacred lands without the consent of the forest-dwelling communities. All 12 tribal villages voted against the mining. See *Vedanta Resources Lawsuit (Re Dongria Kondh in Orissa)*, BUS. & HUM. RTS. RESOURCE CENTRE, <http://business-humanrights.org/en/vedanta-resources-lawsuit-re-dongria-kondh-in-orissa> (last visited Jan. 28, 2015).

In Ecuador, the 2008 Constitution includes a groundbreaking chapter on the Rights of Nature, reflecting an indigenous conception of the relationship between society and the environment. Article 71 provides that nature, or *Pacha Mama*, “has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles,

structure, functions and evolutionary processes.” Moreover, any person, community, or peoples are empowered to call on public authorities to enforce the rights of nature.

Conclusion

In sum, a broader understanding of the rule of law is essential; it must be recognized as key to realizing equitable and inclusive development within planetary boundaries. Only by embedding the rule of law in the sustainable development goals can we ensure that progress will be lasting, justice served, our planet preserved, and our wealth augmented and shared more equitably. ♦

Irene Khan (ikhan@idlo.int) was elected director-general of the International Development Law Organization (IDLO) in November 2011. An international thought leader on human rights, gender, and social justice issues, Khan was secretary-general of Amnesty International from 2001–09. Prior to her work for Amnesty International, she worked for the UN High Commissioner for Refugees for 21 years at headquarters and in various field operations. **Judit Arenas** (jarenas@idlo.int) is director of External Relations and deputy permanent observer to the United Nations for IDLO. An expert in advocacy, government relations, public affairs, and strategic communication, she was a vice-president at APCO Worldwide before joining IDLO. She has a strong background in human rights, having worked for 10 years at the International Secretariat of Amnesty International.

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As our contributors correctly reflect, the development and implementation of the Post-2015 SDG Agenda cannot be simply left in the hands of the UN member states. Private cooperation and determination are also necessary to contribute to economic, social, and environmental progress. In this sense, our Association affirmed many years ago and in different ways its commitment to sustainable development. Special mention needs to be made of the ABA House of Delegates approval in 2003 of Resolution A108. This position is reaffirmed through ABA President William Hubbard's letter to the Secretary-General of the United Nations in December 2014, which is included in this issue. I recommend that you read it together with the interview that one of our issue co-editors, *ILN* Editor-in-Chief Richard Field, conducted with the former Under-Secretary-General for Legal Affairs and Legal Counsel of the United Nations, our very valued Section member, Mr. Hans Corell.

Certainly much can be said on the Post-2015 SDG Agenda and of its utmost importance. The question lying ahead is how efficiently and timely can these goals be achieved. I would propose that after you have had an opportunity to read through this wonderful issue, ask yourself if we are not in a time for shifting into high-gear implementation mode—for action, rather than words.

I hope you enjoy this issue of our *ILN* on this topic that is absolutely vital for generations to come. ♦



Magna Carta and Sustainable Development

By Daniel Magraw and Andrea Martinez

On June 15, 1215, 25 English barons forced King John (r. 1199–1216) to agree to Magna Carta at Runnymede, just outside London. Magna Carta was an intensely practical document addressing specific abuses of power by the king in the hopes of avoiding war. Although Magna Carta was invalidated by Pope Innocent III in August 1215 on the ground of coercion, it is now revered as the fountain of liberty and rule of law. Winston Churchill called it one of the “title deeds of freedom.” Although at this time only three and a half of Magna Carta’s original 63 provisions are still in force in England, its legacy and influence encircle the globe, including not only the United States, but also the United Kingdom and the other 52 members of the Commonwealth of Nations, plus other countries as well. It is inscribed in the United Nations Memory of the World Register. What then does this ancient instrument have to do with sustainable development, a term that was not even coined until the last part of the twentieth century, more than 750 years after King John affixed his seal to Magna Carta? To answer that, it helps to examine Magna Carta’s fascinating course over the past 800 years.

History of Magna Carta and Carta de Foresta

King John was the latest of a line of rulers who had abused their power and alienated segments of English society. The demands made by the rebellious barons thus covered not only their own concerns, but also the concerns of knights, the business community, noblewomen, and elements of the church. These demands, some of which were quite mundane, are contained in the Articles of the Barons, which King John probably sealed on June 15, 1215. The documents we now call the 1215 Magna Carta were created soon thereafter by the royal scribes and sealed by the king. The scribes may have made about 40 exemplifications—i.e., copies—of Magna Carta in order to provide them to each of the shires (so

that the sheriffs could apply Magna Carta as law), the royal court, and some others; the exact number and distribution are unknown. Four copies of the 1215 Magna Carta, which had 63 provisions (referred to as chapters), are known to exist. As was customary at that time, the copies are in abbreviated Latin and are in the form of a description of what was agreed to, akin to minutes of a meeting, not the form of an actual agreement; and each has the date the agreement was made, June 15, rather than the date the copy was actually sealed. A French-language translation was made in conjunction with a letter dated June 27, 1215, presumably in order to allow knights and others not fluent in Latin to know Magna Carta’s contents. At this juncture, Magna Carta was referred to as the Charter of Liberties.

A sequence of critical events then quickly transpired. As noted above, the pope invalidated Magna Carta 10 weeks after King John agreed to it, and civil war broke out between the barons and King John: the peace treaty had failed. King John died a year later, however, and his nine-year-old son Henry III (r. 1216–1272) was crowned king. To reassure barons and others, Magna Carta was re-issued over the seal of King Henry III’s regent and the pope’s legate. England now had Magna Carta again, though in a different version. The 1216 version of Magna Carta omitted several provisions from the 1215 original, explaining that some of them were under consideration. It is also noteworthy that, whereas the 1215 Magna Carta had been forced upon King John by his enemies, the 1216 Magna Carta was issued by King Henry III’s supporters: Magna Carta now had the support of the king and the church.

A year later, a third version of Magna Carta was issued by the king’s regent and the pope’s legate as reassurance at a time when taxes were being raised. The 1217 version reinstated some of the provisions that had been omitted in 1216. Importantly, it also spun off several provisions relating to forests and created a new charter, Carta de Foresta—the Charter of the Forest. In order to distinguish it from the new shorter charter, Magna Carta was given its current name. England now had two charters: Magna Carta and Carta de Foresta. These were re-issued with some changes to Magna Carta in 1225 by King Henry III over his own seal when he turned 18. They were re-issued in 1297 (with one miniscule change in Magna Carta) and again in 1300 (with no changes).

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The history just recounted can be seen in the British Library. The library's collection includes the Articles of the Barons, two of the four remaining copies of the 1215 Magna Carta, the August 1215 papal bull invalidating Magna Carta, a 1225 copy of Magna Carta, and a copy of Carta de Foresta. The U.S. National Archives contains a copy of the 1297 Magna Carta.

Magna Carta's textual development was over, but its journey had just begun. It first entered into English statutes in 1297, and it was invoked by litigants, barons, and judges from the thirteenth century on, as is indicated by a fourteenth-century miniature Magna Carta in the collection of the U.S. Library of Congress. In 1354, its reach was expanded by statute to apply to all people in England. Nevertheless, Magna Carta was ignored or evaded by kings at various times after its inception, each of these instances being followed by objections by subjects and a reconfirmation of Magna Carta by the ruler.

In the late sixteenth and early seventeenth centuries, however, Magna Carta began to acquire a mythical status as the foundation of English law and rights as it was invoked by judges, politicians, and commentators in England, most strikingly by Sir Edward Coke. Coke described Magna Carta as the "ancient constitution" of England. His descriptions of Magna Carta were factually erroneous, as was revealed later through the scholarship of William Blackstone, but they had a strong effect on contemporary thought. Thus, although the influence of Magna Carta had waxed and waned for centuries, the mythical Magna Carta had been created, and, with one notable exception, it is this myth that has had the most impact.

The exception is that the primary principle of Magna Carta is that everyone, even the king or head of state, is subject to the law and that this can be established via a written instrument. This concept is the essence of constitutionalism; and it is inherent in Magna Carta from its inception in 1215 onward. It is obvious that both King John and Pope Innocent III recognized the validity of this principle because of John's effort to have Magna Carta invalidated on the ground of duress and the pope's agreement to do that. The several re-issues of Magna Carta, the many demands for its reconfirmation, and rulers' acquiescence in those demands demonstrate the same. This principle, unlike other aspects of Magna Carta, has not changed for 800 years.

Coke's vision of Magna Carta traveled to England's colonies, including those in the Americas. In order to encourage Englishmen to move to its colonies, England had adopted the view that English law followed the colonists as the British Empire expanded across the globe. Individuals such as William Penn, who had raised Magna Carta as a defense

when he was being tried as a heretic in England, brought Magna Carta with him when he came to the colonies and founded Pennsylvania. As Coke had, the American colonists used Magna Carta for their own ends, arguing forcefully for principles they asserted were embodied in Magna Carta and seeing in it a symbol of their rights as free Englishmen. A wonderful example of this is the 1775 seal of Massachusetts colony, which depicts a patriot brandishing a sword in one hand and Magna Carta in the other. There are echoes of Magna Carta in parts of the Bill of Rights in the Fifth, Seventh, and Eighth Amendments. For example, the Due Process Clause of the Fifth Amendment has a connection to the reference to "the law of the land" in chapter 39 of the 1215 Magna Carta (chapter 29 of the 1225 and subsequent Magna Cartas). And Magna Carta is still cited frequently in the U.S. Supreme Court.

Magna Carta has been dynamic, adaptable, and resilient throughout its existence. Its textual content, its perceived role, and common understandings of its meaning have changed as the mythical Magna Carta has grown. Principles are sometimes inaccurately attributed to it, including those of the rights to trial by jury, religious freedom, or habeas corpus; but these concepts developed independently with no meaningful connection to Magna Carta. At the same time, less attractive aspects of Magna Carta are routinely ignored, such as the facts that it implicitly recognized the legitimacy of the feudal system because it applied to only half of the population (freemen); it discriminated against Jews (chapter 10); and it implicitly recognized the legitimacy of trial by battle (chapter 54). The iconic vision of Magna Carta as the fountain of freedom and rule of law concentrates instead on the inspiring Magna Carta myth—a myth that shows no signs of fading as we head into Magna Carta's ninth century.

Carta de Foresta has received less attention than Magna Carta, perhaps because its impact has been felt primarily within England, but it has important implications for rule of law and sustainable development. Since 1066, kings had been designating much of England as Royal Forests, within which the draconian provisions of forest law replaced common law. When Carta de Foresta was created in 1217, among other reforms, it rolled back the many expansions of the forests perpetrated by King John and his father, significantly increased the uses that people could make of the remaining forests, and outlawed capital punishment for poaching deer and maiming for other forest law offenses. Moreover, parts of it applied to all Englishmen. Despite occasional resistance and disregard, Carta de Foresta has served over the past eight centuries both to protect the forests,



many of which are now national parks, and to allow their sustainable use and enjoyment. Notably, it accomplished this via a written document establishing that the king had to obey certain rules, just as Magna Carta did.

Sustainable Development Goals

The international community adopted sustainable development at the UN Conference on Environment and Development in 1992 as the framework for improving the quality of people's lives around the world. Although there is no universally agreed-upon definition of sustainable development, it is generally agreed that sustainable development requires four things: taking into consideration the interests of future generations; giving priority to the needs of the world's poor; integrating economic, social, and environmental policies; and protecting the environment to a significant degree.

The Sustainable Development Goals (SDGs) were called for in *The Future We Want* (U.N. Doc. A/RES/66/288), the outcome document of the 2012 UN Conference on Sustainable Development (Rio+20). See http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E. They will be part of the Post-2015 Development Agenda. The SDGs are intended to build on and fill in the gaps of the Millennium Development Goals (MDGs), adopted by the UN General Assembly in 2000 with the aim that they would be met by 2015. An Open Working Group (OWG) was tasked with preparing a proposal for the SDGs. On September 10, 2014, the UN General Assembly adopted the *Report of the Open Working Group of the General Assembly on Sustainable Development Goals* (U.N. Doc. A/68/970), which proposed 17 goals and 169 targets under those goals. See http://www.un.org/ga/search/view_doc.asp?symbol=A/68/970&Lang=E. The OWG's report will be the "main basis" on which to establish the SDGs. Though the proposed goals and targets are not final, they indicate themes that will be considered in the Post-2015 Development Agenda.

Magna Carta, Rule of Law, and Sustainable Development

The proposed SDGs expressly include rule of law under Goal 16: "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels." Target 16.3 is more explicit: "Promote the rule of law at the national and international levels, and ensure equal access to justice for all." Other targets under Goal 16 relate to other aspects of the mythical Magna Carta. For example, targets 16.5, 16.6, 16.7, 16.10, and 16.b include,

respectively: "[s]ubstantially reduce corruption and bribery"; "[d]evelop effective, accountable and transparent institutions"; "[e]nsure responsive, inclusive, participatory and representative decision-making"; "[e]nsure public access to information and protect fundamental freedoms"; and "enforce non-discriminatory laws and policies . . ." Importantly, the concept of rule of law embodied in the SDGs not only requires access to justice and that law be enforced, but also more expansively that it be enforced in a manner that respects procedural rights *and* that the substance of the laws themselves achieve good governance, respect fundamental freedoms, and be nondiscriminatory.

The concept of the rule of law embodied in Magna Carta is essentially the same as that embodied in the SDGs.

The OWG *Co-Chairs' Summary Bullet Points* recognized that rule of law touches directly on sustainable development because, for example, economic growth is advanced through the "protection of land, property and other resource use rights [and] providing access to fair and responsive justice systems." See <http://sustainabledevelopment.un.org/content/documents/3190summarybullets.pdf>. It was acknowledged that the SDGs require a focus on the social, economic, and environmental dimensions and that rule of law and governance, among other things, are relevant because development is undermined by conflict and violence. The *Summary* also noted the many references to the declaration of the high-level meeting of the UN General Assembly on rule of law. That declaration emphasized that rule of law and development are "inter-related and mutually reinforcing," and that advancement of rule of law is "essential" for sustainable development.

The relationship between rule of law and development is not a novelty. It has presumably been an issue since at least the promulgation of the first known code of laws, the Code of Urukagina, roughly 4,400 years ago, which dealt with economic issues such as bribery and social issues such as treatment of widows and orphans. The fact that during the reign of King John there was no rule of law led to Magna Carta. In addition to the fundamental idea embodied in Magna Carta of imposing rule of law through a written instrument, specific provisions of Magna Carta demonstrate the importance of rule of law with respect to a wide range of concerns.



The most famous provisions of Magna Carta (chapters 39 and 40 of the 1215 version, which were combined in chapter 29 of the 1225 version) deal expressly with rule of law:

[39] No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any other way ruined, nor will we go against him or send against him, except by the lawful judgment of his peers or by the law of the land.
[40] We will not sell, or deny, or delay right or justice to anyone.

See http://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/all. Other provisions also reflect concerns related to aspects of justice, such as chapters 45 (appointment of qualified persons as justices, constables, sheriffs, and bailiffs); 17 (access to court); and 53 (restoration of illegally obtained property). The mythical Magna Carta came to represent an even broader array of justice principles, as noted above, but even the 1215 Magna Carta (and the 1217 Carta de Foresta) embodied the same concept of rule of law as does SDG 16.

The last-mentioned point is evident because the 1215 Magna Carta spanned a wide range of other issues relevant to sustainable development. For example, Magna Carta covered economic concerns such as bankruptcy (chapter 9) and international travel of merchants (chapter 41); social concerns such as the treatment of widows (chapters 7 and 8); environmental concerns such as fish weirs (chapter 33) and forests (chapters 31, 44, 47, 48, and 53); religious concerns such as freedom of the English Church (chapters 1 and 63); and municipal concerns such as the treatment of London and other towns and ports (chapter 13). The range of these provisions mirrors the reach of sustainable development.

Carta de Foresta and Sustainable Development

Multiple SDGs are relevant to environmental protection, one of the three essential components of sustainable development. Relevant goals include Goal 6 (sustainable management of water and sanitation); Goal 8 (sustainable economic growth); Goal 12 (sustainable consumption and production); and Goal 13 (combating climate change). This article focuses on the sustainable management of forests in proposed Goal 15: “Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.”

As Nicholas Robinson explains in a chapter of *Magna Carta and the Rule of Law* (Daniel Barstow Magraw et al. eds.,

2014), Carta de Foresta was a successful mechanism for sustainably managing the Royal Forests for nearly 800 years. Carta de Foresta addressed several of the targets established under Goal 15, for example: 15.1, “ensure the conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests . . .”; 15.2, “promote the implementation of sustainable management of all types of forests . . .”; 15.4, 15.5, and 15.7, which address the conservation of ecosystems, loss of biodiversity, and ending poaching; and 15.9, “integrate ecosystem and biodiversity values into national and local planning. . . .” Today, 129 remaining Royal Forests are the legacy of Carta de Foresta, which was guided by, among other things, aims similar to the aforementioned targets.

Concepts and terminology have evolved over the past 800 years, and therefore the relevant chapters of Carta de Foresta do not use the same terms as the SDGs. Nevertheless, the overall purpose and objectives remain essentially the same. For example, overall the Royal Forests’ natural resources were carefully managed—limiting hunting, gathering berries and herbs, collecting wood, removing clay, and grazing of cattle and pigs (chapters 1, 6, 8, and 11). The Forest Courts were used to enforce these restrictions. There were also fines for the “degradation of resources” (chapter 4) and allowances to “make a mill, fishpond, dam, marsh pit, or dike, or reclaim arable ground” as long as it did not constitute a “nuisance” to any neighbor (chapter 12).

Similarly, target 15.9 resembles acts passed in the nineteenth century that integrated values of ecosystems and biodiversity into national and local planning. In that century, commoners sought to enforce “common rights,” and in 1877, the New Forest Act was passed by Parliament, which recognized the rights of commoners. Also, in 1878, London purchased 3,500 acres of forest, and with the passing of the Epping Forest Act, London became the Conservator of the Forest. The Epping Forest Act established that conservators were to “at all times as far as possible preserve the natural aspect of the Forests [and] protect the timber and other trees, pollards, shrubs, underwood, heather, gorse, turf and herbage.” RICHARD MABEY, *THE COMMON GROUND: A PLACE FOR NATURE IN BRITAIN’S FUTURE?* (1980).

For obvious reasons, the scale of environmental protection in 2015 and 1215 play out at different levels. Globalization has played a tremendous role in the scale of environmental protection, and now concerns are carried out at an international level, which the SDGs intend to address. However the same issues existed and are reflected in Carta de Foresta.



Conclusions

The fundamental rule-of-law concerns that gave rise to Magna Carta 800 years ago are still of critical importance to our entire global community. These concerns are reflected in the proposed SDGs, particularly Goal 15 and Goal 16 and their targets. Moreover, the concept of rule of law embodied in Magna Carta is essentially the same as that embodied in the SDGs. The call for rule of law in the proposed SDGs is encouraging. If rule of law remains in the SDGs 800 years from the sealing of Magna Carta, all UN members will be committed

to achieve rule of law worldwide, thereby increasing the likelihood of just, stable, and accountable governance.

Likewise, Magna Carta's offspring, Carta de Foresta, remains as relevant as ever. As the international community struggles to sustainably manage forests, Carta de Foresta stands as a model. Carta de Foresta experienced many phases and changes, but it became a tool civil society used to conserve the forests of the United Kingdom. Such lessons can be utilized to successfully move the Post-2015 Development Agenda forward. ♦

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Sustainable Energy in the Post-2015 Development Agenda

By Renee Dopplick

Energy is the golden thread that connects economic growth, increased social equity, and a healthy environment. Sustainable development is not possible without sustainable energy.

—UN Secretary-General Ban Ki-moon, April 9, 2014

Ending energy poverty by delivering scalable, resilient, efficient, and affordable low-carbon and sustainable energy is among the set of global priorities on track to be integrated within the United Nations' Post-2015 Development Agenda and its Sustainable Development Goals (SDGs). The new international development agenda, which will succeed the eight goals of the Millennium Development Goals (MDGs), will drive public and private investment, regional and international coordination, and legal and regulatory innovations.

Sustainable energy is already positioned as a global development priority for the next decade, thereby increasing the likelihood that the UN General Assembly will adopt sustainable energy as a key goal within its final Post-2015 Development Agenda. In June 2014, UN Secretary-General Ban Ki-moon and World Bank Group President Jim Yong Kim launched the UN Decade of Sustainable Energy for All (SE4ALL) 2014–2024 at the inaugural Sustainable Energy for All Forum at the UN Headquarters. See KANDEH YUMKELLA, SPECIAL REPRESENTATIVE OF THE SEC'Y-GEN. (SRSG), SUSTAINABLE ENERGY FOR ALL FORUM REPORT (2014), available at http://www.se4all.org/wp-content/uploads/2014/09/SE4ALL_forum_report_final.pdf. The Decade builds on the Sustainable Energy for All initiative that the UN Secretary-General started in 2011 to drive innovative and practical strategies and investments to provide modern energy access,

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double the rate of energy efficiency, and double the market share of renewable energy by 2030.

In his remarks at the Forum, the UN Secretary-General described sustainable energy as “central” to the Post-2015 Development Agenda. Ban Ki-moon, Welcoming Remarks at Sustainable Energy for All Forum (June 5, 2014), http://www.se4all.org/wp-content/uploads/2014/06/ban_ki-moon_welcoming.pdf. He further elaborated on the importance of sustainable energy to the post-2015 agenda throughout and beyond the decade in his report to the UN General Assembly in September 2014. U.N. Secretary-General, *United Nations Decade of Sustainable Energy for All*, U.N. Doc. A/69/395 (Sept. 22, 2014). World Bank Group President Kim said of the Sustainable Energy for All initiative, “I truly believe that ending poverty and ensuring sustainability are the defining challenges of our time, and access to sustainable energy is central to both of them.” *Brief: Sustainable Energy for All*, WORLD BANK (Nov. 19, 2013), <http://www.worldbank.org/en/topic/energy/brief/sustainable-energy-for-all>.

The importance of delivering on sustainable energy also is reflected in its inclusion as a high-level priority in the major proposals for the Post-2015 Development Agenda. Notably, the list of 17 goals developed by the intergovernmental Open Working Group on Sustainable Development Goals includes sustainable energy as a goal and incorporates the UN Secretary-General's sustainable energy targets in support of that goal. *Open Working Group Proposal for Sustainable Development Goals*, SUSTAINABLE DEV., <http://sustainabledevelopment.un.org/sdgsproposal> (last visited Jan. 28, 2014).

The UN General Assembly adopted this proposed list of goals at its plenary in September 2014 as the framework for preparatory discussions for next year's official adoption of a revitalized UN development agenda beyond 2015. G.A. Res. 68/309, U.N. GAOR, 68th Sess., U.N. Doc. A/RES/68/309 (Sept. 10, 2014). Delivering on the sustainable energy goal could have a profound effect on achieving the other proposed post-2015 development goals of reducing poverty and



disease, safeguarding public health, mobilizing responses to climate change, and ensuring sustainable uses of natural resources around the globe.

The sustainable energy goal proposed by the Open Working Group calls for the international community to “ensure access to affordable, reliable, sustainable, and modern energy for all.” It aims to achieve the following targets by 2030:

- ensure universal access to affordable, reliable, and modern energy services;
- increase substantially the share of renewable energy in the global energy mix;
- double the global rate of improvement in energy efficiency;
- enhance international cooperation to facilitate access to clean energy research and technologies, including renewable energy, energy efficiency, and advanced and cleaner fossil fuel technologies, and promote investment in energy infrastructure and clean energy technologies; and
- expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, particularly in least developed countries and small island developing countries.

The need to end energy poverty through increased low-carbon and sustainable energy solutions is great. The UN High-Level Panel of Eminent Persons on the Post-2015 Development Agenda reported in 2013 that “national and local governments, businesses and individuals must transform the way they generate and consume energy, travel and transport goods, use water and grow food.” HIGH-LEVEL PANEL OF EMINENT PERSONS ON THE POST-2015 DEV. AGENDA, A NEW GLOBAL PARTNERSHIP: ERADICATE POVERTY AND TRANSFORM ECONOMIES THROUGH SUSTAINABLE DEVELOPMENT 8 (2013), http://www.un.org/sg/management/pdf/HLP_P2015_Report.pdf. Citing a 2011 World Energy Outlook Factsheet from the International Energy Agency, the Panel observed that “[d]espite all the rhetoric about alternative energy sources, fossil fuels still make up 81 percent of global energy production—unchanged since 1990.” *Id.* at 4. The Panel cautioned that developing countries face “critical choices,” in that infrastructure investments made today “will lock-in energy use and pollution levels tomorrow.” *Id.* at 6. The most recent World Energy Outlook Factsheet, dated 2014, projects that emerging economies will have the highest energy demand and that energy will be pivotal to achieving climate change goals. Int’l Energy Agency, World Energy Outlook 2014

Factsheet (Nov. 12, 2014), http://www.worldenergyoutlook.org/media/weoweb/2014/141112_WEO_FactSheets.pdf.

Tackling many of the challenges of sustainable energy and the reduction of greenhouse gases will require strategically leveraging public and private investments, breaking down economic barriers to energy access, catalyzing business and civil society action, developing and investing in innovative technologies, and providing transparent and effective regulatory and legal frameworks.

Public and Private Investment

At the launch of the UN Decade of Sustainable Energy for All, the international community announced billions of dollars of new public and private investment, including leveraged investments. Press Release, Sustainable Energy for All, UN Secretary-General Calls for Greater Investment and Commitment to Meet Sustainable Energy for All Targets, Tackle Energy Poverty and Climate Change (June 5, 2014), <http://www.se4all.org/2014/06/05/un-secretary-general-calls-greater-investment-commitment-meet-sustainable-energy-targets-tackle-energy-poverty-climate-change>. The World Bank Group committed \$5 billion in new financial support for projects in Africa. The African Development Bank reported financing \$2 billion in sustainable energy projects and mobilizing more than \$4 billion in co-financing. The European Union announced €3 billion (\$3.8 billion) in new grants. The United States committed technical assistance and \$7 billion in financial support and loan guarantees for energy projects in Africa, with the private sector committing an additional \$14 billion in new private financing through direct loans, guarantee facilities, and equity investments.

The global investment framework still falls short of the \$45 trillion investment needed to meet the 30-percent increase in energy demand over the next 15 years, according to Kandeh Yumkella, the UN Secretary-General’s Special Representative on Sustainable Energy for All. *\$45 Trillion Needed to Meet Global Energy Demands Says UN*, BBC RADIO 5LIVE (Oct. 6, 2014), <http://www.bbc.co.uk/programmes/p0281y52>. He told the BBC in October 2014 that “how we use that amount of investment will determine the trajectory for the rest of the century.” *Id.* He asserted that it is possible for renewable energy sources to generate 50 percent of new energy capacity during the next 15 years, but questioned whether policy needs to change to address the disadvantage of significantly lower subsidies for renewables as compared to other energy sources.

An assessment last year of recent progress toward the goal of sustainable energy indicates that national and



international action has been “too slow to reach the new objectives.” SUSTAINABLE ENERGY FOR ALL, 2013 GLOBAL TRACKING FRAMEWORK REPORT (2013), <http://www.se4all.org/tracking-progress>. Adoption of sustainable energy as one of the SDGs would further affirm the need for the public and private sectors to innovate and invest in sustainable energy generation, infrastructure, services, and research and development. Additional international investment could generate increased demand for legal services in project financing, investment guarantees, investment tax exemptions or credits, public benefit funds, and procurement.

Regional and International Coordination

Should the UN General Assembly adopt sustainable energy as a central goal of the post-2015 agenda, the international community could see further acceleration of coordinated clean energy activities across governments, nongovernmental organizations, businesses, and civil society through the Sustainable Energy for All structures. See SUSTAINABLE ENERGY FOR ALL, <http://www.se4all.org> (last visited Jan. 28, 2015). Three hubs serving Africa, Asia, and Latin America support national agendas and regional solutions. Two thematic hubs coordinate policies and initiatives on energy efficiency and renewables. Such coordinated approaches aim to decrease risks to sustainable energy project development, facilitate cross-border financial flows, and accelerate high impact opportunities.

More than 85 countries with emergent economies are coordinating through Sustainable Energy for All to assess their needs for new investments to increase sustainable energy and other modern energy services. These countries could be the ones to watch for increased legal opportunities as they boost action to attract new investments for sustainable energy projects. *Country Level Actions*, SUSTAINABLE ENERGY FOR ALL, <http://www.se4all.org/actions-commitments/country-level-actions> (last visited Jan. 28, 2015).

A wide range of UN, nongovernmental organizations, and private sector partners are participating in the multi-stakeholder Sustainable Energy for All forums, including UN-Energy, UN Global Compact, the UN Industrial Development Organization (UNIDO), the UN Department of Economic and Social Affairs (DESA), the UN Development Programme (UNDP), the UN Environment Programme (UNEP), and the International Renewable Energy Agency (IRENA). Participating financial institutions include the African Development Bank, the Inter-American Development Bank, the Asian Development Bank, and the World Bank.

Legal and Regulatory Innovations

Creating transparent and effective legal and regulatory frameworks is vital to accelerating national and international investments in sustainable energy and to mobilizing further international action to reduce greenhouse gas emissions. Increasingly, governments are exploring innovative legal and regulatory reforms in coordination with voluntary industry mechanisms to promote transparency, new subsidies schemes, updated certification requirements, demand-side flexibility measures, cross-border and regional market integration, and realigned financial investment flows. Reflective of a trend to integrate voluntary sustainability schemes, at least 144 countries have voluntary renewable energy targets, up roughly five percent from 2013. RENEWABLE ENERGY POLICY NETWORK FOR THE 21ST CENTURY (REN21), RENEWABLES 2014: GLOBAL STATUS REPORT (2014), <http://www.ren21.net/REN21Activities/GlobalStatusReport.aspx>.

As the legal and regulatory frameworks further progress, attorneys could find increased opportunities in counseling clients on feed-in tariffs, renewable quotas, tradable certificates, metering, environmental reviews and permitting approvals, and corporate social responsibility practices and reporting requirements.

Outlook for Sustainable Energy within the Post-2015 Development Agenda

Sustainable energy as a global development goal will continue throughout the Sustainable Energy for All Decade and will contribute to the overall international development agenda. How effective the international community will be at accelerating and cultivating energy access, energy efficiency, and an increased share of renewables in the overall energy mix during the Decade and beyond could turn on whether the Post-2015 Development Agenda formally embraces sustainable energy as a central goal.

As the international community continues outlining a roadmap forward for targeting energy inequalities and addressing sustainable development, attorneys and the broader legal community will continue to play important roles. The legal community can help the range of stakeholders understand better how to build capacity, grow distribution and value chains, leverage public-private partnerships, create and bolster effective regulatory and legal frameworks, and manage risks of innovative energy solutions. ♦



Assessing the UN Sustainable Development Goals through the Lens of International Trade Law

By Bernd G. Janzen and Emily S. Fuller

Undoubtedly, international trade law, as a mechanism for defining the scope and direction of economic ties between countries, has an essential role to play in the attainment of the UN Sustainable Development Goals (SDGs or Goals). Indeed, the seventeenth and final Goal, which functions as an enabling clause for the preceding Goals by calling for the revitalization of a global partnership for sustainable development, expressly supports the conclusion of ongoing World Trade Organization (WTO) negotiations convened under the 2001 Doha Development Agenda (DDA).

However, just as the global community's focus on the Goals intensified, the WTO's DDA appeared to be collapsing. In October 2014, WTO Director-General Roberto Azevêdo described the trade body's ongoing work in increasingly bleak terms, speaking of "growing distrust" among members, "paralysis," and the possible "end of Doha." Although the WTO can point to the recently concluded Trade Facilitation Agreement (TFA) as evidence of some progress on the DDA, the TFA's scope only represents a fraction of the full array of DDA issues. The main—but not only—cause of this existential crisis in the Doha Round negotiations has been the growing rift between developing and developed

countries on agricultural market access negotiations. More broadly, many observers believe that the rise of the BRICS countries—i.e., Brazil, Russia, India, China, and South Africa—since the adoption of the DDA has fundamentally altered the balance of power underlying the 2001 Doha consensus, putting a successful outcome to the Doha Round increasingly out of reach.

These developments raise the question of whether the DDA remains the most appropriate international trade law platform for further work toward the SDGs. In particular, while the DDA has languished, a series of multilateral trade initiatives in recent years have embraced sustainable development to varying degrees. These efforts include the Environmental Goods Agreement (EGA), the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP), all of which are currently under negotiation. Progress in these multilateral negotiations has effectively supplanted the DDA as a vehicle for advancing the SDGs through trade.

Environmental Goods Agreement

One of the few ongoing WTO negotiations tied directly to the DDA is the EGA, which would eliminate import duties—and potentially some behind-the-border trade impediments known as technical barriers to trade (TBTs)—on goods related to energy efficiency, renewable energy generation, and climate change mitigation. Currently, countries assess duties as high as 35 percent on such goods.

While the 180-plus WTO membership as a whole has been unable to agree to proceed with such negotiations, 14 members—the United States, Australia, Canada, China, Costa Rica, the European Union (EU), Hong Kong, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, and Chinese Taipei—launched the EGA on their own in July 2014. Reflecting the above-discussed ideological divide between developing and developed countries, Brazil and India have not joined the EGA negotiations. Even without

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the participation of these major developing countries, however, the involved member countries account for nearly 90 percent of global trade in the environmental goods covered under the current initiative, according to the WTO.

An EGA could advance a number of SDGs, including SDG 7 (ensuring broad access to modern and sustainable energy sources), SDG 9 (promoting sustainable infrastructure and technology development), SDG 13 (acting to combat and mitigate against climate change), and SDG 15 (promoting sustainable management of ecosystems). During the recent second round of talks held in October 2014 in Geneva, the negotiating parties agreed that the list of environmental goods subject to the EGA will have 10 or 11 product categories (e.g., air pollution control). Also, five of the parties submitted specific proposals for goods to be included in two categories: solid and hazardous waste management and air pollution control. The negotiating members were to have held their next discussions at the end of January 2015. Although it is unclear at this point when the talks will conclude, some commentators have indicated the end of 2015 as a goal, albeit an ambitious one, for concluding the agreement.

Trans-Pacific Partnership

Outside of the WTO and unrelated to the DDA, the 12 negotiating partners of the TPP intend to execute an ambitious, “twenty-first century” free trade agreement (FTA) that facilitates trade, creates new and enforceable standards, and acts as a template for future trade agreements. The 12 participating countries—Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States—span the development spectrum. Additional major trading countries, including Korea, may join the negotiations. While the TPP negotiations have been underway for almost five years, the parties hope to finalize the agreement, which would cover roughly one-third of global trade, by mid-2015.

At its core, a final TPP would improve market access and investment opportunities for all of its parties. In doing so, it would advance SDG 17, which calls for increased market access for developing country exporters. One TPP participant, Vietnam, has consistently asserted that it must, under the agreement, obtain additional access to the U.S. market for its textiles and apparel products. A Harvard scholar found that Vietnam’s annual export growth could reach 37.3 percent per year by 2025 if the TPP’s anticipated reforms and tariff reductions succeed. Although some developed-developing country tensions also exist in the context of the TPP negotiations, the participation of developing economies, such as Vietnam, Malaysia, and Peru, in the regional pact demonstrates that multilateral or regional FTAs may prove effective to bridge gaps between

these blocs. For example, in order for Vietnam to obtain some traction on its request for enhanced access to the U.S. textiles and apparel market, the country will likely have to provide some assurances that it will commit to rules that directly impact the SDGs (i.e., improved workers’ rights, which may advance SDG 8 (promoting full and productive employment and decent work) and SDG 10 (reducing inequality)).

A final TPP could also advance other SDGs, including SDG 13 (acting to combat and mitigate against climate change) and SDG 14 (conserving and sustainably using the oceans and marine resources). For example, according to leaked text from the TPP environmental chapter, the parties have agreed to ban some fisheries subsidies that contribute to overcapacity and overfishing. Specifically, the ban would reportedly apply to any subsidy that targets “the fishing of fish stocks in an overfished condition” or funds fishing vessels identified as engaging in illegal, unreported, or unregulated fishing. Although many of the other obligations in the leaked chapter only require the parties to “take appropriate measures” to protect flora, fauna, and biodiversity without any specific obligations, these priorities would still place pressure on parties, including the developing parties, to implement new measures for achieving these goals.

Transatlantic Trade and Investment Partnership

The current negotiations between the United States and the EU toward a TTIP may include an unprecedented effort in a trade pact to enhance anticorruption controls. While trade and investment ties between these jurisdictions are already deep and mature, the TTIP attempts to further increase them through, among other things, the elimination of remaining import duties and harmonization of regulatory frameworks governing key industries.

While the most recent U.S. FTAs have all included anti-corruption provisions, Transparency International, the global civil society group dedicated to combating international corruption, has requested that the TTIP build on previous commitments. Such novel elements, as described below, would directly address SDG 16, which provides, as part of a broader goal to build effective, accountable, and inclusive institutions at all levels, that UN members should work “to substantially reduce corruption and bribery in all its forms.” No such effort is underway under the auspices of the DDA. Former WTO Director-General Pascal Lamy, who serves on the Transparency International advisory board, recently argued that the TTIP “represents the most obvious step forward” to use international trade law to further combat corruption, given that the United States and the EU already strongly prohibit the bribery of foreign officials



through, for example, the U.S. Foreign Corrupt Practices Act and the United Kingdom's Anti-Bribery Act.

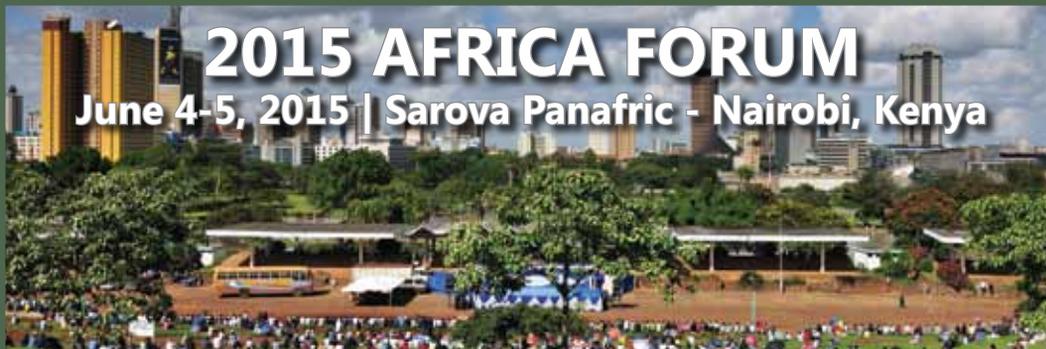
The draft TTIP text, if included, would strengthen anticorruption efforts in several ways, including through specifying penalties that the parties must adopt to discourage foreign officials from engaging in corrupt behavior, requiring domestic officials to make financial activity declarations, and involving civil society and the private sector in implementation efforts under the OECD Anti-Bribery Convention and UN Convention against Corruption. The draft text would also criminalize the offering of bribes to domestic public officials, not just foreign ones, and domestic public officials who accept or solicit bribes would also face penalties.

These proposed TTIP provisions would not only directly advance SDG 16, but would also implicate a number of other SDGs with respect to which corruption is already known to impede. These include SDG 1 (ending poverty); SDG 2 (combating hunger and achieving food security); and SDG 10 (reducing inequality).

Conclusion

As the prospect of finalizing a broad-based deal encompassing the entire WTO membership under the DDA becomes increasingly remote (even with the recent finalization of the TFA), many WTO members are embarking on more manageable negotiations on a multilateral or bilateral basis. Many of these ongoing efforts touch on or advance distinct elements of the UN's Sustainable Development Goals.

In some cases, as with the EGA and the TPP, developing countries are assuming obligations reflecting the SDGs in exchange for increased access to developed country markets. In other cases, such as in the context of the TTIP, negotiators are forging ambitious new standards that would advance certain SDGs. Thus, while the progress is incremental and staggered, international trade agreements are indeed beginning to reflect the UN's Sustainable Development Agenda—just not on the WTO membership-wide basis called for in Doha in 2001. ♦



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Global Common Goals and Goods: Security and Realism

By Jonathan Granoff

The footprints of science, technology, and human social organization have never disturbed the natural world as intensely as they do today. Their impact has created many threats unique to the twenty-first century, and we must recalibrate the way security is pursued. The threats ignore national boundaries, and they cannot be met without global cooperation and the rule of law. Policies inconsistent with that cooperation must be challenged, and new thinking is critically needed. This essay will address the new challenges and the steps needed to overcome barriers to success.

There are global public goals the cooperative pursuit of which will amplify the capacity of nations to work together and find common ground in addressing issues where current differences preclude critical short-term progress. Some of these goals are issues of critical importance to the quality of life for billions of people. These include: ending terrorism, preventing pandemic diseases, obtaining cyber security and stable financial markets, and bringing about peaceful democratization in transitioning countries. There are other issues that challenge the very existence of civilization. Success in these arenas is imperative. Cooperation is an existential necessity. We must, for example, cooperate universally to achieve success in stabilizing the climate, protecting the oceans and rain forests, and insuring that nuclear weapons are never used. None of these goals can be achieved without establishing international legal regimes.

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On the critically important issues, there are legal regimes emerging at global, regional, and national levels. On the existential threats, the norm currently is ad hoc. Imagine if commercial matters were approached on an ad hoc voluntary basis. The stability that the rule of law provides would be lacking and commerce ground to a halt. Do we have a rigorous treaty for elimination of nuclear weapons, as we do for biological and chemical weapons? No. Do we have a regime to adequately protect the very alkaline acidic balance of the oceans and their biodiversity? No. Do we have an enforceable, adequate set of laws in place to protect the very climate of the planet? No. Is it likely we will achieve these common goals without active advocacy of lawyers?

Achieving these goals, possibly even working cooperatively to move toward such achievements, will constitute global, public, common goods of the highest value. Failure to engage in such a new bold approach, commensurate with the unique challenges facing all of humanity today, will ensure immeasurable suffering. For example, predictions relating to a degraded climate by legions of credible scientists range from disastrous to downright apocalyptic. We know that any use of nuclear weapons will disrupt society in dramatic ways, but few recognize that a mere 100 blasts could push tons of material into the atmosphere, causing a drop in climate and massive famine sufficient to kill billions from starvation and render civilization a meaningless dream of the past. There are over 17,000 of these horrific devices in the world with thousands poised and ready to strike in short order. Moreover, these weapons constitute a wall of threat and fear between peoples and countries where bridges of trust and cooperation are required. The business community has figured out how to work in a coordinated manner, but the "security" community is still working with the mentality of existential adversity. Nuclear weapons exemplify this incoherence symbolically and in reality.

The only way to guarantee that nuclear weapons will not be used is to eliminate them universally. There are immediate, tangible steps that must be taken on the road to this goal: lower the political currency of nuclear weapons, as well as their operational military posture of hair-trigger readiness; strengthen institutional verification and monitoring systems to



inventory and control all nuclear-weapons-grade fissile materials; bring the test ban treaty into force; obtain a treaty ending any further production of weapons-grade fissile materials; reduce arsenals to minimal numbers; change the doctrines that guide policy decisions to eliminate roadblocks to disarmament progress; and, in diplomacy and law, establish the clearest framework for a legal, verifiable, enforceable, non-discriminatory, universal ban on these weapons. Without such steps, obtaining the cooperative environment required to address our critically important and existentially imperative concerns will remain problematic. We cannot at once threaten each other with annihilation and expect our pursuits requiring new levels of cooperation to succeed.

Our shared vulnerabilities require a redefinition of security. The new definition must include a global set of legal norms and laws that apply to all nations. In an interconnected world our fates are connected. This obvious truth should compel us to more energetically minimize and ultimately resolve our differences in a spirit of peace and common need. For the sake of our survival, we must succeed in obtaining the clarity of shared goals and galvanizing the creation of policies based on cooperation. We must do this for ourselves today and for future generations as well, for their well-being depends on our conduct today.

Every successful domestic legal system is based on principles of equity. The Golden Rule, in some iteration, is universal to all ethical systems, yet the international security community entirely neglects this lesson, and most glaringly in nuclear weapons policies. Imagine if the treaty banning biological weapons universally stated that while no country is allowed to use polio or smallpox as a weapon, in the interest of strategic global stability, “we” will permit nine countries to stockpile and threaten the use of the plague as a weapon. The world community would declare this an incoherent, unrealistic, and dangerous policy, and this indictment would be correct. That is why we must correct the analogous example in the realm of nuclear weapons. No country should have them, and the failure to establish global norms against them makes stopping their spread very difficult and increases the likelihood of their use, by accident, madness, or design.

Despite legal commitments contained in the Nuclear Nonproliferation Treaty and the pleas of numerous world leaders—which include nearly all Nobel Peace Laureates, including President Obama; the overwhelming majority of nations; the unanimous ruling of the International Court of Justice; coalitions of powerful voices of U.S. statesmen including Henry Kissinger, George Shultz, Sam Nunn, and William Perry; and diplomats, military leaders, and legions

of experts around the world—progress commensurate with the threat is lacking. Arguments posed by those who extol the perceived virtues of nuclear weapons—that we need them to respond to unforeseen dangers and must maintain enough current nuclear capability to counter a first strike by another country—have not amplified our security at all, but rather have delivered to the world enormous arsenals and no substantive operational plan to get rid of them.

We must place nuclear weapons elimination in the context of achieving the entire menu of existential, global public goods.

Advocacy for the elimination of nuclear weapons has not succeeded. One reason is that the debate is framed within a traditional “national risk vs. benefit” analysis. The debate poses the question incorrectly. It presumes that nuclear weapons provide a unique benefit to the security of privileged states, while also having controllable risks. On the other hand, most arms control advocates argue that the risk is too great and that some having the weapons is a stimulant for proliferation. Even though this analysis is true, this approach to the debate has not succeeded. Counterarguments in the capitals of states with nuclear weapons consistently prevail, and those who extol the value of nuclear weapons box the debate in an antiquated structure.

Thus, in the risk/benefit framework, it is difficult to overcome the argument that these weapons provide a beneficial deterrent against a potential, as yet unrealized, unforeseen, unknown, and unknowable threat. According to nuclear weapon advocates, we have a known, yet manageable risk, and an unknown risk could be far worse. They thereby successfully advance “the solution” of improving the management system by making concerted efforts to stop proliferation.

The reality is that nuclear weapons are a present, existential threat and do not provide national security. In fact, they constitute a pillar in a systemically dysfunctional international security order that is not adequately addressing a set of pressing global threats. Nuclear weapons are a critical log-jam for progress behind a large, complex systemic problem: the lack of a sufficiently broad, common security framework that integrates nuclear weapons elimination into the process



of addressing all shared threats to human survival. So long as nuclear arms control practitioners insist on pursuing arms control and disarmament goals outside of a broader framework defined by cooperation, law, and collective security, we will have a very hard time achieving success. We must place the elimination of nuclear weapons in the context of achieving the entire menu of existential, global public goods. This holistic approach to global sustainable security is accurate and realistic and will certainly help build coalitions with others also interested in a sustainable future.

Ensuring a sustainable safe future is a moral imperative. We at GSI propose redefining security to meet critical and existentially imperative challenges. Success will be the obtaining of global, common, public goods of the highest value. These would be achievements worth celebrating. So-called “realists” who persist in asserting that international law, ethical principles in policy, and finding common interests are adverse to the natural order and manner in which

nations must behave are unable to come up with realistic solutions. They advocate the pursuit of a dominance model of security that we believe is unable to generate a sufficiently cooperative international order to respond to real security threats that have no military solution. A new approach should focus on common goals and collective efforts in a manner that is consistent with empirical, honest, and accurate appraisals of our current existential situation and worthy of our highest ideals and most passionate efforts.

What is needed fast is a sober discussion by the world’s leaders in government and civil society to define where nations’ interests are harmonious and coherent and can thus be coordinated, where interests are adverse, and where they are simply different. In such a discussion, it would be discerned that we are in a unique moment in history where our common interests and goals far outweigh perceived adversarial postures. We could then begin acting as grown-ups who deal with reality rather than ideas about it. ♦

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Sustainable Development and Natural Resources: Periodic Negotiations of Natural Resource Contracts

By Jacqueline Mandelbaum, Salli Anne Swartz, and John Hauert

This article is based on the Columbia Center on Sustainable Investment (CCSI) Briefing Note Number 2, “Periodic Review in Natural Resource Contracts,” published in July 2014 at <http://ccsi.columbia.edu/files/2014/08/Periodic-review-in-natural-resource-contracts-Briefing-Note-FINAL-8.8.14.pdf>. It is published in ILN with permission of CCSI.

Large-scale investments in extractive industries can be plagued by demands for renegotiation, sometimes leading to arbitration or litigation and causing a breakdown in the relationship between the host country and the investor. The nature of these investments, which are often long-term, is such that it can be difficult to predict at the outset which conditions will exist or arise over the course of the investment. The circumstances at the time the original agreement is entered into are likely to change, as they may be driven, for example, by resource cycles or a changing political environment. If the parties cannot agree upon renegotiated terms, then years of litigation or arbitration will follow if the investor decides to stop performing under the agreement or the government terminates the permits or concessions.

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As the balance of risks and benefits to the parties changes, parties request modifications to the terms and conditions of the investment. Accordingly, mechanisms are needed in these agreements to smooth the process of dealing with the inevitability of changing circumstances. One such mechanism is including provisions that formally require parties to meet at specified, periodic intervals to review the terms of the contract or license and renegotiate or readjust key provisions to take into account changing circumstances.

Such periodic review mechanisms have been included in contracts as early as the 1970s. However, a review of publicly available extractive industry contracts and of extractive industry databases found such mechanisms only in contracts published by the Liberia Extractive Industries Transparency Initiative (LEITI) and in the contracts referred to in Model Mining Development Agreement (MMDA) prepared by the International Bar Association in 2011. Occasionally, legislative instruments may contain such a mechanism. Tanzania’s Mining Code is one example (and the only one we found) of legislation that contains such a mechanism.

Review Mechanisms: An Overview

The periodic review mechanisms in the Liberian contracts are representative of those found in the MMDA. Three stages of review appear in the Liberian contracts.

Initiation of the Review

The parties start the review process in regular meetings that take place at defined intervals or at the request of one of the parties. The review process does not necessarily lead to the parties actually discussing changes to the contract.

The Modification Process

This is the process during which the parties consider in good faith their respective obligations and possibly modify the contract in ways they agree are necessary in light of changed circumstances.



A Trigger Event

This is a particular circumstance that the parties during the review process must agree has occurred before they enter into the modification process. If the particular circumstance has not occurred, the review process stops and a modification process does not proceed. For some “at-request review mechanisms,” defined below, a trigger event need not be established before commencing the modification process.

Periodic Review in the Liberian Contracts

In the contracts reviewed for this article, seven out of 20 mining contracts and two out of the 10 oil contracts contain periodic review mechanisms.

Initiation of the Periodic Review

At predefined intervals, the parties are required to meet and consult with the aim of establishing whether or not a trigger event has occurred. Almost always, this interval is five years.

Trigger Event in Periodic Review

The trigger event is a crucial element of the periodic review mechanism because it starts the modification process. In order for a modification process to take place, the parties must agree that the trigger event has occurred (which is not a given). Occasionally, the trigger event is not explicitly defined. For example, some contracts consider a trigger event to be “*any substantial change in circumstances.*”

Other contracts, however, expressly define a trigger event in more detail. For example, in some contracts, in order for the modification process to begin, the parties must establish the occurrence of “profound change in circumstances” (PCC). A PCC is generally defined as

such changes . . . in the economic conditions of the mineral and mining industry worldwide or in Liberia, or such changes in the economic, political or social circumstances existing in Liberia specifically or elsewhere in the world at large as to result in such a material and fundamental alteration of the conditions, assumptions and bases relied upon . . . that the overall balance of equities and benefits reasonably anticipated by them will no longer as a practical manner be achievable.

See An Act to Ratify the Concession Agreement among the Government of the Republic of Liberia, Western Cluster Limited, Sesa Goa Limited, Bloom Fountain Limited and Elenilto Minerals and Mining LLC § 1 (Aug. 22, 2011).

If the parties fail to agree that the trigger event has

occurred, the review process terminates. The contracts reviewed herein generally do not specify whether (or not) the dispute over the existence of a trigger event can or should be arbitrated. One contract explicitly provided that the clauses dealing with the review process will not be subject to the contract’s dispute resolution provisions.

On the other hand, if the parties agree, the modification process begins and the obligations of the parties relative to this process are triggered.

Obligations of the Parties during the Periodic Review

Typically, the obligation of one party to negotiate and accept a proposal to modify the contract made by the other party during the modification process is relatively weak: parties are only required to enter into discussions in good faith. Rarely, contracts provide sanctions to persuade the other party to negotiate and accept proposals for modification from the other parties. For example, one contract provides that certain tax exemptions expire unless they are renewed during the review process.

The periodic review mechanisms in the MMDA also impose relatively weak obligations. Only one example, from an Australian land use agreement, provided that the contract’s original terms will not continue if the parties do not reach agreement during the review process.

In conclusion, the language used in the periodic review mechanisms clearly leaves consensus to modify the contract solely in the hands of the parties. If there is no agreement, no modification is made. The only real obligation in the majority of contracts is the duty to act in good faith while discussing and considering possible modifications to the contract, but most contracts do not provide parameters as to what will be considered “good faith.” More work needs to be done in the area to understand how arbitral tribunals treat such a term.

At-Request Review in Liberian Contracts

In addition to the periodic review mechanisms, two types of review mechanisms, termed “at-request reviews” in the Liberian contracts, are initiated at the request of one of the parties. “Trigger-at-request review” clauses require the parties to establish that a trigger event has occurred in order to start the modification process when the parties meet. “Automatic-at-request review” clauses indicate that the request itself will set the modification process in motion. The obligations of the parties to agree to any modifications to the contract are weaker for the automatic-at-request review than for the trigger-at-request review.



Initiation of the At-Request Review

Both at-request review mechanisms can be initiated by the request of one of the parties, at any time. In trigger-at-request review mechanisms, the request usually must be based on the perception by the party making the request that a particular trigger event has occurred, and in all cases the parties only discuss changes to the contract if they agree that a trigger event has occurred.

Trigger Event in Trigger-At-Request Review

In the Liberian contracts, the trigger event of the trigger-at-request review mechanism is always defined as a PCC, although the definition of PCC differs slightly between mining and agricultural contracts, on the one hand, and oil contracts, on the other.

Obligations of the Parties during the At-Request Review

The obligations of the parties during the modification process of the trigger-at-request review clauses are very similar to those in the periodic review clauses. Generally, the provisions impose a requirement that the parties make any changes that they agree “*in good faith*” are necessary. Automatic-at-request review clauses provide even weaker obligations for the parties to agree to any modification proposals made by the other side: “the parties *shall take such action, if any, that is mutually agreed* to address the matter.”

Issues Encountered in Practice

Many periodic review clauses use very broad and imprecise wording. Accordingly, disagreements arise over whether or not the circumstances alleged by one party can justify a renegotiation or whether or not a trigger event has occurred. Thus, instead of renegotiating substantive provisions, the parties exhaust much time, effort, and initial goodwill arguing over the pertinence and reality of the facts alleged by one of the parties. Over time, goodwill often turns to bad faith negotiations with allegations that the numbers produced by one of the parties are not trustworthy and cannot be relied upon as the basis to renegotiate terms and conditions. The higher the financial stakes, the more unlikely the parties will agree that events have resulted in a grave disequilibrium in the contract conditions.

The parties use many arguments to justify the status quo, depending upon which party has benefited from the alleged change in circumstances. For example, an investor who benefits from a windfall profit often will argue against a renegotiation requested by the government by stating that the sudden rise in prices of the commodity (for example) was foreseeable in long-term contracts and that the new-found profit is a fair return for

the assumed project risk. Moreover, it will argue that because it pays more taxes on the higher revenues (if this is the case), the government benefits from the increased tax revenue.

By contrast, if the issue is a prolonged investor loss, the investor often will argue that unforeseeable geological challenges or a drop in the commodity prices makes its investment worthless or much less valuable to it, thereby setting the scene for a work stoppage to force renegotiations. Likewise, in response to commodity price decreases or geological challenges, the government can argue that a sharp rise or fall in commodity prices is foreseeable (even if it is forced to admit that the timing and extent of the variations in price are not) and that the investor assumed the risk of geological challenges.

A New Approach

Setting Objective Criteria

In order to avoid allegations of the use of unreliable data during renegotiations, it may be advantageous to set forth at the outset objective criteria and supporting financial data to calculate a baseline for the parties’ financial expectations. The purpose of the baseline calculations is to share the partners’ financial expectations at the beginning of the project. These expectations would be reexamined by comparing the baseline figures with actual figures at contractually defined intervals or at party-requested intervals, or both, to ascertain whether circumstances have resulted in the financial reality for one or several of the parties being very far off the baseline expectations such that renegotiations are warranted. If the investor’s projections turn out to be wildly off-base, it is likely that the government’s revenue projections will be as well, thereby giving the parties a reality-based incentive to renegotiate.

The baseline calculations would be attached to the contractual framework when it is first negotiated and signed. For example, in the schedule setting out the investor’s investment requirements (work schedules, amounts to be invested, etc.), the investor could set out its expected return on investment (ROI) for each phase of the project (feasibility study, exploration, infrastructure construction, commercial production, and sale phases of the project, etc.). The more information and data shared by the investor in calculating its ROI, the more reliable the baseline will be.

The investor’s baseline could take the form of a mathematical formula wherein its numbers affecting the future profitability of the project are inserted—capital expenditures (CAPEX), operating expenditures (OPEX), financial costs not accounted for in the CAPEX, projected average sale price of commodity, etc.—to predict a projected ROI during each of the major phases of the project (which could



be a loss, for example, for the feasibility and exploration stage). This method would not necessarily require the investor to divulge all of the detailed data used to calculate its projected CAPEX and OPEX, but it would hold the investor responsible for its projected baseline ROI for each stage of the project in order to evaluate whether or not the financial and other conditions of the contract should be renegotiated.

For the government, the projections of revenue from royalties, land fees, taxes, etc., and the timeline for their receipt would also be attached to the contractual framework. The government's calculations will, to a large extent, rely on the investor's projections of quantities, quality, and sale price, but the government could conceivably arrive at its revenue projections through independent analysis, which is always preferable to relying solely on the investor's figures.

Data Required

To ensure reliable, long-term numbers, the data for each stage of the project would be input into the formula during each stage of the project, and the calculated ROI would be exchanged by the parties at contractually defined periods during each project stage or upon the request of one of the parties, or both. If the resulting ROI calculations vary by more than one or several negotiated fixed percentages, the parties would be obligated to renegotiate in order to attain or readjust their respective expectations as set forth in the initial contractual framework. The parties could also decide to modify the baseline figures and the percentage of difference that will trigger a renegotiation. Moreover, different percentages could be used for different stages of the project and applied in both upturn and downturn situations.

Detailed Financial Information Required

A major issue in the negotiation of extractive contracts is the unequal knowledge base of the contracting parties. Investors inevitably have more information at hand to make savvy investment decisions. Governments, on the other hand, have difficulty getting evaluations of their mineral or hydrocarbon reserves from neutral third parties due to cost constraints, as they do not have easy access to the economic and financial experts needed to construct realistic tax, royalties, production sharing, and other essential economic and financial projections.

The primary purpose of setting forth detailed financial expectations in the contractual framework is to permit the parties to set a mutually agreed baseline for their financial returns. The numbers and assumptions used by investors and their lenders to decide whether or not to invest are crucial information which, if shared in a confidential, commercially

constructive manner, would serve to build trust between the partners in the investment and allow for renegotiations based on objective criteria, depending upon the stage of the project and which party has incurred the cost.

Governments, too, should provide details about the numbers they have. The calculations by the government's economists of tax and royalty revenue and other financial considerations must be taken into account in order to evaluate whether or not the numbers for the royalty percentage, land fees, income tax rate calculations, and so forth are reasonable or inaccurate. The goal is for the negotiations to be based on the parties' real interests, and not on secret and undocumented calculations.

Dealing with Confidentiality

A key problem with this approach is convincing investors to share their information and know-how, which is often considered proprietary. Certain investors understandably will not want to divulge such information. However, if information, data, and financial projections can be "sanitized," and if the other partners/parties are obliged to respect confidentiality subject to stiff automatic penalties, there may be room for the exchange of sufficient data to make this method work.

For example, the data used to establish feasibility studies could be licensed to the government on an exclusive basis for a modest fee. This could give the data the intellectual property protections required to reassure the investor while giving the government access to valuable data concerning its own reserves. The license fee could be incorporated into the royalty for a fixed period of time. To make this type of arrangement work, the investor would have to communicate to the government the cost of the feasibility study so that the government's payment for its use makes commercial sense. Perhaps the government would want to purchase the data and the feasibility study for its cost plus a small percentage. At the very least, the parties can give the data and the feasibility study a value to be taken into account when calculating the ROI of the investor and the ROI of the government.

Conclusions

The importance of review provisions rests in their ability to maintain dialogue between the parties and to create an opening to discuss changed circumstances. The periodic review mechanisms examined here tend to impose an obligation to discuss; the parties are required to meet and consult, but there is little or no obligation for them to make any changes to the contract during a review.

If the parties wish to ensure that contract modification



is seriously considered during each consultation, stronger obligations need to be included during the modification process. Furthermore, periodic review mechanisms could define clear standards and criteria for the parties to follow during the modification process; for example, some of the oil contracts are more explicit regarding the intended outcome of a modification (e.g., “offset or alleviate the said economic hardship caused by such change [PCC]”). The authors David N. Smith and Louis T. Wells Jr. in their book *Negotiating Third World Mineral Agreements: Promises as Prologue* (1975) suggest the following formulation, which provides some parameters around the issue of determining whether a change should be made:

In undertaking such review, the Parties shall bargain in good faith with a view toward providing a fair and equitable division of profits in light of the economic factors prevailing at the time of the review.

In undertaking such review the Parties shall be guided by, but not limited to, consideration of the following factors:

1. The economic value of the concession.
2. Terms of other (nickel) agreements negotiated by the government within the five-year period preceding the date of review.
3. Terms of other (nickel) agreements negotiated by the Concessionaire within the five-year period preceding the date of review.
4. Terms of other (nickel) agreements negotiated by third parties to the extent that such agreements can be reasonably compared to this Agreement.

Id. at 140.

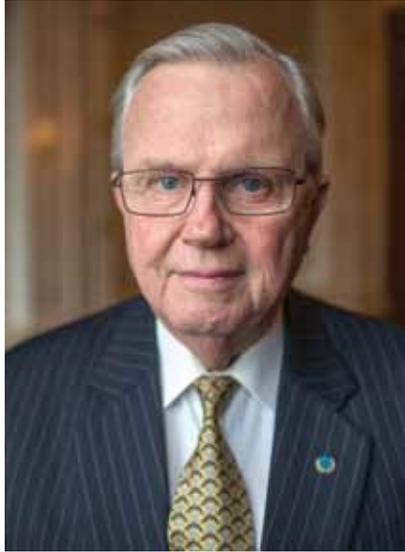
Alternatively, an entirely new approach could be adopted whereby the parties share, at the outset, their financial expectations over the course of the project to create a baseline reflecting these expectations. This baseline can be reviewed over the duration of the project in order to determine, objectively, whether there is a need for renegotiation—in cases where either party’s financial expectations are not being met.

Despite their problems, periodic review mechanisms can still play an important role. These mechanisms can be the only provision under which a government can request changes to the terms of the contract where the balance of benefits changes in light of changed circumstances. For example, it was suggested by practitioners that the mechanisms can add legitimacy to a request by a government for amendments when changed circumstances in the market result in the investor receiving an unexpected level of profit. This contrasts with other mechanisms that often apply unilaterally to the investor, providing for adjustment to the contract terms to restore the economic equilibrium expected under the contract when there has been a change (typically, government legislation) affecting the investor’s share of benefits. On the part of the investor, periodic review mechanisms can be used internally to convince others within the company that changes are necessary for business or political purposes. From this perspective, the mechanisms can provide a legal underpinning for parties seeking to achieve a business or relationship imperative.

In any event, the review mechanisms may play an important role in managing the relationship between the parties and in particular in managing the process of renegotiation. At the very least, they act to keep the parties talking to each other over the course of the investment. ♦

Hans Corell, Former UN Legal Counsel

By Richard L. Field



Editor's Note: This interview inaugurates ILN's new column, "ILN Interviews," which will be published from time to time to spotlight notable contributors to the field of international law.

Hans Corell (Sweden) was Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations from March 1994 to March 2004. From 1962 to 1972, he served in the Swedish judiciary. In 1972, he joined the Ministry of Justice, where he became director

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of the Division for Administrative and Constitutional Law in 1979. In 1981, he was appointed chief legal officer of the Ministry. He was Ambassador and Under-Secretary for Legal and Consular Affairs in the Ministry for Foreign Affairs from 1984 to 1994.

Since his retirement from public service in 2004, he has been engaged in many different roles in the legal field, including those of legal adviser, lecturer, and member of different boards. Among others, he is involved in the work of the International Bar Association; the International Center for Ethics, Justice and Public Life at Brandeis University; and the Hague Institute for the Internationalisation of Law. He was chairman of the Board of Trustees of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, from 2006–12.

Richard Field: Please tell us about the job of the Legal Counsel of the UN. Has the job changed since you were the Legal Counsel?

Hans Corell: This job is probably one of the most fascinating legal positions you can hold in the world—it's at the crossroads between law and politics. You are one of the Under-Secretaries-General of the United Nations working directly with the Secretary-General. The Legal Counsel is head of the Office of Legal Affairs with some 170–180 staff members from all over the world. See <http://legal.un.org/ola/>. The Office, which is based at the UN Headquarters in New York, has six units:

- the Office of the Legal Counsel, where you interact with the Secretary-General and the Secretariat, the General Assembly, the Security Council, the International Court

- of Justice, and other UN organs;
- the General Legal Division, where you find the in-house lawyers dealing with many questions, ranging from the internal UN administrative law, labor law, contracts law, procurement, arbitration—you name it;
- the Codification Division, which is the Secretariat of the Sixth (Legal) Committee of the General Assembly, the International Law Commission, and UN conferences such as the 1998 Rome Conference on the International Criminal Court;
- the Division for Ocean Affairs and the Law of the Sea, which is a center for the law of the sea work within the UN system—a very important task considering that the seas and oceans constitute about 70 percent of the surface of the globe;
- the International Trade Law Division, based not in New York but in Vienna, which is the Secretariat of the UN Commission on International Trade Law (UNCITRAL), one of the best functioning commissions of the UN; and
- the Treaty Section, which performs the work of the Secretariat and the Secretary-General's functions in relation to multilateral and bilateral treaties.

In addition, the UN Legal Counsel is also the chair of the meetings of the legal advisers of the organs within the UN system. This is a meeting at the legal advisers level that mirrors the UN System Chief Executives Board for Coordination (CEB), which brings together the executive heads of 29 specialized organizations to deliver as one at the global, regional, and country levels and

which is supported by three pillars: the High Level Committee on Programmes, the High Level Committee on Management, and the United Nations Development Group. See <http://www.unsceb.org/>.

It is very difficult for me to say whether the job has changed since I left in 2004. Let me say that I was the Legal Counsel during a fairly dynamic time in the UN that followed upon the fall of the Berlin Wall in 1989. Great advances were made in many fields, not least in the legal field. International criminal law should be mentioned in particular. By way of example, one can cite the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia, and, of course, the adoption of the Rome Statute of the International Criminal Court in 1998 and the establishment of this Court when the Statute entered into force in 2002.

The entry into force of the Convention on the Law of the Sea in 1994 and the establishment of its three institutions, the International Seabed Authority, the International Tribunal for the Law of the Sea, and the Commission on the Limits of the Continental Shelf in the 1990s is yet another example.

However, relations have now changed, which is demonstrated in particular through the inability of the permanent members of the Security Council to join hands in certain situations when international peace and security are threatened. I experienced the U.K.-U.S. attack on Iraq in 2003, a flagrant violation of the UN Charter by permanent members of the Security Council. This happened again when Russia attacked Georgia in 2008. And what is now happening in Ukraine is extremely serious. I am sure that this development reflects also on the work of the Legal Counsel and the Office of Legal Affairs.

Reforming the UN Security Council, not by simply adding new members but by amending its working methods, is in my view the most urgent need for UN reform today. I have developed my

thoughts in this matter many times in the past, most recently in an article published in October 2014. See <http://www.havc.se/res/SelectedMaterial/20142224ilperceptionsofsecurity.pdf>.

Field: The world geopolitical picture seems to be changing, with non-state players (political and religious, as well as business, civil society, and other interests) sometimes taking a prominent role. Transborder phenomena, such as the Internet, refugees, and health, augment this. Is the UN keeping up in an appropriate way with these changes?

Corell: Such changes have always occurred in the history of mankind, even if the development has accelerated in later years. Whether the UN has kept up depends on the subject matter. It is certainly not easy for the UN to always take the lead for the simple reason that the organization reflects the will of its members. Positions on many issues have not yet crystallized at the national level. One important example is climate change and its effects on the environment. Another example is the growing world population. We were maybe 2 billion people in the world when the UN was established in 1945. At present, we are some 7 billion, and in 2050, we will be 9.6 billion according to the UN Population Division. These are enormous challenges for the future. But in many countries—not least in the United States—people do not seem to realize that these phenomena must be addressed with determination and that they constitute a tremendous threat to international peace and security.

Let me also mention the Internet. Every time a new communications system has been invented, states have joined hands and concluded agreements in order to manage them: the postal system, the telegraph, the telephone, the railways, shipping, and air transport are good examples. But when the fastest and most powerful communications system ever is developed—the Internet—states are unable to come to

an understanding and conclude an agreement on how to manage it.

The UN could certainly do more here. However, this requires that states support the organization wholeheartedly.

Field: What should the ABA's role be in UN affairs? Should the ABA seek a more prominent voice in world affairs?

Corell: I believe that the ABA has a very important role to play here. As lawyers, members of the ABA are in a position to explain the need for democracy and the rule of law both at the national and the international level. Furthermore, the ABA should explain what the present U.S. generation seems to have forgotten: the importance of international cooperation by joining international treaties—e.g., the UN Convention on the Law of the Sea and the Rome Statute of the International Criminal Court—and by respecting the so-called Supremacy Clause in Article 6 of the U.S. Constitution. Imagine the United Nations with 100 percent U.S. support!

Today, the UN is being criticized within the United States—often for unjustified reasons—to such an extent that, so far, President Obama has not even dared mention the UN in any of his State of the Union addresses. One of my favorite quotes from an American president is from President Dwight D. Eisenhower—a Republican and at that a military man. On January 21, 1957, the re-elected president stated before the U.S. Congress:

We recognize and accept our own deep involvement in the destiny of men everywhere. We are accordingly pledged to honor, and to strive to fortify, the authority of the United Nations. For in that body rests the best hope of our age for the assertion of that law by which all nations may live in dignity.

Where did this wisdom go?

It is extremely important that the United States and other Western democracies set the example when it

comes to democracy and the rule of law, both at the national and the international level. And this cannot wait. There is an enormous geopolitical shift going on in the world which is not yet fully understood in the West. In a few years' time, the geopolitical center of the globe will probably be somewhere between China and India. The middle class in China already outnumbers the entire U.S. population. We need the United States as a stabilizing factor in the world. But a precondition is that the United States joins important international treaties and, in particular, that it respects the UN Charter.

Field: You have been astonishingly busy since your “retirement.” Are there issues that interest you, or that trouble you, that you would like *ILN* readers to know about?

Corell: Yes, I retired from public service 10 years ago, but I am still working full-time because I am troubled and refuse to give up. A very interesting learning experience after I left the UN was to work as legal adviser to Kofi Annan and the other members of the Panel of Eminent African Personalities appointed by the African Union to assist Kenya after the disastrous events in the wake of the 2007 elections. The process, which went on for six years (2008–13), was referred to as the Kenya National Dialogue and Reconciliation. This gave me a unique insight into the internal affairs of another country and the difficulties that must be overcome in building a democratic society under the rule of law.

What troubles me is that UN members do not always observe international law—not even the UN Charter. We inherited the Charter from a generation that had experienced two world wars among “civilized” nations. It is extremely important that we respect this inheritance.

What is particularly troubling is that the permanent members of the Security Council sometimes flagrantly violate the UN Charter. I mentioned Iraq, Georgia, and Ukraine. What struck me

following the discussion in the United States some time ago about the possibility of using military force against Iran and Syria was that it was not even mentioned that the UN Charter actually forbids the use of force unless in self-defense in accordance with its Article 51 or after a clear authorization in a Security Council resolution.

The latest development with respect to ISIS is, of course, a different situation because there is now a request for military assistance from the legitimate government in Iraq. And Iraq is entitled to self-defense against the ISIS terrorist aggression, whether it emanates from within Iraq or from the territory of Syria, where the government seems to be unable to defeat ISIS.

I am also devoting a lot of time these days to working to spread knowledge about the rule of law. More specifically, I would like to point to a publication that is now being disseminated over the world: *Rule of Law—A guide for politicians*. I got the idea for this guide in a meeting of the InterAction Council of Former Heads of State and Government in 2008. All of a sudden, former German Chancellor Helmut Schmidt, 90 years old at the time, puts the question: do politicians really know about *their* responsibility for establishing the rule of law in their societies? I thought: there are books written about this, but politicians are too busy to read thick volumes. Why not prepare a short guide that could be circulated among politicians around the world?

This guide is now elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University in Sweden and the Hague Institute for the Internationalisation of Law (HiiL) in the Netherlands. It is only some 40 pages, but it is available in 17 languages, with more to come. It is freely available for downloading and printing from the Web at <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians>. The following quotation about “superiority of international law” should be of

particular interest to an American audience:

International law is superior to national law. States are under an obligation to act in conformity with international law and bear responsibility for breaches of it, whether committed by the legislative, executive or judicial branches. This means that states cannot invoke national law, basically not even a national constitution, as a defence of violations of obligations under international law. In other words, international law cannot be evaded, let alone overruled, by national law.

Field: What advice can you give students and lawyers interested in a career in international law?

Corell: I am often asked this question. My answer is: after law school, get some experience with legal work at the national level. Otherwise you do not have any practical national experiences to relate to when you work at the international level. My situation was of course somewhat different, since I did not join the UN until I was 54. But my experiences from serving in the Swedish judiciary for more than 10 years, in the Ministry of Justice for 13 years, the last three as chief legal adviser, and as the legal adviser in the Ministry of Foreign Affairs for nine years were indispensable for my work in the UN. But there are many avenues leading to a career in international law. Here are some useful sources of information:

- The UN Galaxy System: <https://jobs.un.org/Galaxy/Release3/Vacancy/Vacancy.aspx>.
- For junior lawyers, it is of particular importance to know about the National Competitive Recruitment Examinations (NCRE). See <http://www.un.org/depts/OHRM/examin/ncrpage.htm>.
- The UN Office of Legal Affairs: <http://legal.un.org/ola/employ.aspx>.

- The United Nations System Employment Opportunities: http://www.unsystem.org/jobs/job_opportunities.htm.

Field: What are your thoughts about the UN sustainable development process, the 2015 Sustainable Development Goals, and the prospects for their future implementation? Do you see this as different from the 2000 Millennium Development Goals?

Corell: With respect to the eight 2000 Millennium Development Goals to be achieved by 2015, certain progress has certainly been made, even if there is still a long way to go. See <http://www.undp.org/content/undp/en/home/mdgoverview.html>. The 17 2015 Sustainable Development Goals as elaborated in July 2014 are very ambitious indeed. See <https://sustainabledevelopment.un.org/focussdgs.html>. I see no competition between these goals. As a matter of fact, the Sustainable Development Goals are built on the foundation laid by the Millennium Development Goals, and they seek to complete the unfinished business of those goals and respond to new challenges. I therefore view them as part of a continuing process. The question is, however, whether this process is driven forward with sufficient determination and efficiency.

The Sustainable Development Goals are explained in no less than 169 various actions that are very interesting to study. The first among the goals is ending poverty in all its forms everywhere, and the final focuses on strengthening the means of implementation and revitalization of the global partnership for sustainable development.

In view of my past experiences, I am looking at some of the goals with particular interest. Among these are the need to combat climate change and its impacts and the need to conserve and use oceans, seas, and marine resources in a sustainable manner.

I also note with particular attention Goal 16, with its references to promoting the rule of law at the national and international levels and to ensuring equal access to justice for all. I do this for the simple reason that these elements are necessary for implementing all the other goals. I refer to what I just said about democracy and the rule of law. They are indispensable components in modern world governance. An intense focus should therefore be on these elements in the process. Otherwise, the implementation of the other goals is at risk. For this reason, I note with some concern that there are many components additional to the ones mentioned in the document that need to be taken into consideration in the context of Goal 16—in particular, international criminal justice.

Field: What projects are you involved with currently?

Corell: Quite a few. The simplest answer to that question is to refer to the following page on my website, <http://www.havc.se/PresentEngagements.htm>.

Field: Would you like to tell us about any of your other interests outside of international policy?

Corell: First, I would like to mention my family: my wife and our children and grandchildren. They mean so much to me and I am very proud of them all. Other interests are ornithology

(birdwatching), poetry, and music. Although I'm a Swede, I actually play the bagpipes. At the age of 16, I was sent to Scotland to practice my English. This meant that I got acquainted with many people there, which led to lifelong friendships. I was introduced to Scottish culture—poetry, music, bagpipes. I got used to wearing the kilt. Scotland became my second homeland. Later in life, I learned to play the pipes and was a member of a pipe band in Sweden for many years. I also played at the UN. When I left the UN, I gave the Secretary-General a farewell gift, a hymn that I had composed for the great Highland pipe: "Secretary-General Kofi Annan's Prayer for Peace." You are welcome to listen here <http://www.havc.se/BagpipesSackpipa.htm>.

Field: Are you optimistic for the future?

Corell: One must be optimistic, in particular when interacting with the younger generation. But it is equally important to be a realist. What I miss in the world is *statesmanship*. We need statesmen and women in world governance. And they should all be reminded of the last lines in the final choir in Sophocles' tragedy, *Antigone*, written about 2,500 years ago:

Wisdom is the supreme part of happiness; and reverence towards the gods must be inviolate. Great words of prideful men are ever punished with great blows, and, in old age, teach the chastened to be wise.

Why is it so difficult to transfer wisdom from one generation to another? ♦

BRIEFLY NOTED

Attorney Fee Award Reduced from \$13.4 Million to Less than \$30,000 in *McKesson Corp. v. Islamic Republic of Iran* (D.C. Cir. 2014)

By Mark E. Wojcik

A party seeking attorney fees under foreign law carries the burden of proving the applicability (or nonapplicability) of that foreign law. An interesting application of this rule arose in *McKesson Corp. v. Islamic Republic of Iran*, 753 F.3d 239 (D.C. Cir. 2014), a complex international civil case in which an attorney fee award of \$13.4 million was cut to less than \$30,000.

After the 1979 revolution in Iran, the Iranian government expropriated the interest that McKesson Corporation, an American dairy company, had held in an Iranian dairy company. The American company sued in federal district court, where, after more than 30 years of litigation and six appeals, it secured a final damages award of \$29.3 million under Iranian law.

Over the course of that litigation, McKesson filed five petitions for attorney fees. Although the parties agreed that some attorney fees were owed, it

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was unclear whether those fees would be payable under U.S. law, Iranian law, or international law.

Because the expropriation award was payable under Iranian law, the federal appellate court found that the attorney fees were also payable under Iranian law. Moreover, as the party seeking attorney fees, the American company carried the burden of establishing the applicability or nonapplicability of the substantive foreign law. In this case, an expert offered by the Iranian government had asserted that a tariff schedule for attorney fees applied to the case (even though the case was being heard in the United States, rather than in Iran). McKesson criticized the Iranian government's expert for not supplying authority supporting the assertion that the tariff rate applied outside Iranian courts, but the company could not supply any authority to show that rate could not be applied outside of Iran.

The federal appellate court said that McKesson was trying "to have it both ways" because the company was invoking Iranian law to claim that the U.S. district court had discretion to award attorney fees, but the company had

not cited a single Iranian precedent to show how the court should exercise that discretion. McKesson was citing U.S. precedents for its right under Iranian law to collect attorney fees (and thus avoid the default American rule under which each party pays its own attorney fees unless a statute or contract provides otherwise).

But the American company inconsistently rejected the application of Iranian law when the applicable tariff for Iranian lawyers would have yielded a smaller fee award than what would have been seen had the case been brought under U.S. law. The court stated that "the internal inconsistency" of the argument was "telling" and held that the attorney fees awarded under Iranian law had to be awarded under the applicable Iranian tariff for attorney fees.

Because the official Iranian tariff applied to the \$29.3 million judgment for the expropriation, the tariff yielded a fee award of only \$29,516. The district court was instructed to vacate the prior attorney fee award of \$13.4 million and grant the dairy company \$29,516 in attorney fees. ♦

Open Working Group Proposal for Sustainable Development Goals and Targets

continued from page 5

2.a	increase investment, including through enhanced international cooperation, in rural infrastructure, agricultural research and extension services, technology development, and plant and livestock gene banks to enhance agricultural productive capacity in developing countries, in particular in least developed countries
2.b	correct and prevent trade restrictions and distortions in world agricultural markets including by the parallel elimination of all forms of agricultural export subsidies and all export measures with equivalent effect, in accordance with the mandate of the Doha Development Round
2.c	adopt measures to ensure the proper functioning of food commodity markets and their derivatives, and facilitate timely access to market information, including on food reserves, in order to help limit extreme food price volatility

Goal 3	Ensure healthy lives and promote well-being for all at all ages.
3.1	by 2030 reduce the global maternal mortality ratio to less than 70 per 100,000 live births
3.2	by 2030 end preventable deaths of newborns and under-five children
3.3	by 2030 end the epidemics of AIDS, tuberculosis, malaria, and neglected tropical diseases and combat hepatitis, water-borne diseases, and other communicable diseases
3.4	by 2030 reduce by one-third pre-mature mortality from non-communicable diseases (NCDs) through prevention and treatment, and promote mental health and wellbeing
3.5	strengthen prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol
3.6	by 2020 halve global deaths and injuries from road traffic accidents
3.7	by 2030 ensure universal access to sexual and reproductive health care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes
3.8	achieve universal health coverage (UHC), including financial risk protection, access to quality essential health care services, and access to safe, effective, quality, and affordable essential medicines and vaccines for all
3.9	by 2030 substantially reduce the number of deaths and illnesses from hazardous chemicals and air, water, and soil pollution and contamination
3.a	strengthen implementation of the Framework Convention on Tobacco Control in all countries as appropriate
3.b	support research and development of vaccines and medicines for the communicable and non-communicable diseases that primarily affect developing countries, provide access to affordable essential medicines and vaccines, in accordance with the Doha Declaration which affirms the right of developing countries to use to the full the provisions in the TRIPS agreement regarding flexibilities to protect public health and, in particular, provide access to medicines for all
3.c	increase substantially health financing and the recruitment, development and training and retention of the health workforce in developing countries, especially in LDCs and SIDS
3.d	strengthen the capacity of all countries, particularly developing countries, for early warning, risk reduction, and management of national and global health risks

Goal 4	Ensure inclusive and equitable quality education and promote life-long learning opportunities for all.
4.1	by 2030, ensure that all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and effective learning outcomes
4.2	by 2030 ensure that all girls and boys have access to quality early childhood development, care and pre-primary education so that they are ready for primary education
4.3	by 2030 ensure equal access for all women and men to affordable quality technical, vocational and tertiary education, including university
4.4	by 2030, increase by x% the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship
4.5	by 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples, and children in vulnerable situations
4.6	by 2030 ensure that all youth and at least x% of adults, both men and women, achieve literacy and numeracy

4.7	by 2030 ensure all learners acquire knowledge and skills needed to promote sustainable development, including among others through education for sustainable development and sustainable lifestyles, human rights, gender equality, promotion of a culture of peace and non-violence, global citizenship, and appreciation of cultural diversity and of culture's contribution to sustainable development
4.a	build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all
4.b	by 2020 expand by x% globally the number of scholarships for developing countries in particular LDCs, SIDS and African countries to enrol in higher education, including vocational training, ICT, technical, engineering and scientific programmes in developed countries and other developing countries
4.c	by 2030 increase by x% the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially LDCs and SIDS

Goal 5	Achieve gender equality and empower all women and girls.
5.1	end all forms of discrimination against all women and girls everywhere
5.2	eliminate all forms of violence against all women and girls in public and private spheres, including trafficking and sexual and other types of exploitation
5.3	eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations
5.4	recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies, and the promotion of shared responsibility within the household and the family as nationally appropriate
5.5	ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life
5.6	ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the ICPD and the Beijing Platform for Action and the outcome documents of their review conferences
5.a	undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance, and natural resources in accordance with national laws
5.b	enhance the use of enabling technologies, in particular ICT, to promote women's empowerment
5.c	adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels

Goal 6	Ensure availability and sustainable management of water and sanitation for all.
6.1	by 2030, achieve universal and equitable access to safe and affordable drinking water for all
6.2	by 2030, achieve access to adequate and equitable sanitation and hygiene for all, and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations
6.3	by 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater, and increasing recycling and safe reuse by x% globally
6.4	by 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity, and substantially reduce the number of people suffering from water scarcity
6.5	by 2030 implement integrated water resources management at all levels, including through transboundary cooperation as appropriate
6.6	by 2020 protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes
6.a	by 2030, expand international cooperation and capacity-building support to developing countries in water and sanitation related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies
6.b	support and strengthen the participation of local communities for improving water and sanitation management

Goal 7	Ensure access to affordable, reliable, sustainable, and modern energy for all.
7.1	by 2030 ensure universal access to affordable, reliable, and modern energy services
7.2	increase substantially the share of renewable energy in the global energy mix by 2030
7.3	double the global rate of improvement in energy efficiency by 2030

7.a	by 2030 enhance international cooperation to facilitate access to clean energy research and technologies, including renewable energy, energy efficiency, and advanced and cleaner fossil fuel technologies, and promote investment in energy infrastructure and clean energy technologies
7.b	by 2030 expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, particularly LDCs and SIDS
Goal 8	Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
8.1	sustain per capita economic growth in accordance with national circumstances, and in particular at least 7% per annum GDP growth in the least-developed countries
8.2	achieve higher levels of productivity of economies through diversification, technological upgrading and innovation, including through a focus on high value added and labour-intensive sectors
8.3	promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage formalization and growth of micro-, small- and medium-sized enterprises including through access to financial services
8.4	improve progressively through 2030 global resource efficiency in consumption and production, and endeavour to decouple economic growth from environmental degradation in accordance with the 10-year framework of programmes on sustainable consumption and production with developed countries taking the lead
8.5	by 2030 achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value
8.6	by 2020 substantially reduce the proportion of youth not in employment, education or training
8.7	take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour, eradicate forced labour, and by 2025 end child labour in all its forms including recruitment and use of child soldiers
8.8	protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment
8.9	by 2030 devise and implement policies to promote sustainable tourism which creates jobs, promotes local culture and products
8.10	strengthen the capacity of domestic financial institutions to encourage and to expand access to banking, insurance and financial services for all
8.a	increase Aid for Trade support for developing countries, particularly LDCs, including through the Enhanced Integrated Framework for LDCs
8.b	by 2020 develop and operationalize a global strategy for youth employment and implement the ILO Global Jobs Pact
Goal 9	Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.
9.1	develop quality, reliable, sustainable and resilient infrastructure, including regional and trans-border infrastructure, to support economic development and human well-being, with a focus on affordable and equitable access for all
9.2	promote inclusive and sustainable industrialization, and by 2030 raise significantly industry's share of employment and GDP in line with national circumstances, and double its share in LDCs
9.3	increase the access of small-scale industrial and other enterprises, particularly in developing countries, to financial services including affordable credit and their integration into value chains and markets
9.4	by 2030 upgrade infrastructure and retrofit industries to make them sustainable, with increased resource use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, all countries taking action in accordance with their respective capabilities
9.5	enhance scientific research, upgrade the technological capabilities of industrial sectors in all countries, particularly developing countries, including by 2030 encouraging innovation and increasing the number of R&D workers per one million people by x% and public and private R&D spending

9.a	facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and technical support to African countries, LDCs, LLDCs and SIDS
9.b	support domestic technology development, research and innovation in developing countries including by ensuring a conducive policy environment for inter alia industrial diversification and value addition to commodities
9.c	significantly increase access to ICT and strive to provide universal and affordable access to internet in LDCs by 2020

Goal 10	Reduce inequality within and among countries.
10.1	by 2030 progressively achieve and sustain income growth of the bottom 40% of the population at a rate higher than the national average
10.2	by 2030 empower and promote the social, economic and political inclusion of all irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status
10.3	ensure equal opportunity and reduce inequalities of outcome, including through eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and actions in this regard
10.4	adopt policies especially fiscal, wage, and social protection policies and progressively achieve greater equality
10.5	improve regulation and monitoring of global financial markets and institutions and strengthen implementation of such regulations
10.6	ensure enhanced representation and voice of developing countries in decision making in global international economic and financial institutions in order to deliver more effective, credible, accountable and legitimate institutions
10.7	facilitate orderly, safe, regular and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies
10.a	implement the principle of special and differential treatment for developing countries, in particular least developed countries, in accordance with WTO agreements
10.b	encourage ODA and financial flows, including foreign direct investment, to states where the need is greatest, in particular LDCs, African countries, SIDS, and LLDCs, in accordance with their national plans and programmes
10.c	by 2030, reduce to less than 3% the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5%

Goal 11	Make cities and human settlements inclusive, safe, resilient and sustainable.
11.1	by 2030, ensure access for all to adequate, safe and affordable housing and basic services, and upgrade slums
11.2	by 2030, provide access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, women, children, persons with disabilities and older persons
11.3	by 2030 enhance inclusive and sustainable urbanization and capacities for participatory, integrated and sustainable human settlement planning and management in all countries
11.4	strengthen efforts to protect and safeguard the world's cultural and natural heritage
11.5	by 2030 significantly reduce the number of deaths and the number of affected people and decrease by y% the economic losses relative to GDP caused by disasters, including water-related disasters, with the focus on protecting the poor and people in vulnerable situations
11.6	by 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality, municipal and other waste management
11.7	by 2030, provide universal access to safe, inclusive and accessible, green and public spaces, particularly for women and children, older persons and persons with disabilities
11.a	support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning

11.b	by 2020, increase by x% the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, develop and implement in line with the forthcoming Hyogo Framework holistic disaster risk management at all levels
11.c	support least developed countries, including through financial and technical assistance, for sustainable and resilient buildings utilizing local materials

Goal 12	Ensure sustainable consumption and production patterns.
12.1	implement the 10-Year Framework of Programmes on sustainable consumption and production (10YFP), all countries taking action, with developed countries taking the lead, taking into account the development and capabilities of developing countries
12.2	by 2030 achieve sustainable management and efficient use of natural resources
12.3	by 2030 halve per capita global food waste at the retail and consumer level, and reduce food losses along production and supply chains including post-harvest losses
12.4	by 2020 achieve environmentally sound management of chemicals and all wastes throughout their life cycle in accordance with agreed international frameworks and significantly reduce their release to air, water and soil to minimize their adverse impacts on human health and the environment
12.5	by 2030, substantially reduce waste generation through prevention, reduction, recycling, and reuse
12.6	encourage companies, especially large and trans-national companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle
12.7	promote public procurement practices that are sustainable in accordance with national policies and priorities
12.8	by 2030 ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature
12.a	support developing countries to strengthen their scientific and technological capacities to move towards more sustainable patterns of consumption and production
12.b	develop and implement tools to monitor sustainable development impacts for sustainable tourism which creates jobs, promotes local culture and products
12.c	rationalize inefficient fossil fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities

Goal 13	Take urgent action to combat climate change and its impacts.*
<i>*Acknowledging that the UNFCCC is the primary international, intergovernmental forum for negotiating the global response to climate change.</i>	
13.1	strengthen resilience and adaptive capacity to climate related hazards and natural disasters in all countries
13.2	integrate climate change measures into national policies, strategies, and planning
13.3	improve education, awareness raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction, and early warning
13.a	implement the commitment undertaken by developed country Parties to the UNFCCC to a goal of mobilizing jointly USD100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible
13.b	Promote mechanisms for raising capacities for effective climate change related planning and management, in LDCs, including focusing on women, youth, local and marginalized communities

Goal 14	Conserve and sustainably use the oceans, seas and marine resources for sustainable development.
14.1	by 2025, prevent and significantly reduce marine pollution of all kinds, particularly from land-based activities, including marine debris and nutrient pollution
14.2	by 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration, to achieve healthy and productive oceans
14.3	minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels
14.4	by 2020, effectively regulate harvesting, and end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices and implement science-based management plans, to restore fish stocks in the shortest time feasible at least to levels that can produce maximum sustainable yield as determined by their biological characteristics
14.5	by 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on best available scientific information
14.6	by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation *
14.7	by 2030 increase the economic benefits to SIDS and LDCs from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism
14.a	increase scientific knowledge, develop research capacities and transfer marine technology taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular SIDS and LDCs
14.b	provide access of small-scale artisanal fishers to marine resources and markets
14.c	ensure the full implementation of international law, as reflected in UNCLOS for states parties to it, including, where applicable, existing regional and international regimes for the conservation and sustainable use of oceans and their resources by their parties
Goal 15	Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.
15.1	by 2020 ensure conservation, restoration and sustainable use of terrestrial and inland freshwater ecosystems and their services, in particular forests, wetlands, mountains and drylands, in line with obligations under international agreements
15.2	by 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests, and increase afforestation and reforestation by x% globally
15.3	by 2020, combat desertification, and restore degraded land and soil, including land affected by desertification, drought and floods, and strive to achieve a land-degradation neutral world
15.4	by 2030 ensure the conservation of mountain ecosystems, including their biodiversity, to enhance their capacity to provide benefits which are essential for sustainable development
15.5	take urgent and significant action to reduce degradation of natural habitat, halt the loss of biodiversity, and by 2020 protect and prevent the extinction of threatened species
15.6	ensure fair and equitable sharing of the benefits arising from the utilization of genetic resources, and promote appropriate access to genetic resources
15.7	take urgent action to end poaching and trafficking of protected species of flora and fauna, and address both demand and supply of illegal wildlife products
15.8	by 2020 introduce measures to prevent the introduction and significantly reduce the impact of invasive alien species on land and water ecosystems, and control or eradicate the priority species
15.9	by 2020, integrate ecosystems and biodiversity values into national and local planning, development processes and poverty reduction strategies, and accounts

15.a	mobilize and significantly increase from all sources financial resources to conserve and sustainably use biodiversity and ecosystems
15.b	mobilize significantly resources from all sources and at all levels to finance sustainable forest management, and provide adequate incentives to developing countries to advance sustainable forest management, including for conservation and reforestation
15.c	enhance global support to efforts to combat poaching and trafficking of protected species, including by increasing the capacity of local communities to pursue sustainable livelihood opportunities

Goal 16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
16.1	significantly reduce all forms of violence and related death rates everywhere
16.2	end abuse, exploitation, trafficking and all forms of violence and torture against children
16.3	promote the rule of law at the national and international levels, and ensure equal access to justice for all
16.4	by 2030 significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime
16.5	substantially reduce corruption and bribery in all its forms
16.6	develop effective, accountable and transparent institutions at all levels
16.7	ensure responsive, inclusive, participatory and representative decision-making at all levels
16.8	broaden and strengthen the participation of developing countries in the institutions of global governance
16.9	by 2030 provide legal identity for all including birth registration
16.10	ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
16.a	strengthen relevant national institutions, including through international cooperation, for building capacities at all levels, in particular in developing countries, for preventing violence and combating terrorism and crime
16.b	promote and enforce non-discriminatory laws and policies for sustainable development

Goal 17	Strengthen the means of implementation and revitalize the global partnership for sustainable development.
Finance	
17.1	strengthen domestic resource mobilization, including through international support to developing countries to improve domestic capacity for tax and other revenue collection
17.2	developed countries to implement fully their ODA commitments, including to provide 0.7% of GNI in ODA to developing countries of which 0.15-0.20% to least-developed countries
17.3	mobilize additional financial resources for developing countries from multiple sources
17.4	assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries (HIPC) to reduce debt distress
17.5	adopt and implement investment promotion regimes for LDCs
Technology	
17.6	enhance North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation, and enhance knowledge sharing on mutually agreed terms, including through improved coordination among existing mechanisms, particularly at UN level, and through a global technology facilitation mechanism when agreed

17.7	promote development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed
17.8	fully operationalize the Technology Bank and STI (Science, Technology and Innovation) capacity building mechanism for LDCs by 2017, and enhance the use of enabling technologies in particular ICT
Capacity building	
17.9	enhance international support for implementing effective and targeted capacity building in developing countries to support national plans to implement all sustainable development goals, including through North-South, South-South, and triangular cooperation
Trade	
17.10	promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO including through the conclusion of negotiations within its Doha Development Agenda
17.11	increase significantly the exports of developing countries, in particular with a view to doubling the LDC share of global exports by 2020
17.12	realize timely implementation of duty-free, quota-free market access on a lasting basis for all least developed countries consistent with WTO decisions, including through ensuring that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access
Systemic issues	
Policy and institutional coherence	
17.13	enhance global macroeconomic stability including through policy coordination and policy coherence
17.14	enhance policy coherence for sustainable development
17.15	respect each country's policy space and leadership to establish and implement policies for poverty eradication and sustainable development
Multi-stakeholder partnerships	
17.16	enhance the global partnership for sustainable development complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technologies and financial resources to support the achievement of sustainable development goals in all countries, particularly developing countries
17.17	encourage and promote effective public, public-private, and civil society partnerships, building on the experience and resourcing strategies of partnerships
Data, monitoring and accountability	
17.18	by 2020, enhance capacity building support to developing countries, including for LDCs and SIDS, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts
17.19	by 2030, build on existing initiatives to develop measurements of progress on sustainable development that complement GDP, and support statistical capacity building in developing countries



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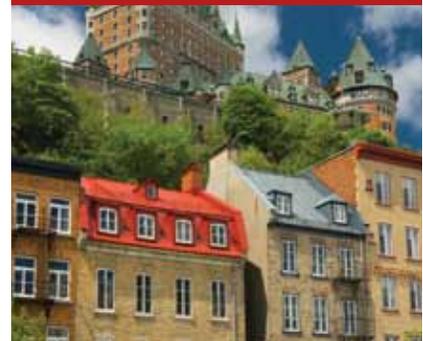
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