



THE NORTH - SOUTH DIVIDE IN THE WORLD OF INTELLECTUAL PROPERTY PROTECTION

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INTRODUCTION

There is a substantial difference between the words world and earth. While the earth can be one, the whole world is divided. It has been twenty years since the publication of the report “Our Common Future” has been done. But the plight of the planet has not changed even a bit.

The degradation of nature and natural resources have been the most discussed yet the least implemented issues of the recent times. Several individuals are coming out with a propaganda to save the nature but they seem all but empty sounds. The threats continue to destabilize the world’s ecosystem. The need to completely eradicate these threats is not possible to be met by a single nation or individual. It will require a mammoth participation of the international society to ward off these threats.

But it is difficult to categorize the world into a single unit. We are still divided politically, economically as well as socially. On one hand, we have the prosperous and developed nations of the West and on the other, we have the lesser developed nations of Africa, Asia and the Latin Americas. Thus, our world continues to severely suffer from what is called the “North-South divide”.¹

The 1972 UN Conference on the Human Environment in Stockholm is said to mark the beginning of modern international environmental law, which is characterized by a shift in the interests of states from trans boundary environmental matters to global environmental concerns. At the same time the states’ awareness of the close interdependency of development and the environment increased. Twenty years later, the UN Conference on

¹The notion of “North-South divide”, as well as that of “Third World” may be blamed for being mere catchwords that are simplifying today’s inter-state relations in an undue manner. However, they still truly sketch the phenomenon of a highly disrupted world whose solution still stands out. See in particular D. N o h l e n /F. N u s c h e l e r , “Ende der Dritten Welt?”, in: D. Nohlen/F. Nuscheler(eds.), Handbuch der Dritten Welt, vol. 1, 3rd ed., 1992, at 14 et seq. with further references. Compare also N. H a r r i s , The End of the Third World, 1986; K. Michelson, Rhetoric and Rage: Third World Voices in International Legal Discourse, Wisconsin International Law Journal 16 (1998), 353, at 355 et seq., and B.S. C h i m n i , Third World Approaches to International Law: A Manifesto, in: A. Anghie/B. Chimni/K. Mickelson/O. Okafor (eds.), The Third World and International Order: Law, Politics and Globalization, 2003, 47, at 48 et seq.

Environment and Development in Rio de Janeiro raised the concept of “sustainable development” that embodies this interdependency was the leitmotif of all subsequent international environmental activities.²

DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW AND INTELLECTUAL PROPERTY RIGHTS IN ITS NORTH-SOUTH DIMENSION

Prior to the UN Stockholm Conference in 1972 international environmental treaty-making had been clearly dominated by the industrialized states. At that time, the Third World had not been able to considerably influence international environmental treaty-making. Accordingly, most of the treaties concluded in that period show traces of the close inter-connection between natural conservationism and colonialism; almost none of them really addressed the economic and social needs of underdeveloped countries and their societies.³

In the late 1960s, the international state society began to become aware of the fact that there is a close interdependence between development and environmental protection. This change in states’ attitude is clearly reflected in two important documents of the early 1970s. First, the so-called Founex Report on Development and Environment of 1971 emphasized the need to incorporate environmental concerns into an expanded understanding of development.⁷ Second, the UN Conference on the Human Environment in Stockholm of 1972, in Principle 11 of its Declaration,⁴ acknowledged that “the environmental policies of all states should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by states and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures”.⁵

However, it should be stressed that on the part of many Third World countries there was considerable resistance to this new conceptual approach of the Stockholm Conference. In their view, pollution of the environment was the result of industrialization and did therefore not represent an immediate concern for them.

Consequently, in the post-Stockholm era the economic and social concerns of developing countries became predominant in inter-state relations.

In the mid-1970s the North-South conflict considerably intensified. In 1974 the developing states, organized in the Group of 77, succeeded in their efforts to make the UN General Assembly adopt the Declaration on the Establishment of a New International Economic Order,⁶ as well as the Charter of Economic Rights and Duties of States.⁷ These instruments, both legally non-binding in nature, were inspired by the idea of overcoming injustices in the then existing international law system. Accordingly, they called upon the industrialized states to take action towards reaching the following seven objectives: opening their markets for the products of

²See for the impact of the Stockholm Conference on the further development of international environmental law more in detailed, Principles of International Environmental Law, 2nd ed., 2003, at 35 et seq.; P.W. Birnie/ Boyle, International Law and the Environment, 2nd ed., 2002, at 38 et seq; U.Beyerlin, Umweltvölkerrecht, 2000, at 10 et seq.

³See for a more intensive discussion on international environmental treaties made in that period K. Mickelson, South, North, International Environmental Law, and International Environmental Lawyers, in: Yearbook of International Environmental Law 11 (2000), 52 et seq.

⁴The Report was elaborated by a Panel of Experts who convened in June 1971 to set the agenda for the then upcoming Stockholm Conference.

⁵For a survey of the outcome of the Rio Conference and the post-Rio process see again Sands (note 3), at 52 et seq.; Birnie/Boyle (note 3), at 41 et seq.; U.Beyerlin (note 3), at 15 et seq.

⁶UN General Assembly’s Resolution 3201 (S-XV) of 1 May 1974; ILM 13 (1974), 715.

⁷UN General Assembly’s Resolution 3281 (XXIX) of 12 December 1974; ILM 14 (1975), 251.

developing countries; acknowledging the developing countries' full and permanent sovereignty over natural resources; increasing the official development aid of industrialized states to 0.7 % of the GNP;⁸ increasing the developing countries' share in the worldwide process of manufacturing industrial products; facilitating their access to modern technology and enhancing their infrastructure; solving the debt crisis of developing countries; and increasing their participation in relevant decision-making processes of international financial institutions.

The adoption of the 1974 Declaration on the Establishment of a New International Economic Order may be seen as an increase in prestige of the Third World states. However, their optimism “that ways of life and social systems can be evolved that are more just, less arrogant in their material demands, and more respectful of the whole planetary environment”⁹ was to dissipate all too quickly in the 1980s – a decade that was marked by the super powers' cold war attitudes and a dramatic increase of the poor countries' debt burden.¹⁰

In 1992 the United Nations convoked the state community to the Conference on Environment and Development in Rio de Janeiro. Inspired by the innovative concept of sustainable development, the Rio Conference adopted a number of important documents, such as the Rio Declaration and Agenda 21, designed to open up concrete ways for bridging the still existing dichotomy between North and South. On the other hand, the discussions held during the Rio Conference showed that there are still deep clashes between the two groups of states in weighing environmental interests against developmental needs.¹¹ Accordingly, the post-Rio process of cooperation between North and South was not as successful as originally hoped. Thus, at the end of the 20th century, the core demands of the New International Economic Order were still unfulfilled. As the industrialized states' official development aid still clearly kept below the threshold of 0.7 % of their respective GNP, they could not reasonably claim to have pursued a meaningful policy of eradicating poverty, as promised 25 years before.

The North-South Divide in Current Practice of International Environmental and Intellectual Property

Laws

Political Dissonances in Environmental North-South Relations

At the Stockholm Conference in 1972, the then acting Indian Prime Minister Indira Gandhi had stated:

“... We do not want to impoverish environment any further, (but) we cannot forget

the grim poverty of large numbers of people. When they themselves feel deprived how can we urge the preservation of animals? How can we speak to those who live ... in slums about keeping our oceans, rivers and the air clean when their own lives are contaminated at the source? Environment cannot be improved in conditions of poverty...”¹²

Having a look at the current attitude of developing countries towards environmental protection, it appears that it does not essentially differ from this statement of the early 1970s.

⁸ Supra Note 2

⁹The Cocoyoc Declaration was adopted at the UNEP/UNCTAD Symposium on Resource Use, Environment, and Development Strategies in October 1974; see its text in: *The International Law of Development: Basic Documents, 1753, at 1776.*

¹⁰ Supra Note 3

¹¹ Supra Note 4

¹² Quoted in R.P. Anand, *Development and Environment: The Case of the Developing Countries*, *Indian Journal of International Law* 20 (1980), 1, at 10.

One might assume that states most seriously affected by environmental problems would be the most willing to participate in all efforts to solve these problems at the international level. However, current practice shows that there is no such correlation.

Taking climate change and loss of biological diversity as examples, it is clear enough that the share of North and South in causing these environmental threats and likewise the responsibility for managing these threats differ considerably.

There is evidence enough for arguing that, at least in the past, the industrialized states contributed primarily to the process of global warming with its seriously detrimental impacts on the ecosystem as a whole. It is also clear that the South suffers from climate change much more directly than the North. Most telling in this respect is the undisputed prediction that, at least in the long run, the low-lying Pacific island states will vanish if the sea levels continue to rise.

The industrialized states imagine that they possess the economic and technological means for mastering the worst effects of climate change. Perhaps this is why they keep on pursuing policies aimed at furthering their own economic growth and welfare. Thereby they neglect the urgent need of altering their lifestyles and desisting from accustomed unsustainable patterns of production and consumption that are at the root of global warming and other global environmental problems.¹³

THE ISSUE OF THE INTELLECTUAL PROPERTY RIGHTS

Developing and developed countries were clearly divided over the treatment of intellectual property rights (IPRs) over climate-friendly technologies at negotiations under the United Nations Framework Convention on Climate Change.¹⁴

The informal plenary under the Ad-hoc Working Group on Long-term Cooperative Action (AWGLCA) on 6 June began its first reading of the negotiating text on the issue of technology and capacity building.

The issue of IPRs in relation to climate-friendly technologies was clearly controversial in the negotiations. While several developing countries including Bolivia, the Philippines and Indonesia called for the exclusion of patents over such technologies, developed countries such as Japan, Canada, Australia, Switzerland and the United States insisted on strong IPR regimes. They even opposed the use of compulsory licensing for patented technologies, which is allowed for under the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs).¹⁵

Developed countries maintained that a strong IPR regime was necessary to ensure innovation and the development of technology. The developing countries on the other hand, argued that there was a need for patent exclusion on climate technologies, given the need for a global and systemic response to address the global challenge of climate change. They said that the existing flexibilities to overcome patent barriers under TRIPs

¹³The call upon states, especially those coming from the industrialized North, to change their unsustainable production schemes and consumption patterns traces back to the Brundtland Commission's Report of 1987 (note 1), at 44 and 89. Since then it has been reiterated several times, e.g. in the Bergen Ministerial Declaration on Sustainable Development of 15 May 1990 (see its text in: H. Hohman, Basic Documents of International Environmental Law, vol. 1, 1992, at 558) and more recently in the Plan of Implementation of the Johannesburg Summit of 2002 (note 11), paras. 14 et seq.

¹⁴See for a more intensive discussion on international environmental treaties made in that period K. Mickelson, South, North, International Environmental Law, and International Environmental Lawyers, in: Yearbook of International Environmental Law 11 (2000), 52 et seq.

¹⁵Compare V.P. Nanda and C. Spring, International Environmental Law & Policy for the 21st Century, 2003

was an inadequate remedy, as these required a case by case national response that was still fraught with obstacles and difficulties in using the flexibilities.¹⁶

Apart from the IPR issue, the United States and Australia also questioned the need for new institutional arrangements as proposed by the G77 and China for a technology mechanism to enhance technology development, diffusion and transfer. Developed countries stressed the need for the establishment of enabling environments and national policies that would enhance investments in climate technologies in developing countries.

Developing countries on the other hand emphasized the legally binding commitment of developed country Parties under the Convention to enable technology transfer, emphasizing the role of developed country governments in this regard. The private sector played a complementary role but cannot be a substitute for public sector actions.¹⁷

Developed countries also stressed the need to link technology needs of developing countries to low-carbon development strategies.

Ghana speaking for G77 and China, said that in relation to measures to address intellectual property rights, the Group had difficulty with option 1 under paragraph 187 in the text that states that technology development, diffusion and transfer be promoted by operating the intellectual property regime in a manner that encourages the development and transfer of climate-friendly technologies. It indicated that the Group will have a new formulation of the text that would reflect their interests.

It said that the entire structure of the negotiating text had to be modified to include the Group's proposal for a technology proposal under the Convention. The role of the private sector in technology research, development and transfer has to be recognised but it cannot be a substitute for actions needed from developed countries. Financing for technology transfer and capacity building must be new, additional, stable and predictable. There is a need to streamline nationally appropriate mitigation actions, technology road maps, action plans and needs assessments to ensure that there is no multiplication of documents to be prepared by developing countries before there is cooperation on technology.¹⁸

In reference to the term "framework for technology" in the negotiating text, the Group wanted to know what it meant. The Group had difficulties as regards paragraph 180 (f) of the text which reads as follows - "{Stimulate the formation and development of national and international innovation systems and markets for technologies for mitigation and adaptation, creating favourable investment and enabling environments, and engaging the private sector;}"

It also asked for the deletion of proposals that call for voluntary technology oriented agreements within and outside the Convention. On institutional arrangements, the Group would like to see clarity in the proposals to ensure consistency with its technology mechanism proposal.

¹⁶Compare U. Beyerlin, Sustainable Use of Natural Resources – A Key to Combating Poverty?, Zaorv 63 (2003), 417.

¹⁷See for the whole U. Beyerlin, Perspectives on Wildlife Conservation: A Critical Assessment of the Relevant International Treaties and EC Instruments, in: T. Zhenghua/R. Wolfrum (eds.), Implementing International Environmental Law in Germany and China (2001), 41 et seq., particularly at 51.

¹⁸Consequently, they are hardly able to ensure the full integration of their specific concerns into the agreements finally reached. What aggravates the situation of developing countries is the fact that the more negotiation processes are running at the same time, the less developing countries are adequately represented therein because they lack sufficient numbers of officials and experts who are skilled enough to keep up with their Northern counterparts.

Bolivia said that in relation to IPRs, there was a need for measures to allow for the mandatory exclusion of technologies for adaptation and mitigation. Where relevant, there was a need for the revocation of existing patents linked to climate change. There was also a need for immediate measures that can facilitate patent pools and know-how. Changes to the international IPR regime was also consistent with the payment of the climate debt for adaptation that is owed by developed countries to developing countries.¹⁹ Patents promote monopolies and this even goes against the free market thinking. The current flexibilities under the TRIPs regime to overcome patents are insufficient to face the global challenge of climate change. The flexibilities have to be on a case by case basis which slows down technology deployment. Hence, there was a need to rethink the whole IPR architecture.²⁰

Indonesia also noted that the TRIPs Agreement, while providing flexibilities to overcome patents, does not provide for a systemic and comprehensive solution to address the climate challenge. A case by case response at the national level was also fraught with the lack of capacities and various obstacles and is therefore not a sufficient and effective remedy to deal with a global emergency like climate change. Hence, there was a need for a systemic response in dealing with the existing IPR regime.

Philippines also called for patent exclusion in relation to climate technologies. There was also a need to increase the flexibilities under the TRIPs Agreement.²¹

Ecuador on behalf of several Latin American countries said that measures to address IPRs was important, such as compulsory licensing, the promotion of innovation through alternative mechanisms, access to publicly funded technologies, the creation of patent pools, free access to technology resources and the provision of price incentives and other forms of incentives.²²

Nicaragua, speaking for several Central American countries said that it supported measures for the removal of barriers to technology transfer such as IPRs.²³

¹⁹Consequently, in the last twenty years many multilateral environmental negotiation processes have been dominated by states of the North. Due to their abundant human resources they mostly play a leadership role in these processes. Consequently, broad segments of the Southern negotiating parties, particularly those which are notoriously subject to an immense burden of foreign debts and therefore are highly dependent on the North, generally have less bargaining power than the latter. However, part of the multilateral environmental negotiations in the 1980s and 1990s show that due to the emergence of state coalitions of interests cutting across traditional North-South lines it has become increasingly difficult for any state group to dominate the proceedings. Actually, participating in such fluid alliances offers even weak developing countries the chance to become constructive participants in these negotiations

²⁰As regards the loss of biological diversity, the situation is different. Due to their richness in valuable species of flora and fauna, it is primarily the developing states that should feel responsible for preserving them, thereby acting as trustees on behalf of the state community. However, realities are different. It may be true that in former times the local and indigenous communities in developing countries used the species of flora and fauna in their habitat in a sustainable manner, thereby preserving them from extinction. However, meanwhile, these traditional practices have been widely lost. Today, the Third World states show broad patterns of over-exploitation of natural resources, such as land, soil, water and wildlife. This is all the more alarming because, for instance in Africa, natural resources are the backbone of the economy as well as the life-support system for most of its people. Selective harvesting of medicinal plants, as well as the exotic pet trade and the demand for animal products such as ivory, rhino horn, and tiger bones, have been taking their toll on species diversity and abundance in many developing countries.

²¹It all started when the Philippine government became a signatory of the World Trade Organization (WTO), whose agreement on TRIPS (Trade-Related Aspects of Intellectual Property Rights) is hotly contested by several countries. TRIPS covers several forms of intellectual property rights (IPR) such as patents, copyrights and trademarks. The TRIPS agreement requires ratification by the legislature by the year 2000, after which WTO member countries must enact IPR legislation on plant varieties. Once ratified, the TRIPS agreement will allow transnational corporations (TNCs) and scientists to obtain exclusive legal rights over seeds that local farmers are currently using, without any recognition of their rights.

²²Benedict R.E., Perspectives of a Negotiation Practitioner, in: G. Sjöstedt (ed.), International Environmental Negotiation, 1993, 219, at 221

²³Supra Note 4

Turkey also said called for a review of IPRs and for flexibilities in addressing IPRs. **India** said that there must be provisions in the text to accelerate technology diffusion and transfer to enable the early lock-in of climate technologies. The text calls for a number of documents and technology assessments to be done for technology cooperation but these cannot be alternatives to actions. The technology framework must enable support for short-term, medium-term and longer-term technologies. There was a need for a hard look at IPRs to ensure that technology transfer is accelerated especially in areas where there were cartels.

China stressed that in relation to climate change, Parties are not talking about commercial issues but about a global public good to combat climate change. There was a need for public-private partnerships over technologies. There was need to develop a logical framework to reach a solution, linking technology, finance and the issue of IPRs. It wants IPRs to motivate innovation but where it is unfair and the IPR system damages innovation through unfair monopolies, there needs to be a solution. There was a need to have an innovative development of the IPR system to address climate change.

Brazil said that technology transfer is a commitment by developed country Parties to developing countries. There must be innovative approaches to remove barriers to technology transfer. There should be no conditionalities that create new barriers to technology transfer.

South Africa speaking for the **Africa Group**²⁴ said that it would like to see all the stages of the technology cycle to be linked to finance, noting that the various stages would require financing and capacity building interventions. It said that there was a lot of emphasis on private sector funding for technology and stressed that public sector financing was essential. Technology action plans cannot be used as a foundation for funding as it could be impose conditionalities.²⁵

Belize for the **Alliance of Small Island States (AOSIS)** said that in relation to technology roadmaps, the needs of the Small Island States and least developed countries (LDCs) must be addressed.²⁶

Uganda for the **LDCs** said that the institutional framework should be small and effective, with a technology committee with executive powers, drawn with participation from various regions.

Australia said that options in the text for specific measures to be established to remove barriers to development and transfer of technologies arising from IPRs including through compulsory licensing for specific patented technologies; the pooling and sharing of publicly funded technologies and the exemption from patent protection for LDCs were inconsistent with the TRIPs Agreement. It would be detrimental to technology development without strong incentives as according to the World Intellectual Property Organisation (WIPO), a strong and effective IPR regime would facilitate technology innovation.

It also said that in relation to technology cooperation, there was a need to include all Parties' common responsibilities.²⁷ There was a catalytic and facilitative role of the technology framework in relation to a wider

²⁴ Supra Note 20

²⁵ Compare Sjosted and Spector, Conclusion, in: Sjostedt (note 26), 291, at 297.

²⁶ For a detailed analysis of relevant negotiation processes see again Benedick, *ibid.*, at 235 et seq., and F.O. Hampson/M. Hart, *Multilateral Negotiations: Lessons from Arms Control, Trade and the Environment*, 1995, at 345 et seq., particularly at 352 et seq. For an elaborate account of the North South relationship in the climate protection regime see A. Missbach, *Das Klima zwischen Nord und Süd. Eine regulationstheoretische Untersuchung des Nord-Süd-Konflikts in der Klimapolitik der Vereinten Nationen*, 1999, particularly at 124 et seq.

²⁷ However, it appears to be too narrow to derive from solidarity only an obligation of non-interference. There is rather much in favor of arguing that each member of the community of interest must be prepared to become pro-active and act in concert for achieving the community's aim. It should be strongly induced to do so by the acknowledgement that "(a)s a member of a community that benefits

range of activities external to the UNFCCC. The current text focuses on new institutional arrangements. There was a need for cohesive actions first and then the appropriate institutions. The private sector should be enhanced to play a role. It was important for technology actions plans to be linked to technology roadmaps. There was a need to link technology needs assessments to low carbon strategies.

Japan also expressed concerns over the proposed measures to address IPRs in the text. The example of IPRs over medicines in health is completely different from environment and energy technologies. The cost of IPRs in environment and energy technologies is much lower than that of medicines. While technologies in medicines are limited, that is not the case for environment and energy related technologies. According to a special report of the IPCC, the main barrier to technology transfer is the lack of data or information and not IPRs. A report from D-G Trade of Europe also concluded the same that IPRs are not a barrier for climate technologies. IPRs are a source of innovation and its driving force. Thus, IPR protection is essential. Compulsory licensing and technology-sharing do not have a role in technology diffusion. There was a need for a more effective solution.²⁸

Canada said that strong IPR protection enables investments and is an incentive for the private sector. It had strong and fundamental concerns about options to change the IPR regime and cannot support such proposals.

The **US** also had concerns about the treatment of IPRs, which were an essential building block for technology innovation. Empirical evidence showed that robust IPR regimes promote technology development and innovation.

It also suggested that a new section be introduced in the text for common and cooperative actions. It would also like to see the linking of technologies to low carbon strategies. It was not convinced that new institutional arrangements would facilitate technology transfer. Technologies will be adopted when Parties have national policies that could enhance internal and external investment in technologies.²⁹

Switzerland said that an enabling environment was a prerequisite for technology transfer. There was need to have an environment that protects private property and IPRs. It had strong reservations over options in the text that call for compulsory licensing for patented technologies. IPR protection is an incentive for the private sector.

The **European Union** said that it was important to see the link between technologies and the concept of low carbon development strategies. Low carbon development strategies were a vehicle to identify and support

from the protection of the community, a state acting in a manner that preserves the good of the community also preserves its own individual good”.

²⁸The likely impact of the TRIPS Agreement on developing countries is considered in comparison with higher and lower levels of intellectual property protection. Human resource development, university technology transfers, venture capital formation, agricultural development, and six other areas are examined under these three levels of protection. Trade facilitation is expected under TRIPS, while local invention will be fostered by private investment stimulation at more robust levels of protection. The impact of TRIPS on public administration is assessed. Judicial system ability to support intellectual property is considered.

²⁹Ma c d o n a l d (note 34, Solidarity), at 301. R. W o l f r u m (Solidarity amongst States: An emerging Structural Principle of International Law, in: P.-M. Dupuy/B. Fassbender/M.N. Shaw QC/ K.-P. Sommermann [eds.], *Völkerrecht als Wertordnung – Common Values in International Law*, Festschrift für C. Tomuschat, 2006 [forthcoming]) holds the view that international environmental law is based upon the “structural principle of solidarity” that combines two aspects, namely the “achievement of a common objective and amelioration of deficits of certain States”. Compare also C. R i e m e r , *Staatengemeinschaftliche Solidarität in der Völkerrechtsordnung*, 2003, particularly at 43; as well as R. S c h ü t z , *Solidarität im Wirtschaftsvölkerrecht*, 1994, at 105 et seq., particularly at 109 et seq.

technology needs and capacity building needs. The Copenhagen outcome can catalyse and facilitate technology research, development, diffusion and deployment.³⁰

CONCLUSIONS

While today states may show an increasing readiness to accept that global environmental protection is a common concern of humankind, they do not yet constitute a community that, in the spirit of international solidarity and justice, acts in concert for achieving this end. States are still far from taking joint protective and remedial environmental action that suffices to achieve the aim of preserving and administering our common natural heritage for the benefit of the present and future generations.

As shown above, the basic ideas of international solidarity and justice should constitute the theoretical starting-point for constructing an international legal framework of environmental and developmental cooperation between the North and South. However, both perceptions, because of their abstractness and vagueness, only give some rough direction to the way in which both sides should shape their future inter-relationship in substantive and procedural terms. Therefore, they should be understood as sources for developing more meaningful instruments that might bridge the North-South divide in practice.

Our search for ways and means of better integrating the specific concerns of the developing world in international environmental law has revealed that “sustainable development”, “common but differentiated responsibilities”, “equitable participation”, and “equitable sharing of benefits” may constitute concepts that promise to help in this respect. All of them might contribute to shifting the inter-relationship between the North and South from disparity to equal partnership.

As shown above, the concept of “sustainable development”, in both its intragenerational and inter-generational dimension, can be understood as an emanation of solidarity and, concurrently, as a specification of the idea of distributive justice.

Particularly in the latter respect, it becomes instrumental in the North-South context. Although a mere political ideal, rather than a legal principle, “sustainable development” has proven to be an important catalyst in the process of further developing international environmental law.

³⁰http://www.twinside.org.sg/title2/intellectual_property/info.service/2009/twn.ipr.info.090608.htm as last accessed on 25th February 2010