Part One
Refining General Principles
Sustainability Discourses in International Courts: What Place for Global Justice?

Tim Stephens+

I. Introduction

In discussing sustainable development it is not possible to avoid fundamental questions of justice, such as how we might achieve an equitable distribution among all peoples of the public goods that the natural environment provides.1 Indeed justice is at the forefront of the mainstream definition of sustainability as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.2 This formulation highlights intergenerational environmental justice, although also implicit in the reference to the ‘needs of the present’ is intragenerational environmental justice.3

Sustainable development has been the dominant global environmental policy since the 1980s4 not only because it holds out the tantalising prospect that economic development might be reconciled with environmental protection, but also because it is a pliable concept that embraces quite different views about its ethical content.5 Although this flexibility has frustrated efforts to entrench sustainable development as a binding norm, it has meant that sustainability as a discourse has retained ongoing relevance.6 As was noted in the Third Report of the International Law Association Committee on the International Law on Sustainable Development (the ‘Committee’), the unfinished debate has ensured that ‘vibrancy and interest’

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4 J. S. Dryzek, ‘Paradigms and Discourses’ in Bodansky, Brunnée and Hey (eds.), ibid, 45, 56–58.
6 Dryzek, above n 4, 56 (‘sustainable development is a discourse, not a concept’).