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RESEARCH ARTICLE

Sustainability as a Governing Norm of Sustainable Development in Contemporary Environmental law

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Abstract

This paper investigates the role of sustainability as a governing norm of sustainable development in the context of contemporary environmental law. The concept of sustainability has been widely discussed in the literature as an overarching goal of development, with a focus on economic, social, and environmental dimensions. This paper examines the concept of sustainability as it is encoded in environmental law, especially in the context of principles of international law related to sustainable development. It assesses how sustainability is used in contemporary environmental law, and whether it serves as an effective tool for protecting the environment and promoting sustainable development. The paper identifies a range of different uses of sustainability as a governing norm and discusses their relative strengths and weaknesses, as well as their potential for shaping environmental policies. The findings suggest that sustainability as a governing norm of sustainable development has been fairly successful in providing a clear and consistent vision of sustainable development, although its actual implementation has been inconsistent.

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Introduction

After the United Nations Conference on Environment and Development (Rio Earth Summit, 1992), contemporary environmental and developmental policies have reinvigorated the need to promote harmonisation between socioeconomic needs and the protection of the environment (De Salles Cavedon et al., 2011). Such views have increased in recent years and are noted among the objectives of sustainable development, which has taken a multidisciplinary approach, while its governing norm of sustainability has gradually expanded in various policies and areas of international economic, social, and environmental law (Schrijver et al., 2009). The energy challenges, the deterioration of the environment, and the depletion of natural resources have also raised awareness of sustainability to challenge the conventional pathway of development (Golusin et al., 2009). Particularly, during the environmental versus development debate in the 1980s, the concept of sustainability became an important norm applicable to many environmental instruments (Lafferty, et al., 2000). This continued until the 1990s when sustainability ceased to be viewed only as a precondition for environmental protection but also as an important component of any economic activity. Since then, sustainability has become a parameter of evaluation in all areas of life and activities and has been given a new dimension as an obligation to manage all natural resources with an ethic of conservation in order to maintain the optimal functioning and productivity of our common environment (Strydom, et al., 2009). This obligation has widely emerged in various international environmental instruments (Cordonier Segger et al., 2016). Despite its expansion, sustainability has been a running track. Partly because defining and establishing criteria to quantify sustainability effectively poses significant challenges. As a result, sustainability is viewed as a shorthand for sustainable development (Blackburn, 2012). Therefore, sustainability is defined differently, whether as a warm or a comforting concept. On its part, the business sector views sustainability as merely about reporting and getting the right message in the right form to the right people who will pass judgment (Blackburn, 2012). Sustainability is not a term of stagnation but a term of progress towards a better life. It suggests an evolving process that restores the balance needed for long-term organisational and societal well-being. It aims at producing long-term global well-being through the wise use and management of economic and natural resources, and through respect for people and other living things. Sustainability is a concept describing humankind's ability to create a world for humans and non-humans that environmentally, socially, and economically provides for a current population's needs without damaging the ability of future generations to take care of themselves (Loew et al., 2004). The definition of sustainability proposed here encompasses the version put forth by the U.N. Brundtland Commission and is consistent with several other noteworthy definitions that have been put forth in many environmental instruments. For example, Heals (2000) defines sustainability as "doing things that we can safely continue indefinitely: doing things that can be continued over long periods without unacceptable consequences or without unacceptable risks of unacceptable consequences". This definition may not stand the test of social and economic needs, which is an

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integral part of the requirements for sustainability in various areas because it is more focused on the environmental aspect of sustainability (Gasparatos et al., 2012). Sustainability as we have seen, originated from a concern about the balance between the environment and economics. Sustainability is indeed broader (Stemmet, 2017; Ruppel, 2026) and based on socioeconomic, environmental, institutional, and human rights' net benefits (Hill et al., 2006). Accordingly, the most accepted today is the definition provided by the World Commission on Environment and Development Report (the Brundtland Commission Report, 1987) which defines sustainable development as the 'development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs'. Although defined and interpreted in different ways, the norms governing sustainable development involve a comprehensive and integrated approach to economic, social, and environmental processes, which express the need to ensure the sustainable use of natural resources and the protection of the environment on which nature and human life, as well as social and economic development, depend. As such, sustainability has been viewed as a unifying and useful agenda for the twenty-first century and has ignited various international law principles intended to measure sustainability. Some of these principles are established in the Brundtland Commission's report, Agenda 21, the Rio Declaration, the Johannesburg Plan of Implementation, the Commission on Sustainable Development (CSD) Decisions, the United Nations Framework Convention on Climate Change and its Kyoto Protocol, and recently the Paris Agreement. While efforts to legitimate sustainability in international and national legal instruments persist, its practice has not yet become a fundamental tool for public and private decision-makers (Scholtz, 2016). Sustainability as a norm or duty has widely emerged in various international and national legal instruments of environmental, economic, and social character and received judicial acceptance both at international and national levels as a global objective (Cordonier Segger et al., 2016). For instance, the United Nations Framework Convention on Climate Change (UNFCCC,1992) requires sustainable use of natural resources, "whereby states have sovereign rights over their natural resources, and a corresponding duty not to cause (or allow) undue damage to the environment of other states in the use of these resources". The Biodiversity Convention recognises the role and importance of terrestrial and marine ecosystems and requires sustainable use of these genetic resources. Like its predecessors, the Paris Agreement has strong sets of implied references to sustainability. The agreement set no binding commitments for state parties but rather gave promises to hold increases in global temperatures and increase adaptation to climate impacts. It welcomes the United Nations General Assembly Resolution A/RES/70/1 on global Sustainable Development Goals and acknowledges that when taking actions on climate change, states must respect, promote, and consider their human rights obligations and recognize the importance of taking national sustainable development priorities into account. The Paris Agreement recognizes sustainable development principles as a global objective for climate change adaptation and mitigation. Principles such as intergenerational equity, and integration, and the interrelationship of human rights and social and economic are highlighted.

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The principle of sustainable development and its legal elements have also received judicial pronouncement (Sands, 1999).[1] The WTO Appellate Body in the Shrimp –Turtle case, notes that the rules of the WTO explicitly recognise the "objective of sustainable development… It has been generally accepted as integrating economic and social development and environmental protection".[2] Despite the wide use of the sustainable development principle, the meaning and definition of its governing norm of sustainability in all cases remain unclear. Consequently, sustainability is understood in many ways, whether as a term, a concept, a philosophy, an attitude, a request, or a need (Golusin et al., 2013). Despite these challenges, the concept has emerged because of the growing need to define activities and events that are acceptable in terms of the opportunities they offer to meet the needs of present and future generations.

Against this background, this paper assesses how sustainability is used in contemporary environmental law, and whether it effectively protects the environment and promotes sustainable development. The paper identifies a range of different uses of sustainability as a governing norm and discusses their relative strengths and weaknesses, as well as their potential for shaping environmental policies. One is the legal elements recurring in many international instruments. These include the commitment to preserve natural resources for the benefit of future generations; the use of appropriate, sustainable, prudent, or rational standards, for the exploitation of natural resources; the equitable use of natural resources between states and between generations, and the need for environmental consideration to be integrated into economic and other development plans, projects and programmes. These four elements are interdependent and have been translated into principles of international law. For instance, the requirement that present generations should hold the natural resources in trust for future generations is a very well-established principle of international law underlining the principle of intra and intergenerational equity (Brown Weiss,1990). Sustainability also underlines the need for sustainable use of natural resources. In this context, the sustainability approach requires the adoption of appropriate, genuine, or rational standards governing the proportion of exploitation of specific natural resources. In support of this case, the paper offers two overlapping arguments which make such a conclusion foreseeable. Firstly, the paper argues that the normative character of sustainability generates rights and obligations that are enshrined in binding international treaties forming part of international law and policy in the field of sustainable development. Secondly, because of its firm acceptance and its normative character as a norm governing sustainable development provides the legal basis for the effective protection of the environment and the promotion of sustainable development.

Methods

A doctrinal research method of data collection, also known as the desktop or non-empirical research method, is used to study normative materials and to enable the clarification of the meaning and significance of the concept of sustainability as a norm governing sustainable development. The method relies more on the analysis of ordering and arranging legal

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instruments, case laws, and legal studies through rational deduction or legal perception. Thus, the research applies a qualitative methodology of research to assess primary and secondary sources including judicial precedents, journal articles, and international environmental law instruments, such as the Brundtland Commission's report, Agenda 21, the Rio Declaration, the Johannesburg Plan of Implementation, the Commission on Sustainable Development (CSD) Decisions, the United Nations Framework Convention on Climate Change and its Kyoto Protocol, the Paris Agreement, the Biodiversity Convention and the African Nature Convention. The use of the concept of sustainability in contemporary environmental laws was examined and the assessment of whether it serves as an effective tool for protecting the environment and promoting sustainable development was done. The assessment of these instruments provided the basis for conceptualising the normative character and the international pronouncement which determines the effectiveness of sustainability as a tool for protecting the environment and promoting sustainable development.

Findings/Results

Sustainability as a governing norm of sustainable development

Sustainability is understood differently as a norm, duty, concept, and right that describes humankind's ability to sustain a world for humans and the nature that environmentally, socially, and economically provides for a current population's needs without damaging the ability of future generations to take care of themselves. Sustainability as a norm governing sustainable development is also considered as an evolving dynamic system that is embedded in a multifaceted interaction between social, economic, and environmental systems. It also reflects a complete system that manages and absorbs challenges without weakening its functionality. Looking down over the past quarter-century, it is evident that a shift to a more comprehensive conception of sustainability has barely been adopted. An important indication in support is the interpretation of the concept of sustainability as a norm. Sustainability is referred to as 'strict or strong sustainability and weak sustainability'. The former aims to ensure the preservation of every natural capital and not to be substituted by manufactured capital (Dietz et al., 2007). In other words, strict sustainability emphasises the conservation and protection of natural capital and translates the need for equity in the use of natural resources between current and future generations. By contrast, 'weak sustainability' perceives sustainability as equivalent to a non-decreasing overall capital store. It allows the substitution of any loss caused by human activities for natural capital (Morrissey et al., 2012). Thus, 'weak sustainability' implies that money can substitute for the loss of natural capital (Tladi, 2003). This classification, even not yet recognised under international law, is perhaps coined because of the lack of an operational, and generally agreed-on definition of sustainable development (Munasinghe et al.,1995). Sustainability has expanded into several principles of international law which generate rights and obligations forming part of international law in the field of sustainable development.

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Discussion

Sustainability and Principles of International Law on Sustainable Development

Several legal principles are central to the discussion of sustainability at the international level. On its part, the Committee on Legal Aspects of Sustainable Development of the International Law Association (ILA) analyses the obligation for sustainable use of natural resources as an important element of the evolving international law of sustainable development because of its firm status in treaty laws and its frequent application in decisions of international courts and tribunals.[3] It analyses how international law can support the sustainable use and stewardship of natural resources, while also contributing to an adequate living standard and the realisation of human rights for all.[4] While Schrijver (2008) recognises that sustainable development principles are non-exhaustive and are increasingly recognised by States and other actors in international law. Segger (2016) noted that there are seven principles of international law on sustainable development that have been discerned over a decade and are increasingly reflected in the decisions of international courts and tribunals on sustainable development. They include the principle of inter and intra-generational equity and the eradication of poverty; the precautionary approach to human health, natural resources, and ecosystems; the principle of integration and interrelationship of human rights and social, economic, and environmental objectives or the principle of sustainable development holding that States must take into account the environmental and social (including human rights) aspects of economic plans and projects (Cordonier Segger et al.,2004). Sustainability as a norm governing sustainable development expresses the need or commitment for equity and equitable use of natural resources. The present generation should hold the natural resources in trust for future generations. This is a very well-established principle of international law underlining the principle of intra and intergenerational equity. This principle has been widely used in international environmental instruments. For instance, principle 3 of the Rio Declaration establishes the "right of development" as a means of "equitably" meeting the developmental and environmental needs of future generations. Likewise, the 1992 United Nations Framework on Climate Change and Biodiversity Convention includes provisions on equity. The UNFCCC particularly requires parties to be guided on "the basis of equity" in their actions to achieve their objectives.[5] Likewise, the Biodiversity Convention objectives include the "fair and equitable" sharing of the benefits arising out of the use of genetic resources.[6] Equity has since then acquired a place in international law. It has been referred to as the "equitable principle" in the UN Law of the Sea Convention. It has been elaborated on in many court decisions, including the International Court of Justice jurisprudence.[7] The equity principle has two major components for the attainment of sustainable development. One is the concept of inter-generational equity, which ensures the rights of future generations to enjoy a fair level of the common human heritage (natural resources), and intra-generational equity, which refers to the rights of all people within the current generation to enjoy fair access to natural resources. Both elements emphasis the "benefits", which include

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economic, environmental, and social benefits. Obviously, the attainment of socio-economic and environmental benefits for everyone requires cooperation for the eradication of poverty in accordance with Chapter IX of the United Nations Charter on International Economic and Social Co-operation and the Rio Declaration on Environment and Development. These instruments require cooperation for global sustainable development and the attainment of equity in the development opportunities between developed and developing countries. Sustainability also expresses the need for equitable use of natural resources (Handl, 1978). After the decade-and-a-half lifespan of the MDGs, the international community under the umbrella of the UN set new targets, the Sustainable Development Goals (SDGs), designed to achieve sustainable development and to continue with the theme of inter-generational equity first conceived over 30 years ago.[8] The nexus between sustainability and intergenerational equity is also strong. The 1992 Rio Declaration on the Environment and Development states: "[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations." The Committee on the Rights of the Child (CRC) has committed to consistently link its Concluding Observations on State Party reports on environmental issues to the SDGs and State commitments under the United Nations Framework Convention on Climate Change (UNFCCC). [9] It has also undertaken to: 'clarify the extent of states' obligations relating to climate change and children's rights, including with regard to mitigation, adaptation, and the rights of children… taking into account the explicit reference to children's rights and intergenerational equity…'[10] While efforts to legitimate sustainability in international and national legal instruments persist, its practice has not yet become a fundamental tool for public and private decision-makers. Sustainability depicts a vision of sustainable use of (natural) resources and the protection of the environment on which nature and human lives depend. In this context, contemporary discourse on sustainability views the concept as a unifying and useful agenda of the twenty-first century. Sustainability expresses the commitment to integrate environmental considerations into economic and development activities. Sustainability is therefore measured by the degree to which economic development takes into account ecological and social impacts. Yet, it is difficult to strike a balance between environmental, social, and economic objectives within the parameters of any activity, but on the other hand, prioritizing one aspect of sustainability is not an option. Prioritising one aspect over the other is like asking, "Which is more important to human life: air, water, or food?" (Blackburn, 2012). Blackburn's argument is supported by Hawken (2007), who believes that we are not separated from nature and that all systems are connected, especially, humans are strongly connected with nature, and without exception, living systems are failing. This approach to sustainability is perhaps most relevant for renewable energy, particularly the development of biofuel energy. It requires the integration of appropriate environmental measures when developing and implementing biofuel activities or programmes. The need to integrate environmental measures in economic activities, such as biofuel production, has also been expressed and emphasised by the Arbitration Tribunal in the Iron Rhine case as an international

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law principle.[11] The integration approach also implies the conducting of an environmental, social, and economic impact assessment of the activity and requires a report indicating the sustainability of such an activity (Elbehri et al., 2013). Such a report must also provide recommendations on how to avoid, minimize, and mitigate potential impacts. This is to allow project leaders to decide on the rationality of measures to be taken or to be adopted. It may also assist in redirecting the commitments and tracking their progress in the interest of relevant stakeholders, such as the affected communities. In the context of biofuel development, the integration approach will likely allow the establishment of green conditions in biofuel activities. A clear picture of what sustainable use of natural resources means is found in the 1968 African Nature Convention, which provides that the utilisation of all natural resources "must aim at satisfying the needs of man according to the carrying capacity of the environment".[12] Thus, the use of the concept of "sustainability" is closely related to the aim of conservatory measures and programmes as required under the principle of sustainable development. Thus, the term conservation itself is an element of sustainability.[13] The requirement for sustainable use of natural resources plays a vital role in the adaptation of climate change through sustainable management of forests as a key natural resource and carbon sink. Parties to the Paris Agreement are required to mitigate atmospheric and carbon resources in a sustainable manner and are encouraged to adopt *inter alia* 'positive incentives for activities relating to reducing emissions from deforestation and forest degradation, take actions for the conservation and sustainable management of forests and alternative policy approaches, such as joint mitigation and adaptation approaches for the integral and sustainable management of forests. Other recurring legal elements for sustainability or the requirement of sustainable use of natural resources include the commitment to use appropriate, sustainable, prudent, or rational standards, for the exploitation of natural resources; and the need for environmental consideration to be integrated into economic and other development plans, projects and programmes (Philippe Sands et al., 2012). The requirement to use prudent, appropriate, and sustainable or rational standards for the exploitation of natural resources is a very well-established precautionary principle under international environmental law. Sustainability as a norm requires a precautionary approach to human health, natural resources, and ecosystems. This principle is announced in the preamble of the Paris Agreement, paragraph 4 and article 4(1) on the urgent 'threat' of climate change, the need to strengthen the global response to the 'threat' of climate change, and to significantly reduce the risks of climate change. The Paris Agreement and the UNFCCC itself are founded on the precautionary principle. To stabilize GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system and allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed sustainably, mitigation and adaptation actions must be taken, even not in the event of scientific uncertainty, to identify the exact contours of the challenges. As asserted in several places in the Paris Agreement, including Articles 7 (1) and 7 (7c) on adaptation and Article 14(1)

on the global stocktake, with specific reference to the work of the IPCC, actions on climate change should be guided by the best available scientific knowledge. However, because scientific knowledge may evolve and render knowledge uncertain, precautionary approaches need to be adapted to new realities. In this context, the precautionary principle precludes parties from relying on scientific evidence only to predict absolutely when, why, and how to conserve biological diversity.[14] In the absence of reliable evidence, parties are required to consider any information available to them for the identification, conservation, and prevention of climate change impacts. Moreover, where reasonable evidence exists, parties are required to take immediate and appropriate action, including promoting and encouraging an understanding of the importance of biological diversity and the protection of the ecosystem. Article 12 of the Paris Agreement is more explicit on how parties should take appropriate measures. It provides for the need to develop research and training. It urges parties to 'establish and maintain programmes for scientific and technical education and training, to promote and encourage research which contributes to the conservation and sustainable use of biological diversity, and to cooperate in developing methods for conservation and sustainable use of biological resources'. Unlike many other principles, the precautionary principle has been incorporated into many regional policies to ensure the environmental sustainability of project development. For instance, the European Union Directive on Renewable Energy (UN-RED, 2009) urges the European Commission to report on the requirements for the sustainability of schemes. It requires "reports and any proposals contained therein shall be based on the best available scientific evidence, considering new developments in innovative processes."[15] Sustainability as a norm also requires the integration of environmental, human rights, and social considerations into economic programmes. The principle of integration of environmental, social, and human rights considerations into economic programmes is very important, particularly when considering the far-reaching nature of climate change's impacts on environmental, social, and economic sectors, as well as the need for a timely and effective response to prevent detrimental impacts. Article 7 (9 e), which also highlights the resilience of socioeconomic and ecological systems, underlines the need for adaptation measures to integrate all three objectives, namely environmental, economic, and social. Parties must ensure that climate change actions are economically viable and that respect for human rights is guaranteed.[16] The principle of integration is also a safeguard to food security, promotion and protection of human rights, gender equality, and indigenous rights. This was also affirmed by the International Law Association Washington Resolution on Climate Change in 2014, which attested that states have an obligation of due diligence when developing social and economic plans to mitigate climate change impacts that may result in significant emissions of greenhouse gases.[17] Accordingly, it is suggested that states must take into account the 'economic development and available resources, scientific knowledge, the risks involved in an action, and the vulnerability of affected states.

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Sustainability and the protection of the environment and promotion of sustainable development

There are increasingly intense debates around the legal aspects of many principles related to sustainable development. One is the question of what the specific legal obligations of states and other stakeholders are. The other core question is that of the legal sources of such obligations as well as their legal status under international law, which may generate obligations for which the violation may incur the state's international responsibility arising from the breach of an international obligation and call for the duty to make reparation. The latter is based on the fact that many of the principles central to the discussion of sustainable development, in some cases, are not yet and may not be recognized as binding rules of customary international law or general principles of international law for which the violation may incur international responsibility of the state. This is not to say that the use of the principle of sustainable development is meaningless. Rather, they will be much more effective if substantive obligations are sufficiently clear. For example, the precautionary principle is not accepted by all as a customary international law principle (Schrijver, 2009). The EU considers that the principle is already a customary rule of international law or at least a general principle of law (Wirth DA, 1998), and such assumptions are supported by EU institutions,[18] including the European Court of Human Rights, where several judges in a dissenting opinion criticised the majority decision because it 'ignored the whole trend of international institutions and public international law towards protecting persons and heritage, as evident in …. the development of the precautionary principle'.[19] The US by contrast is still more restrained in its approach, arguing that the principle is not yet established in customary international law.[20] Interestingly, the Arbitration Tribunal on the Iron Rhine Railway case between Belgium and the Netherlands gave a clear meaning of the precautionary principle. The tribunal concluded that in cases where economic development causes serious damage to the environment, there is an obligation to stop, prevent, or at least minimise such damage. The tribunal further recognises that such an obligation to adopt precautionary measures has become a general principle of international law.[21] Likewise, despite the wide use of the sustainable development principle, its meaning and definition in all cases remain unclear (Scholtz, 2016). Particularly, it is difficult to strike a balance between environmental, social, and economic objectives within the parameters of any activity. Prioritising one aspect of sustainable development over another one has not been an option. It is like asking, 'Which is more important to human life: air, water, or food?' (Blackburn, 2007). Sustainability is understood differently thus, the challenge is to enforce it when the legal obligations of the player are up in the clouds. To understand the concern about the effectiveness of the legal element of sustainability and whether it promotes sustainable development. The analysis must be centered on the legal evolution of an international norm or how certain norms achieve the status of jus cogens (Bassiouni, 2001). Debates on the legal evolution of an international norm continue to devolve scholars as they are based on philosophical and methodological views that look at the sources, the content, the evidentiary elements, and the value-oriented goals of

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international norms. Doctrinal views assume that certain norms affect the interests of the world community as a whole and threaten the peace and security of humankind, shocking the conscience of humanity, are part of jus cogens norms. This means that an international norm, which has or creates a positive capacity or is universally accepted and aimed at the preservation of fundamental human rights, can be considered as arising at the level of a jus cogens norm. Such views are said to lack a scholarly accepted agreement as several factors have drawn legal attention. They include the lack of methods by which to ascertain the existence of a peremptory norm or to assess its significance and to determine its elements as well as a norm priority over other competing or conflicting norms or principles of international law (Ian, 1979). A scholarly agreement must determine not only the principles of the legal evolution of a legal norm but also perhaps determine the implications and consequences of its application. However, despite the legal uncertainty, these views may support or be used to determine the effectiveness of sustainability as a norm governing sustainable development. This is because certain international norms, including those related to the precautionary principle, are already part of customary law and these raise no debate because sufficient legal basis exists to ascertain that they affect the interests of the world community as a whole or create a positive capacity or are universally accepted and aimed at the preservation of fundamental human rights. Thus, the international recognition or pronouncement on the need for sustainability and sustainable development supports the views on the legal evolution of the norm governing sustainable development. This includes the acknowledgment of various international and regional court decisions as well as international treaties. These treaties have been ratified by many, if not all, states, which justifies their international recognition. As far as the question of the legal status of the principles central to the discussion of sustainable development is concerned, their normative character has generated obligations and rights for state parties.[22] They are increasingly recognized as principles and made operational in binding international treaties and confirmed in the decisions of international and national courts as a global objective, [23] thus forming part of international law and policy in the field of sustainable development.[24] Their normative character in international law has generated rights and obligations such as the obligation to act or not to act, for member states (Cordonier Segger et al., 2004). Likewise, these principles play a significant role in the interpretation and application of international law and guide the development of laws and policies toward social, environmental, and economic objectives (Philippe Sands, 2000). Such assumptions imply that principles of sustainable development generate international legal obligations, for which states may be liable or engaged in their international responsibility for the breach of an international obligation. Thus, because of the international pronouncement supporting such views, the norm governing sustainable development principles set out a solid footing for the definition of legal obligations of states for environmental responsibilities and can serve a useful purpose in claiming reparation under international law.

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Conclusion

Sustainability as a norm governing sustainable development is viewed as a unified objective of the twenty-first century. The paper has assessed how sustainability is used in contemporary environmental law, and whether it serves as an effective tool for protecting the environment and promoting sustainable development. The paper has identified a range of different uses of sustainability as a governing norm and discussed their relative strengths and weaknesses, as well as their potential for shaping environmental policies. The paper's findings suggest that sustainability as a governing norm for sustainable development has been fairly successful in providing a clear and consistent vision of sustainable development, although its actual implementation has been inconsistent. This paper recognises the lack of recognition of some of these principles or the fact that many are not yet and, in some cases, may not be recognized as binding rules of customary international law. However, the paper argues that their normative character generates rights and obligations that are enshrined in binding international treaties forming part of international law and policy in the field of sustainable development. Thus, because of the firm acceptance and the normative character, sustainability as a norm governing sustainable development provides the legal basis for the effective protection of the environment and the promotion of sustainable development. If such an interpretation is accepted by all, it may contribute to the creation of an internationally agreed foundation on which this discourse is grounded. Alternatively, it is suggested that whenever doubts arise about the legal status of these principles, each be examined and determined separately as to whether it comprises one or more of the elements to qualify as an international principle for which the violation may incur state international responsibilities. Likewise, a doctrinal determination is always preferable in determining how and when, in the historical legal evolution of a given norm, it can be said to achieve the status of an international norm.

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Notes

[1] Case concerning *Gabcikovo –Nagymaros Project (Hungary v. Slovakia)* 1997 ICJ Reports 78 at par 140.

[2] Case concerning the Import Prohibition of Shrimp and Shrimp Products (United States) 1999 WTO Doc.WTDS58/AB/R Appellate Body at par 129.

[3] International Law Association "Sustainable Natural Resource Management for Development" (2016) Final Draft First Report of the Committee on the Role of International Law in Sustainable Natural Resource Management for Development. Available at http://www.ila-hq.org/en/committees/index.cfm/cid/1044 (accessed 08-08-2016).

[4] International Law Association "2002 New Delhi Declaration on Principles of International Law Related to Sustainable Development" (2002) International Law Association London.available at http://www.ila-hq.org/en/committees/index.cfm/cid/1044 (accessed 08-08-2016).

[5] Article 3(1) and 4(2, a) of the 1992 United Nations Framework on Climate Change Convention.

[6] Article 1 and 15 (7) of the 1992 Biodiversity Convention

[7] Case Concerning the North Sea Continental Shelf (*Tunisia v. Libya*) 1982 ICJ Reports at par 60.

[8] The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future.' See UN 'Sustainable Development Goals' accessed at https://sustainabledevelopment.un.org/sdgs2

[9] Center for International Environmental Law & The Global Initiative for Economic, Social and Cultural Rights 'States' Obligations under the Convention on the Rights of the Child, in the Context of Climate Change' at pg 2 accessed at http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report-CRC.pdf

[10] OHCHR 'Committee on the Rights of the Child Day of General Discussion: "Children's Rights and the Environment"' 23 September 2016 at para 2 accessed at https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx

[11] Case Concerning the Iron Rhine Awards (Belgium v. Netherlands) 2005 Permanent Court of Arbitration (PCA) at para 59 -243.

[12] Article 1(h) of the African Convention on the Conservation of Nature and Natural Resources (Revised in 2003) available at www.au.int (accessed 12 02 2015).

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[13] Legal Experts Group of World Commission on Environmental and Development (1986) WCED Legal Principles, para. (i).

[14] Article 2 of the CBD

[15] Article 17 (9) of the 2009 EU-RED

[16] Paragraph 7 of the Preamble of the Adoption Decision and paragraph 11 of the Paris Agreement Preamble

[17] Resolution 2/2014 Declaration of Legal Principles Relating to Climate Change Committee on Legal Principles Relating to Climate Change, International Law Association 76th Conference, Washington D.C., USA 7-11 April 2014. See http://Www.Ila-Hq.Org/En/Committees/Index.Cfm/Cid/1029. (accessed on 22-06-2017).

[18] The European Court of Human Rights rejected the applicant's (Balmer- Schafroth) claim that Switzerland failed to provide an administrative review of the decision extending the operation of a nuclear facility and that such failure violated article 6 of the EU Convention on Human Rights. The court ruled that the applicant failed to "establish a link between the operating conditions of the power station…., in the absence of such findings, the effects on the population of the measures which the Federal Council could have ordered to be taken in the case therefore remained hypothetical…." Case concerning the administrative review of the decision to extend the operation of nuclear facility (*Balmer – Schafroth v. Switzerland*) 1987 ECHR Reports IV Paragraph 40.

18 Desisting opinions of Judge Pettiti supported by Judge Golcukul, Walsh, Russo, Valticos, Lopes Rocha and Jambrek. Ibid.

[19] Desisting opinions of Judge Pettiti supported by Judge Golcukul, Walsh, Russo, Valticos, Lopes Rocha and Jambrek. Ibid.

[20] The principle does not constitute an international tort for which there is universal consensus in the international community as to its binding status and content. Case concerning the status of the precautionary principle (*Beanal v. Freeport- McMoran)* 1977 US District Court for Eastern District of Louisiana at 362 -969.

[21] Case concerning the arbitration on the Iron Rhine railway (the Kingdom of the Netherlands v the Kingdom of Belgium) 2005 Arbitration Court Hague at Par 59-84 and 222.

[22] Case Concerning Military and Paramilitary Activities (Nicaragua v. United Nation) 1986 ICJ Rep14 par 99-101.

[23] Case concerning *Gabcikovo –Nagymaros Project (Hungary v. Slovakia)* 1997 ICJ Reports 78 at par 140; See also Sands P "International Courts and the Application of the Concept of 'Sustainable Development'" Vol. 3 *Yearbook of UN Law* (1999) at 389.

[24] Declaration on Establishment of the Artic Council, 35 ILM 1382 (1996); Yaoundé Declaration on the Conservation and Sustainable Management of Forests, 38 ILM 783 (1999); Agreement on Co-operation for the Sustainable Development of Mekong River Basin, 34 ILM 864 (1995); and Revised Protocol on Shared Watercourses in the Southern African Development Community, 40 ILM (2001).