

1 Legal and historical aspects of sustainable development

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Introduction

The role and meaning of sustainable development have been recognized in the scientific literature for decades (Paul, 2008). However, the latter has shown a dynamic increase in interest in the subject, which has resulted in numerous, in-depth scientific research and publications with an interdisciplinary dimension (Mensah, 2019).

The concept of sustainable development functions in the literature in economic, management, social, and legal contexts (Jabareen, 2008). In this chapter, the historical background of sustainable development will be described, showing the development of the subject, while analysing the specificity of the discussed issues of *multifarious* nature (Borowy, 2013). Moreover, the author will discuss the legal aspects of sustainable development in the context of international and European Union law. The issues of human rights, environmental law, and elements of constitutional law will be discussed, which will allow us to understand the meaning of legal provisions and their role in shaping sustainable development.

Sustainable development in the context of international law

Sustainable development is an economic development concept based on achieving economic goals while respecting the environment and social change (Parris, & Kates, 2003; Imran, Alam, & Beaumont, 2014). Its focus on the three types of capital – economic, human, and natural – allows it to be translated into many areas of human activity. The concept centres around not only the current state of society but also its future (Rogers, Jalal, & Boyd, 2012; Emas, 2015).

An important point in the history of the term and the development of the concept itself was the establishment of the Club of Rome in 1968, which was a kind of ‘think tank’, that is, a group of people representing the world of politics, science, and business initiating a discussion on social responsibility at a global level (Weizsäcker, Lovins, & Lovins, 1998). In 1973, they published *Limits to Growth*,

making predictions about the future of humanity in terms of a growing population, shrinking natural resources, the catastrophic effects of industrialization processes, and the growing problem of poverty (Dror, 2012). The authors of the study were Donella H. Meadows, Dennis L. Meadows, Jørgen Randers, and William W. Behrens III (Meadows, Meadows, Randers, & Behrens, 2018). Despite criticism of some of the premises contained in the book (including the postulate of zero growth based on freezing economic growth at its then-current level), it helped to initiate an international discussion on development issues, placing environmental and social issues at the centre of the discussion and thus establishing the basis for the concept of sustainable development (Colombo, 2001).

At about the same time, the term ‘sustainable development’ was officially used for the first time at the 1972 United Nations Conference on the Environment held in Stockholm on 5–16 June 1972 linking the concept to the environmental context. The leading outcome of the conference was the adoption on 16 June 1972 of a Declaration on the Human Environment called the UN Stockholm Declaration introducing 26 principles of international environmental law. Within this declaration, for the first time, a part of the international community, with 77 states voting in favour, declared that matters of an environmental nature should be given due prominence (Brunnée, 2009; Pallemarts, 2014). The Declaration was therefore important in laying the foundations of international cooperation, although the act itself had no binding force (Boer, 1995).

The concept of sustainable development itself was formulated in the 1980s. Its promoters are considered to be D. Pearce, E. Barbier, A. Markandya, and R. Turner, emphasizing the role of the social objectives of states (Pearce, Turner, & Turner, 1990). In parallel, its foundations can also be found in reports and publications of the Club of Rome (Pearce, & Atkinson, 1993; Pearce, Barbier, & Markandya, 2013). The history of the concept under consideration is directly linked to a series of initiatives, mainly of the United Nations and the OECD, and to the acts passed on various occasions relating directly or indirectly to the topic of sustainable development. Various documents defined sustainable development in more or less detail or specified its terminological scope (Waas, Verbruggen, & Wright, 2010).

The 1980s led to the establishment of the World Commission on Environment and Development (WCED) in 1983, known as the Brundtland Commission. In its resolution 38/161 of 19 December 1983, the UN General Assembly established a special commission to produce a report on the environment and to promote sustainable development. The Brundtland Commission’s report *Our Common Future* issued in 1987 (paragraph 27) indicated that the process of sustainable development is based on meeting today’s needs without the risk of preventing future generations from meeting theirs (Brundtland, 1985). Some wanted to see a definition of sustainable development there, yet the report in question did not in fact initiate a discussion on the definition of the concept itself, operating on a vague explanation without describing how to achieve the declared goals.

An important moment for the promotion of the concept was the convening by the WCED of the Conference on Environment and Development (UNCED), also known as the 'Earth Summit', held in Rio de Janeiro in 1992 and was devoted to the environment and development. The conference drew on ideas voiced 20 years earlier at the Stockholm Conference and went beyond it, focusing on the themes of environmental protection and simultaneous economic and social development. The conference attracted huge public interest, bringing together 183 government delegates, including heads of states and governments. All this helped to catch the attention of decision-makers and popularize the topic (Hens, 2005). Five documents were adopted during the Conference, of which only the last two were binding:

- 1 Rio Declaration on Environment and Development (The Rio Declaration)¹
- 2 Agenda 21²
- 3 Declaration on the Principles of Forest Management³
- 4 Convention on Biological Diversity⁴
- 5 United Nations Framework Convention on Climate Change (UNFCCC).⁵

The first document contained 27 principles of human conduct towards the environment, referring to the Stockholm Declaration. The need to create a global partnership to achieve sustainable development and a higher quality of life (Principle 8) and a series of actions by the international community (e.g., Principles 4, 5, and 9) were identified as the primary objective. Interestingly, the Declaration did not contain a definition of sustainable development, and although it was not legally binding, it is the basis for countries to accept the concept and procedural rules such as the principle of environmental assessment or the right to information (Atapattu, 2001).

The second document was referred to as Agenda 21, which is a set of recommendations to achieve sustainable development by respecting the environment, combating poverty, supporting agriculture or reducing consumption on the eve of the 21st century (Porras, 2014).⁶ This act is a development of the principles included in the Declaration, divided into four parts, focused on (1) the economic and social aspects of environmental protection; (2) the protection and management of natural resources; (3) the strengthening of the role of different social groups and organizations; and (4) the feasibility of sustainable development.

The third document was the Declaration on the Principles of Forest Management, addressing, *inter alia*, forest governance issues. The fourth binding document was The Convention on Biological Diversity, centred on the idea of protecting endangered plant and animal species. The last document was the UNFCCC, which is an international agreement setting out the principles for international cooperation on reducing greenhouse gas emissions affecting the phenomenon of global warming.

Shortly afterwards, in 1997, the Protocol on Greenhouse Gas Emissions was adopted in Kyoto, Japan, which entered into force on 16 February 2005 and was ratified by 183 countries.⁷ The Kyoto Protocol was the first follow-up document to the UNFCCC, and importantly, it was of legally binding. The main objective of the Protocol was to reduce greenhouse gas emissions by 5% between 2008 and 2012 compared to 1990 levels and to introduce a number of mechanisms to achieve the climate goals, that is, Emission Trading, the carbon market, and the Clean Development Mechanism.

Another important event that took place in terms of developing the idea of sustainable development was The Millennium Summit of the United Nations held from 6 to 8 September 2000 in New York.⁸ The 189 members of the United Nations adopted a document called The Millennium Declaration, which assessed the current state of the Earth's environment and laid out a list of goals focused on environmental protection, with the cooperation and collaboration of states anchored in the process.⁹ These objectives included, according to the chapters of the Declaration: (1) peace, security and disarmament; (2) development and the eradication of poverty; (3) protection of the common environment; (4) human rights, democracy, and good governance; (5) protection of the vulnerable, including children; (6) the special needs of Africa; and (7) strengthening the institutions of the United Nations.

Following on from earlier declarations, the United Nations convened the World Summit on Sustainable Development (WSSD) in Johannesburg on 26 August–4 September 2002.¹⁰ Its main objective was to review the process of attaining the objectives set earlier (Wilkins, 2008). In addition, it was decided to identify the five most relevant areas previously established in Agenda 21, revolving around the subject under discussion, namely (1) water protection, access to sanitation and to drinking water of adequate quality; (2) energy provision while respecting the environment; (3) health protection; (4) agriculture and its importance in economic and social development; and (5) biodiversity protection and ecosystem management. The deliberations resulted in the issuing of a document, the Implementation Plan, which was mainly focused on the theme of poverty (Ruhl, 2008).¹¹

The Millennium Summit required a review of its objectives after five years, and hence, another World Summit was convened in New York on 14–16 September 2005.¹² At that time, the focus was on debt, world trade, poverty, as well as combating malaria, HIV, AIDS, and other diseases. The resolution adopted at that time emphasized the importance of sustainable development for the United Nations and the importance of democracy as being necessary for good governance (Dernbach, 2002; Ross, 2009).

Another significant event in the history of the development of the notion of sustainable development was the 'Green Growth Strategy' summit convened in 2011 by the Organisation for Economic Cooperation and Development (OECD).¹³ In the midst of the ongoing financial crisis, it was decided to hold a

meeting to highlight the objectives of the concept of sustainable development and to revise them taking into account the prevailing global economic situation, as described in The Development Co-operation Report.¹⁴

Twenty years after the Earth Summit, on 20–22 June 2012, the United Nations organized an event – The United Nations Conference on Sustainable Development, again in Rio de Janeiro, later called Rio+20.¹⁵ Once again, the previously established goals adopted in Agenda 21 and the tenets of The 2000 Millennium Declaration were reviewed (Stevens, & Kanie, 2016). The meeting resulted in the issuance of a number of resolutions, including The Future We Want, defining more precisely further goals in line with the concept of sustainable development¹⁶ (Lafferty, & Eckerberg, 2013).

On 25 September 2015, during the United Nations Summit of Member States held in New York, another agenda was adopted with the primary goal of eradicating global poverty by 2030.¹⁷ The 2030 Agenda for Sustainable Development contained 17 Sustainable Development Goals (SDGs) and 169 specific targets. The new UN programme Transforming our world: the 2030 Agenda for Sustainable Development established a set of Sustainable Development Goals, pointing to the importance of human rights, poverty prevention, and well-being guarantees, among others (Lee et al., 2016).¹⁸ They all address achievements in five areas – the so-called 5xP: people, planet, prosperity, peace, and partnership. The goals cover a wide range of challenges including hunger, poverty, health, education, gender equality, climate change, sustainable development, and peace. They replaced the Millennium Development Goals, which were to be met by 2015 (Li, 2020).

At around the same time, an important step in promoting respect for the environment in correlation with economic planning was the adoption of the Paris Agreement in 2015 at the COP21 (UNFCCC, 21st Conference of the Parties), a binding document implementing the demands of the Framework Convention on Climate Change.¹⁹ The long-term goal of the Agreement, as set out in Article 2, was to respond to ongoing climate change, respecting the goals of sustainable development, by (1) limiting global warming well below 2°C and ultimately to 1.5°C relative to the pre-industrial era to reduce the risks and damages caused by climate change; (2) low-carbon development; and (3) respecting climate targets. The agreement also sought to achieve carbon neutrality by 2050 and committed all countries to present long-term scenarios for reducing greenhouse gas emissions by 2020. The agreement was accepted by all 195 participating countries, and the start date for signatures was set for 22 April 2016.

Searching for a definition of sustainable development, one could contemplate the jurisprudence of international courts, yet this is scarce indeed. The judgement of 25 September 1997 of the International Court of Justice (ICJ) in Hungary v. Slovakia, known as the Gabčíkovo-Naymaros Project case, has become important in the field of sustainable development, determining the voice of the majority of doctrine representatives considering that sustainable development

does not have the status of international common law.²⁰ The judgement recognizes that sustainable development is a concept of international law without being normative (Boyle & Freestone, 2001; Nanda, 2005). However, this does not change the fact that sustainable development has gained wide social acceptance and certainly has continued and will continue to exert a significant influence on policy decisions and the choices of decision-makers (Segger, 2009).

Sustainable development in the context of European law

The principle of sustainable development recognized in international law is also reflected in European law. However, rather than being a distinct feature in the European Union, the notion operates in all policies as one of a more universal nature. This makes it related not only to environmental protection but is treated much more broadly and horizontally.

Environmental protection was already included as a legally protected category in the Single European Act, issued on 17 February 1986 amending the Treaty of Rome.²¹ Within the European Union itself, however, the manifestations of sustainable development can be found in environmental policy, and it is within the framework of environmental policy that sustainable development has become a systemic principle of the European Union (Baker, Kousis, Young, & Richardson, 1997; Kastrinos, & Weber, 2020).

Analysing historical legislation, the Maastricht Treaty in 1992 (hereafter the ‘TEU’) had already underlined the importance of sustainable development.²² The preamble of the TEU sets out the following objectives:

to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields.

The principle of sustainable development here goes beyond the environmental protection perspective to also include the principle of cohesion and the demand for the completion of the internal market (Sjåfjell, 2011). The repetition of these assumptions in the wording of Article 3(2) of TEU confirmed that the principle of sustainable development was not only a premise but also contained a binding normative layer for EU bodies (Philip, 2014). While the inclusion of the principle of sustainable development in the preamble can only be regarded as a postulated administrative policy direction or an accepted interpretative formula, its repetition in the specific provision referred to above means that this principle is not just a postulate (Stetter, 2001). Moreover, subsequent provisions of the TEU (i.e., Articles 3(5) and 21(2)) mandate the EU bodies to be guided by the principle of sustainable development not only in their internal relations but also

to promote this principle in their external relations, thus clearly underlining its importance (de Sadeleer, 2015).

The subsequent EU treaty was the Treaty of Amsterdam (1997), whose main objective turned out to be to clearly define the values that unite the European Union, based on freedom, democracy, respect for human rights, and fundamental freedoms.²³ Hence, it can be concluded that the social dimension of sustainable development was formalized at the community level in this very treaty (Avilés, 2011).

As regards the subject in question, an extremely important event was the adoption of a socio-economic development plan for the European Union at the Lisbon meeting in 2000 (Douma, 2017).²⁴ The Lisbon Strategy 2000 aimed to improve the competitiveness of the EU economies on the global stage (Bartels, 2013). A comprehensive strategy for introducing the concept of sustainable development was developed shortly afterwards in 2001 (A European Union Strategy for Sustainable Development, endorsed by the European Council at its meeting in Gothenburg and then modified within the European Council on 16 June 2006 as a complement to the Lisbon Strategy – The EU’s Renewed Strategy on Sustainable Development).²⁵ The main objective formulated in the documents was to develop initiatives to ensure a better quality of life by promoting environmental and social innovation (Vedder, 2010).

In yet another EU treaty, Treaty on the Functioning of the European Union (TFEU), there is only one provision referring directly to the principle of sustainable development, namely Article 11.²⁶ According to it, environmental protection requirements must be taken into account in the definition and implementation of the Union’s policies and activities, in particular with a view to promoting the concept of sustainable development (Kenig-Witkowska, 2017). Hence, the principle of sustainable development as enshrined in Article 11 is a kind of link between environmental protection requirements and other Union policies. The TEU refers to the principle of sustainable development in much narrower terms, only with regard to the relationship of environmental protection requirements with other EU policies. However, the scope of coverage in Article 11 TFEU applies to all aspects of EU administration, including European integration (Avilés, 2012).

The Charter of Fundamental Rights of the European Union (Charter) was adopted and signed on 7 December 2000 at the Nice European Council and then again with amendments at the Lisbon Summit on 12 December 2007. The document is binding thanks to the Lisbon Treaty. Because of the importance and significance of the Charter’s provisions, the document could not ignore the important context of the principle of sustainable development (Toner, 2006). In the preamble of the Charter, it is indicated that the European Union’s pursuit of sustainable and balanced development is framed in isolation from its specific sphere of activity, which can be understood as the need to interpret its provisions putting the concept discussed here as a point of reference (Lock, 2019).

In the contents of the Charter itself, the concept of sustainable development appears in Article 37 stating that a high level of environmental protection must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development (Quirico, 2021). However, when attempting to interpret the provision and trying to find the context of human rights, it must be stated that the specificity of the Charter and its vague provisions only help to point in a certain direction for policies and further initiatives rather than provide a basis for the creation of rules within the environmental or other areas (Gentimir, 2020).

The lack of success in implementing the Lisbon Strategy made it necessary to redefine the goals in view of the ongoing financial crisis and the economic changes in Europe taking place in the EU Member States. Hence, in March 2010, the document *Europe 2020: A strategy for smart, sustainable and inclusive growth* was formulated with the objective of sustainable development using existing resources.²⁷ At the same time, this topic has also become a priority in the European Union's long-term programme for social and economic development 2010–2020 *Europe 2020*, referred to as 'sustainable growth'.²⁸ The strategy adopted on 17 June 2010 replaced the Lisbon Agenda, which had been in place since 2000. Its basic assumptions were based on building a stable foundation for a sustainable future for the European Union based on intellectual growth, sustainable growth, and inclusive development (Harkiolakis, Prinia, & Mourad, 2012). The *Europe 2020* strategy was very detailed in setting out the objectives under specific headings, such as increasing the employment rate for specific age groups, CO₂ emissions, and poverty indicators.

The multitude of acts relating to sustainable development, growth, and environmental protection at the European Union level shows its importance and relevance to this organization. EU treaty provisions clearly define sustainable development as one of the fundamental legal principles of European integration, but secondary legislation also refers to it. Examples of acts (at the EU level) that have referred directly or indirectly to the subject in question can be multiplied. These include White Papers – documents from the European Commission proposing changes to the common policy, for example, White Paper on the Future of Europe (2017),²⁹ Green Papers – documents dedicated to discussions and consultations on selected topics, for example, Green Paper – European Strategy for Sustainable, Competitive and Secure Energy (2006),³⁰ communiques from the Commission of the European Communities, or opinions of the European Economic and Social Committee.

Results

In common international law, there exists no legal definition of the concept of sustainable development. Its definitions appearing in non-binding acts do not have universal applicability, which determines its nature and the specificity of

the lack of substantive legal consequences of its violation. The principle of sustainable development itself is not of a normative nature either. However, some of its constituent norms do have such a character, although the principle itself is an example of soft law.

At the level of the European Union, on the basis of the very treaty provisions, that is, EU primary law, it should be acknowledged that there is no clear legal definition of the concept of sustainable development, but it is nevertheless one of the key principles of European integration. At the EU level, the concept of sustainable development represents the idea of improving the economies of individual Member States in terms of more efficient use of resources, which in turn translates into environmental aspects and maintaining the competitiveness of economies (Bomberg, 2004; Muserra, Papa, & Grimaldi, 2020).

Looking at the extensive history of legal acts directly referring to the notion in question, both at international and EU levels, it is clear that the concept of sustainable development is widely respected and has had a significant impact on political decisions and directions of further development chosen by countries despite the vagueness of its conceptual framework.

Notes

- 1 The Rio Declaration: [https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/CONF.151/26/Rev.1\(vol.I\)&Lang=E](https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/CONF.151/26/Rev.1(vol.I)&Lang=E).
- 2 Agenda 21: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>.
- 3 The Declaration on the principles of forest management: <https://www.un.org/esa/documents/ga/conf151/aconf15126-1.htm>.
- 4 The Convention on Biological Diversity: <https://www.cbd.int/doc/legal/cbd-en.pdf>.
- 5 The United Nations Framework Convention on Climate Change (UNFCCC): https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf
- 6 United Nations Conference on Environment & Development Rio de Janeiro, Brazil, 3 to 14 June 1992, AGENDA 21.
- 7 Kyoto Protocol: <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>.
- 8 The Millennium Summit: <https://www.un.org/en/conferences/environment/newyork2000>.
- 9 The Millennium Declaration: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/559/51/PDF/N0055951.pdf?OpenElement>.
- 10 Report of the World Summit on Sustainable Development, 2002, Johannesburg, South Africa, 26 August–4 September, A/CONF.199/20: <https://www.un.org/en/conferences/environment/johannesburg2002>.
- 11 The Implementation Plan: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N02/636/93/PDF/N0263693.pdf?OpenElement>.
- 12 The 2005 World Summit: <https://www.un.org/en/conferences/environment/newyork2005>.
- 13 Towards Green Growth (2011): <https://www.oecd.org/greengrowth/48012345.pdf/>.
- 14 The Development Co-operation Report: <https://www.oecd.org/dac/developmentco-operationreport2011.htm>.

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- 15 United Nations Conference on Sustainable Development, Rio+20: <https://sustainabledevelopment.un.org/rio20>.
- 16 A/RES/66/288 – The Future We Want: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/66/288&Lang=E.
- 17 The 2030 Agenda for Sustainable Development: <https://sdgs.un.org/goals>.
- 18 A/RES/70/1 Transforming our world: the 2030 Agenda for Sustainable Development: <https://undocs.org/en/A/RES/70/1>.
- 19 UNFCCC: <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>.
- 20 Gabčíkovo-Nagymaros Project – (Hungary/ Slovakia), ICJ Reports, 1997.
- 21 Jednolity Akt Europejski [Single European Act] *OJ L 169*, 29.6.1987, pp. 1–28: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:11986U/TXT>.
- 22 Traktat o Unii Europejskiej [Treaty on European Union] *OJ C 191*, 29.7.1992, pp. 1–112: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX:11992M/TXT>.
- 23 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts (*C 340, 10/11/1997 P. 0001–0144*): <https://eur-lex.europa.eu/eli/treaty/ams/sign>.
- 24 The Lisbon Strategy: https://www.europarl.europa.eu/meetdocs/2009_2014/documents/empl/dv/lisbonstrategybn_lisbonstrategybn_en.pdf.
- 25 A European Union Strategy for Sustainable Development: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52001DC0264&from=EN>. The EU's Renewed Strategy on Sustainable Development: <https://data.consilium.europa.eu/doc/document/ST-10917-2006-INIT/en/pdf>.
- 26 The Treaty on the Functioning of the European Union *OJ C 326*, 26.10.2012, pp. 47–390: <https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=celex%3A12012E%2FTXT>.
- 27 COM/2010/2020 final. Europe 2020 A strategy for smart, sustainable and inclusive growth: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52010DC2020&from=PL>.
- 28 Europe 2020: http://www.europedirect-gdansk.morena.org.pl/wp-content/uploads/2015/08/europa_2020.pdf.
- 29 The White Paper on the Future of Europe (2017): https://ec.europa.eu/info/future-europe/white-paper-future-europe_en.
- 30 Green Paper – A European Strategy for Sustainable, Competitive and Secure Energy (2006): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52006DC0105&from=PL>.

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