1st Tarragona International Environmental Law Colloquium

RETHINKING SUSTAINABLE DEVELOPMENT IN TERMS OF JUSTICE

ABSTRACT PROCEEDINGS

Rovira i Virgili University
Faculty of Law
May 5-6, 2016, Tarragona, Spain

TARRAGONA INTERNATIONAL ENVIRONMENTAL LAW COLLOQUIUM

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ABOUT THE COLLOQUIUM

1ST TARRAGONA INTERNATIONAL ENVIRONMENTAL LAW COLLOQUIUM: 'RETHINKING SUSTAINABLE DEVELOPMENT IN TERMS OF JUSTICE'

Sustainable development is a normative concept that was conceived of as a paradigm for reconciling competing and conflicting interests in economic development, social justice and environmental protection. In legal terms, sustainable development has been portrayed in manifold ways. Some view it as a normative matrix for re-interpreting existing legal principles and rules and fostering the emergence of new ones, or as a meta-legal principle that exerts interstitial normativity. Others describe it as a decision-making framework for maintaining and achieving human well-being. Yet, the perception seems to spread in academia and civil society that, as a normative concept, sustainable development may already have seen its best days. Instead, renewed claims for the reparation of historical wrongs and the promotion of procedural fairness and distributive justice in international environmental law are increasingly gaining salience. Is sustainable development still a suitable concept to address these claims? What normative and/or institutional changes are required in different areas of international environmental law and governance to tackle these demands and promote social fairness and environmental sustainability?

The 1st Tarragona International Environmental Law Colloquium is an activity carried out under research project 'From Sustainable Development to Environmental Justice: Towards a Conceptual Framework for Global Governance (IUSTAM)' funded by the Spanish Ministry for Economy and Competitivity (DER2013-44009-P).

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ABOUT THE ORGANIZERS

The 1st Tarragona International Environmental Law Colloquium (TIEC) jointly organized by the Tarragona Centre for Environmental Law Studies (CEDAT-URV) and the Tarragona Environmental Law Students Association (AAEDAT).

The CEDAT has gradually become a reference point for environmental law in Spain and Europe. Its objectives are to generate and socialize knowledge in the field of environmental law. In 2014, it hosted the 12th edition of the Annual Colloquium of the IUCN Academy of Environmental Law, which gathered researchers and academics from 56 countries across all regions of the world. At present, the CEDAT is involved in several national and international research projects. The AAEDAT is an association founded in 2009 by students and ex-students of the LL.M. of environmental law in Rovira i Virgili University. It promotes activities within the university community in order to further environmental and social values and create spaces for debate, reflection and exchange with other universities and research groups.

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KEYNOTE SPEAKERS

Jorge E. Viñuales, Harold Samuel Professor of Law and Environmental Policy at the University of Cambridge and the Director of the Cambridge Centre for Environment, Energy and Natural Resource Governance.

Professor Viñuales has published widely in his specialty areas, most recently his books The Rio Declaration on Environment and Development. A Commentary (Oxford University Press, 2015), International Environmental Law (Cambridge University Press, 2015, with P.-M.Dupuy), The Foundations of International Investment Law ouglas and J. Pauwelyn), Foreign Investment and the Environment (Oxford University Press, 2014, co-edited with Z. Din International Law (Cambridge University Press, 2012), and Diplomatic and Judicial Means of Dispute Settlement (Martinus Nijhoff, 2012, co-edited with L. Boisson de Chazournes and M. G. Kohen).

He has also wide experience as a practitioner. He has worked on many cases under ICSID, UNCITRAL, ICC or LCIA rules, including several high profile inter-State, investor-State, and commercial disputes, and he regularly advises companies, governments, international organisations or major NGOs on different matters of environmental law, investment law, human rights, maritime delimitation and public international law at large.

Professor Viñuales was educated in France (Doctorat - Sciences Po, Paris), the United States (LL.M. - Harvard Law School), Switzerland (Licence and Diplômed'étudesapprofondies in international relations - HEI; lizjur – Universität Freiburg; Licence and Diplômed'étudesapprofondies in political science – Université de Genève), and Argentina (Abogado – UNICEN).

THE RISE AND FALL OF SUSTAINABLE DEVELOPMENT (1962-2015)

Jorge E. Viñuales
University of Cambridge

Abstract

Over the last five decades, global environmental governance has moved from a half-hearted recognition of environmental problems as questions of international concern to the realization - particularly with climate change - that the very survival of humankind is at stake. But are words being matched with action? Or is sustainable development turning 'brownish'? In discussing these questions, this lecture will attempt to define the current frontier of international environmental law.

Garrett Wallace Brown, Reader in Political Theory and Global Ethics in the Department of Politics, University of Sheffield. His current HEFCE N8 grant project is on Global Food Justice.

Dr Garrett Wallace Brown joined the Department in September 2006 from The London School of Economics and Political Scence. Between 2002 and 2006 he was a member of the Project on GlobalDesign at the LSE Centre for Global Governance. He received a Institutional BA in Political Science from the University of California Berkeley as well as earning a degree in Legal Studies from the Jurisprudence and Social Policy Program at UC Berkeley, Boalt School of Law.

He earned his MSc and PhD from the Government Department at The London School of Economics and Political Science. His thesis was awarded the LSE McKenzie Prize for Best Dissertation in 2006 and the United Kingdom Political Science Association's Ernest Baker Prize for Best Dissertation in Political Theory in 2006.

Dr Brown's principle research interests include: Normative political theory, Kantian political and legal philosophy, cosmopolitanism, global justice, international and cosmopolitan law, global health policy and governance, humanitarian intervention, the theory and practice of global governance, global food justice, global constitutionalism, health system financing, globalization and health, and issues lying at the interface between political theory and international relations theory.

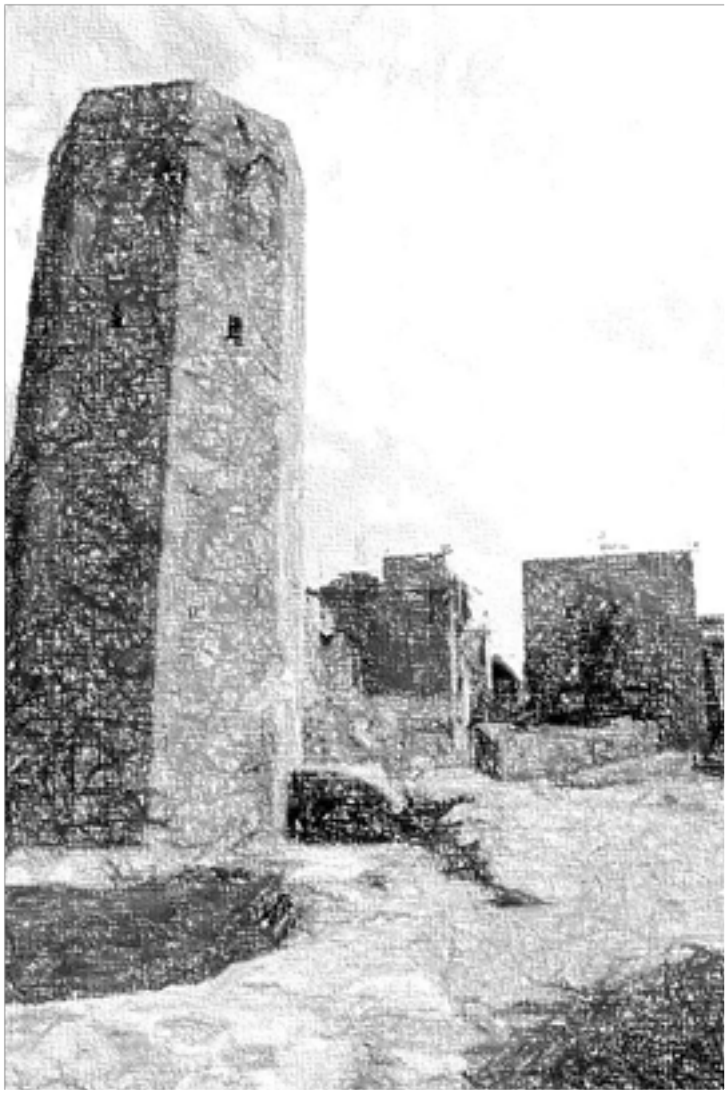
THE SUSTAINABLE DEVELOPMENT GOALS, EQUITABLE GOVERNANCE AND GLOBAL HEALTH JUSTICE: WHY THE SDGS WILL FAIL AGAIN.

Garrett Wallace Brown
University of Sheffield

Abstract

The purpose of this paper is to examine the transition from the Millennium Development Goals to the Sustainable Development Goals, outlining important aspects about how the SDGs were negotiated, what 'governance gaps' continue to exist within the SDGs, and how these gaps raise serious questions in reference to global justice. As part of this examination, this paper will focus on SDG 3 and 17 on Global Health and Development Partnership, arguing that in both cases what is most interesting about the goals is not what has been written, but what has been systematically and purposely left out of the negotiation process as well as what these omissions say about development commitments to more equitable development and global justice. Two key elements will be targeted as problematic: the purposeful removal of a 'rights based' approach for development (and health in particular) and the lack of clear governance mechanisms within Goal 17 on partnership and compliance. From this analysis this paper will argue that the SDGs have missed an opportunity to strengthen a move toward better approximating the demands of global justice, thus resulting in yet another failure in fulfilling development goals by 2030.

ORAL PRESENTATIONS



1. SUSTAINABLE DEVELOPMENT AND JUSTICE

THE STATUS OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL LAW: A BIG DATA ANALYSIS

Michelle Ayu Chinta Kristy
University of Geneva and Maastrich University

Abstract

Sustainable development is knowingly referred to development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains the interdependent and mutually reinforcing pillars, *e.g.* economic development, social development and environmental protection. Since the adoption of the Rio Declaration on Environment and Development in 1992,[1] sustainable development has been referred in many treaties, including trade-and-investmentrelated treaties.[2] The reference on sustainable development is envisaged to be proliferated in many treaties following the adoption of the General Assembly Resolution 'Transforming Our World: The 2030 Agenda for Sustainable Development' on 25 September 2015[3] including the 17 Sustainable Development Goals (SDGs)[4] and 169 targets to be achieved in 2030 by the United Nations members. The paper aims at presenting the status of sustainable development in international law by introducing a new approach in its legal analysis, *i.e.* the big data analysis. A comprehensive database on the reference of sustainable development complemented with certain relevant indicators has been developed.[5] This database reviewed 277 international trade agreements, 3503 investment agreements, 140 Multilateral Environmental Agreements and 951 reports of disputes from various international tribunals. The paper argues that sustainable development is a general principle of law and a principle of customary law in the European Union.

[1] See in particular Principle 27 of the Rio Declaration on Environment and Development which mandates the further development of international law in the file of sustainable development. The Rio Declaration can be accessed at: http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163 (last accessed on 30 November 2015).

[2] For instance, the Marrakesh Agreement Establishing the World Trade Organization refers to sustainable development in its preamble. This agreement is available at: https://www.wto.org/english/docs_e/legal_e/04wto_e.htm (last accessed on 20 December 2015).

[3] General Assembly Resolution, Resolution Adopted by the General Assembly on 25 September 2015, A/RES/70/1, 'Transforming Our World: The 2030 Agenda for Sustainable Development', available at: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E (last accessed on 20 December 2015).

[4] Further information on the Sustainable Development Goals can be accessed at: https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals (last accessed on 3 September 2015).

[5] The database is developed as a part of a doctorate thesis of the author titled "Legal Aspect of Sustainable Development in the World Trade Organization".

THE (IM-) POSSIBILITY OF THINKING THE SUSTAINABILITY AND ENVIRONMENTAL JUSTICE DIFFERENTLY?

Anna Aseeva and Agnès Michelot
Université La Rochelle

Abstract

Today's notion of sustainability seems to be permeated with conflicts between economy and ecology, profit and prudence, the risk-taking of the present and the security of the future. Quickly, however, sustainability surpassed its initial -Bruntland's style -limitation to nature-related policies, and has become a pop culture reference applicable to almost any policy realm –and especially the market economy. Indeed, the tendency of a 'beyond-limits' world, captured in the paradigm of 'green growth' or 'low-carbon development', moves far beyond sustainable development's uneasy balancing or compromise between the myriad objectives of limits on growth (as per Bruntland), but instead calls to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all" and "double the global rate of improvement in energy efficiency" (UN post-2015 SDGs),amongst other things. Such transmutations as decoupling and substitution, however, do not resolve, but instead transpose, spatially and temporally, the conflicts that the modern discourse of sustainability is beset with.

The authors will first discuss and critically assess, and then seek to re-think the ideas of sustainability. The authors aspire to demonstrate possibilities of thinking the environmental degradation, hence possible ecological justice and solidarity differently, and to simultaneously show that the highly contingent nature of the globalist, future-orientated form of growth as intergenerational 'supra-normativity' that sanctions various UNEP instruments, the UNFCCC regime, and the like, thereby empowers a specific set of regulatory actors and endorses specific modes of regulation. In particular, firstly, the propertisation of the biosphere (e.g. the carbon regime) within the current international law framework assumes the possibility of the existence of a universal equivalent. Second, this model of justice allows only to a state or state-like entity existing at the international level to decide to what both individuals and the nature are entitled as a 'right'. At the same time, virtually no realistic hard-law responsibilities or liabilities are envisaged for states in case of environmental or ecological wrongs; neither there exists a world compromise on the notion of 'ecological crime', for instance.

The proposed presentation will thus seek to examine the socio-legal relations inherent to the existing sustainability and environmental justice discourses, and, in particular, the commodification of everything in nature. In addition to sociology of law and global law and governance approaches, the authors intend to draw on particular theories of political economy and biopolitics of sustainability. Generally, the paper aims to discuss broad strategies and specific actions that can be used to implement intergenerational environmental justice instead of the existing ones that apparently barely work. More specifically, the paper will attempt to sketch the main reasons and possible options how to engage more progressively into debates about intergenerational ecological justice and North-South development.

IS 'LEGAL JUSTICE' BLIND TO PLURAL REALITIES? SOCIAL-ENVIRONMENTAL JUSTICE IN TRANSBOUNDARY LAW AND INSTITUTIONS

Stephanie Hawkins
University of Strathclyde

Abstract

Social-environmental justice is concerned with environmental and social difference, and is intrinsically connected with legal mechanisms for environmental protection and social change. Yet, law (national to international) is often criticised for its limited connection to realities on the ground. Simplification and distance from reality is said to be a necessary aspect of law, since the complexities of reality that are uncertain and dynamic cannot be incorporated into legal mechanisms if they are to be operationally effective. There is thus a gap between law, and notions of environmental justice that are widely considered to be plural (justice experienced subjectively by different stakeholders, whilst claims of what is objectively 'just' can be framed by different ideological lenses).

Nevertheless, international law and policy engages with environmental justice through an emerging legal framework promoting procedural justice. Specifically, this framework requires access to information, public participation in decision-making, and access to justice in local, national and transboundary environmental matters (Principle 10 of the Rio Declaration; UNECE Aarhus Convention). This framework sits alongside sustainable development as a pervading international discourse. Significantly, the recent Sustainable Development Goals re-enforces the framework for justice through Goal 16, which asserts the target of 'equal access to justice for all', 'inclusive, participatory, representative decision-making', as well as 'public access to information'. As a result of the difficulties of incorporating plural notions of justice into law and policy, it can be seen that achievable but vague objectives are used instead.

This research addresses the gap in legal approaches that fail to contextualise justice in specific spatial, political and social circumstances. By developing a framework for socialenvironmental justice that uses the plural notion of justice as a basis for empirical research, (in)justice can be determined in any specific context. This, in turn, can lead to the identification of leverage points for intervention to make positive changes, which is directly relevant for informing law and policy. In addition, the framework can facilitate the identification of obstacles to justice, allowing a thorough analysis of the broader social structures held in place through legal mechanisms. Accordingly, this research provides a conceptual and operational tool to practically address the plurality of justice surrounding law and institutions. By applying the framework to the transboundary environmental law context in selected case studies, this paper provides the lens for shifting perspectives to more accurately consider the question: 'justice for whom?', when analysing legal and institutional structures across different decision-making levels.

2. SUSTAINABILITY, JUSTICE AND HUMAN RIGHTS

INDIGENOUS PEOPLES AND THE PROTECTION OF BIODIVERSITY: DOES SUSTAINABLE DEVELOPMENT PLAY A ROLE?

Federica Cittadino
Università di Trento - EURAC

Abstract

This contribution argues that the principle of sustainable development is of limited use when it comes to the relationship between the rights of indigenous peoples and the management of biodiversity under current international law. These bodies of law are potentially in conflict with one another since the management of environmental resources in light of the Convention of Biological Diversity (CBD) may unduly compress indigenous rights. In spite of this, the principle of sustainable development has not played a role in resolving this conflict. When it comes to the integration of environmental considerations into established indigenous rights, human rights bodies have used environmental degradation as a supporting evidence for recognising the violation of indigenous rights. Therefore, human rights bodies have framed environmental protection as being mutually supportive to the realisation of indigenous rights. In this sense, these bodies have almost consistently failed either to acknowledge any potential conflicts between the two or to find criteria to solve such conflicts, thus leaving the principle of sustainable development out of the picture.

Concerning the CBD regime, although the Convention explicitly acknowledges the importance of traditional knowledge, it fails to recognise that the implementation of the Convention may conflict with the realisation of indigenous rights. The conflict between the two, however, is evident at least in two main respects. First, while the CBD invites its Parties to establish protected areas to realise the Convention's conservation objectives, it does not require them to consult with indigenous peoples when protected areas are planned on indigenous territories. Second, access to genetic resources within the Convention is conditioned upon States' consent and the distribution of benefits to those State Parties that have provided genetic resources. In contrast, the Convention does not establish similar obligations for the case in which indigenous resources and traditional knowledge are concerned.

CBD practice in the form of the decisions adopted by the Convention's Conference of the Parties together with the Nagoya Protocol have partially addressed these normative gaps by acknowledging the relevance of indigenous rights when implementing the international regime on biodiversity. In this context, however, sustainable development has not provided useful indications on how to concretely integrate the rights of indigenous peoples into the CBD regime. Indeed, this integration can only be realised when the substantive content of indigenous rights is taken into account and when procedural mechanisms are established to make indigenous peoples participate into the decision-making processes concerning the management of natural resources.

DAMS, DEFLECTIVE DISCOURSE & SUSTAINABLE DEVELOPMENT

Ed Atkins
University of Bristol

Abstract

Coupling an approach of Ernesto Laclau's and Chantal Mouffe's Discourse Analytic framework with understandings of the relationship between socio-natures and discourse, this paper will explore how recent Brazilian governments have appropriated narratives of Sustainable Development as a means to legitimise the construction of mega-dams in the Amazon region. In doing so, a pro-dam coalition (incorporating politicians, industry-leaders and civil society) have sought to adapt the developmentalist discourse of previous regimes to incorporate an environmental component. Such narratives are lent credence by international environmental governance and the increased international funding for the projects in question - with large-scale hydropower development often eligible for support via the Clean Development Mechanism.

Yet, the Amazon is a flow resource that many depend upon for their livelihoods. Consequently, when a river is dammed of redirected, the communities pocketed along its journey from glacier to sea are adversely affected. It will be asserted that, in the contemporary world, it is this characterisation of hydropower as sustainable that has further legitimised this discourse – allowing contemporary dam projects to possess strong green credentials – despite objections from the affected communities and civil society. As a result, the resistance-discourse of opposition groups, embodying both ecological and human rights critiques, has been further undermined by a shift in discourse that casts the dam as, at best, sustainable and, at worst, environmentally benign. Within this discourse, economic development and utilitarian benefits are promised - often within the greater context of energy scarcity and sustainable energy.

This paper will demonstrate how these discourses have come to embody a worldview that has adopted existing storylines of sustainability as a hegemonic tool to allow it to isolate opposition networks, fragment alliances, and further legitimate construction. As a result, it will assert that notions of sustainable development have been appropriated as a means to justify the infringement of human rights as a means to build infrastructure that's green credentials are increasingly questioned.

MAPPING THE INTERNATIONAL LEGAL FRAMEWORK OF THE SACRED NATURAL SITES

Jeronimo Basilio São Mateus
Rovira i Virgili University

Abstract

This paper explores the legal definition of Sacred Natural Sites (SNS) in international Law. The main goal is to present a cartography of its different normative sources. As a relatively new issue in international law – the first discussions about it in international forums date from 1990 – there is yet no single legal framework. Indeed, the subject has been considered in three different sets of legal instruments. They are: (a) nature conservation and cultural protection norms, as, for example, the Convention on Biological Diversity, and the Convention Concerning the Protection of the World Cultural and Natural Heritage; (b) Indigenous Rights norms, as the United Nations Declaration on the Rights of Indigenous Peoples; (c) and religious freedom protection instruments as the Universal Declaration of Human Rights. The interactions between religion and environmentalism have been gaining increasing attention recently, as an alternative approach of dealing with the environmental crisis. These kinds of studies have gained a powerful boost with the publication of the Laudato si encyclical letter from Pope Francis in May 2015. As the leader of one of the biggest religions in the world the Pope has addressed several of the main environmental problems of our contemporary world in a considerable critical and provocative way. Studying the legal international treatment of the SNS is, thereby, one of the possible nodes in which religion, environment and the law are being related. The identification of the different international normative systems that regulate this issue is the first and a fundamental step in mapping further conceptual problems and antinomies between them. In the same way, it allows us to think about the necessity of a new unified international legal framework. Additionally, this legal map is useful in the analysis of the internal legislation of countries that have already produced legal instruments on SNS, as India, Australia or Benin. As a conclusion, the paper extracts from the different normative sources a legal definition of SNS, and presents some problems concerning its practical application, considering the myriad of religious sensibilities and visions.

3. SUSTAINABLE DEVELOPMENT AND COURTS: THE ROLE OF NATIONAL AND INTERNATIONAL JUDICIARIES

THE EFFECTIVENESS OF THE AARHUS CONVENTION COMPLIANCE COMMITTEE AFTER THE FIRST AND SECOND SPANISH CASES

Eduardo Salazar
Murcia University

Abstract

Compliance mechanism – Aarhus Convention – Access to Justice

The aim of the proposed paper is to discuss about the experience gained after a couple of cases before the Aarhus Convention Compliance Committee (ACCC) and its enforcement at the national level. The abstract's author sent a communication representing an Association based in the Orchards of Murcia (Spain) regarding land use conflicts - ACCC/C/2008/24 - and participated in the procedure and its implementation, learning lessons to share in this forum.

The main points of the proposed paper are:

1) to analyze the process before the Compliance Committee and the follow-up process dealing with Meeting of the Parties (MOP) decisions after non-compliance declarations (together with the also Spanish case (ACCC/C/2009/36)),

2) to explore the relationship between the ACCC Findings and Recommendations, the MOP's non-compliance declarations and the reactions from the national/regional/local administrations and Courts, to know more about the effectiveness of the non-compliance mechanisms and the way to implement its decisions at the domestic level,

3) to verify the changes in the administrative and judicial praxis regarding the substantive matters of the both Spanish Cases at the ACCC. The substantive matters are related not only to access to environmental information and public participation but to barriers to access to environmental justice in Spain. Both communications asked for noncompliance declaration regarding the injunctive relief regime and the legal aid system for NGOs in environmental cases at the Spanish Courts.

4) to determine the remaining obstacles for access to environmental justice in Spain after the both cases.

The paper will show how a successful experience using Aarhus Convention compliance mechanism in order to enforce environmental citizen's rights regarding access to justice at the domestic level brings difficulties and challenges for NGOs to implement international MOP decisions at the national Courts and Administrations.

USING LITIGATION TO PROTECT THE RIGHTS OF INDIGENOUS PEOPLES IN CANADA FROM THE ADVERSE EFFECTS OF CLIMATE CHANGE

Kaitlyn S. Harvey
University of Saskatchewan

Abstract

Greenhouse gas emissions from anthropogenic sources have caused the earth's climate to change, and these changes are having a myriad of negative impacts on the health and well-being of people around the world. Among those who are expected to be the most significantly impacted by these changes are people who live in low-lying coastal and Arctic regions, Indigenous peoples, and those who live in poverty.

To combat the adverse effects of climate change on their communities, people are increasingly turning to the courts, seeking protection from the state and redress for the damages they have suffered. Plaintiffs typically argue that government is responsible for regulating and reducing the amount of greenhouse gases that may be emitted in a given nation, or that fossil fuel-developing companies should be held liable for the damages people suffer as a result of a changed climate. Although these arguments often fail, people continue to seek the court's assistance to deal with their climate change-related matters — and the trend towards using litigation to address the legal implications of climate change shows no sign of slowing down.

Climate change litigation has yet to take hold in Canada, but it may only be a matter of time before that changes. As Arctic ice and permafrost thaw, and northern, primarily Inuit communities face widespread and profound changes to their environment and their way of life, questions have been raised regarding whether Canada's Constitution, which provides protection to Aboriginal and treaty rights, might provide Indigenous peoples in Canada with a means of ensuring they are adequately protected from the adverse effects of climate change. This thesis aims to shed light on this question by identifying and exploring the analytical frameworks developed by the Supreme Court of Canada for dealing with Aboriginal and treaty right matters under s. 35 the Constitution Act, 1982. Since Inuit communities in northern Canada have been suffering from the consequences of climate change for over a decade already, the thesis focuses on arguments that could be made by members of these communities while highlighting gaps in the jurisprudence and suggesting how those gaps may be filled. Ultimately, however, the thesis concludes that arguments based on s. 35 alone may not be sufficient to ensure the rights of Indigenous peoples in Canada are protected from climate change, and suggests that more analysis is needed in this area to identify additional options for potential Indigenous litigants in the future.

GREECE'S EXAMPLE OF HOW TO PIONEER AND THEN DEMOLISH ENVIRONMENTAL PROTECTION

Pantelina Emmanouilidou
Limoges University, CRIDEAU

Abstract

In Greece, sustainable development is applied in a very different manner than the one suggested by the European and international legal texts. The article 24 § 1 of the Greek Constitution states that measures for the protection of the environment should be taken "in the context of the principle of sustainable development"[1]. This phrase was added upon the constitutional amendment of 2001 in order to bring the internal legal system up to date with the advances in the international scene[2]. According to the Supreme Court of Greece, sustainable development is defined as the rational human intervention to the environment. An intervention is perceived as such when it allows for the preservation of the natural resources for the next generations. Considering that this version of sustainable development differs significantly from the definition and the legal scope provided by international mechanisms, we are thus faced with a novel environmental principle, best translated instead as "viability principle".

Following the constitutional amendment, a highly significant case-law development based on the viability principle occurred. The procedural characteristics granted to the principle are at the origin of this evolution; for example, it constitutes a sufficient legal basis on which an administrative decision can be overruled. Furthermore, the Supreme court has based some of it's most important environmental rulings on the viability principle. These elements transform the vague concept of sustainable development into a real and effective legal tool which has the potential of becoming a paradigm. However, this fresh and unconventional way of approaching sustainable development seems to have been currently put aside, due to obligations concerning the enactment of antienvironmental laws included in the agreed austerity measures.

The first part of this talk will focus on the analysis of the viability principle as applied by the Supreme Court and examine it's theoretical construction. The second part will be consecrated to the regression of the viability principle and of Greek environmental legislation in general, as a result of the financial crisis. Some examples will be provided, mainly from the insular territory. This proposed talk would be appropriate for "economy and the environment" topic of the colloquium.

[1] Official translation, The Constitution of Greece, Hellenic Parliament editions, 2008
[2] The previous amendment was at 1986, so the environmental provisions of the Rio declaration weren't included.

4. SUSTAINABLE DEVELOPMENT IN CONTEXT

THE SUSTAINABLE DEVELOPMENT GOALS IN THE CONTEXT OF INTERNATIONAL ENVIRONMENTAL LAW: HOW IMPLEMENTATION WILL BE INCORPORATED INTO NATIONAL POLICIES

Simone Walker, Edna Okine, Danielle Law, Regine Acluche and Linda Mensah
University of Strathclyde

Abstract

Climate change and sustainable development are not mutually exclusive. The United Nations Framework Convention on Climate Change (UNFCCC), and the 2030 Agenda for Sustainable Development provides the framework for the global community to try to mitigate the effects of climate change. The success of this relationship will be dependent on many factors, most importantly, political will. This is critical as the world moves towards managing the climate crisis while simultaneously implementing a new, ambitious agenda for sustainable development.

The recently adopted SDGs and Paris Agreement have been lauded as a breakthrough in promoting human well-being by addressing the eradication of poverty and human deprivation, the effects of climate change and environmental protection as well as promoting economic growth. As this year marks the timeframe set to begin implementing the SDGs, it is important to look at how countries will link their national priorities with the global framework that the SDGs provide.

As such, we will critically examine the procedural aspects of implementing the SDGs and the extent to which climate change is addressed. This will entail assessing the legal nature of the SDGs and the extent to which climate change needs to be addressed in order to incorporate the SDGs into national policies and public international law. In addition, an examination of the extent to which implementation is related to the provisions of the Paris Agreement will be conducted. In this context, we will also consider the extent to which sustainable development needs to be addressed in order to implement the Paris Agreement.

Accordingly, we will employ case studies from Scotland, United States, Jamaica, Ghana and Malawi in areas including: forestry and biodiversity, food security and poverty eradication to support our objective.

This paper will be presented by students from the University of Strathclyde in Glasgow, Scotland, who are members of the Climate and Sustainability Project (CASP), a programme under the Strathclyde Centre for Environmental Law and Governance (SCELG). It is a student-led project, which focuses on the implementation of the Sustainable Development Goals (SDGs). In this context, a working paper will be developed to be presented at a workshop in June 2016.

CLIMATE JUSTICE AND SUSTAINABLE DEVELOPMENT - WHAT TO EXPECT FROM CHINA POST-2020?

Yuhong Zao
The Chinese University of Hong Kong

Abstract

Both climate justice and sustainable development requires inter-generation and intra-generation equity. Inter-generation equity dictates the present generation to take immediate and decisive action to mitigate climate change so that the climate system will not be damaged to the extent that deprives the future generations of their capacities to meet their own developmental needs. Thus the global consensus of aiming to control the temperature increase within 2 degrees centigrade compared to the pre-industrial level. However, within the present generation, countries from the North and the South differ in their historical greenhouse gas (GHG) emissions, their resilience to climate change and their capacity to mitigate and adapt. Intra-generation equity requires fair and just distribution of the legal obligations to mitigate.

The North-South divide has long caused deadlocks in the global climate negotiation, which was seen at the Copenhagen Conference (2009) when China rejected any suggestion of a legally binding cap on its GHG emissions and the US refused to accept the legal obligations of deeper cut by developed countries. The Paris Agreement (2015) offers new hope of more effective international cooperation to combat climate change, but challenges remain in implementation. This paper examines China's evolving role in the global climate governance, with a focus on its latest commitment made in the INDC. From a poverty-stricken developing country to the second largest economy in the world, China's rise economically and politically in the international arena comes with the expectations for it to contribute more to the building of a fair and just global climate regime for long-term sustainable development. China was a vocal and effective advocate of the common but differentiated responsibilities (CBDR) at the Rio Conference in 1992 to make it a fundamental principle of UNFCCC and the Kyoto Protocol. While China continues to emphasize the importance of CBDR in its INDC, it has promised strengthened mitigation measures so as to achieve carbon peak by around 2030. An important highlight of China's INDC is its commitment to South-South cooperation. By setting up a South-South Cooperation Fund on Climate Change, China aims to assist small island developing countries, least developed countries and African countries to address climate change. The paper analyses whether and how China will deliver what it has promised in its INDC to make it a responsible and reliable member of the global climate regime.

EMBRACING THE REFLEXIVITY OF INTERNATIONAL CLIMATE LAW FOR SUSTAINABLE ELECTRIFICATION FOR ALL

Daniel Arnesson
University of Oslo

Abstract

With the adoption of the Sustainable Development Goals and interrelated policies, access to sustainable energy for all has become a prioritized international development goal but there is a lack of effective mechanisms for achieving this substantive goal. The oral presentation intends to discuss this problem and suggest a solution of incorporating renewable energy certificate (REC) trade as part of the implementation of the Paris Agreement.

Internationally, renewable energy deployment has gained momentum under the international climate change regime but it has offered little solutions in respect to the distributional aspects of promoting sustainable electrification for all. The Clean Development Mechanisms was intended to spur such development and include developing countries in sustainable development promotion. However, the strong focus on cost-efficient carbon emission abatements has resulted in a failure to effectively include small-scale renewable electrification projects for poor. While the new mechanism under the Paris Agreement could mitigate this with the intended move away from project-based funding towards a more comprehensive policy-oriented approach, there is still a lack of ideas on policies and measures that could be used under the new Agreement. The presentation argues that lessons could be learnt from the experimental regime established under the United Nations Framework Convention on Climate Change, in which countries and regions have elaborated on best practices for renewable energy promotion. It is in this context that REC systems have emerged and developed around the world.

RECs are energy commodities that can be traded separately from the physical electricity. This flexibility have allowed for regional cooperation in renewable energy promotion and off-grid electrification, primarily in developed countries but also emerging economies have or are in the process of implementing them. The presentation intends to show how lessons can be drawn from these practices when establishing bilateral or multilateral REC systems with the purpose of promoting renewable energy for all.

The presentation builds on a PhD project where the REC systems in developed countries are compared with similar schemes in South Africa and India. The conceptual ideas and suggestions presented are based on the empirical observations from the case studies and draws from the prospects and challenges presented when interacting with stakeholders in these different contexts. Thus, the presentation is a reflection of national emissions mitigation actions, when elaborating on international REC regulatory regimes for promoting sustainable development and renewable electrification for all.

POSTER PRESENTATIONS

SUSTAINABLE DEVELOPMENT AND JUSTICE – THEORY, CONCEPTUALISATION AND ENFORCEMENT

ACCESS TO JUDICIAL REMEDIES AS A TOOL FOR ACHIEVING SUSTAINABLE DEVELOPMENT: OUTLINING ENVIRONMENTAL LITIGATION AGAINST CORPORATIONS IN THE EUROPEAN UNION

Daniel Iglesias Márquez and Maria Font Mas
Rovira i Virgili University

Abstract

On September 2015, the United Nation General Assembly adopted the post-2015 development agenda: Transforming our World: the 2030 Agenda for Sustainable Development. The Goal 16.3 promotes the rule of law at the national and international levels and ensures equal access to justice for all. Against this background, victims of environmental corporate abuses face several practical and legal challenges to access to justice for the damages suffered. This situation takes place in developing host States where the environmental impacts of multinational corporations are more significant and the existing barriers prevent victims from accessing to judicial remedies before the courts where the damages occurred. Therefore, victims seeking judicial remedy bring their claims before the courts where the companies have their headquarters. In this sense, civil proceedings have been brought in the domestic courts in the European Union (EU) Members States for large scale environmental pollution or damage committed by EU-based multinational corporations in third countries. Our research focuses on the civil litigation in the EU for holding corporations liable for extraterritorial ecological degradation. Particular emphasis is given to European regulation of private international law (Brussels I bis Regulation and Rome II Regulation). We outline the legal and practical challenges (practical barriers; jurisdictional issues; applicable law, enforcement of the judgment) that third-country plaintiffs face in bringing their claims in the EU. The research makes reference to relevant cases related to environmental-based cases before the domestic courts in the EU (e.g. Akpan vs. Shell). We conclude that the EU Member States' courts are a suitable forum for third-countries victims to pursue their environmental claims. However, there are several obstacles that must be removed to ensure victims' access to justice and to effective civil remedies.

COLLECTIVE REDRESS IN ENVIRONMENTAL LIABILITY CASES: A USEFUL TOOL TO ACHIEVE AN EFFECTIVE JUSTICE

Laura García Álvarez
Pablo de Olavide University

Abstract

Environmental disasters occurred over the last century and the harmful effects that the industrial activity and our lifestyle have on the environment and, therefore, on our quality of life have brought to light the special and complex nature of environmental damages and their legal and procedural treatment. These damages pose several challenges to Law in general and to Private international law in particular, as the presence of a foreign element is increasingly common in these cases. In this scenario, collective redress mechanisms appear as a useful tool to access efective justice for injured people. However, its deficient and incipient regulation, especially as regards environmental matters, makes its use difficult or impossible for plaintiffs in cases of transnational damages, which results in an insufficient or inexistent repair of the damages, both the individual and the social ones. These obstacles will be presented in this work in order to make some proposals with the aim of improving both the Spanish and the European regulation of collective redress mechanisms. This will all be analised in the light of the "substainable development" concept, taking into account that traditional legal principles, as the rigid separation between the public and the private or the individualistic approach of the civil procedure, have to be re-interpreted according to vital issues such as the right to access effective justice or the right to enjoy a healthy environment.

FROM SUSTAINABLE DEVELOPMENT TO SUSTAINABLE HUMAN DEVELOPMENT? KEY ELEMENTS FOR THE TRANSITION

Stephanie Victoria Ascencio Serrato and Paola Andrea Díaz Cordero
Rovira i Virgili University

Abstract

After more than three decades of the emergence of the notion of sustainable development, it is relevant to wonder if the path is right or needs to change? Although some progress has been made, there are still significant differences between the expected results and those achieved. This leads us to conclude that the current development model is not consistent with sustainability because they both pull in different directions, which does not allow to achieve meaningful results regarding economic, social and environmental issues. In this sense, we consider that it is necessary to rethink the existing development paradigm.

This paper aims at analyzing the sustainable human development as an alternative to the existing development paradigm and its underlying economic rationale in order to cause a paradigm shift. Firstly, it examines the way that sustainable human development attempts to overcome anthropocentrism-ecocentrism dichotomy and to incorporate an ecological ethics advocating for a comprehensive and systematic model that include values such as justice, fairness, frugality and responsibility. Secondly, it studies a proposal of indigenous people to tackle climate change: Sacha Kawsak (The Living Forest) with the purpose of providing other views and ways to connecting with nature that could contribute for a paradigm shift. Finally, some elements for achieving this transition are given.

CLIMATE CHANGE INDUCED MIGRATION AND (UN)SUSTAINABLE DEVELOPMENT: SEEKING JUSTICE FOR SIDS

Beatriz Felipe Pérez
Rovira i Virgili University

Abstract

Most of the countries of the global North have adopted "sustainable development" policies. However, these countries have maintained a development model based on high fossil-energy consumption, which is far from environmentally sustainable. These countries are largely responsible for the greatest amount of greenhouse gas emissions and climate change is one of the gravest consequences of this (un)sustainable development. On the other hand, other nations like the Small Island Developing States (SIDS), which have contributed the least to climate change, are highly vulnerable to its adverse impacts. Rising sea levels, saline intrusion and increased frequency and intensity of storms have significant impacts on its population. Many islands will become uninhabitable long before they disappear. In other words, as climate change threatens lives and livelihoods across the globe, it especially challenges the development of the world's poorest. This is how climate change induced migration on SIDS becomes one of the worst ironies of the (un)sustainable development carried out by many nations in the world. On this basis, it is ethically arguable to assume that countries of the global North should be committed to providing financial and technological assistance for adaptation in situ and, when no more options are available, at least procuring inter-state cooperation in the form of immigration benefits for those climate migrants who can no longer maintain a decent standard of living on their place of habitual residence.

Through the analysis of climate induced migration on SIDS from a climate justice perspective, this paper aims (1) to shed light to the vulnerable situation of these specific climate migrants, (2) to analyze the ways in which the ethical responsibility that counties of the global North have with climate migrants on SIDS could be practically implemented, and (3) to highlight the need for covering the legal gaps by adapting the current legal frameworks of protection within the short term and by creating a new international convention in the long term.

(RE)THINKING THE PRINCIPLE OF FREEDOM UNDER ECOFEMINISM PERSPECTIVE: SKETCHING AN ALTERNATIVE SUSTAINABLE SOCIETY

Thays Ricarte
Rovira i Virgili University

Abstract

My point of a critical analytical departure is that the current environmental degradation and social inequality confirm the failures of the distribution system followed by one premise: the planetary boundaries; and, focusing on one assumption: jeopardizing the mainstream meaning of the Principle of Freedom in order to take environmental responsibility seriously. In this regard, the ecofeminists in the global south and decolonial gender theory are fundamental to reflect over the feasibility of rethinking the human-nature relationship to achieve a sustainable and equitable society. In fact, they uncover the dark (true) side of the globalization impact (externalization), namely, environmental degradation, economical growth supported by global oligopolies and colonialism on the lives of women and vulnerable communities (including men) in the global south. Thus, the awareness of the unequal dynamic of the world in which a large population (global south) assumes the environmental cost derived from the use of natural resources that supports the high and unsustainable standard of a small amount of people, demands a (re)conceptualization of the principle of freedom to achieve a deep reconsideration of the current understanding of sustainable development (maldevelopment) and the feminine principle. Accordingly, I suggest that their approach that engages holism, rejects all hierarchical binaries, emphasizes subsistence as a model of eco-dependence and cooperation, value care, and therefore tends to another form of human-human and human and non-human synergy is a valuable avenue for achieving a sustainable and equitable society.

A PROSPECT INTERNATIONAL CUSTOMARY RULE OF SUSTAINABLE DEVELOPMENT LAW: PUBLIC PARTICIPATION

Lorena Martínez Hernández
Rovira i Virgili University

Abstract

In its early formulations, sustainable development was a discourse seeking to reconcile environmental conservation and economic growth. Gradually, it developed into a normative concept that aimed to balancing economic, social and ecological concerns in shaping policies and law making at every level. Since its formulation in the Rio Declaration, sustainable development has been endorsed in hundreds of international treaties and other instruments. However, its implementation remains a challenge. Some attribute this shortcoming to the persistent uncertainty on the precise meaning of the concept.

Furthermore, the fragmentation of international law poses special difficulties in applying the concept of sustainable development, since the value given to the each dimension of the concept depends, to some extent, on the orientation of the tribunal, e.g. a investor-state arbitral tribunal may not categorically exclude environmental values in its awards, but it may give greater importance to economic values. By doing so, it brings greater uncertainty on the meaning of sustainable development, encapsulating the concept in a vicious circle of indeterminacy.

Against this backdrop, the challenge is to disentangle the constitutive elements of sustainable development and to translate them into legal rules that can be jointly used in the administration and application of law by international courts and tribunals across regimes. Given their general character, customary norms are better suited for this endeavor.

Public participation in decision-making has been recognized as fundamental for sustainable development since the formulation of Principle 10 in the Rio Declaration. The 2015 UN General Assembly resolution Transforming Our World: the 2030 Agenda for Sustainable Development reinforces it and places people at the center of sustainable development.

This contribution aims to 1) identify public participation in decision-making as a constitutive element of sustainable development, 2) describe the interrelations between customary and treaty norms and the advantages that the former would entail for the application of sustainable development across regimes for the sake of legal coherence and 3) get a glimpse of the status of public participation as a potential customary norm and the conduct that it requires from States as an international minimum standard. Due to the difficulties of demonstrating opinio juris, proving the emergence of a customary norm may be overly ambitious for this paper. Thus the contribution focuses on evidencing usus.

NEW PROPOSALS TO GUARANTEE ACCESS TO JUSTICE FOR INTERNATIONAL AND ENVIRONMENTAL CRIMES

Dominika Bucová
University Jaume I

Maria Chiara Marullo
Research group "Business and Human Rights Challenges for Cross-Border Litigation in the EU"
University Jaume I

Abstract

Internationally there is progress on the idea that access to justice is essential to ensure the development and to eradicate poverty. In fact, the new Millennium Sustainable Development Goals are linking the concept of development to new effective measures to ensure that access to justice to all people and at all levels. Given that, we cannot forget the existing legal and procedural barriers for the prosecution of the activities such as environmental crimes committed by companies. This reality demonstrates the need to implement the existing international framework in this area. Regarding the "Protect, Respect and Remedy" Framework that is promoting the creation of National Plans , in which it would be useful to establish a specific rule to bring criminal and civil claims behind the States where the multinational companies are domiciled. Moreover, considering that the U.N. Guiding Principles have not provided sufficient response to the abuses committed by business corporations, there is a proposal of binding treaty.The new legally binding international instrument should include some specific obligations for corporations to respect international Human Rights law and international environmental norms. Finally, based on the idea of Global Justice, we need to evaluate the proposal of binding treaty on Criminal Universal Jurisdiction, the well-known "Declaración de Madrid".

SUSTAINABLE DEVELOPMENT GOALS, SUSTAINABILITY IN LOCAL CONTEXTS AND SUSTAINABLE EXPLOITATION OF NATURAL RESOURCES

THE LEGAL FRAMEWORK FOR THE MANAGEMENT OF APPLE SNAIL IN SPAIN

Ramón Manuel Álvarez Halcón
University of Zaragoza

José Ramón Arrébola Burgos
University of Seville

Abstract

The apple snails (Mollusca: Gastropoda: Ampullariidae) are biological organisms of tropical and subtropical freshwater. The commercial breeding aquarium or human consumption, particularly of some species of the genus Pomacea, have caused its geographic expansion outside the original range. Intentional or accidental releases of Pomacea spp. have caused significant economic losses in rice crops in Southeast Asia since the 1980s.

The presence of apple snail (Pomacea sp.) in the irrigation ditches of the rice paddies on the left part of the Ebro Delta, was detected in August 2009. Since then, its proliferation has been progressively happening in rice paddies through the Delta's canals and ditches network, reaching to the Ebro River. The agricultural and ecological conditions involve heavy losses to the Ebro Delta Natural Park and its management is requiring substantial financial investment by the competent institutions.

The annual campaigns against this harmful organism undertaken by the Government of Catalonia, in coordination with the Government of Spain and the European Union, have failed to eradicate it, but at least they have managed to contain it. However, some releases have been identified in other parts of the geography of Catalonia, and even its presence is known in a reservoir of Gran Canaria Island from end of 2011. This agricultural and environmental problem is a major concern in the affected social sectors and has undergone a comprehensive legal treatment.

In this poster, a study of the legal regulations approved by the European Union, the Government of Spain, the Government of Catalonia and other autonomous governments of Spain in their social, ecological and agro-environmental context is presented. The dual legal consideration of apple snail is assessed as a quarantine pest harmful to rice crops, and as an invasive alien species, which also affects river ecosystems.

In addition, a critical legal analysis is carried out of the effectiveness and timing of these regulations relating to temporary entry process, detection and expansion of the apple snail, as well as the procedure of Preliminary Proceedings No. 104/2011 field in the Tortosa Investigating Court No. 5, resulting in prescription of the investigated offense concerning the protection of flora, fauna and domestic animals of articles 333 and 338 of the Spanish Criminal Code.

SUSTAINABLE DEVELOPMENT AND POLICY ON CLIMATE CHANGEIN BUILDING SECTOR

María del Sagrario Navarro Lérida and María Nieves Pacheco Jiménez
University of Castilla-La Mancha

Abstract

The core theme of the Congress is "sustainable development in terms of justice". From the perspective of private law (civil and commercial law) energy efficiency is discussed in the context of the building activity, while affirming the need to link the model change with the overall European policy on climate change. In fact, Plans, Strategies and norms about the promotion of energetic efficiency in buildings are born in a context of real concern on climatic change and its consequences. All of them aim the reduction of the energetic cost and the promotion of economic, political and environmental sustainability. A sign of this worry on getting a low environmental impact can be observed in the building sector, as a key sector to avoid the energy waste and to limit the global warming, and in the consequent attempt to make bioclimatic buildings that take advantage of environmental energy. In Spain several Action Plans (2008-2012 and 2011-2020) impulse important measures, for example in the residential scope, to achieve those objectives. The present poster approaches the saving and energy efficiency patterns in buildings, especially the use of renewable energies such as biomass, geothermic and solar, being a good example the innovative Sunhouse 360º, with a sophisticated system of rotation. Now this transition to cleaner energy sources should be considered in the overall context of the European climate policy (Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy). So we can say that the cornerstone of Europe's climate policy is a well-functioning EU Emissions Trading System. This one will deliver a meaningful price on carbon emissions and stimulate cost-efficient greenhouse gas emission reductions. The European Commission wants the EU Emissions Trading System to fully play its role as a technology neutral, cost-effective and EU-wide driver for low-carbon investments. Through its price formation at EU level it reinforces the functioning of the internal energy market and stimulates the uptake of renewables and other low-carbon and energy-efficient technologies. In conclusion, our poster shows the need to understand the legal concept of "sustainable development" in the context of the construction scope from the perspective of the necessary reconciliation between economic, social and environmental interests.

NATURAL RESOURCES GRABBING AS A NEW FORM OF HUMAN RIGHTS VIOLATION

María Lorena Sales Pallarés and María Pilar Molero Martín-Salas
University of Castilla-La Mancha

Abstract

The core theme of the Congress is "sustainable development in terms of justice". The international community has adopted sustainable development as one of its main references. Multinational companies can, however, interfere with or preclude their achievement through the natural resource grabbing, a complex phenomenon which often reach a strong role and can be seen, among its various manifestations, as a condition of that development. Such grabs on many occasions are absolutely contrary to the various objectives that make sustainable development, as they have been exposed, for example, by the Secretary General of the United Nations, Ban Ki-Moon, in its summary report on the agenda at about after 2015.

Because of its vital essential character, natural resources have always been one of the basic concerns of mankind and preferred object of their desires and interests. This century is witnessing a special attention to these issues, which are evident, for example, in many scientific studies, a variety of initiatives from national bodies or regional level, or universal and abundant contributions doctrinal field, in line with those instances, evaluate natural resources under the relevant human rights at key access to them.

Actions such as land grabbing or grabbing waters are phenomena that exemplify the struggle for control of natural resources, mainly by large international companies. Grabbing natural resources has occurred mainly in developing countries, but as we shall aim, now can be predicated of countries we call developed. Therefore, we must consider that we are facing global problems or universal screening.

Among the manifestations of these grabs, we have selected some cases of water grabbing and land grabbing to highlight how these actions can produce serious human rights violations. However, we also analyze other cases of human rights violations produced on the environment in a broader sense (tourism, food industry, public works, extractive ...) to view the recent practice.

A CRITICAL ANALYZE ON INTERNATIONAL LEGAL INSTRUMENTS PROTECTING ENVIRONMENT AGAINST EXCESSIVE EXPLOITATION FROM CROSS-BORDER PETROLEUM RESOURCES

Mohsen Masjedi
Rovira i Virgili University

Masoud Alizadeh
Payam e Nour University

Abstract

There are many petroleum resources located at the mid of at least two country's borders. No sources of international law directly determine legal circumstances of exploitation from these fields. Nevertheless, International law contains customary rules dealing with exploitation from cross-border or share resources. The general obligation to reach a mutual agreement concerning exploration and exploitation from the cross-border resources and the obligation of ceasing any unilateral exploitation in the lack of mentioned agreement are two main international customary rules in this context. Cross-border petroleum resources have a specific condition among the other resources, more exploitation from one side of a reservoir leads to movement of the fluid from the other side. Hence in the lack of mutual agreements determining the share of each party, a competition of neighbor states in exploitation from petroleum share resources could limit the share of the other part. Moreover, new technologies like horizontal drilling made this competition more serious. This situation leads to excessive exploitation of resources and could cause different environmental damages. As instance, the competition between Iran and Iraq over exploiting from Azadegan-Majnoon oil field resulted conscious drying of many parts of Hoor al Howaizeh (Mesopotamian Marshes) that causes stickler environmental damages and affected daily life of the people living around the Marsh.

This article aims to provide an answer to the question that to what extend current international legal instruments could protect environment against competing exploitation of cross-border petroleum resources?As a response to this question we first argue that the current legal instruments contains a chain of general considerations that don't provide clear and comprehensive legal obligations. Secondly we argue that lack of necessary legal bounds caused serious environmental damages that will be discussed by mentioned cases analysis. Thirdly we discuss that; initiatives to design new international specific bounds are required.

FRAMING SUSTAINABLE DEVELOPMENT IN THE EBREBIOSFERA: NEW CULTURES FOR ENVIRONMENTAL AND ECOLOGICAL JUSTICE IN THREE MULTIPARTY INTRACTABLE CONFLICTS

Jordi Prades
Rovira i Virgili University

Abstract

Rationale: Since they are socially constructed, meanings about sustainable development are diverse and go far beyond the normative, legal concept. Not only the law but also other institutions such as the media, policy, NGOs and social movements create meanings regarding the environment through communication processes. Unbalances of power are in the core of social inequalities. Management of natural resources produces environmental as well as social conflicts when risk and benefits are unfairly distributed. Rethinking environment in terms of communication and conflict draws new crossroads from a sustainability perspective.

Aim: We explore communication and sense making processes in the Terres de l'Ebre Biosphere Reserve (EbreBiosfera, Southern Catalonia) to identify how new environmental cultures for sustainability are framed by the media and by political, legal and social logics.

Sample and methodology: Three intractable multiparty conflicts related to water and energy —nuclear and wind power— are analysed from 2000 to 2015. Main actors in conflict are Spanish and Catalan governments on one hand and social movements on the other hand. Framing and sense making practices, discursive and organizational, are identified through the study of (communicative) legislation, legal proceedings, manifestos, demonstrations, newspapers, etc.

Results: In all three cases new meanings for sustainable development associated with environmental justice and with ecological justice have resulted in new environmentally sustainable cultures, specifically, new water and energy cultures. Communicative legislation integrates social movement interests in political and decision-making processes.
EbreBiosfera is an uncertain opportunity: it may be useful to implement sustainability policies and appease social and economic aspects of the conflict at a local level and at short-medium term. Instead, EbreBiosfera does not seem to be a valid tool to face the environmental conflict as a whole inasmuch as it reproduces the ecological modernization that capitalism imposes globally.

URBAN VULNERABILITY AND THE SUSTAINABLE DEVELOPMENT GOALS: A NEW HOLISTIC APPROACH OR ANOTHER LINGUISTIC DISCOURSE? INSIGHTS FROM THE RIGHT TO THE CITY

Gabriela Fauth
Universida de Federal do Rio de Janeiro

Paola Villavicencio
North Wet University

Abstract

Nowadays people are living on an urban planet because cities are home to over 50% of the world's population and, by 2050, the amount will increase until 75%. The rapid pace of urbanization will also increases the proliferation of urban zones with slum dwellings or marginalized-urban neighborhoods where human rights are denied and vital services are not provided. The urban slums, gathering 880 million inhabitants, are a spatial manifestation of the fragmented and uncontrolled urbanization and the most palpable expression of poverty and inequalities in cities. The increase of people living in slums, along with the deficiency and inequality of urban policies, will turn cities into predominant sites of poverty, thereby increasing urban poverty. That is not to mention the consequent occurrence or increase of environmental problems that such growth of slums will produce and that will affect the own human condition of their inhabitants.

In a context in which the traditional political and economic system have left aside the poorest, even denying them the right to the city and making them victims of a degraded environment, there is no doubt that one of the challenges of the cities of the 21st Century will precisely be to address the socio-environmental reality of slums or shanty towns where poverty coexists daily with injustice, inequality and insecurity. In light of this situation and in order to cope with the increasing demands of people living in slums who call for the improvement of their harsh living condition, the new Sustainable Development Goals (SDG) have incorporated a new urban goal (SDG11) on cities and human settlements which requires States "by 2030, to ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums" (SDG11.1). The purpose of this target is to make progress in the transition towards cities where their inhabitants live in dignity within the parameters of the right to the city and where the economic decisions are linked to the social and ecological well-being. However, the nobility and aspiration of this goal will still have to face the reality of a world in which the perverse economic system does not take into account the social and environmental realities; a world in which the deficient urban policies have led to "slum cities" where progress coexists with poverty.

Addressing issues of urban poverty concomitant with sustainable development and the right to the city, this paper analyzes the strengths, weaknesses and challenges of the new urban SDG in its ambition task to achieve the goal of slum upgrading settlements. By doing so, this analysis will try to determine if such goal is relevant and valid to address the unsustainable levels of poverty, inequality, unfairness and environmental degradation of slums in order to achieve the challenge to make "cities and human settlements inclusive, safe, resilient and sustainable".

THE MITIGATION OF CLIMATE CHANGE IN THE CATALAN LEGISLATION

Aitana de la Varga Pastor and Marina Rodríguez Beas
Rovira i Virgili University

Abstract

Climate change is one of the greatest challenges of the humanity in the present century (XXI). The international scientific community, through the environmental expert group of climate change in his fifth report published on 2014, warned about the unquestionability of climate change caused by the human activity whose consequences are visible and the necessity of acting urgently.

The public administration has reacted and adopted several compromises in order to reduce greenhouse gas emissions according to a greater energy efficiency and a larger use of alternative energy. However, the Spanish government approved in 2014 a controversial decree of clean energy that revised the subsidies regime for the renewable energy including the current projects, what implies a step backwards.

The aim of this paper is to analyze the project of law of climate change that Catalonia has recently approved and the development of all the actions already done in this frame, as well as a study of the further steps. This autonomous community is one of the most actives applying public policies of mitigation and adaptation to climate change in Spain and in the countries of the south of Europe. Indeed, Catalonia government has approved the "Frame Plan of Mitigation of the Climate Change 2008-2012, the "Energy and Climate Change Plan" (PECAC 2012-2020) and the "Catalan Strategy of Adaptation to Climate Change" (ESCACC 2013-202).

If the project of law were finally approved and published, Catalonia would be the first one that approves a law of control of the Climate Change in all the sectorial policies of the public administration in Spain and in South Europe. This law would favor the measures that permit their mitigation or adaptation like the use of renewable energy; improving waste management; the development of energy efficiency; the creation of new taxes to promote ways to produce and consume cleaner energy and less environmental impacts, and the creation of the Climatic Fond.

THE ENERGY REFORM IN MEXICO AND THE RIGHT TO SUSTAINABLE ENERGY

Marco Antonio Heredia
National Autonomous University of Mexico

Abstract

Mexico has gone recently through a major overhaul of its energy production regime. The Mexican Constitution was amended in late 2013 to allow for participation of the private and social (unions, cooperative organizations) sectors openly in the electricity industry, and in other areas of the oiling industry, including exploration, exploitation of hydrocarbons, and their final sell to the public. This represented a major shift in the traditional standpoint and regime governing propriety of natural resources, notably regarding petroleum and its by-products, along with corresponding issues over Mexican sovereignty. In the oiling industry, President Lázaro Cárdenas had expropriated oiling companies, mainly US and British companies back in 1938.

In the electricity realm, constitutional amendments ended a 50-year regime that granted the state-owned Compañía Federal de Electricidad (Federal Commission of Electricity) the right to be the only provider to generate, transmit, and distribute electricity to the public. In this state-controlled regime, private participation in power generation was limited to activities that were not deemed public service. This was only posible after amendments to the legislation of the public service of energy (Ley delServicio Público de Energía Eléctrica) passed in 1992. Before that, all power generation and electricity services related activity was exclusive to state owned companies since the 1960s.

Constitutional amendments published in the official gazette or otherwise known as Diario Oficial de la Federación on December 20, 2013, included modification to articles 25, 27 and 28. The modification to the Constitution also brought along 21 transitory articles spanning over electricity and hydrocarbons.

Regarding the electricity modifications, changes to articles 25, 27 and 28, along with previous amendments to the Mexican Constitution, notably in article 4, which provides for a Right to a Healthy Environment, are the basis for what can be considered the Right to Sustainable Electricity for Mexicans, thus contributing to Environmental Justice.

The basis for this right stems of the interpretation of articles 4, 25, 27 and 28 of the Constitution and the transitory articles of the 2013 Amendment. After the constitutional amendments, Congress issued 9 new laws and amended other 12. This legislation was published on August 11, 2014. The last legislation stemming from this process, the law on energy transition (Ley de TransiciónEnergética) was published on December 24, 2015. 25 by-laws have been either modified or adjusted to meet the key elements of the energy reform. This work looks at the key elements of the 2013 Constitutional Amendment, including an analysis of the accompanying legislation and corresponding by-laws, in order to identify if all elements of the Constitution in thisarea have been addressed, thus contributing to exercise the Right to Sustainable Electricity.

REVIEWING SPANISH LEGAL FRAMEWORK FOR COASTAL PROTECTION THROUGH A GENDER PERSPECTIVE: AN OVERVIEW FROM THE SHELLFISHERWOMEN CONTRIBUTIONS TO THE PRESTIGE DISASTER MANAGEMENT

Amanda Braga de Melo Fadigas
Girona University

Abstract

Women have demonstrated be an important partnership in environmental management, due to their specific knowledge and their strategies to create networks in community. In coastal zones their contributions cover scopes since resources management to the protection against contamination, being the last one a constant threat to coastal balance. Regarding to this, oil spill is one of the most hazardous source of marine contamination, because the pollution potential as well as the difficulty to reverse damages. Therefore a strong legal framework is a relevant tool to states pressured polluters. However, states cannot embrace the complexity of some disasters that have an immeasurable dimension. To apply legislation for coastal protection more effectively, fisherwomen can play an important role giving support to control pollution or to restore marine balance, for these reason the legal framework should include the right of participation to the disaster management.

The Prestige disaster was the second largest oil spill event in the world, affecting mainly Galicia coastal zone, in Spain. The “white tide”, composed by coastal communities and volunteers, was an emblematic case of public participation in disaster response. But an invisible collective of shellfisherwomen had contributed decisively to restore Galicia coast. They promoted a response based on a gender view, through coordinated actions that combined elements of the “Ethics of care”, unconditional cooperation and ocean protection.

This study will introduce a gender perspective to advance in the scenario of coastal protection regarding oil contamination. To this, through the Prestige case it was analyzed the current legal framework for coastal protection in Spain and deep interviewees of 15 participants, between leaders and seniors shellfisherwomen (11), non-governmental environmental organization agents (02) and seniors researchers (02). The main findings showed that the current legal framework is not adapted to the present social-environmental and technological defiances, and there is a lack of mechanisms for participation and information access. Also it was identified that although shellfisherwomen ignore the way to participate in legal changes, they believe that their knowledge and social abilities could contribute decisively to disaster management provoked by an oil spill. Finally, we conclude that is relevant to raise decision making process to discuss about mechanisms that could promotes women participation in coastal protection.

THE HUMAN RIGHTS HORIZON OF THE CITIES: THEORIZING THE RIGHT TO SUSTAINABLE URBAN DEVELOPMENT

Francesco Seatzu and Simona Fanni
University of Cagliari

Abstract

A human rights based approach to sustainable urban development has progressively become a strong urge for the international community since the Seventies, when the conception of a "human environment" was theorized at the Stockholm Conference and when Habitat I turned the spotlights on urban settlements.

In the current legal landscape, where the conceptual elaboration of the right to the city has not received widespread acceptance and the 2016 Habitat III UN Conference is expected to provide a human rights basis for the right to sustainable urban development, justiciability is a compelling exigency.

This clarifies why the major human right courts are called on to develop a human rights based approach and a definition of the scope of the right to sustainable urban development, seeking a unifying view that, at the same time captures and respects the multifaceted nature of this entitlement. The paper addresses, through some relevant examples, the efforts and the achievements of the European Court of Human Rights ('ECtHR') and the Inter-American Court of Human Rights ('IACtHR') when confronted with issues related to urbanization. Some proposals are advanced for overcoming the difficulties encountered in the jurisprudence of the ECtHR and the IACtHR, including: a) the enhancement of the interpretive trends built around Articles 2 and 3 of the European Convention on Human Rights (ECHR) in order to provide an environmental perspective on the right to life and on the prohibition of inhuman and degrading treatment; b) the improvement of the environmental approach adopted when striking the balance between private and public conflicting interests involved by the right to private and family life and the right to property, before the ECtHR and the IACtHR; c) the use of Article 11 of the Additional Protocol to the American Convention on Human Rights (ACHR), which expressly enshrines the right to a healthy environment, in the jurisprudence of the IACtHR; d) the use of the international soft law standards related to sustainable urban development, as the Global Charter and the European Charter for the Safeguarding of the Human Rights in the City, in the case-law of the ECtHR and the IACtHR.

ECOSYSTEM-BASED APPROACH TO ESTABLISHING FRESHWATER LEGAL FRAMEWORKS THAT ACCOMMODATE CLIMATE CHANGE IMPACTS

Antonella Furlato Cortez
University of Melbourne

Abstract

Water is a finite and non-substitutable natural resource, essential to maintaining ecosystem equilibrium and for sustaining human life. Freshwater represents 3% of global water, which is indispensable for food security of 7 billion people and maintaining the ecosystems that sustain development, growth and wellbeing. Ensuring water security for the population has become a major international challenge. Agriculture consumes around 70% of global freshwater, with industry, energy and local livelihoods also important consumers that cause water stress. Therefore, it is important to achieve equitable water use between water consumers, particularly in shared river basins. The current availability of freshwater is scarce in many regions, with some already vulnerable areas being more sensitive to further negative effects from climate change. Droughts due to global warming have caused shortage in areas such as North Africa. Floods due to variation in forest-hydrological patterns and ecosystem services are impacting Southeast Asia. Thus, the need to have global international frameworks that address climate change adaptation of freshwater resources is urgent in order to face future climate change impacts. Around 60% of trans-boundary river basins are not under any institutional framework that allows watercourse cooperation. Few of these legal frameworks address issues regarding climate change adaptation. Consequently, implementation of climate change adaptation policies has become difficult in shared watercourses due to the lack of regulations that join water and climate change issues. However, it is possible to solve the current law vacuum by reaching climate change adaptation policies from an ecosystem-based approach. This considers the entire ecosystem and human interaction for achieving ongoing protection. This perspective avoids the protection of isolated aspects of the ecosystem in order to encompass land, living resources and water integration. Some countries have already adopted an ecosystem-based approach in trans-boundary water agreements, which help them to be prepared to face climate change impacts in shared river basins. One of the main guidelines is the Convention on Biological Diversity framework, which is the major proponent of this concept. Nevertheless, there are several other international instruments that consider an ecosystem-based approach such as UNFCCC and Convention on the law of the Non-navigational Uses of International Watercourses. This study will analyze the principles related to the ecosystem-based approach exposed across environmental international agreements, which are guidelines for trans-boundary watercourse agreements that have been implemented by some countries. In particular, cases of successful implementation of the ecosystem-based approach for climate change preparedness will be assessed.

LIST OF PARTICIPANTS

Oral Presentations

Name	Institution	Email address
Acluche, Regine	University of Strathclyde	regine.acluche.2015@uni.strath.ac.uk
Arnesson, Daniel	University of Oslo	daniel.arnesson@jus.uio.no
Aseeva, Anna	Université La Rochelle	anna.aseeva@univ-lr.fr
Atkins, Ed	University of Bristol	ed.atkins@bristol.ac.uk
Basilio São Mateus, Jeronimo	Rovira i Virgili University	jeronimo.basilio@urv.cat
Cittadino, Federica	Università di Trento - EURAC	federica.cittadino@eurac.edu
Emmanouilidou, Pantelina	Université de Limoges	linanimae@hotmail.com
Harvey, Kaitlyn S.	University of Saskatchewan	harvey.kaitlyn@gmail.com
Hawkins, Stephanie	University of Strathclyde	steph@stephanie-hawkins.com
Kristy, Michelle Ayu Chinta	University of Maastricht and Geneva University	michelle.a.c.kristy@gmail.com
Law, Danielle	University of Strathclyde	danielle.law.2015@uni.strath.ac.uk
Mensah, Linda	University of Strathclyde	linda.mensah.2015@uni.strath.ac.uk
Michelot, Agnès	Université La Rochelle	agnes.michelot@univ-lr.fr
Okine, Edna	University of Strathclyde	edna.okine.2013@uni.strath.ac.uk
Salazar, Eduardo	Murcia University	eduardo.salazar@um.es
Walker, Simone	University of Strathclyde	simone.walker.2015@uni.strath.ac.uk
Zao, Yuhong	The Chinese University of Hong Kong	yuhong.zhao@cuhk.edu.hk

Poster presentations

Name	Institution	Email address
Alizadeh, Massoud	University of Payam e Nour	massoud.alezadeh1@gmail.com
Álvarez Halcón, Ramón M.	University of Zaragoza	ramahalcon@gmail.com
Arrébola-Burgos, José Ramón	Seville University	mastus@us.es
Ascencio Serrato, Stephanie	Rovira i Virgili University	stephanie.ascencios@gmail.com
Braga de Melo Fadigas, Amanda	Girona University	amanda01dir@gmail.com
Bucová, Dominika	Jaume I University	dominika.buc@gmail.com
De la Varga Pastor, Aitana	Rovira i Virgili University	aitana.delavarga@urv.cat
Díaz Cordero, Paola Andrea	Rovira i Virgili University	paolaandrea.diaz@estudiants.urv.cat
Fanni, Simona	Università di Cagliari	mimina84@hotmail.it
Fauth, Gabriela	Universidade Federal do Rio de Janeiro	gabrielafauth@hotmail.com
Felipe Pérez, Beatriz	Rovira i Virgili University	beatrizirene.felipe@urv.cat
Font-Mas, Maria	Rovira i Virgili University	maria.font@urv.cat
Furlato Cortez, Antonella	University of Melbourne	afurlatocortez@gmail.com
García Alvarez, Laura	Pablo de Olavide University	lgaralva@upo.es
Heredia, Marco Antonio	Universidad Nacional Autónoma de México	Markheredia777@hotmail.com
Iglesias Márquez, Daniel	Rovira i Virgili University	daniel.iglesias@urv.cat
Martínez Hernández, Lorena	Rovira i Virgili University	lorenamh@live.com-mx
Marullo, Maria Chiara	Universitat Jaume I	marullo@uji.es
Masjedi, Mohsen	Rovira i Virgili University	m.m.masjedi@gmail.com
Molero Martín-Salas, María Pilar	University of Castilla-La Mancha	MariaPilar.Molero@uclm.es
Navarro Lérida, María Sagrario	University of Castilla-La Mancha	sagrario.navarro@uclm.es

Name	Institution	Email Address
Pacheco, María Nieves	University of Castilla-La Mancha	MariaNieves.Pacheco@uclm.es
Prades, Jordi	Rovira i Virgili University	jordi.prades@urv.cat
Ricarte, Thays	Rovira i Virgili University	thays.ricarte@gmail.com
Rodriguez Beas, Marina	Rovira i Virgili University	marina.rodriguez@urv.cat
Sales Pallarés, María Lorena	University of Castilla-La Mancha	lorena.Sales@uclm.es
Seatzu, Francesco	Università di Cagliari	fsearzu@unica.it
Villavicencio, Paola	North West University	p_villavicencio@hotmail.com

Design project

Egea, Clàudia	La Baldufa visualitat	labaldufavisualitat@gmail.com

TARRAGONA
INTERNATIONAL
ENVIRONMENTAL LAW
COLLOQUIUM

Agència de Gestió d'Ajuts Universitaris i de Recerca
AGAUR

ESTRATEGIA DE EMPRENDIMIENTO Y EMPLEO JOVEN
garantía juvenil

GOBIERNO DE ESPAÑA
MINISTERIO DE ECONOMÍA Y COMPETITIVIDAD

UNIÓN EUROPEA
Fondo Social Europeo

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