CHAPTER FOUR

RECONFIGURATION OF THE HUMAN RIGHTS SYSTEM IN LIGHT OF SUSTAINABLE DEVELOPMENT AND THE TWO-LEVEL CONCEPTUALISATION OF ENVIRONMENTAL RIGHTS

Introduction

This chapter locates the evolving ‘Right to Environment’ in the broader framework of sustainable development and a new categorisation of human rights. The chapter explores whether the emergence of sustainable development has played a role in furthering or hindering the development of the international ‘Right to Environment’ and its sub-rights, as proposed in this book. It also builds a theoretical connection among the concepts of environment, development, democracy and human rights. In fact, the right to development has been greatly influenced by the concept of sustainable development. As for the right to democracy, it is not yet recognised as a human right, although the Aarhus Convention on environmental procedural rights is illustrative of the intimate connection between environmental issues and democratic accountability, especially in Eastern Europe.¹

Labelling broad concepts like those of development and environment as ‘human rights’ does not easily fit within the traditional framework of human rights. Therefore, a more evolutionary and proactive approach is needed in order to overcome the theoretical stalemate between these new rights and the requisites of individualism and judicial enforceability. The conceptualisation of a distinct ‘Right to Environment’ in international law and the reconfiguration of the human rights system into generalist and specialist rights fit squarely within this context. This conceptualisation conforms to the principle of interdependence and indivisibility of human rights. By emulating the more advanced right to development and the less developed right to democracy, it is possible to conceive a ‘Right to Environment’ as a generalist or umbrella right. This approach will provide a broad legal and policy framework necessary to take on the complexities of environmental issues and the multiplicity of duty-bearers involved.

The first section of this chapter explains the meaning of sustainable development, its three pillars and its role as an umbrella concept for the right to development, the right to democracy and the ‘Right to Environment’. The second section examines the rationale behind the proposed reconfiguration

¹ See generally Zaharchenko and Goldenman, “Accountability in Governance.”

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of human rights and establishes the connection between each generalist right and its corresponding covenant, including a detailed description of a draft covenant on environmental rights.

A. Sustainable Development: A Marriage of Convenience between Environment and Development

The concept of sustainable development can mean different things to different people. For instance, in the Hungary v. Slovakia case, both contending parties used the concept of sustainable development to defend their differing interests: Slovakia stressed the economic aspect of sustainable development, Hungary focused on the environmental impact of the Gabčíkovo-Nagymaros project. Extensively defined, the concept of sustainable development is one of the most hotly debated topics of international concern. Its opponents question whether sustainable development aims to sustain nature or to sustain ‘economic’ development, while its advocates believe in the concept’s ability to restructure and ‘green’ existing development paradigms. The concept of sustainable development is often marketed as the magic wand that can sustain, on one hand, economic development and the lifestyle of modern societies and, on the other, the environment and the livelihoods of local and traditional communities—at least, this is the common rationale behind most definitions of sustainable development. The Brundtland Report states that “ecology and economy are becoming ever more interwoven—locally, regionally, nationally, and globally—into a seamless net of causes and effects.” Instilling ecological concerns into the dominant economic paradigm will eventually change our perception of economic growth, so it is important to clarify the place of environmental human rights and the proposed ‘Right to Environment’ in the sustainable development discourse, which has become the dominant discourse in relation to the global environmental movement.

1. What is Sustainable Development?

The ambiguity and versatility of the term ‘sustainable development’ stem from the difficulty of defining development itself. If development is simply equated with economic growth, sustainable development may appear to be an oxymoron concept par excellence. For its critics, sustainable development seems unattainable because it entails the reconciliation between two traditionally opposing notions—economic development and environmental protection. They often differentiate between sustainability and sustainable development.

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3 The World Commission on Environment and Development, Our Common Future, 5.