

# Jo'burg or Joke' burg?

Contribution of Johannesburg Declaration to the International Environmental Law

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## Introduction

"We live on one planet connected in a delicate and intricate web of ecological, social, economic and cultural relationships that shape our lives. Achieving sustainable development will require greater responsibility for the ecosystem on which all lives depend for each other as a single human community and for the generations that will follow our own. Johannesburg Summit 2002 is an opportunity to regenerate the quest to build a more sustainable future."

During the period of industrial modernisation in eighteenth and nineteenth centuries most of the Western countries achieved a marked development in the economy, social conditions and in various other aspects. In the 1960's the attention of the world leaders was focused on preservation of the natural resources as they realized that environmental protection can not be divorced from economic development. Thus various endeavors were made by different authorities to address this issue and "Sustainable Development" was the key concept that came about as a result of these attempts. Two decades after the Stockholm Declaration in 1972, the Rio Summit was a watershed mainstreaming environmental concerns. It captured the world's attention and for the first time got leaders around the globe to talk seriously about the environment. Rio Declaration, the treaty that led to the Kyoto Protocol on Greenhouse Gas emission, The Convention on Bio-diversity and Agenda 21 were few of the massive detailed work plans to achieve sustainable development. But a decade afterwards, **none of these accords has been successfully implemented so as to reach the aspirations set forth by the authorities.** Johannesburg Summit was the next most important instance where the world leaders felt the need to look more closely at the key factors that influence sustainable economic, environmental and social issues.

In this discussion it will first briefly examine the meaning of the concept of "sustainable development", then an analysis of the principles in the declaration with regard to same, and finally its contribution to the International Environmental Law. This analysis however will be limited to the key issues due to the vast nature of the subject.

## 1.0 The definition of "Sustainable Development"

The term was defined by the Brundtland Commission as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." According to academics the phrase was far too ambiguous and placed too much emphasis on economic development. Though the phrase lacks precision the attempt to strike a balance between economic development and environmental protection can be considered as a major accomplishment. 'Further United Nations 2005 World Summit Outcome Document refers to the "interdependent, and mutually reinforcing pillars" of sustainable development as economic development, social development, and environmental protection. Since most of the written documents refer to 'culture' stating that cultural diversity is as necessary for humankind as biodiversity is for nature, making it the forth pillar in sustainable development. According to the above description, it is manifest that the scope of sustainable development hasn't been static in the past and will continue to evolve in time to come.

## 2. Background of the Johannesburg Summit

By 2002 there was no necessity to introduce the concept to the world as it was well established and the participants were well aware of its

contents. What was required was to segregate duties and obligations different countries should bear, and how to achieve the developmental targets. What they attempted to do was to bring about a mechanism to put the Rio principles into practice. This conference was referred to as the forth mega conference on environment organized by the United Nations (UN) and these try to take a synoptic overview of the relationship between human society and the natural world. Preparation for the summit began in mid 2001 as a series of national consultations, sub regional and regional preparatory meetings 'assessed key changes that are required, identified future priorities, commitments that should be made by countries, etc. the Summit was a highly controversial event even before its commencement. NGOs passed harsh criticisms on USA, Australia, Canada and the oil exporting nations alleging that they played an obstructionist role and prevented progress by "blocking meaningful targets and timetables. " However the summit was completed as scheduled with the participation of over 60000 delegates across the globe. Further the Johannesburg Conference envisioned a "summit to reinvigorate the global commitment to sustainable development," to "focus on the identification of accomplishments and areas where further efforts are needed," to carry out the pledges made ten years earlier at the UN Conference on Environment and Development in Rio de Janeiro, Brazil.

### **3.0 Johannesburg Declaration and "Sustainable development"**

The declaration manifestates the intention of the states to reaffirm their commitment to Sustainable development. This attempted to bring about wide-ranging commitments by both states and private sector companies. The declaration can be regarded as an authentic realization of a global need to address this multifaceted issue. Thus it makes an effort to discuss the concept of sustainable development in a more sensitive manner by utilizing phrases such as "collective future" and "collective responsibility". Principle 5 of Declaration only deals' with the three basic pillars of sustainable development, namely, economic development, social development and environmental protection leaving out

cultural diversity as one of the pillars. Further Principle 7 of the Declaration refers to 'human development' which substantiate the fact that the whole concept of Sustainable Development is *human centric*.

One of the most important concerns/crucial points of the Summit was to address the issue of the split between the developed and the developing nations. The former contention is a common criticism leveled against most of the international instruments. It is apparent that this Declaration endeavors to address this issue especially focusing on poverty eradication. Since economic development and social development go hand in hand they are more or less addressed together in this instrument. But natural environment as opposed to built environment is more sensitive and has to be dealt with carefully. It could be argued that environmental protection is imperative than the other two pillars, however solving the dilemmas in the other two pillars will inevitably contribute to the protection of the environment.

Principle 13 of the Declaration is the most important statement on natural environment.

"The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, decertification claims more and more fertile land, the adverse effects of climate change are already evident.... "

Depletion of the natural environment affects various aspects of human well being. Thus preserving and protecting the environment is of paramount importance. It is manifest that the present alarming rates of use of natural resources should decrease drastically to attain sustainable development. A means of minimizing utilization of the aforementioned is by 'technology transfer'. This was one of the cardinal factors highlighted in the Declaration. Through this they make an effort to employ the resources equitably.

Making the criticisms unsound, the Declaration explicitly recognizes the developed states' duty to make concrete efforts to achieve developmental goalswhilst attempting to acknowledge and adhere to the previous international instruments on Sustainable

Development. The Declaration recognizes the nature of instruments required to achieve same. According to the official document the UN has a vital role to play in implementing the proposals. The latter part of the Declaration reiterates the fact that the countries should commit themselves to the plan of implementation ensure that the collective hope of sustainable development is achieved.

### 3.1 Contribution of Johannesburg Declaration to the International Environmental Law

"International Environmental law is a complex and interlocking body of statutes, common law, treaties, conventions, regulations and policies which, very broadly, operate to **regulate the interaction of humanity and the rest of the biophysical or natural environment**, towards the purpose of reducing or minimizing the impacts of human activity, both on the natural environment for its own sake, and on humanity itself."

Despite the fact that above definition exemplifies that the call for sustainable development is not simply and solely a call for environmental protection, the international environmental crisis poses unique challenges to the international environment legal regime and to mankind. The crux of the matter is the 'carrying capacity of the *fragile ecosystem*. In a report published in 1969 UN Secretary-General identified three major causes for environmental problems:

- Population growth
- Urbanization
- Effects of new technology .

One of the main flaws in the Declaration is that it focuses on urbanization and new technology, but there is no direct reference to the **unprecedented spurt of population growth**. It is evident that population growth, poverty and environmental degradation are closely linked. In fact population growth has an impact on almost all of the environmental issues posing a threat to the long term value of these genetic resources. Unregulated utilization of natural resources could have profound and sometimes irreversible environmental impacts and the policy makers must ensure that future

development is sustainable and ecologically acceptable. The declaration does not specifically attempt to address this issue.

Environmental mega-conferences have provided an important and authoritative source of '**soft law**' that is, a halfway stage in the development of more binding legal frameworks. Nevertheless they are an established part of the landscape of modern international environmental governance. States will always interpret soft laws in a variety of ways, as justification for action that would not otherwise be countenanced. But breaches of treaty or customary international law on environment will enable the injured state to maintain a claim against the violating state. Further certain academics are of the view that the main attraction of these resolutions and declarations are their flexibility and speedy adoption. Even where declarations and principles aren't directly transformed into binding rules, they may serve to guide states in adopting legislation. But the non binding nature of these poses a lot of controversies amongst states which is a common phenomenon in the International Law.

The importance attached to the traditional notion, of sovereignty is deteriorating. The states could still exercise sovereignty over its natural resources but if the action produces impairment/harm outside its territory then the state can be held liable for such damage. But the Johannesburg Declaration does not contain any principle with regard to responsibilities of the states. It is rather a Declaration of Friendly relations which fails to bring about any static principles. .

According to Justice Weeramantry in **Hungary V. Slovakia** the concept of "Sustainable Development" is now a part of the contemporary international law. If this is accepted then it should be binding on all the states. The fact that states have not been consistent with their practice, vagueness or the lack of a precise definition has not made the concept superfluous. Academics pose a positive attitude towards the concept stating that it will continue to influence the decision making process.

### 3.2 Jo'burg or Joke' burg?

The Summit was a controversial event even before its commencement. But the problem is

that whether it has been successful in its official outcomes. Despite the fact that the Johannesburg Conference did not fulfill most of its aspirations, the aftermath of the Conference offers a good opportunity for discussing the results, identifying loopholes within the present system of international environmental law and pointing to the perspectives for strengthening the law. But it is debatable whether the Summit successfully achieved its objectives.

A criticism on the declaration states that South reconceived Johannesburg in its own image, to be a development rather than an environmental summit, one that would focus on poverty alleviation and wealth redistribution to their betterment'. But it is well established that poverty cannot be divorced from environmental protection. Thus these criticisms lack validity. But it could raise an issue with regard to consistent practice which is a requirement in establishing the concept as a part of customary international law.

The Declaration is a restatement as to "what" should be done, not "how" things should be done rendering it a mere replication of, Rio Declaration. Though it comprise of several significant principles it does not lay down at least the basic principle of implementation. A declaration is rather a statement of intention whereas a convention is a more concrete commitment. Considering the amount of manpower, time and funds that was spent on preparations and on hosting the summit, if the final outcome was a convention that would have been worthwhile.

The legal community in the world is much 'lesser than the non legal community. Thus these ,declarations should attempt to bring about simpler solutions focusing on non legal community away from legal principles, universal concepts towards locally based practical activities that involve local institutions, local communities which are knowledge intensive. The development in multi media could be an added advantage in achieving these objectives.

'Right to clean environment as a basic human right' is emerging in the international human rights arena. Another flaw in the declaration is that it does not make specific reference to this concept.

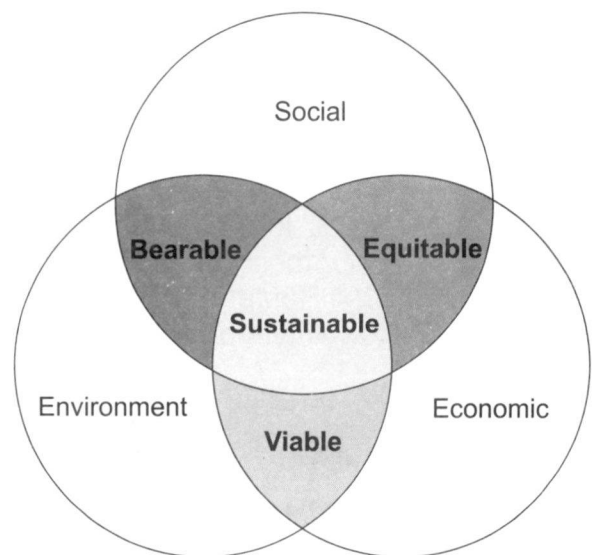
The Declaration explicitly states in principle 32 that UN should hold the leadership in promoting sustainable development. This could grow suspicion amongst the developing countries. It could be more pragmatic if they formed a new institution where the powerful/developed states cannot influence the 'decision making process. Thus it could be argued that the influence of this declaration to the International Environmental Law is minimal.

#### 4.0 Conclusion

"We have to be careful not to expect conferences like this to produce miracles. This is just a beginning.." Kofi Annon.

The concept of "Sustainable Development" has been absorbed into International Environmental Law and will continue to nourish it. Since Rio Declaration there is hardly any international environmental instrument that makes no reference to the former concept. Though Johannesburg Declaration on Sustainable development was somewhat futile in achieving its objects it was indeed a major effort made towards achieving development targets while preserving the environment.

#### Illustration of the definition of Sustainable Development



source : [http://en.wikipedia.org/wiki/Sustainable\\_development](http://en.wikipedia.org/wiki/Sustainable_development)

## Annexure II

### Criticisms leveled against Sustainable Development

Different scholars have looked at the concept in different angles.

#### 1. Critique regarding consequences?

#### 2. Critique regarding vagueness of the term.

Jean-Marc Jancovici states as follows: "I know that this term is obligatory, but I find it also absurd, or rather so vague that it says nothing." Luc Ferry adds that the term is more charming than meaningful.

#### 3. Critique regarding the basis?

**4. Critique regarding "de-growth".** According to the proponents of de-growth, on a planet where 20% of the population consumes 80% of the natural resources, a sustainable development cannot be possible for this 20% :

#### 5. The phrase is one of words not of actions.

Source :

[http://en.wikipedia.org/wiki/Sustainable\\_development](http://en.wikipedia.org/wiki/Sustainable_development)

## Annexure III

### The Johannesburg Declaration on Sustainable Development

#### From our Origins to the Future

1. We, the representatives of the peoples of the world, assembled at the World Summit on Sustainable Development in Johannesburg, South Africa from 2-4 September 2002, reaffirm our commitment to sustainable development.

2. We commit ourselves to build a human, equitable and caring global society

cognizant of the need for human dignity for all.

3. At the beginning of this Summit, the children of the world spoke to us in a simple yet clear voice that the future belongs to them, and accordingly challenged all of us to ensure that through our actions they will inherit a world, free

of the indignity and indecency occasioned by poverty, environmental degradation and patterns of unsustainable development.

4. As part of our response to these children, who represent our collective future, all of us, coming from every corner of the world, informed by different life experiences, are united and moved by a deeply-felt sense that we urgently need to create a new and brighter world of hope.

5. Accordingly, we assume a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at local, national, regional and global levels.

6. From this Continent, the Cradle of Humanity we declare, through the Plan of Implementation and this Declaration, our responsibility to one another, to the greater community of life and to our children.

7. Recognizing that humankind is at a crossroad, we have united in a common resolve to make a determined effort to respond positively to the need to produce a practical and visible plan that should bring about poverty eradication and human development.

#### From Stockholm to Rio de Janeiro to Johannesburg:

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

9. Between Rio and Johannesburg the world's nations met in several major conferences under the guidance of the United Nations, including the

Monterrey Conference on Finance for Development, as well as the Doha Ministerial Conference. These conferences defined for the world a comprehensive vision for the future of humanity,

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

### **The Challenges we Face**

11. We recognize that poverty eradication, changing consumption and production patterns, and protecting and managing the natural resource base for economic and social development are overarching objectives of, and essential requirements for sustainable development.

12. The deep fault line that divides human society between the rich and the poor and the ever-increasing gap between the developed and developing worlds pose a major threat to global prosperity, security and stability.

13. The global environment continues to suffer. Loss of biodiversity continues, fish stocks continue to be depleted, decertification c1pims more and more fertile land, the adverse effects of climate change are already evident, natural disasters are more frequent and more devastating and developing countries more vulnerable, and air, water and marine pollution continue to rob millions of a decent life.

14. 'Globalization has added a new dimension to these challenges. The rapid integration of markets, mobility of capital and significant increases in investment flows around the world have opened new challenges and opportunities for the pursuit of sustainable development. But the benefits and costs of globalization are unevenly distributed, with developing countries facing special difficulties in meeting the challenge.

15. We risk the entrenchment of these global disparities and unless we act in a manner that fundamentally changes their lives, the poor of the world may lose confidence in their representatives and the democratic systems to which we remain committed, seeing their representatives as nothing more than sounding brass or tinkling cymbals.

### **Our Commitment to Sustainable Development**

16. We are determined to ensure that our rich diversity, which is our collective strength, will be used for constructive partnership for change and for the achievement of the common goal of sustainable development.

17. Recognizing the importance of building human solidarity, we urge the promotion of dialogue and cooperation among the world's civilizations and peoples, irrespective of race, disabilities, religion, language, culture and tradition.

18. We welcome the Johannesburg Summit focus on the indivisibility of human dignity and are resolved through decisions on targets, timetables and partnerships to speedily increase access to basic requirements such as clean water, sanitation, adequate shelter, energy, health care, food security and the protection of bio-diversity. At the same time, we will work together to assist one another to have access to financial resources, benefit from the opening of markets, ensure capacity building, use modern technology to bring about development, and make sure that there is technology transfer, human resource development, education and training to banish forever underdevelopment.

19. We reaffirm our pledge to place particular focus on, and give priority attention to, the fight against the worldwide conditions that pose severe threats to the sustainable development of our people. Among these conditions are: chronic hunger; malnutrition; foreign occupation; armed conflicts; illicit drug' problems; organized crime; corruption; natural disasters; illicit arms trafficking; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatreds; xenophobia; and endemic, communicable and

chronic diseases, in particular HIV/AIDS, malaria and tuberculosis.

20. We are committed to ensure that women's empowerment and emancipation, and gender equality are integrated in all activities encompassed within Agenda 21, the Millennium Development Goals and the Johannesburg Plan of Implementation.

21. We recognize the reality that global society has the means and is endowed with the resources to address the challenges of poverty eradication and sustainable development confronting all humanity. Together we will take extra steps to ensure that these available resources are used to the benefit of humanity.

22. In this regard, to contribute to the achievement of our development goals and targets, we urge developed countries that have not done so to make concrete efforts towards the internationally agreed levels of Official Development Assistance.

23. We welcome and support the emergence of stronger regional groupings and alliances, such as the New Partnership for Africa's Development (NEPAD), to promote regional cooperation, improved international co-operation and promote sustainable development.

24. We shall continue to pay special attention to the developmental needs of Small Island Developing States and the Least Developed Countries.

25. We reaffirm the vital role of the indigenous peoples in sustainable development.

26. We recognize sustainable development requires a long term perspective and broad based participation in policy formulation, decision making and implementation at all levels. As social partners we will continue to work for stable partnerships with all major groups respecting the independent, important roles of each of these.

27. We agree that in pursuit of their legitimate activities the private sector, both large and small companies, have a duty to contribute to the evolution of equitable and sustainable communities and societies.

28. We also agree to provide assistance to increase income generating employment opportunities, taking into account the International Labour Organization (ILO) Declaration of Fundamental Principles and Rights at Work.

29. We agree that there is a need for private sector corporations to enforce corporate accountability. This should take place within a transparent and stable regulatory environment.

30. We undertake to strengthen and improve governance at all levels, for the effective implementation of Agenda 21, the Millennium Development Goals and the Johannesburg Plan of Implementation.

### **Multilateralism is the Future**

31. To achieve our goals of sustainable development, we need more effective, democratic and accountable international and multilateral institutions.

32. We reaffirm our commitment to the principles and purposes of the UN Charter and international law as well as the strengthening of multi-lateralism. We support the leadership role of the United Nations as the most universal and representative organization in the world, which is best placed to promote sustainable development. Y not a new body which powerful countries cant influence?

33. We further commit ourselves to monitor, progress at regular intervals towards the achievement of our sustainable development goals and objectives.

### **Making it Happen!**

34. We are in agreement that this must be an inclusive process, involving all the major groups and governments that participated in the historic Johannesburg Summit.

35. We commit ourselves to act together, united by a common determination to save our planet, promote human development and achieve universal prosperity and peace.

36. We commit ourselves to the Johannesburg Plan of Implementation and to expedite the achievement of the time-bound, socio-economic and environmental targets contained therein.

37. From the African continent, the Cradle of Humankind, we solemnly pledge to the peoples of the world, and the generations that will surely inherit this earth, that we are determined to ensure that our collective hope for sustainable development is realized.

We express our deepest gratitude to the people and the Government of South Africa for their generous hospitality and excellent arrangements made for the World Summit on Sustainable Development.

### **Abbreviations**

United Nations	UN
Non Governmental Organization	NGO
World Summit on Sustainable Development	WSSD
International Environmental Law	IEA

