

FROM “OUR COMMON FUTURE” TO SUSTAINABLE DEVELOPMENT GOALS: EVOLUTION OF SUSTAINABLE DEVELOPMENT UNDER INTERNATIONAL LAW

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ABSTRACT

Sustainable development has become one of the most influential principles in international law. It has come a long way since the World Commission on Environment and Development first popularized the term in 1987. This article seeks to discuss the evolution of sustainable development from the Stockholm Conference in 1972 to the adoption of Sustainable Development Goals (SDGs) by the international community in 2015 and its implications for states. It argues that sustainable development has evolved as an umbrella concept and many of its components reflect customary international law. It concludes that sustainable development is neither vague nor indeterminate and imposes binding obligations on states.

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INTRODUCTION

Sustainable development has become one of the most influential principles in international law despite being described as a slippery concept¹ and an oxymoron.² Literature on it has virtually exploded over the past three decades.³ From states to multinational companies and from affluent communities in the Global North to impoverished communities in the Global South, virtually everybody is now talking about sustainable development. It has come a long way since the World Commission on Environment and Development first popularized the term in 1987.⁴ It has both ardent proponents and critiques. On the one end of the spectrum are those who believe that it is a hard concept to define and operationalize,⁵ and virtually any kind of development can be considered “sustainable” as long as it is labeled “sustainable.” On the other end of the spectrum are those who believe that a new branch of international law called “international sustainable development law” has emerged.⁶ It has also

¹ See David Hodas, *The Climate Change Convention and Evolving Legal Models of Sustainable Development*, 13 PACE ENVTL. L. REV. 75 (1995).

² See Michael Redclift, *Sustainable Development (1987-2005): An Oxymoron Comes of Age*, 13 SUSTAINABLE DEV. 212, 212–13 (2005).

³ See generally INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT (Boyle & Freestone eds., 1999); ENVIRONMENTAL LAW AND GOVERNANCE FOR THE ANTHROPOCENE (Louis J. Kotzé ed., 2017); GLOBAL JUSTICE AND SUSTAINABLE DEVELOPMENT (Duncan French ed., 2010); SUMUDU A. ATAPATTU, EMERGING PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (2006); ROUTLEDGE INTERNATIONAL HANDBOOK OF SUSTAINABLE DEVELOPMENT (Michael Redclift & Delyse Springett eds., 2015) [hereinafter Redclift & Springett]; NICO SCHRIJVER, THE EVOLUTION OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW: INCEPTION, MEANING AND STATUS (2008); CHRISTINA VOIGT, SUSTAINABLE DEVELOPMENT AS A PRINCIPLE OF INTERNATIONAL LAW: RESOLVING CONFLICTS BETWEEN CLIMATE MEASURES AND WTO LAW (2008).

⁴ See WORLD COMM’N ON ENV’T & DEV., OUR COMMON FUTURE 43 (1987).

⁵ See Christopher D. Stone, *Deciphering Sustainable Development*, 69 CHI.-KENT L. REV. 977 (1994); cf. Hodas, *supra* note 1, at 78 (arguing that without the Rio treaties, sustainable development will become a catch phrase justifying any development project).

⁶ See MARIE-CLAIRE CORDONIER SEGGER & ASHFAQ KHALFAN, SUSTAINABLE DEVELOPMENT LAW: PRINCIPLES, PRACTICES, AND PROSPECTS (2004); cf., Hodas, *supra* note 1, at 84, who argues that “conceptual approaches to environmental law and international law do not lead to a workable international law of sustainable development.” Rather, “the law must be reformulated

received the attention of the World Court and other tribunals, and a substantial body of jurisprudence on sustainable development has emerged.⁷ In the *Case Concerning the Gabčíkovo Nagymaros Project*—the first environmental case to reach the International Court of Justice (ICJ)—the ICJ asserted that the “need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.”⁸

This article seeks to discuss the evolution of sustainable development from the Stockholm Conference in 1972 to the adoption of Sustainable Development Goals (SDGs) by the international community in 2015 and its implications for states. It proceeds in six Parts. Part I will discuss the major milestones relating to the evolution of sustainable development culminating in the adoption of 2030 agenda and the SDGs. It will analyze sustainable development as an umbrella concept and the components that comprise the umbrella in Part II. Part III will discuss some of the critiques of sustainable development including that of the three-legged stool depiction. The legal status of sustainable development and the implications for states will be discussed in Part IV, which will include selected judicial decisions from South Asia. Part V will close with some concluding thoughts.

I. FROM STOCKHOLM CONFERENCE TO THE ADOPTION OF SUSTAINABLE DEVELOPMENT GOALS: SOME MILESTONES⁹

A. STOCKHOLM CONFERENCE, 1972

The Stockholm Conference on the Human Environment of 1972¹⁰ was the first global conference on the environment, held at the invitation of the Nordic countries, which were beginning to experience

to reflect the laws of ecology, biology, physics and chemistry on one hand, and economic principles on the other.” *Id.*

⁷ See SUSTAINABLE DEVELOPMENT PRINCIPLES IN THE DECISIONS OF INTERNATIONAL COURTS AND TRIBUNALS, 1992–2012 (Marie-Claire Cordonier Segger & H.E. Judge C.G. Weeramantry eds., 2017) [hereinafter Segger & Weeramantry].

⁸ *Gabčíkovo-Nagymaros Project* (Hung. v. Slov.), Judgment, 1997 I.C.J. Rep. 7, ¶ 140 (Sept. 25).

⁹ For an excellent overview of the evolution of sustainable development, see Segger & Weeramantry, *supra* note 7, at 29.

¹⁰ U.N. Conference on the Human Environment, *Stockholm Report of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14/Rev.1 (June 5, 1972) [hereinafter *Stockholm Report*].

the adverse consequences of acid rain.¹¹ The Declaration, adopted at the conclusion of the conference, formed the foundation of modern international environmental law and shaped its direction.¹²

While the phrase “sustainable development” does not appear in the Stockholm Declaration, it planted the first seeds of sustainable development; for example, there are several references to rational planning, rational management, and adopting an integrated approach.¹³ Thus, for example, Principle 13 provides:

In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.¹⁴

Furthermore, Principle 8 recognized the importance of social development and noted that “[e]conomic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions on earth that are necessary for the improvement of the quality of life.”¹⁵

Despite a flurry of activity following the Stockholm Conference, such as the establishment of United Nations Environment Program (UNEP), the adoption of laws, and establishment of institutions on environment around the world,¹⁶ developing countries felt that environmental protection was another form of colonialism and oppression by developed countries to stall their quest for economic development.¹⁷ Developed countries, on the other hand, were feeling the negative impacts of economic development in the form of environmental degradation and needed the cooperation of developing countries to tackle

¹¹ DAVID HUNTER ET AL., *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY* 138 (5th ed. 2015).

¹² While there were several conventions relating to environmental protection in existence at that time, these were adopted on an ad hoc basis to respond to a particular environmental issue. *See id.* at 137.

¹³ *Stockholm Report*, *supra* note 10, princ. 13–14.

¹⁴ *Id.* princ. 13.

¹⁵ *Id.* princ. 8.

¹⁶ HUNTER ET AL., *supra* note 11, at 142.

¹⁷ For a detailed discussion of the Stockholm Conference, see Karin Mickelson, *The Stockholm Conference and the Creation of the South-North Divide in International Environmental Law and Policy*, in *INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH* 109 (Shawkat Alam et al. eds., 2015).

the emerging transboundary environmental problems.¹⁸ Developing countries were not, however, convinced.

B. APPOINTMENT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT AND *OUR COMMON FUTURE* REPORT

The increasing North-South divide in relation to environmental protection led to a polarization in the UN General Assembly almost paralyzing any action on environmental protection. No consensus could be reached and ultimately the UN General Assembly appointed the World Commission on Environment and Development (WCED) to find ways to reconcile environmental protection with economic development. The mandate given to the WCED was threefold: (a) to re-examine the critical environment and development issues and to formulate proposals to address them; (b) to propose new forms of international co-operation on these issues that will influence policies and events; and (c) to raise the levels of understanding and commitment to action of individuals, voluntary organizations, businesses, institutes and governments.¹⁹

In its report published in 1987, the WCED acknowledged that both economic development and environmental protection were important.²⁰ It noted that poverty was the biggest polluter and economic development was necessary for developing countries to improve the living standards of their people. The Commission acknowledged that it was important to integrate environmental protection into the economic development process—i.e. achieve sustainable development. It defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their needs.”²¹

While some developing countries argued that sustainable development only applies to them as developed countries are already “developed,”²² it is clear that sustainability (which may be a more accurate term) is necessary for both the Global North and the Global

¹⁸ See HUNTER ET AL., *supra* note 11, at 138.

¹⁹ See WORLD COMM’N ON ENV’T AND DEV., *supra* note 4, at 3–4. For a critique of the report and of sustainable development, see Ruth Gordon, *Unsustainable Development*, in INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH, *supra* note 17, at 50.

²⁰ See WORLD COMM’N ON ENV’T AND DEV., *supra* note 4.

²¹ *Id.* at 43.

²² See Chakravarthi Raghavan, *The Long March from Stockholm ‘72 to Rio ‘92* (June 3, 1992), in INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, *supra* note 11, at 151.

South.²³ Reducing the decadent consumption patterns of the Global North is very much needed if the Global South is to achieve a decent standard of living for its people. Resources are finite and adverse consequences of climate change will limit these options even further.

The WCED report identified six common challenges: population and human resources, food security, species and ecosystems, energy, industry, and the urban challenge.²⁴ While the report recognized that “consumption patterns and preferences are as important as numbers of consumers in the conservation of resources,”²⁵ it paid more attention to the need to reduce the rate of population growth than the need to reduce profligate consumption in the Global North and devoted a whole chapter to population growth.²⁶ The report did acknowledge that population is not just about numbers and that an additional person in an industrial country consumes far more resources than an additional person in a developing country.²⁷ Yet, it pointed out that present rates of population growth cannot continue.²⁸ Population growth is perceived to be most prevalent in developing countries,²⁹ so this puts the burden squarely on the Global South to curb population growth, not on the Global North to curb their consumption. Neither unchecked population growth nor unchecked consumption is sustainable.

Another issue that the Commission glossed over was the role of the international economy. The WCED report, while acknowledging that developing countries had sought (unsuccessfully) to make fundamental changes to the international economic arrangements to make them more equitable, did not quite challenge the current neo-liberal economic model that has given rise to many of the environmental challenges and inequities we face today.³⁰ Tinkering at the margins will not help us solve these crises. We need a major overhaul of the entire economic system, its

²³ The Global North refers to wealthy industrialized countries while the Global South refers to their poorer counterparts in the developing world. This, of course, is a very broad generalization as there are affluent communities in the Global South and poor communities in the Global North. For an in-depth discussion of North-South issues in relation to international environmental law, see generally INTERNATIONAL ENVIRONMENTAL LAW AND THE GLOBAL SOUTH, *supra* note 17.

²⁴ See WORLD COMM’N ON ENV’T AND DEV., *supra* note 4, at 11–16.

²⁵ *Id.* at 95.

²⁶ *Id.* at 95–117.

²⁷ *Id.* at 95.

²⁸ *Id.*

²⁹ For a depiction of population growth for each country and for the world between 1960 and 2017, see *Population Growth (Annual %)*, THE WORLD BANK, <https://data.worldbank.org/indicator/sp.pop.grow> (last visited Nov. 17, 2018).

³⁰ See WORLD COMM’N ON ENV’T AND DEV., *supra* note 4, at 67–91.

institutions, legal tools, and policies, as these greatly favor mostly the elite in developed countries and multinational companies based there. Poor and marginalized countries and communities have become poorer and more marginalized. The same goes for the current global food system that has led to impoverished people and impoverished land because the food system is also based on the global economic system. There is enough food to feed the world's population of seven billion, but millions of people, including many in developed countries, go hungry or are undernourished.³¹

C. UN CONFERENCE ON ENVIRONMENT AND DEVELOPMENT, 1992

The Rio Declaration on Environment and Development,³² adopted by the international community at this conference, was clearly influenced by the WCED report. The Rio Declaration did not seek to elaborate on the definition of sustainable development. Instead, it elaborated on the components of sustainable development, linkages with other areas, and identified tools to achieve sustainable development. The substantive components include the principle of equity (both inter- and intra-generational); sustainable utilization of natural resources; the principle of integration; and the right to development.³³ The procedural components are two-fold: those vis-à-vis individuals which overlap with international human rights law—access to information, participation in decision-making and access to remedies; and those vis-à-vis other States—notification, consultation, cooperation, and assistance during emergencies.³⁴

In addition, the Rio Declaration identified linkages with other areas: warfare, noting that it is inherently destructive of sustainable development (Prin. 24) and peace—that peace, development and

³¹ See *Second International Conference on Nutrition*, FOOD AND AGRICULTURE ORGANIZATION OF THE U.N., <http://www.fao.org/about/meetings/icn2/toolkit/hunger-facts/en/> (last visited Feb. 9, 2019). With SDG 2, the international community pledged to end hunger. *SDG Goals*, UNITED NATIONS STATISTICS DIVISION, <https://unstats.un.org/sdgs/report/2016/goal-02/> (last visited Feb. 9, 2019) (“End hunger, achieve food security and improved nutrition and promote sustainable agriculture.”).

³² U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

³³ PATRICIA BIRNIE ET AL., *INTERNATIONAL LAW AND THE ENVIRONMENT* 116 (3rd ed. 2009).

³⁴ See *id.*

environmental protection are interdependent and indivisible (Prin. 25).³⁵ Moreover, the Rio Declaration identified environmental impact assessment, the polluter pays principle, the precautionary principle, and the common but differentiated responsibility principle, which is also linked to the principle of equity as tools/principles to achieve sustainable development.³⁶ It also identified women, youth, and indigenous people as groups requiring special protection.³⁷ The Rio Declaration is discussed further in Part II.

D. WORLD SUMMIT FOR SOCIAL DEVELOPMENT, 1995

The WCED report published in 1987 had a huge impact not just on the environmental agenda but also on other UN conferences held thereafter.³⁸ The Declaration adopted at the World Summit for Social Development, held in Copenhagen in 1995, added a third pillar or dimension to sustainable development even though its first seeds were planted in the Stockholm Declaration itself. It provided that “[e]conomic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development which is the framework to achieve a higher quality of life for all people.”³⁹ While the WCED report discussed many social issues such as poverty eradication and improving the living standards of people in the Global South, it did not frame this as a third pillar of sustainable development. The World Social Summit seized the opportunity to do so.

The Declaration adopted at the Copenhagen Summit (referred to as the Copenhagen Declaration) elaborated on the social pillar.⁴⁰ It asserted that social development and social justice cannot be achieved in the absence of respect for all human rights and fundamental freedoms, reflecting the intertwined relationship between social justice, human rights, and social development.⁴¹ The commitments that states made at the Copenhagen Conference shed light on the social pillar. These

³⁵ *Rio Declaration*, *supra* note 32.

³⁶ *Id.*

³⁷ *See id.* princ. 20–22; WORLD COMM’N ON ENV’T AND DEV., *supra* note 4, at 11–16.

³⁸ *See* HUNTER ET AL., *supra* note 11, at 169.

³⁹ *See* World Summit for Social Development, *Copenhagen Declaration on Social Development*, 1, U.N. Doc. A/CONF.166/9 (Mar. 14, 1995).

⁴⁰ *Id.*

⁴¹ *Id.* This Part draws from another of this author’s articles. *See* Sumudu Atapattu, *The Paris Agreement and Human Rights: Is Sustainable Development the “New Human Right”?*, 9 J. HUM. RTS. & ENV’T 68 (2018).

include: creating an economic, political, social, cultural, and legal environment that will enable people to achieve social development; eradicating poverty; promoting full employment and enabling men and women to attain sustainable livelihoods; promoting social integration by fostering societies that are stable, safe, and just based on the promotion and protection of all human rights and non-discrimination; promoting full respect for human dignity and to achieving equality and equity between men and women; and promoting universal and equitable access to quality education and the highest attainable standard of physical and mental health.⁴²

In addition, the discourse on environmental justice is also relevant here. While a detailed discussion of environmental justice cannot be undertaken here, it is important to point out that it seeks to avoid placing a disproportionate burden of polluting activities on minorities and communities of color.⁴³ Originated in the U.S. as a direct response to the practice of siting polluting industries in low-income and minority communities,⁴⁴ the environmental justice movement is now global.⁴⁵ While there are many definitions of environmental justice,⁴⁶ it encompasses distributive justice, corrective justice, remedial justice, and social justice,⁴⁷ which overlaps with the social pillar. Thus, the social pillar brought human rights and environmental justice within the ambit of sustainable development.⁴⁸

⁴² See *id.*

⁴³ See JONAS EBBESSON, ENVIRONMENTAL LAW AND JUSTICE IN CONTEXT 2 (Jonas Ebbesson & Phoebe Okowa eds., 2009); see also Sheila Foster, *Justice From the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CALIF. 775 (1998).

⁴⁴ See Foster, *supra* note 43.

⁴⁵ For a discussion of case studies from various parts of the world, see EBBESSON, *supra* note 43.

⁴⁶ See Dinah Shelton, *Describing the Elephant: International Justice and Environmental Law*, in ENVIRONMENTAL LAW AND JUSTICE IN CONTEXT 55 (Jonas Ebbesson & Phoebe Okowa eds., 2009); see also Hari M. Osofsky, *Learning From Environmental Justice: A New Model for International Environmental Rights*, 24 STAN. ENVTL. L.J. 71 (2005).

⁴⁷ See Robert Kuehn, *A Taxonomy of Environmental Justice*, 30 ENVTL. L. REP. 10681 (2000).

⁴⁸ See Robert William Collin & Robin Morris Collin, *Sustainable Development: Environmental Justice and Sustainability*, in ROUTLEDGE INTERNATIONAL HANDBOOK ON SUSTAINABLE DEVELOPMENT 209 (Micahel Redcliff & Delyse Springett eds., 2015); see also Carmen Gonzalez, *Environmental Justice and International Environmental Law*, in ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 79 (Shawkat Alam et al. eds., 2013).

E. WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, 2002

Held to commemorate the twentieth anniversary of the Stockholm Conference and the tenth anniversary of the Rio Conference, the World Summit on Sustainable Development in Johannesburg formally embraced social development as an integral component of sustainable development.⁴⁹ It also formalized sustainable development as the overarching framework for the environmental protection discourse and recognized the need to eradicate poverty:

We recognize that poverty eradication, changing unsustainable and promoting sustainable patterns of consumption and production and protecting and managing the natural resource base of economic and social development are the overarching objectives of and essential requirements for sustainable development.⁵⁰

Continued degradation of the environment, climate change, the increasing disparity between the rich and the poor, and globalization were identified as being among the many challenges to achieving sustainable development.⁵¹ The pledge to achieve sustainable development was reaffirmed, yet again, by the international community ten years later at Rio de Janeiro.

F. RIO+20 AND THE FUTURE WE WANT

The international community convened in Rio for the twentieth anniversary of the UNCED in 2012 and adopted a document titled “The Future We Want.”⁵² The international community renewed its commitment to sustainable development and reiterated, yet again, the need to eradicate poverty: “Poverty eradication is the greatest global challenge facing the world today and an indispensable requirement for sustainable development. In this regard, we are committed to freeing humanity from poverty and hunger as a matter of urgency.”⁵³

Acknowledging the need to further mainstream sustainable development at all levels of governance, integrating economic, social and environmental aspects, the report affirmed the need to identify the inter-

⁴⁹ World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² G.A. Res. 66/288 (Sept. 11, 2012).

⁵³ *Id.* ¶ 2.

linkages.⁵⁴ It reiterated verbatim the objectives of sustainable that the Johannesburg Declaration identified. It further noted:

We also reaffirm the need to achieve sustainable development by promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living, fostering equitable social development and inclusion, and promoting the integrated and sustainable management of natural resources and ecosystems that supports, inter alia, economic, social and human development while facilitating ecosystem conservation, regeneration and restoration and resilience in the face of new and emerging challenges.⁵⁵

Thus, the following can be identified as the objectives of sustainable development: poverty eradication; changing unsustainable patterns of consumption and production; managing the natural resource base; promoting inclusive and equitable economic growth; reducing inequalities; raising living standards of people; equitable social development and inclusion and creating greater opportunities for all. The report also recognized the importance of the respect for human rights, especially the principle of equality and non-discrimination, gender equality and empowerment, and the creation of peaceful and inclusive societies.⁵⁶ Reference was also made to democracy, good governance, and rule of law.⁵⁷ Renewing the commitment to apply Rio principles and other international environmental law principles embodied in instruments starting from the Stockholm Declaration, the Rio+20 document highlighted two areas for further action: institutions and green economy.⁵⁸ It also established a high-level, intergovernmental political forum to replace the Commission on Sustainable Development.

G. AGENDA 2030 AND THE ADOPTION OF SUSTAINABLE DEVELOPMENT GOALS

In many respects, 2015 was a historic year for sustainable development and environmental protection. The international community adopted the Paris Agreement on Climate Change,⁵⁹ the first global

⁵⁴ *Id.* ¶ 3.

⁵⁵ *Id.* ¶ 4.

⁵⁶ *Id.* ¶ 8.

⁵⁷ *Id.* ¶ 10.

⁵⁸ *Id.* ¶ 104.

⁵⁹ Paris Agreement, Dec. 12, 2015, FCCC/CP/2015/10/Add.1.

multilateral agreement that encompassed obligations for all states in relation to climate change. It also adopted the 2030 Agenda for Sustainable Development⁶⁰ containing 17 Sustainable Development Goals (SDGs)⁶¹ with 169 targets. According to Agenda 2030, these SDGs are integrated and indivisible. Never before have world leaders pledged common action across such a broad and universal policy agenda.⁶² The international community reaffirmed the importance of the Universal Declaration of Human Rights as well as other human rights instruments and international law in achieving SDGs. The UN General Assembly Resolution that adopted Agenda 2030 notes: “We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development.”⁶³ The international community seeks to build on MDGs and complete what they did not achieve. They seek to realize human rights for all and to achieve gender equality and the empowerment of all women and girls.⁶⁴ The SDGs are integrated and indivisible and balance the three dimensions of sustainable development: economic, social, and environmental.⁶⁵ Agenda 2030 further recognized that each country faces specific challenges in its pursuit of sustainable development and that vulnerable people must be protected. It identified children, youth, persons with disabilities, people

⁶⁰ G.A. Res. 70/1 (Sept. 25, 2015).

⁶¹ *Id.* at 14. The SDGs in brief are: ending poverty (Goal 1); ending hunger (Goal 2); ensuring healthy lives and promoting well-being (Goal 3); ensuring inclusive and quality education (Goal 4); achieving gender equality and empowering all women and girls (Goal 5); ensuring sustainable water and sanitation for all (Goal 6); ensuring access to modern energy for all (Goal 7); promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all (Goal 8); building resilient infrastructure, promoting inclusive and sustainable industrialization and fostering innovation (Goal 9); reducing inequality within and among countries (Goal 10); making cities and human settlements inclusive, safe, resilient and sustainable (Goal 11); ensuring sustainable consumption and production patterns (Goal 12); taking urgent action to combat climate change and its impacts (Goal 13); conserving and sustainably using the oceans, seas, and marine resources for sustainable development (Goal 14); protecting, restoring and promoting sustainable use of terrestrial ecosystems, sustainably managing forests, combating desertification, and halting and reversing land degradation and halting biodiversity loss (Goal 15); promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels (Goal 16) and; strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development (Goal 17). *Id.*

⁶² *Id.* at 1 (noting also that a previous attempt with the Millennium Development Goals (MDGs) was not very successful and did not include a human rights approach to MDGs).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

living with HIV/AIDS, older persons, indigenous peoples, refugees, and internally displaced persons and migrants as vulnerable persons. It also identified the need to support those who are affected by terrorism and humanitarian emergencies.⁶⁶

SDGs are based on five “Ps:” **People;**⁶⁷ **Planet;**⁶⁸ **Prosperity;**⁶⁹ **Peace;**⁷⁰ and **Partnership.**⁷¹ Unlike the MDGs, the 2030 Agenda and SDGs are based on human rights:

We envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity. A world which invests in its children and in which every child grows up free from violence and exploitation. A world in which every woman and girl enjoys full gender equality and all legal, social and economic barriers to their empowerment have been removed. A just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met.⁷²

It remains to be seen how much progress the international community will make toward achieving the SDGs by 2030. While many strides have been made with regard to reducing poverty and improving the living standards of people, much remains to be done. More than 2.2 billion people still live in poverty and more than 15% of the world’s population “remain vulnerable to multidimensional poverty.”⁷³ Poverty eradication has been on the global agenda since the creation of the UN and even after over seven decades, we are still struggling to end poverty.

⁶⁶ *Id.* at 7.

⁶⁷ *Id.* at 2 (noting the goals of ending poverty and hunger and ensuring that human beings can fulfill their potential in dignity and equality and in a healthy environment).

⁶⁸ *Id.* (noting the goal of protecting the planet from degradation including action on climate change).

⁶⁹ *Id.* (noting the goal of prosperous and fulfilling lives for all human beings).

⁷⁰ *Id.* (noting the goal of peaceful, just, and inclusive societies free from violence – no sustainable development without peace, no peace without sustainable development).

⁷¹ *Id.* (noting the goal of global partnership for sustainable development based on solidarity).

⁷² *Id.* at 4.

⁷³ See UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 3 (2014); see also *Poverty Overview*, THE WORLD BANK, <http://www.worldbank.org/en/topic/poverty/overview> (last updated Sept. 24, 2018).

It is not because we have not created enough wealth to go around—it is because much of the global wealth is concentrated in a few people.⁷⁴

II. SUSTAINABLE DEVELOPMENT AS AN UMBRELLA CONCEPT

It is now generally accepted that sustainable development comprises three pillars or dimensions: economic development, social development, and environmental protection. It requires us to balance all three. In addition, what does the social pillar mean? It clearly overlaps with human rights and environmental justice and, as the discussion above revealed, it seeks to ensure a decent standard of living for everybody. As noted, sustainable development evolved as an umbrella concept embodying both substantive and procedural components. The Rio Declaration adopted at the Earth Summit in 1992 sought to elaborate on these components. This Part discusses the components of sustainable development as well as some tools that have been developed to achieve it. It will also discuss some linkages and obstacles to achieving sustainable development.

Principles of international environmental law evolved in a rather *ad hoc* manner, responding to environmental issues that emerged at a given time as well as politics surrounding that issue.⁷⁵ It thus lacked any overarching framework to give these principles any organizing order. Scholars believe that sustainable development gave these principles an overarching framework.⁷⁶

Dobson believes that the “search for a unitary and precise meaning of sustainable development is misguided”⁷⁷ because it “rests on a mistaken view of the nature and function of political concepts.”⁷⁸ “The crucial recognition here is that, like other political terms (democracy, liberty, social justice, and so on), sustainable development is a ‘contestable concept.’”⁷⁹ “Contestable concept” has two levels of

⁷⁴ See Anna Ratcliff, *Just 8 Men Own Same Wealth as Half the World*, OXFAM INTERNATIONAL (Jan. 16, 2017), <https://www.oxfam.org/en/pressroom/pressreleases/2017-01-16/just-8-men-own-same-wealth-half-world>.

⁷⁵ See HUNTER ET AL., *supra* note 11, at 143.

⁷⁶ *Id.* at 144.

⁷⁷ Andrew Dobson, *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (1999), in INTERNATIONAL ENVIRONMENTAL LAW AND POLICY, *supra* note 11, at 170.

⁷⁸ *Id.*

⁷⁹ *Id.*

meaning.⁸⁰ At the primary level the meaning is unitary, but vague. Justice and democracy are good examples of such a contestable concept. We know they are necessary, but it is hard to define them and have different meanings in different contexts. At the secondary level their meaning depends on how they should be interpreted in practice.⁸¹ At this level, their meaning is not vague. On the contrary, we know what we need to do to give effect to these concepts in practice. Dobson identifies six principles of sustainable development at the secondary level and most of these are reflected in legal documents and literature: (a) environment-economy integration; (b) futurity; (c) environmental protection; (d) equity; (e) quality of life; and (f) participation.⁸² Many of these are already established principles of international environmental law. For example, the principle of integration is already established and reflected in Rio Principle 3. The principle on futurity reflects the inter-generational equity principle (Rio Principle 3), while the principles of equity and quality of life are reflected in human rights principles and the social pillar of sustainable development. Finally, participation is a well-established principle of both international human rights law and international environmental law. It is thus obvious that sustainable development is “clearly neither meaningless nor redundant.”⁸³ Moreover, it has influenced not just states and NGOs, but also the corporate and banking sectors, which is quite remarkable:

It is precisely the ability of sustainable development – a concept both substantive and challenging – to gather endorsements from states and large corporations as well as from the environmental movement, which is what makes it so important. Indeed, the extraordinary thing about sustainable development in many ways is that it has acquired such widespread endorsement.⁸⁴

While this widespread acceptance by many sectors is quite remarkable, it has also attracted a considerable amount of criticism. We will discuss some of these critiques in Part III.

The Rio Conference marked the formal acceptance of sustainable development as the goal of the modern economy⁸⁵ and the Rio Declaration greatly influenced the development of international

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 171.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 169.

environmental law. Some contend that it laid the foundation for the emergence of a new area of international law called “international sustainable development law.”⁸⁶ It is important to note that the treaties adopted at Rio also endorsed sustainable development. The United Nations Framework Convention on Climate Change (UNFCCC),⁸⁷ in fact, listed sustainable development as one of the principles that should guide parties in fulfilling their obligations under the Convention.⁸⁸ The Convention on Biological Diversity refers to the sustainable use of biological diversity and the sustainable use of its components as one of the objectives of the Convention.⁸⁹ “Sustainable use” is defined as “the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.”⁹⁰ The non-binding forest principles adopted at Rio also refers to sustainable development: “The guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.”⁹¹

Another instrument that contributed to the consolidation of principles of governing sustainable development is the New Delhi Declaration on Sustainable Development adopted by the International Law Association (ILA) in 2002.⁹² It recognized sustainable development as a common concern of mankind and acknowledged that the realization of human rights is central to the pursuance of sustainable development. It

⁸⁶ See SEGGER & KHALFAN, *supra* note 6, at 98.

⁸⁷ United Nations Framework Convention on Climate Change, May 9, 1992, S. TREATY DOC. 102-38 (1992), 1771 U.N.T.S. 107 [hereinafter UNFCCC].

⁸⁸ *Id.* art. 3.

⁸⁹ Convention on Biological Diversity, art. 1, June 5, 1992, 1760 U.N.T.S. 79.

⁹⁰ *Id.* art. 2; see also United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa art. 2, Oct. 14, 1994, 1954 U.N.T.S. 3 (including sustainable development as part of its objective).

⁹¹ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (Vol. III), annex III (Aug. 14, 1992).

⁹² See generally Permanent Rep. of Bangladesh to the U.N., Letter dated 6 August 2002 from the Permanent Representative of Bangladesh to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of the Netherlands to the United Nations addressed to the Secretary-General of the United Nations, U.N. Doc. A/CONF.199/8 [hereinafter *ILA Declaration*] (transmitting the ILA Declaration to the United Nations); see also Comm'n on Sustainable Dev., Rep. of the Expert Group Meeting on Identification of Principles of International Law for Sustainable Development, (May 3, 1996); Maja Goepel, *Formulating Future Just Policies: Applying the Delhi Sustainable Development Law Principles*, 2 SUSTAINABILITY 1694, 1696-97 (2010).

also elaborated on the need to develop international law in relation to sustainable development. It identified seven principles that form the components of sustainable development: (a) the duty of States to ensure sustainable use of natural resources; (b) the principle of equity and the eradication of poverty (this includes inter- and intra-generational equity); (c) the principle of common but differentiated responsibilities; (d) the principle of the precautionary approach to human health, natural resources, and ecosystems; (e) the principle of public participation and access to information and justice; (f) the principle of good governance; and (g) the principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.⁹³ Although not binding, the ILA Declaration provides a useful elaboration of principles governing sustainable development.

III. CRITIQUES OF SUSTAINABLE DEVELOPMENT

Despite being endorsed by almost all sectors of society, sustainable development has its fair share of critics, some very vocal. This Part will briefly discuss some of these critiques. One of the main critiques, of course, is that it lacks a proper definition.⁹⁴ Currently, the most popular definition is the one proposed by the WCED in their report, *Our Common Future*.⁹⁵ Admittedly, it is vague and lacks precision. Some consider *sustainable* development to be an oxymoron.⁹⁶ Others have, however, argued that it has been accepted by the international community precisely because of its “brilliant ambiguity”⁹⁷ and “has received nearly universal acceptance (at least rhetorically) among every sector of international society.”⁹⁸

One of the depictions of sustainable development is that of a three-legged stool, each leg representing one pillar. However, this depiction has been critiqued for not treating the environment as *the floor* on which both humanity and the economy rest:

It [three legged stool depiction] perpetuates an even older myth that the environment is something apart from humanity, humanity's economy, and its social well-being. We do not discuss whether

⁹³ *ILA Declaration*, *supra* note 91, at 213–16.

⁹⁴ Redclift & Springett, *supra* note 3, at 16.

⁹⁵ WORLD COMM'N ON ENV'T AND DEV., *supra* note 4, at 43.

⁹⁶ *Id.* at 21.

⁹⁷ See HUNTER ET AL., *supra* note 11, at 169.

⁹⁸ *Id.*

sustainable development itself is an oxymoronic concept. We do assume that sustainable development represents a real change in the way humans choose to live so that the viability and subsistence of all living species and their places are ensured.⁹⁹

Scholars point out that since humanity and the economy cannot survive without the eco-system services provided by nature, environmental protection must be the foundation of all development activities:

Humanity can have neither an economy nor social well-being without the environment. Thus, the environment is not and cannot be a leg of the sustainable development stool. It is the floor upon which the stool, or any sustainable development model, must stand. It is the foundation of any economy and social well-being that humanity is fortunate enough to achieve.¹⁰⁰

Moreover, we cannot live outside the limits set by nature. Climate change is a good example of an issue where human beings have acted in total disregard of the planetary boundaries. Future generations will have to bear the brunt of the repercussions of short-sighted “development” decisions that the previous and current generations have made.

Others have argued that sustainable development is a way to ensure that the options of the Global North are preserved.¹⁰¹ In a harsh critique of sustainable development, a scholar from the Global South argued that the burden has fallen, yet again, on the Global South:

The latter concept [sustainable development] has now been pushed to the point of making it the burden of the South to ensure that it pursues policies that will not compromise the ability of future generations or worsen the burden on the environment with consequence for the North whose concerns have become identified as global environment issues.¹⁰²

Yet others have argued that because the Global North is already developed, sustainable development applies only to the Global South.¹⁰³ However, with the inclusion of Principle 8 of the Rio Declaration (on

⁹⁹ See Neil K. Dawe & Kenneth L. Ryan, *The Faulty Three-Legged-Stool Model of Sustainable Development*, 17 CONSERVATION BIOLOGY 1458, 1458 (2003).

¹⁰⁰ *Id.* at 1459.

¹⁰¹ See Raghavan, *supra* note 22.

¹⁰² *Id.*

¹⁰³ See Redclift & Springett, *supra* note 3, at 7.

production and consumption patterns), the Global North became part of the framework:

With its reference to patterns of production and consumption, Principle 8 addresses one of the most problematic inadequacies of the term sustainable development: because the term sustainable development refers to development as opposed to “growth” or “economy”, it appears to apply exclusively to developing countries. Industrialized countries rarely refer to their activities as development activities, and there, seem to be outside the scope of the term. The *Rio Declaration* provides a reminder that the intra-generational equity goal of sustainable development can only be achieved if industrialized countries cease to benefit, to the detriment of developing countries, from their ongoing unsustainable practices. With Principle 8, developed countries become full partners in the quest for sustainable development.¹⁰⁴

Because the theoretical basis of sustainable development is ambiguous and there is no consensus about its meaning, some argue that it is impossible to implement sustainable development: “there are conceptual, political and ethical dilemmas in recasting ‘development’ activities as ‘sustainable’, and then declaring this a new paradigm for human interaction with the environment.”¹⁰⁵ Moreover, the focus of the Global North is on poverty, rather than poverty production. In other words, the root causes of poverty have consistently been ignored by the Global North as well as by the global institutions that are supposed to eradicate poverty.

Some have called for sustainable development to be replaced by sustainability while others believe that both terms suffer from the same ills:

Despite the calls for sustainability to be extricated from the sustainable development discourse – or to replace it – there is also evidence that a number of writers have in mind an all-embracing concept that eschews neo-classical economics, calls for better

¹⁰⁴ See Ileana M. Porras, *The Rio Declaration: A New Basis for International Cooperation*, in GREENING INTERNATIONAL LAW 20, 27 (Philippe Sands ed., 1994); cf. Haydn Washington, *Is “Sustainability” the Same as “Sustainable Development”?*, in SUSTAINABILITY: KEY ISSUES 359 (Helen Kopnina & Eleanor Shoreman-Ouimet eds., 2015) (distinguishing between sustainability and sustainable development) (“There is a key need to demystify ‘sustainability’, to understand that it cannot (on a finite planet) be based on endless growth. This is why sustainability is *different* to sustainable development, as ‘development’ has for so long been equated to growth in Western society. We need now to focus on a ‘sustainability’ that heals the damage caused by the endless growth myth. Time to stop beating around the bush. If we break the denial dam, then we can urgently commence the ‘Great Work’ of healing the planet.”).

¹⁰⁵ See Redclift & Springett, *supra* note 3, at 16.

understanding and treatment of nature, demands social equity and eco-justice based on a less instrumental understanding of democracy, and that his overall conception of the ‘the good life’ is sometimes referred to as ‘sustainability’, and sometimes as ‘sustainable development.’¹⁰⁶

Renowned scholar Julian Agyeman has coined the phrase “just sustainabilities”¹⁰⁷ bringing together concepts of sustainability, environmental justice, and equity:¹⁰⁸

In recent years it has become increasingly apparent that the issue of environmental quality is inextricably linked to that of human equality. Wherever in the world environmental despoliation and degradation is happening, it is almost always linked to questions of social justice, equity, rights and people’s quality of life in its widest sense.¹⁰⁹

They identify three related dimensions to this: First, countries with a more equal income distribution, greater rights, and higher literacy rates tend to have higher environmental quality.¹¹⁰ Second, environmental problems affect the poor and marginalized disproportionately, which is compounded by the fact that the major contributors to environmental degradation are not the poor and marginalized.¹¹¹ Rather, it is the rich with their high consumerist lifestyles that place a greater burden on the environment. The third dimension is that of sustainable development—sustainability cannot be simply an environmental concern: “A truly sustainable society is one where wider questions of social needs and welfare, and economic opportunity, are integrally connected to environmental concerns.”¹¹² This last critique is rather unfair, however. Sustainable development was never just about environmental protection. Even the first iteration of sustainable development in the WCED report referred to poverty alleviation and improving the living standards of people. The report itself made this clear in the Chairman’s foreword: “But first and foremost, our message is directed towards people, whose

¹⁰⁶ *Id.* at 17.

¹⁰⁷ See JUST SUSTAINABILITIES: DEVELOPMENT IN AN UNEQUAL WORLD (Julian Agyeman et al. eds., 2003).

¹⁰⁸ See generally *id.*

¹⁰⁹ *Id.* at 1.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 4.

¹¹² *Id.* at 2.

well-being is the ultimate goal of all environment and development policies."¹¹³

Despite these critiques, it is clear that sustainable development has influenced the development of international environmental law as no other term has in recent years. It has also been discussed in other fora, and has influenced policies, action plans, and principles in relation to women, social development, and population. Some scholars point out:

Since Rio the concept of sustainable development has received nearly universal acceptance (at least rhetorically) among every sector of international society. Sustainable development has been incorporated in international declarations and treaties on the environment and, increasingly, in trade and investment treaties. It is appearing in corporate charters and business strategies, and national policies and laws as well as plans of action for governments at every level – from international institutions to city councils. It is being taught in schools, preached in churches, and exalted by civil organizations throughout the world.¹¹⁴

For a concept that has remained largely undefined, this level of influence at both international and national levels is indeed quite remarkable. It is therefore important to discuss its legal reach and we turn to a discussion of legal status in Part IV.

IV. LEGAL STATUS OF SUSTAINABLE DEVELOPMENT

As discussed in Part III, sustainable development is now considered an umbrella concept embodying both substantive and procedural components. Many of these components have become binding on states, especially, the principle of integration, equity (embodying both inter and intra generational equity aspects), and the procedural components are all part of international law. While a detailed discussion of the legal status of these components is beyond the scope of this article, suffice it to say that both international environmental law and international human rights law embody these principles. The Framework Principles on Human Rights and Environment proposed by the UN

¹¹³ See WORLD COMM'N ON ENV'T AND DEV., *supra* note 4, at xiv.

¹¹⁴ HUNTER ET AL., *supra* note 11, at 169.

Special Rapporteur on the topic, John Knox, also affirm these principles.¹¹⁵ A brief discussion of these principles is warranted here.

Principle 10 of the Rio Declaration embodies procedural rights in relation to environmental issues:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.¹¹⁶

Principle 10 was the impetus for the adoption of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹¹⁷ adopted by the UN Economic Commission for Europe in 1998.¹¹⁸ A similar convention was adopted in March 2018 in Latin America and the Caribbean.¹¹⁹ These three rights—access to information, participation in decision-making and access to justice—confer binding obligations on states under international human rights law and these were brought within the realm of environmental law through the environmental impact assessment process and via international and regional instruments such as the Rio Declaration and Aarhus Convention.¹²⁰ The Framework Principles also affirm these principles.¹²¹

¹¹⁵ See Human Rights Council, Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, U.N. DOC. A/HRC/37/59, at 2 (Jan. 24, 2018).

¹¹⁶ See *Rio Declaration*, *supra* note 32, at 2–3.

¹¹⁷ See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447 [hereinafter Aarhus Convention].

¹¹⁸ UNECE, <https://www.unece.org/env/pp/introduction.html> (last visited Feb. 10, 2019).

¹¹⁹ Leila Mead, *LAC Countries Adopt First Binding Regional Agreement on Principle 10*, IISD (Mar. 8, 2018), <http://sdg.iisd.org/news/lac-countries-adopt-first-binding-regional-agreement-on-principle-10/>.

¹²⁰ See Aarhus Convention, *supra* note 116, art. 1.

¹²¹ See Human Rights Council Rep., *supra* note 114, at 11–13. These Framework Principles include principles 7 (access to information), 9 (public participation), and 10 (access to remedies). It is a pity that these principles are written in soft language (states *should* as opposed to *shall*), as these are already binding on states under various treaties.

The principle of integration is also now well established. Principle 4 of the Rio Declaration affirms this principle: "In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."¹²² One of the tools that states have widely utilized to achieve integration is the environmental impact assessment (EIA) process, which also incorporates public participation in many countries.¹²³ EIA is also embodied in the Rio Declaration: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."¹²⁴

Over 100 countries now have laws relating to EIAs, although processes and laws vary considerably.¹²⁵ Although there are challenges inherent in the EIA process, especially in developing countries, it is a tool with great potential to reduce the impact of development activities on the environment and people. While EIA is subject to national laws, in the *Pulp Mills Case*¹²⁶ between Argentina and Uruguay, the ICJ held that transboundary EIA is now part of customary international law.¹²⁷ The Court, unfortunately, did not go as far as saying that it should be subject to public participation. Nonetheless, the recognition that transboundary EIA is now part of customary international law is significant.

Inter- and intra-generational equity principles have also received considerable attention in international documents. Principle 3 of the Rio Declaration provides that: "The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations."¹²⁸ Similarly, the UNFCCC includes them as principles in Article 3.¹²⁹ The Convention on Biological Diversity also

¹²² See *Rio Declaration*, *supra* note 32, princ. 4.

¹²³ See NEIL CRAIK, *THE INTERNATIONAL LAW OF ENVIRONMENTAL IMPACT ASSESSMENT: PROCESS, SUBSTANCE AND INTEGRATION* (2008).

¹²⁴ *Rio Declaration*, *supra* note 32, princ. 17.

¹²⁵ See CRAIK, *supra* note 122, at 23.

¹²⁶ *Pulp Mills on the River of Uruguay*, (Arg. v. Uru.), Judgment, 2008 I.C.J. Rep. 1 (July 29).

¹²⁷ *Id.* at 315.

¹²⁸ *Rio Declaration*, *supra* note 32, princ. 3.

¹²⁹ UNFCCC, *supra* note 87, at 4 ("The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.").

refers to future generations in its preamble.¹³⁰ While some consider the inter-generational equity principle to be unrealistic and inoperable,¹³¹ there seems to be a general consensus, especially in light of the adverse consequences of climate change, that there is a need to at least consider the impact of our activities on future generations.¹³²

Thus, all in all, it is clear that most of the components that form part of the sustainable development umbrella impose binding obligations on states. Moreover, most states have adopted national laws relating to EIAs that require public participation and the provision of information. It is thus apparent that sustainable development is neither vague nor lacks legal status as many of these components impose obligations on states. Moreover, as we shall see from the discussion later in this Part, national judiciaries have held that sustainable development is part of national law.

None of the elements comprising the sustainable development umbrella is new but the Rio Declaration brings them together in a systematic form and, at least with regard to the procedural elements, “never before have they secured such widespread support across the international community.”¹³³ They believe that “the most potentially far-reaching aspect of sustainable development is that for the first time it makes a state’s management of its own domestic environment a matter of international concern in a systematic way.”¹³⁴ This is quite a remarkable development. For centuries, international law considered how states developed to be within the exclusive prerogative of sovereign nations. No external body or laws could dictate how states should develop. However, with the advent of sustainable development, this has changed.

While many have critiqued sustainable development as being too vague, looking for a more precise definition of sustainable development is misguided. Focusing on its definition or being stuck on its vagueness is to ignore its remarkable influence nationally and internationally. As

¹³⁰ Convention on Biological Diversity, *supra* note 88, at 2 (“Determined to conserve and sustainably use biological diversity for the benefit of present and future generations.”).

¹³¹ See BIRNIE ET AL., *supra* note 33, at 120 (“[A]lthough the idea of moral responsibility to future generations is well established in the writings of Rawls and other philosophers, it is less easy to translate into law, or, more specifically, into rights for future indeterminate generations.”).

¹³² See HUNTER ET AL., *supra* note 11, at 460 (“[T]he principle is one of fairness, that present generations not leave future generations worse off by the choices we make today regarding development.”). The seminal work on this is EDITH BROWN WEISS, IN FAIRNESS TO FUTURE GENERATIONS: INTERNATIONAL LAW, COMMON PATRIMONY, AND INTERGENERATIONAL EQUITY (1989); see also Edith Brown Weiss, *In Fairness to Future Generations and Sustainable Development*, 8 AM. U. INT’L L. REV. 19 (1992).

¹³³ See BIRNIE ET AL., *supra* note 33, at 116.

¹³⁴ *Id.* at 124.

noted earlier, it is a meta-concept like democracy or justice which depends on other principles for its realization. There is no doubt that it has influenced international law significantly. Its influence at the national level is even more significant—there is burgeoning jurisprudence in many parts of the world that has effectively incorporated sustainable development into national law, as discussed later in this Part.

Nonetheless, many challenges remain. These challenges include: (a) delineating the concept and bringing more clarity on the exact legal substance. This includes translating the principles and rules into concrete tasks and obligations; (b) addressing the fragmentation of international law relating to sustainable development and creating a coherent basis for its development; (c) aligning international development law with a balanced and coherent international law on sustainable development; (d) expanding the circle of legal participants to include non-state actors as states can no longer stand alone; and most importantly, (e) implementing obligations at the national level and setting up monitoring instruments.¹³⁵

The assertion here that the normative implications of the main elements of sustainable development are not clear is no longer correct—as the above discussion showed, many of the elements that comprise the sustainable development umbrella have normative implications for states. Thus, international law requires development decisions to be the *outcome of a process* that promotes sustainable development:

Specifically, if states do not carry out environmental impact assessments (EIAs), or they refuse to cooperate in the management of global and transboundary risks or the conservation of natural resources, or they fail to integrate development and environmental considerations in their decision-making, or do not take accounts of the needs of intra- and inter-generational equity, they will have failed to implement the main tools employed by the Rio Declaration and other international instruments for the purpose of facilitating sustainable development. There is, as we shall see below, *ample state practice to support the normative significance of most of these elements*.¹³⁶

These elements were emphasized by the African Commission of Human Rights in its decision in the *Ogoniland* case.¹³⁷ Here, the Commission had to interpret, *inter alia*, the meaning of the right to a

¹³⁵ See HUNTER ET AL., *supra* note 11, at 174.

¹³⁶ BIRNIE ET AL., *supra* note 33, at 127 (emphasis added).

¹³⁷ Soc. & Econ. Rights Action Cent. v. Nigeria, No. 155/96, Decision, African Commission on Human and People's Rights (Oct. 27, 2001), http://www.achpr.org/files/sessions/30th/communications/155.96/achpr30_155_96_eng.pdf.

satisfactory environment and the Commission pointed out that this right imposes clear obligations on states, including the obligation to carry out environmental and social impact assessments, ensure that proper monitoring is done and the local communities are given proper information and their participation is solicited.

Other scholars have questioned whether there is a hierarchy amongst various norms in different areas of international law and their relationship with sustainable development. Thus, does economic development supersede environmental protection or social development? Achieving coherence is necessary but the challenge has been how to balance these competing norms. Some scholars substitute the social pillar with international human rights law. For others, international environmental law forms the central pillar of sustainable development, which also needs support from the other two pillars—international human rights law and international economic law. Yet others consider international sustainable development law to be “at the intersection of three principal fields of international law, each of which contribute to sustainable development”¹³⁸: international economic law, international social law and international environmental law.¹³⁹ This, however, is a very wide interpretation of international sustainable development law.

Sands *et al.* identify four recurring elements reflected in international agreements that appear to comprise the legal elements of sustainable development: (a) **the intergenerational equity principle** (the need to preserve natural resources for the benefit of future generations); (b) **the sustainable use of natural resources principle** (the aim of exploiting natural resource in a sustainable, prudent, rational, wise or appropriate manner; (c) **the principle of equitable use or intra-generational equity principle** (use of resources by one state should take into account the needs of other states); and (d) **the principle of integration** (environmental considerations are integrated into economic development activities).¹⁴⁰ With regard to its status, they are of the view that there can be little doubt that the concept of sustainable development has entered the corpus of international customary law, requiring different streams of international law to be treated in an integrated manner.¹⁴¹

¹³⁸ See SEGGER AND KHALFAN, *supra* note 6, at 51.

¹³⁹ *Id.*; see also Dominic McGoldrick, *Sustainable Development and Human Rights: And Integrated Conception*, 45 INT'L & COMP. L.Q. 796 (1996).

¹⁴⁰ PHILIPPE SANDS ET AL., *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 219 (4th ed. 2018).

¹⁴¹ *Id.*

They believe that by invoking the concept of sustainable development in the *Gabčíkovo-Nagymaros Project*,¹⁴² the ICJ indicated that the term has a legal function as well as a procedural/temporal aspect and a substantive aspect:¹⁴³

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past this was often done without consideration of the effects upon the environment. False. new norms and standards have been developed [and] set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities, but also when continuing such activities in the past. This need to reconcile economic development with the protection of the environment is aptly expressed in the concept of sustainable development.¹⁴⁴

According to the Court, what this means for the present case is that the parties should look afresh at the effects of the project on the environment and find a satisfactory solution to the volume of water to be released into the old bed of the Danube. In his separate opinion Judge Weeramantry considered, unlike the Court, that sustainable development is a principle with normative value. Tracing its historic foundations, he asserted “international law in the field of sustainable development is now sufficiently well established.”¹⁴⁵ Judge Weeramantry noted that if environmental harm was the only factor in this case, Hungary’s contention would have been conclusive.¹⁴⁶ However, this project was important for Slovakia from a developmental point of view. Thus, the Court had to strike a balance between environmental and developmental considerations. The Court held that sustainable development was the relevant principle here:

When a major scheme, such as that under consideration in the present case, is planned and implemented, there is always the need to weigh considerations of development against environmental considerations, as their underlying juristic bases – the right to development and the right to environmental protection – are important principles of current international law.¹⁴⁷

¹⁴² *Gabčíkovo Nagymaros Project (Hung. v. Slov.)*, Judgment, 1997 I.C.J. Rep. 7, ¶ 140 (Sept. 25).

¹⁴³ See SANDS ET AL., *supra* note 139, at 220.

¹⁴⁴ *Gabčíkovo Nagymaros Project*, 1997 I.C.J. Rep. 7, ¶ 140.

¹⁴⁵ *Id.* at 90 (separate opinion by Weeramantry, J.).

¹⁴⁶ *Id.* at 88.

¹⁴⁷ *Id.* at 89.

Having surveyed numerous treaties, soft law instruments, and practices of ancient civilizations of Sri Lanka, Iran, and Tanzania, Judge Weeramantry concluded, “[t]he principle of sustainable development is thus a part of modern international law by reason not only of its inescapable logical necessity, but also by reason of its wide and general acceptance by the global community.”¹⁴⁸

Lowe believes that while sustainable development is a convenient umbrella term to label a group of congruent norms, it is itself not a norm:

Whatever the label might be, it is itself not a norm; it can be no more than a name for a set of norms. Indeed, it may not even be that. The components themselves do not have the appearance of archetypal norms. Normativity, by definition, must express itself in normative terms: it must be possible to phrase a norm in normative language. But it is by no means clear that the components of sustainable development can be so phrased.¹⁴⁹

Things have certainly changed since Lowe expressed his views almost two decades ago. As noted, the components of sustainable development do indeed impose obligations on states. Even at the time Lowe wrote this, the procedural components were already well established to have imposed binding obligations on states. Significantly, even two decades ago, he identified a useful function for sustainable development. Calling it a meta-principle, Lowe was of the view that it is “potentially a tool of great power in the hands of decision-makers.”¹⁵⁰

In the *Pulp Mills* case¹⁵¹ between Argentina and Uruguay, the ICJ again had the occasion to pronounce on sustainable development. Interpreting the Statute of the River Uruguay between the parties, the Court said essentially infusing sustainable development into the Statute which was adopted long before sustainable development became a norm:

The need to strike a balance between the use of the waters and the protection of the river consistent with the objective of sustainable development . . . it is the opinion of the Court that Article 27 embodies this interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic

¹⁴⁸ *Id.* at 95.

¹⁴⁹ Vaughn Lowe, *Sustainable Development and Unsustainable Arguments*, in INTERNATIONAL LAW AND SUSTAINABLE DEVELOPMENT, *supra* note 3, at 26.

¹⁵⁰ *Id.* at 37.

¹⁵¹ *Pulp Mills on the River of Uruguay* (Arg. v. Uru.), Judgment, 2008 I.C.J. Rep. 1 (July 29).

development and environmental protection that is the essence of sustainable development.¹⁵²

The preamble of the WTO Agreement refers specifically to “the objective of sustainable development.”¹⁵³ In some of the disputes before the Appellate Body, sustainable development has come to the forefront. In the *Shrimp/Turtle* case, the WTO Appellate Body referred to sustainable development in the Preamble and considered it as a concept that has been generally accepted as integrating economic, and social development and environmental protection.¹⁵⁴ It was also invoked in *India-Certain Measures Relating to Solar Cells and Solar Modules*.¹⁵⁵ India relied on international environmental law principles including sustainable development to justify the measures it took, which were challenged by the U.S. as being incompatible with WTO principles. The WTO Appellate Body pointed out:

The Panel further noted India’s argument that principles of international environmental law and the concept of sustainable development “are fundamental to the environmental and developmental governance in India” and “that the concept of sustainable development is a part of customary international law”. The Panel did not, however, consider that this spoke “to the question of whether international obligations are automatically incorporated into domestic law and have ‘direct effect’ in India”. The Panel therefore found that India had failed to demonstrate that the international instruments it had identified can be characterized as “laws or regulations” within the meaning of Article XX(d) in the present dispute.¹⁵⁶

This decision seems to indicate that India may have had a chance of succeeding in this argument if it had established that these international environmental principles, including sustainable development, were part of the law of India. As the cases below show, Indian judiciary has interpreted these principles as being applicable in India.

¹⁵² *Id.* ¶ 177.

¹⁵³ Marrakesh Agreement Establishing the World Trade Organization, intro., Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144.

¹⁵⁴ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998).

¹⁵⁵ Appellate Body Report, *India – Certain Measures Relating to Solar Cells and Solar Modules*, ¶ 5.72, WTO Doc. WT/DS456/AB/R (adopted Sept. 16, 2016).

¹⁵⁶ *Id.* ¶ 5.98 (footnotes omitted).

Similar to international tribunals several national judiciaries have discussed sustainable development. The Supreme Court of India noted in the *Vellore Citizens' Welfare Forum v. Union of India* (1996) that sustainable development, and in particular the polluter pays principles and the precautionary principle, have become part of customary international law.¹⁵⁷ In *Intellectuals Forum Tirupathi v. State of AP* (2006)¹⁵⁸ the Court acknowledged the importance of the public trust doctrine in achieving sustainable development. The Court referred to Principle 4 of the Rio Declaration and stressed the need for rational management of resources and the adoption of an integrated and coordinated approach to development planning.¹⁵⁹ In the case of *S. Jagannath v. Union of India*,¹⁶⁰ the Supreme Court of India elaborated on the principles governing sustainable development:

Some of the salient principles of 'Sustainable Development,' as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that 'the Precautionary Principle' and 'the Polluter Pays Principle' are essential features of 'Sustainable Development.'¹⁶¹

In *Gunaratne v. Homagama Pradeshiya Sabha*,¹⁶² the Supreme Court of Sri Lanka noted that public participation and transparency are essential if sustainable development is to be achieved. Drawing inspiration from Judge Weeramantry's separate opinion in the *Hungary v. Slovakia case*,¹⁶³ Justice Amerasinghe of the Supreme Court of Sri Lanka in the *Eppawala Phosphate Mining case*¹⁶⁴ referred to the need to balance the needs of the present generation with those of posterity. Sustainable development *does not* mean that further development must

¹⁵⁷ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996 SC 2715, paras. 10–11 (India).

¹⁵⁸ *Intellectuals Forum Tirupathi v. State of A.P.*, AIR 2006 SC 1350 (India).

¹⁵⁹ *Id.* ¶ 56.

¹⁶⁰ *Vellore Citizens*, AIR 1996 SC 2715, ¶ 56.

¹⁶¹ *Id.* ¶ 11.

¹⁶² *Gunaratne v. Homagama Pradeshiya Sabha*, (1998) 2 SLR 11, ¶ 9 (Sri Lanka).

¹⁶³ *Gabčíkovo Nagymaros Project* (Hung. v. Slov.), Judgment, 1997 I.C.J. Rep. 7, at 90 (Sept. 25) (separate opinion by Weeramantry, J.).

¹⁶⁴ *Bulankulama v. Ministry of Industrial Development*, (2000) 3 SLR 243, ¶ 72 (Sri Lanka); see also Sumudu Atapattu, *Sustainable Development, Myth or Reality?: A Survey of Sustainable Development Under International Law and Sri Lankan Law*, 14 GEO. INT'L. ENVTL. L. REV. 265, 294–95 (2001).

be halted. The case of *Sugathapala Mendis and Raja Melroy Senanayake v. Chandrika Bandaranayake Kumaratunge and Others*¹⁶⁵ involved the public trust doctrine and acquisition of public land for private purposes. The court held that the public trust doctrine must be upheld not only for purposes of good governance but also for sustainable economic development of the country especially for the economically challenged, the disadvantaged and the marginalized.¹⁶⁶

Thus, the judiciaries in South Asia have incorporated sustainable development as a principle into national law and applied that to cases before them. They have also adopted the precautionary principle, the polluter pays principle, the inter-generational equity principle and the public trust doctrine as principles to give effect to sustainable development. Sustainable development has, thus, become part of national law in many parts of the world through judicial interpretation.¹⁶⁷

V. CONCLUSION

If sustainability is a norm that is recognized under international law—and this now seems to be the case—then *how* states develop is no longer under the sovereign prerogative of states. If sustainable development is intended to hold states accountable at international and national levels for achieving sustainability, then clear criteria are required to measure such compliance. The Sustainable Development Goals (SDGs), discussed above, together with its 169 targets could fill this void.

The general consensus is that sustainable development comprises three dimensions (or pillars) balancing social, environmental, and economic aspects. The social pillar of sustainable development has brought human rights law within the sustainable development paradigm. Human rights and environmental justice are central to any discussion of sustainable development. Far from being vague and ambiguous, sustainable development has influenced the development of international environmental law as no other term has. Both binding and non-binding

¹⁶⁵ *Sugathapala Mendis v. Chandrika Bandaranayake Kumaratunge*, (2007) SC 352 (Sri Lanka); see also Sumudu Atapattu, *Judicial Protection of Human Rights*, in *SRI LANKA: STATE OF HUMAN RIGHTS 2009–10* (L. & Soc’y Tr. 2011), at 87–88, 91–93.

¹⁶⁶ Atapattu, *supra* note 164, at 100–01.

¹⁶⁷ See Jonathan Verschuuren, *The Role of Sustainable Development and the Associated Principles of Environmental Law*, in *ENVIRONMENTAL LAW AND GOVERNANCE FOR THE ANTHROPOCENE*, *supra* note 3, at 15.

instruments adopted since the WCED report refer to it and every segment of society from states to corporations, from development banks to NGOs and from international organizations to educational institutions across the world have endorsed it. Moreover, it has evolved as an umbrella concept encompassing both substantive and procedural components, many of which are now part of customary international law, binding on states. It is neither vague nor inoperable as has been argued in the past. What seems to be lacking is political will to make any real changes to the existing laws, structures, and institutions.

Justice and equity are at the core of sustainable development. They form the foundation on which sustainable development rests. Just as environmental protection lies at the heart of both society and economy, justice and equity underlie sustainable development, without which no development will be sustainable or just. We need to look no further than the current global society with its vast disparity between the rich and the poor both in the Global North and the Global South to exemplify this.

The international community took a long time to bring all three pillars of sustainable development under one global agenda. It did so with the adoption of Agenda 2030 and SDGs. Achieving SDGs will pose particular challenges to developing countries. Adequate funding will be key. Moreover, many of these countries face governance challenges. The next few years will be crucial as climate change consequences will throw unprecedented challenges to achieving sustainable development.

Much ink has been spilled over the documents adopted by world leaders pledging their support to sustainable development over the last three decades with flowery language and grandiose promises. Even so, the world leaders seem to need to refresh their memories at regular intervals at international conferences convened at great expense to the tune of millions of dollars. Despite their continued commitment to sustainable development, the global environment continues to deteriorate nearing tipping points, poor people are getting poorer, and marginalized groups are living in appalling conditions while the rich continue to get richer with no end in sight for their decadent consumerism. This clearly cannot be the kind of “sustainable development” that the WCED envisioned.