

ESSAYS

Linkages of Development and Environment: In Search of an Integrated Approach through Sustainable Development

SHAWKAT ALAM* AND MD. SAIFUL KARIM**

I. INTRODUCTION

Least developed countries (LDCs) are the primary victims of environmental changes, including present and future impacts of climate change. Environmental degradation poses a serious threat to the conservation and sustainable use of natural resources, thus hindering development in LDCs. Simultaneously, poverty is itself both a major cause and effect of global environmental problems. Against this backdrop, this essay argues that without recognition and protection of a collective right to development, genuine environmental protection will remain unachievable. Further, this essay submits that, particularly in the context of LDCs, the right to environment and the right to development are inseparable. Finally, this essay argues that the relationship between the right to environment and the right to development must fall within the paradigm of sustainable development if the promotion and protection of those rights are to be justified.

According to the Brundtland Report, poverty is a major cause and effect of global environmental problems.¹ The poor are both victims and perpetrators of environmental degradation. In desperately trying to meet their present needs, the world's poor may be doing so at the cost of their future. Poor and hungry populations in LDCs often destroy their immediate environment for their survival. They may cut down forests; allow livestock to overgraze grasslands; overuse marginal lands; and crowd congested city slums in growing numbers. Therefore, the world's poorest are more vulnerable to environmental degradation,

* Shawkat Alam, LLB (Honours) (Rajshahi), LLM (Dhaka), PhD (Macquarie) is a Senior Lecturer, Macquarie Law School, Macquarie University, Sydney, Australia. Email: shawkat.alam@mq.edu.au.

** Md. Saiful Karim, LLB Hons., LLM (Chittagong), LLM by Research (Singapore), PhD Candidate (Macquarie) is a Sessional Academic, Macquarie Law School, Macquarie University, Sydney, Australia. Email: saiful24bd@yahoo.com © 2011, Shawkat Alam and Md. Saiful Karim.

1. U.N. REP. OF THE WORLD COMM'N ON ENV'T AND DEV.: OUR COMMON FUTURE, *available at* <http://www.un-documents.net/wced-ocf.htm> (last visited Feb. 17, 2011).

because they depend heavily on natural resources, have less alternative resources, are most often exposed to environmental hazards, and are least capable of coping with environmental risks.² Indeed, there is a vicious circle of underdevelopment, poverty, and environmental degradation.

One should not anticipate that people will conserve wildlife while they are dying from starvation. *In-situ* conservation of the environment can only be made possible by ensuring development of LDCs. For the betterment of present and future generations, the principle of sustainable development must be married with sustainable utilization of natural resources and environmental sustainability. Fortunately, both of these concepts fit within the notion of sustainable development. However, sustainable utilization of natural resources in itself will not be enough for many LDCs, because resources that are now scarce have been plundered initially by LDCs' colonial rulers and later by their own corrupt leaders.

Part 2 of this essay briefly analyzes the linkages of poverty, environmental conservation, and development. Part 3 examines the status of the right to environment under international law. Part 4 critically analyzes the right to development under international law. Part 5 explores the suitability of the concept of sustainable development as a way of achieving both the right to development and the right to environment.

2. POVERTY, ENVIRONMENTAL CONSERVATION, AND DEVELOPMENT

Over the past century, humans have demonstrated an unrivaled capacity to exhaust natural resources by their actions. It is imperative to recognize the urgency of maintaining the stability and quality of nature, as well as the importance of conserving natural resources. At the same time, the role of natural resources in our continued economic, political, and social development must be recognized. Environmental degradation jeopardizes many people's livelihoods, increasing their vulnerability to poverty and social deprivation, and reinforcing the trend towards general instability in LDCs. Biodiversity provides the essential "input" for many forms of agricultural production.³ However, the single greatest source of biodiversity loss is linked to the loss of habitats and ecosystems from unsustainable agricultural production.⁴

2. *Id.*; Natalie Persadie & Rajendra Ramlogan, *Pursuing Development and Protecting the Environment: Dilemma of the Developing World*, 1 ELEC. GREEN J., no. 22, art. 5 2005, available at <http://escholarship.org/uc/item/6s3766kc>.

3. Scott Vaughan and Zachary Patterson, Paper presented at the CEC meeting on Assessing the Environmental Effects of Trade at the Montreal Commission for Environmental Cooperation: Changing Biodiversity, Changing Markets—Links Between Agricultural Trade, Markets and Biodiversity (Dec. 2001), available at http://www.cec.org/Storage/44/3661_agritrade-biodiv_EN.PDF (last visited Feb. 17, 2011).

4. Ariel Brunner & Harry Huyton, *The Environmental Impact of EU Agricultural Subsidies in the WTO Green Box*, ICTSD Programme on Agricultural Trade and Sustainable Development, Agricultural Subsidies in

If people do not have the basic capabilities to support themselves in dignity, their human rights are under threat. Subsistence rights depend to a considerable extent upon the availability of natural resources, and any degradation of natural spaces will impact people's livelihoods.⁵ When people enjoy food security, they are also better able to participate in the civic life of their community and nation. Notwithstanding the indivisibility of rights, the right to adequate food has a privileged place among human rights, because inadequate food and nutrition imperil human survival and development.

Poverty remains one of the biggest threats to the environment in LDCs. Poverty is one of the largest causes of pollution, overexploitation, and unsustainable consumption of physical resources in LDCs. There is massive pressure on primary resources in rural areas, and the resulting mass migration of people from rural to urban areas places overwhelming strain on already threadbare infrastructure and services.

Millions of subsistence farmers, who would normally protect their immediate environment and have minimal external environmental impact, will exploit natural resources if their food security is threatened. It follows that food security is an essential precursor to environmental protection.

High population pressure and the rapid pace of human activity, including urbanization, industrialization, and other economic activities, have led to a dwindling supply of arable land per capita in developing countries. For example, more than fifty percent of Bangladesh's agro-ecological zones now have a nutrient status ranging from poor to very poor.⁶ The process of agricultural intensification in developing countries has caused considerable damage to the physical environment, including the loss of genetic diversity (for example through deforestation and slash-and-burn agriculture), degradation and depletion of natural resources, and unsustainable use of land and water resources.⁷ Without industrialization and infrastructure development, eradication of poverty is nearly impossible. As long as people are poor and their food security is not ensured, it will be difficult to promote environmental conservation in LDCs. On the other hand, environmental degradation may be one of the main hindrances to ensuring development of LDCs. LDCs are the main victims of not only their own

the WTO Green Box: An Overview of Upcoming Issues from a Sustainable Development Viewpoint. (A paper for the Int'l Ctr. for Trade and Sustainable Dev. 2007), available at <http://ictsd.org/downloads/2008/07/g.pdf> (last visited Feb. 17, 2011).

5. Wolfgang Sachs, *Environment and Human Rights*, 1, 10-14 (Wuppertal Paper No. 137, 2003), available at <http://www.uibk.ac.at/peacestudies/downloads/peacelibrary/environment.pdf> (last visited Feb. 17, 2011).

6. Q. K. Ahmad & S. M. Hasanuzzaman, *Agricultural Growth and Environment*, in *BANGLADESH AGRICULTURE IN THE 21ST CENTURY* 81-10 (Rashid Faruqee ed., 1998); H. BRAMMER, *AGRICULTURAL DEVELOPMENT POSSIBILITIES IN BANGLADESH* 7 (1997).

7. Mohammad Alauddin & Clem Tisdell, *Labor Absorption and Agricultural Development: Bangladesh's Experience and Predicament*, 23 *WORLD DEV.* 281, 281-97 (1995); Press Release, World Resources Institute, *Degraded Agricultural Lands Threaten World's Food Production Capacity*, available at <http://archive.wri.org/news.cfm?id=76> (last visited Feb. 17, 2011).

pollution, but also environmental pollution caused by developed countries.⁸ LDCs are also the predominant victims of climate change,⁹ which will have many impacts on human health. Climate change will affect the intensity of a wide range of diseases—vector-borne, water-borne, and respiratory diseases.¹⁰ Moreover, regional food production is likely to decline because of the impact of climate change.¹¹ As the earth gets warmer, heat waves and water shortages will make it difficult to access safe drinking water and sanitation.¹² Violent conflicts over water are likely to become more severe and widespread.¹³

The Johannesburg Declaration on Sustainable Development recognized developing countries' sufferings due to environmental degradation, including climate change, and the close linkage with a right to development.¹⁴ Environmental pollution itself is one of the main causes of poverty and underdevelopment.¹⁵ This makes the linkage between the right to environment and the right to development all the more crucial. If the collective right to development in LDCs is not ensured, LDCs will not be able to adopt a meaningful program for adaptation and mitigation of climate change. The interconnection and interdependency of the right to development and the right to environment is more critical than ever in this climate change affected world.

For the sake of the well-being and welfare of the millions of poor people in these countries, the process of economic development cannot be stopped or halted. At the same time, the natural environment cannot be irreparably damaged, as it is equally important to the continued well-being of those same people. Ensuring sustainable development may be the answer to this problem.

Many people in LDCs suffer from the effects of environmental degradation resulting from poor environmental management practices and inadequate gover-

8. See, e.g., World Bank, *World Development Report 2010: Development and Climate Change* (2010), available at <http://go.worldbank.org/FTD88BBDV0>.

9. A joint study by the World Health Organization and the London School of Hygiene and Tropical Medicine in 2003 states that global warming may already be responsible for more than 160,000 deaths a year from malaria and malnutrition, a number that could double by 2020. See Shaoni Bhattacharya, *Global Warming 'Kills 160,000 A Year'*, NEW SCIENTIST, Oct. 2003, available at <http://www.newscientist.com/article/dn4223-global-warming-kills-160000-a-year.html?full=true&print=true> (last visited Feb. 17, 2011).

10. Hannah Reid et al., Working Group on Climate Change, *Up in Smoke? Asia and the Pacific: The Threat from Climate Change to Human Development and the Environment*, New Econ. Found No. 1055254 (2007), available at <http://www.iiied.org/pubs/pdfs/10020IIED.pdf> (last visited Feb. 17, 2011).

11. Alan Dupont & Graeme Pearman, *Heating up the Planet: Climate Change and Security*, Lowy Institute Paper 12 (2006), available at http://lowyinstitute.richmedia-server.com/docs/AD_GP_ClimateChange.pdf (last visited Feb. 17, 2011).

12. *Id.*

13. U.N. Dev. Programme, *The Human Development Report 2007/2008, Fighting Climate Change: Human Solidarity in a Divided World*, at 186 (Nov. 2007), available at <http://hdr.undp.org/en/reports/global/hdr2007-2008/chapters/> (last visited Feb. 13, 2011).

14. U.N. Env't Programme, *Report on the World Summit on Sustainable Development, Johannesburg, South Africa*, U.N. Doc. A/CONF.199/20 (Sept. 4, 2002) [hereinafter *Johannesburg Declaration*].

15. See generally U.N. Population Fund, *The State of World Population 2001*, available at <http://www.unfpa.org/swp/2001/english/ch01.html> (last visited on Feb. 13, 2011).

nance rather than utilization of natural resources in a manner that leads to positive developmental outcomes. Several institutional and legal factors hinder domestic compliance with internationally recognized environmental management norms in LDCs.

3. RIGHT TO ENVIRONMENT

The right to environment is a very recent phenomenon in international law. The relationship between other human rights and the right to environment has been seen from three different perspectives. One school of thought is that there are no human rights without a right to healthy environment. Another school considers that an existing or emerging right to environment is an eminently contestable proposition. The final school argues that the right to environment is ingrained within more recognized human rights, such as the right to life and the right to health.¹⁶

A right to environment has not been recognized as a separate, unique right in the major human rights treaties. However, over the years and through state practice, such a right has gained the status of a human right, developing as a customary international law principle.¹⁷

The connection between a right to environment and a right to housing and to health is now well established. Article 6 of the International Covenant on Civil and Political Rights (ICCPR)¹⁸ recognizes the universal right to life. Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁹ provides for the right of all people to an adequate standard of living and continuous improvement in living conditions. Article 25 of the Universal Declaration of Human Rights (UDHR)²⁰ proclaims the right to a standard of living adequate for the health and well-being for all.

To date, only two regional human rights treaties expressly recognize environmental rights. Article 24 of the 1981 African Charter states that “all peoples shall have the right to a general satisfactory environment favourable to their development.”²¹ Similarly, Article 11 of the 1988 San Salvador Protocol to the 1969 Inter-American Charter of Human Rights provides that “everyone shall have the right to live in a healthy environment and to have access to basic public services.

16. Sueli Giorgetta, *The Right to a Healthy Environment, Human Rights and Sustainable Development*, 2 INT'L ENVTL. AGREEMENTS: POLITICS, LAW, AND ECON. 173, 175 (2002).

17. John Lee, *The Underlying Legal Theory to Support a Well-Defined Human Right to Healthy Environment as Principle of Customary International Law*, 25 COLUM. J. ENVTL. L. 283, 338 (2000).

18. International Covenant on Civil and Political Rights art. 6, 999 U.N.T.S. 171 (Dec. 16, 1966) [hereinafter ICCPR].

19. International Covenant on Economic, Social and Cultural Rights art. 11, 993 U.N.T.S. 3 (Dec. 16, 1966) [hereinafter ICESCR].

20. Universal Declaration of Human Rights art. 25, G.A. Res. 217 (III) A, U.N. Doc. A/ RES/217(III) (Dec. 10, 1948) [hereinafter U.D.H.R.].

21. African Charter on Human and Peoples' Rights art. 24, 21 I.L.M. 58 (June 27, 1981).

The state parties shall promote the protection, preservation and improvement of the environment."²²

The right to environment was first seriously considered under the U.N. system in the 1972 U.N. Conference on the Human Environment held in Stockholm, Sweden. The Conference adopted the Stockholm Declaration,²³ which has, over the years, gained the status of international soft law. According to Principle 1 of the Stockholm Declaration:

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.²⁴

The Stockholm Declaration also recognized intra- and inter-generational equity; the rights and obligations of citizens and governments to preserve and improve the environment; a nascent right to a quality environment; and the right of states to exploit their resources pursuant to their environmental (*not* developmental) policies.²⁵ The Declaration also urged states to cooperate to develop international law regarding liability and compensation for extra-territorial harm.

Twenty years later, the United Nations organized another major conference on the environment—the 1992 U.N. Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil. As its name reflects, the Conference focused not only on the environment, but also on development. The Rio Declaration on Environment and Development made the right to environment subject to the right to development.²⁶ As per Principle 4 of the Declaration, “[i]n order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”²⁷

In 2002, ten years after the Rio Conference, the United Nations held the World Summit on Sustainable Development in Johannesburg. The Johannesburg Declaration on Sustainable Development recognizes “a collective responsibility to advance and strengthen the interdependent and mutually reinforcing

22. Additional Protocol to the American Convention on Economic, Social and Cultural Rights art. 11, 28 I.L.M. 156 (Nov. 17, 1988) [hereinafter San Salvador Protocol].

23. U.N. Conference on the Human Environment, Stockholm, Swed., June 5–16, 1972, *Declaration of the United Nations Conference on the Human Environment*, U.N. Doc. A/CONF.48/14 (June 16, 1972) [hereinafter Stockholm Declaration].

24. *Id.* at Principle 1.

25. *See generally id.*

26. U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 3–14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), Annex I (Aug. 12, 1992) [hereinafter Rio Declaration].

27. *Id.* at Principle 4.

pillars of sustainable development—economic development, social development and environmental protection—at the local, national, regional and global levels.”²⁸

International and regional courts have also recognized the right to environment as part of the right to life and other related human rights. The right to life is inextricably linked to the environment because maintenance of life requires adequate food, water, and shelter. In his celebrated separate opinion in the *Gabčíkovo-Nagymaros* case, Judge Weeramantry of the International Court of Justice succinctly summarizes these linkages:

The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.²⁹

The right to a healthy environment is a fundamental part of the rights to life and personal integrity. Article XI of the American Declaration on the Rights and Duties of Man states that “[e]very person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.”³⁰ A number of cases in the European Court of Human Rights have considered the positive nature of state obligation, in the context of environmental harm.³¹ A report prepared by Fatma Zohra Ksentini, Special Reporter on Human Rights and Environment to the U.N. High Commission of Human Rights, also recognized the environmental dimension of human rights. The Report identified the link between environmental degradation and some human rights including right to life, right to health, right to food, and right to satisfactory standard of living.³² It argues that existing international law principles recognize a right to a healthy environment.³³

28. Johannesburg Declaration, *supra* note 14, ¶ 5.

29. *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia), Judgment, 1997 I.C.J. Rep. 7, 91-92 (Sept. 25) (separate opinion of Vice-President Weeramantry).

30. Conference of American States, *The American Declaration on the Rights and Duties of Man*, O.A.S. Res. XXX, OEA/Ser.L.V/II.82.doc.6.rev.1 at 17 (1992), available at <http://www1.umn.edu/humanrts/oasinstr/zoas2dec.htm> (last visited Oct. 24, 2010).

31. *See e.g.*, *López Ostra v. Spain*, App. No. 16798/90, Eur. Ct. H.R. 46 (1994); *Öneryildiz v. Turkey*, App. No. 48939/99, Eur. Ct. H.R. 657 (2004).

32. Fatma Zohra Ksentini, *Human Rights and Environment Final Rep.*, U.N. Doc. E/CN.4/Sub.2/1994/9 (July 6, 1994).

33. *Id.*

4. RIGHT TO DEVELOPMENT AND ITS IMPLICATIONS FOR ENVIRONMENTAL PROTECTION

As the previous section introduced the right to environment in the current international law context, this section examines the other key right considered by this article, namely, the right to development. A right is a long-term guarantee and a set of structural claims designed particularly to protect the most underprivileged.³⁴ Consequently, rights to food or health are not upheld simply by improving health care or food production. During recent years, there has been an increased demand for integrating human rights in development assistance and some donors have chosen to react to this pressure by reformulating their terminology.³⁵ A rights-based approach offers a framework by which problems like malnutrition or contamination of water are characterized as violations and as such they cannot be as easily tolerated, and measures to eliminate them cannot be as easily postponed. The root causes of poverty are illuminated in the human rights framework where power structures are revealed, and discrimination and denial of access to resources and opportunities are given more precise legal definitions, thus enabling a better analysis of poverty and disadvantage.³⁶

However, the right to development is significantly different from a rights-based approach to development. The right to development is a much broader concept than rights-based development, which includes broader issues of resource allocation and global responsibility. The right to development not only declares development as a means of achieving other human rights, but also declares development itself as a separate right.³⁷

Within the United Nations, the right to development has emerged within a broader global economic reform agenda, which is popularly known as the New International Economic Order (NIEO). In 1986 the U.N. General Assembly adopted the Declaration on the Right to Development,³⁸ which is closely linked with two other General Assembly resolutions, namely the Resolution on the Permanent Sovereignty over Natural Resources adopted in 1962 and the Declaration on the Establishment of a New International Economic Order adopted in

34. See, e.g., A. Frankovits *Rejoinder: The Rights Way to Development*. 21 FOOD POL'Y 85 (1996).

35. See PETER UVIN, HUMAN RIGHTS AND DEVELOPMENT (2004).

36. See, e.g., U.D.H.R., *supra* note 20, at arts 7, 22. For discussion, see UVIN, *supra* note 35; MARIA SOCORRO DIOKNO, HUMAN RIGHTS CENTERED DEVELOPMENT: THEORY AND PRACTICE 5 (2004); U.N. High Comm'n For Human Rights, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation 8, U.N. Doc. HR/PUB/06/08 (2006), available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (last visited Oct. 24, 2010); World Bank, Listen to the Voices, available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/0,,contentMDK:20612465menuPK:336998pagePK:148956piPK:216618theSitePK:336992,00.html> (last visited Oct. 24, 2010).

37. Alessandro Sitta, *The Role of the Right to Development in the Human Rights Framework for Development* (2010) available at http://www.capabilityapproach.com/pubs/5_1_Sitta.pdf (last visited July 31, 2010).

38. Declaration on the Right to Development, G.A. Res. 41/128, U.N. Doc. A/41/53 (1986).

1974. The NIEO movement was not very successful, and very little development has been achieved.³⁹ However, the concept of the right to development is slowly progressing with the premature death of its original philosophical base, the NIEO. Subsequently, a number of U.N. declarations and conferences have recognized the right to development.

Although there is no express recognition of a collective right to development in the relevant international covenants, there is indirect recognition of this right in the U.N. Charter. Articles 1(3) and 55 of the U.N. Charter set achievement of development and human rights for all people of the world as a goal of the United Nations.⁴⁰

Moreover, the 1986 Declaration on the Right to Development recognized that development is a human right “by virtue of which every human 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.”⁴¹ Development has since been expanded to incorporate environmental sustainability as a necessary corollary of human rights. Development connotes not only spontaneous economic progress via market mechanisms, but also the deliberate and wise management, channelling, stimulating, checking, and coordination of economic interactions specifically aimed at fostering such economic progress, particularly in poorer states. For example, the 1993 Vienna Declaration adopted in the World Conference on Human Rights states that “[t]he right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.”⁴²

Arjun Sengupta, the independent expert on the Right to Development of the U.N. Commission of Human Rights, identified that the right to development has three aspects:

- (a) there is an inalienable human right that is called the right to development;
- (b) there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized; and
- (c) the right to development is a human right by virtue of which every human

39. See generally Thomas W. Wälde, *A Requiem for the New International Economic Order—The Rise and Fall of Paradigms in International Economic Law*, in INTERNATIONAL LEGAL ISSUES ARISING UNDER THE U.N. DECADE OF INTERNATIONAL LAW 1301 (NAJEEB AL-NAUIMI & RICHARD MEESE eds., 1995) (explaining the successes and failure of the concept in its first 20 years).

40. United Nations, *Charter of the United Nations*, 24 October 1945, 1 U.N.T.S. XVI, art. 1 ¶ 3, art. 55, available at <http://www.unhcr.org/refworld/docid/3ae6b3930.html>.

41. Declaration on the Right to Development, *supra* note 38, at art. 1.

42. World Conference on Human Rights, June 14–25, 1993, *Vienna Declaration and Programme of Action*, ¶ 11, U.N. Doc A/CONF.157/23 (July 12, 1993).

person and all peoples are entitled to participate in, contribute to and enjoy that particular process of development.⁴³

In their commentary on the 1986 Declaration, Susan Randolph and Maria Green strongly supported this view, noting that the right to development is broader than most human rights and that the Declaration raises both conceptual questions and issues of implementation.⁴⁴ However, the precise elements of the right to development have yet to be determined.⁴⁵ Randolph and Green do not highlight express recognition of the merits of the integrative approach for development and environmental protection. Furthermore, the report does not consider a separate right to environment and, in particular, whether it has any relationship with the right to development. Despite this, it implicitly recognizes the linkages between the promotion of the right to development and the increasing importance of the sustainable development paradigm in international law discourse.⁴⁶ The report notes that “[s]ince the Right to Development was adopted in 1986, a movement or field of sorts has arisen that focuses on integrating human rights standards effectively with development policy and programming, including development planning, implementation, monitoring, and assessment.”⁴⁷

However, it has been widely acknowledged that development must be viewed holistically to achieve social justice and obtain equitable outcomes.⁴⁸ For example, the Proclamation of Tehran recognized that while scientific discoveries and technological advances have opened vast prospects for economic, social, and cultural progress, such developments might endanger the rights and freedoms of individuals and would require continuing attention.⁴⁹

Human rights, specifically civil and political rights and economic, social, and cultural rights, have been incorporated in principle into different regional mechanisms for many decades. Nevertheless, human rights are rarely explicitly referred to as either the means or the ends of development. Human rights need to be present throughout the development process—from drafting to implementation. Strategies need to be process-oriented so that the vulnerable people can be empowered⁵⁰ to claim their own rights. Participation and empowerment is crucial

43. Arjun Sengupta, *Report of the Independent Expert on the Right to Development*, U.N. Human Rights Comm'n, ¶ 4 U.N. Doc A/55/306 (Aug. 17, 2000).

44. Maria Green & Susan Randolph, *Bringing Theory into Practice: Operational Criteria for Assessing Implementation of the International Right to Development*, U.N. Human Rights Council, Working Group on the Right to Development, U.N. Doc. A/HRC/15/WG.2/TF/CRP.5 (Jan. 14, 2010).

45. *Id.* at 17, ¶ 54.

46. *Id.* at 13, ¶ 35.

47. *Id.* at 14.

48. U.N. Secretary-General, *Global Consultation on the Right to Development as a Human Right*, E/CN.4/1990/9/Rev.1, 42 ¶ 153 (Jan. 26, 1990).

49. Final Act of the International Conference on Human Rights, Teheran, Apr. 22 to May 13, 1968, U.N. Doc. A/CONF. 32/41 at 12 (1968).

50. U.N. Env'tl. Programme, *Human Rights and the Environment, Proceedings of a Geneva Environment Network Roundtable*, available at <http://www.environmenthouse.ch/docspublications/reportsRoundtables/>

in a rights-based approach and can be seen as an end in itself.⁵¹ Development is a necessary means for, and a complement to, satisfying human rights. It both answers basic material needs and offers new opportunities for communities to flourish and express freedoms. Kofi Annan famously described this joint aspiration as the “larger freedom.”⁵²

Although there is a growing recognition of the right to development, its normative content is not clear enough. As Randolph and Green observe, the 1986 Declaration integrates the aspects of human rights and development and includes the international and national dimensions of the issue. Although a number of international initiatives support this right, including the Millennium Development Goals, and the WTO initiation of the Doha Development Round, the normative content of the right remains relatively opaque.⁵³ Due to this normative vagueness, responsibilities of states and non-state actors are yet to be clearly settled.⁵⁴

The legitimacy of a right to development is now arguably well-settled.⁵⁵ However, the most controversial aspect in relation to development rights discourse is the creation of legally binding obligations deriving from that right.⁵⁶ In international law, having a right generally denotes possessing something that can be claimed from other international actors or the global community as a whole.⁵⁷ As observed by Nobel Laureate Amartya Sen:

Rights are entitlements that require, in this view, correlated duties. If person A has a right to some x, then there has to be some agency, say, B that has a duty to provide A with x.⁵⁸

The argument can be made that developed states, many of which secured development by exploiting their former colonies, have a corresponding obligation to meaningfully assist LDCs to achieve development. Many international environment-related instruments translate this North-South tension into a doctrine of common but differentiated responsibility. The Declaration of the Right to

Human%20Rights%20Env%20Report.pdf (last visited Oct. 24, 2010).

51. Gobind Nankani, John Page & Lindsay Judge, *Human Rights and Poverty Reduction Strategies: Moving Towards Convergence?*, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT 475, 487 (Philip Alston & Mary Robinson eds., 2005) [hereinafter HUMAN RIGHTS AND DEVELOPMENT]; see also Mark W. Plant, *Human Rights, Poverty Reduction Strategies, and the Role of the International Monetary Fund*, in HUMAN RIGHTS AND DEVELOPMENT, *supra*; Frances Stewart, & Michael Wang, *Poverty Reduction Strategy Papers within the Human Rights Perspective*, in HUMAN RIGHTS AND DEVELOPMENT, *supra*.

52. *In Larger Freedom: Towards Development, Security and Human Rights for All: Rep. of the Secretary-General*, ¶ 5, 14 U.N. Doc A/59/2005 (2005).

53. Green & Randolph, *supra* note 44.

54. *Id.*

55. Arjun Sengupta, *On the Theory and Practice of the Right to Development*, 24 HUM. RTS. Q. 837, 841 (2002).

56. *Id.* at 842.

57. *Id.* at 843.

58. AMARTYA SEN, DEVELOPMENT AS FREEDOM 228 (1999).

Development calls for a sustained action to promote more rapid development of developing countries.⁵⁹ This provision is an indication of a corresponding duty of the international community in prompting the right to development in the least developed countries. The precise content of a right to development is a particularly important consideration at this current stage of its evolution. The Declaration of the Right to Development defines the right to development as “a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.”⁶⁰

The core theme of this provision is the “well-being of the entire population.” The term “well-being” is a generic term, which reasonably can be said to encapsulate all aspects of well-being including an environment free from pollution and conducive to a healthy life for the people. In this way, the very concept of right to development includes within its ambit the right to a healthy environment. Moreover, the right to development is a process “in which all human rights and fundamental freedoms can be fully realized.”⁶¹ Again, this is an unmistakable recognition that a right to development itself provides an inherent guarantee for the right to environment.

According to the OHCHR, a human rights-based approach to development identifies the entitlements of rights-holders and the obligations of duty-bearers while seeking to strengthen the capacities of both groups to claim their rights and meet their obligations.⁶² A human rights-based approach also applies the principles of *non-discrimination* and *substantive equality* recognized in Article 2 of the ICCPR and the ICESCR.

Peter Uvin argues that three categories of obligations can serve as a tool for human rights analysis applicable to development. For example, the right to food is composed of the following elements: a negative obligation to abstain from all forms of hindrance to people’s access to food; protection of people from those who may deprive them from enjoying their access to food; and as a last resort, providing food to those who are in need of it.⁶³

Recognition of express human rights makes development efforts more detailed and less arbitrary. They are of a legal nature and are therefore legally enforceable. Included in the categories of obligations are certain core duties from which there can be no derogation, thus promoting the maintenance of an international minimum standard. A human rights-based approach will thus lead to greater accountability of governments and make institutions more effective

59. Declaration on the Right to Development, *supra* note 38, at art. 4.

60. *Id.* at preamble.

61. *Id.* at art. 1.

62. U.N. High Comm’n. For Human Rights, *supra* note 36, at 12.

63. UVIN, *supra* note 35.

and equitable.⁶⁴

A discourse based on recognition of defined rights also ensures that violations are not perceived as either inevitable or natural, but instead arise from deliberate decisions and policies. By demanding explanations and accountability, human rights expose the hidden priorities and structures behind violations and challenge the conditions that create and tolerate poverty.⁶⁵ Furthermore, procedural human rights are often crucial for ensuring policies that respect environmental concerns.⁶⁶ The advantages in pursuing a procedural rights based approach are succinctly outlined by Cecilia Ljungman.⁶⁷ She argues that this approach is both a strategy and a tool that recognizes that development efforts should address the issue of poverty and poverty reduction. Moreover, this approach gives the poor an internationally recognized legal basis, for their free, active, and meaningful participation in the development process.⁶⁸

A rights-based approach identifies the poorest of the poor, seeks people's participation, and promotes good governance; it empowers local communities to participate in decision-making and in holding the state accountable for its obligations; and it facilitates people assuming direct responsibility for them so that state assistance is sought only where necessary. In short, a rights-based approach enables people to become part of the solution.

5. SUSTAINABLE DEVELOPMENT: INTEGRATING THE RIGHT TO ENVIRONMENT AND THE RIGHT TO DEVELOPMENT

Thus far, this essay has defined the right to environment and the right to development. It is important to amalgamate these two rights in a manner that avoids conflicting approaches that seek to realize one at the expense of the other. The concept of sustainable development may be a key way of ensuring a right-based approach that ensures both a right to development and a right to environment. Therefore, this section explores the emergence of sustainable development on the world stage and analyzes the importance of some of its core related principles, namely issues of equity and responsibility.

5.1 THE EMERGENCE OF SUSTAINABLE DEVELOPMENT

While a large number of derivations are now in existence, the definition of sustainable development that has come to enjoy virtually universal acceptance is

64. Diokno, *supra* note 36.

65. UVIN, *supra* note 35.

66. Human Rights and the Environment, *supra* note 51, at 5.

67. See generally Cecilia Ljungman, *Applying a Rights-Based Approach to Development: Concepts and Principles* (COWI, Conference Paper, Nov. 2004), available at <http://www.sed.manchester.ac.uk/research/events/conferences/documents/Winners%20and%20Losers%20Papers/Ljungman.pdf>.

68. *Id.* at 18.

the persisting declaration of *Our Common Future*, a report published in 1987 and chaired by the former Prime Minister of Norway, Gro Harlem Brundtland. The Brundtland Report proposed that “[s]ustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”⁶⁹

The Brundtland Report definition of sustainable development has subsequently been adopted both domestically and internationally in relation to a broad array of social and economic policies. The Brundtland Report emphasized the need for a new development path, pointing out that many present developmental trends are leaving an increasing number of people poor and vulnerable as a result of environmental degradation.⁷⁰ The assistance of the world’s poorest via economic growth fuelled by the exploitation of natural resources encounters conflict if a high quality environment is also desirable. In maintaining the acceleration of economic growth, rising pressures on natural resources mean that development is achieved increasingly at the expense of the environment.

A more recent and more expansive definition of sustainable development can be found in the Preamble to the International Law Association’s New Delhi Declaration:

[T]he objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from, with due regard to the needs and interests of future generations.⁷¹

In a demonstration of how the concept of sustainable development forms a strong linkage between, and in fact fully incorporates, the individual human rights considered in the preceding parts of this essay, it is possible to extrapolate from the above quote components that can be directly attributed to the right to development, right to environment, and perhaps even both.

Over the last twenty years, there has been a line of important international events that have affirmed the need to subordinate global trading regimes to the overarching ideology of sustainable development. The Rio Declaration recommended that “States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable

69. U.N. REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: *OUR COMMON FUTURE*, ch. 2, ¶ 1, U.N. Doc. A/42/427 (1987), available at <http://www.un-documents.net/wced-ocf.htm>.

70. *See id.*, at ch. 2, pt. I (discussing how economic growth has come at expense of environmental considerations).

71. Int’l Law Ass’n [ILA], *New Delhi Declaration Of Principles of International Law Relating to Sustainable Development*, at 3 (2002).

development in all countries.”⁷² Chapter 2 of Agenda 21 recommends a similar approach in regards to the relationship between trade and the environment. It states that the “development process will not gather momentum . . . if barriers restrict access to markets and if commodity prices and the terms of trade of developing countries remain depressed.”⁷³ These important international declarations unequivocally affirmed that trade liberalization and the environment should be mutually supportive. As both trade and the protection of the natural environment are equally important for sustainable development, there must be a process of integration between the two spheres. More recently, the Johannesburg Declaration on Sustainable Development affirmed that globalization has added a new dimension to these challenges.⁷⁴ One particular problem is that the costs and benefits of globalization are unevenly distributed, which creates a particular challenge for developing countries.⁷⁵

However, perhaps the most crucial and coordinated sustainable development initiative to date has been the U.N. Millennium Development Goals (MDGs). The eight individual goals that constitute the MDGs were derived directly from the U.N. Millennium Declaration, which received support from every Member State of the U.N. by Resolution of the General Assembly on September 8, 2000.⁷⁶

Intergenerational equity is the duty of the present generation to preserve the environment for future generations.⁷⁷ Whilst international law recognizes intergenerational equity, which is the right of access to resources in the present generation, intergenerational equity is also a guiding principle of sustainable development. Therefore, the right to development is limited to the extent that it cannot be pursued at all costs, and economic development must take into account environmental impact and the preservation of resources.⁷⁸

Many commentators trace the origins of sustainable development as a discrete international law concept back to the U.N. Stockholm Conference of 1972. It is therefore significant that the link between development and environmental protection was made clear by the Stockholm Declaration, which states that “in the developing countries, most of the environmental problems are caused by under-development.”⁷⁹ Furthermore, in implicit recognition of the right to environment and its intrinsic relationship with what would later evolve into the

72. Rio Declaration, *supra* note 26, at principle 12.

73. United Nations Environment Programme, Agenda 21: Programme of Action for Sustainable Development, ch. 2, ¶ 2.2, UN Doc A/Conf.151/26 (1992).

74. Johannesburg Declaration, *supra* note 14, at ¶ 14.

75. *Id.*

76. See United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/Res/55/2 (2000), available at http://www.un.org/esa/dsd/agenda21/res_agenda21_02.shtml.

77. Stockholm Declaration, *supra* note 23, at principle 2.

78. See generally EDITH BROWN WEISS, ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: NEW CHALLENGES AND DIMENSIONS ch. 12 (1993).

79. Stockholm Declaration, *supra* note 23, at preamble ¶ 4.

concept of sustainable development, the Stockholm Declaration characterizes environmental protection and improvement as a duty of all governments as the issues affect people across the globe.⁸⁰

Twenty years after Stockholm, the Rio Declaration on Environment and Development made an express linkage between the right to development and the right to environment, incorporating both rights under the umbrella concept of sustainable development. For example, the Rio Declaration states that “[t]he right to development must be fulfilled so as to equitably meet *developmental and environmental needs* of present and future generations.”⁸¹

Similar international declarations emerged throughout the 1990s, recognizing that the concept of sustainable development links and re-enforces its constituent parts of a right to environment and a right to development. One of the more notable examples is the U.N. General Assembly Resolution in 1997, dubbed the Agenda for Development, in which Member States declared, “Economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development.”⁸²

The link between human rights and environmental protection was one of the crucial issues at the Johannesburg World Summit on Sustainable Development in 2002. The Johannesburg Plan of Implementation identified achievement of economic and social development by changing unsustainable patterns of production and consumption to protect natural resources as essential requirements for sustainable development.⁸³ Similarly, the ILA New Delhi Declaration of Principles of International Law relating to Sustainable Development is a further example of the increasing international effort to draw strong linkages between the sustainable development paradigm with the rhetoric and substance of human rights.⁸⁴ Citing recent “hard” and “soft” international law instruments, including the MDGs, Doha Declaration, Monterrey Consensus, and Paris Declaration on Aid Effectiveness, Randolph and Green assert that there is a growing consensus in regards to both sustainable development and global solidarity for its pursuit. Finally, the Accra Agenda for Action, the product of the Third High Level Forum on Aid Effectiveness held in Accra, Ghana in September 2008, recognized the need to address the inequalities of opportunity and income within countries and between states in order to achieve global progress. It also identified gender equality, human rights protection, and environmental sustainability as cornerstones for achieving a positive impact on the marginal segment of the society.⁸⁵

80. *Id.* at preamble ¶ 2.

81. Rio Declaration, *supra* note 26, at principle 3 (emphasis added).

82. G.A. Res. 51/240, U.N. Doc A/RES/51/240 (June 20, 1997).

83. United Nations, Plan of Implementation of the World Summit on Sustainable Development, ¶ 14, available at http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImpl.pdf.

84. *See generally* ILA, *supra* note 71.

85. OECD Working Party on Aid Effectiveness [WP-EFF], *Accra Agenda for Action*, at 2 (Sept. 4, 2008), available at http://www.dev-practitioners.eu/fileadmin/Redaktion/Documents/Reference_Documents/AAA.pdf.

The proposition of the Accra Agenda for Action, in a manner similar to an increasing body of international declarations, implicitly recognizes the capacity of the concept of sustainable development to create a meaningful linkage between a right to development and legitimate environmental concerns. Over the years, through its universal recognition, sustainable development has become a globally accepted norm of international law. As the former Vice President of the International Court of Justice Judge Christopher Gregory Weeramantry observed in his celebrated separate opinion in the case concerning Gabčíkovo-Nagymaros Dam, “I consider [sustainable development] to be more than a mere concept, [it is] . . . a principle with normative value.”⁸⁶

5.2 SUSTAINABLE DEVELOPMENT: EQUITY AND RESPONSIBILITY

The process of sustainable development can be achieved in an equitable manner. The anthropocentric concepts of intra- and intergenerational equity are central to the Brundtland definition of sustainable development. The former principle establishes that there should be equitable distribution of resources and opportunities *between* the present inhabitants of Earth. The latter demands that current resource utilization not inhibit the developmental prospects of humanity into the indefinite future. In considering the impact of the developmental activities on the world’s poorest nations, it is noteworthy that the phrase “future generations” in the Brundtland definition is completely non-specific. Furthermore, the lack of specific identity attributed to “present and future generations” in the Brundtland definition is analogous to the generic nature of human rights and the core concept that any individual can lay claim to those rights by virtue of their humanity alone.

Therefore, it is evident that the sustainable development paradigm demands that no human activity inhibit the capacity of future generations of *any* nation to meet their needs. Beyond the explicit recognition of the importance of both intra- and intergenerational equity, a key feature of sustainable development is its holistic and integrative nature. Social justice and human rights, as well as environmental, economic, and cultural factors are all integral considerations in the sustainable development paradigm and are not readily separable.

The equity-based objectives of sustainable development are also intrinsically linked to the principle of common but differentiated responsibilities (CBDR Principle), which is succinctly defined by L.D. Guruswamy as follows:

Any obligations to protect the common heritage of humankind need not fall disproportionately on the poor and the deprived. Given the enormous disparities of wealth among nations, equity, fairness and efficiency require that

86. Gabčíkovo-Nagymaros Project, *supra* note 29.

discharging the burden of protection should fall differentially and more heavily on richer nations.⁸⁷

Implicit in the CBDR Principle is the recognition that the goal of sustainable development cannot be realized through means that deny people (namely, people in LDCs) their individual and collective right to development. Consequently, the CBDR Principle recognizes that while all countries have a responsibility to protect the environment and prevent further environmental harm, these responsibilities vary according to the socio-economic situation of a country. The developed North and developing South have common but differentiated responsibilities in dealing with global environmental concerns. The responsibility of developed countries is proportionally greater than that of developing countries because of their strong economic conditions and their present and historical contribution to environmental degradation.

Quite explicitly, the CBDR Principle represents a substantial departure from the notion of the sovereign equality of states, which has been at the epicenter of modern international law since its inception. Nonetheless, the 1992 Rio Declaration affirmed the place of the CBDR Principle in international environmental law discourse requiring that “developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment.”⁸⁸ Furthermore, long before the explicit statement of the CBDR Principle in Principle 7 of the Rio Declaration, the possibility of developing countries receiving “special and differential treatment” was recognized in Part IV of the General Agreement on Tariffs and Trade (GATT).

In a damning illustration of the monumental chasm between the rhetorical commitment to the CBDR Principle and the extent of practical implementation in the so-called decade of sustainable development beginning with the Rio Earth Summit in 1992, official Overseas Development Assistance (ODA) from the North *decreased* from an annual figure of \$80 billion to between \$30–40 billion.⁸⁹ This massive decrease in the North-South financial transfer occurred despite rhetorical commitments to *increase* ODA over the same period to around \$200 billion per annum.⁹⁰

While effective implementation of the CBDR Principle involves a dramatic increase in North-South financial transfers in the form of ODA, the provision of economic assistance is by no means the complete picture. Ashok Khosla describes the situation as follows:

87. Lakshman D. Guruswamy, *The Convention on Biological Diversity: Exposing the Flawed Foundations*, 26 ENV'TL CONSERVATION 79, 81 (1999).

88. Rio Declaration, *supra* note 26, at principle 7.

89. Ashok Khosla, *The Road from Rio to Johannesburg*, Issue 5, at 7 (UNED Forum Millennium Papers, 2001), available at <http://www.stakeholderforum.org/publications/millennium/millpaper5.pdf>.

90. *Id.*

Making development more sustainable certainly needs more money. But it also needs much more than simply money. It needs fundamental changes in the global economy, as well as in the domestic economies of nations. The agenda, unfortunately, is set by the rich and powerful.⁹¹

Ever-increasing international acceptance of the sustainable development paradigm, with its strong linkage between the recognized individual human rights to development and environment, must be a driving force in actually bringing about the “fundamental changes” to which Ashok Khosla refers.

6. CONCLUDING REMARKS: TOWARDS AN INTEGRATIVE APPROACH

Any assertion of rights based on either the discrete right to environment or the right to development must, as a preliminary requirement, fall within the paradigm of sustainable development if the promotion and protection of those rights is to be justified. It follows that any claim based on an assertion of the right to development or the right to environment must be scrutinized through the lens of sustainable development. Specifically, the legitimacy of a claim must be assessed based on the requirements of intra- and intergenerational equity.

A key contention of this essay is that the most effective “development strategy” of the kind referred to in the extract above is one that adopts the “traditional” sustainable development paradigm as its key approach. In particular, individual rights to environment and development must be seen as core components of the paradigm. They should not be separately construed in any manner that is antithetical to the concepts of intra- and intergenerational equity, and the doctrine of common but differentiated responsibilities.

In this poverty-stricken world, environmental conservation is impossible without a clear and express right to development. As this essay has suggested, these two rights may be effectively integrated within the paradigm of sustainable development. However, LDCs will not be able to ensure sustainable development if their right to development is not properly recognized and realized. If the North does not come forward to fulfill its obligation in providing assistance to ensure a right to development for people within LDCs, the global environmental conservation movement will not be successful. Without eradicating poverty, environmental conservation is impossible, particularly in the context of LDCs.

91. *Id.* at 9.



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