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The Concept of Sustainable Development in International and Comparative Constitutional Law

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Abstract:

The concept of sustainable development has emerged and developed significantly since the beginning of the 1970s, in the context of growing international trend to establish international legal norms aim at protecting the environment against serious dangers that threaten its various components. Sustainable development was based on the notion of striking a balance between the requirements of economic development of States-especially developing ones-and considerations of environmental protection. It thus aims to preserve the needs of present generations without compromising the rights of future generations to meet their needs, through the conservation and protection of the environment in a way that provides the foundations for development. The concept of sustainable development has been widely accepted by the vast majority of States of the international community, which led to its reflection in many international instruments on the protection of the environment and its various components. It was also reflected in the judgments of international and national courts that decided the relationship between development and environment. Sustainable development then emerged as one of the fundamental principles of the national constitutions of States. This reveals that sustainable development, which initially developed as a general concept, has evolved considerably over a short period of time, on the international and national level, to be placed on the top of the hierarchy of legal rules.

1. Introduction

Sustainable development has raised controversy within the framework of international law. This is due to the lack of a precise understanding, as to its meaning and scope of applicationⁱ. However, the concept of sustainable development has gained an increasing interest among the members of international community, especially after the United Nations Conference on Environment and Development in Rio de Janeiro in 1992 (Rio Conference). This was reflected clearly in several international instruments, which used the term “sustainable development” or other similar terms; such as sustainable use, sustainable utilization, sustainable management and maximum sustainable yield. This diversity in the terminologies used created some sort of confusion and lack of clarity, with respect to the meaning of sustainable development, scope and legal effectⁱⁱ.

Environmentalists exerted a considerable effort to make a change in policy and decision making to establish a balance between the needs of present and future generations. They aimed at addressing adverse impacts on the environment, resulting from practices intended to achieve economic development. They, also, endeavored to develop the concept of sustainable development into legal rules and principles that contribute in resolving legal disputes, without undermining the requirements of development and protection of the environmentⁱⁱⁱ. Nevertheless, the concept of sustainable development has become a basic principle, within the national legal framework of States, when adopting binding legal rules and policies, aim at creating a balance between environmental and economic development^{iv}.

Sustainable development had originated and developed swiftly and consecutively, which led to a development in its binding force, both within the framework of international law, or the national laws of States. Sustainable development has emerged as a general idea aimed at preserving the rights of States to development, in the context of maintaining the various elements of the environment against all types of pollution, abuse and exploitation, i.e. it emerged as a general policy that guide States, in carrying out their obligations related to environmental protection. The general idea, soon, developed to become a guiding principle of States when making rules and decisions relating to the environment. Then, sustainable development gained a normative value, through its general application by the States on the international level. There is now an international consensus that the application of sustainable development is an imperative requirement on all projects that may interfere, by a way or another, with the environment and/or its natural resources^v.

We will endeavor throughout this research to prove that sustainable development has gained a normative value, within the context of international and constitutional law. We must track the stages of emergence and evolution of that idea; reveal its nature within the framework of international law, as well as its relationship to the idea of "development" in general.

International efforts have had a significant impact on the rapid development of the idea of sustainable development. Therefore, we must address the successive international efforts that have contributed to the development of the legal value of sustainable development

Also, the exposure to the legal effects of sustainable development, both in the context of international legal acts, judgments and decisions of international jurisdictions, or within the legal systems of States, will contribute significantly to determining whether sustainable development has been developed to be a basic rule of international law.

In order to determine whether sustainable development has evolved to acquire a normative value, it is pivotal to trace its emergence and development in international law. A close examination shall be conducted, regarding international efforts that contributed to its rapid development, which, in turns, raised a legal debate about its legal nature. A thorough analysis shall be administered on the impact of sustainable development on international conventions, decisions and judgments of international and national jurisdictions, as well as its impact on national legal systems.

This paper is divided into three parts. Part (1) discusses the emergence and development of the concept of sustainable development, defines the concept of sustainable development and explains how the concept of development, *per se*, become a basic human right.

Part (2) demonstrates the basic international declarations that contributed to the consolidation and development of the legal nature of the idea of sustainable development, namely the declarations of Stockholm, Rio and Johannesburg.

Part (3) explains the legal implications of sustainable development on international treaties and judgments of international and national courts, addressing environmental and economic problems. This part also shows how the concept of sustainable development becomes a constitutional right through its reflection in the recent national constitution of many States.

2. The Emergence and Evolution of the Concept of Sustainable Development

The concept of sustainable development did not emerge spontaneously. It passed through several stages until it developed within the rules of international law. The efforts of the international community and international organizations, particularly the United Nations, have had a significant impact on the development and conceptualization of the idea sustainable development.

Sustainable development is an evolution of the general concept of development that then become a fundamental human right.

2.1. Emergence of Sustainable Development

The concept of sustainable development emerged due to States' interest in preserving and preventing over-exploitation of natural resources, in a manner that hinders their ability to regenerate, and thus leads to their depletion. It was argued that the concept of sustainable development dates back to the dispute between the United States and Britain in 1882, concerning Bering fur seals that has been exploited for economic reasons^{vi}. The dispute arose after the United States sought unilaterally to impose conservative measures to prevent the alleged over-exploitation of fur seals by Great Britain. The arbitral tribunal, established to resolve the dispute, decided that the United States had no property rights over seals beyond its territorial limits, determined, then, at three nautical miles, and that the sole inducement of the United States to take conservative measures was to maintain fur seals as an economic asset^{vii}. However, the United States argument, during the arbitral proceedings, had the effect of formulating the concept of sustainable development. The United States mentioned that: "to destroy the sources from which any human blessing flows is a crime ... The earth being designed for the permanent abode of man, each generation is entitled only to its use, and the law of nature forbids that any waste should be committed to the disadvantage of the succeeding tenants" ^{viii}.

However, some scholars argued that the origins of sustainable development dates back to old ages, citing the independent opinion of Judge Weeramantry in *Gabčíkovo-Nagymaros Project*^{ix}. He considered that the idea of sustainable development derived from the practices of ancient civilizations and traditional legal systems in Asia, the Middle East, Africa and Europe. He also stated that sustainable development finds its basis in Islamic law, which provides that "in as much as all land belongs to god, land is never the subject of human ownership", but is the subject of trusteeship for the benefit of all future generations^x.

Allied States realized, during World War II, that natural resources were endangered, in a manner that affect their ability to provide raw materials, required for development. This was reflected in the Fourth Principle of the Atlantic Charter of 1941 between the United States of America and the United Kingdom, when Parties undertake, to endeavor in furthering, the enjoyment by all states, greater small, victorious or defeated, access - on equal terms - to trade and raw materials needed to achieve economic prosperity. This has also affected the initiatives of the post-World War II countries. For example, US President Truman's 1945 declaration, which extended US control over the natural resources of the continental shelf,

established a conservative area in the high seas adjacent to the coast of the United States, for the conservation and development of future fishing activities.

One of the international efforts to conserve natural resources was the convening of the World Forestry Congress, organized by the Food and Agriculture Organization of the United Nations (FAO) in 1947, to address the issue of the availability of forest timbers needed to rebuild countries devastated by the Second World War^{xii}.

The United Nations Scientific Conference on the Conservation and Use of Resources in 1949, represents the first international initiative to deal with global natural resources. It discussed the need for sustained development, and the widespread application of techniques for the conservation and use of natural resources^{xiii}.

The concept of sustainable development was of specific interest in the area of fisheries. This led to the emergence of the notion of "maximum sustainable yield", as the primary objective for the conservation of fisheries. Maximum sustainable yield has been reflected in several international conventions in this context^{xiii}.

The relationship between environment and natural resources has gradually become more evident in international instruments. In 1962, the United Nations General Assembly adopted a Declaration on Permanent Sovereignty over Natural Resources, aimed at emphasizing the right of colonial peoples and newly independent States to their natural resources^{xiv}. In the same year, the General Assembly adopted its first resolution on economic development and conservation of nature. The resolution reaffirmed the important role of natural resources for the economic development of countries, and calls for the protection and reasonable use of such resources. The 1968 African Convention on the Conservation of Nature and Natural Resources is deemed a reflection of the General Assembly's call, in the form of an international convention^{xv}.

2.2. Evolution of Sustainable Development

The outset of the evolution of the concept of sustainable development dates back to 1970, when the United Nations General Assembly (UNGA), in its resolution 2626, proclaimed the International Development Strategy for the Second United Nations Development Decade^{xvi}. The Founex Report on Development and Environment of 1971, which referred to linking long-term development goals with environmental protection, was also published^{xvii}.

In 1972, Stockholm Declaration emphasized for the first time that environmental protection and economic development, must be understood as complementary and aimed at achieving common objectives. Principle 11 of the Stockholm Declaration states that "The environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures." Although Stockholm Declaration did not explicitly mention the term 'sustainable development', it emphasized the relationship between environmental protection and economic development^{xviii}.

A resolution was passed by the UNEP Governing Council in 1975 using the term 'sustainable development' as an idea aimed at meeting basic human needs without harming the biosphere. In 1980, the International Union for the Conservation of Nature and Natural Resources (IUCN) prepared the "Strategy for the Protection of the World", which in its definition of sustainable development highlighted the need to integrate conservation of the environment with sustainable development, to ensure that any changes to the earth will preserve the survival and well-being of all people^{xix}. This was followed by the UNGA resolution of 5 December 1980 on the International Development Agenda for the Third United Nations Development Decade, which contained the first clear commitment by States to the idea of sustainable development. The resolution mentioned that the rapid development of developing countries would enhance their capacity to improve the environment. The resolution, thus, stressed that environmental issues, such as poverty, poor development and interrelationship between development, environment, population and available resources, must be taken into consideration during the development process. A key issue is the need to prevent environmental degradation and to give future generations the benefits of a healthy environment. A long-term, environmentally sustainable economic development process that would protect the ecological balance must be pursued.

The efforts of the International Union for the Conservation of Nature (IUCN), the United Nations Environment Program (UNEP), the World Wide Fund for Nature (WWF) and the United Nations Charter for Nature (1982), through the adoption of the conservation strategy of the world, have had an impact on transforming sustainable development into a program that is practically applicable^{xx}.

In December 1987, the UNGA, by its resolution 42/187, adopted the report of the World Commission on Environment and Development known as the Brundtland Report. The Report confirmed that sustainable development, which meets the needs of the present generation without compromising the ability of future generations to meet their own needs, should become a key guiding principle for the United Nations, Governments, private institutions, and commercial organizations and enterprises. The report also stated that due to the global nature of environmental problems, there is a common interest of all States in pursuing policies aimed at achieving sustainable and environmentally sound development^{xxi}.

The notion of sustainable development was the focus of discussions at the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992, which resulted in the adoption of Agenda 21 and Rio Declaration on Environment and Development. Agenda 21 emphasized that it aims to achieve a new global partnership, based on sustainable development^{xxii}. It calls for the establishment of an institutional system to promote and support sustainable development,

through the establishment of a Commission on Sustainable Development (CSD), to ensure effective follow-up to the work of the Conference, to promote international cooperation "and to rationalize decision-making capacity for the integration of environment and development issues"^{xxiii}. Accordingly, the United Nations Economic and Social Council adopted resolution 207(1993), establishing the CSD.

The post Rio Declaration period witnessed the adoption of many international instruments, resolutions and legal actions, which emphasized the need to comply with the principle of sustainable development. The notion of sustainable development and other notions emanating directly from it, such as sustainable use and sustainable management, have emerged in binding and non-binding international environmental instruments. For example, Article 3 (4) of the 1992 United Nations Convention on Climate Change and Article 2 (1) of the 1997 Kyoto Protocol referred to sustainable development as an objective that States must adhere to in order to combat climate change. The 1994 United Nations Convention to Combat Desertification emphasized the relationship between development and the environment. It stressed on the fact that "Sustainable economic growth, social development and poverty eradication are priorities of affected developing countries, particularly in Africa, and are essential to meeting sustainability objectives"^{xxiv}. Articles 2(1) and 4 (2)(b) calls States Parties to take all effective measures, at all levels, to combat desertification and minimize the effects of drought, in order to achieve sustainable development in the affected areas. Similarly, Article (1) of the 1992 Convention on Biological Diversity emphasized that its objectives include, *inter alia*, the sustainable use of the components of biological diversity.

In September 2000, the UNGA issued the Millennium Declaration, which contained eight Millennium Development Goals to be achieved by 2015. The seventh goal was to underscore the support of the General Assembly for the concept of sustainable development^{xxv}.

In 2000, the International Law Association adopted the New Delhi Declaration, which contained a number of non-binding international legal principles on sustainable development^{xxvi}

In 2002, the World Summit on Sustainable Development was held in Johannesburg to promote the implementation of existing international environmental commitments^{xxvii}. The Johannesburg Declaration recognized that the two Conferences had a collective responsibility to promote and strengthen the interrelated pillars of sustainable development, economic development, social development and environmental protection, at the local, regional and international levels. The Johannesburg Conference also reaffirmed their commitment to Agenda 21, adopted in the 1992 Rio Declaration on Environment and Development, for sustainable development^{xxviii}.

In 2012, heads of State and Government from more than one hundred and ninety countries met at the Rio + 20 Conference (denoting the twentieth anniversary of the Rio Conference), to promote the movement towards a more sustainable twenty-first century. The Conference concluded that there is a need to adopt policies aim at achieving a green economy, within the framework of the principle of sustainable development, as well as eradicating poverty, as a requirement to achieve sustainable development^{xxix}.

2.3. Meaning of Sustainable Development

There is no precise and internationally agreed definition for the term 'sustainable development'^{xxx}. However, the term sustainable development emerged during the work of the World Commission on Environment and Development, also known as the Brundtland Commission. The Commission was established by the United Nations, as an independent body, to examine the global environmental and developmental problems, and to make necessary proposals to resolve such problems. The Commission's 1987 report, known as our common future, defines sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs"^{xxxi}.

It is clear from the aforementioned definition that sustainable development includes two essential elements. First, the equality between the present and future generations regarding the use of resources. This requires that existing available resources, especially non-renewable ones, must be used in a way that is available to future generations. Second, the adoption of integrated decisions that take into account factors other than those of purely economic nature. This means that environment and development must be viewed as interrelated and interdependent, and decisions must, therefore, be taken on that basis^{xxxii}.

In general, the concept of sustainable development is based on a balance between developmental needs and environmental protection^{xxxiii}. Although Rio Declaration adopted the definition previously approved in Principle (3) of Brundtland Report, it did not indicate how this balance would be achieved. However, by reading the text of Principle (3) of Rio Declaration that "the right to development must be fulfilled, so as to equitably meet developmental and environmental needs of present and future generations", we propose apply a balance between the conflicting interests of development and environmental protection, which is supposed to be a balance in essence. It is difficult to assume that development has priority over environmental protection, and vice versa^{xxxiv}. This demonstrates that developing countries facing economic deterioration and social disruption will give priority to developmental needs on environmental protection, and the situation will be the opposite for developing industrial countries. This means that sustainable development will not give priority to one group over the other, but it will opt for creating a harmonization, in each individual case, between development and environmental protection, so that the required balance can be achieved^{xxxv}.

Therefore, we can define 'sustainable development' as a homogenous relationship between developmental needs and environmental protection that brings about development without causing irreversible damage to the environment, to preserve the rights of present and future generations.

This definition is based on the main understanding that sustainable development refers to a close relationship between environment and development. If development is one of the components of sustainable development paradigm, environmental protection is a hidden attribute that is logically and necessarily derived from the term 'sustainable'. In this context, therefore, States must take into account development and the environment in parallel, and not in isolation from each other^{xxxvi}. Thus, States may not adopt policies and legislations aim at achieving development, if they are likely to cause irreversible damage to the environment. On the other, it is inappropriate for States to take measures to protect the environment, if that would affect the development objectives that States, particularly the developing countries, were seeking to achieve. Environment is renewable by its nature, so that it can absorb a certain amount of pollution and tolerate a certain degree of exploitation. States must therefore take into account development considerations, while always taking care not to cause irreversible damage to the environment.

2.4. The Legal Nature of Right to Development

It is internationally settled that individuals are the subject of human rights law. States as the main persons of public international law also applies human rights law. The right to development is one of the rights recognized and protected by human rights law. It has an individual and collective dimension, for the protection of individuals, groups and States^{xxxvii}.

The rationale behind the individual and collective nature of the right to development lies in the need for an integrated trend of development in which the individual is the primary beneficiary. According to this trend, the goal of development will not only be economic growth, but also the promotion of social and cultural growth of the individual. This trend also leads to a link between economic development and human rights, as the protection of human rights will eventually lead to the promotion of economic development^{xxxviii}.

While the Universal Declaration of Human Rights (UDHR) did not specifically mention the right to development, this right can be implied from the provisions of articles (25) to (27) of the UDHR. These articles recognized that everyone is entitled to an adequate standard of living for the health and well-being of himself and of his family, to receive education for the full development of his personality, and to contribute to scientific progress and benefit from its results^{xxxix}. Article (11) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to an adequate standard of living for himself and his family^{xl}. The common article (1) of the ICESCR and the International Covenant on Civil and Political Rights (ICCPR) recognizes the right of all peoples to pursue their economic, social and cultural development, within the framework of their right to self-determination, as well as their freedom to dispose of their natural wealth and resources, and in no way deprive any people of their own means of subsistence^{xli}. The right to development was then explicitly enshrined in the African Charter on Human and Peoples' Rights (ACHPR) when article 22(1) stated that "[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.^{xliii}"

There were also discussions, within the United Nations, in 1977 on the formulation of the right to development, within the framework of the so-called "structural approach" to human rights, which addresses the inequalities in the global political and economic system^{xliii}.

In 1981, the United Nations appointed a working group of government experts to draft a declaration on the right to development, but this group failed to complete its mission. In December 1986, following a proposal submitted by Yugoslavia, the General Assembly of the United Nations accepted a declaration on the right to development. Article(1) of the Declaration formulated the concept of the right to development - albeit with some ambiguity - as follows:

"The right to development is an inalienable human right by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.^{xliiv}"

In June 1993, the United Nations World Conference on Human Rights (WCHR), held in Vienna to celebrate the forty-fifth anniversary of the Universal Declaration of Human Rights. The WCHR concluded, with the unanimous acceptance of the Vienna Declaration and Programme of Action (VDPA)^{xliv}. The VDPA highlighted the fundamental characteristics of human rights, including, *inter alia*, universality, indivisibility and equality among all in enjoying their human rights. Moreover, VDPA emphasized that the primary responsibility for ensuring respect for human rights rests with national Governments; that aid to developing countries should be linked to democratization and economic development; that development, democracy and human rights are interdependent^{xlvi}. VDPA reaffirmed:

"the right to development as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights [...] should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.^{xlvii}"

Following the Vienna Conference, the right to development was subsequently reaffirmed, in terms similar to those contained in the Vienna Declaration and Program of Action, most prominently in the concluding documents of the 1995 World Summit for Social Development in Copenhagen^{xlviii}, and the Fourth World Conference on Women, in the same year, in Beijing^{xlix}.

Many advocates of the right to development have tried to elevate it to the highest possible rank. Judge Mohamed Bedjaoui, former President of the International Court of Justice, has pointed out that the right to development is the "alpha and omega of human rights, the beginning and the end, the means and the goal of human rights"^l.

In the fourth report of the independent expert on the right to development, Mr. Arjun Sengupta defined the right to development as "the right to a particular process of development in which human rights and fundamental freedoms can be fully realized"ⁱⁱ.

On the other hand, an anti-rightist view was merely a facade of withholding facts and that the only goal it could achieve was to draw attention away from the pressing problems of human rights and to give Governments more support for evasion and manipulation.

In general, the right to development is no less important than other human rights. However, the right to development can serve as a bridge between different categories of human rights and work to integrate them. The recognition and realization of the right to development by States will contribute effectively towards the realization and preservation of other human rights, such as the right to a reasonable standard of living, the right to education and participation in cultural, political life, and other human rights and fundamental freedomsⁱⁱⁱ.

3. International Instruments Underpinning the Concept of Sustainable Development

The international community, through the United Nations, has made a remarkable effort to consolidate the concept of sustainable development, through the establishment of committees and the convening of international conferences, aim at defining the notion and determining the limits of that concept. These efforts resulted in the convening of the United Nations Conference on the Human Environment, which resulted in the 1972 Stockholm Declaration; the United Nations Conference on Environment and Development, which resulted in the 1992 Rio Declaration; and the World Summit on Sustainable Development, which resulted in the 2002 Johannesburg Declaration on Sustainable Development and the Plan of Implementationⁱⁱⁱⁱ.

3.1. Stockholm Declaration

The Stockholm Declaration was the outcome of the United Nations Conference on the Human Environment, held in Stockholm in 1972. Preparatory work and resolutions of the General Assembly contributed to the success of this Conference, which led to the establishment of several important principles for the protection of the environment, in general, and underpinning the concept of sustainable development, in particular.

Principle 21 affirmed the arbitral tribunal's decision in the Trail Smelter case of 1941. The arbitral tribunal declared that under international law "no state has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another, or the properties or persons therein, when the case is of serious consequences and the injury is established by clear and convincing evidence"^{iv}.

Principle 3 of the Stockholm Declaration calls for the need to maintain the earth's ability to produce renewable raw materials. For non-renewable raw materials, they must be exploited in such a way as to ensure that they are not at risk of depletion in the future.

It is worth noting that Stockholm Declaration is the first international document to explicitly recognize the interrelationship between environment and development. Principle 8 states that "economic and social development is essential for ensuring a favorable living and working environment for man and for creating conditions necessary for the improvement of the quality of life". Principle 11 provides that the "environmental policies of all States should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate steps should be taken by States and international organizations with a view to reaching agreement on meeting the possible national and international economic consequences resulting from the application of environmental measures". Indeed, this has had an impact on the shaping of the idea of sustainable development, after twenty years from the Stockholm Conference, particularly at the United Nations Conference on Environment and Development, in Rio de Janeiro, in 1992^{lv}.

3.2. Rio Declaration

The international community began in the period following the Stockholm Declaration to take positive steps, towards consolidating the concept of sustainable development, and to highlight the relationship between environment and development. The first of these was the establishment of the World Commission on Environment and Development, followed by the declaration of the General Assembly on international and economic cooperation, and concluded with the convening of the Rio de Janeiro Conference, which had important consequences regarding environment and development.

The preparation of the Rio Conference was characterized by a great effort among the representatives of various States to overcome the conflict of interest between the various groups of States, in particular the division between the developed and the developing countries, called the North-South division^{lvi}.

Industrial States have shown a weak inclination to meet the needs of developing countries to achieve greater equity in distribution and to change environmentally harmful production and consumption patterns. Developing countries, on the other hand, rejected the demand of the industrialized countries to ensure the process of democratization within their societies and the preservation of their natural resources^{lvii}.

The Rio Declaration on Environment and Development is a non-legally binding authoritative statement of principles, reflecting a global consensus on environmental conservation, within the concept of sustainable development. However, three

main factors give the Rio Declaration strength and influence in the development of existing international law, with respect to environment and sustainable development:

First, principles in the Rio Declaration were couched using an authoritative language, as terms like 'shall' and 'should' were used to address States. There was, however, some doubt about the ability of the Declaration, despite the precise wording of its provisions, to create legal rules of international law^{lviii}. The UNGA endorsed the Rio Declaration, noting that it contained basic principles aimed at achieving sustainable development, based on a new and equal global partnership^{lix}; thus calling for the establishment of a Commission on Sustainable Development^{lx}. The UNGA, then, urged Governments, organs, organizations and programs of the UN, and governmental and non-governmental organizations, to take action to provide effective follow-up to the Rio Declaration on Environment and Development, as well as to take all actions aimed at achieving sustainable development in all States^{lxi}.

Second, the Rio Declaration contains twenty-seven principles, as a package deal, negotiated by consensus, and should, therefore, be read as a whole. Some of the provisions of this Declaration reflect the interests of developed countries, such as Principle (4) on the integration of environmental protection with development, principle (10) on public participation, principle (15) on the precautionary approach and principle (17) on environmental impact assessment. Other provisions also reflected the interests of developing countries, including principle (3) on the right to development, principle (6) on the special needs of developing countries, article (7) on common but differentiated responsibility, principle (5) on poverty eradication, principle (9) on strengthening capacity for building towards sustainable development. Principle (4) together with Principle (3), represent the essence of the principle of sustainable development. The greatest difficulties experienced by participants at the Rio Conference were to integrate economic development with environmental protection into one consolidated document^{lxii}.

Third, Rio Declaration reflects a real consensus between developed and developing countries on the need to adopt rules for international environmental protection. For the first time, there has been international consensus on a set of principles and policies for both environmental protection and sustainable development. Therefore, the principles contained in the Rio Declaration have a universal value that cannot be disregarded by any member of the international community^{lxiii}.

Hence, Rio Conference is deemed a milestone in the development of the provisions of international environmental law through its set of principles. It effectively contributed in the formulation of the concept of sustainable development

3.3. Johannesburg Declaration and Plan of Implementation

The UNGA entrusted the World Summit on Sustainable Development, held in Johannesburg in 2002, to review the achieved progress in the implementation of the Rio Conference outcomes, as well as renewing global commitments on achieving and supporting sustainable development. Accordingly, the objective of the Johannesburg Conference was not to establish new rules but to review the commitment related to the implementation of policies and standards agreed upon in advance, as well as to work towards a balance and linkage between socioeconomic development and environmental protection as elements of sustainable development^{lxiv}.

The Johannesburg Conference concluded with the adoption of two main documents:

First: the Johannesburg Declaration on Sustainable Development. A political declaration reaffirming the collective responsibility of the international community for the protection of the environment and for the well-being of peoples at present and in the future. The Declaration highlighted the challenges facing humanity, including: bridging the wide gap between rich and poor countries, the depletion of fish stocks, the adverse effects of climate change, desertification that is destroying increasing areas of wetland, the continuing decline in biodiversity, the increasing vulnerability of developing countries, the continuing pollution in air, water and sea. The best solution is to make efforts aimed at achieving sustainable development, for example by taking decisions that meet specific targets in accordance with a timetable, so that basic requirements such as clean water, adequate shelter and energy can be reached as soon as possible. There is cooperation at all levels, both public and private, to achieve common objectives^{lxv}.

Second: the Johannesburg Plan of Implementation. A comprehensive international plan of action aimed at establishing key points for the application of international and national policies. It addressed questions related to the reduction of poverty, implementation of strategies for sustainable food production, changing patterns of unsustainable production and consumption, protecting and managing natural resources as the basis for economic and social development, providing better health standards and establishing an institutional system on sustainable development^{lxvi}.

However, the Johannesburg Conference did not discuss clearly and intensively, the role of international law in promoting sustainable development. There were no discussions related to the role and impact of the basic principles of international environmental law. Human rights have been spelled out prematurely, including women's reproductive rights and cultural diversity. This reveals that Johannesburg has been overtaken by political interests rather than legal requirements. However, this does not negate the role of this Conference in consolidating and developing the concept of sustainable development.

4. Legal Implications of Sustainable Development

The legal value of sustainable development is emphasized through its impact on many legal areas:

First, sustainable development has a significant impact on addressing different environmental and economic problems. Sustainable development acts as an incentive or a reward for States to work towards finding solutions for those problems.

Second, sustainable development has had an influence on the decisions of international courts, on issues related to environment and development. The idea of sustainable development has also been reflected in many judgements of national courts. Such decisions and judgments revealed an interest in establishing a balance between environment and development, based on the requirements on sustainable development.

Finally, the idea of sustainable development has emerged in many national constitutions and has become a constitutional norm of superior nature within national legal systems. The vast majority of recent national constitutions have endeavored to rely on sustainable development, as a means and an objective, to protect the environment and its various components, as well as achieving the desired economic development of every state in order to preserve its survival and ensure the well-being of its people.

4.1. Impact of Sustainable Development on Environmental and Economic Problems

Sustainable development has a remarkable impact on addressing, protecting and minimizing the risks that affect many environmental and economic areas, including climate change, biological diversity, marine environment, fisheries, freshwater resources, air pollution, desertification, and hazardous wastes.

4.1.1. Global Climate Change

Recognizing serious setbacks that would happen due to anthropogenic change in climate, the World Meteorological Organization (WMO) and the (UNEP) established the International Climate Change Commission in 1988, which published their first report in 1990, including an assessment of the problem of climate change. The WMO and the UNEP also led, during the Rio Conference, the initiatives to adopt the United Nations Framework Convention on Climate Change (UNFCCC) of 1992. The main objective of this Convention is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. This objective "should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner"^{lxvii}.

The Convention recognized the right of its Parties to sustainable development; but at the same time committed them to achieve such sustainable development, based on the fact that economic development is necessary to address problems of climate change. States Parties should, therefore, cooperate to promote an open international economic system that leads to sustainable economic growth and development, particularly in developing countries; thus, giving them greater ability to address climate change problems^{lxviii}.

The Kyoto Protocol to the UNFCCC was adopted in 1997 to establish quantified emission limitation and reduction commitments for its Parties, to promote sustainable development^{lxix}.

The Paris Agreement, adopted by the Conference of the Parties to the UNFCCC, in 2015, has come to the fore with the idea of sustainable development to consolidate the global response to the threat posed by climate change. The agreement called on countries to promote sustainable development and environmental integrity by achieving a global moratorium on rising greenhouse gas emissions as soon as possible, with the principle of common but differentiated responsibilities for developing countries so that the reduction of greenhouse gases for developing countries takes longer^{lxx}.

4.1.2. Conservation of Biological Diversity

The Convention on Biological Diversity emphasized that States are responsible for the conservation of their biological diversity and for the sustainable use of their biological resources^{lxxi}. The Convention also included in their objectives, the sustainable use of the components of biological diversity. Sustainable use, within the Convention, means "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations"^{lxxii}.

The 2000 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, provide for the sustainable use and conservation of biodiversity components. The objective of the protocol is to "to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements"^{lxxiii}.

The International Treaty on Plant Genetic Resources for Food and Agriculture, expressly states that conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture are essential for sustainable agricultural development for present and future generations^{lxxiv}. This Convention is regarded as an implementation of the Convention on Biological Diversity; as evidenced from its objectives, which include "the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits

arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security^{lxxv}.

It is worth noting that the concept of sustainable development has also emerged in conventions aimed at protecting the natural habitat of living organisms, not only because of their environmental significance, but also because of their importance as a cultural heritage of humanity. The 2000 European Landscape Convention emphasized the need for sustainable development based on a balanced and harmonious relationship between social needs, economic activities and the environment^{lxxvi}. The Framework Convention on the Protection and Sustainable Development of the Carpathians, also, called States Parties to adopt a comprehensive policy and cooperate in providing protection and sustainable development of the Carpathian Mountains with a view to improving water quality, supporting the local economy and communities and preserving natural values and cultural heritage^{lxxvii}.

4.1.3. Protection of the Marine Environment

The concept of sustainable development has influenced international conventions relating to the protection of marine areas. The 1989 Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South-East Pacific require State Parties to establish areas under their protection as a shelter for plants and animals and to have integrated management based on a study of their resources, with a view to achieving their sustainable development^{lxxviii}. The 1990 Protocol Concerning Special Protected Areas and Wildlife in the Wider Caribbean Region also recognized that the protection and preservation of the environment in the wider Caribbean region was essential for the achievement of sustainable development. The Protocol, therefore, requires its Parties to take necessary measures to achieve sustainable protection, conservation and management of areas in need for protection, to maintain their own value, from one side, and to preserve endangered species of plants and animals, on the other side^{lxxix}. Each party should also establish in its areas of control and sovereignty protected areas, with a view to sustaining the natural resources of the wider Caribbean region^{lxxx}.

With regard to the protection of the marine environment from pollution, the Kuwait Protocol for the Protection of the Marine Environment against Pollution from Land-based Sources of 1990 noted that, when adopting programs to implement the measures contained in the Protocol, the economic capacity of contracting States and their need for sustainable development should be taken into account^{lxxxi}.

States have, generally, recognized that the protection of the marine environment from pollution is the only way towards achieving sustainable development and sustainable use of their natural resources. Thus, the 1992 Helsinki Convention for the Protection of the Marine Environment of the Baltic Sea Area requires its Parties to take measures for protection of the Baltic Sea area against pollution, with a view to ensuring the sustainable use of its natural resources^{lxxxii}.

The 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic recognized the need to undertake collective action necessary, to prevent and eliminate marine pollution, and to achieve sustainable management of the marine area^{lxxxiii}.

The revised Barcelona Convention on the Protection of the Marine Environment and the Coastal Region of the Mediterranean, 1995, reaffirmed the responsibility to preserve and sustain the development of shared inheritance for the benefit of present and future generations^{lxxxiv}. For this end, the Convention requires its Parties to take all appropriate measures to prevent, mitigate and combat, and to the fullest possible extent, eliminate pollution in the Mediterranean, and to protect and promote the marine environment in that area in a way that contributes to their sustainable development^{lxxxv}. In addition, States Parties must apply the precautionary principle to contribute to sustainable development in the Mediterranean Sea area^{lxxxvi}.

The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter stressed on the need to protect the marine environment and promote the sustainable use and conservation of marine resources^{lxxxvii}. The 1996 Protocol concerning Pollution from Land-based Sources and Activities to the Convention for the Protection and Development of the Environment of the Wider Caribbean Region, also mentioned that there is no equality in the economic and social development of the wider Caribbean States and their need for sustainable development^{lxxxviii}. Therefore, Parties to the protocol shall endeavor to eliminate pollutants that harm marine life and the sustainable development of living resources, or generally adversely affect the legitimate use of the sea^{lxxxix}.

In addition, the concept of sustainable development appeared in international conventions aimed at protecting biodiversity in the marine environment. State Parties to the 1995 Protocol Concerning Specially Protected Areas and Biodiversity in Mediterranean, agreed to protect, maintain and manage areas of natural and cultural value in a Sustainable and environmentally sound manner, through the establishment of special protected areas^{xc}. Similarly, the 2002 Protocol on Black Sea Biodiversity and Landscape Conservation annexed to the Convention for the Protection of the Black Sea against Pollution, aimed at the protection, conservation and sustainable management of the biodiversity and landscapes of the Black Sea, in order to enrich biological resources^{xc1}. The Protocol also mandated States Parties to ensure the sustainable use of marine life organisms of economic importance^{xcii}.

4.1.4. Management of Fisheries

The concept of sustainable development appeared, during the period following the Rio Declaration, in several international conventions relating to the regulation and management of fisheries. The 1993 Agreement on the Conservation of

Southern Bluefin Tuna has required the specialized commission responsible for the allocation of fishing rations among States Parties to consider the need for sustainable development of southern bluefin tuna^{xciii}. Similarly, the 1993 Agreement on the Establishment of the Indian Ocean Tuna Commission (IOTC) decided that the Commission should strengthen cooperation among Members with a view to ensuring the conservation and optimal utilization of the fish stocks covered by the Agreement, as well as promoting the sustainable development of those stocks^{xciv}.

The 1995 Fish Stock Agreement is considered an important step in the development of international rules and provisions on fisheries management. The Agreement is an implementation of the 1982 United Nations Convention on the Law of the Sea aims at ensuring the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks^{xcv}. The Fish Stocks Agreement requires States Parties to adopt measures that would maintain or restore fish stocks at levels that would enable them to achieve the highest sustainable production, as determined by the relevant environmental and economic factors^{xcvi}.

It is worth mentioning that the principles and provisions adopted by the Fish Stocks Agreement have been adopted by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (the Honolulu Convention 2000)^{xcvii}, and the Convention for the Conservation and Management of Fishery Resources in the South-East Atlantic^{xcviii}.

Among the agreements that endorsed the concept of sustainable development was the 2000 Framework Agreement for the Conservation of Living Marine Resources on the High Seas of the South Pacific. The Framework Agreement declared that the coastal States of the South-East Pacific had the right and duty to ensure the conservation and sustainable use of the living marine resources present in their sub region^{xcix}. The Framework Agreement further provides for several conservation measures that aim at achieving sustainable development for one or more fish populations^{cd}.

The 2003 Convention on the Strengthening of the Tropical Tuna Commission of the Americas states that its objective is to ensure the long-term conservation and sustainable use of the fish stocks covered by the Convention^{ci}. The 2005 Framework Convention for the Protection of the Marine Environment of the Caspian Sea, also States that its objective is to "maintain or restore populations of marine species at levels that can produce the maximum sustainable yield as qualified by relevant environmental and economic factors and taking into consideration relationship among species"^{cii}.

4.1.5. Fresh water Resources

The concept of sustainable development, as well as the concept of sustainable use and management, were embodied in international agreements on international watercourses. The Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki Water Convention, 1992) confirmed that sustainable management of water resources is one of the means to prevent, control and reduce adverse transboundary impacts^{ciii}. The 1999 Water and Health Protocol to the Water Convention, aimed at promoting the protection of human health and well-being, both individually and collectively, within the framework of sustainable development, through improved water management, including the protection of water ecosystems, and through preventing controlling and reducing water-related diseases^{civ}.

Moreover, the 1997 United Nations Convention on the Law of the Non-navigational Uses of International Watercourses, endorsed the concept of sustainable development, with a view to ensuring the use, development, conservation, management and protection of international watercourses and to achieving their optimal and sustainable utilization for present and future generations^{cv}. The Convention emphasized the right of watercourse States, within their respective territories, to use it in a fair and reasonable manner^{cvi}.

4.1.6. Transboundary Air Pollution

The concept of sustainable development has had a significant role in international instruments on the prevention of transboundary air pollution. The Protocol on Further Reduction of Sulfur Emissions of 1994 to the Convention on Long-Range Transboundary Air Pollution emphasized the need to ensure environmentally sound and sustainable development^{cvij}.

The 2002 ASEAN Agreement on Transboundary Haze Pollution explicitly provided that its objective is "to prevent and monitor transboundary haze pollution as a result of land and/or forest fires which should be mitigated, through concerted national efforts and intensified regional and international co-operation. This should be pursued in the overall context of sustainable development."^{cviii}

4.1.7. Desertification

The Convention to Combat Desertification (1994) has shown remarkable interest in the principles of sustainable development, sustainable management and sustainable use. Therefore, the Convention:

- Recognized the fact that sustainable economic growth, social development and eradication of poverty are among the priorities of affected developing countries, particularly in Africa, and are essential for the achievement of sustainability goals.
- Recognized that desertification and drought affect sustainable development through their association with important social problems such as poverty, poor health and nutrition, food insecurity and problems caused by migration, displacement and demographic dynamics^{ciix}.

- Defined its objective of combating desertification and mitigating the effects of drought in countries suffering from desertification or drought, or both, particularly in Africa, with a view to contributing to sustainable development. To achieve this objective, State Parties shall take long-term strategies to improve land productivity, rehabilitation, conservation and sustainable management of land and water resources^{cx}.
- Requested States Parties to cooperate at all levels available to conserve and promote sustainable use of the scarce land and water resources in the affected areas^{cxii}.
- Called States Parties to pay due attention to affected developing countries with respect to international trade and debt to establish an international economic environment aimed at achieving sustainable development^{cxiii}.
- Required developing countries to develop plans and adopt policies for sustainable development, to combat desertification and mitigate the effects of drought^{cxiiii}.
- Stressed on the need to integrate national action programs (NAPs), adopted by affected States to combat desertification and mitigate the effects of drought, into national policies on sustainable development. In addition, it required that the NAPs include programs for sustainable irrigation, sustainable management of natural resources and sustainable agricultural practices^{cxv}.
- Obligated State Parties to support research, technological development and transfer, capacity building, education and public awareness to achieve sustainable development^{cxvi}.

4.1.8. Toxic and Hazardous Wastes

The role of sustainable development were incorporated in international environmental agreements, having special technical nature, specifically those that have dealt with regulating the trade and use of toxic and other harmful chemicals. The 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade recognized that "trade and environmental policies should be mutually supportive with a view to achieve sustainable development"^{cxvii}.

The 2001 Stockholm Convention on Persistent Organic Pollutants also confirmed its full observance of the Program of Action for the Sustainable Development of Developing Countries, consisting of small islands, adopted in Barbados on 6 May 1994^{cxviii}.

4.1.9. Environmental Impact Assessment

Environmental impact assessment became a prerequisite procedure for activities that are likely to cause significant adverse impacts on the environment. Sustainable development has promoted the adoption of conventions, requiring States to conduct environmental impact assessment. The 1991 Espoo Convention on Environmental Impact Assessment in a Transboundary Context affirmed the need to ensure environmentally sound and sustainable development^{cxix}. The 1992 Helsinki Convention on the Effects of Transboundary Industrial Accidents also recognized "the importance and urgency of preventing serious adverse effects of industrial accidents on human beings and the environment, and of promoting all measures that stimulate the rational, economic and efficient use of preventive, preparedness and response measures to enable environmentally sound and sustainable economic development^{cxix}".

The role of sustainable development was highlighted in international conventions that required public participation on important environmental issues. Accordingly, the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters of 1998 referred to the desire of Parties to promote environmental education to strengthen knowledge of the environment and sustainable development, to promote the dissemination of public awareness and participation in decisions affecting the environment and sustainable development^{cxix}.

Similarly, States Parties to the Protocol on Strategic Environmental Assessment to Espoo Convention (2003 Kyiv Protocol) undertook to provide a high level of environmental protection, including health protection, by integrating environmental and health concerns into measures and instruments designed to promote sustainable development^{cxix}.

4.1.10. Addressing Economic Issues

The role of sustainable development has not only addressed environmental problems, but has also played a vital role in addressing economic problems that threaten development in many countries, particularly developing countries. Thus, the idea of sustainable development has been reflected in many international conventions aimed at addressing the problems that impede the economic development of States.

States parties to the 1994 WTO Marrakesh Agreement have realized that, within the framework of their trade relations and economic endeavors, they must aim at "raising standards of living, ensuring full employment and a large and steadily growing volume of real income". State parties also considered the expansion of production, trade of goods and services and the optimal use of the world's resources, in accordance with the objectives of sustainable development^{cxix}.

In addition, States parties to the United Nations Convention against Corruption of 2003 stressed on their concern about the threats posed by corruption to the stability and security of societies, which undermine the institutions and values of democracy, ethical values, and jeopardize sustainable development and rule of law. State Parties showed their concern with respect to cases of corruption involving assets that represent a significant proportion of State resources, thereby jeopardizing

and threatening the political stability and sustainable development of those States^{cxxiii}. Interestingly, the Convention against Corruption has adopted measures to implement the Convention through economic development^{cxxiv}.

The concept of sustainable development was also embedded in regional conventions aimed at establishing common markets and economic groups. The most prominent example is the 1992 Treaty of the Southern African Development Community (SADC), which aimed, on the one hand, to promote sustainable and equitable economic development with a view to ensuring poverty reduction, with the ultimate goal of its entire eradication for the people of southern Africa. On the other hand, the promotion of sustainable development through the collective self-reliance of the Southern African States and, finally, the sustainable use of natural resources and the effective protection of the environment^{cxxv}.

The 1993 Treaty of the Common Market for Eastern and Southern Africa (COMESA) 1993 referred to the concept of sustainable development, when it identified that the common market objective was to achieve the sustainable growth and development of Member States, by promoting a more balanced and harmonious development of the production and marketing structures^{cxxvi}. The Parties to the Convention also agreed to take collective measures to enhance cooperation in the joint and effective management and sustainable use of natural resources within the common market^{cxxvii}.

The 1999 Treaty for the Establishment of the East African Community stated that the Community must ensure the sustainable development of Member States, by promoting a more balanced and harmonious development, as well as promoting the sustainable use of natural resources, and by taking measures that effectively contribute to the protection of the natural environment^{cxxviii}. States Parties recognized that development activities may have an adverse impact on the environment, leading to the degradation and depletion of their natural resources, and that a healthy and sound environment is essential for achieving sustainable development. Therefore, States Parties agreed to take collective measures to enhance cooperation in the joint and effective management and sustainable use of natural resources within the Community^{cxxix}.

The objectives of the Constitutive Act of the African Union 2000 were to promote sustainable development at the economic, social and cultural levels^{cxxx}.

The 2003 Revised African Convention on the Conservation of Nature and Natural Resources affirmed the responsibility of States for the protection, conservation and sustainable use of the environment and natural resources, with a view to meeting human needs, in accordance within the carrying capacity of the environment^{cxxxi}. The Convention identified among its basic objectives the need to protect the environment in order to promote the conservation and sustainable use of natural resources^{cxxxii}. The convention also committed its Parties to meet environmental and development needs in a sustainable, fair and equitable manner^{cxxxiii}, as well as the need to give due attention, when formulating development plans, to "ecological, as well as to economic, cultural and social factors in order to promote sustainable development."^{cxxxiv}

4.2. Sustainable Development before Judicial Bodies

The concept of sustainable development underpinned many decisions and judgments, whether rendered by international courts, dispute settlement bodies, arbitral tribunals or national courts.

4.2.1. International Courts

Sustainable development had an impact on the judgments of international courts, particularly, the judgments and advisory opinions of the International Court of Justice (ICJ). In its 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the ICJ gave a description to the environment, and emphasized the importance of future generations, when it recognized that:

"the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment"^{cxxxv}.

While the ICJ did not explicitly refer to the concept of sustainable development, it affirmed its fundamental elements namely, the protection of the environment for the benefit of present and future generations.

In *Gabčíkovo-Nagymaros Project* case between Hungary and Slovakia, the ICJ addressed the notion of sustainable development, asserting that:

"new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such standards given proper weight, not only when States contemplate new activities, but also when continuing activities begun in the past. This need to reconcile development with protection of the environment is aptly expressed in the concept of sustainable development"^{cxxxvi}.

The ICJ had also explicitly referred to the concept of sustainable development in the *Pulp Mills* case. The dispute arises due to the Uruguayan government's permission to establish pulp mills for the production of raw material needed in the paper industry on the Uruguayan River; a common river with Argentina. The later objected to the establishment of pulp mills, on the grounds that it would cause pollution of the Uruguay River and damage the environment. Uruguay justified the establishment of pulp mills on the principles of equitable and reasonable sharing of international watercourses, sustainable development, precaution and environmental impact assessment^{cxxxvii}. The ICJ, therefore, stressed on the need to strike a balance between economic development and environmental protection within the framework of the principle of sustainable development^{cxxxviii}.

Although the judgments of the International Tribunal for the Law of the Sea (ITLOS), did not explicitly refer to the concept of sustainable development, it contributed to laying the foundations, ideas and trends on which sustainable development is based. For example, the case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean, submitted by Chile and the European Community in 2000, raised issues related to the sustainable use of marine living resources^{cxix}. The 1999 Southern Bluefin Tuna Cases (New Zealand v. Japan, Australia v. Japan), aimed at preventing overfishing of this kind of tuna, in a manner affecting its maximum sustainable yield^{cxl}. The 2001 MOX Plant Case was submitted to the ITLOS, due to the establishment of a chemical plant on the Irish Sea, which could affect the sustainable use of the environment^{cxli}. The 2003 Land Reclamation Case related to Singapore's land reclamation in the Johor Straits, a common area with Malaysia, thereby damaging the marine environment^{cxlii}.

4.2.2. International Dispute Resolution Panels

The concept of sustainable development emerged in the decisions of the dispute settlement bodies of the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). The old GATT dispute settlement system, referred to the concept of sustainable development in the Tuna-Dolphin decision (Netherlands Antilles v. United States of America), which concluded that "the objective of sustainable development, which includes the protection and preservation of the environment has been widely recognized by the contracting parties to the General Agreement"^{cxliii}.

Under the WTO dispute settlement system, reference to the concept of sustainable development was made in the report of the Appellate Body in the 1998 Shrimp-Turtles Case, regarding the prohibition by the US of importation of shrimp and certain shrimp based products that had been harvested in a manner that threatened turtle population. The United States responded to the complaint submitted by the Asian countries, namely, India, Pakistan, Malaysia and Thailand, by relying on the provisions of Article (20) of the GATT. This article allows, under certain circumstances, for the adoption of measures that, though in breach of other GATT provisions, are necessary to protect human, animal or plant life or health or relate to the conservation of exhaustible natural resources^{cxliiv}.

The Appellate Body of the WTO commented on the response of the US by affirming that:

"The words of the Article XX (g), 'exhaustible natural resources', were actually crafted more than 50 years ago. They must be read by a treaty interpreter in the light of contemporary concerns of the community of nations about the protection and conservation of the environment. While Article XX was not modified in the Uruguay Round, the preamble attached to the WTO Agreement shows that the signatories to that Agreement were, in 1994, fully aware of the importance and legitimacy of environmental protection as a goal of national and international policy. The preamble of the WTO Agreement-which informs not only the GATT 1994, but also the other covered agreement- explicitly, acknowledges the objective of sustainable development"^{cxlv}.

The Appellate Body followed that the language of the preamble indicates the recognition by the WTO parties that optimal use of the world's natural resources must be made with a view to achieving sustainable development^{cxlvi}.

Although the Appellate Body eventually decided that the import ban measures taken by the US constituted unlawful discrimination, the reference to the concept of sustainable development contributed to the consolidation of its legal status in international law^{cxlvii}.

4.2.3. International Arbitration

The concept of sustainable development was reflected in the decisions of international arbitral tribunals, specifically in the Iron Rhine Railway case in 2005. The arbitral tribunal noted that there is a widespread debate about what constitutes, within the framework of international environmental law, rules, principles or soft law, and "which environmental treaty law or principles have contributed to the development of customary international law". The tribunal then mentioned that "the emerging principles, whatever their current status, make reference to conservation, management, notions of prevention and of sustainable development, and protection for future generations"^{cxlviii}.

5. The Right to Sustainable Development in Comparative Constitutional Law

The emergence of sustainable development as a fundamental human right on the international level has inspired many constitutional systems to incorporate the right to sustainable development into the heart of their national constitutional texts. The reliance of these Constitutions on sustainable development was viewed as a mean as well as an objective to protect the environment and its various components, as well as achieving the desired economic development of every State in order to preserve its survival and ensure the well-being of its people.

The evolution of this concept has further encouraged a number of Supreme Constitutional Courts to enforce sustainable development right on the national level, or to recognize it as a constitutional right, in cases where there is no reference in the national constitutions of the concerned States.

The following part will firstly shed the lights on textual references to sustainable development in a number of constitutional context and their resemblance with international attempts to define sustainable development. It will then address a number of constitutional adjudications in comparative legal systems that have explicitly acknowledge the constitutional nature of the right to sustainable development.

5.1. Sustainable Development in Comparative Constitutions

Being largely inspired by development of international law previously demonstrated in part II of this paper; many contemporary constitutions have opted to adopt sustainable development as their predominant social and economic paradigm.^{clix} Yet, we can distinguish between two categories of constitutions with explicit reference to sustainable development. While constitutions belonging to the first category encompass the concept of "sustainable development" in the context of state's constitutional obligation to preserve the environment and handling natural resources, Constitutions of the second category have regarded sustainable development as a fundamental constitutional right to which all citizens are entitled.

Examples of constitutional provisions pertinent to the first category include, but not limited to, article two of the Instrument of government act of Sweden, which provides that "public institutions shall promote sustainable development leading to a good environment for present and future generations."^{cl} In the same vein, article 24 of the Greek Constitution reads, "The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development."^{cli} The Constitution of Georgia has also included an analogous provision which States "Taking into account the interests of current and future generations, the State shall guarantee environmental protection and rational use of nature in order to ensure a safe environment for human health and maintain sustainable development of the country in line with the ecological and economic interests of society."^{clii} Likewise, the Belgium Constitution provides in article 7bis that "the Federal State, the Communities and the Regions pursue the objective sustainable development in its social, economic and environmental aspects, taking into account the solidarity between the generations." Similarly, Qatari constitution has also incorporated a similar provision that reads "The State endeavors to protect the environment and its natural balance, to achieve comprehensive and sustainable development for all generations."^{cliii} In the Egyptian context, textual reference to sustainable development seems to have appear quite a few times,^{cliv} article 27 for instance emphasized that the sustainable development and social justice are the only two means by which the economic system could achieve prosperity.^{clv} Likewise, article 41 of the Egyptian constitution, which instates a constitutional obligation upon the government to implement a housing program stressed that such program should "aim at achieving balance between population growth rates and the resources available, maximizing investment in human energy, and improving its features, within the framework of achieving sustainable development."^{clvi} Article 46 also imposes upon the state a duty to rationally use its natural resources to ensure that sustainable development so as to guarantee to all citizens the right to live in a healthy, sound and balanced environment.^{clvii}

With regards to Constitutions that have treated sustainable development as a fundamental right with a constitutional value, examples include,^{clviii} but not limited to: article 73 of the Zimbabwean Constitution and article 24 of the South Africa Constitution which, having used almost the exact same wording, provide "every person has the right to ... b- to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that ... iii. secure ecologically sustainable development and use of natural resources while promoting economic and social development."^{clix} Likewise, article 19 of the constitution of Mauritania reads "the citizens enjoy the same rights and the same duties vis-à-vis the Nation. They participate equally in the construction [edification] of the Fatherland and have right, under the same conditions, to sustainable development and to an environment balanced and respectful of health."^{clx}

The aforementioned constitutional texts are deemed to be clear constitutional mandates as to the parameters to be considered when making national policies and regulations pertinent to development.^{clxi} The goal beyond the incorporation of such provisions in the constitutional scheme, as noted by one scholar, is "to preserve natural resources and pass on healthy ecosystems to future generations."^{clxii} It is nevertheless obvious from the wording of all provisions pertaining to both categories, that constitutional documents have echoed the universally agreed upon international definition of sustainable development. Such an observation is supported by the explicit incorporation of the two main prongs of the sustainable development definition: the preservation of the environment and natural resources from one hand and the acknowledgment of the right of future generation to an equal usage of resources from the other hand.

With regard to the first prong, the examination of the above-mentioned sustainable developments provisions reveals that contemporary Constitutions have remarkably endeavored to relate environmental protection and usage of natural resources with the right to development. In doing so, these constitutions have encompassed a number of environmental rights and obligations that are conducive to sustainable developments.^{clxiii} This constitutional mandate requires the state to abandon prior practices and policies in the area of human development if they likely to cause irreversible damage to the environment. It further establishes a civil responsibility, the content of which entail a duty on the part of every citizen to respect constitutional right of their peers to a healthy and clean environment.^{clxiv} Such an approach, as viewed by one scholars, marks "a new cycle in achieving sustainability of a country model of development."^{clxv}

With respect the second prong, the wordings employed to craft sustainable development provisions assert that national development schemes should be built upon the premise, previously highlighted by the Brundtland Commission in 1987, that development to satisfy present needs by current generations should not by any means compromise those of future generations.^{clxvi} In other words, our developments strategies must not only take into consideration our present-day needs but should also consider the impact of such strategies on future generations.^{clxvii} To achieve this end, these constitutional provisions have considered sustainable development as the only appropriate alternative for economic development that could accommodate future population growth without demolishing the ecosystem.^{clxviii} Therefore, such provisions serve as

constitutionally mandated barrier or obligation to prohibit recourse of governments, corporations and even individuals to traditional development schemes that serve contemporary people to the detriment of future generations.^{clxix} This obligation stems not only from economic reasons, but rather, as expressed in the words of some commentators, from “our interest in our own children’s welfare, a trait we share with other species, and from a genuine concern for future generations, a quality that is uniquely human.”^{clxx}

5.2. Sustainable Development in Constitutional Adjudications

The constitutional value of the right to sustainable development has also been acknowledged by many Supreme Constitutional Courts that have been keen to enforce sustainable development into the heart of environmental laws and regulations adopted on the national level. The following will investigate some of the leading precedents in that regard.

5.2.1. The Egyptian Supreme Constitutional Court Decision

Although sustainable development seems to appear in the 2014 Egyptian Constitution more than one times as shown previously, former Egyptian Constitutions such as 1923, 1956, 1964, 1971 Constitutions provided nowhere into their texts for the right to sustainable development or the right to a clean environment. Yet, despite this constitutional lack, the Supreme Constitutional Court of Egypt has recognized in 1995 a constitutional value for the right to sustainable development.

Unlike, other constitutional adjudications where the Egyptian Supreme Constitutional Court has interpreted constitutional rights and freedoms in light of international law of human rights norms and standards,^{clxxi} the court has taken the use of international law in constitutional construction further by filling out the gap in the 1971 constitution through the direct use of the International norms and standards. Although not so often, the court, inspired by human rights ideas and concepts, has accorded a constitutional value to certain human rights not expressly protected by the constitution but are closely tied to other existing constitutional rights.^{clxxii} According to the court reasoning in this case, the aim of its adopted approach was to secure the fundamental global values and to reduce potential clashes between domestic law and international law to a minimum.^{clxxiii}

Applying this approach, the court has regarded the right to sustainable development as a constitutional right given the very close ties between this right and right to life.^{clxxiv} In reaching this decision, the court has been highly inspired by multiple international instruments including UN Declaration on the Right to Development,^{clxxv} the International Covenant for Civil and Political Rights,^{clxxvi} and the VDPA.^{clxxvii} Having conceded the constitutional nature of the right to sustainable development, the Court declared as constitutional Articles 2 and 16 of law N. 48 of 1982 relevant to the protection of the Nile Course and waterways from pollution which were basically proscribing discarding of solid, gaseous or liquid into the Nile or other waterways in Egypt and criminalizing such behaviour. The Court defended its decision on the ground that the challenged provisions are in well conformity with the characteristics of the right to sustainable development as protected by major international law instruments of human rights.^{clxxviii}

5.2.2. The Bangladesh Supreme Court Decision

Another example on the recognition of a constitutional value to the right of sustainable development by means of constitutional adjudication involve the decision of the Supreme Court of Bangladesh in *Dr. M. Farooque v. Secretary, Ministry of communication, Government of the People’s Republic of Bangladesh and 12 others*.^{clxxix} Although the Bangladesh constitution makes no explicit reference to sustainable development or to the right to a healthy and clean environment, the Supreme constitutional Court has construed the constitutional provisions with relevance to the fundamental right to life so as to include with its ambit “the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life can hardly be enjoyed.”^{clxxx} With this reasoning, the court acknowledged he right for every citizen to file a writ petition seeking remedy in cases where a public injury has occurred.^{clxxxi}

5.2.3. The Philippine Supreme Court Decision

In the context of Philippine, although the term “sustainable development” does not appear anywhere in the Constitution of Philippine, the Supreme Court of Philippine has expressed a robust willingness to adopt sustainable practices by emphasizing the essence of the concept of sustainable development premised on the conservation of natural resource to meet the needs of present and future generations.

One of the landmark decisions in that regard, is the Supreme Court’s decision in 1993 known as the “*Minors Oposa*”. The case involved a claim by the parents of forty-four children as well as the Philippines Environmental Network, in their legal capacity to represent current and future generations to prevent deforestation within the country. The Court upheld the plaintiffs’ claims, stating that:

“We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality [i.e. as a legally recognized entity] to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility in so far as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the rhythm and harmony of nature[...] Such rhythm and harmony include, inter alia, the judicious disposition, utilization, management, renewal and conservation of the country’s forest, mineral, land, waters, fisheries, wildlife, offshore areas and other natural resources to be aimed at their exploration,

development and utilization be equitably accessible to the present as well as the future generations [...] Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and helpful ecology. Put a little differently, the minor's assertion of their right to a sound environment constitutes at the same time, the performance of their obligation to ensure the protection of that right for future generations to come.^{clxxxii}"

5.2.4. The Supreme Court of India Decision

The Supreme Court of India has played, similar to its counterparts, an important role in acknowledging the constitutional value of the environmental protection. One of the well-recognized precedents in that area is the 2000 Supreme Court of India decision concerning the construction of a dam on the Narmada River. In this case, the court made clear that when the impact of the project is known, the principle of sustainable development has a role to play in ensuring that steps are taken to mitigate negative impacts in order to maintain the ecological balance. Sustainable development means the type and extent of development that can be done in a sustainable manner with the environment, whether or not mitigation measures have been taken.^{clxxxiii}

5.2.5. The South African Court Decision

The Supreme Court of South African has also joined the position of its comparative peers in recognizing the constitutional value of the right to sustainable development. The Court affirmed this perception in a 2007 decision by emphasizing that environmental protection is fundamental to the enjoyment of other constitutional rights enshrined in the Bill of Rights, in particular the right to life itself. Therefore, the environment must be protected for the benefit of present and future generations^{clxxxiv}. It further highlighted the constitutional acknowledgment of the two essential elements of sustainable development by stating that "The Constitution recognizes the interrelationship between the environment and development: indeed it recognizes the need for the protection of the environment while at the same time it recognizes the need for social and economic development. It contemplates the integration of environmental protection and socioeconomic development. It envisages that environmental considerations through the ideal of sustainable development. Sustainable development and sustainable use and exploitation of natural resources are at the core of the protection of the environment"^{clxxxv}. The decision also stressed on the major role that the judiciary should assume in the context of protecting the environment and giving effect to the principle of sustainable development.^{clxxxvi}

6. Conclusion

The concept of sustainable development has undoubtedly received considerable attention of the international community in the past few decades. Sustainable development, therefore, had an impact on many international conventions that address environmental and economic problems.

Environmental protection and sustainable development are two linked and interrelated concepts: first, environmental laws primarily aim to protect the elements of the environment against all forms of pollution or abuse, which has an adverse impact on human life and health. Such protection as established by the rules of international environmental laws is a necessary requirement for the achievement of sustainable development. Second, sustainable development is the means by which natural resources, especially renewable ones, are used in a rational and equitable manner to provide basic needs for present generations, without compromising the ability of future generations to meet their needs. Thus, sustainable development helps to preserve the environment and its various components against pollution, abuse and overuse.

Sustainable development plays a pivotal role in striking a fair and equitable balance between the requirements of environmental protection and that of economic development of States. However, it is not legally or practically acceptable to over-protect the environment in a way that interferes with the ability of developing countries, in particular, to pursue their development, address their internal problems and meet the needs of their citizens.

In addition, Sustainable development has been expressly mentioned in the national constitutions of many states. This means that sustainable development became a constitutional principle that sits at the top of the hierarchy of norms within national legal systems. States conceived sustainable development as an effective and durable means of achieving their economic development and eliminating, or at the very least, alleviating other internal problems, including, inter alia, poverty, health, education, food and energy

Moreover, many international and national judicial bodies have relied on the concept of sustainable development as a basis for justifying their judgments regarding cases that raise various environmental problems. Nevertheless, international and national judiciaries shall take further steps in order to firmly establish the legal nature of sustainable development.

Finally, it should be noted that regardless of the designation for the term "sustainable development", whether it is called a notion, a principle, a requirement or a concept, this in no way reflects its actual legal nature. Sustainable development has emerged as a general notion, then evolved into a principle, and has now become a basic rule of both international and constitutional law.

7. References

- i. "Although emerging as a distinct field of scholarship, the existence of sustainable development as a distinct legal concept, that is, one which gives rise to or defines actionable rights, is controversial." James Crawford, Brownlie's

Principles of Public International Law, Oxford University Press, 2012, 358. See also: Marcos Orellana, In this Issue: Sustainable Development in the Courts: Introduction, Sustainable Development Law and Policy, Fall 2009, p. 2

- ii. While sustainable development is primarily concerned with environmental protection, this does not mean that all legal aspects of sustainable development are necessarily related to the issue of environmental protection. Conversely, not all aspects of international environmental law are concerned with sustainable development. There are issues that concern sustainable development, other than environmental protection, including human rights and animal rights. Melissa Clack, Vaughn Lowe et Al., *International Law and Sustainable Development: Past Achievements and Future Challenges*, edited by Alan Boyle and David Freestone, Denver Journal of International Law and Policy, Winter, 2003, 145.
- iii. Ahmed Abd-elkareem Salama, *Environmental Protection Law, Combating pollution-development of natural resources*, Dar-Al-Nahda Al-Arabia, Egypt, 2009, 31-32.
- iv. Luis A. Avilés, IN THIS ISSUE: RIO+20: SUSTAINABLE DEVELOPMENT AND THE LEGAL PROTECTION OF THE ENVIRONMENT IN EUROPE, *Sustainable Development Law & Policy*, spring, 2012, 29.
- v. However, there is an argument that the term "sustainable" can only be used by politicians, hence, it is merely a political idea, and should not be confused with binding legal rules. Anthony Aust, *Handbook of International Law*, Cambridge University Press, 2005, 328.
- vi. Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status*, Hague Academy of International Law, 2008, 33-34.
- vii. Nico Schrijver, *Development without Destruction, the UN and Global Resource Management*, Indiana University Press, 2010, 20.
- viii. Nico Schrijver, *The Evolution of Sustainable Development in International Law*, supra note 6, at 34.
- ix. Stephen Stec, *Nature Beyond the Nation State Symposium: Do Two Wrongs Make a Right? Adjudicating Sustainable Development in The Danube Dam Case*, *Golden Gate University Law Review*, Spring, 1999, 365.
See also: Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, *Georgetown International Environmental Law Review*, Fall, 2003, 23.
- x. International Court of Justice, *Case Concerning the Gabčíkovo-Nagymaros Project (Hungry/Slovakia)* Separate Opinion of Vice-president Weeramantry, 1997, p. 108. (hereinafter referred to as Gabčíkovo-Nagymaros Project, Separate Opinion of judge Weeramantry.)
- xi. The conference included several recommendations and calls aimed at preserving and restoring forests. The Conference recommended that all countries adopt national policies for forests within their regional jurisdiction, based on the rational use of existing forests, the restoration of forests once again in areas that have been removed. *International Timber Conference, FAO, Marianske Lazne, April-May 1947, Empire Forestry Review, Vol. 26, No. 2 (December 1947) 286-288.*
- xii. Nico Schrijver, *The Evolution of Sustainable Development in International Law*, supra note 6, at 36.
- xiii. In 1955, FAO convened the International Technical Conference for the Conservation of Living Resources of the Sea, with a view to studying the problems related to the conservation of living resources at sea and making technical and scientific recommendations to address those problems. The Conference declared that the direct goal of conserving living water resources is to undertake fishing activities in a way that increases or at least maintains a sustainable rate of production as desired. On the other hand, the main objective of conserving living resources at sea is to obtain maximum sustainable yield to ensure maximum supply of food and other marine products. *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea, 18 April-10 May 1955, Rome, UN Doc. A/CONF. 10/6, para. 17-18, p. 1-10.*
- xiv. UN General Assembly, *Permanent sovereignty over natural resources, Resolution adopted on the Reports of the Second Committee, 17 December 1973, UN Doc. A/RES/3171.*
- xv. The convention entered into force in 1969, revised on March 07, 2017.
- xvi. Ulrich Beyerlin and Thilo Maruhn, *International Environmental Law*, Hart Publishing Ltd, 2011, 15. This opinion mentioned that it is not easy to track the roots of the concept of sustainable development; however, it refers to the UNGA resolution 2626, as the first international instrument to link development policies with environmental protection.
- xvii. United Nations General Assembly Resolution 2626 on International Development Strategy for the Second United Nations Development Decade, 24 October 1970, UN Document (A/RES/(2626), 39-49.
- xviii. Declaration of the United Nations Conference on Human Environment, held in Stockholm, from 6 to 16 June 1972, [hereinafter referred to as Stockholm Declaration].
- xix. "the term sustainable development as a concept aimed at meeting basic human needs without transgressing the outer limits set to endeavor by the biosphere." Marcos Orellana, supra note 1, at 2.
- xx. Ulrich Beyerlin, *Sustainable Development*, Max Planck Encyclopedia of Public International Law, October 2013, 2.
- xxi. Luis A. Avilés, supra note 4, at 29.
- xxii. "The programme areas that constitute Agenda 21 are described in terms of the basis for action, objectives, activities and means of implementation. Agenda 21 is a dynamic programme. It will be carried out by the various actors

according to the different situations, capacities and priorities of countries and regions in full respect of all the principles contained in the Rio Declaration on Environment and Development. It could evolve over time in the light of changing needs and circumstances. This process marks the beginning of a new global partnership for sustainable development." United Nations Conference on Environment & Development, Rio de Janeiro, Brazil, 3 to 14 June 1992, Agenda 21, para 1.1.

- xxiii. Ibid, para. 38.11.
- xxiv. The preamble of the International Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, adopted on 14 October 1994 and entered into force on 26 December 1996.
- xxv. States undertake in the seventh goal of the Millennium Declaration "to take special measures to address the challenges of poverty eradication and sustainable development in Africa, including debt cancellation, improved market access, enhanced Official Development Assistance and increased flows of Foreign Direct Investment, as well as transfers of technology." UNGA resolution 55/2, United Nations Millennium Declaration, 13 Sept. 2000, UN doc. A/RES/55/2. paras. 22-23.
- xxvi. New Delhi declaration gave a new dimension to the concept of sustainable development by adding the principle of good governance. Djoghlaif, Ahmed. "The Concept of Sustainable Development." *Environmental Policy and Law* 36.5 (2006): 211-218.
- xxvii. Ulrich Beyerlin and Thilo Marauhn, *supra* note 16, at 23.
- xxviii. Juhansberg Declaration on sustainable Development 2002, para. 5.
- xxix. Ulrich Beyerlin, *supra* note 20, at 3.
- xxx. Gerlinde Berger-Walliser and Paul Shrivastava, *Beyond Compliance: Sustainable Development, Business, and Proactive Law*, Georgetown Journal of International Law, Winter, 2015, 422
- xxxi. Melissa Clack, Vaughn Lowe et al., *supra* note 2, at 145.
- xxxii. Cindy Chaisson, *Sustainable Development*, LawNow, Legal Resource Centre, Faculty of Extension, University of Alberta, 1999, 2.
- xxxiii. Dr. Ahmed Abou-El-Wafa, *Public International Law*, Dar-Al-Nahda Al Arabia, 2002, p. 260-261. Dr. Abou-El-Wafa mentioned that sustainable development is among the main principles that are considered the constituent of modern international environmental law.
- xxxiv. The main objective of sustainable development is to apply a balance between environmental protection and the need to address other economic, social, cultural and humanitarian issues. James Crawford, *supra* note 1, at 352.
- xxxv. An opinion argues in the contrary to this approach. It gives priority to environment protection over developmental needs. It is based on the fact that environmental protection is the essence of sustainable development. Thus, dealing with environmental, economic and social considerations, as being equal in nature is based on a misconception that constitutes an obstacle towards achieving economic and social justice. Ulrich Beyerlin and Thilo Marauhn, *supra* note 16, at 77-78.
- xxxvi. This view is supported by principle (4) of Rio Declaration, which mentioned that "in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it."
- xxxvii. "The study of the U.N. Secretary-General and the Report to the Commission on Human Rights on the Right to Development agree that the right to development had both a collective and individual dimension, and that the subjects of the right are individuals, peoples and states. The General Assembly and the Commission argue that equality of opportunity for development is as much a prerogative of nations as of individuals within nations." Roland Y. Rich, *The Right to Development as an Emerging Human Rights*, Virginia Journal of International Law, Winter 1983, 315-316.
- xxxviii. Ibid, at 317.
- xxxix. UDHR was proclaimed by the UNGA in Paris on 10 December 1948, pursuant to resolution 217-A.
 - xl. ICESCR, adopted and opened for signature, ratification and accession by the UNGA resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27.
 - xli. ICCPR, adopted and opened for signature, ratification and accession by the UNGA resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with article 49.
 - xl.ii. ACHPR, also known as Banjul Charter, adopted on 27 June 1981, entered into force on 21 October 1986.
 - xl.iii. "Unfortunately, the right to development was discussed as part of a fiercely ideological debate and was often the object of heated exchanges". Nico Schrijver, *The Evolution of Sustainable Development in International Law*, *supra* note 6, at 77.
 - xl.ii. The Declaration underscores a mutual and indivisible relationship between political, economic, social and cultural rights. Declaration on the Right to Development, adopted by UNGA on 4 December 1986, UN Doc. A/RES/41/128.
 - xl.v. Vienna Declaration and Programme of Action, Adopted on 25 June 1993, UN doc. A/CONF.157/23. (hereinafter referred to as VDPA)
 - xl.vi. Nico Schrijver, *The Evolution of Sustainable Development in International Law*, *supra* note 6, at 81-82.
 - xl.vii. VDPA, *supra* note 45, paras. 10-11.

- xlvi. Report of the World Summit for social Development, Copenhagen, 6-12 March 1995, UN doc. A/CONF.166/9, para. 6.
- xlix. Report of the Fourth World Conference on Women, Beijing, 4-15 September 1995, A/CONF.177/20, paras. 16,27,36.
- i. M. Bedjaoui, *The Right to Development*, in M. Bedjaoui, *International Law: Achievements and Prospects*, Paris, UNESCO, 1991, 1182.
- ii. Fourth report of the Independent expert on the Right to Development, Mr. Arjun Sengupta, Submitted in accordance with Commission Resolution 2001/9, ECOSOC, Commission on Human Rights, Open-ended Working Group on the right to Development, Geneva, 18-22 February 2002, UN. doc. E/CN.4/2002/WG.18/2, para. 2.
- iii. Nico Schrijver, *The Evolution of Sustainable Development in International Law*, supra note 6, at 80.
- liii. The declarations of the General Assembly are, undoubtedly, not binding by nature; however, this does not negate the fact that the principles and provisions contained in those declarations gained a general acceptance and acquired a normative value, as a prerequisite to be a part of customary international law. It may even become a peremptory norm of international law, in case there is an overwhelming agreement that the derogation from these rules is not permitted; for example, many provisions of the Universal Declaration of Human Rights of 1948, have become peremptory norms established by international customs.
- liv. Reports of International Arbitral Awards, Trail Smelter Case (United States, Canada), 16 April 1938 and 11 March 1941, Vol. III, p. 1965.
- lv. Among the most remarkable results of the Stockholm Declaration was the establishment of the United Nations Environment Program (UNEP), in December 1972. The first institution to be established under the umbrella of the United Nations on the protection of the environment, with a leading and coordinating role in environmental protection. Although the United Nations Environment Program (UNEP) was established by a resolution of the General Assembly and therefore has no international legal personality as is the case with the specialized international organizations, it has contributed successfully and effectively to the establishment of general rules of international environmental law. UNEP carried out the preparatory work for many international and regional conventions on the ozone layer, hazardous wastes and biodiversity, as well as contributing in the establishment of several programs, for example, the Regional Seas Program, and the integrated environmental and development programs for large river basin areas. UNGA Resolution 2977 (XXVII), Institutional and financial arrangements for international environmental cooperation, 15 December 1972, UN Doc. A/RES/27/2997. See also: Rachele Adam, *Missing the 2010 Biodiversity Target: A Wake-up Call for the Convention on Biodiversity?* Colorado Journal of International Environmental Law and Policy, Winter 2010, 123-124.
- lvi. Dr. Abou-El-Wafa argues that the inclination to establish a fair balance between developing and industrial countries has led to the development of public international law through the emergence of other topics, such as the protection of the environment and the new international economic order. Dr. Ahmed Abou-El-Wafa, *Public International Law*, Fifth Edition, Dar-Al-Nahda Al Arabia, 2010, p. 21-23.
- lvii. The statement of the former Prime Minister of Malaysia, Mahathir Mohamad, reflected the depth of the clashed between the developing and developed countries:
"The Poor are not asking for a charity. When the rich chopped down their own forests, built their poison-belching factories and scoured the world for cheap resources, the poor said nothing. Indeed, they paid for the development of the rich. Now the rich claim a right to regulate the development of the poor countries. And yet any suggestion that the rich compensate the poor adequately is regarded as outrageous. As colonies we were exploited. Now as independent nations we are to be equally exploited". Ulrich Beyerlin and Thilo Marauhn, supra note 16, at 13-14.
- lviii. Philippe Sands, *International Law in the Field of Sustainable Development*, British Yearbook of International Law, 1994, 303.
- lix. UNGA Resolution on Dissemination of the Principles of the Rio Declaration on Environment and Development, 21 December 1993, UN Doc. (A/RES/48/190).
- lx. UNGA Resolution adopted on Institutional arrangements to follow up the United Nations Conference on Environment and Development, 29 January 1993, UN doc. A/RES/47/191, paras. 1-5.
- lxi. Report of the UN Conference on Environment and Development, UNGA, 22 December 1992, A/RES/47/190, para. 5.
- lxii. Alan Boyle and David Freestone, *International Law and Sustainable Development: Past Achievement and Future Challenges*, Oxford University Press, 1999, 3-4.
- lxiii. Ibid.
- lxiv. UNGA Resolution 55/99, Ten-year Review of Progress Achieved in the Implementation of the Outcome of the United Nations Conference on Environment and Development, 5 February 2001, A/RES/55/199, para. 1-4.
- lxv. The Conference recognized the need to address the conditions prevailing throughout the world that seriously threaten sustainable development. These include: chronic hunger; malnutrition; foreign occupation; armed conflicts; illicit drug trafficking; organized crime; corruption; natural disasters; trafficking in persons; terrorism; intolerance and incitement to racial, ethnic, religious and other hatred; xenophobia; endemic, infectious and chronic diseases; in particular HIV / AIDS, malaria and tuberculosis. . Report on the World Summit on Sustainable Development, Johannesburg, 26 August-4 September 2002, 1-6.
- lxvi. Ibid, at 9 et seqq.

- Ixvii. Article (2) of the UNFCCC, adopted in New York, in 4 June 1992, entered into force in 21 March 1994. See also: Stuart Bell, Donald McGillivray, and Ole Pedersen, *Environmental Law*, 8th edition, Oxford University Press, 2013, 544-545.
- Ixviii. Article (3) of the UNFCCC.
- Ixix. Articles 2(1) of Kyoto Protocol to the UNFCCC, adopted on 11 December 1997, entered into force on 16 February 2005.
- Ixx. Articles (2), (4), (6), (7), (8) and (10) of Paris Agreement, adopted on 12 December 2015, entered into force on 4 November 2016.
- Ixxi. The Preamble of the Convention on Biological Diversity, adopted on 5 June 1992, entered into force on 29 December 1993.
- Ixxii. *Ibid*, article (2).
- Ixxiii. Article (1), 7(4) and 17(1) of Cartagena Protocol on Biosafety to the Convention on Biological Diversity, adopted in Montreal, on 15 May 2000, entered into force on 11 September 2003.
- Ixxiv. The Preamble of the International Treaty on Plant Genetic Resources for Food and Agriculture, adopted in Rome, on 3 November 2001, entered into force on 29 June 2001.
- Ixxv. *Ibid*, Article 1(1).
- Ixxvi. Preamble of the European Landscape Convention, Florence, adopted on 20 October 2000, entered into force on 1 March 2004.
- Ixxvii. Article 2(1) of the Framework Convention on the Protection and Sustainable Development of the Carpathians, Kiev, adopted on 22 May 2003, entered into force on 4 January 2006.
- Ixxviii. Article (2) of the Protocol to the 1981 Convention for the Protection of the Marine Environment and Coastal Areas of the South East Pacific for the Conservation and Management of Protected Marine and Coastal Areas of the South East Pacific, Paipa, Colombia, adopted on 21 September 1989, entered into force on 18 October 1994.
- Ixxix. The preamble and Article 3(1) of the Protocol concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Kingston, Jamaica, adopted on 18 January 1990, entered into force on 18 June 2000.
- Ixxx. *Ibid*, Article 4(1).
- Ixxxi. Article 6(2) of the Protocol for the Protection of the Marine Environment against Pollution from Land-based Sources, adopted in Kuwait, on 21 February 1990, entered into force 11 December 1993.
- Ixxxii. Article (15) of Convention for the Protection of the Marine Environment of the Baltic Sea Area, adopted in Helsinki, on 9 April 1992, entered into force on 17 January 2000.
- Ixxxiii. The Preamble of the Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 22 September 1992.
- Ixxxiv. The Preamble of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Barcelona, adopted on 10 June 1995, entered into force on 9 July 2004.
- Ixxxv. *Ibid*, article 4(1).
- Ixxxvi. *Ibid*, article 4(3)(a).
- Ixxxvii. The Preamble of the 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter of 1972, adopted on 7 November 1996, entered into force on 24 March 2006. The protocol also recognized that an international action "must be taken without delay to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to meet the needs of present and future generations."
- Ixxxviii. The Preamble of the Protocol Concerning Pollution from Land-Based Sources and Activities to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Oranjestad, adopted on 6 October 1999, entered into force on 13 August 2010.
- Ixxxix. *Ibid*, Annex (I) on Source Categories, Activities and Associated Pollutants of Concern.
- xc. Article 3(1)(a) of the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean to the Convention on Special Protected Areas and Biodiversity, Barcelona, adopted on 10 June 1995, entered into force on 12 December 1999.
- xc. Article 1(1) and 4(1)(a) of the Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea against Pollution, Sofia, Bulgaria, adopted on 14 June 2002, entered into force on 20 June 2011.
- xcii. *Ibid*, Article 4(1)(c).
- xciii. Article 8(4)(b) of the Convention for the Conservation of Southern Blue-fin Tuna, Canberra, adopted on 10 May 1993, entered into force on 20 May 1994.
- xciv. Article 5(1) of the Agreement for the Establishment of the Indian Ocean Tuna Commission, Rome, adopted on 25 November 1993, entered into force on 27 March 1996.
- xcv. Article 63(2) of the 1982 United Nations Convention on the Law of the Sea, stipulates:
"where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and States fishing for such stocks in the adjacent area shall seek,

either directly or through appropriate sub regional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area”.

- xcvi. Article 5(b) of the Agreement for the Implementation of the Provisions of the United Nations Conventions on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stock and Highly Migratory Fish Stocks.
- xcvii. Convention on the Conservation and Management of Highly Migratory Fish Stock in the Western and Central Pacific Ocean, Honolulu, United States, adopted on 5 September 2000, entered into force on 19 July 2004.
- xcviii. Convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean, Windhoek, Namibia, adopted on 20 April 2001, entered into force on 30 April 2003.
- xcix. The Preamble of the Framework Agreement for the Conservation of Living Marine Resources on the High Seas of the South Pacific, Chile, 14 August 2000, not yet in force.
 - c. Ibid, article 1(1).
 - ci. Article (2) of the Convention for the Strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), Adopted on 14 November 2003, entered into force on 27 August 2010.
 - cii. Article (2) of the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, Tehran, Adopted on 4 November 2005, entered into force 12 August 2006.
 - ciii. Article 1(1) of the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, adopted in Helsinki, on 17 March 1992, entered into force on 6 October 1996.
 - civ. Article (1) of the Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, London, adopted on 17 June 1999, entered into force on 4 August 2005.

The preamble of the protocol mentioned that the “availability of water in quantities and of a quality sufficient to meet basic human needs is a prerequisite both for improved health and for sustainable development.”
 - cv. The Preamble of Convention on the Law of the Non-navigational Uses of International Watercourses, adopted in New York, on 21 May 1997, entered into force on 17 August 2014.
 - cvi. Ibid, article (5).
 - cvii. The Preamble of the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Further Reduction of Sulphur Emissions, Oslo, signed on 14 June 1994, entered into force on 5 August 1998.
 - cviii. Article (2) of ASEAN Agreement on Transboundary Haze Pollution, Kuala Lumpur, signed on 10 June 2002, entered into force on 25 November 2003.
 - cix. The Preamble of the Convention to Combat Desertification, supra note 24.
 - cx. Ibid, article (2).
 - cxii. Ibid, article 3(c).
 - cxiii. Ibid, article 4(2)(b).
 - cxiv. Ibid, article 5(b).
 - cxv. Ibid, article (10).
 - cxvi. Ibid, articles (17)-(19).
 - cxvii. The Preamble of the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted in Rotterdam, on 10 September 1998, entered into force on 24 February 2004.
 - cxviii. The Preamble of the Convention on Persistent Organic Pollutants, adopted in Stockholm, on 22 May 2001, entered into force on 17 May 2004.
 - cxix. The Preamble of the Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Espoo-Finland, on 25 February 1991, entered into force on 10 September 1997.
 - cxix. The Preamble of the Convention on the Transboundary Effects of Industrial Accidents, Helsinki, adopted on 17 March 1992, entered into force on 19 April 2000.
 - cxx. The preamble of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, adopted on 25 June 1998, entered into force on 30 October 2001.
 - cxxi. Article 1(e) of the UNCECE Protocol on Strategic Environmental assessment to the Convention on Environmental Impact Assessment in a Transboundary Context, adopted in Kyiv, on 21 May 2003, entered into force on 11 July 2010.
 - cxviii. The Preamble of the Agreement Establishing the World Trade Organization, Marrakesh, adopted on 15 April 1994, entered into force on 1 January 1995
 - cxviii. The Preamble of the United Nations convention Against Corruption, adopted on 31 October 2003, entered into force on 14 December 2003.
 - cxviii. The Convention against corruption committed States parties to take measures to the “optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general, in particular on sustainable development”. Ibid, article 62(1).
 - cxv. Article (5) of the Consolidated Text of the Treaty of the Southern African Development Community, Windhoek, adopted on 17 August 1992, entered into force on 30 September 1993. The Agreement amending the Treaty, 2001, the

- Agreement amending the Article (22) of the Treaty 2007, the Agreement amending the Treaty, 2008, The Agreement Amending Article 10(A) of the Treaty 2009, the Agreement amending Articles (10) and (14) of the Treaty 2009.
- cxxvi. Article (3) of the Treaty establishing the Common Market of Eastern and Southern Africa (COMESA), Kampala, Uganda, adopted on 5 November 1993, entered into force on 8 December 1994.
- cxxvii. *Ibid*, article (12).
- cxxviii. Article 5(3)(a) of the Treaty for the Establishment of the East African Community, Arusha, adopted on 30 November 1999, entered into force on 7 July 2000.
- cxxix. *Ibid*, article 11(1).
- cxix. Article 3(j) of the Constitutive Act of the African Union adopted in Lome-Togo, on 11 July 2000, and entered into force in 26 May 2001.
- cxxxi. The Preamble of the Revised African Convention on the Conservation of Nature and Natural Resources (Revised Version), Maputo, 11 July 2003, not yet in force.
- cxxxii. *Ibid*, article (2).
- cxxxiii. *Ibid*, article 3(3).
- cxxxiv. *Ibid*, article (14).
- cxxxv. ICJ, Reports of Judgments, Advisory Opinions and Orders, Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, para. 29, p. 241-242
- cxxxvi. ICJ, Case Concerning the Gabčíkovo-Nagymaros Project (Hungry/Slovakia) Reports of Judgments, Advisory Opinions and Orders, Judgments of 25 September 1997, para. 141, p. 78. (hereinafter referred to as Gabčíkovo-Nagymaros Project Case).
- cxxxvii. ICJ, Reports of Judgments, Advisory Opinions and Orders, Case Concerning Pulp Mills on The River Uruguay (Argentina V. Uruguay), Judgment Of 20 April 2010, para. 55, p. 42-43 (hereinafter referred to as the Pulp Mills Case.)
- cxxxviii. *Ibid*, para. 177, p. 74-75.
- cxxxix. ITLOS, Case concerning the Conservation and Sustainable Exploitation of Swordfish Stock in the South-Eastern Pacific Ocean (Chile/European Union), Order, 20 December 2000, para. 2.
- cxli. Andrew Serdy, Accounting for Catch in Internationally managed Fisheries: What Role for State Responsibility?, *Ocean and Coastal Law Journal*, 2010, 50
- cxlii. Saptarishi Bandopadhyay, Another History of Knowledge and Decision in Precautionary Approaches to Sustainability, *Fordham Environmental Law Review*, May 2014, 593-594.
- cxliii. Helmut Tuerk, The Contribution of the International Tribunal for the Law of the Sea to International Law, *Penn State International Law Review*, Fall 2007, 303-304.
- cxliiii. United States-Restrictions on Imports of Tuna (Netherland Antilles v. United States), Report of the Panel, 16 June 1994, para. 5.42, p. 58.
- cxliv. Nico Schrijver, The Evolution of Sustainable Development in International Law, *supra* note 6, at 146-148.
- cxlv. World Trade Organization, United States-Importation Prohibition of Certain Shrimp and Shrimp and Shrimp Products. 12 October 1998, para. 129, p. 48.
- cxlvi. *Ibid*, para. 153, p. 58.
- cxlvii. Nico Schrijver, The Evolution of Sustainable Development in International Law, *supra* note 6, at 148.
- cxlviii. The arbitral tribunal explains the concept of sustainable development in the following terms:
 "Today, both international and EC law require the integration of appropriate measures in the design and implementation of economic development activities. Principle 4 of the Rio Declaration on Environment and Development ... which reflects this trend, provides that 'environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it'. Importantly, these emerging principles now integrate environmental protection into the development process. Environmental law and the law on development stand not as alternatives but as mutually reinforcing, integral concepts, which require that where development may cause significant harm to the environment there is a duty to prevent, or at least mitigate, such harm ... This duty in the opinion of the Tribunal, has now become a principle of general international law." Award in the Arbitration regarding the Iron Rhine ("Ijzeren Rijn") Railway between the Kingdom of Belgium and the Kingdom of the Netherlands, Reports of International Arbitral Awards Decision of 24 May 2005, Volume XXVII P.35-125, para. 58-59, p. 66-67.
- cxlix. Mark N. Salvo, Constitutional law and Sustainable development in Central Europe: Are we there Yet? 5 *S.C.Envtl. L.J.* 141, 143 (1997); See also Danial A. Sab say, Constitutional and Environment Relation to Sustainable development, 21 *Pace Envntl. L. Rev.* 155, 161 (2003)
- cl. Sweden. Constitutional Documents of Sweden: The Instrument of Government, the Riksdag Act, the Riksdag Regulations. Stockholm: Swedish Riksdag, art. 2, 1972.
- cli. The Constitution of Greece [Greece], 18 April 2001, art. 24, available at: <http://www.refworld.org/docid/4c52794f2.html>
- clii. The Constitution of Georgia, Adopted on 24 August 1995. Last amendment 27.12.06, art. 37(4).
- cliii. The Constitution of Belgium, Adopted 1831 (rev. 2014), art. 7 bis.
- cliv. The Constitution of the Arab Republic of Egypt, 18 Jan. 2014 (Egypt) [hereinafter Egyptian Constitution].

- clv. Egyptian Constitution, supra note at Art. 27.
- clvi. Egyptian Constitution, supra note at Art. 41.
- clvii. Egyptian Constitution, supra note at Art. 46. Article 46 of the Egyptian Constitution reads "Every individual has the right to live in a healthy, sound and balanced environment. Its protection is a national duty. The state is committed to taking the necessary measures to preserve it, avoid harming it, rationally use its natural resources to ensure that sustainable development is achieved, and guarantee the rights of future generations thereto."
- clviii. Justice Susan Glazebrook, Human Rights and the Environment, 40 Vict. U. Wellington L. Rev. 293, 304 (2009).
- clix. Constitution of Zimbabwe, 2005 [Zimbabwe], art. 73, 14 September 2005, available at: <http://www.refworld.org/docid/4a1e9c2d2.html> [accessed 5 November 2017]; Constitution of the Republic of South Africa, art. 24, 10 December 1996, available at: <http://www.refworld.org/docid/3ae6b5de4.html> [accessed 5 November 2017]
- clx. Republic of Malawi (Constitution) Act, 6 July 1966, available at: <http://www.refworld.org/docid/3ae6b4ee24.html> [accessed 5 November 2017]
- clxi. Sabsay, supra note 149 at 165.
- clxii. Salvo, supra note 149 at 145.
- clxiii. Salvo, supra note 149 at 145; Sabsay, supra note 149 at 157.
- clxiv. Klaus Bosselmann, Sustainability alternatives: A German-New Zealand Perspective, 13 N.Z. J. Pub. & Int'L. 25, 35(2015).
- clxv. Nour Mohammad, Environments and sustainable development in Bangladesh: A legal study in the context of international trends, Int. J.L.M. 2011, 53(2), 89, 90 (2011).
- clxvi. World Comm'n on Env't and Dev., Our Common Future 8, 43(1987). development shall "meet the needs of the present without compromising the ability of future generations to meet their own needs." See also, Bosselmann, supra note 164 at. 36
- clxvii. Sabsay, supra note 149 at 162.
- clxviii. Salvo, supra note 149 at 143.
- clxix. Ibid., p. 146.
- clxx. Ibid., p.147.
- clxxi. Modern comparative Constitutions have provided explicitly for this interpretive technique by requiring courts to interpret constitutional provisions in conformity with international human rights law. Examples of such Constitutions include: The Constitution of Portugal, Art. 16 (1976) stipulates '1. The fundamental rights enshrined in this Constitution shall not exclude such other rights as may be laid down by law and in the applicable rules of international law. 2. The provisions of this Constitution and of laws concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights'; The Constitution of Spain, Sec. 10(2) (1978) reads 'provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain'; Constitution of Romania, Art. 20 (1991). Article 20 of the Constitution of Romania stipulates that the '1- Constitutional provisions concerning the citizens' rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the Covenants and other treaties Romania is a party to. 2- Where any inconsistencies exist between the covenants and treaties on fundamental human rights Romania is a party to, and internal laws, the international regulations shall take precedence'.
- clxxii. Ahmed Fathi Sorour, The Constitutional Protection of Rights and Freedoms (Cairo: Dar Al Shorouk, 2000), 26 at 43 & 95.
- clxxiii. Islam Chiha, 'Constitutional Interpretation of Constitutional Rights and Liberties in light of International Law of Human Rights', Alexandria School of Law Legal and Economic Law Review, Issue (1) (2016): 107-127. Anne Peters, 'Supremacy Lost: International law Meets Domestic Constitutional law', Vienna Online Journal on International Constitutional Law, 3(3) (2009): 177.
- clxxiv. Case No. 34/1996/ Supreme Constitutional Court (Egypt).
- clxxv. UN General Assembly, Declaration on the Right to Development: resolution / adopted by the General Assembly, 4 December 1986, A/RES/41/128, Art.1.
- clxxvi. UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Art. 1. (Hereinafter ICCPR).
- clxxvii. VDPA, supra note 45.
- clxxviii. Case No. 34/1996/ Supreme Constitutional Court (Egypt).
- clxxix. Dr M. Farooque v. Secretary, Ministry of Communication, Government of the People's Republic of Bangladesh and 12 others (Unreported). Cited in Mohammad, supra note 165 at 94. The case was introduced against a number of ministries of Bangladesh for failure to assume their constitutional and statutory duties and responsibilities to lessen air and noise pollution provoked by motor vehicles in Dhaka.
- clxxx. Mohammad, supra note 165 at 94.
- clxxxi. Ibid, at. 95

- clxxxii. Nico Schrijver, *The Evolution of Sustainable Development in International Law*, supra note 6, at 150-151.
clxxxiii. *Ibid.* at 151
clxxxiv. *Ibid.*
clxxxv. *Ibid.* at 152.
clxxxvi. *Id.*