

AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON ENVIRONMENTAL LAW
SECTION OF ENVIRONMENT, ENERGY, AND RESOURCES
SECTION OF STATE AND LOCAL GOVERNMENT LAW

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

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2
3 RESOLVED, That the American Bar Association recognizes that good governance and the rule
4 of law are essential to achieving sustainable development.

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6 FURTHER RESOLVED, That the American Bar Association reaffirms its 1991 commitment to
7 sustainable development, and adopts the internationally accepted concept of sustainable
8 development, as recognized at the United Nations Conference on Environment and Development
9 in 1992 and subsequent international conferences: simultaneous achievement of environmental
10 protection, economic development, social development, and peace, for present and future
11 generations.

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13 FURTHER RESOLVED, That the American Bar Association encourages governments,
14 including U.S. federal, state, local, tribal, and territorial bodies, as well as businesses,
15 nongovernmental organizations, and other entities, to promote sustainable development,
16 including by adopting and implementing appropriate measures with respect to their own facilities
17 and activities.

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19 FURTHER RESOLVED, That the American Bar Association urges the U.S. government to meet
20 the targets and timetables for sustainable development that are contained in the Plan of
21 Implementation adopted at the World Summit on Sustainable Development in Johannesburg,
22 South Africa, in September 2002, that are applicable to the United States and to which the United
23 States agreed.

24
25 FURTHER RESOLVED, That the American Bar Association should enter into appropriate
26 partnerships with governments, including U.S. federal, state, local, tribal, and territorial bodies,
27 as well as with businesses, nongovernmental organizations, and other entities, to help foster
28 sustainable development and to help achieve the targets and timetables that are contained in the
29 Johannesburg Plan of Implementation, to which the United States agreed.

30
31 FURTHER RESOLVED, That the American Bar Association should consider and promote
32 sustainable development principles in the work of its entities, and encourage communication
33 and cooperative action among its entities to better understand and promote the principles of
34 sustainable development in relevant fields of law.

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36 FURTHER RESOLVED, That the American Bar Association urges international, state, local,
37 tribal, and territorial bar associations to adopt similar resolutions.

REPORT

At the 1992 U.N. Conference on Environment and Development in Rio de Janeiro (UNCED, or Earth Summit), the United States and other countries adopted a global plan of action for sustainable development (Agenda 21) and a set of 27 principles to guide that effort (Rio Declaration). Sustainable development is “socially responsible economic development” that protects “the resource base and the environment for the benefit of future generations.” UNCED, Agenda 21, ¶ 8.7. Peace provides an indispensable foundation for sustainable development. UNCED, Rio Declaration, Principles 24 & 25. Subsequent international conferences, including the 2002 World Summit on Sustainable Development in Johannesburg, South Africa, reaffirmed this concept of sustainable development. These conferences have built on the 1987 Brundtland Commission definition of sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Sustainable development is intended to respond to the long-standing tension among economic, environmental, and social goals and objectives, including the related and growing problems of environmental degradation and the gap between rich and poor. It is not about the environment alone; it is about the relationship between the environment and other human goals. It is not about the environment vs. development; it is about the environment *and* development.

Laws and effective governance are central to sustainable development. UNCED, Agenda 21, ch. 8. Because governance is based largely on law, sustainable development raises profound challenges—and opportunities—for the rule of law and for lawyers. Underlying all sustainable development efforts is the need for capacity building and infrastructure to support effective stakeholder engagement, issue identification, emotional and values conflict management, and the development of sustainable solutions to complex economic, social and environmental challenges. Reflecting these realities, some have posited that all law should have sustainable development principles integrated into it.

But sustainable development is not merely another way of talking about environmental regulation; it is about all laws that affect the environment and social well-being. Many of the key principles underlying sustainable development, as articulated at UNCED, have a significant legal component. 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, at international, national and local levels, that integrates a variety of legal specialties, including environmental, labor, property, tax, corporate, finance, international trade and risk management.

There will always be tension between industrial development and protection of ecological and social environments. Thus, we need suitable systems and techniques for engaging diverse stakeholders as well as managing and resolving the inevitable conflicts and disputes in order to achieve sustainable development objectives. Sustainability thinking is especially useful as a framework for addressing complex environment-development matters, usually involving multiple stakeholder interests, and often with significant domestic and international components.

The importance of law and good governance to sustainable development was emphasized in August 2002 by ABA President Robert E. Hirshon when he wrote to Secretary of State Colin L. Powell concerning the then-upcoming World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa. Hirshon wrote that “we strongly encourage the United States to promote inclusion in the Plan of Implementation and the Political Declaration for the WSSD of both a commitment by all governments to pursue domestic good governance and application of the rule of law at home, and a commitment by the international community to provide the financial, technical, and other assistance needed to enable these national efforts.” In his reply, Secretary Powell said that the United States would support those commitments, and expressed his appreciation for the ABA’s efforts to foster “good governance and the rule of law around the world.”

The important role of law and legal organizations in fostering sustainable development is also underscored by a series of meetings and conferences that occurred in South Africa before the WSSD. These include a global judges symposium on sustainable development, an environmental law conference sponsored by the IUCN (World Conservation Union) Environmental Law Commission, and an environmental law conference sponsored by South Africa’s largest law firm and various international judicial and bar associations.

World Summit on Sustainable Development

The 2002 World Summit on Sustainable Development focused on implementation of the Earth Summit agreements. One set of critical outcomes, agreed to by the United States and other countries after lengthy negotiations, are the targets and timetables contained in the Johannesburg Plan of Implementation. Targets and timetables are commitments to achieve specific results by stated dates. Some of these targets and timetables reaffirm commitments that were previously agreed to in the U.N. General Assembly’s “Millennium Declaration” in 2000. These targets and timetables, to which the United States agreed, are set forth in the Appendix.

Another set of critical outcomes are commitments, made at the Summit and afterwards, by governmental and nongovernmental entities to work toward sustainable development in partnership with others. The United States specifically encouraged such partnerships in the run-up to the World Summit, and they are repeatedly endorsed in the Plan of Implementation. See, e.g., ¶ 3. These so-called “Type II” outcomes or partnerships derive from the idea that governments cannot, and should not try to, accomplish sustainable development alone. While some Type II partnerships were announced in Johannesburg, there will continue to be opportunities for the creation of new partnerships. These partnerships may involve the ABA.

ABA at the 2002 World Summit

In May 2002, Professor Robert E. Lutz, 2001-2002 Chair of the ABA Section of International Law & Practice (SILP), petitioned ABA President Robert Hirshon for permission to form an ABA Delegation to participate in the World Summit. Since there had been an ABA Delegation to the 1992 UNCED or Earth Summit, it was felt that the ABA could achieve a number of Association and Section objectives by organizing a delegation of informed persons

who were actively involved in a variety of ABA activities related to sustainable development. Receiving the support of the ABA President, Professor Lutz organized a delegation of persons who are leaders in some ABA activity related to the theme and work of the World Summit.

Through programs it held and the activities of its members, the delegation helped the ABA gain significant visibility and credibility among non-U.S. international lawyers and among environmental and other NGOs based outside the United States. The delegation's report to the ABA recommended that the ABA play a significant role in fostering sustainable development through a variety of committees and sections at both the domestic and international level.

Continuing ABA Commitment

The ABA has a history of supporting the principles of sustainable development. In 1991, the House of Delegates adopted a resolution urging "the United Nations and each nation of the world" to "develop and foster policies and long-term strategic plans for sustainable development" and "encouraging the betterment of human life through conservation and efficient use of natural resources." In 1992, the ABA helped the previous Bush Administration prepare for the Earth Summit and participated in the Earth Summit by sending representatives to non-governmental organization (NGO) sessions and providing a representative to serve on the official delegation sponsored by the United States government.

The House of Delegates has already adopted at least two other resolutions that are consistent with the basic principles of sustainable development. The 1999 House of Delegates resolution on legislation concerning cleanup of brownfields and the 2001 resolution on environmental management systems recognize the important role law and policy can play in simultaneously furthering economic, environmental, and social objectives.

More generally, promoting the rule of law internationally is a priority for the ABA. This work takes a variety of forms. For example, the ABA's regional councils for international legal technical assistance were created for the purpose of initiating, implementing, and overseeing ABA technical legal assistance projects in their respective areas of the world. These councils include the Asia Law Initiative, the Central European and Eurasia Law Initiative (CEELI), the Africa Law Initiative, and the Latin American Legal Initiative. Similar work has been conducted for years by the Section of Environment, Energy, and Resources and the Section of International Law and Practice. These are examples of activities that could form the basis for the Type II partnerships described above.

Importance of Resolution to Sponsoring Committees/Sections

Standing Committee on Environmental Law. Policy conferences conducted by the Standing Committee in 1992 (also serving as an official U.S. government hearing for U.S. preparation for the Earth Summit), in 1994 (addressing Agenda 21) and in 1996 (examining the role of the private sector in sustainable development) attest to the continuing high degree of interest in sustainable development concerns within the legal community. A 1997 ABA hemispheric conference on sustainable development in the Americas cosponsored by four ABA entities and the Inter-American Bar Association similarly drew widespread attendance by

lawyers and participation by leaders in business, government and NGOs throughout the Americas. The Standing Committee also supported a 1997 symposium at Widener University Law School on the role of law in defining sustainable development. The Committee organized and held a conference, "Combating Terrorism in the Environmental Trenches," portions of which were published in 2003 in the *Widener Law Symposium Journal*, and convened a colloquium in 2000 addressing the environmental consequences of armed conflict. As Secretary of State Collin Powell and others have pointed out, because terrorism undermines peace and security, and armed conflict inevitably damages natural resources, such that attention to these matters becomes an essential element of fostering sustainable development.

Section of Environment, Energy, and Resources. Because sustainable development is not a discrete category, like air quality or endangered species, the overarching, cross-cutting scope of the sustainability concept means that it is likely many Committees within the Section will increasingly address their specialized areas of interest within a sustainability framework. There are at least 16 Section Committees for which there is a direct subject matter analogue to a chapter in *Stumbling Toward Sustainability*, a detailed assessment of U.S. sustainable development efforts published in 2002. In 1995, moreover, the Section expanded the scope of its climate change committee to specifically include sustainable development. The Section cosponsored the 1997 Widener Symposium on the role of law and sustainable development.

Section of International Law and Practice. SILP's activities long have manifested a deep commitment to promotion of sustainable development. The Section continues to pursue rule of law training and technical assistance projects around the world. Its writings and programs focus on improvement and understanding of myriad aspects of international law and policy relevant and necessary to sustainable development, from investment, finance and trade to human rights, the environment and human health. SILP considers promotion of sustainable development an essential mission of the ABA and, accordingly, seeks to work creatively and collaboratively with other ABA entities to pursue this goal and to enable ABA members to play active and effective roles. The Section's founding of CEELI and establishment of the International Legal Resource Center in collaboration with the United Nations Development Program reflect this commitment. SILP was pleased to initiate and coordinate ABA's participation in WSSD and efforts to work with the United States government before and since to promote and enable good governance and the rule of law. An express affirmation of ABA's ongoing commitment to the principle of sustainable development would facilitate SILP's ongoing efforts and help guide the design and implementation of the numerous relevant activities of the Section and the ABA as a whole.

Conclusion

This resolution is timely because it comes shortly after the September 2002 World Summit on Sustainable Development, in which the United States and other countries reaffirmed their commitment to sustainable development. This resolution is necessary because continued unsustainable development is not a prudent option. 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.

Respectfully submitted,

Meghan H. Magruder, Chair
Standing Committee on Environmental Law

Eugene E. Smary, Chair
Section of Environment, Energy & Resources

Mary Massaron Ross, Chair
Section of State and Local Government Law

August 2003

APPENDIX
TARGETS AND TIMETABLES
CONTAINED IN THE JOHANNESBURG PLAN OF IMPLEMENTATION

The Plan of Implementation, adopted by the World Summit on Sustainable Development in Johannesburg, South Africa in September 2002, and agreed to by the United States, contains the following targets and timetables:

- to halve by 2015, “the proportion of the world’s people whose income is less than one dollar a day” (¶ 7(a)).
- to halve by 2015 “the “proportion of people who suffer from hunger” (¶ 7(a)).
- to halve by 2015 “the proportion of people who do not have access to basic sanitation” (¶ 7(a)).
- to halve by 2015 “the proportion of people who are unable to reach or to afford safe drinking water” (¶ 8).
- to achieve “a significant improvement in the lives of at least 100 million slum dwellers” by 2020 (¶ 11).
- to encourage “and promote the development of a 10-year framework” of programs to accelerate the shift toward sustainable consumption and production” (¶ 15).
- to aim to ensure, by 2020, “that chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment” (¶ 23).
- to promote ratification of the Rotterdam Convention on Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade “so that it can enter into force by 2003” (¶ 23(a)).
- to promote ratification of the Stockholm Convention on Persistent Organic Pollutants “so that it can enter into force by 2004” (¶ 23(a)).
- to encourage “countries to implement the new globally harmonized system for the classification and labeling of chemicals as soon as possible with a view to having the system fully operational by 2008” (¶ 23(c)).
- to develop “integrated water resources management and water efficiency plans by 2005” (¶ 26).
- to encourage “application by 2010 of the ecosystem approach” to oceans and seas. (¶ 30(d)).
- to restore depleted fish stocks “on an urgent basis and where possible not later than 2015” (¶ 31(a)).
- to develop and implement national or regional plans to put into effect by 2005 the International Plan of Action for Management of Fishing Capacity (¶ 31(d)).
- to develop and implement national or regional plans to put into effect by 2004 the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing (¶ 31(d)).
- to make “every effort to achieve substantial progress by the next Global Plan of Action conference in 2006 to protect the marine environment from land-based activities” (¶ 33(d)).
- to establish “by 2004 a regular process under the United Nations for global reporting and assessment of the state of the marine environment” (¶ 36(b)).

- to facilitate “implementation of the Montreal Protocol on Substances that Deplete the Ozone Layer by ensuring adequate replenishment of its fund by 2003/2005” (¶ 39(b)).
- to accelerate “implementation of proposals for action of the Intergovernmental Panel on Forests/Intergovernmental Forum on Forests” to “contribute to an assessment of progress in 2005” (¶ 45(g)).
- to improve developing country access “to affordable, accessible, cost-effective and environmentally sound alternatives to ozone-depleting substances by 2010” (¶ 39(d)).
- to promote “and develop partnerships to enhance health education with the objective of achieving improved health literacy on a global basis by 2010” (¶ 54(e)).
- to reduce “maternal mortality by three quarters” of its 2000 rate by 2015, and to reduce “under-five child mortality by two thirds” of its 2000 rate by 2015 (¶ 54(f)).
- to reduce by 25% by 2005 in the most affected countries, and by 2010 globally, the prevalence of HIV “among young men and women aged 15 to 24” (¶ 55).
- to “reduce, prevent and control waste and pollution and their health related impacts” on small island developing states by taking specified actions by 2004 (¶ 58(e)).
- to develop “community-based initiatives for sustainable tourism” on small island developing states by 2004 (¶ 58(g)).
- to strengthen and support ongoing and new efforts “on energy supply and energy services” on small island developing states by 2004 (¶ 59(a)).
- to undertake “a full and comprehensive review of the implementation of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States in 2004” (¶ 61).
- to support Africa’s efforts to secure access to energy “for at least 35 per cent of the African population within 20 years” (¶ 62(i)).
- that African countries should be “in the process of developing and implementing food security strategies” by 2005 (¶ 67(a)).
- to ensure that by 2015 “children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education” (¶ 116(a)).
- to “eliminate gender disparity in primary and secondary education by 2005” and “at all levels of education by 2015” (¶ 120).
- that nations should take “immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development and begin their implementation by 2005” (¶ 162(b)).

GENERAL INFORMATION FORM

Submitting Entities: Standing Committee on Environmental Law; Section of Environment, Energy, & Resources; Section of State and Local Government Law

Submitted by: Meghan H., Magruder, Chair; Eugene E. Smary, Chair; Mary Massaron Ross, Chair, respectively

1. Summary of Recommendation

Recognizes the role of sustainable development in promoting the ABA commitment to good governance and the rule of law; adopts the internationally accepted definition of sustainable development; encourages governments, businesses and other entities to promote sustainable development as well as to adopt and implement legal and policy incentives to support and encourage sustainable development; urges the U.S. government to meet, and to help other countries meet, agreed-on targets and timetables contained within the Plan of Implementation adopted at the 2002 World Summit on Sustainable Development; resolves that the ABA enter into appropriate partnerships to help foster sustainable development and that ABA consider and promote sustainable development principles in its work and encourage communication and cooperation in these endeavors; and urges bar associations to adopt similar resolutions.

2. Approval by Submitting Entities

Approved by the Standing Committee on Environmental Law, by the Section of Environment, Energy, and Resources, and by the Section of State and Local Government Law in May 2003. Approval by the Section of International Law and Practice is pending at time of submission.

3. Has this or a similar recommendation been submitted to the House or Board previously?

In 1991, the ABA adopted a policy resolution urging the United Nations and nations of the world to develop and foster policies and strategic plans for sustainable development. In 1997, a policy resolution cosponsored by the Standing Committee on Environmental Law, Section of Environment, Energy, and Resources and Section of Tort Trial and Insurance Practice endorsed the sixteen belief statements and ten goals of the President's Council on Sustainable Development. The proposal was withdrawn before House consideration in an effort to consider suggestions made by other ABA Sections.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

In 1999 and in 2001 the ABA adopted resolutions consistent with the basic principles of sustainable development, supporting appropriate brownfields redevelopment and voluntary environmental management systems, respectively. This resolution continues the underlying emphasis on sustainable development principles and as a result also reinforces these resolutions.

5. What urgency exists which requires action at this meeting of the House?

The World Summit on Sustainable Development convened in September 2002. The United States took part in the Summit and signed on to the targets and timetables contained in the

resultant Plan of Implementation. Work already is under way within the U.S. and elsewhere to take steps to achieve the targets and timetables and to help other nations in this endeavor. Through this policy resolution, the American Bar Association will play an important role for the legal community – in a timely manner – to clearly encourage, support, and help foster achievement in this arena.

6. Status of Legislation

There is no pending legislation dealing specifically with sustainable development, but various pieces of legislation will relate to the goals underlying sustainable development.

7. Cost to the Association

This resolution does not impose costs on the Association, as there are many steps that ABA entities can choose to take to promote sustainable development without incurring costs.

8. Disclosure of Interest (If applicable)

The cosponsoring entities hold an active interest in and engage in activities that will foster sustainable development generally, such as CLE programming, provision of ABA activities information to governments, NGOs and others, and development of policy resolutions. No individual associated with this resolution will benefit personally from adoption of this resolution.

9. Referrals

As it was developing, this Report with Recommendations was circulated to representatives of the ABA Standing Committee on Environmental Law; Section of International Law & Practice; and Section of Environment, Energy, & Resources as well as to the ABA Sections of Administrative Law & Regulatory Practice; Business Law; Public Utility, Communications & Transportation Law; Real Property, Probate & Trust Law; State and Local Government Law; and Taxation. Circulation to all ABA Sections is being made following this submission.

10. Contact Person (Prior to the meeting)

Elissa C. Lichtenstein
American Bar Association
740 15th Street, NW
Washington, DC 20005
202-662-1695

11. Contact Person (Who will present the report to the House)

Meghan H. Magruder
Hale & Dorr LLP
1455 Pennsylvania Avenue, NW, Suite 1000
Washington, DC 20005
202-942-8418