

# CISDL

THE CENTRE FOR INTERNATIONAL SUSTAINABLE DEVELOPMENT LAW  
CENTRE DE DROIT INTERNATIONAL DU DÉVELOPPEMENT DURABLE

## PARTNERS

International Law Association (ILA)

International Development Law Organization

United Nations, Commission on Sustainable Development (UN CSD)

International Institute of Sustainable Development (IISD)

United Nations Environment Programme (UNEP)

United Nations Development Program (UNDP)

The Lauterpacht Centre for International Law (Cambridge University)

Centre d'Études et de Recherches Internationales de  
l'Université de Montréal (CERIUM)

The World Bank Legal Vice Presidency

McGill University, Faculty of Law

Université de Montréal, faculté de droit

Oxford University, Faculty of Law

## CISDL Mandate

The Centre for International Sustainable Development Law (CISDL) exists to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

As part of its ongoing legal scholarship and research, the CISDL publishes books, articles, working papers and legal briefs in English, Spanish and French. The CISDL hosts academic workshops, dialogue sessions, legal expert panels parallel to international negotiations, law courses and seminar series, and conferences to further its legal research agenda. It provides instructors, lecturers and capacity-building materials for developing country governments and international organisations in national and international law in the field of sustainable development, and works with countries to develop national laws to implement international treaties in these areas.



## What is Sustainable Development Law?

International law on sustainable development, or 'sustainable development law' for short, describes an emerging corpus of international legal principles and instruments which address the areas of intersection between international economic, environmental and human rights law, towards development that can last. In the 1992 Rio Declaration and Agenda 21, governments committed to the "further development of international law on sustainable development, giving special attention to the delicate balance between environmental and developmental concerns." Sustainable development requires accommodation, reconciliation and integration between economic growth, social justice (including human rights) and environmental protection objectives, towards participatory improvement in collective quality of life for the benefit of both present and future generations.

## CISDL Governance

The CISDL is federally incorporated as a not-for-profit organisation in Canada, and governed by a distinguished Board of Governors, chaired by Hon. Judge Charles D. Gonthier, formerly of the Supreme Court of Canada, with two CISDL Directors. It is guided by a roster of international advisors and expert collaborators. The CISDL is engaged in six primary areas of sustainable development law research and legal analysis, each of which is led by a CISDL Lead Counsel based at a law faculty, international organisation or firm. There are also three Lead Counsels responsible for cross-cutting sustainable development law issues.

## CISDL Legal Research

The CISDL is engaged in six primary areas of sustainable development law research, each of which is headed by a CISDL Lead Counsel. These CISDL programmes focus on intersections and sustainable development related laws on:

- Trade, investment and competition;
- Natural resources;
- Biodiversity;
- Climate change and vulnerability;
- Human rights and poverty eradication; and
- Health and hazards.

There are also three Lead Counsels responsible for cross-cutting sustainable development law issues (e.g. global governance, corporate social responsibility and accountability, financing mechanisms, and criminal and constitutional law aspects of sustainable development).

## CISDL Membership

CISDL members include learned jurists and scholars from all regions of the world, and a diversity of legal traditions. Through a competitive annual selection process, the CISDL appoints Associate Fellows, Legal Research Fellows and Senior Research Fellows, who are holders of all associated privileges and obligations of fellowship.



# INTERNATIONAL LEGAL PROJECTS



The CISDL and its partners undertake international legal projects to advance the understanding, development, and implementation of international sustainable development law. Several current initiatives can be highlighted as examples:

## Laying the Foundations for Global Access & Local Benefits

CISDL is partnering with the *Sociedad Peruana Derecho Ambiental* (Peruvian Environmental Law Society), the Southern Environmental and Agricultural Policy Research Institute in Kenya, and Gene Campaign in India, to study how access and benefit-sharing contracts (ABS agreements) are functioning in practice. The project includes in-country legal research by the project partners, as well as a capacity-building component in which junior researchers from Costa Rica, India, Kenya, Peru and Canada travelled to Montreal to participate in a three-week workshop and collaborative research opportunity on ABS. The 'Laying the Foundations' project is possible thanks to the International Development Research Centre (IDRC) and Environment Canada.

## When Biosafety Becomes Binding

CISDL is providing technical expertise to the UNEP-GEF Biosafety Development Project by reviewing the national biosafety frameworks and laws for 15 Francophone African countries. Activities under the project include reviewing, commenting and reporting on proposed national biosafety frameworks and their compatibility with relevant international instruments, as well as participating in national and international biosafety workshops with regulators from the region.

## Eco-Health Assessment Law in the Americas

CISDL, in partnership with the IISD and UNEP ROLAC, has undertaken a research and capacity building initiative in collaboration with ten legal research centers across Latin America and the Caribbean. The project is guided by the Organization of American States, and focuses on ways to update impact assessment laws to take into account recent eco-health developments. The partners are jointly investigating compliance with impact assessment laws across the Americas, and how health and environment institutions work together to identify means to enhance and mitigate potential eco-health effects of economic liberalisation. This project is possible thanks to a contribution from the International Development Research Centre of Canada.

## Judicial Resources on Sustainable Development

CISDL has partnered with the National Judicial Institute (NJI) and the UNEP to put together a series of Curriculum Materials on Sustainable Development Law. Initial activities include the design of a computer taught course / website that focuses specifically on a challenge to hypothetical Canadian climate change legislation. In Canada, the course materials are being provided for a new seminar that will be facilitated, taught and published by the NJI. On the international level, these materials are being reviewed for translation and publication by the International Development Law Organisation and the UNEP.

## Strengthening Climate Cooperation, Coherence & Compliance

This project, "Strengthening Climate Cooperation, Coherence & Compliance" will conduct a legal and policy analysis of the impacts of climate change in the Canadian Arctic by studying the implications of a changing climate in governance and interactions with Inuit Land-claims organizations; environmental protection and human rights; and international sovereignty and diplomacy. It will develop, debate and disseminate legal and policy knowledge needed to formulate adaptation strategies and national and international policies to address the impacts and opportunities of climate change and globalization in the Arctic; and build new partnerships and capacity between national and international legal researchers, and Northern researchers, organisations and communities, especially from indigenous peoples and scientific communities, working on law and policy issues related to climate change and the Arctic.

The project focuses on three streams related to climate change law and policy:

- **Cooperation:** Analysis of intersections between global and domestic climate regimes, and other international regimes (environmental protection, human rights and international economic investment law), as these relate to indigenous peoples concerns in the Arctic.
- **Coherence:** Survey of recent developments in land tenure law within Canada and around the world, with a focus on identifying examples of innovative new governance practices, and identifying key legal and policy priorities of relevance to Inuit Land-Claims organizations and agreements; and
- **Compliance:** Analysis of international sovereignty and diplomacy issues related to international climate law and policy, and how interpretation of key terms and doctrines could address the implications of climate change for vulnerable regions such as the North.



2005 – 2006

LEGAL RESEARCH  
PROJECTS

The CISDL's joint academic and legal research projects with developed and developing country law professors and practitioners have continued to expand this year. Over the course of the summer and fall, the CISDL has begun several new projects, especially in the areas of trade, investment and competition law, climate change, biodiversity and health. A brief summary, based on work developed over the past few years, is below:

## Trade, Investment and Competition Law (Markus Gehring)

### 1. Sustainable Development & Regional Integration Agreements:

This legal research seeks to define whether regional trading agreements really promote more trade in the aggregate on a global scale as is claimed by their defenders or whether they lead principally to diversion of trade within expanded regional groupings, and whether their political advantages outweigh their economic consequences. The CISDL has committed to undertake two legal research papers, this year, to determine whether RIAs could serve as platforms for the adoption of important social and environmental policies on the regional level. The first paper was presented in a panel on 'Governance, Economic Development and the Law' in Montreal on Nov 30, 2004, and its early version was published as a chapter in *Sustainable Development in World Trade Law* (Kluwer Law International, 2005). The second paper was presented in the British International Law Association's Annual Conference on 'Regional Trade Agreements and the WTO System' in Edinburgh on May 28, 2005, and has been accepted for publication by Oxford University Press in the resulting book, edited by Lorand Bartels. A meeting was held at McGill to launch this project in December, 2005, and CISDL member participated in one of the sessions, reporting on progress, and outlining areas where future work will be done.

### 2. Sustainable Global Trade, Investment and Competition Law:

In 2003, two legal research papers, on 'Sustainable Developments in World Trade Law', and on 'Sustainable Development and Competition Law', were peer-reviewed by international advisors. Then, with funding and partnership from the IDRC and Foreign Affairs Canada, in collaboration with the LRCIL at Cambridge, TRALAC of South Africa, and the International Development Law Organisation, the CISDL hosted an experts panel event on 'Sustainable Competition Law' and another one on 'Sustainable Developments in World Trade Law' at the WTO 5th Ministerial Conference in September, 2003. The proceedings were displayed on the web site of International Trade Canada (ITC), and the competition law paper was reviewed in an Academic Workshop in February at McGill Law Faculty. A CISDL Research Fellow participated in the WTO Symposium for Civil Society in Geneva, 2005, and two other members participated in the WTO and Cotonou Agreement Sustainability Impact Assessment meetings of the European Commission in Brussels, 2005. A new book, *Sustainable Development in World Trade Law*, was published by Kluwer Law International, 2005, and was launched at the WTO Ministerial meeting in Hong Kong in December, 2005, in a Special Guest Reception in Hong Kong's highest skyscraper, at the law firm Mallesons Stephen Jaques. The event was sponsored by the Canadian Chamber of Commerce in Hong Kong and the Canadian Consulate. In Hong Kong, a CISDL Member also spoke in the 'Legal Dimensions of Trade and Development' Symposium, which was organised

by the Hong Kong University Faculty of Law and co-sponsored by the CISDL, which will help to edit the proceedings of this symposium. In Hong Kong, two legal experts panels were also hosted by the CISDL in the Canadian Delegation Room at the Ritz Carleton Hotel, one on Sustainability Impact Assessment of Trade Agreements, which featured speakers from Foreign Affairs Canada and the European Commission, and one on the US-Brasil Cotton Dispute, and how cases in the WTO dispute settlement mechanism can influence the positions of countries in WTO negotiations. Both resulted in excellent substantive discussions, based on legal working papers that will be prepared for further review and publication. The CISDL is also considering a second book, Sustainable Development in World Investment Law, for publication with Kluwer Law International's global trade and investment series.

### 3. CISDL / IDLO Handbook on Sustainable Development in Project Finance Transactions

The CISDL and the IDLO will develop, together, an original book derived from research that describes the practical issues involved in structuring project finance transactions to ensure sustainable development. The manual will explain the concept and principles of sustainable development, its utility in international and national law, its relevance to project finance transactions and practical applications of these principles in project finance transactions. It will draw from best practice material, including experience of major international financial institutions in structuring project finance transactions to ensure sustainability. Two CISDL legal research fellows are coordinating this project, in cooperation with IDLO experts, and a CISDL legal research group.

### 4. CISDL 'Economic Law in Practice' Manuals Series with Globe Business Publishing

The CISDL has received an advance from Global Business Publishing to prepare a series of three handbooks that will serve as short guides to three areas of world economic law, for corporate counsel of firms and new associates in law firms who do not have backgrounds in international law. The three areas are world trade law, world investment law, and world competition law. The outline for the first, 'World Trade Law in Practice', has been developed, and a CISDL lead counsel and legal research fellow are coordinating the project. Each will contain sustainable development law sections in order to mainstream the legal concept of sustainable development for counsel practice.

## Biodiversity Law (Jorge Cabrera)

### 1. Implementing Biosafety Protocol Regulatory Regimes:

The CISDL has a partnership with the United Nations Environment Programme – Global Environment Facility Biosafety Project and the UN Convention on Biological Diversity (CBD). A legal brief and research paper were drafted, reviewed in an academic workshop held with the UN Biodiversity Convention Secretariat on the entry into force of the Biosafety Protocol, then edited into a joint CBD / CISDL working paper, which was reviewed at the first UN CBD Meeting of the Parties (MOP) to the Protocol in 2004. This led to a contract with IDRC to complete a new scoping study to define upcoming research on these issues, which was done

in March, 2005, and presented in Kuala Lumpur at the second MOP in 2005. The CISDL also carried out regional training in Santiago, Chile, Dar Es Salaam, Tanzania, Ouagadougou, Burkina Faso, and Maputo, Mozambique, and developed a regulatory assessment tool kit for the UNEP-GEF Biosafety Project. The CISDL then undertook to review the new biosafety laws of over fifteen Francophone African countries, providing advice and technical assistance. A framework for review was developed by 3 research fellows, with advice from the lead counsel, and many of the NBFs and related draft laws (Madagascar, Togo, Niger, Cote d'Ivoire, The Congo, Senegal, Mali, Benin, Algeria, Guinee, Comores, etc) were reviewed. In 2005 – 2006, the contract was renewed to work on Africa, the Middle East and the Pacific Islands, including Lebanon, Gabon and the Comores Islands. UNEP has provided very favourable reviews of this work, and co-hosted a Special Reception with the CISDL for all countries who have completed their NBFs at the McGill Faculty Club on June 02, 2005, during the Meeting of the Parties (MOP) of the Cartagena Protocol to the UN Convention on Biological Diversity. At the reception, the first draft of a new book, 'When Biosafety Becomes Binding: Legal Aspects of Implementing the Cartagena Protocol', was launched for consultation, and this manuscript continues to be developed, for submission to Oxford University Press, in 2006.

## 2. Access Contracts for Genetic Resources and Sharing of Benefits, in the context of negotiations for a New International Regime:

This research examines the nature, scope and potential elements of an international regime on access and benefit-sharing in biodiversity. The project began when two academic workshops were held parallel to the CBD meetings, and a scoping study to define a research agenda was carried out. A CISDL – IDRC research meeting was held at the UN Biodiversity Convention COP in Kuala Lumpur in February 2004 to confirm this agenda. The scoping study led to the initiation of a new research project, supported by the IDRC and Environment Canada, on Access and Benefit-Sharing (ABS) Contracts in civil and common law countries. The project focuses on mentoring a new generation of ABS researchers, and developing a series of papers on how experiences with these contracts might inform the new international regime negotiations. The project hosted a 3 week seminar for junior researchers from Costa Rica, India, Kenya, Peru and Canada, in the fall of 2004, where the researchers received training, developed joint research papers, and met with legal and policy experts. The research partners presented their results at the UN CBD Ad-Hoc Open-Ended Working Group on ABS, and began planning the next phase of a five year project with the IDRC. A short summer course was held to train researcher assistants from McGill Law Faculty in this area of law, funded by Environment Canada. The researchers also undertook a scoping study for Environment Canada on national laws to implement ABS regimes, and the resulting legal working paper was published (in its third edition) in December, 2005.

## Health and Sustainable Development Law (Maya Prabhu)

### 1. International Public Health and Trade Law:

One of the most important issues at the nexus of trade and public health is the dispute that surrounds the WTO Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS") and access to essential medicines. Preliminary legal research in this area led to a chapter that was published in the CISDL-edited book, *Sustainable Development in World Trade Law* (Kluwer Law International, 2005). Outbreaks of highly pathogenic avian influenza, caused by the H5N1 strain, have raised concerns that the world may be moving towards another influenza pandemic. As part of its response to this concern, the WHO is considering international responses to manage the epidemic and ways to expedite the development of pandemic vaccines. A legal brief forthcoming in the spring outlines the implications of a potential pandemic on relevant international legal regimes including patent and biosafety laws.

### 2. The WHO Tobacco Convention:

Legal research is seeking to scope the provisions of the WHO Framework Convention on Tobacco Control, its implementation mechanisms and intersections with world trade law. The research resulted in a new legal brief, and the publication of a chapter in the CISDL-edited book, *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Martinus Nijhoff, 2004).

### 3. Americas Health and Environment Impact Assessments of Economic Liberalisation Project:

The CISDL, in partnership with the IISD and the UNEP, has undertaken a research and capacity building initiative in collaboration with legal research centres across Latin America and the Caribbean. The project is advised by the OAS, and focuses on how to translate the results of integrated assessment of trade agreements into new regulations in Latin America and the Caribbean, and on how to strengthen law making and implementation capacity of sub-regional environment and development institutions. The preparatory work for this project has resulted in the preparation of a journal article, published in the *Fordham Journal of International Law*, on the Free Trade Area of the Americas, and a new book, *Beyond the Barricades: The Americas Trade and Sustainability Agenda* (Ashgate 2005). The project began through a meeting that was held parallel to the Americas Trade and Sustainable Development Forum at the Miami, Florida in November, 2003, which also led to a commissioned report for Foreign Affairs Canada. With support from Environment Canada, the ACA Project hosted an Experts Workshop at the McGill Faculty of Law in March, 2004, on assessment methods, common hemispheric sustainable development law research priorities, and institutional capacities. The project also hosted a Roundtable Dialogue at the University of Ottawa Law Faculty in March, 2004. A 'Synergy Report' was completed and published on-line. Then, with support from the IDRC, two of the Latin American partners represented the project in consultations at the Health and Environment Ministers of the Americas meetings (HEMA), in June 2005 in Mar del Plata, Argentina. To follow up, the CISDL and the Fundacion Ecos of Mercosur hosted an International Expert Panel at the UNNE Faculty of Law in Corrientes, Argentina, which was very well attended and reported in the press and on national radio, and a Partners Workshop to discuss the proposed project in Mercedes, Argentina, in November, 2005. This has led to

the initiation of a new project, with support from the IDRC, undertaken jointly by five core partner institutions and three associates, a four-year research initiative to examine how health and environment impact assessment laws have been applied to economic liberalisation led development projects in the Americas, and make recommendations for sub-regional and hemispheric eco-health impact assessment laws.

#### 4. Risk Analysis, Health and the Precautionary Principle in World Trade Law:

In 2003, based on a legal research paper on Precaution, World Trade Law and Sustainable Development, a panel event was held at the McGill Law Faculty. This resulted in two law journal articles, one on the WTO Asbestos case, published in the *Oxford Journal of Environmental Law*, and one on precaution and risk analysis in the WTO, published in the *Queen's Law Journal*. It also led to a chapter for a peer reviewed book on the international and domestic implications of new health and environment law, published by *Yale University Press*. A Senior Research Fellow is taking this research forward and contributed a chapter to the CISDL-edited book, *Sustainable Development in World Trade Law* (Kluwer Law International, 2005).

## Climate Change and Vulnerability Law (Christopher Tung)

### 1. ISDL Curriculum Materials for Judicial Education:

CISDL has partnered with the National Judicial Institute (NJI) and the United Nations Environment Programme (UNEP) to compile Cases and Curriculum Materials on Sustainable Development Law, focusing specifically on a hypothetical challenge to Canadian climate change legislation. On the international level, these materials were part of a Judges Handbook that was reviewed, translated and published by UNEP. CISDL members served as external authors for UNEP and other partners. In Canada, this work was part of a contract with the NJI, where the materials were prepared for publication as a new computer-taught course / website. The NJI expressed great satisfaction with the materials and the course as it comes together, and arranged to purchase a bulk order of 'Sustainable Development Law: Principles, Practices and Prospects' (OUP, 2004) to send to judges. The sustainable development law course will first be offered, drawing on CISDL members as instructors and honorary chair, in the spring of 2006. The NJI sponsored a reception at the CISDL Climate Change Law Symposium in Montreal, on December 02, 2005, on the occasion of the Climate Change Convention COP 11/MOP 1, and has also renewed the contract with the CISDL in order to develop the online course materials into an Electronic Bench Book for use by the NJI and its member judges.

### 2. Climate Change & Kyoto Protocol Implementation Legal Research and Scholarly Dialogue:

The CISDL is a member of an international group of climate law researchers and practitioners hosted by the Prototype Carbon Fund program in the World Bank Legal Vice-Presidency. This legal research has focused on legal implementation of the Kyoto Protocol, addressing potential synergies between legal obligations under climate and investment or trade law, emission trading and registry systems, land use change financing (LUCF), and voluntary covenants. In 2003, a legal brief and panel event at McGill Law Faculty furthered discussions. In 2004, CISDL au-

thored a comparative study for UNEP North America on regulatory and voluntary greenhouse gas registries, and an article on the legal nature of emissions reduction credits for the *ELI Environmental Law Journal*. After meetings at the Conference of the Parties 9 in Milan, Italy in December 2003, a CISDL working paper was contributed to a University of Toronto / Health Canada workshop on adaptation, health and climate change in Ottawa, and this led to a chapter on legal aspects of adaptation to climate change for a new book with University of Toronto Press. A chapter was also prepared on Canada's participation in the Kyoto Protocol mechanisms for a new book, *Legal Aspects of Implementing the Kyoto Protocol Mechanisms* (Oxford University Press, 2004). In February, 2005, CISDL hosted a workshop on climate policy and law at Oxford University with Sir Crispin Tickell, and in June, 2005, hosted a second session with Dr. Charlotte Streck. A panel event was held at McGill University to celebrate the entry into force of the 1997 Kyoto Protocol on February 16, 2005, and a presentation was given at the annual conference by the British Association of Canadian Studies (BACS) leading to a chapter on Canadian and UK innovations for implementation of the Kyoto Protocol, for a new book with Martinus Nijhoff in 2006.

### 3. International Symposium on Sustainable Development Law and Policy related to Climate Change and Follow up Academic Volume:

Over 9,000 delegates participated in the successful COP 11 / MOP 1 of the UNFCCC and Kyoto Protocol in Montreal in December, 2005. On this occasion, the Centre for International Sustainable Development Law (CISDL), in collaboration with the McGill University Faculty of Law and the *Centre d'Études et de Recherche Internationale de l'Université de Montréal* (CERIUM), organized "Strengthening Climate Cooperation, Compliance & Coherence", an international law symposium on sustainable developments in law and policy on climate change. Funded by Foreign Affairs Canada and the Canadian International Development Agency, the event took place on December 2nd and 3rd, at McGill University Faculty of Law, and was highly successful. It brought together over 200 expert participants and students, amongst which were government negotiators, academics, lawyers, scientists and policy-makers, to debate the most recent trends and practices in sustainable development law related to climate change. Substantive panels and workshops were chaired by leading experts in international law, and sponsored by the European Studies Institute, the National Judicial Institute, Climate Focus, Fasken Martineau LLP, Mallesons Stephen Jaques, and others. The focus of the event, through its expert panels and workshops, was threefold; Cooperation: Recent developments in law and policy to support Joint Implementation (JI) and the Clean Development Mechanism (CDM), and the potential for future implementation and advancement, Compliance: Recent developments in international law and policy to strengthen compliance with the UNFCCC and Kyoto Protocol, and future directions for facilitation and enforcement mechanisms, and Coherence: Intersections between global and domestic climate regimes, and other international regimes (trade and investment, indigenous peoples & other human rights, biodiversity, desertification, law of the sea, etc.). It provided an opportunity for participants to build their knowledge and capacity in this important emerging area, and many positive comments were received after the event. As part of the Symposium, a Special Guests Reception was held at the McGill Faculty Club, where a new book edited by a CISDL legal research fellow, which includes chapters by several members, *Making Kyoto Work: Legal Aspects of Implementing*

the Kyoto Protocol (OUP, 2005), was launched for Canada. The Reception also featured the launching of a new course for judges which uses a challenge to a climate bill as a hypothetical problem, and a presentation by the McGill International Journal of Sustainable Development Law and Policy. The Symposium proceedings are being edited into a new book on Sustainable Development Law and Policy Related to Climate Change, which will be submitted to Oxford and Cambridge University Presses in 2006/07.

#### 4. Scoping a Manual on Sustainable Development Law on Climate Change:

The CISDL took on a project in 2004 - 2005 for the CIDA Environmental Policy Unit to scope the potential for a series of manuals on domestic implementation of sustainable development law. The scoping study report recommended the development of a new manual on climate change for regulators in developing countries. In 2005 – 2006, CIDA agreed to support this initiative, and an international experts meeting was held, directly after the Climate Law Symposium in Montreal on December 04, 2005, to review a draft outline for the manual. It was decided at the meeting, which was attended by 20 experts including 11 from developing countries, that the manual would focus on 'sustained economic growth' goals of the Kyoto Protocol, and seek to engage development and finance ministries from developing countries in developing and supporting new laws related to implementation of international law on climate change. The first draft manual should be available for review in the spring and summer of 2006.

#### 5. ArcticNet Legal and Policy Analysis of the Impacts of Climate Change in the Canadian Arctic:

This new four-year project, funded by the NSERC through the ArcticNet, will study the implications of a changing climate in governance and interactions with Inuit Land-claims organizations; environmental protection and human rights; and international sovereignty and diplomacy. It will develop, debate and disseminate legal and policy knowledge needed to formulate adaptation strategies and national and international policies to address the impacts and opportunities of climate change and globalization in the Arctic; and build new partnerships and capacity between national and international legal researchers, and Northern researchers, organisations and communities, especially from indigenous peoples and scientific communities, working on law and policy issues related to climate change and the Arctic. As the impact of climate change will be most acute in the North, the project will contribute to the development and dissemination of the knowledge needed to formulate adaptation strategies and national policies to help Canadians, and more specifically northern aboriginal communities, face the impacts and opportunities of climate change and globalization in the Arctic. In Phase I, the CISDL, McGill University and the University of Montreal, with partners, hosted a special Workshop on *Law and Policy Implications of a Changing Climate for Northern Communities* with ArcticNet experts and speakers, as part of the International Law Symposium from Dec 02 – 04 on *Sustainable Developments in Law and Policy on Climate Change* in Montreal during the COP 11/MOP 1 Meeting, and linked in with activities organised around 'Arctic Day' (Dec 06, 2005) in Montreal. In Phase II, the CISDL and partners will conduct consultations, then research, write and review 6 – 10 working papers on key topics in climate law and policy, and will develop an on-line, interactive manual on law and policy issues related to climate change in Canada's North. In Phase III, the CISDL and partners will

organise a *National Seminar on Arctic Climate Law and Policy*, engaging young people and students, as well as learned law and scientific experts and aboriginal organizations, in discussions, debates and peer review of the working papers, before publishing them.

## Human Rights, Poverty & SD (Sumudu Atapattu)

### 1. Trans-systemic Analysis of Property Rights over Land and Water:

The CISDL is a member of the United Nations Development Programme's community of practice on land tenure and water rights in Africa. In 2003, in partnership with the African Centre for Technology and Science (ACTS), CISDL produced a legal challenge paper based on a series of case studies of *Land Tenure, Land Reform & Desertification* for UNDP, which led to an UNDP - CISDL - ACTS experts panel event at the UN Convention to Combat Desertification COP 6 in Havana, Cuba. The second phase of this work takes a trans-systemic legal pluralist perspective, and examines how customary land and water rights mix with new property tenure regimes established during 'legal modernisation' efforts in civil and common law countries. A paper on these issues was developed by a team of CISDL research group members, with advice from CISDL Research Fellows, and presented at the United Nations Commission on Sustainable Development in 2004, it was later published in *Sustainable Justice* (Martinus Nijhoff, 2004). The CISDL took on a new project in 2005 for the CIDA Environmental Policy Unit to scope the potential for a series of manuals on domestic implementation of sustainable development law. The scoping study report recommended the development of a new manual on desertification, and a second manual on access to water, for regulators in developing countries, and CISDL is seeking to confirm funds for this with CIDA. In addition, the paper on the water tenure regimes and access to water is being included in a manual on water rights to be published by the IDLO, based in Rome which is one of the partner organizations of CISDL. This manual is being developed with the objective of training personnel working on the ground.

### 2. International Debt Legitimacy Project:

CISDL prepared a legal memorandum on the preliminary procedural and structural considerations for a proposed Iraq debt tribunal, currently posted by the Jubilee Iraq organization. A working paper on the Doctrine of Odious (Illegitimate) Debts has been circulated internationally, and is used as the principal articulation of the doctrine which various social movements wish to apply in the effort to cancel certain portions of Iraqi debt, which has recently been the subject of a resolution by the Iraqi National Assembly. This research is aimed toward a new book which will be submitted for publication by Cambridge University Press.

### 3. Conflict and Sustainable Livelihoods Paper:

A legal research paper on Conflict Prevention, Sustainable Livelihoods & Reform of Legal and Judicial Institutions, was developed in 2003 for the CIDA Social Policy Unit. This has led to a publication of a chapter in *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Martinus Nijhoff, 2004).

#### 4. Right to Development v. Sustainable Development:

The right to development was proclaimed by the UN General Assembly as an inalienable right in 1986. Since then much work has been done by the UN to promote this "right" including the appointment of a Special Rapporteur on the Right to Development as well as a working group. Unfortunately, however, the discourse on the right to development has not taken account of the discourse on sustainable development. This initial concept paper which will be developed later into a book chapter or an article will trace the evolution of these two discourses in order to ascertain to what extent they are compatible and should be reconciled. This book chapter or article will also discuss the present efforts in the UN in relation to poverty eradication.

#### 5. Poverty and the Right to Food:

The issue of right to food has received increasing attention in the UN lately. Since it is closely related to the issue of poverty as well as food security, it is proposed to discuss the right to food within a broad framework of sustainable development. Again, an initial concept paper or legal brief would discuss the present debate surrounding the right to food and to what extent these promote the ultimate goal of poverty eradication and sustainable development. This will be developed later into a book chapter or an article.

#### 6. Sustainable Development and Conflict:

This project will look at environmental refugees, with a case study of climate change. There is an increasing tendency for international lawyers, environmentalists and political scientists to look at the link between environmental degradation and the escalation of conflict. It has been noted that sustainable development can be undermined as a result of conflict as well as unsustainable development can lead to conflict. The issue of environmental refugees is posing a direct threat to international stability and security which will be exacerbated by climate change. This concept paper will be written with the Lead Counsel on Climate Change and will be later developed into a book chapter or article. Climate change has the potential to undermine many human rights protected by international law. This paper will address these issues while the main focus will be on the emerging phenomenon of environmental refugees. It will also address the issue of current international law governing "refugees" and whether the present legal framework will have to be broadened to encompass the new category of environmental refugees.

## Natural Resources Law (Kent Nnadozie)

#### 1. Sustainable Development, Phosphate Mines and the Law, in Sri Lanka:

A legal research project on how phosphate mining impacts on ancient irrigation systems, and on how sustainable development law principles can be applied at different levels in Sri Lanka, has been proposed to develop in collaboration with H.E. Judge Christopher G. Weeramantry's International Centre for Peace Education and Research (WICPER) and a Sri Lankan University. The research project contemplates an exchange, joint publications and the elaboration of a clear alternative plan for development in the region. It has awaited approval and processing by the Office of International Research, with Prof. Myron Frankman is leading the initiative on the McGill side, for approximately three years.

## 2. Legal Aspects of Sustainable Water Management:

Two CISDL Research Group members, based at Oxford University, collaborated to draft a new working paper on implementation of the Johannesburg Plan of Implementation and the Millennium Development Goals in the area of access to water, and integrated water resource management. The resulting paper formed the basis for a very well subscribed course that was taught by CISDL members for delegates to the United Nations Commission on Sustainable Development in 2005, New York, and a panel event that was held at the UN CSD to review the work. This research has led to an invitation by UN Water for the CISDL to develop a 'Guidance Note' for countries seeking to draft and implement new laws on water management, and potential for a collaborative seminar and special issue on these questions with the *Revue quebecoise de droit international*.

## 3. Implementing the FAO 'Seed Treaty' and its Multilateral System for Access and Benefit-sharing:

A Legal Research Fellow prepared two new papers on the International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA), one of them for presentation in the new Oxford Globalization & Sustainable Development Law seminar. One article will be published in the *Revue Belge de Droit International*, 2006-II and the other one has been submitted to the *International Journal of Sustainable Development Law and Policy*. They both will later become chapters in an upcoming book on new issues related to access to genetic resources for food and agriculture and the benefit-sharing derived from their utilisation. The work has led to a project proposal, currently being considered by the United Nations Food and Agriculture Organization (FAO), the International Plant Genetic Resources Institute (IPGRI), the Rockefeller Foundation and the International Development Research Centre (IDRC), to develop case studies, legal analysis and instruments to assist countries with the implementation of the FAO Seed Treaty (the IT-PGRFA). Two seminars on 'IT-PGRFA and agro-biodiversity issues' are planned for Spring 2007: one at the School of Oriental and African Studies, London, UK, and one at the Université Libre de Bruxelles, Brussels, Belgium.

## Cross-Cutting Legal Research

(Salim Nakj̄havani, Micheal Kerr & Maria Leichner Reynal)

### 1. Sustainable Corporate Law:

A new Lead Counsel, Michael Kerr, has been appointed to lead our work on cross-cutting issues that relate to corporate responsibility and accountability. A corporate responsibility legal working group has also been established to carry out research and prepare legal briefs on issues relating to this area. In cooperation with the European Studies Institute, the group organised a joint panel event at McGill Faculty of Law on the role of regulation in promoting corporate social responsibility. The panel event which was held in February, 2005, turned out to be a big success. The working group has been working in close cooperation with McGill Professor Richard Janda. Much of this joint work has focused on researching a new book for Lexis-Nexis on corporate social responsibility from a legal perspective. Synergies are also being sought with McCarthy Tetrault LLP, and the McGill Senior Wainwright Research Fellow and assistant. A proposal has been discussed for a CSR legal workshop to be held some time in 2006.

## 2. Gender, International Health and Environmental Law:

The CISDL, along with many global and grassroots civil society organisations and experts, participated in the WAVE (Women's Global Assembly) conference in Nairobi, and the following UNEP Experts Group on Gender and Environment, to discuss and debate issues relating to gender equality and women's empowerment. The 2004 WAVE endorsed a new legal research and awareness-raising project on Gender, Sustainable Development and International Law, proposed by the CISDL, which will result in a new book and set of educational resource materials over the next few years. The Experts Group advised UNEP on contents, including analysis of international treaties, for the 2004 GEO Feature Focus on Gender and Environment. The CISDL, in collaboration with other members of the ILSD Partnership (UNEP, World Bank, IDLO and ILA) hosted consultations at the Governing Council of UNEP in Nairobi, 2005, and is developing the book proposal for publication. Student research assistants have been selected to work on this project, along with a Legal Research Fellow, and an Associate Fellow. This team has received a research support grant from the IDRC to allow potential research partners to jointly discuss, debate and prepare an IDRC full project proposal on "Gender, International Law and Justice: Access to Gender Equality." It provides an opportunity for partners to investigate the lessons learned and potential for gender equality and empowerment relating to some of the most important treaties and international policy commitments of our time, and the potential to implement gender equality based on these global contracts and processes. The future project can lay the first steps for a careful examination of the links between ECOSOC General Comment 16, CEDAW, and other international treaties in the field of sustainable development, with a view to how these treaties can be accessed and used to defend women's equality on the ground in developing countries on different continents.

## 3. The International Law for Sustainable Development Partnership:

The CISDL is chair, with the International Law Association and the International Development Law Organisation, the UNEP, the UNDP and the World Bank, of a new partnership on sustainable development law under the auspices of the UN CSD. In 2004 – 2005, among many other activities, the ILSD hosted side events at the UN CSD, authored working papers and legal briefs on emerging issues in SD Law, gave a well attended course on sustainable development law related to water at the UN CSD, conducted guest lecture tours and book launches, and hosted international panel events and other symposia to advance international dialogue.

SELECTED  
CISDL  
PUBLICATIONS



CISDL members are based in different developed or developing countries, but collaborate on legal research projects and publications. CISDL Research Group members support this work, providing student research assistance from Oxford, McGill and the University of Montreal. A sample of recent publications by CISDL members includes:

## Selected Books

*Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005).

*Beyond the Barricades: The Americas Trade and Sustainable Agenda*, M.C. Cordonier Segger & M.L. Reynal, eds. (Aldershot: Ashgate Press, 2005). <http://www.ashgate.com>

*Legal Aspects of Implementing the Kyoto Protocol Mechanisms*, D. Freestone & C. Streck, eds. (Oxford: Oxford University Press, 2005). <http://www.oup.co.uk>

*International Law and Policy of Sustainable Development*, D. French (Manchester: Manchester University Press, 2005).

*Sustainable Development Law: Principles, Practice, and Prospects*, M.C. Cordonier Segger & A. Khalfan (Oxford: Oxford University Press, 2004). <http://www.oup.co.uk>

*Sustainable Justice: Reconciling Economic, Social and Environmental Law*, M.C. Cordonier Segger & C. G. Weeramantry, eds. (Leiden: Martinus Nijhoff, 2004). <http://www.brill.nl>

## Selected Book Chapters

Marie-Claire Cordonier Segger, "The WTO, RTAs and Sustainable Development" in *RTAs and the WTO Legal System*, L. Bartels, ed. (Oxford: Oxford University Press, 2006 – forthcoming).

Marie-Claire Cordonier Segger, "Canadian and UK Perspectives on Sustainable Development in Trade Law and Policy" in *Canadian and UK Perspectives on International Law*, C. Waters, ed. (Leiden: Martinus Nijhoff, 2006 – forthcoming).

Henry Lovat & Osman Aboubakr, "Canadian and UK Perspectives on Corporate Social Responsibility" in *Canadian and UK Perspectives on International Law*, C. Waters, ed. (Leiden: Martinus Nijhoff, 2006 – forthcoming).

David Frank, Edward Fife & Henry Lovat, "United Kingdom" in *Corporate Responsibility World*, D. Frank, ed. (London: European Lawyer Reference Series, 2005).

Marie-Claire Cordonier Segger, Karina Kessararis & Kristin Price, "Complying with the Kyoto Protocol: Health, Social and Economic Challenges" in *Understanding the Nexus of Health, Social and Economic Impacts of Climate Change on Canadians*, D. Macdonald, M. Erskine & J. Séguin eds. (Toronto: University of Toronto Press, 2006 – forthcoming)

Marie-Claire Cordonier Segger, Director, CISDL "Integrating Social and Economic Development and Environmental Protection in World Trade Law" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Nicolas J. Schrijver, Professor, Leiden University

Markus W. Gehring & Kristin Price, "UK and Canadian Approaches to Kyoto Protocol Implementation" in *Canadian and UK Perspectives on International Law*, C. Waters, ed. (Leiden: Martinus Nijhoff, 2006 – forthcoming).

Dr. Markus W. Gehring, Lead Counsel, Trade, Investment and Competition Law, CISDL & Marie-Claire Cordonier Segger, "Sustainable Development through Process in World Trade Law" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Amb. Sergio Marchi (Canada), former Chair, General Council, World Trade Organisation

W. Bradnee Chambers, Senior Research Fellow, CISDL, Alphonse Kambu, & Christine Frison, Legal Research Fellow, Natural Resources Law, CISDL, "Intellectual Property Rights and Traditional Knowledge" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Shawn Atleo, Responsible for International Affairs and B.C. Regional Chief, Assembly of First Nations of Canada, Hereditary Chief, Ahousat, Nuu-Chaa Nuulth Nation.

Dr. Markus W. Gehring, "Competition Law, Sustainable Development and the WTO" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Frederic Jenny, Professor, Justice, Court de Cassation, France, former Vice President, Conseil de la Concurrence.

Martin Endicott, Legal Research Fellow, Trade, Investment and Competition Law, CISDL, "Investment in ICSID: Development Lessons for the WTO?" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Thomas W. Wälde, Professor of International Economic, Natural Resources and Energy Law & Jean-Monnet Chair of EU Energy Law, University of Dundee.

Mario Prost, Legal Research Fellow, Trade, Investment and Competition Law, CISDL, "Is the European Union Becoming More Sustainable?" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Armand de Mestral, Professor & Jean Monnet Chair, McGill University Faculty of Law; Director, European Studies Institute.

Michael Kerr, Lead Counsel, Corporate Social Responsibility, CISDL, "Sustainable Development in the Australia-U.S. Free Trade Agreement" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Nicholas Sinclair-Brown, Fellow, LRCIL, Cambridge Law Faculty.

Dr. Kishan Khoday, Legal Research Fellow, Trade, Investment and Competition Law, CISDL, "Sustainable Development, Trade and Social Exclusion in Asia" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Gary Sampson, former Senior Counsel, World Trade Organisation.

Maya Prabhu, Lead Counsel, International Health Law, CISDL and Kathryn Garforth, Legal Research Fellow, Biodiversity Law, CISDL, "International Public Health and Trade Law" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Margaret Somerville, Professor, McGill Law Faculty, Director, McGill Centre for Medicine, Ethics & the Law.

Prof. Hélène Trudeau, Senior Research Fellow, CISDL & Céline Nègre, "Precaution in Multilateral Environmental Agreements and its Impact on the World Trading System" in *Sustainable Development in World Trade Law*, M. Gehring & M.C. Cordonier Segger, eds. (London: Kluwer Law International, 2005), Preface by: Prof. Robert Howse, Professor, Michigan Law School.

## Selected Journal Articles

C. Frison, « Le Traité International sur les Ressources Phytogénétiques pour l'Alimentation et l'Agriculture: un système multilatéral communautaire ? » in *Revue Belge de Droit International* (Spring 2006, forthcoming).

S. Atapattu, "Sustainable Development and Terrorism: International Linkages and a Case Study of Sri Lanka" in *William and Mary Environmental Law Review* (Spring 2006, forthcoming).

S. Atapattu, "Sustainable Development, Environmental Protection and Human Rights: A Necessary Linkage?" Paper presented to the Annual Conference of the Canadian Council on International Law, to be published in the *CCIL 2005 Conference Proceedings* (forthcoming).

## Selected Legal Briefs & Working Papers

"Canadian Securities Regulators Introduce Mandatory Corporate Environmental and Social Disclosure," M. Kerr & O. Aboubakr, CISDL Legal Brief (Montreal: April, 2005)

"The Principle of Integration and Interrelationship, In Particular In Relation To Human Rights and Social, Economic and Environmental Objectives: Recent Developments in International Law Related to Sustainable Development," Carinne

Hébert-Sabourin & Sébastien Jodoin, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Duty of States to Ensure Sustainable Use of Natural Resources: Recent Developments in International Law Related to Sustainable Development" K. Bottriel, reviewed by D. French, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Principle of Equity and the Eradication of Poverty: Recent Developments in International Law Related to Sustainable Development," J. Hepburn, reviewed by A. Khalfan, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Principle of Common but Differentiated Responsibilities: Recent Developments in International Law Related to Sustainable Development," I. Ahmad, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Principle of the Precautionary Approach to Human Health, Natural Resources and Ecosystems: Recent Developments in International Law Related to Sustainable Development," J. Hepburn, reviewed by M.W. Gehring & M.C. Cordonier Segger, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Principle of Public Participation and Access to Information and Justice: Recent Developments in International Law Related to Sustainable Development," A. M. Loong, reviewed by M.C. Cordonier Segger, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

"The Principle of Good Governance: Recent Developments in International Law Related to Sustainable Development," N. Chowdhury, Working Paper for Foreign Affairs Canada (Montreal: CISDL, 2005).

Dr. Peggy J. Blair, "Book Note," *Commercial Law and Human Rights* edited by Stephen Bottomley and David Kinley, ( Burlington, VT: Ashgate, 2001) in *Human Rights and Human Welfare: An International Review of Books and Other Publications*, University of Denver, March, 2005  
<http://www.du.edu/gsis/hrhw/booknotes/index.html>

Dr. Peggy J. Blair, *Rights of Aboriginal Women On and Off-Reserve*, (Vancouver: The Scow Institute, October, 2005)  
<http://www.scowinstitute.ca/documents/RPRightsofWomen.pdf>

Dr. Peggy J. Blair, *The Non-Protection of Aboriginal Heritage (Burial Sites and Artifacts)*, (Vancouver: The Scow Foundation, October 2005)  
<http://www.scowinstitute.ca/documents/HeritageSitesFacts.pdf>

A close-up photograph of a green leaf, showing the intricate network of veins. The veins are a vibrant green color, with some appearing as bright yellow-green lines against a darker green background. The leaf is slightly curved, and the lighting creates a sense of depth and texture. The overall composition is abstract and organic.

Partnerships

## CISDL Relationships with Key Partners

The CISDL collaborates closely with the Law Faculty of McGill University in engaging students and interested faculty members in sustainable development law research and scholarly initiatives. The CISDL also works in cooperation with a network of developing country faculties of law, and is developing closer ties with the University of Cambridge Faculty of Law through the LRCIL and the Université de Montreal through the CERIUM. It has guidance from three Montrealbased multilateral treaty secretariats, the World Bank Legal Vice-Presidency, the United Nations Environment Programme and the United Nations Development Programme. It maintains a memorandum of understanding with the International Institute for Sustainable Development (IISD) and the International Development Law Organisation (IDLO). Leading CISDL members serve as expert delegates on the International Law Association Committee on International Law on Sustainable Development.

## The ILSD Partnership

With the International Law Association (ILA) and the International Development Law Organisation (IDLO), under the auspices of the United Nations Commission on Sustainable Development (UN CSD), CISDL chairs a Partnership Initiative, 'International Law for Sustainable Development' that was launched in Johannesburg at the 2002 World Summit for Sustainable Development, to build knowledge, analysis and capacity about international law on sustainable development. Leading CISDL members serve as expert delegates on the International Law Association Committee on International Law on Sustainable Development.

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The CISDL offices in Montreal are provided by the McGill University Faculty of Law by reason of the involvement of students, graduates and faculty members in its activities. CISDL subsidiary offices are based at the University of Cambridge, the University of Costa Rica, and the University of Nairobi, Kenya.

## CISDL Contacts

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CISDL members en route to June 2, 2005 Special Guests Reception hosted by the CISDL and the United Nations Environment Programme-Global Environment Fund Biosafety Project

Front row, left to right: Judge Charles Gonthier, Christine Frison, Emily Wheeler, Dr. Markus Gehring, CISDL Director Ashfaq Khalfan, CISDL Director Marie-Claire Cordonier Segger, Martin Endicott, Sebastien Jodoin;  
Back row, left to right, Kishan Khoday, Jaykumar Menon