

Cambridge University Press & Assessment

978-1-107-03293-4 — Sustainable Development, International Criminal Justice,
and Treaty Implementation

Sébastien Jodoin, Marie-Claire Cordonier Segger

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SUSTAINABLE DEVELOPMENT, INTERNATIONAL CRIMINAL JUSTICE, AND TREATY IMPLEMENTATION

Sustainable Development, International Criminal Justice, and Treaty Implementation provides a serious and timely perspective on how the implementation of international criminal law can protect the interests of future generations. With contributions from leading academics and international lawyers, this volume examines how the principles and practices of international criminal law can contribute to sustainable development in their elaboration, interpretation, and implementation, and vice versa. Debates canvass the potential and limitations of international criminalisation as a means for protecting the basic foundations of sustainable development; the role of existing international crimes in penalising serious forms of economic, social, environmental, and cultural harm; the indirect linkages that have developed between sustainable development and various mechanisms of criminal accountability and redress; and innovative proposals to broaden the scope of international criminal justice. With its rigorous and innovative arguments, this book provides a unique and urgent contribution to current debates on the future of global justice and sustainability.

Sébastien Jodoin is a PhD Candidate, Trudeau Scholar, and SSHRC Doctoral Fellow at the Yale School of Forestry & Environmental Studies and a member of the Governance, Environment, and Markets Initiative at Yale. He also serves as a Lead Counsel with the Centre for International Sustainable Development Law and directs the One Justice Project, which seeks the recognition, investigation, and prosecution of serious forms of economic, social, and environmental harm as crimes under domestic and international law. Jodoin previously worked with the Canadian Centre for International Justice, Amnesty International Canada, and the United Nations International Criminal Tribunals for Rwanda and the former Yugoslavia. He most recently received the 2012 Public Scholar Award from the Yale Graduate School of Arts and Sciences for conducting research ‘that engages and betters the world at large’.

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TREATY IMPLEMENTATION FOR SUSTAINABLE DEVELOPMENT

Over the past three decades, a series of international treaties have entered into force to address pressing global concerns of social and economic development and environmental protection. On climate change, biodiversity and biosafety, desertification, agriculture and seeds, and trade and investment liberalisation, new regimes have been established to implement global commitments related to sustainable development, many with nearly universal membership. Successful domestic implementation of these international treaty regimes is one of the most significant challenges facing international law today. Although much has been written on the content and form of treaty law, there is relatively little that examines the transition from international legal theory and treaty texts to domestic regulation and practice.

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Sustainable Development, International Criminal Justice, and Treaty Implementation

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Foreword

Rt. Hon. Sir Dennis C. M. Byron

The challenges facing the world are immense and unprecedented. If overuse in recent years has rendered this statement hackneyed, its urgency cannot be overstated. As the global population continues to expand, the planet's ecosystems teeter on the brink of irreversible collapse. Meanwhile, millions of people continue to live in dire poverty, struggling to meet their basic needs despite expanded economic activity that has greatly increased the wealth and material well-being of some segments of the population.

It is not only the scale of the challenges facing us that is unprecedented; it is also their increasing interconnectedness. From the current crisis in the global financial system to the devastating effects of climate change, the interrelated nature of the factors determining sustainable development is undeniable. Sadly, the diagnostic posed by the Brundtland Commission on Environment and Development is as accurate today as it was 25 years ago when it was first posed, because the world continues to face a series of interlocking global crises in the fields of environment, development, and energy that are 'rapidly closing the options for future generations'.¹

In this context, it is clear that the challenge of achieving sustainable development raises fundamental questions of justice on a global scale. How can we ensure that the fruits of development are shared equitably, while also sustaining the ecosystems on which all life depends? What should be our response to individuals, corporations, or governments that seriously infringe on the human rights of others, destroy the basic conditions that make development possible, or carry out gross environmental destruction? What responsibilities do current generations have toward generations to come? Such questions touch on different conceptions of justice – distributive, retributive, and restorative.

¹ Brundtland Commission, *Our Common Future: Report of the World Commission on Environment and Development* (2007), 8.

The connection to distributive justice is clear. Many of the earth's resources are finite, and those that are not are being taxed to the limit. Experts predict a future increasingly marred by resource conflicts, and the gap between the rich and the poor continues to grow. The question of how to achieve a fair and socially just allocation of resources, both among and between generations, is thus one of the most pressing of our time.

But it is increasingly evident that we must also consider aspects of retributive and restorative justice to address the challenges posed by sustainable development. The last hundred years have seen the rise of international criminal law in the wake of the Second World War – from the Nuremberg and Tokyo tribunals, to the international tribunals for the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia and the International Criminal Court. Nevertheless, the tools of international criminal law have remained underdeveloped and undertheorised with respect to their connection to development, and sustainability, and social justice. And yet it can be argued that serious violations of economic, social, and cultural rights and environmental destruction on a large scale often spring from the intentional acts of individuals, rather than from systemic causes alone, and these behaviours may be morally reprehensible enough for individual criminal liability to attach to their perpetrators. Individual criminal liability therefore holds tremendous potential to strengthen the rule of law by ensuring compliance with the global norms and fundamental rights that underpin it. After all, as propounded in a famous dictum of the International Military Tribunal in Nuremberg, international crimes are 'committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced'.

A restorative conception of justice may also provide important insights for the field of sustainable development. International criminal processes aimed at truth, reconciliation, and accountability in the wake of crimes and conflicts may support the conditions for sustainable development in the future, and the concepts underpinning sustainable development may, in turn, inform the practice of international criminal tribunals. Indeed, although the contributions of international courts and tribunals to global justice cannot be underestimated, the future of international criminal justice necessarily lies at the domestic level through the effective prosecution of international crimes, strengthened legal systems, and enhanced opportunities for the rule of law and justice.

Bringing together these different conceptions of justice in the service of sustainable development is vital to mounting a robust response to the challenges we face. This book offers exciting perspectives on this integration, providing wide-ranging analyses of the intersections between sustainable development and international criminal justice by leading scholars and practitioners in these fields. As such, it makes an important contribution towards developing a conceptual basis to underpin future thinking in this domain. It interrogates the boundaries of criminalisation as a means to tackle the challenges of sustainable development and explores future directions

to end impunity for egregious acts and conduct that are so crucial in securing a sustainable and just future for all. The contributions in this book also offer original reflections on the linkages between the objectives and means of achieving sustainable development and the pursuit of international criminal justice. These reflections probe the limitations of international law's fragmented response to the complex and interrelated problems that bedevil us at the intersections of criminality, sustainability, and development.

In his opening argument at the International Military Tribunal in Nuremberg, Justice Jackson, Counsel for the United States, declared as follows:

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. It is a responsibility that the wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated.²

By exploring the fundamental linkages between international criminal justice and sustainable development, this book offers powerful insights into a broader range of wrongs that we should seek to address, as well as a broader range of means for restoring peace to the world. I am hopeful that some of the ideas presented in this book will be taken up by others for the benefit of present and future generations.

² "Opening Statement before the International Military Tribunal," Trial of the Major War Criminals before the International Military Tribunal (Nuremberg: IMT, 1947), 98.

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We must also thank many former judges and colleagues at the International Criminal Tribunals for the former Yugoslavia and Rwanda, who were very supportive of this research. We are pleased that a few of them were able to contribute chapters to this volume.

We dedicate this book to our spouses, Sébastien's loving and supportive wife, Sarah, who endured quite a few lonely evenings and weekends in The Hague, Arusha, Cambridge, Ottawa, and New Haven so that he could work on this book; and Marie-Claire's brilliant and kind husband, Markus, whose companionship and patience have proven beyond measure over the years.

Sébastien Jodoin
Marie-Claire Cordonier Segger

Table of Abbreviations

CISDL	Centre for International Sustainable Development Law
ECCC	Extraordinary Chambers in the Courts of Cambodia
ECHR	European Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICJ	International Court of Justice
ICL	International Criminal Law
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IGOs	Intergovernmental Organizations
IHL	International Humanitarian Law
ILA	International Law Association
IMT	International Military Tribunal
IPCC	Intergovernmental Panel on Climate Change
JCE	Joint Criminal Enterprise
JPOI	Johannesburg Plan of Implementation
MEA	Multilateral Environmental Agreements
NGOs	Non-governmental Organizations
OAS	Organization of American States
OECD	Organization for Economic Co-operation and Development
SCSL	Special Court for Sierra Leone
SPSC	Special Panel for Serious Crimes in East Timor
STL	Special Tribunal for Lebanon
TRC	Truth and Reconciliation Commission
UNCBD	United Nations Convention on Biological Diversity
UNCCD	United Nations Convention to Combat Desertification

UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
WFC	World Future Council
WHO	World Health Organization
WSSD	World Summit on Sustainable Development