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Introduction

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INTRODUCTION

by Marcos Orellana*

While its exact legal nature and status remains the object of controversy, sustainable development, at a minimum, requires the integration of environmental concerns in development decision-making. The *Iron Rhine Railway* arbitral tribunal recently affirmed this notion. While the process of integration required by sustainable development occurs mainly in the planning and implementation stage of projects and policies, the resolution of disputes concerning those economic activities also calls for an attempt to integrate the various relevant legal fields. In this regard, sustainable development invites a normative dialogue between competing norms and interests, and courts have a central role in providing a forum for such dialogue, both at the international and national levels.

Sustainable development finds its roots in the Stockholm Declaration on the Human Environment, endorsed by the UN General Assembly in 1972, which deals with the integration of economic, environmental, and social justice issues. In 1975, a decision of the UN Environment Programme's Governing Council employed the term sustainable development as a concept "aimed at meeting basic human needs without transgressing the outer limits set to man's endeavours by the biosphere." In 1980, the International Union for the Conservation of Nature and Natural Resources prepared its World Conservation Strategy which emphasized integration in its definition of sustainable development: "integration of conservation and development to ensure that modifications to the planet do indeed secure the survival and well-being of all people." The concept of sustainable development acquired international recognition as a result of the report of the World Commission on Environment and Development, "Our Common Future:"

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- The concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and
- The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs.

Sustainable development carries profound implications for economic activities. The transition towards sustainability in response to the alarming deterioration of the earth's environment requires both immediate and gradual changes in production and consumption patterns. The required regulatory changes will affect not only new activities, but also those economic activities already under way, as clarified by the International Court of Justice in the *Gabcikovo/Nagymaros* case. It is thus foreseen that the necessary changes in the legal structures governing the local and global economies will impose costs on existing activities as

well as foster new opportunities in the marketplace. At the same time, investments in activities that reduce humanity's "ecological footprint" are indispensable to fuel the transition towards sustainability.

It is also foreseen that sustainable development requires adaptive management and evolving norms in order to incorporate new scientific insights and lessons learned regarding the operation and effectiveness of legal tools. In a long-term perspective, the international community has come to realize that while the challenges involved in sustainable development are formidable, they are also indispensable to maintain the viability of the planet and to safeguard the rights of unborn generations.

With the emergence of sustainable development as the overarching policy framework, the international community faces the challenge of finding channels for normative and institutional dialogue between economic, social, and environmental regimes. An important tool for dialogue is sustainable development's call for science-based decision-making, including with regard to the precautionary principle. Indeed the 2002 Plan of Implementation concluded at the World Summit for Sustainable Development expressly recognizes the need to "[p]romote and improve science-based decision-making and reaffirm the precautionary approach as set out in principle 15 of the Rio Declaration on Environment and Development."

In the 1992 UN Conference on Environment and Development, governments officially adopted sustainable development as the development paradigm. Since that adoption, the concept of sustainable development has influenced not only the legal structures governing policy-making, but also those concerning dispute settlement. Accordingly, international and national courts have a critical role in clarifying the contents of sustainable development in concrete historical circumstances.

The role of domestic courts is particularly important in regard to sustainable development, given that courts address particular disputes that reflect concrete tensions and interests and not abstract controversies. In addition, the societal balance between competing economic, environmental, and social considerations are often mediated by domestic laws, both substantively and procedurally. It is thus incumbent upon domestic courts to interpret and give effect to internal laws embodying societal preferences, with the aid of the principle of sustainable development. In this light, this volume explores how national and international courts are using the principle of sustainable development to reconcile tensions that surface between environmental, social, and economic issues.



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