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**European Union and global sustainable development through law –
the research agenda**

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European Union and global sustainable development through law – the research agenda

Peter-Tobias Stoll*

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Introduction

The United Nations Conference on Development and Environment introduced the principle of sustainable development in 1992. Like no other political concept, sustainable development has shaped environmental, economic and development policy at the international European and German level. The concept and principle of sustainable development connects different lines of development of environmental, social and economic policy and the associated policy areas.

The activities of a „Jean Monnet Chair for European Union and Global Sustainable Development Trough Law“ have been based on a research agenda, which has been tabled at the kickoff meeting and was updated in the course of the project and finally discussed at the closing in January 2022. This paper takes stock of some of the findings, which emerged in the course of activities of the Chair and of important questions left for future work.

I. The principle of sustainable development: substance and normative relevance

Examining further the already impressive impact and the further potential of the principle of sustainable development requires some reflection as to its meaning and normative significance.

A. Roots

The concept of sustainable development has sometimes been placed in a context with earlier concepts of forest management.¹ This line of development is instructive but

¹ See Richard Hölzl: *Historicizing Sustainability. German scientific forestry in the 18th and 19th centuries*, *Science as Culture* 19/4, 2010, 431–460.

fails to adequately describe the present-day content of the term. In particular, the social dimension of the term is hardly considered in these early sources. It should be added that little research has been done so far on what concepts and expectations are associated with the concept of sustainable development in other regions of the world and especially in the global South. Here, for example, it would be worth investigating how the idea of Mother Earth, as expressed in recent constitutional developments in Latin America, could be linked to the concept of sustainable development.

B. Legal interpretation

Nor is an analysis from a terminological perspective of much further use. From it, it can be deduced that the term "sustainable" opens up a time dimension and that the concept of "development" describes an overall societal process that includes economic, social, environmental, political, legal and also cultural aspects. However, the two words as such do not give much more guidance.

C. Established meanings

However, some more concrete implications of the concept have already been established. First, it can be regarded as certain today that the principle of sustainable development, in the sense of three pillars, has as its object the goals of economic and social development and environmental protection in the sense of mutual support. Another key point of the principle is the inclusion of future generations.

Further clarification of the term² is proving difficult. Of course, a further clarification might be achieved by methods of legal interpretation. In this way, the context and possibly also - if available - the history of the term could be taken into consideration.

² See Peter-Tobias Stoll, Chapter 17: Precaution and Genetically Modified Organisms: A Healthy Legal Environment?, in: Heike Krieger, Andrea Liese (eds), *Tracing Value Change in the International Legal Order: Perspectives from Legal and Political Science*, OUP, forthcoming .

D. From interpretation to implementation: The SDGs

However, any effort to further clarify the meaning of sustainable development by means of legal interpretation would have to take into account, that the openness of the term follows from its character as a concept or a political programme. Furthermore, it has to be kept in mind, that the principle of sustainable development has to be seen in context of a process of further implementation and clarification. Thus, the openness of the term is not seen so much as a somewhat accidental deficit, which should be fixed by academic or adjudicative efforts of legal interpretation. Rather, the openness of the term and the context of further implementation signifies, that it is largely upon competent bodies and legitimate procedures to elaborate an understanding of the term.

In this light, the adoption of the Agenda 2030 by the United Nations General Assembly in 2015 with its 17 sustainable development goals is key. It can be deemed to reflect a legitimate interpretation of the principle of sustainable development. The 17 policy goals effectively guide the further implementation of the principle in defining more specific goals, measures to be taken in this regard and benchmarks to effectively monitor successful implementation.

The European Green Deal can also be understood as a kind of implementation of the principle of sustainable development. The corresponding basic papers of the European Commission do not explicitly intend to specifically implement the international principle of sustainable development and the Sustainable Development Goals. However, implicitly and sometimes also explicitly, they importantly draw from those international developments. Further work is necessitated to understand, to what extent the Green deal can be understood as a full implementation of the principle of sustainable development and the SDGs.

II. Implementing sustainable development: a grand transformation

The concept in sustainable development refers to the behaviour and lifestyles of societies and individuals, groups and companies, and to the changes brought about

through individual awareness, public information, market interactions, the introduction of technical and social innovations and the influencing and steering by actors in society, the economy and politics. Rightly, the implementation of sustainable development is sometimes said to require a „great“ or a „grand“ „transformation“. Three dimensions of this challenge are key.

A. Integration of economic, social and environmental policies

As explained above, the principle of sustainable development is based on three pillars, between which synergies are to be created. It is thus based on a holistic view and the integration of economic, social and ecological aspects. This integrative perspective must therefore be incorporated into countless regulatory processes and political decisions. From a substantive point of view, the principle of sustainable development in its openness can contribute little to this. Its importance lies at the procedural and institutional level. Indeed, it would be key that any such processes would be informed as early as possible about the dimension of sustainable development. At procedural level, indeed, impact assessments are key in this regard. If carefully designed, they may ably assist decision-making and allow for an understanding of the sustainability dimensions. Also, and in institutional dimension, structures would be helpful to coordinate between different agencies in a way to secure coherent action for sustainable development. Indeed, at governmental level and in Parliaments around the world, a variety of structures of institutional coordination for sustainable development has been established. As Nazli Aghazadeh-Wegener has figured out in her Jean Monnet Paper, the issue of sustainable development has been treated by different agencies within the EU, while efforts to coordinate have proven difficult.³

This is particularly so in view of the social dimension of sustainable development, which is of crucial importance for the kind of transformations required to take place. Beyond particular action to prevent unemployment, to counter price increases in the

³ Nazli Aghazadeh-Wegener, *Mainstreaming Sustainable Development into EU Policy and Law: The Governance Approach of the EU in Light of its Historical Foundations*, Jean Monnet Paper 1/19, https://www.uni-goettingen.de/de/document/download/ce67192c6617b828ff0e769df487c5c9.pdf/Aghazadeh_2019_Mainstreaming_Sustainable_Development.pdf, last visited on 1 March 2022.

area of food, heating and transportation a more general concept is warranted to fully understand the social dimension of sustainable development and to properly link it to economic policies.

B. Temporal dimensions of sustainable development and the rights and interest of future generations

A special dimension of the principle of sustainable development lies in a time dimension: we can only speak of "sustainability" and "development" in a temporal perspective. One can assume that by "sustainable" is meant a development or a policy that in a nearer or even more distant future does not have consequences that force a correction. Roughly speaking, and taking into account the three pillars of sustainable development as outlined above, this means a policy orientation that ensures economic prosperity and growth, social cohesion and environmental protection at a longer timescale.

This amounts to a situation, where individuals and human societies live and work without having to fear an abrupt impairment of any of these elements or harsh political interventions to avert such impairments. This "sustainability" is reflected in substantive and procedural precautions. It is obvious that the precautionary principle, as it has developed in German law and in European and eventually also in international law, takes this point of view into account. In procedural terms, sustainability can be brought to bearing through various forms of impact assessments within the framework of individual projects, in approval procedures and in connection with legislative projects or in the course of concluding international agreements.

With this time dimension, the succession of generations also comes to the fore. An expression of this is that the rights and interests of future generations are predominantly understood as an established sub-dimension of the principle of sustainable development. This first takes a look back at the scale of the time dimension of sustainability. One can therefore assume that, with regard to sustainability, one must take time periods as a basis that include the following generation.

Various approaches have been taken to take into account the interests and rights of future generations, as Samuel Matthias Hartwig has explained in a Jean Monnet Paper in 2020.⁴

In some cases, it has been suggested that an ombudsman be appointed to represent future generations. In Germany, for example, a foundation has been set up to deal with the general concerns of future generations and to make them visible. The German Federal Constitutional Court took a more far-reaching approach when, in its climate decision of April 2022, it attributed a kind of early effect to the fundamental rights of the young complainants, according to which they can already assert the foreseeable future necessary restriction of these rights.

C. Global and local dimensions

An important dimension of implementing sustainable development is the need to link global and local contributions. It is rightly emphasised time and again that under conditions of globalisation and increasing economic interdependence, behaviour in one place can have an impact in distant parts of the world. Similarly, the principle of sustainable development is based on the recognition that key environmental goods have a global dimension. This applies not only to the climate, but also to biodiversity, for example. On the other hand, these interrelationships of cause and effect and these common interests are contrasted by the possibilities of international coordination and understanding with the means of global communication and the highly developed structures of international counter-governance. In the field of international environmental policy and environmental law, far advanced approaches to such coordination are discernible, in which global goals are set and are to be realised by means of implementation at regional, national and local levels. The nationally determined contributions under the Paris Agreement are an example of how global goals and their local implementation can be coordinated.

⁴ See Samuel Matthias Hartwig, Sustainability and Future Generations: How can their interests be preserved?, Jean Monnet Paper 2/20 at https://www.uni-goettingen.de/de/document/download/142405b33cf11d66170cc31e6148c35b.pdf/20_02_Hartwig_2020_Sustainability_and_Future_Generations.pdf, last accessed on 1 March 2022.

A greater and more difficult challenge, however, lies in correctly addressing the economic and social dimensions of sustainable development in their significance for local and global contexts and seeking solutions for them. This problem arises in particular in the case of free trade agreements, which are increasingly and rightly intended to promote sustainable development.

III. Sustainable development - a role for law

The role, that law plays in context of the implementation of sustainable development is complex. At the outset, much effort has been made from the side of legal academia to explore the meaning and legal significance of the principle. However, legal sciences face a much more diverse and promising field of research, when considering, what legal scholarship and the legal system may contribute to the further implementation in a functional perspective. Different functions and resources can be distinguished:

B. Mainstreaming sustainable development into international law

The legal dimension plays an important role first of all with regard to the mainstreaming of the principle of sustainable development into various areas of the national, European and international legal order. This function is significant because law is an essential governance resource of the national, European and international systems. In this respect, it is important that the principle of sustainable development finds its way into the various regulations and regulatory functions of the law. This mainstreaming is already evident in important areas, while the respective progress and future potential still need to be further explored.

1. Human rights

A first area relevant for mainstreaming concerns human rights. The link between the principle of sustainable development and the rights and interests of individuals was established early on and has developed intensively and fruitfully, especially after the adoption of the United Nations Sustainable Development Goals. At the international level, the work of the global human rights institutions has contributed significantly to

this. In addition, there have been a number of landmark decisions by international, regional and national human rights courts and other tribunals. Finally, at the national and regional level, there is a trend toward further development of fundamental and human rights that incorporate aspects of sustainable development. The development of a right to a clean environment is particularly noteworthy in this regard.

2. International economic law

The mainstreaming of the principle of sustainable development has also taken place in areas of international economic law. In addition to the mention of sustainable development in the preamble to the Agreement Establishing the World Trade Organization (WTO), the principle has played a role in WTO dispute settlement and, even more so, in the increasing number of free trade agreements.

C. A role for law - and the rule of law

In addition to this function of mainstreaming, law with its existing rules and structures also plays a role in the further implementation of sustainable development. This further implementation requires a change in the behavior of individuals, companies, social organizations and entire societies that takes place in many different forms. Changes in awareness, technical and social innovations, changing market conditions and ways of communication play a major role. These behavioral changes can be supported by various forms of action by political or administrative actors. Activities of education, enlightenment and communication come into question as well as the targeted promotion of certain developments and innovations. However, these education-related communicative and promotional activities and possible subsidies will foreseeably also require legal control on a large scale through various regulations and their application and enforcement.

Progressive regulation to implement the principle of sustainable development relies in many cases on providing individuals and businesses with predictable, clear, and specific requirements and frameworks, which will often involve administrative mechanisms of approval or subsidization. The law provides the regulatory and administrative mechanisms and machinery for this purpose. It must define the corresponding

commands and prohibitions, concretize the administrative processes with responsibilities, procedures and forms, and ultimately provide constitutional possibilities for review with legal protection. Beyond providing these instruments, the law also provides guidance for the various regulations at all levels through fundamental and human rights, procedural principles and other principles.

D. Legitimacy and participation

Finally, an essential function of law is to legitimize the policies, regulations and agreements necessary for the implementation of sustainable development. If based on proper competence and adopted in observance of the manifold rules of procedure, any such policies or legal acts and agreements can be considered to be legitimate according to the long-standing doctrine in national and EU constitutional law. However, it has been well-established in recent times, that additional elements and procedures might be warranted particularly in areas, where regulatory activities concern complex matters, which has far-reaching economic, social and environmental implications as is the case in the implementation of sustainable development. Participation is a key concept to add to legitimacy in this way. In this context, law plays a prominent role in defining the base and to provide for adequate mechanisms of such participation. Such participation can take place in many forms. Legislative initiatives may be launched by European citizens by way of the European Citizens Initiative.⁵ Participation also is an integral part of free trade agreements, where domestic advisor groups are established. Also, civil society, the privat sector and NGOs have a say in the various types of impact assessments, which take place in the context of EU regulations and the conclusion of trade agreements. It has to be assessed, whether these forms of participation are effective.

⁵ See the Erasmus + project of the Chair and partners from Portugal, Spain and Romania „ECI from A-Z“ at <https://eci-az.eu>, last visited on 15 March 2022.

Conclusion

The principle of sustainable development and especially the Sustainable Development Goals (SDGs) have given important impulses to international, European and national policy that continue to have an impact. But they have also stimulated research in all disciplines.

In politics as well as in science, the principle of sustainable development, at least in the global North, has initially and primarily been understood from the perspective of environmental protection. This applies in the broadest sense to environmental research in the natural and social sciences.

Less well developed is our understanding of the ideas and perceptions that exist in the Global South about sustainable development and its further implementation. This is particularly relevant in view of the necessary link between global and local action. Similarly, it is important to explore the social dimension of sustainable development, which plays a key role in its further implementation.

As regards the role of law in the further implementation, the research agenda is by no means confined to ascertain the content and normative significance of the principle as such. Legal scholarship is key in promoting the further mainstreaming of sustainable development in international law at large. It is further required to provide input to the further implementation in exploring appropriate mechanisms and structures for the grand transformation and means to secure their effectiveness. Moreover, it has to provide orientation and guidance in view of the observance of the rule of law and proper participation.