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PACE ENVIRONMENTAL LAW REVIEW

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THIRD ANNUAL GILBERT AND SARAH KERLIN LECTURE

Ethical Considerations for Sustainable Development

JUAN MAYR MALDONADO*

I would like, first of all, to express my thanks for this invitation to talk to you in this Kerlin Lecture about an ethics for sustainable development. I feel especially honored to be here, as I am not a lawyer, and certainly do not consider myself an ethicist. Nevertheless, ethics and sustainable development is a theme of growing importance in today's world, where globalization is too often given as the only way for solving our problems. It is also a theme with which I have a certain history, and it is this history that I would like to share with you.

My work in relation to environmental issues began many years ago in Colombia, in a region known as the Sierra Nevada de Santa Marta. The indigenous communities that live there consider this region sacred territory.[1] I was fortunate to live and work for over 20 years with both the indigenous communities and the local peasant farmers. I worked especially with the Kogi community,[2] in a joint search for holistic solutions to their multiple

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1. *See* Juan Mayr Maldonado, *Geschichtliche uberlieferung und ruinenstatten im gebiet der Tairona-kultur-Sierra Nevada de Santa Marta*, *in* TAIRONA GOLDSCHMIEDE DER SIERRA NEVADA DE SANTA MARTA, KOLUMBIEN 56-61 (1986).

2. *See* Juan Mayr Maldonado, *Los Kogi*, *in* LA SIERRA NEVADA DE SANTA MARTA 112 (1985).

problems, and in a participatory process involving the different social, political and economic actors that are present in the region. In 1986, it became necessary to establish a non-profit organization to advance the work further. The Pro-Sierra Nevada de Santa Marta Foundation was formed, and for more than 10 years I worked as Executive Director. Then one fine day, I received a call from the elected President of Colombia inviting me to become his Minister for the Environment.

This was not an easy decision to make, as I was extremely committed to my work with the Sierra Nevada and its people. Furthermore, my living with the Kogi had taught me other ways of approaching reality, from a non-western perspective in which spirituality and the codes of ethics for social behavior and interaction with the environment have a tradition of hundreds of years.[3] I took the unusual step of asking the newly elected President, Andrés Pastrana, to accompany me to the Sierra Nevada, to request the blessing of the Mamas (Kogi priests) so that my work as Minister would be coherent and productive. He agreed, and we made our visit to one of the ceremonial sites, where the Mamas, after a process of consultation and divination, confirmed that I could work as the Minister of the Environment and could count on their spiritual support in this work.

For a period of four years (1998-2002), the duration of the President's period of office, I was responsible for the Environment. This was somewhat unusual in my country where, with few exceptions, Ministers are periodically replaced during their terms of office, presenting obvious problems such as a lack of continuity in government policies and actions.

The Ministry for the Environment in Colombia was only created in 1994. It was a young institution, with a team of enthusiastic and non-political professionals. We proposed an environmental policy that would be constructed collectively, from the cultural and regional characteristics of a country that has extraordinary diversity. It was an opportunity to put into practice the teachings of the Sierra Nevada, at the national level, and at the international level where I took the role of President of the negotiations that culminated with the signing of the Biosafety Protocol (the first legal development of the Convention on Biological Diversity, and one of the most complicated negotiations between trade and

3. *See* Juan Mayr Maldonado, *Contribución a la Astronomía de los Kogi*, *in* ETNOASTRONOMÍA AMERICANAS 57 (Elizabeth von Hildebrand & Jorge Arias de Greiff eds., 1987).

environment at that time). It was also the opportunity to preside over the Commission for Sustainable Development (CSD-8) and a segment of the United Nations (UN) High Level Forum on Forests.

It is within this context that I am going to introduce the theme of ethics: a theme, which has gained increasing importance in my thinking and work, and led to the approval of a paragraph on ethics for sustainable development within the Plan of Implementation, at the recent World Summit on Sustainable Development (WSSD) in Johannesburg.[4]

But first, we must return to the place of origin: Colombia, the second most biodiverse country in the world, and the Sierra Nevada de Santa Marta in particular.[5] The Sierra Nevada is a mountain range reaching an altitude of 5,775 meters above sea level, on the Caribbean coast and geographically isolated from the Andean cordillera. It is the world's highest coastal mountain range. The Sierra Nevada region contains all globally significant ecosystems that can be found in tropical America, and is rich in biodiversity. It is also the source of thirty-five watersheds, which supply 1.5 million inhabitants of the region, as well as vast urban and farming areas on the surrounding lowlands.

The Sierra Nevada is surrounded by fertile valleys, fed by mountain rivers and streams, the desert of the Guajira peninsula, and the Cienaga of Santa Marta with its complex system of wetlands, and the Caribbean Sea. These features contribute to forming one of the most unique natural regions of Colombia.

It was this extraordinary landscape that served in the past for the settlement of different cultures, one of which, the Tayrona, reached a high level of social, cultural, economic and environmental development. Evidence of this can be seen in the thousands of pieces of gold work, ceramics and semi-precious stones; and the way they managed to adapt to the steep and fragile terrain, avoiding erosion processes and environmental deterioration, through the construction of hundreds of settlements, connected by a complex network of stone pathways. Spanish chroniclers, during the

4. WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, PLAN OF IMPLEMENTATION, *available at* http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm (last visited June 16, 2003).

5. *See* Juan Mayr Maldonado, *The Sierra Nevada de Santa Marta: A case study*, *in* SUSTAINABLE HARVEST AND MARKETING OF RAIN FOREST PRODUCTS 41 (1991); *see also* Juan Mayr Maldonado, *Case Study: Colombia*, *in* HUMAN POPULATION, BIODIVERSITY AND PROTECTED AREAS: SCIENCE AND POLICY ISSUES 217 (Victoria Dompka, ed., 1996).

period of the Conquest, documented the high quality of life of the Tayrona Indians.

After more than 100 years of resistance, much of the population was overcome by the Conquistadors, and was obliged to work as slaves and settle in the lower regions of the Sierra Nevada. Other smaller groups managed to hide in the higher mountain areas where, thanks to the geographic isolation, they were able to re-organize and conserve their traditions, their way of thinking and their culture. The region is now inhabited by four ethnic groups, each one with different processes of cultural contact. Among them, the Kogi stand out for having preserved their ancestral traditions and the "Law of the Mother", a code of rules for ethical behavior in which their spiritual conduct maintains the order of the universe and social and environmental balance.[6]

The indigenous territory is surrounded by steep terrain and fragile soils—the coffee-growing zone. These lands are now inhabited by peasant farmers who have originated from different regions of Colombia: many of them were displaced due to political violence during the 1950's; others arrived amidst the 'gold-fever' or to ransack the graves of the ancient populations for archeological pieces; and others, more recently due to the bonanza of illicit crops which has sparked a new stage of violence and the continuous presence of armed groups seeking control over the territory.

In the lower lands, around the mountain range, are the urban centers and the productive infrastructure of the region, characterized by large land-owners with plantations of banana and African palm; also centers for coal mining, ports, tourism, and especially the culture of the Caribbean coast.

In the midst of this scenario of different cultures and multiple interests, the recent historic events have left a legacy of environmental, social and cultural deterioration. This is largely due to the peasant migrations, the widespread growing of marihuana in the 1970's with the resulting corruption and violence, and more recently due to falling international prices for coffee. The inequities of international market prices in particular has resulted in economic de-stabilization of the peasant populations, who have since found in the illegal cultivation of the coca-leaf a certain eco-

6. For discussion about the protections on the Sierra Nevada see Juan Mayr Maldonado, *La Sierra Nevada de Santa Marta Una Reserva Filosófica Que Se Proyecta Al Siglo XXI*, *in* EL VUELO DE LA SERPIENTE, DESARROLLO SOSTENIBLE EN LA AMÉRICA PREHISPÁNICA 66 (Siglo del Hombre ed., 2000).

nomic compensation, and especially in the absence of government and coherent social and economic policies.

More than 100,000 hectares of natural forests were felled for the planting of 'Santa Marta Golden', one of the highest-quality and most sought after marijuanas in the American markets (in some ways, it can be said that during this period the Americans smoked our tropical forests, and were accomplices to the start of the drug-trafficking and violence that has cost so many lives in our country). Now, thirty years later, the consequences of environmental deterioration can be observed in large eroded areas, in the reduction of fauna and flora, and the drying up of rivers in the dry season, leaving many populations without water and affecting the farming economy.

At present, the coffee trade only benefits the multinational corporations who obtain considerable profit, at the cost of the producing peasants and consumers who receive a low salary and pay high costs for the product, respectively. In the USA, two corporations control 75% of the market.

The Sierra Nevada region is no longer the great source of water as previously, nor the great producer of high-quality coffee for export.

The Sierra Nevada is a complex cultural mosaic, with different ways of conceiving and interpreting reality. For the indigenous peoples, the mountain is sacred, their place of origin, where each geographical feature and the natural world that surrounds them has a special significance and is represented in the memory of some event in the past. For the peasant farmers, it is a territory to be worked and exploited for their very survival; for the large landowners, it is a region for maintaining political and economic control; and for the outside world it is a place for the extraction of goods, be they legal or illegal.

It could be said that the Sierra Nevada is a great Tower of Babel, characterized by different languages, interests and contradictions.

However, a great difference comes to view: indigenous thought is founded on the ancestral experiences that are lost in history, whereas western thought is based generally on external development models and with limited temporal tradition. For the indigenous peoples these differences are clearly reflected in the legal systems of both cultures. The "Law of the Mother", among the Kogi for example, is permanent and does not allow changes. The law of the "younger brother" (the term used for western cul-

ture), on the other hand, does not have this maturity and is in a state of permanent change. Take the concept of Sustainable Development, for example, which is just starting to take form in both the legal systems and social, economic and political behaviors. In the indigenous world this concept is intimately linked to the environment that surrounds them. In this worldview decision-making is not oriented by economic factors, which are the main criteria in western society.

This leads me to mention some of my experiences as Minister in international negotiations where, in the midst of enormous difficulties and diverse interests, we urgently need to construct legislation that integrates environmental protection into the processes of development.

As previously mentioned, I was responsible for the negotiations of the Biosafety Protocol, which sought to regulate the transboundary movement of Living Genetically Modified Organisms.[7] This theme, which is so important at this time, implies a very difficult negotiation where environmental and cultural interests confront economic and business interests. Aside from political implications, it was the first legal development of the Convention on Biological Diversity (CBD), and put at risk the very credibility of this important multilateral instrument.

A similar situation occurred in another multilateral negotiation in which I participated, the Commission on Sustainable Development (CSD), in which we dealt with the issues of trade, funding and agriculture. There was no progress in these talks, and likewise at the international negotiations on forests, and at the Kyoto Protocol on Climate Change. In all of these negotiations, without exception, economic interests have taken precedence over socio-cultural and environmental interests, producing bland agreements that do not solve the root causes of problems, but at the political level are presented to society as great advances towards sustainable development.

There is, however, an emerging new force of opinion and pressure, represented by the civil society movements, farmers, workers, students and other sectors of society. On finding no answer from the government for solving these problems, they have started massive protests against the forces of globalization.

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7. *See* Juan Mayr Maldonado, *Environment Ministers: Political Perspective on the Final Negotiations*, *in* THE CARTAGENA PROTOCOL ON BIOSAFETY, RECONCILING TRADE IN BIOTECHNOLOGY WITH ENVIRONMENT & DEVELOPMENT? 218 (Christoph Bail et al. eds., 2002).

I remember the meeting of the World Trade Organization (WTO) in Seattle, where I attended as Minister and as President of the Biosafety Protocol negotiations. My aim was to observe the development of the proposals being put forward by some countries to create a Committee to tackle environmental themes, especially biosafety, within the WTO—a mechanism for negotiations that was likely to damage the negotiations being advanced and even block the Biosafety Protocol.

Imagine my surprise when, at the start of the day, it was impossible to enter the Convention Center due to the huge demonstration in the streets by thousands of people protesting the WTO policies. I will never forget the images of the police wearing suits that one only sees in Star Wars films, shooting tear-gas to stop and disperse the crowds of protesters; and the crowds of people running through the streets, trying to escape the effects of the tear-gas and the police persecution.

This was the first large-scale demonstration against the policies of globalization and free trade aimed at blocking and breaking the negotiations in this way. It gave a message to the world about the impact of these policies in many sectors of society, and the growing imbalance between developed and developing countries. Figures showing the concentration of wealth and power in the hands of the few, and especially in the hands of transnational corporations, as well as the unprecedented increase in the number of poor, led to the need for a profound reflection on this theme.

Something that I had already noted, throughout different experiences of negotiations and conflict resolution both in the Sierra Nevada and as Minister, was the economic criteria that dominated the content of each discussion, negotiation or decision-making. The only scenario where the discussions were from a perspective of values and ethical principles, without exception, were in the indigenous world; and more recently among some civil society organizations.

An invitation to a university in Cali to give the opening speech at a meeting on Ethics for Sustainable Development that was being promoted by a colleague and well-recognized professor in Philosophy and the Environment, had a great impact. When I arrived at the University, the auditorium was already full and additional rooms had been adapted with audio-visual screens so that all those present could participate in the event. More than 800 people had congregated to listen and discuss the theme of ethics. I quickly realized that in all my talks as Minister for the Environ-

ment, I had not once used the word 'ethics'. It was at this precise moment that I decided to dedicate my time and energy to promoting and working for the incorporation of fundamental ethics in the processes of the environment and sustainable development.

With this in mind, I traveled to Rio de Janeiro for a Meeting of Environment Ministers of Latin America and the Caribbean, which coincided with a regional preparatory meeting for the World Summit on Sustainable Development (WSSD) to be held in Johannesburg. The scenario, Rio Centre, could not have been better. It was here that ten years previously the United Nations Conference on Environment and Development had been held, in which I had participated as Director of the Pro-Sierra Nevada de Santa Marta Foundation. I returned now with the belief that the absence in contemporary society of a strong ethical dimension is largely responsible for our failure to achieve the goals we established ten years ago, in Rio, of sustainable development.

The agenda for our meeting had been prepared by the Ministerial advisors, and the Ministers generally participate to approve previously agreed texts without much discussion. Only this time we were faced with a recent event, unprecedented in our history. Just one month before, we had been horrified by images transmitted direct by television, of the attacks on New York and Washington on September 11th.

I requested that my colleagues modify the agenda of the meeting and that we dedicate a morning to Ministerial discussion and political analysis on the new reality. There is no doubt that the events of September 11th would have a profound impact on all future developments. In the meeting we discussed the need to establish ethical criteria for the construction of a model for sustainable development and we agreed to work on the theme at the regional level as a contribution to the Johannesburg Summit. There was agreement that technological, economic or political solutions, if not accompanied by ethical principles, will not solve problems already identified, much less achieve sustainable development.

At that time, the Millennium Declaration made a call for the need to adopt a new ethics, for conservation and for all activities related to the environment.[8] The Secretary-General of the UN,

8. UNITED NATIONS, MILLENNIUM REPORT OF THE SECRETARY-GENERAL OF THE UNITED NATIONS, *available at* http://www.un.org/millennium/sg/report (last visited May 19, 2003).

Kofi Annan, also mentioned in one of his speeches that a new ethics for global sustainability would be jointly constructed. The Declaration of Mälmo referred to how success in combating environmental degradation is dependent on the full participation of all actors in society, an informed and educated population, respect for the ethical, spiritual values and cultural diversity and the protection of indigenous knowledge.[9] It mentions too, in its section on the private sector and the environment, that ethical and social implications should be taken into account.

The theme of ethics should be discussed in other multilateral fora, to continue creating a favorable environment in the preparatory process towards Johannesburg. With this in mind, I participated in the Ministerial Level Conference of the Parties to the CBD in The Hague, where we proposed that a text on ethics be included in the Ministerial Declaration. This was unanimously approved. A similar proposal was made to the Ministers for Health and for the Environment, who met at a hemispherical level in Canada. In addition, UNEP collaborated with Colombia's Ministry for the Environment to convoke a Regional Symposium on Ethical Principles and Sustainable Development, in which important thinkers from Latin America participated. The Symposium was held in Bogotá, and results were documented in the publication "Ethics, Life, Sustainability".[10]

The process continued in Bali, during the last preparatory meeting for the Johannesburg Summit. There, with the support of Latin American countries, we proposed a text on ethics for a sustainable development, to be considered by G-77. This text appeared in the first draft of the negotiations between parties for the WSSD Plan of Implementation. However I discovered, to my surprise, that the text had disappeared in the second draft. I protested to the President of the Conference, and it was revealed that the text had indeed been sent to a working group. The group had studied it and accepted it as part of the Plan of Implementation, but due to objections from some delegations, especially the US delegation, the text remained in brackets.

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9. UNITED NATIONS ENVIRONMENT PROGRAMME, MÄLMO MINISTERIAL DECLARATION (May 31, 2000), *available at* http://www.unep.org/malmo/malmo_ministerial.htm.

10. UNITED NATIONS ENVIRONMENT PROGRAMME, ETHICS, LIFE, AND SUSTAINABILITY, *available at* http://www.rolac.unep.mx/cronica/ing/pn0103i.htm#doce (last visited May, 19, 2003).

The Bali meeting turned out to be highly frustrating for the majority of the government and non-government delegations. All main decisions for Johannesburg were delayed, and in some way it seemed that time was lost and this was a glimpse of how Johannesburg would be. On the last night, we all waited anxiously for the plenary meeting to inform us of the final text that would be sent to the Summit. When it was distributed, we noted that the article agreed upon by the working group on ethics was still not included. The President of the working group made a public announcement that the omission was unintentional. It was requested that the article be included in the official and final text, and the plenary gave no objection.

Two weeks later, when the final text from the Bali meeting was circulated, it was clear that the wording on ethics had again been omitted. There was an obvious lack of transparency about the proceedings of the Bali meeting. I immediately requested that the Colombian Government and the President of the Working Group make a complaint to the Secretary.

Finally, thanks to the support of many governments, the text on ethics was approved in Johannesburg, as article 6 in the WSSD Plan of Implementation.[11] With approval of article 6, the doors have opened for the construction of an inter-governmental process, to include broad participation of all sectors of the civil society, for consultation on ethical principles for sustainable development.

When corporations and governments are not governed by a strong sense of equity and ethics in their decisions, it is no wonder that the goals of sustainable development have not been achieved. Corruption and greed are all too common in each of these sectors. Not a week goes by without news about ongoing investigations of legal and ethical failures of well-known corporations such as Enron, Arthur Anderson, WorldCom, Xerox and many others. Corrupt and unethical practices are also pervasive in governments, Fernando Marcos in the Philippines, Mobutu Sese Seko in Zaire, Anastasio Somosa in Nicaragua, Alberto Fujimori in Peru, Manuel Noriega in Panama, Alfredo Stroessner in Paraguay, and General Suharto in Indonesia, being but a few examples.

11. *See* WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, PLAN OF IMPLEMENTATION, *available at* http://www.johannesburgsummit.org/html/documents/summit_docs/2309_planfinal.htm (last visited June 16, 2003).

Ethical behavior in the context of development is behavior that promotes equity, providing benefits to all affected by development, not just to those conducting the development. If we continue along this current path of development, we will be witness to irreversible consequences. How can we explain that 1.2 billion persons live on just one dollar a day, when 15% of the world's population in developed countries consumes 60% of world goods? And why is it that 30% of the world population still has to use wood as a source of energy, affecting the last tropical forests that remain on the planet and their biodiversity?[12]

Transparency is a pre-requisite for the urgent transformation that we need. It is necessary for transparency in all our actions, our negotiations, our forms of governance and our forms of living. We need transparency and dialogue—to listen, learn, understand, work and live together—to achieve sustainable development. Respect for different cultures and traditions is another pre-requisite. When people feel they are not respected, they immediately feel threatened, and tensions and conflicts are created, which, in some cases, lead to unimaginable extremes.

There is not doubt that our society demands a change towards equity where the dignity of all persons is respected, because when dignity is lost one is not only poor, but miserable, and that is what is happening. There are thousands of millions of persons that live in misery, while a minority lives in opulence. Development has economic, social, political and environmental consequences and it affects our freedom. There is no freedom without equity and development must promote equity to provide an improved common welfare.

I have not the slightest doubt that we are at a critical moment, in which we must show the highest expression of collective responsibility towards others, society in general, our planet and towards the future generations.

We need more than a change in habits and activities. Until world leaders from each of our countries, and each one of us individually, have a strong sense of social responsibility based on equity and ethics, nothing will change. On the contrary, problems will increase, the breach between rich and poor will widen, and

12. For more detail on socio-environmental trends refer to the UNEP series of publications, GLOBAL ENVIRONMENTAL OUTLOOK, *available at* http://www.unep.org/geo (last visited May 19, 2003).

conflict and tensions between our societies will increase, along with environmental destruction and inequality.

Now is the moment to act to establish a series of ethical principles that can guide us. Fortunately, as I have witnessed throughout my life, there are many persons who share this feeling, and there are many societies that are still ruled by codes of ethical behavior, such as the Kogi. These are the seeds. There are also initiatives, such as the Earth Charter,[13] among others, upon which we should build, and obviously the academic world and educational centers constitute a fundamental pillar for this transformation.

I would like to thank you for listening to me, and to express again my gratitude for this wonderful opportunity you have given me to talk to you.

Many thanks.

13. This organization's goal is to "establish a sound ethical foundation for the emerging global society and to help build a sustainable world based on respect for nature, universal human rights, economic justice, and a culture of peace." Earth Charter, *Mission of the Earth Charter Initiative*, *at* http://www.earthcharter.org/aboutus/ (last visited May 26, 2003).