

# Internationaal Publiekrecht als Wereldrecht

## College V

**Prof. Nico Schrijver**

*Grotius Centre for International Legal Studies, Universiteit Leiden*



**Universiteit Leiden**  
The Netherlands



FHR Diploma Program in  
International & Comparative Law  
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# Duurzame ontwikkeling en internationaal milieurecht



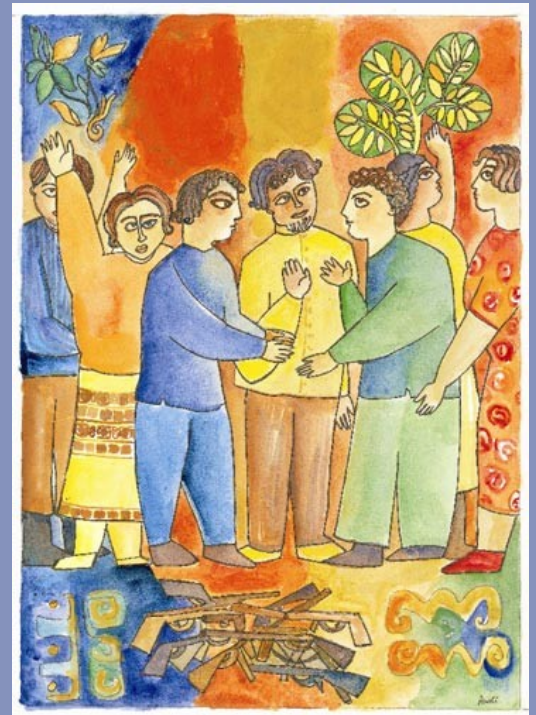
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# Outline

1. Three branches of international law relevant to sustainable development
2. Exploring the concept of sustainable development
3. Inception of sustainable development in international law
4. NGO initiatives
5. Development - the Neglected Dimension

# 1. Three branches of international law relevant to sustainable development

- International environmental law
- International law and co-operation for development
- Human rights law



## 2. Exploring the concept of sustainable development: The Brundtland report and beyond

Report our Common Future, 1987

p. 43

'...to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs'



## 2. Exploring the concept of sustainable development (continued)

### ILA Declaration on Principles of Sustainable Development, New Delhi, 2002

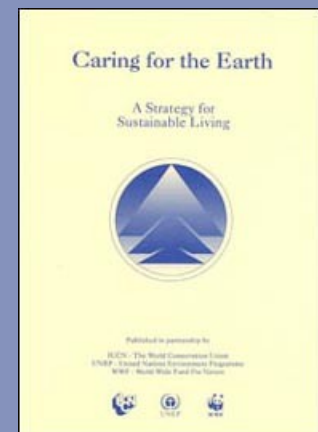
'...the objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations...'

# 3. Inception of sustainable development in international law

- Early treaties (related to fisheries, nature management and anti-pollution)
- 'Soft law': declaration, final statements, resolutions
- Multilateral environmental agreements
- International economic agreements
- Regional co-operation treaties
- Human rights treaties?
- Judicial decisions and arbitral awards

# 4. Major NGO initiatives in the field of Sustainable Development

- International Union for the Conservation of Nature (IUCN)
- World Conservation Strategy (1980)
- World Charter for Nature (1981)
- Caring for the Earth: Strategy for Sustainable Living (1991)





## 4. Major NGO initiatives in the field of Sustainable Development (continued)

- Brundtland Commission: Report and Legal Principles, 1987
- International Chamber of Commerce: Business Charter for Sustainable Development, ICC 1990
- IUCN Draft Covenant on Environment and Development, 1995 and rev.
- Earth Charter initiative, 2000
- International Law Association: ILA Principles, New Delhi Declaration, 2002

# 5. Development - the Neglected Dimension in the Evolution of the International Law of Sustainable Development

- Main results in North-South co-operation
- Principles of the traditional international law of development
- Stalemate in recent decades
- The Evolution of the Right to Development

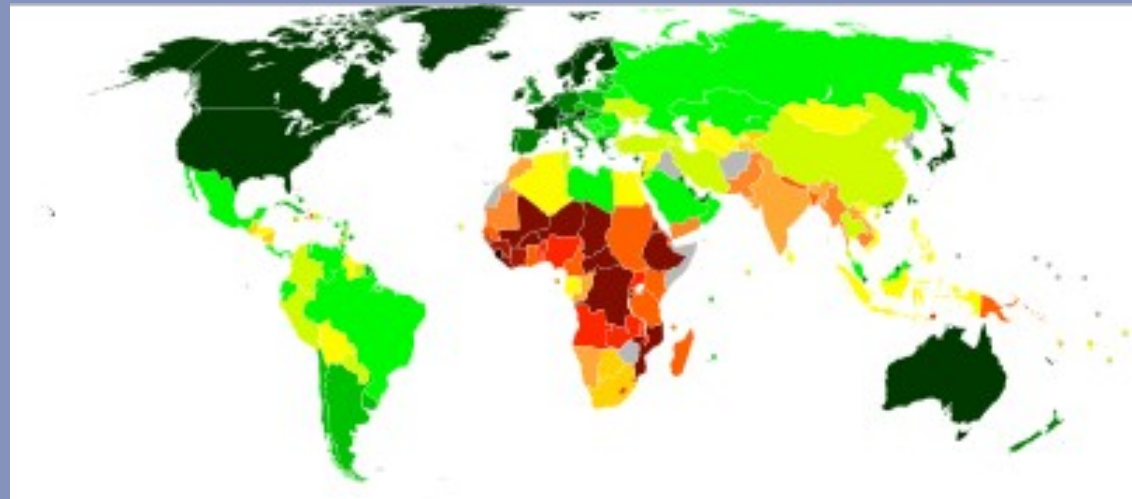
# 5. Development - the Neglected Dimension:

## *Main results in North-South Co-operation*

- Declaration on Permanent Sovereignty over Natural Resources 1962
- NIEO resolutions 1974-76
- Generalized System of Trade Preferences
- Lomé Conventions/Cotonou Convention
- Various codes of conduct on transnational corporation
- UNCTAD Common Fund for Commodities
- UN Convention on the Law of the Sea
- UN Declaration on the Right to Development
- Doha Development Agenda WTO 2001
- Debt rescheduling 2005

# 5. Development - the Neglected Dimension (continued):

- The international law of development: does it whither away?



# 5. Development - the Neglected Dimension (continued):

*Principles of the international law of development*

## A. SOVEREIGN EQUALITY

- Economic self-determination
- Sovereignty over natural resources
- Participatory equality of developing countries in international economic relations

# 5. Development - the Neglected Dimension (continued):

*Principles of the international law of development*

## B. DUTY TO CO-OPERATE FOR WORLD DEVELOPMENT

- Preferential treatment, positive discrimination
- Entitlement to development assistance
- Stabilization of export earnings
- Right to benefit from science and technology
- Common heritage of humankind

# 5. Development - the Neglected Dimension (continued):

*Principles of the international law of development: consolidation or erosion?*

## A. SOVEREIGN EQUALITY

- Economic self-determination: *in an age of globalization?*
- Sovereignty over natural resources: *but interdependence, privatization*
- Participatory equality of developing countries in international economic relations: *G-77 versus G-8?*

# 5. Development - the Neglected Dimension (continued):

*Principles of the international law of development: consolidation or erosion?*

## B. DUTY TO CO-OPERATE FOR WORLD DEVELOPMENT

- Preferential treatment, positive discrimination: how compatible with WTO law? *New principle of graduation and integration*
- Entitlement to development assistance: *in reality, no substantive increase*
- Stabilization of export earnings: *lip-service only*
- Right to benefit from science and technology: *mostly replaced by intellectual property protection*
- Common heritage of humankind: *in a stalemate and replaced by notion 'common concern of humankind'*



# De zeven beginselen van de International Law Association



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# The Principles

1. The duty of States to ensure sustainable use of natural resources
2. The principle of equity and the eradication of poverty
3. The principle of common but differentiated responsibilities
4. The principle of the precautionary approach to human health, natural resources and Ecosystems

# The Principles II

5. The principle of public participation and access to information and justice
6. The principle of good governance
7. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives

## Vier vragen

- Kan men spreken van internationaal recht inzake duurzame ontwikkeling? Heeft het zin?
- Wat zijn de knelpunten in de rechtsontwikkeling?
- Is duurzame ontwikkeling een doelstelling of een rechtsbeginsel of beide?
- Wat houdt het beginsel van integratie in en waarom is dat zo belangrijk?

functies.



# Sustainable use of natural resources

- soevereiniteit over NH
- geen ernstige grensoverschrijdende schade
- gebruik NH voor ontwikkeling
- rechten inheemse volken
- behoeften toekomstige generaties
- bescherming vitale ecologische

# Equity and the eradication of poverty

- Inter- en intragenerationale billijkheid
- Realiseer lange-termijneffecten
- Recht op ontwikkeling: kwestie van duurzaamheid en rechtvaardigheid
- Samenwerkingsplicht
- Realiseer de MDGs

# Common but differentiated responsibilities

- Global partnership van staten
- Ook corporate social responsibility
- Differentieer naar verantwoordelijkheden
- Speciale aandacht voor behoeften ontwikkelingslanden
- Ontwikkelde landen moeten onduurzame productie- en consumptiepatronen uitbannen



# The precautionary principle

- Voorzorg in acht te nemen door alle relevante actoren
- Voorzorg t.a.v. menselijke gezondheid, milieubescherming en duurzaam gebruik natuurlijke hulpbronnen
- Goede en transparante informatie

# Public participation

- Publieke participatie is essentieel
- Respecteer mensenrecht op meningsuiting, informatieverkrijging
- Schendt geen bedrijfsgeheimen
- Empowerment
- Adequate beroepsprocedures

# Good governance

- Democratisch, transparant bestuur
- Financial accountability
- Rule of law/due process of law
- Anti-corruptie
- Openbare aanbesteding
- Behoorlijk bestuur, ook door NGO's en civil society
- Rol vrouwen
- Corporate social responsibility

# Integration and interrelationship

- Samenhang en onderlinge afhankelijkheid tussen sociale, economische, financiële, milieu-, politieke en mensenrechtenaspecten
- Alle relevante bestuursnivo's: wereldwijd, regionaal, nationaal, lokaal
- Los fricties/tegenstrijdigheden in goede afweging en balans op.