Vilnius University Press

Contents lists available at Vilnius University Press

Teisė
2024, Vol. 130, pp. 77–90

ISSN 1392-1274 eISSN 2424-6050
DOI: https://doi.org/10.15388/Teise.2024.130.7

Legal Contours of Sustainable Development: Historical Tracker and Arguments Supporting Its Normativity

Dmytro Korchahin

3rd year PhD student
Vilnius University, Faculty of Law
Saulėtekio al.9, Bulding I, LT-10222 Vilnius, Lithuania
E-mail: dmytro.korchahin@tf.stud.vu.lt; korchagindd@gmail.com

Legal Contours of Sustainable Development: Historical Tracker and Arguments Supporting Its Normativity

Dmytro Korchahin

(Vilnius University (Lithuania))

Summary. In the present paper the author overviews the historical tracking of sustainable development as such. Besides, in the article, the current legal nature of sustainable development and some aspects helping to enhance its legal contours are revealed. The concept of sustainable development has gradually evolved through different political forums and discussions. This process has been taking more than fifty years. The current legal contours of sustainable development are not stable, making scientists look for their proper outline. Therefore, the practice of the International Court of Justice (ICJ) is analysed, together with the EU (supranational) policymaking and the current state of environmental emergency. Based on the methods from the qualitative approach, the output on the legal contours of sustainable development and sustainability is proposed. Outside of the general formula of the obligation of states to act in a way that can guarantee sustainable development, some novel aspects of its enhanced regulatory value have been identified, bringing a new interpretation of the legal contours of sustainable development. These news aspects revolve around the realm of ambient reality (the current state of environmental emergency that dictates putting sustainable development at the centre of policymaking on different levels), the realm of ICJ case law (since the current case law is outdated, prospect advisory opinions of ICJ are needed to clear out the current legal contour of sustainable development), and the realm of supranational policymaking of the EU (in which sustainable development has become quite unstable but imperative, being at the heart of the factual policymaking).
Keywords: sustainable development, sustainability, legal contours of sustainable development, environmental emergency, ICJ practice, EU policy.

Darnaus vystymosi teisiniai kontūrai: istorinės aplinkybės ir argumentai, pagrindžiantys jo normatyvumą

Dmytro Korchahin

(Vilniaus universitetas (Lietuva))

Santrauka. Šiame straipsnyje autorius apžvelgia darnaus vystymosi istorinį pėdsaką. Be to, straipsnyje atskleidžiama dabartinė darnaus vystymosi teisinė prigimtis ir kai kurie aspektai, padedantys sustiprinti jo teisinius kontūrus. Darnaus vystymosi koncepcija tolydžio buvo plėtojama įvairiuose politiniuose forumuose ir diskusijose. Šis procesas truko daugiau

Received: 14/03/2024. **Accepted:** 19/03/2024

nei penkiasdešimt metų. Dabartiniai darnaus vystymosi teisiniai kontūrai nėra stabilūs, todėl mokslininkai ieško tinkamų teisinių apybrėžų. Į tai atsižvelgiant analizuojama Tarptautinio Teisingumo Teismo (TTT) praktika, ES (viršvalstybinės) politikos formavimas ir dabartinė nepaprastoji padėtis aplinkosaugos srityje. Remiantis kokybinio požiūrio metodais, siūloma išvada apie darnaus vystymosi ir tvarumo teisinius kontūrus. Be bendros formulės, pagal kurią valstybės privalo veikti taip, kad būtų užtikrintas darnus vystymasis, buvo nustatyti kai kurie nauji jo didesnės reguliavimo vertės aspektai, leidžiantys naujai interpretuoti darnaus vystymosi teisinius kontūrus. Šie nauji aspektai yra susiję su aplinkos realybe (dabartinė nepaprastoji padėtis aplinkosaugos srityje, dėl kurios darnus vystymasis turi tapti svarbiausiu įvairių lygmenų politikos formavimo elementu), Tarptautinio Teisingumo Teismo praktika (kadangi dabartinė teismų praktika yra pasenusi, siekiant išaiškinti dabartinius darnaus vystymosi teisinius kontūrus, reikalingos perspektyvinės patariamosios Tarptautinio Teisingumo Teismo nuomonės) ir ES viršvalstybinės politikos formavimo sritimi (kurioje darnus vystymasis tapo gana nepastovus, tačiau būtinas, nes yra svarbiausias faktinės politikos formavimo elementas).
Pagrindiniai žodžiai: darnus vystymasis, tvarumas, teisiniai darnaus vystymosi kontūrai, nepaprastoji padėtis aplinkosaugos srityje, Tarptautinio Teisingumo Teismo praktika, ES politika.

Introduction

The invention of the incandescent light bulb and, later on, light-emitting diodes (LED) have changed the usual flow of human lives; together with their apparent advantages, they influenced the natural process of human sleep, negatively impacting the latter (Walker, p.338). The same scientific developments that were initially trying to raise the quality of people‘s lives and satisfy industrial needs after the Industrial Revolution eventually ended up revealing particular shortcomings, not only for social and economic dimensions but primarily for our environment. Equally, the interaction of any industry and the environment from a negative perspective postpones the achievement of sustainable development, which is understood to be a “development that meets the needs of the present without compromising the ability of future generations to meet their own needs” (Our Common Future Report, 1987), consisting of environmental, social and economic components. In those case scenarios, where the massive shift of negative consequences to such dimensions as our environment destroys the equilibrium between other systematic components (as social and economic ones), a political and, consequently, legal intervention is needed to find a new balance within a system, in other words, to maintain the sustainability of a particular system, so it can evolve and become self-sustaining at the same time.

Achieving self-sustainment is associated with development, which is called sustainable development. In this regard, it is crucial to trace the development of the concept of sustainable development together with its current legal contours and additional legal aspects.

Research objective and tasks. This research article analyses the current legal contours of sustainable development. In light of the research objective, the article seeks to revolve around the following tasks: tracing the historical becoming of sustainable development, outlining its most used definitions and current legal contours, and introducing some novel aspects of its normativity.

Novelty. The new outlook on the fundamental legal nature of sustainable development must be adequately analysed. The research community needs a more substantial analysis of the concept’s current legal status (as well as the related idea of sustainability). The new look of the concept is reflected through its historical development, as well as some novel aspects that could enhance its current legal contours. Finding and analysing such new elements would constitute a novelty of the current research article. Such analysis would benefit any further legal initiatives based on sustainable development.

State of the art. The genuine legal nature and becoming of sustainable development has become a central analysis area in many pieces of research. Scholar research by Dijan Widijowati and others, Virginie Barral, Rakhyun E. Kim, Jaye Ellis, Marcel M.T.A. Brus, Nico J. Schrijver, David Mhlanga

and Eila Jeronen have revolved around different angles of sustainable development and sustainability from a legal perspective.

Methods. The qualitative approach is used to conduct this research. With the primary role of the descriptive analytical method used for literature and case law review, historical, comparative and systematic analyses are also employed. Historical analysis is utilised to analyse the becoming of sustainable development. Comparative analysis is used to contrast the case law practice. Lastly, systematic analysis is applied to identify and summarise relevant findings, which would help propose a new vision of the current legal contours of sustainable development and sustainability.

1. Tracker of the history of sustainable development: from Stockholm to the recent milestone of Stockholm + 50

In light of the more frequent use of such concepts as "sustainable development" or "sustainability", it is important to give a fresh look to the history of sustainable development, especially to the most recent milestones. The modern history of sustainable development started more than 50 years ago in the global political arena, bringing a new set of contemporary environmental concerns to the most powerful international political tables. Even though sustainability and sustainable development are much wider than mere environmental issues, specifically environmental concerns helped to highlight the problems and come up with new solutions; however, the roots of sustainable development may go even further into the thickets of history. Nico J. Schrijver, in the work "The Evolution of Sustainable Development in International Law: Inception, Meaning and Status", analysed the development of sustainable development in international law. Besides, Schrijver mentioned that the link between environment and development (or, in other words, sustainable development) occurred earlier than in the second part of the 20th century. It rather occurred earlier, with some researchers believing, as per Schrijver, to be derived "from the practice of ancient civilisations" and with the examples of "preoccupation with the availability of natural resources" in the early post-WWII period (Schrijver, 2008).

However, the first modern steps towards sustainable development were made in 1972 with the first conference on the environment - the UN Conference on the Human Environment (UNCHE) in Stockholm. The Stockholm Declaration, with 26 principles associated with the development and environment accompanied by the Action Plan, became the first international document in the field of international environmental law, which proclaimed the existence of the right of every person to enjoy a healthy environment. In general, the Conference put environmental issues at the forefront of human concerns, aiming to start the conversation between industrialised and developing nations regarding the link between environmental pollution, economic growth and social issues (Handl, 2012).

The Stockholm Conference was an inspirational basis for further international forums and discussions. Gro Harlem Brundtland, Norway's former prime minister, realised the strong necessity to unite the world because the natural resources and human environment deteriorated. This idea was incarnated in the World Commission on Environment and Development (WCED), created in 1983 as a sub-organization of the UN "to propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond" (Process of Preparation of the Environmental Perspective..., 1983). This forum was better known as Brundtland Commission after its chairwoman. As the result of the Commission's work in 1987, the Our Common Future Report (more commonly known as Brundtland Report) was issued. The report defined "sustainable development" for the first time in history. Thus, sustainable development is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Our Common Future Report,

1987). Analysing the report, the components of sustainable development could also be crystalised, namely environmental protection, social equality and economic growth, which will be more clearly stated during the next international conferences. Therefore, the main outcome of the Commission's work was the crystallisation of the concept of "sustainable development" as such and putting it at the forefront of the international policy-making agenda for the years to come.

Later, there was a range of milestones in the history of sustainable development, from the United Nations Conference on Environment and Development (UNCED, the Earth Summit), held in Rio de Janeiro in 1992, to the Millennium Development Goals (MDGs) adopted in 2000 and the 2015 Sustainable Development Goals (SDGs), among others.

However, a closer look should be given to the most recent milestones. In June 2022, the "Stockholm+50: A Healthy Planet for the Prosperity of All – Our Responsibility, Our Opportunity" conference was held in Sweden to commemorate the first 1972 conference on the human environment, where the ideas of sustainable development emerged. The Conference itself brought a set of recommendations for accelerating action towards achieving SDGs in the near future, as to "place human well-being at the centre of a healthy planet and prosperity for all" and "recognise and implement the right to a clean, healthy and sustainable environment" (Stockholm+50 report, 2022).

Also, in 2022, the UN General Assembly adopted a resolution called "The human right to a clean, healthy and sustainable environment" (UN General Assembly Resolution, 2022). The resolution recognised a right to a clean, healthy and sustainable environment as a novel human right, in line with the 2021 Resolution of the Human Rights Council (UN Human Rights Council Resolution, 2021). This recognition resembles what happened in 1972 at the first environment conference in Stockholm. However, now, the right to just a healthy environment has been significantly modified to a right to a clean, healthy and sustainable environment. Now, as per the current UN Special Rapporteur on human rights and the environment, this new fundamental right is a part of internationally recognised rights for the first time (UN Special Rapporteur website). The resolution mentions unsustainable development, as the opposite to the one that is to be sustainable, as one of the issues that "constitute some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights"(UN General Assembly Resolution, 2022). If interpreted conversely, it might be concluded that only sustainable development might help to overcome the above-mentioned threats. More practically, besides the affirmation of the quite novel right, the resolution sought to actively involve countries and other stakeholders, ranging from international organisations to enterprises and others, to "scale up efforts to ensure a clean, healthy and sustainable environment for all" by adopting different policies, and enhancing international cooperation, among other related activities (UN General Assembly Resolution, 2022).

Thus, it must be concluded that the current tracker of the history of sustainable development marks the ever-rising international consensus on the importance of sustainable development. David Mhlanga, in the work "A Historical Perspective on Sustainable Development and the Sustainable Development Goals", examined the historical perspective of sustainable development and the SDGs and called the 21st century a century of sustainability (Mhlanga, 2023).

Therefore, it is important to trace the history of sustainability and sustainable development since the year 2022 marked some new important developments, as mentioned above. The long history, together with the milestones and documents mentioned above, proves that sustainable development is important for international society. Besides, such importance lies not only in the political spectrum, as seen before; rather, it starts to relate more and more to the legal realm, as we will see in the further parts of this article. The analysis of the history of sustainable development in this tracker helps further conceptualise sustainable development and underline its legal contours.

2. The conceptualisation of sustainable development: its meaning and legal contours

There are various instances when legal framework documents and legislative proposals in different jurisdictions operate with the concepts of "sustainable development" or "sustainability". It is important to highlight that there is no official (standard) definition of any of the concepts mentioned above. Eila Jeronen, in the work "Sustainability and Sustainable Development," said that sustainability stands for a long-term goal and is a "paradigm for thinking about the future". In contrast, sustainable development includes multiple "processes and pathways" to achieve sustainability, but both are "multifaceted". Besides, Eila Jeronen stressed the difference between "sustainable development" and "environmental protection" (Jeronen, 2013). The latter is seen as "the part of resource management", whereas the first is domination of "the concepts of the social sciences" (ibid.). The definitions of both – "sustainable development" and "sustainability" may vary depending on the context in which they can be defined and by the specific defining subject (Jeronen, 2013).

David Mhlanga, as mentioned above, calls the 21st century a century of sustainability. However, "sustainability" is currently considered a fashionable notion, which is quite expensive to implement by enterprises and governments. As per David Mhlanga, sustainable development, as a concept, consists of two ideas: the minimal needs of the underprivileged and "the ability of the environment to meet both present and future needs" (Mhlanga, 2023).

Therefore, "sustainable development" and "sustainability" can be seen as interconnected concepts that go together and imply each other even when only one out of two is mentioned in a specific document of a legal character. It is agreed that "sustainable development" consists of two parts, as mentioned above, namely the minimal needs of the underprivileged and the ability of the environment to meet both present and future needs, building upon three dimensions – environmental, economic and social. However, sustainable development or sustainability could be presented on different levels (tiers/variants), in which one of the abovementioned dimensions could be somehow prioritised over others, or they all can be balanced. Such tiers/variants could range from just implying various environmental harm-reduction techniques, still prioritising economic components and overall economic growth, to implying indeed balanced policies that sometimes might not lead to huge economic growth. The idea is very close to a debate that Jérôme Pelenc and others analysed regarding which conception of sustainability to choose, a strong or a weak conception of sustainability (Pelenc *et al*., 2015). However, it can be a continuum of different possible tiers/variants of sustainability, and it is up to an individual state to choose the most suitable one based on the current circumstances. The main point is to process the main ideas and achieve at least some positive results. However, as per Rakhyun E. Kim, the definition of sustainable development must be updated by the High-Level Political Forum for Sustainable Development (under the UN Economic and Social Council) to bring more clarity, which would be helpful (Kim, 2016).

Another point in this part of the work is the current legal contours of sustainability/sustainable development. As it was clear from the first part of the work, through the range of the most important milestones, humanity crystallised the concept of sustainable development. The historical aspirations eventually regenerated into a specific, tremendously comprehensive and scientifically approved up-to-date plan for achieving sustainable development/sustainability – the 2030 Agenda with 17 SDGs (20230 Agenda, 2015). The SDGs were adopted as a product of a UN resolution. In accordance with Articles 10, 11 and 13 of the UN Charter, general resolutions of the UN General Assembly are not binding and only have the status of recommendations (UN Charter, 1945). Therefore, from a very straightforward perspective, the SDGs (and the concept of sustainable development at the centre of SDGs) are not legal

imperatives. However, it is essential to highlight, once again, that the ideas of sustainable development/ sustainability did not emerge at once. Still it was more than a 50-year-long evolution, spanning from 1972 to the present day. This evolution was going through several phases. In the first phase, there were debates and discussions at different conferences, and the next phase was the straightforward move to concrete and specific goals (MDGs and then SDGs). This historical development of the concepts has opened a debate in the scientific community over the legal orchestration of sustainable development/ sustainability and SDGs, ranging from seeing them as non-binding frameworks to considering them imperatives.

On the one hand, Rakhyun E. Kim, in the work "The Nexus between International Law and the Sustainable Development Goals", argued that despite being grounded in international law, the SDGs are yet out of the normative context. However, as per Rakhyun E. Kim, the normative context of sustainable development derives from judicial practice (ICJ) (Kim, 2016).

Also, as stated by Jaye Ellis, "a critical approach be taken to the concept [sustainable development] and to its application"(Ellis, 2008). Ellis analysed different approaches to sustainable development and specified that, for example, according to Vaughan Lowe, the concept "is not and cannot be seen as a legal principle because it lacks normative status" (Ellis, Lowe quoted, 2008).

On the other hand, in contrast, Virginie Barral, in her work "Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm", argued that sustainable development, beyond possessing a significant interpretative function for judicial bodies, has a primary function to regulate the conduct of states, by laying down *"*a relative obligation to achieve sustainable development". As such, per Virginie Barral, sustainable development is not addressed to judges but to the subjects of law – the States that have an obligation "to pursue sustainable development…by implementing these countless treaties they contribute, day after day, to progressively making sustainable development requirements real" (Barral, 2012).

Marcel Brus, in his work titled "Soft Law in Public International Law: A Pragmatic or a Principled Choice? Comparing the Sustainable Development Goals and the Paris Agreement", stated that soft law, to which the SDGs (Agenda 2030) refers to, is a reality of international law. The binding force of the SDGs, as the goals that have in mind the ambition to achieve sustainable development, should not depend on the binary approach that states that something is only law or not law in international law. Per Brus, "the binding force of expressions of international law is also not dependent on the form… There are various degrees of bindingness ranging from nonbinding in form and content at one end of the spectrum to fully binding in form and content of the other end" (Brus, 2018). Therefore, it can be agreed with Brus and stated that even if the concept of sustainable development and the current best available plan to achieve – the SDGs are considered a part of soft law, it does not automatically mean that the concept is not binding as such, but rather it should be a part of a continuum. This, together with the current reality, dictates that the contours of sustainable development are quite wide.

Therefore, the states should have an obligation to achieve sustainable development, and this obligation is represented in a formula that a state should act in a way that can guarantee sustainable development. As there is no standard definition, a state should devise its own definition of sustainable development (concentrating on main ideas, as addressed above), juggling different combinations of dimension prioritisation. Such a "national definition" of sustainable development should not jeopardise enacted national, regional, supranational or international strategies or guiding documents (conventions, etc.) that set up specific priorities for policy-making in a particular jurisdiction (for example, the EU Green Deal or Paris Agreement priorities).

Besides, the argument that sustainable development and sustainability are just plans or framework concepts that do not have binding forces cannot be seen as clear and vital. There is no point in considering achieving sustainability/sustainable development as non-obligatory frameworks or plans. According to Cambridge Dictionary, a plan is "a set of decisions about how to do something in the future" (Cambridge Dictionary). Therefore, a plan is something that is aimed to be achieved and, eventually, must be completed, especially considering the issue's importance for the whole international society that has been working on these concepts for over fifty years. Besides, a framework is defined as "a system of rules, ideas, or beliefs that is used to plan or decide something"(Cambridge Dictionary), meaning that it is a transition to a concrete decision. In other words, there is no point in underlying frameworks or plans without the final aim to come to a concrete decision.

3. A set of some novel arguments supporting the view of sustainable development's normative character

As addressed above, sustainability and sustainable development should be considered a state obligation. In this part of the work, some novel arguments that can even enhance the legal position of sustainable development are analysed. These arguments are rooted in the following realms:

- the realm of ambient reality;
- the realm of case law;
- the realm of factual policymaking.

3.1. The realm of ambient reality

In 2019, more than 11,000 scientists from all over the world "clearly and unequivocally declared that planet Earth is facing a climate emergency… The climate crisis has arrived and is accelerating faster than most scientists expected. It is more severe than anticipated, threatening natural ecosystems and the fate of humanity… (Ripple, 2019) labelling climate change as an emergency state for the first time in history. Besides, in November 2019, the European Parliament adopted a resolution on the climate and environment emergency declaring "a climate and environment emergency; called on the Commission, the Member States and all global actors, and declared its own commitment, to urgently take the concrete action needed in order to fight and contain this threat before it is too late" (European Parliament Resolution on the climate…, 2019). Additionally, in the recent paperwork, Ripple and others stated that "we are now at "code red" on planet Earth. Humanity is unequivocally facing a climate emergency. The scale of untold human suffering, already immense, is rapidly growing with the escalating number of climate-related disasters" calling on stakeholders, citizens and scientists, and world leaders to take the necessary steps to avoid the worst impacts of climate change as soon as possible (Ripple *et al*., 2022).

Therefore, it perfectly strengthens the current legal status of sustainable development in a changing world. It is believed that only by acting in a way that can guarantee sustainable development all the stakeholders (with a primary role of states) could take all "the necessary steps" described above. The ambient reality in the world is being changed. Therefore, the current objective environmental reality clearly indicates the paramount importance of sustainable development (that was born as a world leader's reaction to devastating environmental destructions) and frames its legal contours since the current objective climate and environmental reality dictates putting sustainable development in the centre of policy making on different levels.

3.2. The realm of case law

3.2.1. Current case law of the International Court of Justice (ICJ)

The international case law realm is represented by various cases of the International Court of Justice concerning sustainable development. These cases are not novel; however, their analysis is needed to understand better the following activity of the Court, which will be reflected in the next subsection.

For instance, the first case which expressed the initial adherence to sustainable development was the 1997 Gabcikovo-Nagymaros Project Case between Slovakia and Hungary (regarding dam construction) (ICJ Gabcikovo-Nagymaros case, 1997). The Court ruled that watercourse states have to participate and cooperate in the protection, development, and use of international watercourses at a reasonable level, invoking the concept of sustainable development (Sands, 1999).

Thus, using this concept by the ICJ gives this concept the status of normativity. Moreover, Judge Weeramantry (the judge from this case) stated in the dissenting opinion about general and wide recognition of the sustainable development concept in modern international society. For Judge Weeramantry, the sustainable development principle is a part of modern international law (Separate Opinion of Weeramantry, 1997). Besides the separate opinion, the ICJ gave no more than initial adherence to that principle by recommending its use in national decision-making. Nevertheless, it is a perfect starting point for the court to provide more regulatory details concerning the application of the principle of sustainable development in further judicial entrances.

In this regard, it is also important to mention, for example, the case concerning the 2010 Pulp Mills on the River Uruguay (ICJ Pulp Mills…case, 2010). The dispute between the two countries involved the planned construction of pulp mills, authorised by Uruguay, on the River Uruguay, a border between two countries protected by the 1975 treaty regarding managing the river. The case was initiated by Argentina, as an applicant claiming the other part – Uruguay – as a respondent, which did not initiate the prior notification and consultation before the construction of the mills, complemented by the issue of environmental pollution of the river. The ICJ ruled that Uruguay indeed failed to inform Argentina regarding the constructions in the manner specified in the treaty of the management of the river; however, the Court did not find evidence of the river pollution; therefore, the parties may "continue their cooperation [via the river management treaty] and to enable it to devise the necessary means to promote the equitable utilisation of the river, while protecting its environment". Besides, the ICJ used the term "sustainable development" several times, specifying in the point 177 of the decision "it is the opinion of the Court that Article 27 [of the river management treaty] embodies this interconnectedness between equitable and reasonable utilization of a shared resource and the balance between economic development and environmental protection that is the essence of sustainable development*"*. For Judge Cançado Trindade, it was a "disappointment, the Court's present Judgment preferred to guard silence on this particular issue ["dwell further upon" sustainable development]". In his separate opinion, Judge Cançado Trindade, specified that "there are strong reasons for recognizing sustainable development as a guiding general principle for the consideration of environmental and developmental issues*"*. Moreover, he asked "can we, for example, conceive of International Environmental Law without the principles of prevention, of precaution, and of sustainable development, added to the long-term temporal dimension of inter-generational equity? Not at all, in my view" (Separate opinion of Trindade, 2010). Nevertheless, with this case, the Court underlined the importance of sustainable development, crystallising its essence when parties must cooperate to balance economic development and environmental protection. However, the Court did not specify any enforcement measures to protect the principle of sustainable development. It is highly possible it was not done due to the lack of actual environmental harm in this case.

Therefore, it is essential to trace how the ICJ has been using the concept of sustainable development, both in its obligatory judgements and the separate opinions of the honoured judges. Even though the judgements did not provide an unambiguous and straightforward legal interpretation of sustainable development as a mandatory legal norm, by crystallising the essence and due to frequent use of the term in its judgements and other documents (e.g. separate opinions), the ICJ clearly states that the cooperation for achieving sustainable development is needed in international relations. In other words, it can be extrapolated to the national law sphere and stated that if the countries must adhere to sustainable development in international relations, the same obligation could inevitably exist in national policy-making. The legal contours of sustainable development are not stable and straightforward since the ICJ did not specify any enforcement mechanisms. This was not the case, probably due to the impossibility of outlining a proper obligation for the result. Nevertheless, the ICJ certainly possibly does effectively delineate the obligation to act in a way that can guarantee the achievement of sustainable development rather than the obligation to achieve any concrete results related to sustainable development as such.

3.2.2. Advisory opinions of ICJ

The first time the ICJ noted the concept of sustainable development was in the Advisory Opinion on Threat or Use of Nuclear Weapons in 1996, stating that the principle formed part of the whole of international environmental law (Advisory Opinion, 1996).

Besides, in early 2023, per the Resolution A/77/L.58 (UN GA Resolution, 2023), the UN General Assembly requested the ICJ to issue an advisory opinion on the state‘s obligations concerning climate change issues. The UN General Assembly wants the ICJ to elaborate on the concrete state obligations under international law to ensure the protection of the climate and other environmental media from emissions of greenhouse gasses. Besides, the legal consequences of such obligations also became the subject of the General Assembly‘s interest. As the name – advisory opinion – of the ICJ prospected action specifies, it goes without saying that, if adopted, the legally binding force of such an opinion would not be an option. It is expected that the ICJ, in such a novel advisory opinion, would bring a lot of clarity and details regarding the state‘s sustainable development policies. Despite not being a binding piece, it would become a moral obligation for the states to achieve sustainable development. Climate change actions are interlinked with the principle of sustainable development even more – they are part of the actions aimed at achieving sustainable development (SDG n.13, for example).

The ICJ, specifically answering the questions received from the UN General Assembly regarding climate change obligations, would contribute a lot to contextualising the current legal frames of the principle of sustainable development, providing a ground for future decisions. Therefore, the practice of ICJ in the form of its advisory opinions would be a helping tool in framing the current legal contours of sustainable development, especially when the abovementioned case law is not novel.

3.3. The realm of factual policymaking (supranational policymaking of the EU and CJEU practice)

The EU level represents the supranational realm in this paper. Both concepts – sustainability and sustainable development – have been widely used under the auspices of the EU. The EU has been recognised as one of the pioneers in adjusting its policy documents to the concept (or principle) of sustainable development. According to Regulation (EC) No 2493/2000, which is no longer in force, sustainable development meant *“*the improvement of the standard of living and welfare of the relevant populations within the limits of the capacity of the ecosystems by maintaining natural assets and their biological diversity for the benefit of present and future generations”. It also relied “on the integration of the environmental dimension into

the development process" (Regulation No 2493/2000). The EU has been also adhering to implementing sustainable development since 2001, when the Union developed its first EU Strategy for Sustainable Development (EU SDS), setting out the actions for implementing the sustainable development agenda (Strategy for Sustainable Development, 2001), reviewed in 2006 and 2016.

According to the First Progress Report on the EU SDS, sustainable development is a long-term objective, "focusing on the quality of life, inter-generational equity and the long-term viability of European society, and the medium term goal of growth". It also specified that "the Member States are committed to actively promoting sustainable development worldwide and ensuring that the EU's internal and external policies are consistent with global sustainable development". Besides, it says that the objective is very broad, and the Member States "tend to focus more on specific themes" that are of utmost importance to them (Progress Report, 2007).

According to Maria Kenig-Witkowska, the EU system has no legal definition of sustainable development. Still, the goal of sustainable development, politically enshrined in the EU primary law and strategies, is to be achieved. However, per Maria Kenig-Witkowska, EU sustainable strategies possess a "relatively low operational level", resulting in "inadequate legal instruments"(Kenig-Witkowska, 2017).

Although it was the case in 2017, the situation has since changed, especially from 2019 onwards. The European Commission (EC) adopted the European Green Deal in 2020, seeking to make the EU climate-neutral by 2050 and adopt new legislation on the circular economy, innovation, and biodiversity (European Green Deal, 2020). Besides, as part of the Green Deal, the EC adopted the Circular Economy Action Plan (CEAP) in 2020, encouraging sustainable consumption and ensuring the resources are used and kept as long as possible (Circular Economy Action Plan, 2020). All these so-called umbrella policies specify that they aim to make Europe more sustainable in different sectors. It is important to mention that sustainability and sustainable development are the cornerstones of these documents. The general policy programs specified above are to be translated into concrete legal proposals of different kinds to become real laws governing Europeans' lives in the future.

As a result of the policy proposals specified above, the EU is developing dozens of regulatory submissions of different kinds to implement the principle of sustainable development in multiple spheres (however, these proposals might imply different variants of sustainability), bringing changes to the current mechanisms of the functioning of the economy.

For instance, there are such regulatory initiatives:

- Proposal for Ecodesign for Sustainable Products Regulation;
- Proposal for a Directive on Empowering Consumers;
- Revision of Directive on Packaging and Packaging Waste;
- Proposal for revision of Waste Framework Directive etc.

The quantity of "sustainable" proposals is immense. It is important to note that it could take several years for the proposals to be adopted and several more to be implemented by individual Member States (in most cases). However, despite that, it is a good starting point for changes since the long-term objectives might require long-term changes to be implemented. At the moment, there are some instances of successful adoption of the so-called sustainable proposals. For example, recently, a new EU Battery Regulation has been adopted, making the batteries more durable, replaceable and sustainable. Proposed in 2020, it took over three years for the Regulation to be adopted (Battery Regulation, 2023). Due to different application dates, a couple of additional years are needed for the Regulation to be fully applicable.

The active implementation of sustainable development into legislative proposals on the EU level might signal that the EU, as a supranational organism, has no choice but to rebuild the current system of the functioning of the economy, making it more sustainable by developing a circular and more

long-lasting economy. It means that national policy-making will be influenced by these new rules in the future, even if these processes require a lot of time, as seen above.

Therefore, by putting sustainable development (as well as sustainability) not only in strategies but into the heart of factual policy-making with concrete proposals (some of which have become laws already, and some are laws in the making), the EU shows how important it is, which would give more operational weight to the legal ornament of this particular principle.

However, it should be highlighted that, despite being extremely adherent to sustainable development, the EU has not specifically addressed it in the practice of the Court of Justice of the European Union (CJEU), lacking legal certainty concerning the nature of sustainable development as such in the EU. As stated by Luis A. Avilés, the principle of sustainable development in the EU "comprises the principle of high level of protection of the environment, which in turn encompasses the sub-principles known as the precautionary principle, the source principle, the polluter pays principle and the prevention principle, and it is balanced against the economic growth imperative of sustainable development" (Avilés, 2014). According to Avilés, the above-mentioned composite principles are addressed by the CJEU in its legal practice. In contrast, a more coherent articulation of the principles of environmental protection would be needed to clarify the principle of sustainable development. It was suggested that the EU position is "sustainable development as a paradigm for environmental legal protection"(Avilés, 2014).

There are not many instances when the CJEU somehow delivers on or mentions sustainable development in its practice of any kind. The most prominent example could be the 2017 landmark opinion on the powers to conclude the EU-Singapore Free Trade Agreement. The CJEU ruled that "the objective of sustainable development henceforth forms an integral part of the common commercial policy"(Opinion of the Court, 2017). Besides, the ruling confirmed a breach of the sustainable development provisions could potentially suspend the liberalisation.

Despite not being practically defined by the CJEU (which should be eventually done), the principle of sustainable development plays an important role in the EU, as it is at the heart of the current factual EU policymaking. This fact makes sustainable development invisible and inherently unstable but still imperative, and its legally binding force should be unquestionable, at least from an objective standpoint.

Conclusions

As a result, taking into account the task of the research, the following can be concluded:

1. States have an obligation to achieve sustainable development, which is represented in a formula that a state should act in a way that can guarantee sustainable development, proving that its legal contours are quite wide.
2. As there is no standard definition, a state should come up with its own definition of sustainable development (concentrating on the main postulates of sustainable development), juggling around with different combinations of dimension prioritisation (giving its own vision on the prioritisation between environmental, economic or social dimensions). Such a prioritisation should consider enacted national, regional, supranational or international strategies or guiding documents.
3. The unprecedented state of environmental emergency necessitates putting sustainable development as a core principle in policymaking across different levels of governance. The objective reality of the environmental crisis serves as a defining factor in shaping the legal contours of sustainable development. As such, it is imperative that policymakers prioritise the implementation of sustainable practices to mitigate the adverse effects of environmental degradation.
4. The existing practice of ICJ is considered a helping tool in framing the legal contours of sustainable development. However, the current body of ICJ case law is believed to be outdated. To address

this issue, there is a growing need for the ICJ to issue prospect advisory opinions that can provide much-needed guidance in clarifying the current legal contours of sustainable development. By doing so, the ICJ can better equip the international community with the needed legal tools to effectively navigate the complex challenges associated with sustainable development.

5. Sustainable development is a crucial principle in EU policy-making. However, the lack of a clear and precise legal definition of sustainable development by the CJEU has created substantial legal uncertainties. It is vital to adopt a framework that explicitly defines sustainable development, enabling policymakers to align their decisions with the principle of sustainability, thus ensuring a fair and just future for all citizens of the EU.

Bibliography

International documents

Our Common Future: Report of the World Commission on Environment and Development (1987). *United Nations*, A/42/427 [online]. Available at: https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf [Accessed 1st of September 2023].

UN General Assembly, *Process of Preparation of the Environmental Perspective to the Year 2000 and Beyond*, 19 December 1983, A/RES/38/161 [online]. Available at: https://www.refworld.org/docid/3b00f22810.html [Accessed 4th of September 2023].

UN Report, Stockholm+50: a healthy planet for the prosperity of all – our responsibility, our opportunity Stockholm, 2 and 3 June 2022, A/CONF.238/9 [online]. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/K22/117/97/PDF/K2211797.pdf?OpenElement Accessed 5th of September 2023].

UN General Assembly (76th sess.: 2021–2022) (2022). *The human right to a clean, healthy and sustainable environment: resolution /: adopted by the General Assembly* [online]. Available at: https://digitallibrary.un.org/record/3983329?ln=en [Accessed 6th of September 2023].

UN Human Rights Council Resolution (2021) "The human right to a clean, healthy and sustainable environment", A/HRC/RES/48/13 [online]. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement [Accessed 7th of September 2023].

UN Special Rapporteur on human rights and the environment. The Right to a Clean, Healthy and Sustainable Environment [online]. Available at: https://www.ohchr.org/en/special-procedures/sr-environment#:~:text=The%20Right%20to%20a%20Clean,clean%2C%20healthy%20and%20sustainable%20environment [Accessed 8th of September 2023].

Charter of the United Nations (1945) [online]. Available at: https://www.refworld.org/docid/3ae6b3930.html [Accessed 11th of September 2023].

Transforming our world: the 2030 Agenda for Sustainable Development (2015). UN General Assembly. A/RES/70/1 [online]. Available at: https://www.refworld.org/docid/57b6e3e44.html [Accessed 11th of September 2023].

Resolution A/77/L.58 (2023). Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change. UN General Assembly [online]. Available at: https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_77_l_58.pdf [Accessed 28th of September 2023].

EU documents

Resolution on the climate and environment emergency (2019). European Parliament. 2019/2930(RSP) [online]. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0078_EN.html [Accessed 20th of September 2023].

Regulation (EC) No 2493/2000 of the European Parliament and of the Council of 7 November 2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000R2493 [Accessed 29th of September 2023].

A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development (2001). Communication from the Commission [online]. Available at: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0264:FIN:EN:PDF [Accessed 30th of September 2023].

Progress Report on the Sustainable Development Strategy (2007). Communication from the Commission to the Council and the European Parliament. COM/2007/0642 final [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007DC0642 [Accessed 1st of October 2023].

A European Green Deal (2020). European Commission [online]. Available at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en [Accessed 4th of October 2023].

A new Circular Economy Action Plan for a cleaner and more competitive Europe (2020). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions. COM/2020/98 final [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1583933814386&uri=COM:2020:98:FIN [Accessed 5th of October 2023].

Proposal for Ecodesign for Sustainable Products Regulation (2022). The European Commission [online]. Available at: https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en [Accessed 6th of October 2023].

Proposal for a Directive on empowering consumers for the green transition (2022). The European Commission [online]. Available at: https://commission.europa.eu/publications/proposal-directive-empowering-consumers-green-transition-and-annex_en [Accessed 6th of October 2023].

Proposal for a Regulation of the European Parliament and of the Council on Packaging and packaging waste, amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904 and repealing Directive 94/62/EC (2022). The European Commission [online]. Available at: https://environment.ec.europa.eu/publications/proposal-packaging-and-packaging-waste_en [Accessed 6th of October 2023].

Proposal for a targeted revision of the Waste Framework Directive (2023). The European Commission [online]. Available at: https://environment.ec.europa.eu/publications/proposal-targeted-revision-waste-framework-directive_en [Accessed 6th of October 2023].

Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC. PE/2/2023/REV/1. *OJ* L 191, 28.7.2023 [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.191.01.0001.01.ENG&toc=OJ%3AL%3A2023%3A191%3ATOC [Accessed 6th of October 2023].

Special literature

Voker, M. (2022). *Chomu mi spimo. Koristajemo z usih mozhlivostej snu ta snovidin'*. Vidavnictvo Starogo Leva. Видавництво Старого Лева. ISBN:978-617-679-784-5.

Schrijver, N. J. (2008). The Evolution of Sustainable Development in International Law: Inception, Meaning and Status [online]. Available at: https://books.google.lt/books?hl=uk&lr=&id=3_R5DwAAQBAJ&oi=fnd&pg=PA2&dq=legal+force+of+sustainable+development&ots=UE9V3TWEBU&sig=N7K5RZiCylx77_bXDafdTV6gXyE&redir_esc=y#v=onepage&q=legal%20force%20of%20sustainable%20development&f=false [Accessed 1st of September 2023].

Handl, G. (2012). Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration On Environment And Development, 1992 [online]. Available at: https://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf [Accessed 3rd of September 2023].

Mhlanga, D. (2023). A historical perspective on sustainable development and the sustainable development goals. In: *Sustainable development goals series*, pp. 67–86 [online]. Available at: https://doi.org/10.1007/978-3-031-37776-1_4 [Accessed 8th of September 2023].

Jeronen, E. (2013). Sustainability and sustainable development. In: *Springer eBooks*, pp. 2370–2378 [online]. Available at: https://doi.org/10.1007/978-3-642-28036-8_662 [Accessed 9th of September 2023].

Pelenc, J. *et al*. (2015). Weak Sustainability versus Strong Sustainability [online]. Available at: https://sustainabledevelopment.un.org/content/documents/6569122-Pelenc-Weak%20Sustainability%20versus%20Strong%20Sustainability.pdf [Accessed 9th of September 2023].

Kim, Rakhyun E. (2016). The Nexus between International Law and the Sustainable Development Goals. RECIEL (Review of European, Comparative & International Environmental Law), 25 (1):15-26 [online]. Available at: https://www.earthsystemgovernance.org/publication/the-nexus-between-international-law-and-the-sustainable-development-goals/ [Accessed 10th of September 2023].

Ellis, J. (2008) ‚Sustainable Development as a legal Principle: A rhetorical analysis,' *Social Science Research Network* [Preprint]. https://doi.org/10.2139/ssrn.1319360 [Accessed 11th of September 2023].

Barral, V. (2012). Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm [online]. Available at: https://academic.oup.com/ejil/article/23/2/377/487236 [Accessed 12th of September 2023].

Brus, M. (2018). Soft law in public international law: a pragmatic or a principled choice? Comparing the sustainable development goals and the Paris Agreement. In: *Law and Philosophy library*. https://doi.org/10.1007/978-3-319-77522-7_13 [Accessed 13th of September 2023].

Ripple, W. J. *et al.* (2019). World scientists' warning of a climate emergency. *HAL (Le Centre Pour La Communication Scientifique Directe)* [Preprint]. https://doi.org/10.1093/biosci/biz088/5610806 [Accessed 17th of September 2023].

Ripple, W. J. *et al.* (2022). World scientists' warning of a climate emergency 2022. *BioScience*, 72(12), pp. 1149–1155. https://doi.org/10.1093/biosci/biac083 [Accessed 21st of September 2023].

Sands, P. (1999). International Courts and the Application of the Concept of "Sustainable Development [online]. Available at: https://www.mpil.de/files/pdf2/mpunyb_sands_3.pdf [Accessed 22nd of September 2023].

Kenig-Witkowska, M. (2017). The Concept of Sustainable Development in the European Union Policy and Law. Journal of Comparative Urban Law and Policy. Volume 1. Issue 1. https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=1005&context=jculp [Accessed 3rd of October 2023].

Avilés, L. A. (2014). Sustainable development and environmental legal protection in the European Union: A model for Mexican courts to follow? *Mexican Law Review*, 6(2), pp. 251–272. https://doi.org/10.1016/s1870-0578(16)30014-2 [Accessed 9th of October 2023].

Case law

Gabčíkovo-Nagymaros Project Case (Hungary/Slovakia) (1997). International Court of Justice [online]. Available at: https://www.icj-cij.org/case/92 [Accessed 21st of September 2023].

Gabčíkovo-Nagymaros Project Case (Hungary/Slovakia) (1997). International Court of Justice. Separate Opinion of Vice-President Weeramantry [online]. Available at: https://www.icj-cij.org/sites/default/files/case-related/92/092-19970925-JUD-01-03-EN.pdf [Accessed 23rd of September 2023].

Pulp Mills on the River Uruguay (Argentina v. Uruguay) (2010). International Court of Justice [online]. Available at: https://www.icj-cij.org/case/135 [Accessed 25th of September 2023].

Pulp Mills on the River Uruguay (Argentina v. Uruguay) (2010). International Court of Justice. Separate opinion of Judge Cançado Trindade [online]. Available at: https://www.icj-cij.org/sites/default/files/case-related/135/135-20100420-JUD-01-04-EN.pdf [Accessed 26th of September 2023].

Legality of the threat or use of nuclear weapons (1996). International Court of Justice. Advisory Opinion [online]. Available at: https://www.icj-cij.org/case/95 [Accessed 27th of September 2023].

Opinion 2/15 (2017). The Court of Justice of the European Union. ECLI:EU:C:2017:376 [online]. Available at: https://curia.europa.eu/juris/document/document.jsf?text=Singapore%2Bfree-trade%2B&docid=190727&pageIndex=0&doclang=en&mode=req&dir=&occ=first&=1&cid=5592776#ctx1 [Accessed 10th of October 2023].

Other sources

Plan (2023) [online]. Available at: https://dictionary.cambridge.org/dictionary/english/plan [Accessed 14th of September 2023].

Framework (2023) [online]. Available at: https://dictionary.cambridge.org/dictionary/english/framework [Accessed 14th of September 2023].

The author, Dmytro Korchahin, obtained a Bachelor's Degree in Law at the Yaroslav Mudryi National Law University of Kharkiv in 2016. In 2018, he obtained a Master's Degree in Law at the Yaroslav Mudryi National Law University of Kharkiv. In 2020, a Master's Degree in International and European Union Law from Vilnius University was acquired by the author. He also started a PhD at Vilnius University, Faculty of Law, in 2021. Currently, the author is a 3rd year PhD student. The author's main scientific interest is environmental law.

Dmytro Korchahinas 2016 m. Charkovo nacionaliniame Jaroslavo Išmintingojo teisės universitete įgijo teisės bakalauro laipsnį. 2018 m. šiame universitete jis įgijo teisės magistro laipsnį 2020 m., o Vilniaus universitete įgijo Tarptautinės ir Europos Sąjungos teisės magistro laipsnį. Taip pat 2021 m. pradėjo doktorantūros studijas Vilniaus universiteto Teisės fakultete. Šiuo metu autorius yra III kurso doktorantas. Pagrindinis autoriaus mokslinis interesas – aplinkosaugos teisė.