

HOWARD MANN



INTERNATIONAL SUSTAINABLE DEVELOPMENT LAW

Since establishing his legal practice in 1993, Howard Mann has specialized in international and Canadian sustainable development law. His practice includes a particular focus on international environmental, trade and investment law and policy, three of the pillars of International Sustainable Development Law (ISDLaw).

With clients from the public and private sectors in Canada and internationally, Howard Mann has worked on a wide range of environment and development concerns, involving such international agreements as the North American Agreement on Environmental Cooperation, the North American Free Trade Agreement, World Trade Organization agreements, the Basel Convention on the transboundary movement of hazardous wastes, the Convention on Biological Diversity and its Protocol on Biosafety, international forest instruments and voluntary environmental standards. Specific assignments have involved participation in international litigation processes, the implementation of existing agreements and design of new ones, institutional management of the environment, international training seminars for business and government leaders, and the development of policy and strategic plans for new approaches to environmentally sustainable development. Dr. Mann has also facilitated inter-departmental and international meetings.

Howard Mann brings to his work an extensive combination of national and international legal skills, along with policy and strategic experience at the national and international levels. In addition to providing legal advice, Dr. Mann also offers his clients seasoned counsel that bridges legal and policy issues through the development of practical, legally informed policy and strategic advice.

Before joining the private sector, Howard Mann was Legal Counsel with the Government of Canada for five years. During this time he specialized in international and Canadian environmental law, and Canadian constitutional law as it relates to environmental issues. Howard Mann represented Canada in the negotiation of several international environmental agreements and instruments, such as the 1992 United Nations Convention on Climate Change and the NAFTA related North American Agreement on Environmental Cooperation. He also assisted in preparing and presenting several key environmental law cases including cases heard before the Supreme Court of Canada and in drafting Canadian environmental legislation.

Howard Mann received his Bachelor of Civil Law (1982) at McGill University in Montréal, Canada, and his Master of Laws (1984) and Ph.D. (1988) from the London School of Economics, London, UK. He is a member of the Bar of the Province of Québec, and the Canadian Council on International Law. Dr. Mann was the founding chair of the International Environmental Law Committee of the Canadian Bar Association.

Howard Mann has served on two special ministerial advisory groups assisting Canada's Minister for International Trade on international trade and investment issues. He is the Senior International Law Advisor to the International Institute for Sustainable Development, and holds an appointment as adjunct professor at the University of Ottawa Faculty of Law.

Howard Mann has published articles in various international journals, presented papers at numerous conferences, and provided media analysis on topical issues.

SERVICES:

DEVELOPMENT AND IMPLEMENTATION OF ISDLAW

International sustainable development law is now made in negotiations between states, in the work of international organizations, through international and domestic cases, and in the development of national laws. Participants in these processes include governments, international secretariats, lawyers and judges, Indigenous Peoples and civil society groups, and even individuals. Howard Mann provides expert services designed to assist participants in the development of ISDLaw by helping them set clear objectives supported by sound negotiating strategies.

The effective implementation of ISDLaw must follow its development. This includes the application and enforcement of international agreements and national laws, public education, and other steps aimed at ensuring that the law is made effective. Capacity building is often a fundamental requirement of this process, especially where local action is equally as important as global action.

Samples of Howard Mann's recent work on the development and implementation of ISDLaw include:

- In a cutting edge program to develop **a new approach to international investment law**, Howard Mann is currently leading a multi-partner international project to develop and articulate a Southern Agenda on Investment. Seven research institutes from Canada, Argentina, Brazil, Thailand, Egypt and South Africa form the core group of researchers, whose work will be reviewed and supplemented by four regional workshops. The results of this extensive research and policy development process will be collated, under Dr. Mann's stewardship, into a comprehensive agenda, from a developing country perspective, for a new international investment agenda focused on promoting sustainable development. The policy tools will then be supplemented with a negotiator's handbook as well.
- Since 2002, UNCTAD has asked Howard Mann to participate in several conferences and meetings that address **the investment-sustainable development linkages**. His contributions in these conferences have blended the legal and policy elements of international trade and investment regimes with the demands of development and sustainable development in less developed countries. The application of the international legal regimes to domestic policy space concerns has been a primary feature of Howard's contributions.
- As part of his work on **the development of international investment law**, Howard Mann and a partner developed a framework for understanding the emerging cases on the relationship between expropriation provisions in international investment agreements and government regulation-making. The Ad Hoc Expert Advisory Group that advises Canada's Minister for International Trade on investment law used this framework as a basis for pursuing its work on a possible interpretive statement for application under the North American Free Trade Agreement.

RESEARCH ON ISDLAW

Understanding both the current state of ISDLaw and its emerging trends is critical to assessing how needs can be met, new issues can be addressed and disputes can be resolved with a true sense of purpose. With a Ph.D. in international law, and almost fifteen years of practical experience developing and analysing ISDLaw, Howard Mann has the research, analytical and writing skills to assist clients in understanding the current state and future directions of ISDLaw.

Over the past few years, Howard Mann has undertaken a variety of research projects for international business and environmental groups, international environmental Secretariats, and environment, legal, industry, natural resources and Aboriginal affairs departments of government.

Some examples of Howard Mann's current and previous research work include:

- In 2003 and 2004, Howard Mann has been part of a team of International Institute for Sustainable Development associates who have developed **international seminars on trade and sustainable development at London's prestigious Royal Institute for International Affairs (Chatham House)**. The second of these seminars took place in February, 2004. Co-sponsored by the Royal Institute and IISD, the seminars provide critical, high-level analysis of important issues at the nexus of economic globalization processes and sustainable development. Howard also presents original research at these meetings.
- In 2003, the United Nations Commission for Trade and Development (UNCTAD) engaged Howard Mann to undertake **a first-ever comprehensive review of the implications for developing countries of disputes between foreign investors and their host states under international agreements on the protection of foreign investors (Bilateral Investment Treaties)**. Howard organized and analyzed the final or interim results of over fifty international arbitrations, many of which had never been analyzed previously. The project demonstrates Howard Mann's internationally recognized leadership in the analysis of trade and investment regimes in the context of development and sustainable development issues.
- In 2002-2003, Howard Mann led a team of four researchers and writers in the development of a report on the State of Trade and Environment Law, 2003. The report documented changes in the development of trade law as it relates to the environment over the past ten years, including on critical issues such as the relationship of science to the precautionary principle, the scope for unilateral environmental measures impacting trade, and the role of international environmental agreements in relation to trade law. The publication was released at a workshop attended by government and non-government delegates to the 2003 WTO Ministerial meeting in Cancun, Mexico.
- From 2000-2002, Howard Mann worked with other IISD associates on a broad program addressing **the evolving impacts of NAFTA's Chapter 11** (Investment) on environmental and human health protection. The project spawned a book on Chapter 11, the IISD intervention in one major international arbitration under Chapter 11 (*Methanex v. United States*), and high-level conferences in Mexico City, Washington D.C., and Ottawa that brought together government, business and other civil society groups to review the issues and ways forward. As a result of this effort, several participants in the process have also published original research based on their conference participation.

INTERNATIONAL LITIGATION

International litigation relating to ISDLaw includes cases before the International Court of Justice, the European Court of Justice, the World Trade Organization, the NAFTA dispute resolution bodies and processes, and national litigation with an international law dimension.

Howard Mann has been advising government and non-government agencies on sustainable development-related litigation since beginning his career in the late 1980s with the Canadian Department of Justice. He has often sought to bring international law arguments to the national judicial process. More recently, he has advised government agencies and the private sector on litigation issues relating to trade law obligations in the hazardous waste area and on NAFTA's investment provisions. Howard Mann currently represents the IISD in the groundbreaking intervention in the *Methanex Corp. v. United States of America* international investment law arbitration.

Some examples of Howard Mann's work on ISDLaw-related litigation include:

- Howard Mann is currently **representing the International Institute for Sustainable Development in the *amicus curiae* (friends of the court) intervention in the major Chapter 11 case of *Methanex Corp v. United States of America***. In a precedent setting decision, the Methanex Tribunal responded to the IISD petition for *amicus* status, and became the first international arbitration tribunal to recognize its jurisdiction to formally accept and use *amicus* briefs from civil society groups. For Howard Mann's own comment on this global precedent see *Opening the Doors*. Background and documents relating to the IISD *amicus* petition can be found at http://www.iisd.org/pdf/trade_methanex_background.pdf.
- **Transboundary movements of hazardous wastes** now provoke a steady stream of international and national litigation. Howard Mann has recently advised a Canadian provincial government involved in such a case.
- Since the late 1980's, **national environmental law litigation** has seen many examples of the inclusion of international environmental law in pleadings and judgements. Howard Mann was involved in bringing international law issues before Canadian courts – from principles of sustainable development to specific instances of protecting migratory birds – in several major domestic law cases during his tenure as a Department of Justice lawyer.

TRAINING FOR NON-LAWYERS

The development and implementation of ISDLaw requires the participation of non-lawyers as well as lawyers. Business people, civil society representatives, government officials, academics, economists, and many others must be involved.

Howard Mann has been training non-lawyers in the legal issues related to sustainable development for many years. He prepared and delivered a pioneering course for senior business and government officials for the World Business Council for Sustainable Development, and has been actively engaged with different organizations in the development of legally informed reading material and seminars on different ISDLaw concerns.

Howard Mann has also testified on ISDLaw issues before several Parliamentary committees analysing proposed legislation or studying other policy matters, and has served on several government-appointed advisory committees addressing sustainable development related issues.

Some samples of Dr. Mann's contributions in this area include:

- In 2003, the **Swiss Development Agency** invited Howard Mann and other IISD associates to present a two day seminar on the relationship of international trade and investment agreements to sustainable development from a development agency perspective. Some twenty Swiss government officials participated in the course. The team has been asked to develop a second training program for 2004.
- Howard Mann recently led an IISD team in developing **a module for a training course for the WTO** to deliver to developing country government and non-government personnel as part of their comprehensive trade capacity building program. The Trade and Sustainable Development module provided an outline for up-to-date, legal and policy driven understandings of the complex linkages between international trade and development issues. This was the first time the WTO had invited an outside, non-governmental organization to develop such materials.
- **Water, trade law and international investment agreements** form a critical trilateral relationship. Over 2002-2003, organizers of the Hemispheric Forum on Water for the Americas (Mexico, October 2002), the Third World Water Forum (Japan, March 2003), and the Global Challenge Program on Water and Agriculture (Nairobi, November 2003) each invited Howard Mann to make presentations in non-technical language on the full range of international law issues that directly impact on water management choices at the community level.
- The Government of Thailand invited Howard Mann, in June 2000, to present the **lead paper on the Cartagena Protocol on Biosafety at the Second ASEAN Workshop on Measures to Align Trade and Environment**. As part of the preparations for the Workshop, Dr. Mann met with the senior Thai officials dealing with biotechnology issues from the research, regulatory and policy perspectives. He also prepared and presented a special, interactive, half-day seminar on the Cartagena Protocol for over 40 non-lawyer government officials actively involved in biotechnology issues. The final presentation for the Workshop factored in the results of the initial meetings and special seminar, thus making it especially germane to the ASEAN participants. (Conference web-site at http://www.narebi.or.th/english/international_asean.htm)

RECENT PUBLICATIONS

- ❑ **“The State of Trade and Environment Law, 2003”**, with Stephen Porter, International Institute for Sustainable Development and Center for International Environmental Law, 2003.
- ❑ **“The Right of States to Regulate and International Investment Law”**, in *The Development Dimensions of FDI: Policy and Rule-Making Perspectives*, United Nations Conference on Trade and Deelopment, 2003, pp. 211-224.
- ❑ **“International Investment Agreements: Building the New Colonialism?”**, in *Proceedings of the 97th Annual Meeting, American Society of International Law, 2003*, pp. 247-250.
- ❑ **“An Investment Regime for the Americas: Challenges and Opportunities for Sustainability”**, with Monica Araya, in Carolyn Deere and Daniel Esty, eds., *Trade and Environment in the Americas: Lessons from the NAFTA*, M.I.T. Press, 2002, pages 163-180. For an expanded version of this paper click <http://www.isdlaw.com/pdfs/Mann%20Araya%20Final.pdf>.
- ❑ **“Opening the Doors, At Least a Little: Comment on the Amicus Decision in Methanex v. United States”**, Review of European Community and International Environmental Law, Vol. 10, 2001, pages 241-245 <http://www.isdlaw.com/pdfs/Opening%20the%20doors.pdf>
- ❑ **“Private Rights, Public Problems: A Guide to NAFTA’s Controversial Chapter on Investor Rights”**, International Institute for Sustainable Development/WWF-US, 2001. http://www.iisd.org/trade/private_rights.htm
- ❑ **“NAFTA and the Environment: Lessons for the Future”**, Tulane Environmental Law Review, Vol. 13, 2000, pp. 387-410.
- ❑ **“NAFTA’s Chapter 11”**,
 - ❑ The International Lawyer, Vol. 35, 2001.
 - ❑ The International Lawyer, Vol. 34, 2000.
- ❑ **“NAFTA’s Chapter 11 and the Environment: Addressing the Impacts of the Investor-State Process on the Environment”**, International Institute for Sustainable Development, Working Paper, 1999. (with Konrad von Moltke) <http://www.iisd.org/trade/chapter11.htm>
- ❑ **“Of Revolution and Results: Trade and Environment Law in the Afterglow of the Shrimp-Turtle Case”**, Yearbook of International Environmental Law, Vol. 9, 1998, pp. 28-35.

RECENT CONFERENCE PAPERS

- ❑ **“Who Owns Your Water? Impacts Of Trade And Foreign Investment Agreements On Water Management”**, CGIAR Global Challenge Program On Water And Food, Baseline Conference, Nairobi, Kenya, November 2003
- ❑ **“Reshaping International Investment Agreements”**, Royal Institute for International Affairs (Chatham House) Conference, *Trade and Sustainable Development Priorities, Post Doha*, London, April 2003.
- ❑ **“International Investment Agreements: Building the New Colonialism”**, 97th Annual Meeting, American Society of International Law, April 2003
- ❑ **“Reclaiming Water As A Public Good In The Post Nafta Era: International Trade And Investment Law Considerations”**, 3rd World Water Forum Day Of The Americas, Kyoto, Japan, 19 March 2003
- ❑ **“The Right of States to Regulate and International Investment Law”**, United Nations Conference on Trade and Development, Expert Meeting on the Development Dimensions of Foreign Direct Investment, Geneva, November 2002.
- ❑ **“Who Owns Your Water: Water and Foreign Investors in the Post-NAFTA Context”**, Hemispheric Forum on Water for the Americas in the 21st Century, Mexico City, October 2002.
- ❑ **“The Corporate v. Public Agenda: Protecting Foreign Investors in the Post-NAFTA Era”**, Syracuse University, Maxwell School of Citizenship and Public Affairs, October 24, 2002. <http://www.maxwell.syr.edu/campbell/XBorder/Mann%20Oped.pdf>
- ❑ **“The New Concerns About Investment Agreements”**, Comments, The United States, The Doha Round and the WTO: Where do we go from here?, American Bar Association Section of International Law and Practice Conference, Washington D.C., September 2002.
- ❑ **“Sovereignty, International Law and the Role of Non-State Actors”**, Closing Plenary, Third Annual International Law Conference: Few Barriers? Directions in International Law and Practice, Canadian Bar Association, Ottawa, Ontario, May 2002.
- ❑ **“Overview of Regulatory Expropriation Issues in International Law: NAFTA’s Chapter 11”**, Regulatory Expropriations in International Law Conference, New York University School of Law, New York, April 2002.
- ❑ **“Protecting Investor Rights and the Public Good: Assessing NAFTA’s Chapter 11”**, Background Paper to the ILSD Tri-National Policy Workshops, Mexico City, March 13; Ottawa, March 18; and Washington D.C., April 11, 2002. With Konrad von Moltke. http://www.iisd.org/trade/ilsdworkshop/pdf/background_en.pdf
- ❑ **“Expropriation and Chapter 11: Just What Do the Cases Say”**, Investment Law and Sustainable Development: Protecting Investor Rights and Protecting the Public Good Ottawa, Ontario, Canada, March 2002, International Institute for Sustainable Development and the Public Policy Forum.