

THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL DEVELOPMENT LAW

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Summary

The concept of sustainable development has been conceptualized originally within the structure of international environmental law. However, in the contemporary world of globalization, it would be a simplification, to confine this principle only to the field of environmental protection and development. Sustainable development has acquired the status of the most significant and influential legal and policy-making principle in all areas of activities, in particular as an indispensable tool in managing development law.

The best example of the changing face of sustainable development in development law is the functioning of financial institutions, both global and regional. It may be said that “the banks have not only an inherently economic and political incentive, but also a clear international legal obligation to avoid causing environmental harm in developing member countries, and indeed to incorporate environmental protection and social development objectives into their activities in DMCs.” It cannot be denied that there is a great awareness among states and international organizations alike that the principle of

sustainable development in development law is a combination of elements, such as environmental protection, economic development, and firstly and most importantly, combating of poverty and generally understood social issues.

However, it is only when policies in the developing countries are democratic, based on the participatory principle and transparency and founded on the rule of law, with a strong and independent judiciary that the donor countries will have confidence to deal with them. “[d]ictatorial and corrupt regimes are not attractive to donors.” Therefore, it is of paramount importance to secure as wide as possible participation in environmental governance of civil society including non-governmental organizations.

1. Introduction

1.1. The Concept of Sustainable Development

The concept of sustainable development has been conceptualized originally within the structure of international environmental law. However, in the contemporary world of globalization, it would be a simplification, to confine this principle only to the field of environmental protection and development. Sustainable development has acquired the status of the most significant and influential legal and policy-making principle in all areas of activities, in particular as an indispensable tool in managing development law.

The concept of sustainable development has been the subject of numerous publications and discussions. This article will be focused primarily on its one aspect, i.e., the place of the concept of sustainable development in development law. In order to achieve this, it appears to be necessary to outline an introduction to the general issues concerning sustainable development and its historical background. The starting point for further discussion will be to emphasize the inherently dynamic aspect of sustainable development and its multidisciplinary character. It is impossible to discuss the principle of sustainable development only from one angle. Likewise, to confine it to the very useful but succinct definition of Ms. Brundtland (see below) would not reflect fully its versatile and almost limitless character. The starting point of the discussion is the Report of the Secretary- General of the United Nations on an agenda for development. The Report was requested by the General Assembly, in particular its developing states in December 1992. The Resolution stipulated as follows:

“...taking fully into consideration the objectives and agreements on development adopted by it, containing an analysis and recommendations on ways of enhancing the role of the United Nations and the relationship between the United Nations and the Bretton Woods institutions in its promotion of international cooperation for development, within the framework and provisions of the Charter of the United Nations and the Bretton Woods institutions’ articles of agreement, including, *inter alia*, a comprehensive annotated, list of substantive themes and areas to be addressed by the United Nations in the agenda, as well his views on principles among them, for the consideration of states.”

The 1993 Report of the Secretary- General was intended to provide a practical guide for the agenda for development in the economy and social fields. These included: poverty

and equity issues both inter-State and infra State; unemployment; vulnerable groups and countries, and patterns of economic exclusion; social security issues and safety nets; migration and patterns of human and economic movement.

In 1994 the General Assembly held a special plenary meeting at a high level “to consider ways of promoting and giving political impetus to an agenda for the development.”

The 1994 Agenda for Development stated that development is the fundamental human right and the most secure ground for peace. The Secretary- General, in the same document gave the answer to the question “Why An Agenda for Development?” which did not strike a positive note. He said as follows: “[t]oday competition to bring development to the poorest countries has ended. Many donors have grown weary of the task. Many of poor are dispirited. Development is in a crisis. (...) There is still time to move forward together, but greater urgency is necessary. With each passing day’s delay, the work grows more costly and difficult. While there is war, no State is securely at peace. While there is a want, no people can achieve lasting development” (paragraphs 5 – 15).

The chapter on development in the Agenda stresses peace as the foundation for development; the importance of economy for progress; and justice as the pillar of society, democracy and good governance. Paragraph 124 supports self-determination in facilitating decolonization in designing procedures to smooth and facilitate transition to democracy and in building democratic alternatives to conflict. The Agenda considers the participation of civil society as one of the pillars of good governance (paragraph 125). In fact, non-governmental organizations appear to play a very important role in furthering the sustainable development. The Agenda mentions private foreign investments; academic and scientific communities; grass root organizations; religious organizations; and self-help groups.

1.2. The Origins of the Principle

The commonly shared view is that the 1987 Brundtland Report is the watershed mark from which sustainable development became a broad global policy objective and set international community on the path which led UNCED and the body of rules referred to as international law in the field of sustainable development, but distinguished from international environmental law.

The Brundtland Report coined the most often cited phrase to describe the principle of sustainable development as “*development that meets the needs of the present without compromising the ability of future generations to meet their own needs.*” The core of this definition are two linked ideas: the needs of present and future generations; and the limitations imposed by the state of technology and social organization on their environment’s ability to meet present and future needs. The Brundtland Report was a product of the World Commission on Environment and Development and was titled “*Our Common Future.*”

The Brundtland Report identified critical objectives for the environment and

development policies reflected in the concept of sustainable development: reviving growth and changing its quality; meeting essential needs for jobs, food energy, water and sanitation; conserving and enhancing the resource base; reorienting technology and managing risk; and merging environment and economies in decision-making.

The Brundtland Report was a summary of the previous events which took into consideration the position of developing states and the link between development and environment. The principle of sustainable development, as formulated in the Report, has its roots in such concepts as NIEO.

The concerns of developing states were also confirmed by the 1986 International Law Association Seoul Declaration.

Mention must be made as well of the UNDRD. This Declaration confirmed the existence of the human right to development together with corresponding duties and responsibilities. Article 1 of the Declaration formulated the general international obligation of states and of the international community to promote the development on the universal recognition of accorded to the basic human rights of all persons. This right was reiterated by the 1986 Vienna Declaration on the Right to Development. According to the General Assembly Resolution, the elements which will advance development are also these which form the principle of sustainable development. They are as follows: equality of opportunity in their access to basic resources, education, health services, food, housing, employment and fair distribution of income, ensuring an active role for women in the development process and adoption of economic and social reforms to remove social injustices, encouragement of popular participation in all spheres relating to development. The critics argued that this is not a right at all and substantiate their view by stressing the uncertain character of the Declaration; and that the conceptualization of such a right is neither serving the environment nor human rights. The view has been expressed that the legal status of the right to development has been and remains doubtful.

This right is at times categorized as the so-called third generation of human rights. Within this category some include the human right to the environment.

Boyle and Freestone submit an interesting analysis of this right in relation to the environmental protection stating that its inclusion in the Rio Declaration represents a success for developing countries advocates, and reflects concerns that environmental protection should not outweigh their need for economic development. It was thus intended as a counterweight to Principle 4. Furthermore, the right to development is limited by the requirement of “equity” i.e., the rights to development according to Principle 3 must be fulfilled equitably in order to meet developmental and environmental needs of present and future generations. In 1989, the United Nations General Assembly decided to organize the United Nations Conference on Environment and Development in 1992. The summation of the objectives of the Conference was the postulate that “development and environment must be one,” thus integrating the environment.

The objectives of the Conference were the following:

- a) To examine the relationship between environmental degradation and the international economic environment, with the view to ensuring a more integrated approach to problems of environment and development in relevant international forums without introducing new forms of conditionality;
- b) To examine strategies for national and international action with a view of achieving of specific agreements and commitments by Governments and by international organizations for defined activities to promote a supportive international economic climate conducive to sustained and economically sound development in all countries, with a view of combating poverty and improving the quality of life, and bearing in mind that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development in financing and should not serve as a pretext for unjustified barriers in trade.

The concept of sustainable development was the basis of the 1980s World Conservation Strategy. The concept was presented in connection with broader issues relating to the general well-being of mankind. Although, the main focus was on conservation of natural resources, this was not presented in isolation, but linked to wider area of human rights, world economy and governance.

It may be also said that the 1982 World Charter of Nature, although indirectly, recognized the concept of sustainable development. It described terrestrial and marine ecosystems as “life support systems.”

The exigencies of environmental protection and sustainable development acted as contributory factors to the reformulation of certain classical concepts in international law such as sovereignty, which according to some authors became a legal basis to cooperate for good of the international community at large.

1.3. From Stockholm to Rio

It is an undisputed fact that the 1992 Rio Declaration on Environment and Development which was a summation of the Rio Conference on Environment and Development, codifies the principles of the concept of sustainable development. In order, however, to fully understand the importance of the Rio Declaration, it is necessary to analyze its predecessor, the 1972 Stockholm Declaration which was a result of the 1972 Conference on Human Environment. The Stockholm Declaration was the yardstick for the future development of the principle of sustainable development which culminated in the Rio Declaration.

1.3.1. The 1972 Stockholm Declaration- The Main Issues

The Stockholm Conference on Human Environment was attended by 113 which adopted a Declaration and an Action Plan. Although the Declaration is not a binding document on states, it establishes the basic rules of international environmental law.

In general, the Declaration has the following structure. It starts with a general invocation which links the environment with fundamental human rights; it deals with

the management of natural resources and the threat of pollution. Next, it considers the relationship between the environment and development which since 1972 was the main area of confrontation between the industrialized and developing countries.

Closely related to the problems of development is the section on planning and environmental policies, with the inclusion of demographic policies. Further, the Stockholm Declaration deals with science, education and technology. The Stockholm Declaration also submits Principle 21 which according to many writers and the International Court of Justice entered the body of international customary law. This principle imposes responsibility on states, *inter alia*, to ensure that activities within jurisdiction of states or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction.

Further, the Declaration supports international co-operation. Principle 26 which warns against weapons of mass destruction concludes the Stockholm Declaration.

In the realm of environment and development Principles 8 to 14 are of special importance.

Principle 8 sets the general background for development and states that “[e]conomic and social development is essential for ensuring a favourable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.” Of great importance for the future were Principles 9 and 11. Principle 9 expressly stipulated that environmental deficiencies generated by the conditions of underdevelopment and natural disasters pose grave problems and can be best remedied by accelerated development through financial and technological assistance as a supplement to the domestic effort of the developing countries. Principle 11 stresses a very important aspect of the link between the environment and development, namely it postulates that the environmental policies of states should enhance not the present and future development potential of developing countries, and that they should not hamper the attainment of better living conditions for all, and that steps should be taken by states and international organizations with a view to reaching an agreement on meeting the possible national and international economic consequences resulting from the application of economic measures.

All principles emphasized the necessity of economic development in relation to developing countries and hinted at the inevitability of a conflict between development and environmental protection. The approach adopted in the Stockholm Declaration heralded a modern view at the position of developing states, such as stress on economic assistance and the transfer of technology.

1.4. The Rio Declaration and Developing States

The Rio Declaration was the final product of the 1992 United Nations Conference on Environment and Development (the Earth Summit). It was also a watershed event in the evolution of the conceptual basis for the further development of the principle of sustainable development and international development law. The UNCED process was initiated by the General Assembly Resolution 44/228 of 22 December 1989 which

called for an UN Conference devoted to the problems of the integration of the environment and development. The Preparatory Committee (PrepCom) was established especially for the Conference. The main task of delegates to PrepCom was to crystallize global environmental policy for environment and development and to incorporate it into what later became Agenda 21, which set a program for the environment and development for 21 century. The PrepCom reflected new political realities, out of which the most important was the disappearance of the Communist states and their transformation into countries with economies in transition.

The development of the concept of sustainable development during the Rio process was substantially enhanced by the participation of 1.420 Non-governmental organizations, which accredited to the Rio Conference.

The integration of the environment and development witnessed in Rio was not welcomed by all. Some of the writers expressed the view that the Rio Declaration smothers international environmental law and policy by merging, as it were, with international economic law and development law.

It is argued that the new discourse on integration may suggest that there is no longer a conflict between environmental protection and economic development. Moreover, it may be presumed that economic development has become the complement or a condition of the environmental protection. At the same time, it is submitted that that this approach obfuscates the very real and increasing conflict between the dominant view of 'development' and prevailing patterns of economic growth on one hand, and the imperatives of environmental protection on the other. M. Pallemmaerts is of the view that several principles of the Rio Declaration subordinate environmental law to development. For example, these principles are: Principle 11 and Principle 23. The general conclusions of this author are rather gloomy. He predicts, not altogether correctly that the ideology of sustainable development undermines the autonomy of environmental law as a system of rules and standards specially designed to restrain and to prevent the environmentally destructive effects of certain kinds of economic activity. It will be shown in a later part of this submission that in fact the principle of sustainable development successfully integrates environmental protection and development. Of importance for the principle of sustainable development principle in relation to developing countries is Principle 2 of the Rio Declaration which is an updated version of Principle 21 of the Stockholm Declaration. This principle states as follows: “[s]tates have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.

In conclusion, it may be said that the twenty-seven principles of the Rio Declaration represent something of a “package deal”, which was achieved through consensus. The compromise reached reflects in principles of the Rio Declaration, the input of the developing and developed states. The interests of developed states are expressed by the inclusion of such principles as Principle 4 (the integration of environmental protection and development); Principle 10 (public participation); Principle 15 (precautionary

principle); and Principle 17 (environment impact assessment). Other principles reflect the policies of developing states, such as Principle 3 (right to development); Principles 6 and 7 (poverty alleviation and capacity building). As Boyle and Freestone assert that one illustration of the Declaration package-deal character is the conjunction of Principles 3 and 4 which together form core of the principle of sustainable development. Throughout, the principal concern of the Declaration, and those who negotiated it, was to integrate the needs of economic development and environmental protection in a single, if not wholly coherent ensemble.

1.5. The Aspects of the Definition of the Principle of Sustainable Development

We have to agree that the principle of sustainable development is not defined in clear terms. However, the catalogue of principles which is contained in the Rio Declaration, gives certain (indirect) definition of this concept - in general terms and in a narrow sense - in relation to economic issues for developing countries.

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Biographical Sketch

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