

UNITED NATIONS ACTIVITIES

Global Judges Symposium

Judges Active in Promoting Environmental Law Capacity Building

by Paul L. Stein*

Introduction

The pre-summit WSSD Global Judges Symposium on the Role of Law and Sustainable Development in Johannesburg between 18–20 August 2002 was a signal event.¹ Never before have so many senior judges from so many nations come together to discuss environmental law. In fact, 126 judges, including 32 Chief Justices or their equivalent, from 60 countries participated. Besides national judges, the group also included judges from the ICJ, the ECJ, COMESA and the International Tribunal for the Law of the Sea. UNEP and its many partners should be congratulated on bringing the judges together in Johannesburg. The global forum built upon the experience gained from the six regional symposiums convened by UNEP in South Asia, South East Asia, Africa, Latin America, the Caribbean and the Pacific Island States in the preceding years.

I have mentioned elsewhere the notable atmosphere of fraternalism which rapidly developed among the judges at the forum. Notwithstanding different systems of law, diverse history and culture, the judges concentrated on issues and problems common to all. We soon found that we were all 'speaking the same language' and had experienced similar problems.

After a number of valuable set pieces, including a thought-provoking presentation by the host, the Hon. Arthur Chaskalson, Chief Justice of South Africa, it was plain that the judges wanted to get down to basics. They were not so much concerned with the nuances of sustainable development law or its principles but with the crucially felt need, especially in developing countries and economies in transition, for the stronger implementation, enforcement and development of environmental law at a national level. Many judges stressed the great disparity between what the law provided, for example in relation to air and water pollution and waste disposal, and its enforcement. The 'gap' spelt environmental degradation and a lack of respect for the law. The judges believed that a sustained programme of judicial capacity building was absolutely essential to bring about a greater state of compliance and enforcement of environmental laws. It was the conviction of the judges at Johannesburg that there

was an urgent need to strengthen the capacity of judges, prosecutors, legislators and others involved in the implementation of environmental law at a national level.

To this end the judges present subscribed to the *Johannesburg Principles on the Role of Law and Sustainable Development*. Four key principles were agreed as follows:

- 1) A full commitment to contributing towards the realisation of the goals of sustainable development through the judicial mandate to implement, develop and enforce the law, and to uphold the Rule of Law and the democratic process,
- 2) To realise the goals of the Millennium Declaration of the United Nations General Assembly which depend upon the implementation of national and international legal regimes that have been established for achieving the goals of sustainable development,
- 3) In the field of environmental law there is an urgent need for a concerted and sustained programme of work focused on education, training and dissemination of information, including regional and sub-regional judicial colloquia, and
- 4) That collaboration among members of the Judiciary and others engaged in the judicial process within and across regions is essential to achieve a significant improvement in compliance with, implementation, development and enforcement of environmental law.

In order to realise the Principles a programme of work was proposed by the judges. The principal proposal was:

The improvement of the capacity of those involved in the process of promoting, implementing, developing and enforcing environmental law, such as judges, prosecutors, legislators and others, to carry out their functions on a well informed basis, equipped with the necessary skills, information and material.

Many other initiatives were proposed to promote the goals of sustainable development, and the better observance of environmental law at a national level.

The *Johannesburg Principles* were presented to the Secretary-General of the United Nations, Kofi Annan, by the Chief Justice of South Africa.

The holding of the Global Forum provided a catalyst

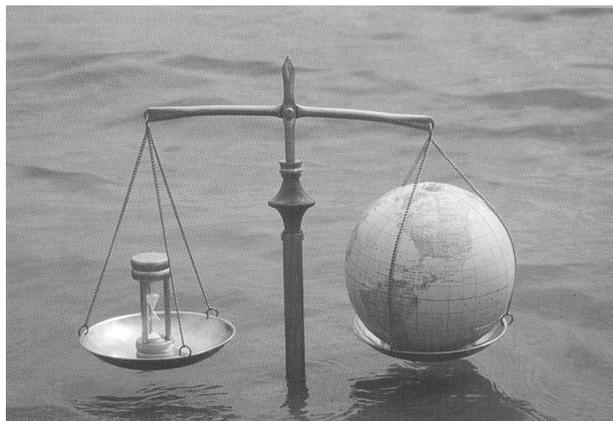
* The Hon. Justice AM, Judge, NSW Court of Appeal, Supreme Court of NSW, Sydney, Australia.

¹ See *Environmental Policy and Law*, Vol. 32 (2002), No. 6 at page 240.

for comprehensive capacity building programmes for judges and others on the enforcement of national environmental law.

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In October 2002 the IUCN Commission on Environmental Law convened a meeting of judges from Western Europe in London, chaired by Lord Woolf, the Lord Chief Justice of England and Wales. The objective was to seek to take some initial steps to advance the implementation of the WSSD insofar as it concerned the role of the judiciary in achieving sustainable development. The meeting adopted and published the *London Bridge Statement* setting out seven heads of agreement.



The Johannesburg Principles on the Role of Law and Sustainable Development adopted at the Global Judges Symposium held in Johannesburg, South Africa, prior to the World Summit on Sustainable Development. The full text of the Johannesburg Principles is available at www.unep.org/dpdl/symposium/principles. Courtesy: UNEP

These included the establishment of a European Judicial Forum to advance the outcomes of the symposium. The Statement also commended UNEP and IUCN on the establishment of the Judicial Portal launched at the Johannesburg Global Judges' Forum. Additionally, it stressed the need to work to enhance the judiciary's knowledge base in environmental law and sustainable development.

Later in October 2002 a highly successful judges' symposium was also held in Kuwait for 50 judges from the Arab Region. The IUCN Commission on Environmental Law (CEL) was again active with the Arab Regional Centre for Environmental Law, UNEP and the Kuwait Institute for Judicial and Legal Studies in convening this meeting on the role of the judiciary in the development of environmental law.

One of the paragraphs in the *Johannesburg Principles* called for the establishment of an *ad hoc* committee of judges, representative of geographic regions and different legal systems, to assist UNEP in the task of designing and delivering capacity building programmes.

To this end, UNEP was instrumental in bringing together a representative *ad hoc* group of 26 judges from 20 different countries in Nairobi on 30–31 January 2003. The task of the group was to consider how best to plan the

follow-up on the outcomes of the Global Forum in Johannesburg.

Again the meeting was led by the Chief Justice of South Africa. The forum quickly became a working party on how best to assist UNEP and its partners in implementing capacity building programmes among judges and other players active in the implementation and enforcement of environmental law at a national level.

A number of organisations and individuals were invited to attend the judges' meeting and make presentations. These included the IUCN, represented by the Chair of the CEL, Professor Nicholas Robinson, and the Head of the Environmental Law Programme, John Scanlon. Also present as an observer was CEL Regional Vice Chair for Eastern Europe, Professor Svitlana Kravchenko.

At the conclusion of the Nairobi *ad hoc* planning meeting, the judges adopted and issued an Outcome Statement. This document endorsed previous conclusions of the Global Forum regarding the significant need for capacity building programmes for judges, prosecutors, law enforcement officers, lawyers, public interest groups and others in order to contribute to the more effective implementation, enforcement and awareness of environmental law. The judges pledged their full support and cooperation to UNEP to develop and implement these programmes, particularly those involving the judiciary.

The Nairobi communiqué stressed the need to undertake an assessment of capacity building needs of developing countries and those with economies in transition in order to design programmes responding to specific needs at a national level, where possible reinforcing and adding value to existing programmes.

The Outcome Statement also called on UNEP and IUCN to further develop the Judicial Portal to provide the opportunity for interaction and sharing of experiences of judges worldwide.

To assist UNEP in the development and implementation of the programme of work, especially with regard to the training and capacity of judicial officers, an *Ad Hoc* Advisory Group of 10 judges was established as follows:

Chair

- Hon. Justice A. Chaskalson, Chief Justice of South Africa

Members

- Hon. Justice Barnabas A. Samatta, Chief Justice of Tanzania
- Hon. Justice Hilario G. Davide Jr, Chief Justice of the Philippines
- Hon. Justice Guy Canivet, President of the Cour de Cassation of France
- Hon. Justice Vyacheslav M. Lebedev, Chief Justice of the Russian Federation
- Hon. Justice Falefatu M. Sapolu, Chief Justice of Samoa
- Hon. Justice Adel Omar Sherif, Deputy Chief Justice of Egypt
- Hon. Justice Clifford Wallace, Chief Judge Emeritus, United States Court of Appeals



- Hon. Justice Vladimir Passos de Freitas, Federal Judge of the Court of Appeal of Brazil
- Hon. Justice Paul L. Stein, Judge, New South Wales Court of Appeal and Judge of the New South Wales Supreme Court, Australia.

The Group is representative of the world's geographic regions and differing legal systems, *eg.* civil law and common law. It contains an immense wealth of experience, energy and enthusiasm.

What was notable at the Nairobi planning meeting of judges was the spirit of cooperation and the acknowledged need for urgency in order to maintain the momentum generated by the Johannesburg Global Forum.

The Chief Justice of South Africa addressed the Plenary Session of the 22nd Session of the Governing Council of UNEP on 3 February 2003. He reported on the progress and outcomes made by the Judges' *Ad Hoc* Planning meeting which had then just concluded.

The UNEP Governing Council unanimously adopted the Decision entitled 'Follow-up to the Global Judges' Symposium focusing on Capacity Building in the Area of Environmental Law'. The resolution of the Governing Council (for the full text see p. 95) included the following:

Noting with appreciation the convening of the Global Judges' Symposium on the Role of Law and Sustainable Development in Johannesburg, from 18 to 20 August 2002, with the participation of over 122 high-ranking judges from more than 60 countries around the world, and noting the adoption by them by acclamation of the Johannesburg Principles on the Role of Law and Sustainable Development as a contribution from the Global Judges' Symposium to the World Summit on Sustainable Development, and the presentation of the Johannesburg Principles to the Secretary-General of the United Nations by the Chief Justice of South Africa,

The Governing Council called upon the Executive Director of UNEP to support:

... within the framework of the programme for

the Development and Periodic Review of Environmental Law for the First Decade of the Twenty-first Century and within available resources to, the improvement of the capacity of those involved in the process of promoting, implementing, developing and enforcing environmental law at the national and local levels such as judges, prosecutors, legislators and other relevant stakeholders to carry out the functions on a well informed basis with the necessary skills, information and material with a view to mobilizing the full potential of the judiciaries around the world for the implementation and enforcement of environmental law, and promoting access to justice for the settlement of environmental disputes, public participation in environmental decision-making, the protection and advancement of environmental rights and public access to relevant information.

UNEP has already commenced the implementation of the Governing Council's decision.

One thing is clear. Judges are anxious to assist in maintaining the energy and drive already secured by Johannesburg, Nairobi and other fora.

Two further regional colloquia of judges are already being planned for May 2003. The first is in Rome where a number of organisations are involved as sponsors or organisers. These include, but are by no means limited to, UNEP, IUCN, OECD and the European and Italian Environmental Law Associations, as well as the Italian Constitutional Court and Supreme Court. Later in May a seminar of Eastern and Central European Judges is being planned in Lviv, Ukraine. Again, the IUCN, UNEP and Ecopravo-Lviv are involved in the organisation in collaboration with the Constitutional Court of Ukraine and others.

An interesting experiment is well and truly underway and one can only be quietly optimistic that it will bear fruit in the years to come, yielding a healthier environment for all the citizens of the world, particularly the poor.

In terms of the implementation, enforcement and development of environmental law, it is plain that judges have a role to play and are willing to do so. 