

THE CONCEPT OF SUSTAINABILITY IN INTERNATIONAL LAW: A RESEARCH AND POLICY BIBLIOGRAPHY

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It is an honor to be part of this Festschrift for Bob Lutz, a dear friend and colleague. Bob has been helpful to us at UCI for many years, both in general ways and in our work on NAFTA and on the Arctic and international law. In a way, his work is fundamental to our focus in this piece on sustainability: his work has assisted in almost innumerable ways in making international law a potent force in maintaining transnational cooperation and commerce.

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I. INTRODUCTION

At the most fundamental level, international law is about (and exists to maintain) sustainability. This is clearly the case in our own central focus of scholarship on environmental and cultural protection. However, sustainability is a major goal of international law in many, if not all, other sectors. Among these are those which we present in this bibliography: trade, business, security, the law of war, and others as noted.

Even when the goal is to change, as opposed to sustain, a status quo, as is the case with human rights, the ultimate objective is to sustain, to allow, to continue, to survive. There, change is the fundamental process to bring all people into the protection of the rule of law, existentially to sustain the diversity of peoples: the human race.

The meaning of sustainability in some sub fields of international law, our own, environmental and cultural survival and thriving, is a critically central and challenging concern. As we have laid out elsewhere, some notions of sustainability can conflict with others: the physical environment and traditions of indigenous peoples for example.¹

This bibliography reflects the evolution of terms in law, and it inventories various understandings in several sectors of society with a heavy influence on environmental sustainability broadly understood.

An essential preface about terminology.

Here we need to say a word about whether the bibliographic topic is the concept of Sustainability or the policy of Sustainable Development. There is a distinction, and it is a reflection of controversy and scholarly analysis. The United Nations (UN) has offered:

[W]hat is the difference between sustainable development and sustainability? Sustainability is often thought of as a long-term goal (i.e. a more sustainable world), while sustainable development refers to the many processes and pathways to achieve it (e.g. sustainable agriculture and forestry, sustainable production and consumption, good government, research and technology transfer, education and training, etc.)...²

1. For our understanding, see, *inter alia*, Joseph F. C. DiMento, et al., *Arctic Sustainability Law: Almost Sufficient*, 47 N.C. J. INT'L L. 247 (2022) and JOSEPH F. C. DIMENTO, POLAR SHIFT: THE ARCTIC SUSTAINED (2022).

2. *Sustainable Development*, UNESCO (Jan. 28, 2017, 1:29 AM), <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-sustainable-development/sustainable-development/> [<https://webarchive.unesco.org/web/20170128012941/http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/education-for-sustainable-development/sustainable-development/>].

Like many commentators or observers, the UN considers that “There are four dimensions to sustainable development—society, environment, culture and economy—which are intertwined, not separate. Sustainability is a paradigm for thinking about the future in which environmental, societal and economic considerations are balanced in the pursuit of an improved quality of life.”³ It is the “overarching paradigm”⁴ of the UN.

We have compiled this bibliography with coverage of both sustainability and sustainable development. We offer this product as a research and policy resource. We ourselves have employed many contributions in it for policy-oriented reasons, including our work on the Arctic.

The bibliography is organized first by time. The 600 entries are listed chronologically from Pre Brundtland⁵ to the most recent, that is, Summer 2022. Other organizing dimensions are noted through two forms of code. We indicate whether a work is Descriptive, Historical, or Analytical. These distinctions are not easily made and many of the writings have more than one goal. We also specify whether the article or book focuses on a sector (agriculture, trade, environment, etc.), region, definition, or principle. Certainly, there are other ways to organize a corpus of this size and with various potential uses, but we offer these to facilitate inquiry by criteria which may be the focus of the user.

II. THE SEARCH METHOD

We provide a wide-ranging bibliography of English language articles and books published from 1983 to the present (Summer, 2022) discussing the definition of sustainability and/or sustainable development in the context of international law and/or environmental law. This is not a bibliography of all books and articles with some relation to sustainability and/or sustainable development. That list would surely stretch into the

3. *Id.*

4. *Id.*

5. *The Report of the World Commission on Environment and Development: Our Common Future*, commonly referred to as the Brundtland Report, is generally understood to be a major initiating event in the history of a focus on sustainability. In 1987, the Commission defined sustainability as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.” Pre-Brundtland concern with the future of the planet and humans on it was addressed in a number of important reports and publications, many without specific reference to the term sustainability, such as those of the Club of Rome. Its 1972 report was its first:

The Limits to Growth. See *The Report of the World Commission on Environment and Development: Our Common Future*, U.N. Docs. 1, 16 (1987), <http://www.un-documents.net/our-common-future.pdf>.

thousands. Instead, this list is curated to share resources with enough focus on sustainability and/or sustainable development to aid the reader in deciphering the meaning of these terms in a legal context.

The methodology for locating and selecting books and articles for inclusion in the bibliography seeks to help readers further understand both the scope and limitations of the list. First, searches were focused on English language materials. Thus, the inclusion of materials in other languages is merely selective and does not aim to be comprehensive. Second, searches were focused on 1983 to the present. The Brundtland Commission was formed in 1983 and the commission published the arguably most widely cited definition in this area in 1987. Interestingly, searches back to 1983 only ultimately yielded relevant results starting in 1987, the year of the commission's report. Third, articles and books that merely mention sustainability and/or sustainable development without providing a descriptive, analytical, and/or historical discussion of the definition of one of these terms were excluded from the bibliography. Fourth, searches were focused on discussions in the context of law, specifically international and environmental laws.

Article research focused on the databases HeinOnline, LegalTrac, and Legal Source. Book research focused first on materials in the UC Library Search catalog containing resources held across the University of California system, with additional research in WorldCat, a worldwide catalog of resources. Research across these platforms showed repetition leading us to believe the list is as comprehensive as possible, but there are surely accidental omissions.

However, we are confident of having identified many of the important works.

III. SOME GENERAL THEMES

For the Festschrift based on our preliminary review of the corpus we offer a few impressions:

Overall, the database evidence encompasses a large and, to us, surprisingly broad (if not everywhere, deep) interest in the concepts of sustainability and sustainable development across many disciplines and sectors of the economy. Some sectors focusing on sustainability may at first seem surprising to those outside of a field or discipline. For example, for the environmental lawyer, there is a strong and convincing coverage in business law.

In fact, sustainability is a major emphasis in the corporate and trade world. Here, sustainability focuses on keeping active, productive, profitable activities (a business, an industry, or a trade) without comprehensive

attention to the effects that acting to sustain types of commerce have on the physical environment. To put it in caricature form: some of the work to sustain activities/industries/enterprises have unsustainable effects on the environment.

There is a great deal of divergence in views as to what these concepts mean and whether they should be made **action forcing and directive** (some even advocate the evaluation by quantitative standards and benchmarks either as inputs or outputs.) An alternative that some scholars, policymakers, and commentators hold is to consider the ideas **heuristics**. Their value is to keep decision-makers and policy makers who are interested in maintaining the quality of the planet focus on an overall orientation to doing that. Some call these distinctions “hard” and “soft” versions of sustainable development. The “hard” version would impose real restrictions on the nature and extent of development in the name of sustainability. The “soft” version treats sustainable development as a set of very general guidelines or goals, a position reinforced by the **essential hortatory** nature of the Rio Declaration.⁶

While sustainability and sustainable development overlap in many ways including in elements of their definition, in much of the literature, the overlap is quite limited. Either the emphasis is on development, with environment being a secondary or tertiary pillar, or the emphasis is heavily on environmental protection. Therein emphases can be exclusive to the physical environment or include cultures and traditions.⁷

With the above noted caution that the distinctions among analytical, historical, and descriptive offerings are rather arbitrary, we calculate about forty-three percent as analytical, and the rest is evenly divided between historical treatment and simply descriptive work.⁸

From our preliminary coding, one observes the following trends. It is no surprise that many articles are on international law. However, some fundamentally focus on environmental law even if not in the international context. With regard to geographical coverage of the articles, about 273

6. See John S. Applegate & Alfred C. Aman, Jr., *Introduction-Syncopated Sustainable Development*, 9 IND. J. GLOBAL LEGAL STUD 1, 2-3 (2001).

7. These pillars are not necessarily mutually exclusive. See Applegate and Aman’s analysis comparing the Stockholm Declaration of 1972 and Principle 21’s focus on “a fundamental right to freedom, equality, and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being.” Rio Principle 1 states: “Human beings are at the centre of concerns for sustainable development.” Some even argue that “Rio replace[s] a right to a healthy environment with a right to develop, and environmental protection was relegated to a distinctly secondary status.” *Id.*

8. We have done our coding without undertaking interrater reliability. That is we have not checked whether different coders would reach roughly similar results. See Joseph DiMento, *International Environmental Law: A Global Assessment*, 33 ENV’T. L. REP. 10387, 10421 (2003).

have a regional focus with a heavy emphasis in North America. This is predictable given our database. Following North America is Europe in general, Asia, Africa, Oceania, and South America. The Arctic is a focus of a very small number. As for sector analysis: governance is a leading category. Here, evenly divided is a focus on national courts and international courts. As for substantive areas of sustainability: land-use is followed by a focus on the law of the sea, water, and air. A large number of contributions are business related and coverage is even larger when one includes trade, the World Bank, and economics. A small number focus on gender and sustainability. Chronologically, the years with the largest number of entries are 2002 and 2013.

Looking forward to further development of the concepts, some of the literature focuses on very specific ideas and recommendations. Some writers, for example, would require environmental impact assessment of (very specific project focused definitions of) sustainability. Some would quantify standards within industries and measure progress in meeting standards in an ongoing way with periodic benchmarking.

There is also a critical literature that considers both concepts (but primarily sustainable development) as vehicles for “Greenwashing” if not “Greenwashing” itself. That term means to offer assessments of the high positive environmental value of one’s product, service, or activity when those flowery conclusions aim to divert attention from damaging, unsustainable enterprises. Descriptors are phrases to allow development to go forward with an emphasis on the economic pillar while paying homage to what are the sought general goals in the larger society.

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