Chapter 16

Application of the Principle of Sustainable Development: Practical Consequences

16.1 The Aim of Creating Coherence

We have finally come to the point at which we need to ask what the consequences of the application of the principle of sustainable development in the context of climate and trade norm conflicts would be. In order to provide a meaningful answer to this question, we have to be mindful of the objective of applying the principle of sustainable development.

In the relationship between climate law and international trade law conflicts could arise, whose resolution based solely on interpretation of WTO law would seem unlikely or unsatisfactory. Unlikeness is based on the inherent limitations of the process of interpretation. While some conflicts could be ‘interpreted away’; others might not easily be dealt with by giving meaning to the terms of the WTO agreements’. In such a situation of genuine normative conflict, certain conflict clauses or conflict principles would usually define the prevalence of norms. However, in the context of climate and trade law, no such conflict clauses in the traditional sense exist or to guide a meaningful solution.

Therefore, as it has been suggested in this book, the principle of sustainable development as a legal principle of integration of social and environmental provisions into international trade law could provide an appropriate means of dealing with the (so far) unresolved issue of the relationship between WTO law and MEAs, exemplified in this study by international climate law, contained in or deriving from the agreements and legal documents of the international climate regime.

The application of the principle of sustainable development is, in my view, a possible way of addressing the intersection between the rules of trade treaties and the environmental and social values inherent in the climate agreements. This suggestion is based on the understanding that in a complex and
interdependent world, no single, simple solution can adequately address the variety of issues and interests at stake.

Still, certain situations, e.g. legal disputes, demand solutions. In these situations, the final result needs to derive its legitimacy from two criteria: first the affected interests must be balanced, and, second, the result must not jeopardize common interests and concerns of the global community. In these situations, a principle-based approach (as opposed to a strict rule based solution) is appropriate, which provides a framework within which the two criteria just mentioned can be addressed. This is where unifying principles such as sustainable development come into the picture. And it is where the theoretical commitment to sustainable development in different areas of law, such as world trade law, human rights law, development law and environmental law will be tested.

It precisely in this context that George Abi-Saab’s statement gains significance:

In a world characterized by deepening economic interdependence and the growing complexity of international rules reflecting common concerns about human rights, human development, and the human environment, there is a great need for unifying concepts and principles to guide decision-makers – be they national or international, including the judges of the diverse international fora – through the huge maize of seemingly overlapping international rules and commitments. Sustainable development has emerged as one such concept.¹

By applying the principle of sustainable development, the coherence of the international legal order is eventually aspired. This coherence means that the aspects of the international legal systems can be aligned to issues that are of common interest and concern. By applying the principle of sustainable development, it is hoped, the norms of the international legal system can be founded on a ‘common denominator’, which, in Justice Weeramantry’s words, is ‘a sense of common responsibility for the increasingly interdependent societies and economies, for our shared environment and natural resources, and for the condition of humanity.’²

What this specifically means for WTO Dispute Settlement Procedure has yet to be assessed in detail by legal scholarship and judicial practice. Still, the

¹ George Abi-Saab, Member and former Chairman of the WTO Appellate Body, Foreword, in Gehring and Cordonier-Segger, Sustainable Development in World Trade Law, 2005, xxxiv.