# Reimagining sustainable development: from an elusive concept to an integrative legal framework

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Inaugural lecture by

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*Mevrouw de rector magnificus, geachte voorzitter van het College van Bestuur, geacht faculteitsbestuur, uwe excellenties, zeer gewaardeerde collega's en toehoorders,*

**Introduction**

"Humanity is waging war on nature [and] [t]his is suicidal", UN Secretary-General Antonio Guterres warned the world in a speech.[1] He was referring to the triple environmental emergency that threatens current and future life on Earth – that of climate change, depletion of biological diversity[2] and pollution. Although the 'war' metaphor may not accurately depict reality – after all, waging a war on nature implies that nature is considered the enemy of humanity -, this should not divert our attention away from the important message that Guterres intended to convey, namely that we are slowly destroying the very basis that sustains life on Earth. The environmental emergency that we face today is indeed primarily caused by human activities: emissions of large quantities of greenhouse gases into the air, deforestation, overfishing, dumping of plastics and toxic materials into the environment, and so the list goes on and on.

In fact, human impact on nature has only increased since environmental concerns were placed on the global agenda fifty years ago. Let me illustrate this. Each year scientists calculate the date when humanity's demand for natural resources, such as water, food and energy, exceeds the planet's capacity to regenerate these within that same year. This is called 'Earth overshoot day'. In 1971, the first year in the database, Earth overshoot day was reached on 25 December. In contrast, in 2023, it was already reached on 2 August.[3] This means that humanity currently needs 1.7 Earths to satisfy its needs, compared to approximately 1 Earth in 1971.[4]

While these numbers already clearly demonstrate that humanity's lifestyle is not even remotely sustainable, the picture becomes even more distressing when zooming in on the country-level. When comparing individual contributions across countries, one can observe important differences in natural resources use. For instance, if everyone would live like an inhabitant of Qatar, we would need 9 Earths, for inhabitants of the US 5 and for the Netherlands 3.6. In contrast, an inhabitant of India only needs 0.8 Earths and an inhabitant of Angola or the DR Congo only 0.5 Earths.[5] If one adds to this the observation that almost 700 million people globally are still living in extreme poverty and therefore use little of the Earth's natural resources,[6] the full scale of the environmental emergency and the challenges ahead become clear.

The principal challenge that we are facing today is therefore as follows: how do we reduce our ecological deficit globally, while ensuring that every person on Earth has an adequate standard of living? Or, for those of you more familiar with UN language: How do we ensure that humankind lives in harmony with nature, while at the same time leaving no-one behind?[7]



As you may guess, I do not have a solution readily available. If I had, I would most likely be eligible for a Nobel Prize. Nonetheless, in this lecture, which is my inaugural address, I aim to set out my take on how this newly established Chair on International Sustainable Development Law can contribute to addressing this complex challenge. For this purpose, I will first discuss the main premises on which sustainable development is based. I will subsequently zoom in on how sustainable development has been discredited in academic literature over the course of the past decade due to implementation failures. The third and final part of my inaugural address will focus on ways forward.

**Part I: Definition and origins of sustainable development**

Sustainable development, as a concept, is premised on the idea that every generation inherits the Earth from its ancestors and holds it in trust for its descendants.[8] At its core, sustainable development seeks to balance the interests

of people living today to benefit from the natural resources base that has been left behind by past generations on the one hand and to leave behind for future generations a healthy planet which they can use for their development on the other. Sustainable development therefore has two central objectives. The first connects to the responsibility for every generation to provide access to all members of their generation to the legacy of the past generations, which may be referred to as intra-generational equity. The second objective of sustainable development connects to the responsibility for every generation to conserve the options of future generations to use the natural wealth and resources for their needs and aspirations, also referred to as inter-generational equity. It must do so by safeguarding the diversity of the natural resources base, to conserve the quality of the planet and to conserve access to the legacy of past generations.[9]



These two objectives have been elegantly brought together in the famous definition of sustainable development that was proposed in 1987 by the UN mandated World Commission on Environment and Development (also known as the Brundtland commission) in its report *Our Common Future*. The commission defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[10]

This definition sought to respond to the very different concerns of developed and developing countries, as already articulated in a range of other political and legal instruments adopted during the 1970s and 1980s.[11] Developed countries, on the one hand, were concerned about environmental degradation caused by industrialization, including deforestation and high levels of pollution of the air, water and soil. Developing countries, on the other hand, were primarily concerned about underdevelopment and considered the lack of available options as a major cause of environmental degradation in their countries. Both concerns were explicitly recognized in *Our Common Future*. In a chapter entitled 'A Threatened Future', the Commission on Environment and Development explains that the "failures we need to correct arise both from poverty and from the short-sighted way in which we have often pursued prosperity."[12] The solutions to these problems were to be found in radically different trajectories: changing production and consumption patterns in developed States and poverty eradication in developing States.

Notwithstanding the differences in positions between developed and developing countries in terms of the causes of environmental degradation and the solutions, they could find each other in the common belief that environmental and developmental concerns are interdependent and that environmental problems can only be effectively addressed when fully integrated in development trajectories. Sustainable development is the mechanism to achieve this integration between two potentially competing priorities. As the Commission on Environment and Development argued, integration of developmental and environmental considerations in decision-making is "the common theme throughout this strategy for sustainable development".[13] The importance of integration for sustainable development has since been confirmed in numerous legal and political instruments and judicial decisions that consolidated and operationalized the concept of sustainable development over time.

On a programmatic level, the outcome documents of major political summits on sustainable development have played an essential role in consolidating integration as a key principle of sustainable development. For instance, Principle 4 of the 1992 Rio Declaration on Environment and Development, the first high-level political declaration explicitly embracing the concept of sustainable development, stated that "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."[14] Twenty years later, the Johannesburg Declaration on Sustainable Development designated economic development, social development and

environmental protection as the three "pillars" of sustainable development,[15] evoking the idea of mutual interdependence. Likewise, the 2030 Agenda for Sustainable Development, which formulates the Sustainable Development Goals, is presented as "a plan of action for people, planet and prosperity",[16] with references throughout the document to the interdependence of these three dimensions and the need to adopt an integrated and balanced approach to achieve sustainable development.[17]

Judicial decisions have played an equally important role in consolidating integrated decision-making. Mention can be made first and foremost of the case law of the International Court of Justice, the 'World Court'. Already in 1997, in a dispute between Hungary and Slovakia concerning the construction of a hydro-electric dam in the Danube river, the court emphasized "the need to reconcile economic development with protection of the environment [as] aptly expressed in the concept of sustainable development".[18] Consequently, the parties were instructed to "look afresh at the effects on the environment of the operation of the […] power plant".[19] In its subsequent case law, the Court insisted on the need to conduct Environmental Impact Assessments for projects that are likely to pose significant risks to the environment. The Court considered undertaking such assessments "a requirement under general international law".[20] An arbitral tribunal under the auspices of the Permanent Court of Arbitration likewise emphasized the importance of integrated decision-making in a dispute between Belgium and The Netherlands regarding the Iron Rhine railway. In its award, the arbitral tribunal stated that "Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm".[21]

In sum, sustainable development therefore emerged as a mechanism to reconcile the concerns of developed and developing countries relating to environmental degradation on the one hand and poverty on the other. It seeks to bring environmental and developmental concerns together in decision-making, whether at the national, regional or global level, so as to avoid that development projects degrade the environment or that environmental conservation projects impair livelihood opportunities. Furthermore, sustainable development is intrinsically connected with notions of fairness and inclusiveness, as expressed through the principles of intra- and inter-generational equity.

**Part II: Critiques: sustainable development as an elusive concept**

Sustainable development has evolved into an authoritative and powerful normative concept, which has gained considerable currency in law and policy. Today, most international environmental treaties adopt a sustainable development approach, with such an approach also increasingly finding its way into international investment treaties. Likewise, sustainable development is one of the principal objectives of the World Trade Organization and the European Union,[22] while the more action-oriented Sustainable Development Goals have become important policy tools for public and private institutions alike. From a normative perspective, its function has alternatively been described as an interpretative tool or an architectural or organizational principle, with some referring to it as a conceptual or normative framework.[23] Indeed, sustainable development has arguably evolved to such an extent that it can be considered a normative framework, based on a set of principles that support it, including intra- and intergenerational equity, sustainable use and public participation.[24] At the same time, as highlighted in the introduction, we are witnessing an environmental emergency of unprecedented scale, to which countries have not equally contributed and which has only worsened since sustainable development started to gain currency. Likewise, almost 700 million people globally are still living in extreme poverty.

In other words, there appears to be a mismatch between the increasing popularity of sustainable development as a normative concept and its implementation in practice.

This apparent mismatch has led several scholars to raise the question whether sustainable development is fit for purpose as a response to the environmental and social emergencies that we are currently witnessing. They take the position that the implementation failures are a direct consequence of the way sustainable development has taken shape in law and policy. Sustainable development is therefore, in their view, a deeply flawed concept that should be discarded altogether. Let me highlight three main strands of criticism.

A first strand situates the implementation failure in the way sustainable development conceptualizes the human – nature relationship.[25] Authors voicing this criticism often refer to Principle 1 of the Rio Declaration to sustain their argument. This principle proclaims that "[h]uman beings are at the centre of concerns for sustainable development." According to these authors, sustainable development is solely concerned with the interests of human beings and ignores those of other species that inhabit this planet. They find further evidence in the instrumental way sustainable development treats nature, for instance by recognizing a right for States to exploit *their* natural resources. Nature, in other words, is treated as property, to be used for the benefit of human beings. In my view, this critique is valid to the extent that sustainable development is indeed primarily concerned with human beings: it is concerned with ensuring that people today and in the future have an adequate standard of living within planetary boundaries. However, this does not necessarily imply that sustainable development fails to provide space for alternative conceptualizations of the human-nature relationship. In fact, as I will demonstrate in the third part of this lecture, such alternative visions are currently gaining traction within the framework of sustainable development.

A second strand of criticism situates the implementation failure in the way sustainable development approaches 'development'. In the view of authors voicing this criticism, sustainable development policies tend to place an emphasis on economic growth as the primary means to achieve development, taking the development paradigm of the Global North as the benchmark for development globally and without adequately questioning the sustainability of this paradigm.[26] In the words of Ruth Gordon, sustainable development "is deeply flawed for it fails to adequately address the deeper roots of our collective distress: The unsustainability of global North development that is characterized by an ethos and economic system that views the environment as an externality that is to be conquered, and which almost always comes second to economic growth."[27] This criticism points to failures in the design of the global economic order, which I will further address in the third part of this lecture.

Finally, a third strand of criticism situates the implementation failure in sustainable development's three pillar conceptualization. This pillar conceptualization suggests that the economic, social and environmental dimensions are equal, while in reality, economic and social development depend on a healthy environment. In other words, the environmental dimension should be the foundation on which the other two are built.[28] According to authors voicing this criticism, the three-pillar conceptualization also implies that sustainable development fails to strategically prioritize between its economic, social and environmental dimensions. This failure in turn gives rise to diverging interpretations of what is required by sustainable development in a concrete situation and makes it prone to manipulation by decision-makers favouring one dimension – usually the economic dimension - over the other. In other words, sustainable development fails to answer the question of what it means concretely to balance the needs of the present with those of future generations. In the view of Viñuales, sustainable development should therefore be regarded as a "diplomatic trick", one that appeals to everyone

precisely because no-one can disagree with its core, while masking great controversies about the choices that need to be made in practice.[29] In my view, this criticism is valid only if one considers sustainable development as a stand-alone concept. However, in my view, sustainable development is a normative framework, which is by definition open-ended, as it seeks to set out a framework that applies to all States, while – as we have seen – the challenges that States face differ greatly one from the other. This is reflected in the crystallization of the principle of common but differentiated responsibilities and national capabilities as one of the key legal principles underlying sustainable development. This principle recognizes that States must be given sufficient flexibility in setting their priorities based on their circumstances, while stronger environmental protection globally can only be achieved if adequate financial and technological support is provided to countries that do not have the capacities themselves.

In sum, I discussed three strands of criticism that seek to explain the implementation gap by pointing to flaws within the concept of sustainable development. I agree with these criticisms to a certain extent only. It is indeed necessary to reimagine sustainable development to make it better equipped to realize its central objectives: intra- and intergenerational equity. However, I do not see the solution in discarding sustainable development as a framework for integrated decision-making. To the contrary, I argue that the solution must be found within the framework of sustainable development itself. In my view, sustainable development provides a highly dynamic framework that can adapt to changing circumstances and concerns.[30] As such, I feel that it is fit for purpose as a response to the environmental and social emergencies that we are facing today, precisely because it offers a flexible framework that aims to bring economic, environmental and social concerns together.

**Part III: Sustainable development as an integrative legal framework**

This brings me to the third part of this lecture, which addresses the way forward. More specifically, I will set out my perspective on how the current deficiencies in the conceptualization and ultimately the implementation of sustainable development can be addressed within the framework of sustainable development itself. In my view, the key problem lies not in the concept of sustainable development, as I just argued, but rather in the fragmentation of the law relating to sustainable development.

Fragmentation refers to the emergence of specialized regimes within international law governing matters such as 'trade', 'investment', 'environment' or 'human rights' that operate relatively autonomously and which have their own objectives, institutions and legal practices.[31] Although this specialization has many advantages, a major disadvantage is, in the words of the International Law Commission, that "it may occasionally create conflicts between rules and regimes in a way that might undermine their effective implementation".[32] This is what I view as one of the principal reasons explaining the implementation gap of sustainable development. After all, sustainable development can only be achieved through the harmonious implementation of several specialized regimes, the most relevant being international environmental law, international economic law (including both trade and investment law) and international human rights law. In practice however, there are important differences between these specialized regimes. These differences concern their approaches to the two key notions of 'sustainability' and 'development',[33] the normative force of the rules emanating from these and the mechanisms in place to enforce them.

How then do we achieve a harmonious implementation of these specialized regimes? In my view, the solution lies in - what I refer to as - 'normative integration', namely the merging of principles, rules and mechanisms belonging to international

environmental, human rights and economic law within an overarching legal framework called 'international sustainable development law'. Let me expand on this idea, which forms the foundation of this Chair in international sustainable development law.

In order to explain how normative integration works, I would like to focus on a fairly recent development, which serves as a test case for the broader integration that I have in mind. It concerns the gradual merger of relevant norms belonging to international environmental and human rights law into what has been coined as 'environmental human rights law'.[34] This process towards deeper integration between international human rights law and international environmental law consists of three related developments that directly build on the 1972 Stockholm Declaration on the Human Environment and the 1992 Rio Declaration on Environment and Development.[35] I will first discuss these developments and subsequently examine their implications.



The first development concerns the 'greening' of existing human rights in the legal practice of human rights bodies.[36] An early example concerns the European Court of Human Rights' ruling in the *Lopez Ostra v. Spain* case regarding industrial pollution as a violation of the right to respect for private and family life.[37] A more recent example concerns the UN Human Rights Committee ruling in the *Portillo Cáceres v. Paraguay* case, in which the Committee interpreted the right to life as implying an obligation for states to take measures to combat environmental pollution.[38] These measures must be made effective through international environmental law: a number of rulings highlight the role of existing obligations of states under environmental treaties in fulfilling their obligations under human rights treaties. For example, in the *Portillo Cáceres v. Paraguay* case, the Human Rights Committee pointed to the Stockholm Convention on Persistent Organic Pollutants, a treaty that aims to protect human health and the environment from chemicals that remain intact over a long period of time, as a relevant legal framework for Paraguay to meet its human rights obligations.[39]

The second development concerns the inclusion of procedural rights in environmental treaties. Examples include the Economic Commission for Europe's Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, and the Escazu Convention on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean.[40] Besides these specialised conventions, procedural rights can also be found in other environmental treaties. For example, Article 7 of the Nagoya Protocol to the Convention on Biological Diversity stipulates that states must take measures to ensure that "prior and informed consent or approval and involvement" is obtained from indigenous and local communities as a condition for access to their traditional knowledge of genetic resources.[41] Public participation is essential for ensuring that policies take into consideration the needs and interests of affected communities, whether this concerns involvement in decision-making processes regarding economic projects that may negatively affect the environment or environmental projects that may impact their lives and livelihoods. In this sense, the procedural guarantees that international environmental law provides can play an important role in enhancing the protection of human rights.

The third development concerns the emergence of an autonomous right to a healthy environment in international law. First expressed in Principle 1 of the Stockholm Declaration, such a right has subsequently been incorporated into the domestic laws of more than 100 states and into three regional human rights treaties.[42] Recently, the right has also been proclaimed through the adoption of resolutions by the Human Rights Council and the UN General Assembly, paving the way for its global recognition.[43] From a substantive perspective, the right to a healthy environment is markedly different from other human rights, in the sense that it has both

an anthropocentric dimension (protecting the environment in the interest of human beings) and an ecocentric dimension (protecting the environment in the interest of the environment itself).[44] This interpretation is significant, as it broadens the ambit of human rights law to the protection of non-human interests, more specifically, it recognizes that the environment has an intrinsic value that is worthy of protection in and of itself.

Now that I have discussed the developments that mark the emergence of environmental human rights law as a normative framework merging environmental principles and human rights, I would like to highlight four implications that are relevant for understanding what normative integration entails more generally.

The first concerns the enforcement of international environmental law. Where international environmental treaties formulate obligations that apply between States and could therefore only be enforced by States, the integration of international environmental and human rights law broadens the circle of potential enforcers. More specifically, it has provided new avenues for individuals, communities and interest groups to bring environmental claims to court on human rights grounds.[45] The case brought by the foundation *Urgenda* against the Dutch State, and which made it all the way up to the Supreme Court, is likely one of the best-known examples.[46]

Second and somewhat connected to the issue of enforcement is that the merging of relevant norms from both fields of international law also impacts on their implementation. More specifically, norms from one field can be used to implement norms in the other field. For instance, in its 2017 Advisory Opinion, the Inter-American Court on Human Rights considered "the effect of the obligations derived from environmental law on the obligations to respect and to ensure the human rights established in the American Convention." More specifically, it used principles of international environmental law, such as the principle of prevention and the duty to cooperate, to interpret States' obligations under the American Convention.

Third, the deepening of the integration of human rights and environmental law provides space for a reconceptualization of the interests that these fields aim to protect. The emergence of the right to a healthy environment, discussed previously, provides a good example. It provides space for considering alternative visions on the human-nature relationship that take into consideration the interests of nature itself rather than treating it as an object that is only worthy of protection so long as it serves human interests. In this sense, it offers a response to the criticism discussed in the second part of this lecture, which reproaches sustainable development to be inherently anthropocentric, or, in other words, exclusively focused on human interests.

The fourth and final implication that I would like to highlight concerns the question of how the integration impacts on the balancing of social and environmental interests. A relevant example presents itself in the context of the fight against climate change. While positive measures to combat climate change are needed for the protection of human rights, such positive actions can also violate human rights. The Paris Agreement on climate change explicitly recognizes this tension, by stating that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights".[47] To give a practical example, reference can be made to the extraction of lithium, an essential metal for the production of batteries as a clean source of energy, thereby contributing to the fight against climate change. This extraction process is however water-intensive and may therefore threaten local water supplies, thereby infringing on the water rights of local populations.[48] This is just one example where environmental protection measures may clash with the rights of local communities. Another example concerns the

post-2030 framework for the protection of biological diversity, which envisages protection of at least 30 per cent globally of land and sea areas. Such policies must be implemented with due regard for local populations that call these areas their home or who are dependent on them for their livelihoods. Arguably, normative integration ensures that none of these interests are viewed as externalities that can be put aside to achieve the primary purpose of environmental protection. To the contrary, environmental and social interests are to be assessed on equal terms as part of the same normative framework.

In sum, I discussed environmental human rights law as an illustration of a process of normative integration. I demonstrated that environmental human rights law envisages a far-reaching integration between international environmental and human rights law. This integration has implications for the conceptualization, implementation, enforcement of and the interaction between the relevant norms and mechanisms. As such, it provides a relevant test case for the broader process of normative integration that international sustainable development law requires, and which will be an important focus for this Chair in International Sustainable Development Law.



In the following years, I am planning on conducting an in-depth study of processes of integration across the fields of international law that are relevant for sustainable development: how have such processes taken shape and what more is needed to achieve genuine normative integration? As already referred to in the second part of this lecture, major challenges lie in reshaping the global economic order to ensure that it effectively contributes to the social and environmental dimensions of sustainable development. However, although there is a long way to go, there are also encouraging developments.

Let me take the example of international investment law. Currently, important reforms are taking place in this field of law, reflecting the growing recognition that international investment should contribute to sustainable development. For instance, investment agreements increasingly contain sustainable development provisions and chapters that seek to provide host States more space to adopt ambitious environmental and social legislation and which require investors to conduct due diligence to prevent that their projects infringe on human rights or cause environmental pollution.[49]

These reforms are important and illustrate how normative integration is taking shape in the context of investment protection. However, a truly integrative approach would take these reforms a step further. Arguably, international investment law still treats investments primarily as economic transactions, with social or environmental interests being of secondary concern. In other words, international investment law tends to treat environmental and social concerns as externalities, *impacting on* investment but not *being integral to* the objectives of international investment law.[50] A truly integrative approach, in contrast, would internalize sustainable development in the investment regime, for instance by making the protection of the investment contingent on its environmental and social contributions to the host State. Such an approach could be operationalized by including sustainable development directly in the definition of investment adopted by the agreement. An example is provided by a bilateral investment agreement concluded by Morocco and Nigeria in 2016.[51] This agreement, which has not yet entered into force, defines investment as "an enterprise within the territory of one State […] by an investor of the other State in accordance with [the] law of the Party in whose territory the investment is made taken together with the asset of the enterprise which contribute [to the] sustainable development of that Party […]."[52] Article 14 of the Agreement furthermore stipulates an obligation for investors to "comply with environmental assessment screening and assessment processes" either under the law of the host or home state, "whichever is more rigorous in relation to the investment in question" and an obligation to conduct a social impact assessment.

This approach – if adopted more broadly - may have wide-ranging implications for the conceptualization, implementation and enforcement of international investment law. Most importantly, it affects the very objectives of international investment law, which in turn has an impact on the protection provided to investors. More specifically, protection will be made contingent on the contribution of a project to the sustainable development of the host State, as evidenced through environmental and social impact assessments. Although this form of deeper normative integration is still very rare and has not been tested in practice, the Nigerian Moroccan agreement shows that deeper integration is not merely an academic endeavour.

**Conclusion and word of thanks**

Let me first return to where I started: even though the war metaphor chosen by the UN Secretary-General may not adequately depict reality, we are indeed committing suicide if we continue mistreating the environment as we have done over the past century. All hope is however not lost, as the developments that I set out in this lecture offer new pathways to achieve a future in which all living beings on this Earth can live a life in dignity on a planet that is capable of sustaining life supporting functions. In the following years, I intend to build on the ideas that I set out in this lecture, as part of this Chair on international sustainable development law. And, in doing so, I intend to remain faithful to what I consider the essence of sustainable development: intra- and intergenerational equity.

I am grateful to those who have taught me, and I hope that, in turn, I can inspire younger generations of scholars and practitioners to think of innovative solutions to the challenges that we face. A special word of thanks goes to the students I have taught over the past years and who, through their fresh perspectives, have inspired me to think out of the box and to embrace new perspectives.

I would further like to thank everyone who has contributed to my appointment to this Chair. Thank you to the Board of the University, in particular to the Rector Magnificus, and to the present and previous Faculty Board, for their confidence in me. Thank you also to the Academic Director of the Institute of Public Law, Ymre Schuurmans, and to the director of the Grotius Centre, Eric De Brabandere. My gratitude also goes to all past and present colleagues at the Grotius Centre for International Legal Studies. It is an incredible privilege to work with such smart and dedicated people.

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*Ik heb gezegd.*

**Notes**

1 UN Secretary-General (2020) The State of the Planet, Address at Columbia University, available at https://www.un.org/sites/un2.un.org/files/2020/12/sgspeech-the-state-of-planet.pdf.

2 Biological diversity refers to "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems." Convention on Biological Diversity, Rio de Janeiro, 5 May 1992 (entry into force: 29 December 1993), *1760 UNTS 79*, Article 2.

3 https://www.overshootday.org/about-earth-overshoot-day/.

4 https://www.overshootday.org/newsroom/past-earth-overshoot-days/ and https://www.overshootday.org/how-many-earths-or-countries-do-we-need/.

5 Ibid.

6 UN, The Sustainable Development Goals Report 2022 (New York, 2022), at 8 and 9.

7 The notion 'harmony with nature' refers to the United Nations 'Harmony with Nature' agenda. See http://www.harmonywithnatureun.org/chronology/. The notion of 'leaving no-one behind' is one of the central objectives of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals. See *Transforming our world: the 2030 Agenda for Sustainable Development*, UN General Assembly Resolution A/RES/70/1, preamble.

8 Edith Brown Weiss (1989) *In Fairness to Future Generations: International law, Common Patrimony, and Intergenerational Equity* (United Nations University).

9 Ibid.

10 World Commission on Environment and Development, *Our Common Future* (Oxford University Press 1987) at 8. What is somewhat less known is that this famous definition goes back to a report published seven years earlier by the International Union for the Conservation of Nature – with inputs from other environmental organisations. This report, entitled *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, aimed to "help advance the achievement of sustainable development through the conservation of living resources". Although this strategy was conservation-oriented and did not define sustainable development as such, its definition of the term 'conservation' as "the management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations" has undoubtedly inspired the Brundtland Commission's definition of sustainable development. IUCN (ed.) (1980) *World Conservation Strategy: Living Resource Conservation for Sustainable Development*, introduction, para. 4.

11 See Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Martinus Nijhoff 2008); and Shawkat Alam et al., *International Environmental Law and the Global South* (Cambridge University Press 2015).

12 *Our Common Future* 27.

13 *Our Common Future* 62. Here again, the Brundtland report built on the 1980 World Conservation Strategy, which coined sustainable development as a key tool to reconcile economic, social and environmental interests and posited that "The integration of conservation and development is particularly important, because unless patterns of development that also conserve living resources are widely adopted, it will become impossible to meet the needs of today without foreclosing the achievement of tomorrow's." Furthermore, the need to integrate environmental and developmental concerns in decision-making was also expressed in Principles 13 and 14 of the 1972 Stockholm Declaration on the Human Environment, which was the outcome document of the first global conference on the protection of the environment.

14 Rio Declaration on Environment and Development, Annex I of the Report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. 1), 12 August 1992. See also Virginie Barral and Pierre-Marie Dupuy, "Principle 4", in Jorge E. Viñuales (ed.) *The Rio Declaration on Environment and Development: A Commentary* (Oxford University Press 2015) 157.

15 Johannesburg Declaration on Sustainable Development, UN Doc. A/CONF.199/20, 21 October 2015, para. 5.

16 Transforming our world: the 2030 Agenda for Sustainable Development, UN Doc. A/RES/70/1, preamble.

17 Ibid, preamble, paras. 2, 5, 13, 17, 18 and 55.

18 *Gabčikovo-Nagymaros Project (Hungary/Slovakia)* (Judgment) [1997] ICJ Rep. 7, para. 140.

19 Ibid.

20 *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* (Judgment) [2010] ICJ Rep. 14, para. 204.

21 *Iron Rhine ("IJzeren Rijn") Railway (Belgium v. The Netherlands)* (Award) Permanent Court of Arbitration [2005] para. 59.

22 See 1994 Agreement Establishing the World Trade Organization, Marrakesh, 15 April 1994 (entry into force: 1 January 1995), *1867 UNTS 154*, first preambular paragraph. The relevant paragraph reads as follows: "Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, *while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development*, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development". Emphasis added by the author. See also Consolidated Version of the Treaty on European Union, Official Journal of the European Union C 326/15, 26 October 2012, ninth preambular paragraph: "DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection…".

23 See e.g. Jorge E. Viñuales, "Sustainable Development", in Lavanya Rajamani and Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* (2nd ed., Oxford University Press 2021), 285, calling it a normative concept while critically assessing its architectural and interpretative functions; John C. Dernbach and Federico Cheever, Sustainable Development and Its Discontents, *Transnational Environmental Law* 4(2) (2015), 247, referring to it as a normative conceptual framework; Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Martinus Nijhoff 2008), calling it a concept with sustainability being the general norm; Marie-Claire Cordonier Segger and Christopher Weeramantry (eds), *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Nijhoff 2005), referring to it as a legal framework.

24 See the International Law Association's 2002 New Delhi Declaration, which identifies seven principles that are considered "instrumental in pursuing the objective of sustainable development in an effective way". International Law Association, New Delhi Declaration of Principles of International Law Relating to Sustainable Development, adopted on 2 April 2002, UN Doc. A/57/329 of 31 August 2002, last preambular paragraph.

25 See e.g. Louis Kotzé and Sam Adelman, "Environmental Law and the Unsustainability of Sustainable Development: A Tale of Disenchantment and of Hope", *Law and Critique* 34 (2023), 227.

26 See Ruth Gordon, "Unsustainable Development" in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) 50; Sumudu Atapattu and others, "Intersections of Environmental Justice and Sustainable Development: Framing the Issues" in Carmen Gonzalez and others (eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press 2021) 1; Sam Adelman, "The Sustainable Development Goals, Anthropocentrism and Neoliberalism", in Duncan French and Louis J. Kotzé (eds.), *Sustainable Development Goals: Law, Theory and Implementation* (Edward Elgar 2018) 15.

27 Ruth Gordon, "Unsustainable Development" in Shawkat Alam and others (eds), *International Environmental Law and the Global South* (Cambridge University Press 2015) 50 at 63. See for a similar criticism Jorge E. Viñuales, "Sustainable Development", in Lavanya Rajamani and Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* (2nd ed., Oxford University Press 2021), 285.

28 See Rakhyun Kim and Klaus Bosselmann, "Operationalizing Sustainable Development: Ecological Integrity as a Grundnorm of International Law", *RECIEL* 24 (2) (2015), 194; Neil Dawe and Kenneth Ryan, "The Faulty Three-Legged-Stool Model of Sustainable Development", *Conservation Biology* Vol. 17 (2003), 1458 at 1459; and Sumudu Atapattu, Carmen Gonzalez and Sara Seck, "Intersections of Environmental Justice and Sustainable Development: Framing the Issues", in Sumudu Atapattu, Carmen Gonzalez and Sara Seck (eds.), *The Cambridge Handbook of Environmental Justice and Sustainable Development* (Cambridge University Press 2021), 1 at 4-5.

29 Jorge E. Viñuales, "The Rise and Fall of Sustainable Development", *RECIEL* 22(1) (2013), 3 at 4.

30 Virginie Barral, "The Principle of Sustainable Development", in Ludwig Krämer and Emanuela Orlando (eds.) *Principles of Environmental Law* (Edward Elgar 2018), 103 at 107-108.

31 The ILA study group on fragmentation refers to "the emergence of specialized and (relatively) autonomous rules or rule complexes, legal institutions and spheres of legal practice". See Report of the Study Group of the International Law Commission, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law, UN doc. A/CN.4/L.682 and Add.1, 13 April 2006, 10.

32 International Law Commission, Yearbook of the International Law Commission 2006, vol. II, Part Two, 177, para. 246. See also, in another context, Bruno Simma, "Self-contained Regimes", *Netherlands Yearbook of International Law* 16 (1985), 111.

33 For instance, in international economic law, the term development is mostly associated with economic growth, while human rights law sees development as a participatory process aimed at improving human well-being. See the UN Declaration on the Right to Development, which defines development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom". UNGA resolution 41/128, 4 December 1986, second preambular paragraph.

34 John Knox, "Human Rights", in Lavanya Rajamani en Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* (2nd edition, Oxford University Press 2021), 784. I have written about this development in earlier work. What follows is based on a chapter I wrote (in Dutch), entitled "Tegen de stroom in: een kritische reflectie op de mensenrechtelijke benadering van klimaatverandering", in Yvonne Erkens, Cees de Groot and Chris van Oostrum (eds.), *Panta Rhei: recht en duurzaamheid* (Boom juridisch 2023), 65.

35 John Knox, "Human Rights", in Lavanya Rajamani en Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* (2nd edition, Oxford University Press 2021), 784 at 784.

36 See Alan Boyle, "Human Rights and the Environment: Where Next?", in: Ben Boer (ed.), *Environmental Law Dimensions of Human Rights* (Oxford University Press 2015), 201; Evadne Grant, "International Human Rights Courts and Environmental Human Rights: Re-imagining Adjudicative Paradigms", *Journal of Human Rights and the Environment* 2015/6, 156.

37 ECHR, Case of López Ostra v. Spain, Application no. 16798/90, Judgment of 9 December 1994.

38 Human Rights Committee, Communication No.2751/2016, UN Doc. CCPR/C/126/D/2751/2016 (Portillo Cáceres/Paraguay), 9 August 2019, para. 7.3.

39 Ibid.

40 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998, U.N. Doc. ECE/CEP/43; Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazu, 4 March 2018 (entry into force: 22 April 2021), *UNTC 56654*.

41 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Nagoya, 29 October 2010 (entry into force: 12 October 2014), *UNTC 30619*.

42 See article 24 of the African Charter on Human and Peoples' Rights, Banjul, 27 juni 1981 (entry into force: 21 October 1986), *1520 UNTS 217*; article 11 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, San Salvador, 17 November 1988 (entry into force: 16 November 1999), *28 ILM 161*; and article 38 of the Arab Charter on Human Rights, 22 May 2004 (entry into force: 15 March 2008), *12 IHRR 893* (2005). For an overview and evaluation of domestic legislation, see David Boyd, "Catalyst for Change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment", in John Knox en Ramin Pejan (eds.), *The Human Right to a Healthy Environment* (Cambridge University Press 2018), 17.

43 Human Rights Council, Resolution 48/13 on the human right to a safe, clean, healthy and sustainable environment, *UN Doc. A/HRC/RES/48/13*, 18 oktober 2021; UN General Assembly, Resolution 76/300 on the human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300, 28 July 2022.

44 See Inter-American Court of Human Rights, 15 November 2017, Advisory Opinion OC-23/17 on the Environment and Human Rights (Requested by the Republic of Colombia), para. 62, where the Court defined the right to a healthy environment as "protect[ing] the components of the environment, such as forests, rivers and seas, as legal interests in themselves, even in the absence of the certainty or evidence of a risk to individuals". Likewise, a group of human rights and environmental law experts recently issued the Strasbourg Principles of Environmental Human Rights Law, available at https://gnhre.org/?page_id=16649, Principle 9 of which states that "The right to a safe, clean, healthy and sustainable environment has two interconnected dimensions. In its subjective anthropocentric dimension, it recognises that nature has a preconditional utility for humans. In its objective ecocentric dimension, it also acknowledges the intrinsic value of nature, as such."

45 This refers to strategic environmental litigation, which is a growing practice, especially in relation to climate change. See https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/ and http://climatecasechart.com/ for an overview of pending cases and judgments. See

also Joana Setzer and Catherine Higham, *Global trends in climate change litigation: 2023 snapshot* (London School of Economics and Political Science 2023).

46 Hoge Raad, The State of the Netherlands v. Stichting Urgenda, judgment of 20 December 2019, ECLI:NL:HR:2019:2007.

47 Paris Agreement, Paris, 12 December 2015 (entry into force: 4 november 2016), *UNTC 54113*, eleventh preambular paragraph.

48 Salam Ahmad, "The Lithium Triangle: Where Chile, Argentina, and Bolivia Meet", Harvard International Review 15 January 2020, available at https://hir.harvard.edu/lithium-triangle/; Bárbara Jerez et al., "Lithium extractivism and water injustices in the Salar de Atacama, Chile: The colonial shadow of green electromobility", Political Geography (87) 2021, 1.

49 See on this development e.g. Manjiao Chi, *Integrating Sustainable Development in International Investment Law: Normative Incompatibility, System Integration and Governance Implications* (Routledge 2017); Nico Schrijver, "The Rise of Sustainable Development Law" *AIIB Yearbook 2019* (Brill 2020), 297; Eric De Brabandere, "Human Rights and International Investment Law", in Markus Krajewski and Rhea Hoffmann (eds.), *Research Handbook on Foreign Direct Investment* (Edward Elgar 2019), 619; and Jason Rudall, "Greening International Investment Agreements", *Netherlands Yearbook of International Law* Vol. 52 2021 (T.M.C. Asser Press 2023), 133.

50 See more generally Jorge E. Viñuales, "Sustainable Development", in Lavanya Rajamani en Jacqueline Peel (eds.), *The Oxford Handbook of International Environmental Law* (2nd edition, Oxford University Press 2021), 285, at 299-300.

51 Reciprocal Investment Promotion and Protection Agreement Between the Government of the Kingdom of Morocco and the Government of the Federal Republic of Nigeria (concluded on 3 December 2016), https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5409/download.

52 Ibid., article 1(3).

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