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Current Status of Sustainable Development in International Environmental Law

Abstract

Sustainable development is a concept of significant importance in international law. It can be understood in a broad sense, and its interpretation varies depending on the historical context or the perspective from which it is analysed. Its understanding is shaped by the structure and nature of international law. The aim of this article is to present the current status of sustainable development in international environmental law. The research methods applied include a formal-dogmatic analysis of legal texts and an examination of case law and legal literature. The findings indicate that the concept of sustainable development is present in both case law and legal scholarship; however, it gives rise to interpretative ambiguities, which in turn result in its inconsistent implementation. In light of case law, it cannot be recognised as a principle of law.

Keywords: sustainable development, international environmental law, international law, environment

Aktualny status zrównoważonego rozwoju w międzynarodowym prawie ochrony środowiska

Streszczenie

Zrównoważony rozwój to koncepcja o istotnym znaczeniu w prawie międzynarodowym. Pojęcie to może być rozumiane szeroko, a jego interpretacja różni się w zależności od czasów lub perspektywy, z której jest analizowany. Na jego rozumienie wpływa kształt i charakter prawa międzynarodowego. Celem artykułu jest przedstawienie zagadnienia aktualnego statusu zrównoważonego rozwoju w międzynarodowym prawie ochrony środowiska. Do jego realizacji wykorzystano metodologię jakościową i metody badawcze: case study, metodę formalno-dogmatyczną oraz przeanalizowano akty prawne oraz polsko- i anglojęzyczną literaturę. Wyniki badań pozwoliły na stwierdzenie, iż ta koncepcja jest obecna w orzecznictwie i literaturze prawniczej, jednakże powoduje wątpliwości interpretacyjne, a w konsekwencji jej niekonsekwentną realizację. W świetle orzecznictwa nie można jej uznać za zasadę prawa.

Słowa kluczowe: zrównoważony rozwój, międzynarodowe prawo ochrony środowiska, prawo międzynarodowe, środowisko

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1. Introduction

Sustainable development is a broad and multifaceted concept in international law. Its most widely accepted definition originates from the 1987 Brundtland Report, which defines sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹ The concept was conceived as an alternative to the traditional model of economic development, which predominantly focused on unrestricted economic growth, often at the expense of natural resource depletion and the exacerbation of social inequalities. Sustainable development emerged as a vision of dynamic societal progress that respects the environment, linking continued economic advancement with ecological sustainability and both intergenerational and intragenerational social justice.² This article assesses the recognition of sustainable development as a legal principle, along with the extent to which its imprecise definition and lack of binding nature in the applicable legal instruments affect its practical effectiveness.

The aim of this article is to examine the concept and legal status of sustainable development within the framework of international environmental law. The analysis is based on selected case law and scholarly literature. A brief overview of the historical evolution of international environmental law is also provided, as this development significantly contributed to the formulation and dissemination of the concept within legal doctrine. This issue remains of considerable importance, as international law constitutes a foundational element of the global community’s efforts to protect the environment and promote the principle of intergenerational equity.³ Moreover, environmental protection, closely intertwined with the concept of sustainable development, is increasingly recognised through the lens of human rights, including the right to a healthy environment, which has further enhanced its relevance within international legal discourse.⁴

This study focuses exclusively on the legal dimensions of sustainable development. The analysis is limited to normative aspects and deliberately excludes considerations related to state development policies or strategic documents such as the 2030 Agenda or the National Strategy for Regional Development. The main objective is to demonstrate how the notion of sustainable development is embedded and operationalised within binding legal frameworks in the international environmental law context.

A qualitative methodological approach was adopted to meet the objective of this study. The research methods applied include case law analysis, the examination of legal texts, and the formal-dogmatic method. This article draws upon selected international case law and international environmental law instruments, and incorporates references to both Polish- and English-language literature on sustainable development and environmental law. All excerpts originally published in Polish have been translated into English by the author. Part of the research and the article were developed within the framework of the International Environmental Law course held at the University of Eastern Finland between November and December 2023.

1 International Institute for Sustainable Development, *Sustainable Development*, <https://www.iisd.org/mission-and-goals/sustainable-development> (accessed: 27.02.2024).

2 Z. Bukowski, *Zrównoważony rozwój w systemie prawa*, Toruń 2009, p. 78.

3 R. Rosicki, *Międzynarodowe i europejskie koncepcje zrównoważonego rozwoju*, „Przegląd Naukowo-Metodyczny” 2010, vol. 4, p. 44.

4 S. Giorgetta, *The Right to a Healthy Environment, Human Rights and Sustainable Development*, “International Environmental Agreements: Politics, Law and Economics” 2002, vol. 2, pp. 174–177.

2. Emergence and development of sustainable development concept in international environmental law

International environmental law emerged in response to global environmental crises and the socio-economic capacity to address them.⁵ International environmental law is a fairly new discipline, and its development is part of the evolution of international law, which at first focused on building the relations of states during war and peace and was primarily a matter of diplomacy and the law of war.⁶ Only in the twentieth century did international law begin to incorporate human rights and shared global goals such as economic progress and environmental protection objectives that directly impact human well-being.⁷ The growing environmental awareness driven by scientific advances, as well as the economic development of societies, enabled a shift in focus beyond basic needs to long-term ecological issues.⁸ Increasingly, the issue of the current rationale for environmental protection, directly determined by the object of protection – human beings – but also their life, health, and quality of life, has been touched upon.⁹ At the core of international environmental law, however, are the aspirations of states and other subjects of international law to regulate the sphere of international relations and to thereby achieve specific objectives through international legal instruments.¹⁰

According to Bodansky, the development of international environmental law can be divided into three phases. The first, the conservation era, focused narrowly on wildlife protection through early treaties and prioritized state sovereignty over environmental concerns. The second phase, the pollution prevention era, saw the rise of multilateral agreements targeting pollution and resource conservation. A landmark in this period was the 1972 Stockholm Conference, which launched the United Nations Environment Programme (UNEP) and produced the Stockholm Declaration.¹¹ The Declaration affirmed the right to a healthy environment and the duty to protect it.¹² It draws attention to human creative potential, which, used wisely, can improve living conditions, as well as to people's right to enjoy the value of the environment and their duty to protect it.¹³ In addition, it set out 26 principles for the protection and improvement of the environment, which are rarely referred to due to their general nature. One exception is principle 21, which states that activities within a state's territory must not adversely affect areas of other states or global common goods.¹⁴ In this aspect, the Stockholm Declaration also laid the groundwork for developing the concept of sustainable development, although it is not explicitly mentioned.¹⁵ The intensification of environmental regulations in individual states, both in industrialised and developing countries, should also be seen as a positive aspect of the Stockholm Conference.¹⁶

The last phase, beginning with the 1987 Brundtland Report, is the era of sustainable development. This period is marked by the expansion of soft law and greater institutional engagement, despite

5 J. Boć, E. Samborska-Boć, *Ochrona środowiska. Zagadnienia prawne i ekonomiczne*, Wrocław 1989, p. 41.

6 D. Bodansky, *The Art and Craft of International Environmental Law*, Cambridge 2010, p. 18.

7 M.J. Glennon, *Has international law failed the elephant?*, "American Journal of International Law" 1990, vol. 84, pp. 30–32.

8 D. Bodansky, *The Art...*, p. 19.

9 M.M. Kenig-Witkowska, *Międzynarodowe prawo ochrony środowiska. Wybrane zagadnienia systemowe*, Warszawa 2011, p. 48.

10 Ibidem, pp. 48–49.

11 United Nations, *About the United Nations Environment Programme*, <https://www.unep.org/who-we-are/about-us> (accessed: 27.02.2024).

12 Declaration of the United Nations Conference on the Human Environment, principle 1 and 2.

13 R. Paczuski, *Prawo ochrony środowiska*, Bydgoszcz 2000, p. 34.

14 D. Bodansky, *The Art...*, pp. 29–30.

15 S. Atapattu, *Emerging Principles of International Environmental Law*, New York 2006, p. 80.

16 D. Bodansky, *The Art...*, p. 29.

limited success in implementing earlier reforms.¹⁷ Environmental issues gained renewed attention due to growing concerns over global warming, exemplified by the discovery of the ozone hole and the subsequent adoption of the Montreal Protocol.¹⁸ This was the beginning of intensive action to protect the environment, manifested in international negotiations and interaction, as well as programmatic and institutional changes in the activities of international organisations.¹⁹

In pointing out the main issues of international environmental law, it is necessary to emphasise the importance of globalisation, which has been one of the main reasons for the development of society and the modern world economy but has also exacerbated the negative impact of industrial production on the surrounding environment.²⁰ One of the effects of globalisation is climate change, affecting an increasing number of countries, contributing to poverty, and slowing economic growth, especially in poor countries. In this regard, the United Nations Climate Change Conference in 2015 was an important event, which was dedicated to the establishment of Sustainable Development Goals and the negotiation of a new global climate agreement.²¹ The conference achieved its objective and reached a global compromise in the framework of climate change mitigation.

3. Concept of sustainable development in legal literature

Sustainable development is a concept that remains difficult to define, despite the extensive body of literature devoted to it.²² Its interpretation varies depending on historical context and the perspective from which it is examined.²³ This ambiguity is further compounded by the fragmented nature of international law, which lacks a uniform structure. The complexity of applicable norms and the diversity of their sources, illustrated, for instance, by the limited number of judicial decisions with no binding precedent, also contributes to interpretative uncertainty.²⁴ Moreover, inconsistent and inefficient actions by states often result in a proliferation of legal sources and institutions addressing environmental matters, which only exacerbates the problem.²⁵

At present, there is still no generally accepted meaning of the term, not least because under Article 38 of the Statute of the International Court of Justice, sources of international law, in addition to conventions, include international customs, the general principles of law recognised by civilized nations and, subject to Article 59 of that Statute, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.²⁶ Definitions vary from place to place and circumstance to circumstance. For instance, more emphasis is placed on environmental protection in highly developed countries, which ensure the fulfilment of basic needs, such as security and access to food, than in developing countries where this issue is often overlooked.²⁷

17 P.M. Dupuy, J.E. Vinuales, *International Environmental Law*, Cambridge 2018, p. 12.

18 D. Bodansky, *The Art...*, p. 30.

19 Z. Bukowski, *Zrównoważony...*, pp. 82–83.

20 J. Ciechanowicz-McLean, *Globalne prawo środowiska. Podstawowe zagadnienia*, Gdańsk 2021, p. 39.

21 J. Ciechanowicz-McLean, *Prawo ochrony i zarządzania środowiskiem*, Warszawa 2019, p. 21.

22 M. Fitzmaurice, M.S. Wong, J. Crampin, *International Environmental Law: Text, Cases and Materials*, Cheltenham 2022, p. 24.

23 J. Kielin-Maziarz, J. Rozumienie zasady zrównoważonego rozwoju w prawie międzynarodowym, „Roczniki Nauk Prawnych” 2012, vol. 22(1), p. 15.

24 D. Bodansky, *The Art...*, p. 5.

25 D. Hurd, *The Search for Peace. A Century of Peace Diplomacy*, Boston 1997, p. 6.

26 Article 38 of the Statute of the International Court of Justice.

27 R. Lozano, *Envisioning sustainability three-dimensionally*, “Journal of Cleaner Production” 2008, vol. 16(17), pp. 1838–1846.

Nowadays, the concept of sustainable development is characterised by linking care for the environment with socio-economic development, while opposing the previously accepted theory of economic growth.²⁸ However, approaches to the concept have varied over time. One proposed division runs between the traditional and contemporary approaches. In the traditional account, the concept of sustainable development stands for an appropriate balance within the framework of socio-economic development. By contrast, in the contemporary view it is defined as a balance between the economic, ecological, and social elements of economic development, taking into account the needs of future generations.²⁹ It should be noted that, on the latter interpretation, sustainable does not mean rapid, one-size-fits-all development imposed on all subjects of international law and is not a justification for the dominance of a single cultural pattern.³⁰ Furthermore, the idea of sustainable development should be inclusive and of interest not only to environmental agencies but to all government departments.³¹ This means that environmental issues should not be treated as completely separate aspects but should be broadly included in all socio-economic decisions. The contemporary view emphasises the issue of so-called intergenerational equity, which aims to secure future resources and stresses the need for long-term action, spread over generations.³²

The concept of sustainable development may also be approached from three supplementary perspectives: as a socio-philosophical idea involving a transformation of human values, as a contemporary model of economic development, and as an emerging scientific discipline.³³ All of these aspects have already been incorporated by companies implementing ecological solutions valued by consumers or by EU regulations stipulating that every activity must be carried out in accordance with the principles of this concept.³⁴

In summary, a broad understanding of sustainable development allows it to be characterised as a concept that is socially just, ethically sound, economically viable, and ecologically responsible. It is defined by the active involvement of all relevant actors, reliance on scientific knowledge, the rejection of a purely anthropocentric perception of the environment, as well as the evolution of ecological awareness and the transformation of the human-environment relationship.³⁵

4. Concept of sustainable development in the context of principles of international environmental law

The concept of sustainable development is addressed not only in the literature but also in international discourse. The substantive source of international environmental law is the will of states to establish international legal norms in the environmental field, both binding and non-binding.³⁶ A pivotal moment in its evolution was the 1992 United Nations Conference on Environment and Development

28 G. Embros, *Koncepcja ekorozwoju w ujęciu Stefana Kozłowskiego*, „*Studia Ecologiae et Bioethicae*” 2010, vol. 8(2), p. 80.

29 P. Trzepacz, *Geneza i istota koncepcji rozwoju zrównoważonego*, [in:] *Zrównoważony rozwój – wyzwania globalne*, ed. P. Trzepacz, Kraków 2012, p. 16.

30 Ibidem.

31 D. Bodansky, *The Art...*, p. 33.

32 J. Toruński, *Aspekty środowiskowe zrównoważonego rozwoju obszarów prawnie chronionych*, „*Zeszyty Naukowe Akademii Podlaskiej w Siedlcach. Administracja i Zarządzanie*” 2010, vol. 84, pp. 21–22.

33 M. Adamowicz, *Koncepcje trwałego i zrównoważonego rozwoju wobec wsi i rolnictwa*, „*Prace Naukowe Katedry Polityki Agrarnej i Marketingu Szkoły Głównej Gospodarstwa Wiejskiego*” 2006, vol. 38, pp. 11–13.

34 P. Trzepacz, *Geneza i istota...*, p. 18.

35 Ibidem, p. 20–21.

36 M.M. Kenig-Witkowska, *Międzynarodowe prawo...*, p. 104.

(UNCED) in Rio de Janeiro, which emphasised environmental challenges, particularly those affecting the poorest nations.³⁷ The conference aimed to establish a comprehensive agenda for international action on environmental and developmental issues, setting the direction for global cooperation in the 21st century.³⁸ This was to be the beginning of a “new era of sustainable development with environmental requirements.”³⁹ The most crucial outcome of the conference was the adoption of documents and treaties at the event, including the Rio Declaration, which defined 27 principles designed for building cooperation and relations between states, nations and social groups. Notably, the United Nations Framework Convention on Climate Change outlined principles for international cooperation to reduce greenhouse gas emissions exacerbating global warming.⁴⁰

The conference also resulted in the key document Agenda 21, which offered a set of recommendations and actions that introduce the concept of sustainable development into local plans for socio-economic development and natural resources protection and management. The Agenda also strengthens the role of organisations and major social groups, thereby maximizing the likelihood of plan implementation.⁴¹ Other adopted instruments include the Declaration on the principles of forest management and the Convention on Biological Diversity, which emphasises the transition from fragmentary conservation of nature to the conservation of its entirety, in line with the principle of the comprehensiveness of conservation in all its global, regional, local, and national dimensions.⁴²

The enactment of the above acts and the conference itself confirmed that the concept of sustainable development is feasible for all people of the world and that the key to achieving this lies in the cooperation and integration of social, environmental, and economic actions. However, it was determined that reductions and changes must be made to the way we live, consume, and produce, as stipulated by Principle 8 of the Rio Declaration.⁴³ In addition, the enumeration of 27 principles relating to sustainable development allowed for clear target setting and further effective action.⁴⁴

The Earth Summit in Rio de Janeiro initiated strong action on the implementation of the concept of sustainable development, resulting in the Millennium Summit, which aimed to assess the state of the environment and plan further initiatives specified in the Millennium Declaration.⁴⁵ Key challenges included globalization, peace, security, human rights, good governance, and the protection of vulnerable groups, including children.⁴⁶ The implementation of the above provisions was discussed at the next Earth Summit in 2005, which underscored the need to combat global economic and social problems, especially concerning the rule of law and health care.⁴⁷

The 2002 UN conference revisited the validity of previous sustainable development goals, focusing on non-environmental aspects. Concerns arose due to the growing gap between developed and

37 P. Trzepacz, *Geneza i istota...*, p. 25.

38 United Nations, *Sustainable Development: Background, Goals, Climate Action*, <https://www.un.org/en/conferences/environment> (accessed: 27.02.2024).

39 R. Paczuski, *Prawo...*, p. 41.

40 A.F. Bocian, *Implementacja idei zrównoważonego rozwoju w procesie globalizacji*, [in:] *Zrównoważony rozwój gospodarki opartej na wiedzy*, ed. B. Poskrobski, Białystok 2009, p. 150.

41 Agenda 21, United Nations, United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3-14 June 1992. pp. 1-3.

42 P. Korzeniowski, *Zasady prawne ochrony środowiska*, Łódź 2010, p. 288.

43 United Nations, *United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992*, <https://www.un.org/en/conferences/environment/rio1992> (accessed: 27.02.2024).

44 B. Rakoczy, B. Wierzbowski, *Prawo ochrony środowiska. Zagadnienia podstawowe*, Warszawa 2010, pp. 43-46.

45 Z. Bukowski, *Koncepcja zrównoważonego rozwoju a prawa człowieka*, [in:] *Prawa człowieka a ochrona środowiska – wspólne wartości i wyzwania*, eds. B. Gronowska, B. Rakoczy, J. Kapelańska-Pręgowska, K. Karpus, P. Sadowski, Toruń 2018, pp. 42-43.

46 United Nations Millennium Declaration, 8 September 2000.

47 Z. Bukowski, *Koncepcja...*, p. 43.

underdeveloped countries, worsening environmental outcomes.⁴⁸ The failure to achieve goals was linked to accelerating economic globalization, exacerbating social inequalities, and unsustainable consumption patterns.⁴⁹ The conference emphasized poverty eradication and the need for greater public involvement in sustainable development. However, it was criticized for the non-binding nature of its declarations, inconsistent implementation, and lack of concrete solutions.⁵⁰ One crucial accomplishment was the adoption of the Political Declaration outlining both environmental challenges and opportunities for environmental protection through sustainable development.⁵¹

The outcome of the conference was a document entitled *The Future We Want*, which endorsed new sustainable development goals and reaffirmed existing commitments. These included eradicating poverty and hunger, ensuring access to sustainable energy, and protecting ecosystems.⁵² The document highlights the importance of human rights and the rule of law,⁵³ but it has been criticised for the absence of binding obligations and concrete implementation mechanisms.⁵⁴

Currently, the concept of sustainable development is still a tenet of international environmental law, but it is subject to revision. A novel interpretation was drafted in the 2017 Global Pact for the Environment, strengthening the effectiveness of environmental law principles by changing their status to so-called hard law, which is to be adopted through a multilateral international treaty.⁵⁵ Above all, the right to live in an ecologically adequate environment and the duty to care for it are considered to be the most important aspects of the above act, undoubtedly supporting the tendency in the doctrine to recognise the right to the environment as a third-generation human right.⁵⁶ Following Ciechanowicz-McLean, it can be stated that such a view is gaining recognition due to the gradual normalisation of the link between human rights and the environment. Although common international environmental law is currently undergoing a stage of soft law, it co-exists alongside so-called hard law instruments, including international conventions for the protection of selected species of fauna and flora or marine ecosystems, such as the Biodiversity of Areas Beyond National Jurisdiction Treaty.⁵⁷

5. Sustainable development in case law

Sustainable development is referenced in numerous international documents and, despite the lack of a formal legal definition, plays a significant role in both legislation and jurisprudence. Its influence extends to environmental law and related principles, such as the integration of environmental protection into development processes and the right to access information.⁵⁸ Some scholars regard it as a general principle of international law, although its practical relevance in resolving international disputes is often

48 P. Trzepacz, *Geneza i istota...*, p. 27.

49 Z. Hull, *Filozoficzne i społeczne uwarunkowania zrównoważonego rozwoju*, „Problemy Ekorozwoju” 2008, 3(1), pp. 27-31.

50 P. Wołczek, *Ewolucja podejścia do koncepcji zrównoważonego rozwoju na arenie międzynarodowej*, „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu” 2014, vol. 338, pp. 214-215.

51 P. Korzeniowski, *Zasady prawne...*, p. 292.

52 M. Fitzmaurice, M.S. Wong, J. Crampin, *International Environmental Law: Text, Cases and Materials*, Cheltenham 2022, p. 24.

53 Z. Bukowski, *Koncepcja...*, pp. 45-46.

54 P. Wołczek, *Ewolucja...* p. 216.

55 J. Ciechanowicz-McLean, *Globalne prawo środowiska. Podstawowe zagadnienia*, Gdańsk 2021, p. 41.

56 Ibidem, pp. 47-49.

57 Ibidem, p. 50.

58 S. Atapattu, *Sustainable Development, Myth or Reality? A survey of sustainable development under international law and Sri Lanka law*, “The Georgetown International Environmental Law Review” 2002, 14(2), p. 273.

questioned.⁵⁹ Others view it as a “meta-principle” consisting of several underlying norms.⁶⁰ According to Gillroy, sustainable development encompasses both substantive norms (e.g., the precautionary principle, the right to development) and procedural norms (e.g., the integration of development and environmental considerations, the protection of future generations).⁶¹ For example, Mayeda interprets sustainability through the principles of shared but differentiated responsibility and the precautionary principle, while rejecting the notion of intergenerational equity.⁶²

A minority of scholars contend that sustainable development has achieved the status of customary international law, largely due to the landmark ruling in the *Gabčíkovo-Naymaros* project case.⁶³ This case, which involved a dispute between Hungary and Slovakia over the construction of a large hydropower project, marked the first explicit judicial reference to the principles of sustainable development.⁶⁴ The dispute arose when Hungary raised concerns about the potential environmental harm caused by the diversion of water into a side channel, which threatened significant ecological changes in the river valley. Slovakia, however, sought to proceed with the project for economic reasons.⁶⁵ Hungary invoked the Vienna Convention on the Law of Treaties, arguing that the emergence of new norms in international environmental law provided grounds for the unilateral termination of the bilateral agreement.⁶⁶

Although the International Court of Justice (ICJ) did not fully accept Hungary’s argument, it did recognise several principles essential for the implementation of sustainable development. These included the precautionary principle, the liability for damages, and the obligation to continuously assess the environmental impact of international agreements.⁶⁷ The court also emphasized the need for cooperation and the creation of new standards for harmonizing economic development with environmental protection.⁶⁸ While the ICJ did not establish sustainable development as a legally binding norm, it affirmed its importance as a conceptual framework. Only Judge C. Weeramantry expressed a separate opinion in which he described sustainable development as an individual, self-contained principle of international environmental law.⁶⁹

A case that demonstrates the difficulty of interpreting the concept of sustainable development is the *Pulp Mills* case, which concerned a conflict between Uruguay and Argentina over two pulp mills in construction. Argentina held the opinion that their construction would cause water pollution and lead to changes in the ecological balance in the area, and that Uruguay had failed to comply with the substantive and procedural obligations set out in the 1975 Statute.⁷⁰ In contrast, Uruguay argued to the contrary,

59 J. Gillroy, *Adjudication norms, dispute settlement regimes and international tribunals. The status of „environmental sustainability” in international jurisprudence*, “Stanford Journal of International Law” 2006, vol. 42, p. 2.

60 B. Ziemblicki, *Zrównoważony rozwój z perspektywy prawa międzynarodowego i europejskiego*, „Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu” 2016, 452, p. 158.

61 J. Gillroy, *Adjudication Norms...*, p. 12.

62 G. Mayeda, *Where should Johannesburg take us? Ethical and legal approaches to sustainable development in the context of international environmental law*, “Colorado Journal of International Environmental Law and Policy” 2004, vol. 15(1), p. 30.

63 B. Ziemblicki, *Zrównoważony rozwój...*, p. 158.

64 J. Bazylińska-Nagler, *Zrównoważony rozwój w tradycji prawnej Chińskiej Republiki Ludowej*, „Studia nad Autorytaryzmem i Totalitaryzmem” 2021, vol. 43(2), p. 453.

65 Ibidem.

66 Article 59 of the Vienna Convention of Law Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.

67 C. Cepelka, *The dispute over the Gabčíkovo-Nagymaros systems of locks is drawing to a close*, “Polish Yearbook of International Law” 1993, vol. 20, p. 75.

68 *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, ICJ Reports 1997, p. 7, para. 140.

69 J. Bazylińska-Nagler, *Od dywergencji do konwergencji – prawa do rozwoju i życia w czystym środowisku obecnych i przyszłych pokoleń jako filary zrównoważonego rozwoju*, [in:] *Rządy prawa jako wartość uniwersalna: księga jubileuszowa Profesora Krzysztofa Wójtowicza*, ed. A. Kozłowski, Wrocław 2022, p. 279.

70 P. Merkouris, *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay): Of Environmental Impact Assessments and Phantom Expert*, The Hague 2010, p. 8.

stating that the pulp mills met the highest environmental standards and requirements. The ICJ found that Uruguay had breached its procedural duties, but not its substantive duties. However, the court emphasised “the need to strike a balance between the use of the waters and the protection of the river consistent with the objective of sustainable development.”⁷¹ It also strongly underscored the obligation to assess the environmental impact of an investment at risk of transboundary pollution.⁷² Nevertheless, this ruling is criticised by some doctrines due to the restrictive interpretation of the obligations to prevent environmental harm in an international context.⁷³ Sustainable development is described as an objective rather than a principle, which makes it easier for the courts to find a balance between environmental protection and economic development.

Another pertinent case in this regard is the Iron Rhine case, which involved a dispute between Belgium and the Netherlands before the Permanent Court of Arbitration concerning the reactivation of the railway line linking Antwerp to the Rhine basin and the associated costs. In the 1990s, the Netherlands took legal steps to designate nature reserves along the proposed route.⁷⁴ According to the Court, Belgium was obliged to finance a portion of the environmental costs, while the Netherlands was required to pay a pro rata share of the expenses of the total reactivation costs, provided these measures resulted in specific, tangible benefits for the Netherlands. Furthermore, the court established that there exists an obligation to prevent damage that may arise from economic activities. This obligation was interpreted in the judgment as a principle of universal international law, applicable both to autonomous actions and the implementation of treaties.⁷⁵

6. Conclusions

The topic of sustainable development is undoubtedly relevant and present in both case law and legal literature regarding international environmental law. The concept of sustainable development is also found in treaty law with the caveat that it has little legal significance, as its vagueness and flexibility cause interpretative doubts and, consequently, ineffective and inconsistent action by the addressees of the above provisions. Furthermore, although sustainable development has not been recognised by any court as customary law, it is included by some jurists in its corpus.⁷⁶ In jurisprudence, it is typically viewed as a goal to be pursued by international law subjects, primarily as an obligation to prevent environmental harm arising from development activities. At a definitional level, sustainable development can be understood as a tool to balance economic growth with the right to live in a clean environment, taking into account the needs of future generations.⁷⁷ Sustainable development plays an important role in the resolution of international disputes, and its elements derive from key areas of international law, such as human rights and state responsibility.⁷⁸ Case law indicates that due to its undefined meaning and lack of enforceable character, it cannot be considered a principle of law. Sustainable development

71 Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14, para. 177.

72 P. Merkouris, *Case...*, p. 11.

73 S. Maljean-Dubois, V. Richard, *The International Court of Justice's Judgement of 20 April 2010 in the Pulp Mills on the River Uruguay (Argentina v. Uruguay) case*, [in:] *Latin America and the International Court of Justice*, eds. P. Almeida, J.-M. Sorel, London 2017, p. 1.

74 Permanent Court of Arbitration, *Iron Rhine Arbitration (Belgium/Netherlands)*, <https://pca-cpa.org/en/cases/1/> (accessed: 27.02.2024).

75 Iron Rhine Arbitration (Belgium/Netherlands), The Arbitral Tribunal, Award, the Hague 2004, para. 59.

76 M. Petersmann, *International Law and Sustainable Development*, lecture presented on the 27th of October 2023 at University of Eastern Finland, Joensuu 2023.

77 P. Sands, *Principles of International Environmental Law*, Cambridge 1995, pp. 206–207.

78 J. Bazylińska-Nagler, *Od dywergencji...*, p. 280.

functions more as a concept or general guideline rather than as a strictly binding legal norm or principle of law. Through the analysis of selected case law, it can be concluded that sustainable development is treated more as an objective or standard, rather than as an independent principle of law. The concept of sustainable development does not meet the criteria of an international law norm that could be recognised as a principle. However, there is a need for further development of this idea, both at the national and international levels, including through the adoption of more precise regulations.

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