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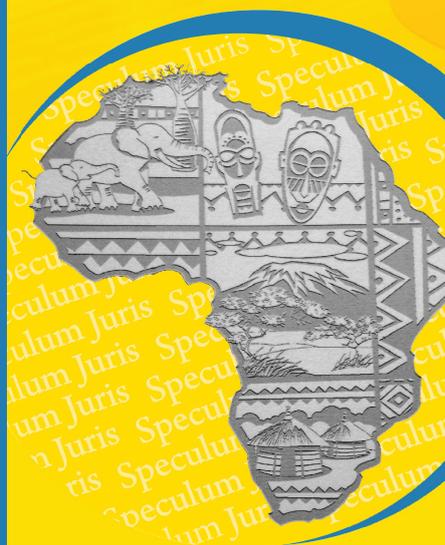
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The Water Goal: Interpreting and Linking Sustainable Development and Equity to Allow for the Realisation of UN Sustainable Development Goal 6

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Abstract

Water is undoubtedly one of the most important natural resources known to man. From its use in everyday life to industry and development, this precious natural resource is required in almost every facet of human, animal and natural life. However, there is not an unlimited supply of usable water on earth and the continuous use of this natural resource without adequate replenishment creates a dilemma for not only the present generation, but for future generations. Through the Sustainable Development Goals (SDGs), a pledge was made to renew the commitment to sustainable development and to ensure the promotion of an economically, socially and environmentally sustainable future for the planet and for present and future generations. Sustainable Development Goal 6 (SDG 6) involves a commitment to ensure availability and sustainable management of water and sanitation for all and it is one of the most significant goals in terms of its potential impact on water access, conservation and preservation. Indeed, the sustainable and equitable use of water is important as it will ensure that this precious commodity is equally available, distributed and conserved for generations to come.

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Therefore, in this article, the aim is to establish the link between sustainable development, equity and water, and how these concepts are inter-related when it comes to the conservation and preservation of water resources. The article focuses on understanding the true meaning of sustainable development and equity in relation to water access, use and conservation from a global perspective. The article also explores potential interpretative shifts from purely legal obligations to moral and ethical obligations, and how a shift in thinking and interpretation should also be considered when attempting to realise true access to water for all generations, in a progressive manner, as envisioned by SDG 6.

Keywords: Sustainable development; sustainable development Goal 6; water law; generational rights; equity; environmental obligations; common good

1 INTRODUCTION

Sustainable development is one of those concepts that it is difficult not to agree with; who would not wish to guarantee environmental protection, while at the same time promoting social and economic development, particularly in some of the poorest regions of the world? It is little wonder that politicians, policy-makers and many academics alike have been so attracted to such an apparently simple juxtaposition, not just of words, but also of ideas. But lying behind the apparent simplicity of sustainable development are some very difficult, potentially even intractable, issues.¹

Sustainable development is an omnipresent term in environmental law. It is a concept that is linked to every facet of environmental preservation and conservation.² The idea of being custodians of the earth and the resources it possesses for not only the current generation, but also for generations to come, places a massive responsibility on current generations — from a legislative and moral perspective. Depletion of natural resources by current generations will indeed conflict with the interests of future generations.³ This depletion and current over-exploitation may cause the future quality of natural resources to diminish, with fewer resources and lower quality resources being left for future generations.⁴ This reality indicates the many issues that human beings will face in future. If natural resources are continually depleted without being replenished to a similar state, then future generations will suffer and struggle to survive.

According to the 1987 Report of the World Commission on Environment and Development⁵ (hereafter the Brundtland Report), sustainable development concerns itself with current generations meeting their own needs without compromising the ability of future generations to do the same.⁶ Sustainable development also encompasses extending an opportunity to all to be able to fulfil their aspirations for a better life.⁷ The inter-relationship between mankind and life, and the existence of both, are affected by sustainable development, with inherent obligations imposed on the current generation to enhance philosophy and policy development in the field.⁸

Indeed, the concept of sustainable development is admirable and incorporates a common-good approach that is inclusive of all human and natural life. The concept is therefore important

1 French “Sustainable Development” in Fitzmaurice, Ong and Merkouris *Research Handbook on International Environmental Law* (2010) 51.

2 Barral “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm” 2012 *The European Journal of International Law* 377–378.

3 Vanderheiden “Conservation, Foresight and the Future Generations Problem” 2006 *Inquiry: Interdisciplinary Journal of Philosophy* 339.

4 Weiss “Implementing Intergenerational Equity” in Fitzmaurice, Ong, and Merkouris *Research Handbook* (2010) 100.

5 United Nations General Assembly Resolution 42/187 (1987).

6 Report of the World Commission on Environment and Development 154.

7 *Ibid.*

8 Orians “Economic Growth, the Environment and Ethics” 1996 *Ecological Applications* 26–27.

to the continued survival of the planet and life on this planet. As a result, it is to be expected that this concept is at the forefront of not only environmental law, but also of law and life in general. However, the inter-disciplinary nature of sustainable development — a concept incorporating social, natural and legal spheres — has caused many more issues to arise. This is because political and economic interests, as well as role-players from the public and private sectors take part in its realisation.⁹ In addition, the overall realisation of the concept usually extends far beyond local levels of governance and also includes global governance.¹⁰ However, the reconciliation of these issues is imperative. If sustainable development is not ensured, the collective welfare of the current generation will be placed in danger and future generations will face an even more hopeless future. Veinla profoundly noted that even if the “preservation of mankind itself is not in danger here, then at least the preservation of the quality of life of future generations is.”¹¹

The quality of the environment that is passed on to future generations also raises the important problem of equity. Pollution in its various forms has degraded the air, fresh water, soils, land and even the marine environment.¹² As a result of this ever-increasing development and pollution, future generations will be severely affected. Therefore, it can even be stated that current generations have an obligation, if only moral and ethical, to ensure that development occurs sustainably and fairly and that natural resources are not depleted for future generations. Sustainable development can be regarded as an ideal that was born out of necessity.

In relation to water, this natural resource is one of the most, if not the most, important and necessary resources for sustaining human life. The sustainable use and management of water is critical for the survival and success of mankind. However, water is being used at such a rapid rate that it is hard to replenish it without adequate rainfall or interventions. Water supply is not keeping up with the demand and use and therefore water reserves are continually decreasing.¹³ This does not bode well for the current and future generations because water is essential for the development and survival of humanity and the earth. Therefore, sustainable use of water is critical for ensuring that water reserves are effectively managed and shared across humankind.¹⁴ This requires moral and ethical considerations which, compounded with economic, social and equitable considerations, make sustainable development a complex and intricate process for the equitable utilisation of water for all parts of the world. Currently, the latest ideals pertaining to water and water access are found in the UN Sustainable Development Goals (SDGs), with water matters being dealt with in SDG 6.

The aim of this article is to reveal the link between sustainable development, equity and water, and how these concepts are inter-related when it comes to the conservation and preservation of water resources and the realisation of SDG 6. It is important to establish how water management and conservation will be better realised if interpreted according to the core ideals and true intentions and definitions of sustainable development and equity, and giving focus to moral

9 French 51.

10 Barral 2012 *European Journal of International Law* 377.

11 Veinla “Sustainable Development as the Fundamental Principle of Europe’s Environmental Ius Commune” 2005 *Juridica International* 117.

12 Weiss 101.

13 Skuse, Gallego-Schmid, Azapagic, Gorgojo “Can Emerging Membrane-based Desalination Technologies Replace Reverse Osmosis?” 2021 *Desalination* 2.

14 Bari *et al.* “Equitable Water Uses and Environmental Sustainability” in Bandh and Malla *Water Footprints and Sustainable Development* (2024) 141.

obligations for the greater good.

2 UNDERSTANDING THE RELATIONSHIP BETWEEN SUSTAINABLE DEVELOPMENT AND EQUITY

2.1 Sustainable Development and its Objectives in Bridging Societal Gaps

Sustainable development should meet the needs of the present without compromising the ability of future generations to meet their own needs.¹⁵ This was one of its first definitions which first described the concept, and left much scope for interpretation.¹⁶ Verschuuren argues that since sustainable development is widely referred to as a principle, objective, ideal or value in international conventions¹⁷ and judicial decisions,¹⁸ it should be viewed as having stronger normative value, stronger legal status and ultimately imposes a legal duty when referred to in these instances.¹⁹ According to Sands and Peel, the legal elements of the concept of sustainable development include the need to preserve natural resources for the benefit of future generations (the principle of inter-generational equity); the aim of exploiting natural resources in a manner which is sustainable, prudent, rational, wise or appropriate (the principle of sustainable use); the equitable use of natural resources, which implies that use by one state must consider the needs of other states (the principle of equitable use or intra-generational equity); and the need to ensure that environmental considerations are integrated into economic and other developmental plans, programmes and projects, and that development needs are considered when applying environmental objectives (the principle of integration).²⁰ On closer inspection, evidence of the holistic nature of the concept is apparent. The concept is multi-faceted and requires multi-faceted approaches in order to be truly realised. The widespread use of the concept in the international legal context does afford the term some enforcement status, especially when attached to existing legal principles.²¹ Sustainable development was not only about ensuring resources for future generations. It was also put in place to bridge the gap between development, poverty and economics.²² This was not meant to involve people in only the same regions, but also to include bridging the gap and divide between regions.

Sustainable development incorporates many ideals. It is regarded as something that seems to be inherently embedded in human nature. It calls for good things, in a good way, in order to produce a good outcome, for the present and for the future of humankind. In fact, every part of the ideal seems to be good. Unfortunately, however, the intricacy of implementation stands in the way of this ‘good’ cause. This intricacy is further compounded by the fact that sustainable development is inter-disciplinary, inter-related and intertwined.²³ As a result, sustainable development aimed to balance developmental and environmental concerns between all people.²⁴

15 Report of the World Commission on Environment and Development 154.

16 Harvey *A Brief History of Neoliberalism* (2005) 2.

17 Verschuuren “The Principle of Sustainable Development as a Legal Norm” in Fisher *Research Handbook on Fundamental Concepts of Environmental Law* (2022) 232.

18 Verschuuren 237.

19 *Ibid* 244.

20 Sands and Peel *Principles of International Environmental Law* (2012) 207.

21 Barral 2012 *European Journal of International Law* 398.

22 Beder “Costing the Earth: Equity, Sustainable Development and Environmental Economics” 2000 *New Zealand Journal of Environmental Law* 232.

23 Mensah “Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review” 2019 *Cogent Social Sciences* 14–15.

24 Clapp and Dauvergne *Paths to a Green World: The Political Economy of the Global Environment* (2005) 61.

Sustainable development, as interpreted by most actors, including state and non-state parties,²⁵ is based on three subsidiary pillars: economic development, social equity, and environmental protection, each of which helps to make up the full concept of sustainable development.²⁶ These can be seen as complementary, with some trade-offs between them.²⁷ Given its influence, the political context of the Brundtland Report also needs to be considered as, at the time, the environmental agenda was largely dominated by the more affluent countries of the North, while the South struggled with economic and political instability.²⁸ Therefore, the North–South divide was a critical driving force in the creation of sustainable development, especially because of the equality between these two regions.

A cursory glance at current international environmental cooperation reveals that developing states are still far from being on a par with industrialised states.²⁹ Hence, the imagery created by the North–South divide holds some truth, as there are still major gaps in equality between the two regions. Injustice and inequality still plague many regions of the South, while the North still maintains its developed status. Unfortunately, many parts of the world are caught in a vicious downward spiral as the poor are forced to overuse environmental resources to survive, and the impoverishment of their environment further increases their poverty, impoverishes them, making their survival ever more difficult and uncertain.³⁰

In theory, bridging the gap between the North and South would allow for improved sustainability and sharing of natural resources on a global scale. Sustainable development may even be an approach for bridging the North–South divide in international environmental law.³¹ Certain theoretical approaches have been devised to bridge the North–South divide. These approaches include international solidarity and international justice.³² Solidarity is not charity where the rich states must support the poorer ones through development aid, but rather it should be viewed as a sort of inter-state cooperation for the betterment of the world at large.³³ In essence, commonality of humankind with an emphasis on a basic and equal standard of living should be the crux of ensuring inter-state cooperation and assistance. Furthermore, this is emphasised in the incorporation of water access for all in various international instruments. For example, the 1948 Universal Declaration of Human Rights, as per Article 25, states that everyone has the right to an adequate standard of living for the health and well-being of himself and his family.³⁴ Although not expressly stated, this is the first inference of a right to water, as food and medical as required by Article 25 can only be realised with water. In addition, the International Covenant on Economic, Social and Cultural Rights (hereafter the ICESCR), determined that the right to water is derived from the right to an adequate standard of living found in Article 11(1) of the ICESCR.³⁵ This also requires sustainable and equitable sharing of water resources in order for the provision to be realised on an international level. The 1997 Convention on the Law of the Non-navigational Uses of International Watercourses (hereafter the UN Watercourses

25 Drumbl “Actors and Law-Making in International Environmental Law” in Ong and Fitzmaurice *Research Handbook of International Environmental Law* (2007) 2.

26 Drexhage and Murphy “Sustainable Development: *From Brundtland to Rio 2012*” (2010) International Institute for Sustainable Development (IISD) 2.

27 *Ibid.*

28 Carter *The Politics of the Environment* (2007) 209.

29 Beyerlin “Bridging the North-South Divide in International Environmental Law” 2006 *Heidelberg Journal of International Law Journal* 266.

30 Report of the World Commission on Environment and Development 154.

31 Beyerlin and Marauhn *International Environmental Law* (2011) 83.

32 Beyerlin 2006 *Heidelberg Journal of International Law Journal* 268.

33 *Ibid* 269.

34 UN Universal Declaration of Human Rights 1948 Art 25.

35 UNGA International Covenant on Economic Social and Cultural Rights 1966 Art 11(1).

Convention) deals with vital human needs,³⁶ which established a practice confirming water for drinking and domestic purposes as a vital need. This is indeed essential and it is stated that a shared watercourse to provide access must be utilised for the purposes of access for all. Therefore, a sustainable and common approach is required, where watercourses are shared equitably.

A number of multilateral agreements declare certain categories of environmental issues to be a common concern of mankind.³⁷ The common concern of mankind approach is essential in sustainable development and sustainable water management. Such agreements seem to confirm the will of their parties to establish a solidarity-driven community for pursuing the common welfare worldwide.³⁸ In relation to water specifically, the requirement for effective global water management and governance strategies cannot be understated. Water governance relates to the range of political, social, economic and administrative systems that are in place to develop and manage water resources and the delivery of water services at different levels of society.³⁹ Water management is further concerned with the manner in which water-related decisions are made as it allows for a system that controls decision-making on water resource development and management.⁴⁰ This drives the hope that international solidarity will also determine the future endeavours of states in bridging the North–South divide in global environmental and water affairs. Therefore, in the final analysis, sustainable development must rest on political will.

Sustainable development is a necessary concept, but one that seems tough to implement properly, especially when looking at all the linkages provided for by the Brundtland Report.⁴¹ The Report called for equity, lifestyle change, economic considerations, social considerations and technological development, but then left it in the hands of the politicians without providing proper guidance. This was done by not providing a proposed or definitive framework for implementation on how to link and implement these aforementioned considerations, but by rather placing the obligation on member states to find ways in progressively realising the aims of the Report.⁴² By defining the term sustainable development, the Commission was able to maintain a careful political balance, rarely achieved internationally, which recognised the real needs of developing countries, without apparently requiring unpalatable solutions from developed countries.⁴³ Also, the Brundtland Report framed sustainable development as incorporating developmental concerns, mainly of the South, and environmental concerns, mainly of the North, in an attempt to overcome their contradictions and bridge the divide both internationally and conceptually, in order to strike a balance.⁴⁴ The promise of sustainable development is that it seems to offer a way out of “the economy versus environment impasse.” It conceptualises an approach where there no longer need be a trade-off between growth and environmental

36 UN Convention on the Law of the Non-Navigational Uses of International Watercourses 1997 Art 10.

37 Bowling, Pierson and Ratté “The Common Concern of Humankind: A Potential Framework for a New International Legally Binding Instrument on the Conservation and Sustainable Use of Marine Biological Diversity in the High Seas” 5–10 https://www.un.org/depts/los/biodiversity/prepcom_files/BowlingPiersonandRatte_Common_Concern.pdf (accessed 06-08-2024).

38 Macdonald “The Principle of Solidarity in Public International Law” 1993 *Pace International Law Review* 301.

39 Rogers and Hall “Effective Water Governance” 2003 *TEC Background Papers No. 7 - Global Water Partnership* 15–16.

40 Hoekstra “The Global Dimension of Water Governance: Nine Reasons for Global Arrangements in Order to Cope with Local Water Problems” 2006 *Value of Water Research Report Series No. 20* 9.

41 Massey “Sustainable Development 20 Years After Brundtland: Time For More Patience and Pragmatism” 2007 *Royal Institute of International Affairs* 5–6.

42 Massey *Royal Institute of International Affairs* 9–10.

43 French 53.

44 Carter 209.

protection .⁴⁵

2.2 The Importance of Equity in Natural Resource Sharing

A very important concept of sustainable development is equity because inequalities of resources or power result in environmental degradation. Equity relates to fairness and usually means that everyone should have equal access to resources and opportunities.⁴⁶ However, environmental degradation will often affect those unable to protect themselves, that is, the world's poor.⁴⁷ In this context, the world's poor are the South half (or developing countries) of the North–South divide. Their struggle to survive will place greater stress on environmental resources, as they may be forced to move to marginal lands or deforest large areas.⁴⁸ This inequity will extend across generations to come, destroying fragile ecosystems for future generations and further entrenching these inequities and inequalities. Thus, sustainable development is impossible, as a balance can never be reached without proper cooperation between the North and the South, for the benefit of current and future generations.

At its core, sustainable development indeed requires both intra-generational and inter-generational equity.⁴⁹

Principle 5 of The Rio Declaration on Environment and Development⁵⁰ states that: “All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.”⁵¹

It also emphasizes in Principle 6 that “The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.”⁵²

It is therefore certain that the Rio Declaration assigns an important role to the concept of sustainable development in bridging the North–South divide in international environmental and developmental relations.⁵³ The principle of equity may then be viewed as a core component of sustainable development when viewed from this perspective. The mandate clearly links to fairness for all in relation to all facets of development, economics and the environment, for achieving the “greater good” and for ensuring human benefits derived from the earth. Therefore, ensuring a sustainable equity-based outlook is imperative when dealing with natural resources, as it will allow for equal use, distribution and assistance, so furthering the common-based approach and ensuring fairness in use. Sustainable development and equity contain both intra-generational and inter-generational dimensions, as it is concerned with relationships both among members of the current generation and between the current and future generations.⁵⁴ This is important to highlight as natural resource conservation and preservation extend to future

45 *Ibid* 212.

46 Beder 2000 *New Zealand Journal of Environmental Law* 228.

47 Carter 218.

48 *Ibid*.

49 Beyerlin 2006 *Heidelberg Journal of International Law Journal* 275.

50 The Rio Declaration on Environment and Development (1992).

51 *Ibid* Principle 5.

52 *Ibid* Principle 6.

53 Beyerlin 2006 *Heidelberg Journal of International Law Journal* 273.

54 *Ibid* 275.

generations, in order to ensure the prosperity of all life on earth.

Sustainable development ensures that states first consider how their actions will affect the environment, their generation and future generations, and whether there is a need to further exploit environmental resources at the expense of the South in order to achieve even more economic prowess for the North. By highlighting the common interest of mankind, which affects both the North and the South, sustainable development can ensure that both the North and the South can come together to conserve the natural resources that remain and to ensure that current inequalities are rectified and that the North–South divide is actually bridged.⁵⁵ Since water is one of the most important natural resource the importance and equitable use, sharing and conservation of this resource are paramount. Water is required in all food production and processing and for everyday human life, from simple everyday tasks to industrial use and societal development.⁵⁶

3 SUSTAINABLE DEVELOPMENT, EQUITY AND THEIR INFLUENCE ON WATER

3.1 Sustainable and Equitable Use of Water

Since life is impossible without water, fairness in sharing and usage of water from a global perspective is vital to ensure that this resource is preserved for future generations. Therefore, the impact of sustainable development on international water law and principles must be examined.

Two important international water law principles must be considered: the equitable utilisation principle⁵⁷ and the no significant harm rule.⁵⁸ A principle is considered to be a special kind of norm, characterised by a rather general meaning, differentiating it from the more concrete legal rules. However, principles go beyond concrete rules or policy goals. Principles usually contain a high moral and/or legal value.⁵⁹

Sustainable development has certainly influenced the international law of watercourses and traditional approaches to water law and water management are encapsulated in the principle of sustainable development.⁶⁰ However, the impact may not be as significant as it seems. For example, the principle of equitable and reasonable utilisation is the cornerstone of the UN Watercourses Convention⁶¹ and the fundamental doctrine guiding water-sharing for international watercourses. It entitles a watercourse state to an equitable and reasonable share of the uses and benefits of the particular watercourse, and also creates the reciprocal obligation not to deprive

55 Beyerlin 2006 *Heidelberg Journal of International Law Journal* 296.

56 Ringler *et al.* “The Role of Water in Transforming Food Systems” 2022 *Global Food Security* 1–2.

57 UN Watercourses Convention Art 5 states that: “Watercourse States shall in their respective territories utilise an international watercourse in an equitable and reasonable manner. In particular, an international watercourse shall be used and developed by watercourse States with a view to attaining optimal and sustainable utilisation thereof and benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse” <https://www.unwatercoursesconvention.org/documents/UNWC-Fact-Sheet-4-Equitable-and-Reasonable-Utilisation.pdf> (accessed 08-08-2024).

58 Article 7 of the UN Watercourses Convention codifies and clarifies the scope of the duty “not to cause significant harm”. This obligation, otherwise known as the “no significant harm” rule requires that states “in utilizing an international watercourse in their territories, take all appropriate measures to prevent the causing of significant harm to other watercourse states” <https://www.unwatercoursesconvention.org/documents/UNWC-Fact-Sheet-5-No-Significant-Harm-Rule.pdf> (accessed 08-08-2024).

59 Verschuuren “Sustainable Development and the Nature of Environmental Legal Principles” 2006 *PELJ* 211.

60 Decleris “The Law of Sustainable Development: General Principles” (A report produced for the European Commission) (2000) 31.

61 1997, Art 5.

other states of their respective rights in this regard.⁶² It refers to sustainable use, which reflects the need to balance economic, social and environmental values in the use of natural resources and to take into account the carrying capacity of international watercourses.⁶³ Also, the term optimum utilisation is used, which means the most economically feasible and, if possible, the most efficient use.⁶⁴ There have been many attempts to link sustainable development to the law of international watercourses; however, such an approach largely ignores the principle of equitable utilisation.⁶⁵ By linking an international water law principle to a global concept, the principle must then be adjusted to suit the outcomes of the goal of sustainable development.

Equitability in relation to water and water resources is important, not only for the current generation, but also for future generations. It is important to note that equity must be used as a benchmark of interpretation when dealing with water usage, conservation and preservation. Given the nature of water, its importance to the world as a whole, and its ever-increasing scarcity, measures must be implemented to sustain and prolong life on earth as we know it. Indeed, interpretative changes are sometimes met with reluctance, especially when no concrete legal obligations are attached. However, it is worth noting that mindset shifts towards the greater good and common good are equally as important for the global population as a whole. The common good pertains to the inclusion and protection of moral and political aspirations of human beings and the natural environment.⁶⁶ Therefore, applying a common good approach ensures that all inhabitants of the earth are equally catered for. The aforementioned UN Watercourses Convention can be viewed as containing principles that have the common-good at heart, with equitable and reasonable utilisation being a theme of the Convention. In addition, the SDGs are global goals, requiring a cohesive global effort and a united front.

3 2 The Importance of Global Goals for Water

Indeed, when it comes to water and water access, sustainable development and equity should go hand-in-hand with the current SDG 6.

The SDG predecessor, the Millennium Development Goals (MDGs) included goal 7.C, a right to access to water. The MDGs initially sought the common-good approach, ensuring that the North–South divide is lessened and providing a platform for global action in relation to basic human needs and actionable sustainability. MDG 7.C aimed to halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.⁶⁷

Following the MDGs and their potential, the SDGs came into being. In relation to water concerns, SDG 6 was a stand-alone goal, signifying its importance and increasing the magnitude of its content, as opposed to its predecessor. SDG 6(1) aims to achieve universal and equitable access to safe and affordable drinking water for all.⁶⁸ The incorporation of the terms universal and equitable should not be overlooked nor understated in the formation of this goal. The goal is clearly based on the roots of equity in relation to water access, ensuring that access is allowed for, and obtainable, for all. How access is determined may be contentious, as physical and economic accessibility may also be factors to consider with water, especially for vulnerable

62 UN Convention on the Law of the Non-Navigational Uses of International Watercourses 1997 Art 5.

63 <https://www.unwatercoursesconvention.org/documents/UNWC-Fact-Sheet-4-Equitable-and-Reasonable-Utilisation.pdf> (accessed 08-08-2024).

64 *Ibid.*

65 Hilderling *International Law, Sustainable Development and Water Management* (2004) 57.

66 Boudouris “Environment as a Common Good and Ecological Crimes” 2002 *Phronimon* 31.

67 <http://www.un.org/millenniumgoals/> (accessed 06-08-2024).

68 UN A/RES/70/1 “Transforming Our World: The 2030 Agenda for Sustainable Development approach to development” Goals and Targets, 18–19.

groups, further compounding issues of inequity regarding access to water.⁶⁹ People should be able to easily or reasonably access water for domestic use. Sustainable development, which aims for equity and balance in relation to resources and development, is intrinsically linked to this target, as universal access to water ensures equity for all, irrespective of where in the North–South spectrum people may be. The idea of sustainably ensuring water access will allow for the actual realisation of SDG 6, under the banner of equity. Development need not be merely in relation to betterment for specific groups only, but rather ensuring that equality prevails for current and future generations in terms of water resources and access thereto. This then requires a paradigm shift in mindset, with moral obligations being pivotal in interpreting these types of goals.

Unfortunately, however, there are not many moral dimensions in decision-making, especially when there is no legal basis. The argument though is that sustainable development is widely promoted by the UN and it is central to a vast number of resolutions, declarations, conventions and international judicial decisions.⁷⁰ It is an agreed objective of many international trade treaties at global and regional levels.⁷¹

The 1992 UN Convention on Biological Diversity stipulates that states are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner,⁷² clearly indicating that the preservation of natural resources is a component of sustainable development. In the 2000 Cartagena Protocol, based on the afore-mentioned Convention, the concept was mentioned again. It was stated that trade and environment agreements should be mutually supportive with a view to achieving sustainable development.⁷³ The 1992 UN Framework Convention on Climate Change and its 1997 Kyoto Protocol also refer to the promotion of sustainable development when dealing with emissions limitations.⁷⁴ The 1994 UN Convention to Combat Desertification and Drought states that the preparation of natural action programmes must be closely interlinked with other efforts to formulate national policies for sustainable development.⁷⁵ Indeed, sustainable development has widely penetrated treaty law.⁷⁶

In addition, in the *Gabcikovo-Nagymaros* case,⁷⁷ the International Court of Justice (ICJ) referenced the concept itself. It stated that throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without

69 McIntyre “International Water Law and SDG 6: Mutually Reinforcing Paradigms” in French and Kotze *Sustainable Development Goals: Law, Theory and Implementation* (2018) 179.

70 Barral 2012 *European Journal of International Law* 377–378.

71 French *International Law and Policy of Sustainable Development* (2005) 168.

72 UN Convention on Biological Diversity 1760 UNTS 79; 31 *ILM* 818 (1992).

73 UN Cartagena Protocol, 2226 UNTS 208; 39 *ILM* 1027 (2000); UN Doc. UNEP/CBD/ExCOP/1/3, at 42 (2000) 2.

74 UN Kyoto Protocol, UN Doc FCCC/CP/1997/7/Add.1, Dec. 10, 1997; 37 *ILM* 22 (1998), Art 2.

75 UN Convention to Combat Desertification and Drought, 1954 UNTS 3; 33 *ILM* 1328 (1994), Art 9.1.

76 The 1994 North American Free Trade Agreement, the 1995 Straddling Fish Stocks Agreement of the 1982 UN Convention on the Law of the Sea, the 2000 Cotonou Partnership Agreement between the European Union and the African, Caribbean and Pacific countries, the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture, and many others also reference the term sustainable development.

77 *Gabčíkovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits*, ICJ GL No 92, [1997] ICJ Rep 7, (1997).

consideration of environmental effects.⁷⁸

In the *Shrimp/Turtle*⁷⁹ case, the World Trade Organization (WTO) Appellate Body noted that the Preamble to the WTO Agreement explicitly acknowledges the objective of sustainable development.⁸⁰

In the *Pulp Mills*⁸¹ case, the parties agreed to the 1975 Statute of the River Uruguay⁸² and the court noted that its object and purpose, set forth in Article 1, is for the parties to achieve the optimum and rational utilisation of the River Uruguay by means of the joint machinery for cooperation. The court observed that such use should allow for sustainable development which takes account of the need to safeguard the continued conservation of the river environment and the rights of economic development of the riparian states.⁸³

SDG 6(1), as the first goal relating to water in the current SDGs, sets the benchmark and foreshadows what is expected of the global community in relation to water access. Setting an aim for universal access is therefore aiming for the highest threshold, which invariably indicates the overall importance of water to human existence.⁸⁴ The legal evidence attached to the use of the term sustainable development provides the foundation needed for implementing moral obligations into action. When examined, sustainable development has moral and ethical considerations in the usage of natural resources and creating a balance when using said resources.⁸⁵ Moral and ethical considerations are not legal obligations. However, the use of sustainable development in the afore-mentioned legal examples attaches certainty in relation to the concept's usage in the legal realm. Thus, the attachment of obligations and inferred (and sometimes explicit) recognition of sustainable development values should also not be undermined. The need to strike a balance becomes crucial. Law, in its true sense, requires adherence to hard, rigid rules. Goals, on the other hand, attached to concepts related to the common good of mankind, like sustainable development, may be regarded as uncertain in relation to legal obligations and implementation by member states. Nevertheless, this is where the change in mindset and interpretation is most needed in order to ensure actual progressive realisation of a goal, SDG 6, that intends to better society for generations to come.

SDG 6(2) focuses on adequate and equitable sanitation and hygiene for all, with women and vulnerable groups being targeted.⁸⁶ The linkage of sustainable development and equity is evident for this target, as focus must be placed on those who find themselves on the South spectrum of the North–South divide. Sustainable development and access to water and equity in relation to water resources allow for a better realisation of sanitation rights, where dignity

78 *Gabčíkovo-Nagymaros Project, Hungary v Slovakia, Judgment, Merits*, ICJ GL No 92, [1997] ICJ Rep 7, (1997) para 140.

79 WTO Appellate Body Report on US – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (12 October 1998).

80 *Ibid* 48.

81 *Pulp Mills on the River Uruguay, Argentina v Uruguay, Order, Provisional Measures*, ICJ GL No 135, (2006) ICJ Rep 113, (2006) 45 *ILM* 1025, ICGJ 2 (ICJ 2006), 13th July 2006, International Court of Justice (ICJ).

82 No. 21425 https://www.internationalwaterlaw.org/documents/regionaldocs/Uruguay_River_Statute_1975.pdf (accessed 06-08-2024).

83 *Pulp Mills on the River Uruguay, Argentina v Uruguay, Order, Provisional Measures*, ICJ GL No 135, (2006) ICJ Rep 113, (2006) 45 *ILM* 1025, ICGJ 2 (ICJ 2006), 13th July 2006, International Court of Justice (ICJ) para 75.

84 UN A/RES/70/1 “Transforming Our World: The 2030 Agenda for Sustainable Development” Goals and Targets 18–19.

85 Garcia and Garcia “Ethical Dimension of Sustainability: The Need to Change Values and Attitudes” 2020 *Sostenibilidad: Económica, Social y Ambiental* 38–39.

86 United Nations A/RES/70/1 “Transforming Our World: The 2030 Agenda for Sustainable Development” Goals and Targets 18–19.

can be preserved for all human beings. There is an inherent link between proper sanitation and human dignity, and therefore access to water for all becomes of even greater importance to ensure that the pillar of human dignity is always upheld.⁸⁷

SDG 6(3) deals with reducing water pollution.⁸⁸ Sustainable development becomes evident as the concept focuses on achieving a holistic balance in relation to access to and preservation of natural resources. Water contamination may lead to serious health consequences,⁸⁹ therefore eradicating pollution is critical, as access to water requires access to clean drinking water suitable for human consumption and everyday domestic use. Pollution severely reduces water quality, thereby reducing quality of life rather than enhancing it.⁹⁰ The provision for water pollution control in the goal is part of a bigger and more holistic approach to water access. Reducing water pollution assures that the quality of water available for consumption and use is high, which further bodes well for future generations — a core ideal for sustainable development. This can be expanded further to equity, where reducing water pollution will help ensure that the inter-generational responsibility placed on the current generation is being fulfilled. This further ensures that the common-good always remains a focal point in terms of the goals and their achievement. With goals, aspirations or ideals, the intent of the goal is important for all, and cooperation and cohesive strategies must be implemented to ensure its envisioned success.

The above reasoning may also be applied to SDGs 6(4), 6(5) and 6(6), which focus on increasing water-use efficiency in order to reduce the number of people suffering from water scarcity, implementing integrated water resource management at all levels, and protecting and restoring water-related ecosystems.⁹¹ Incorporating equity as a central theme to realise SDG 6, has potential not only from a moral standpoint, but also from a legal one, given the implicit and explicit nature of the legal recognition of sustainable development as a whole. At its core, SDG 6 focuses not only on water access, but also on water conservation and preservation,⁹² which are vital elements of the sustainable development concept and the inter-generational and intra-generational responsibilities that are related to the conservation of natural resources.

In addition, targets 6(A) and 6(B) of SDG 6 emphasise international cooperation, capacity building and support, as well as the strengthening local community participation in the improvement of water management.⁹³ This aligns directly with the idea of further bridging the gap in the North–South divide, especially in water treatment, preservation and conservation. This not only encourages further intra-generational equity but also enhances skills and knowledge that can then be passed down to future generations. This ultimately allows for better cohesion

87 Fotio and Nguea “Access to Water and Sanitation in Africa: Does Globalization Matter?” 2022 *International Economics* 80.

88 UN A/RES/70/1 “Transforming Our World: The 2030 Agenda for Sustainable Development” Goals and Targets 18–19.

89 As per the World Health Organization (WHO), “Contaminated water and poor sanitation are linked to transmission of diseases such as cholera, diarrhoea, dysentery, hepatitis A, typhoid and polio. Absent, inadequate, or inappropriately managed water and sanitation services expose individuals to preventable health risks.” “Some 1 million people are estimated to die each year from diarrhoea as a result of unsafe drinking-water, sanitation and hand hygiene” <https://www.who.int/news-room/fact-sheets/detail/drinking-water#:~:text=Contaminated%20water%20and%20poor%20sanitation,individuals%20to%20preventable%20health%20risks> (accessed 08-08-2024).

90 Odeku “Analysis of Water Pollution Control Laws in South Africa” 2014 *Mediterranean Journal of Social Sciences* 2572.

91 UN A/RES/70/1 “Transforming Our World: The 2030 Agenda for Sustainable Development approach to development” Goals and Targets 18–19.

92 *Ibid.*

93 *Ibid.*

and unity from an international perspective in relation to water resource use and management. SDG 6 is layered with aspects of sustainable development and equity and by further enhancing and highlighting the importance of these concepts in relation to the goal, the targets may be more easily achieved because of these obligations. Attaching the ideals of sustainable development and equity to SDG 6 not only further strengthens the actual realisation of the goal, but also gives further purpose and meaning to the goal and further incentives to achieving the targets as indicated.

4 INTER-GENERATIONAL AND INTRA-GENERATIONAL RESPONSIBILITIES AND SDG 6

It must be noted that there is a symbiotic relationship between water and a society. Economic and social activities can severely affect the quality of water, both through direct and diffuse pollution, which limits its availability to other users. The water environment is a resource in itself, underpinning a variety of activities, notably nature conservation and tourism, but also other local livelihoods.⁹⁴

One of the aims of sustainable development is to reduce global poverty. It is important to note that poverty should also include water poverty. Water poverty is a term that has garnered much attention and is different to water scarcity. Water poverty is also multifaceted, much like sustainable development. Therefore, it seems fitting that these concepts are inter-related as one can be used as a solution for the other. Water poverty is defined as a situation where a nation cannot afford the cost of sustainable clean water for all people at all times.⁹⁵ The sustainable use of water can help ensure that water as a resource is available for use by future generations.

4 1 Inter-generational Responsibilities

The principle of inter-generational equity underlies sustainable development.⁹⁶ Since the concept of sustainable development deals with future generations, it is important to note what this actually entails. Members of the current generation hold the earth in trust for future generations and must ensure that its natural resources are used sparingly and wisely.⁹⁷

The term equity refers mainly to fairness. Equity derives from a concept of social justice, and represents policies of impartiality, fairness and justice in order to achieve a certain outcome.⁹⁸ Every generation has the right to have access to the environment and to use its natural resources. However, this ideal may be problematic as too much attention given to future generations may negatively affect the current generation.⁹⁹ The idea behind not reducing the ability of future generations to meet their needs is that although future generations may gain from economic progress, those gains might be more than offset by environmental deterioration. Most people would acknowledge a moral obligation to future generations, in particular as people of the future would have no say in decisions taken today that may affect them.¹⁰⁰ Each generation is both a trustee for the earth with obligations to care for it and a beneficiary of the earth

94 Muller *et al.* "Water Security in South Africa, Development Planning Division" 2009 *Working Paper Series* 8.

95 Feitelson, and Chenoweth "Water Poverty: Towards a Meaningful Indicator" 2002 *Water Policy* 268.

96 Weiss *Implementing Intergenerational Equity* 100.

97 Weiss "Our Rights and Obligations to Future Generations for the Environment" 1990 *American Journal of International Law* 199.

98 Falk *et al.* "Social Equity and the Urban Environment" 1993 *Report to the Commonwealth Environment Protection Agency Canberra* 2.

99 Weiss *Implementing Intergenerational Equity* 102.

100 Beder 2000 *New Zealand Journal of Environmental Law* 227–228.

with rights to use from it.¹⁰¹ This would thus entail equitable or non-discriminatory access to the earth and its resources. The concept of sustainable development definitely implies this. Its explicit mention of future generations implies equity and equitable sharing. Each generation is a member of a community of generations and in partnership with past and future generations,¹⁰² so inferring an obligation. Therefore, the “rights” of the future generations extend beyond the sphere of traditional human rights. They can be regarded as theoretical rights that are needed for the survival of the next generation.¹⁰³

In relation to SDG 6, the importance of water conservation and preservation for future generations are entrenched in the targets of the goal, especially goals 6(3), 6(4), 6(5), 6(6), 6(A) and 6(B). The calls for water pollution reduction, water use efficiency, water resource management, protection of water-related ecosystems and the strengthening of global and local cooperation imply adherence to the responsibilities of the preservation of water for future generations. In addition, these targets fulfil the essence of the core ideals of sustainable development, where future generations are given a current voice in relation to natural resources. The interpretation of SDG 6 from this lens clearly indicates the values of sustainability and equity entrenched in the goal and the intentions of the drafters of the goal to ensure equity of water resources for future generations through current protection and preservation mechanisms. Although a time-frame for achieving the targets is set at the year 2030, the effects of this achievement will be obvious for generations to come.

4 2 Intra-generational Responsibilities

Intra-generational equity deals with fairness in the use of resources among members of current generations.¹⁰⁴ The intra-generational aspect is directed at the serious socio-economic imbalance in resource access and use within and between societies and nations that has exacerbated environmental degradation and the inability of much of humanity to adequately meet basic needs.¹⁰⁵ Indeed, the North–South divide is prevalent when dealing with equity of water in this context as the global South currently bears the brunt of the divide and lack of resources.

In order for intra-generational responsibilities to be met, sustainability in natural resource management must be used. Sustainability is the process suggested to prove the quality of human life within the limitations of the global environment.¹⁰⁶ It involves solutions for improving human welfare that do not degrade the environment or impinge on the well-being of other people. Although there is no agreement about the precise meaning of sustainability, there seems to be a consensus that three basic concepts are involved in sustainable measures: living within certain limits of the earth’s capacity to maintain life; understanding the inter-connections among economy, society, and environment; and maintaining a fair distribution of resources and opportunity for this generation and the next.¹⁰⁷

Intra-generational equity has an inter-state dimension, and requires cooperation between states in order to achieve equitable use of natural resources. This goes together with the targets of SDG 6(A) and 6(B), whereby international cooperation, capacity building, support and

101 Weiss *In Fairness to Future Generations* (1989) 17.

102 Weiss *Implementing Intergenerational Equity* 108.

103 UN Doc. A/CONF.151/26 (vol. I); 31 *ILM* 874 (1992).

104 Maggio “Inter/Intra-Generational Equity: Current Applications under International Law for Promoting the Sustainable Development of Natural Resources” 1997 *Buffalo Environmental Law Journal* 163–164.

105 *Ibid.*

106 Mensah “Sustainable Development: Meaning, History, Principles, Pillars, and Implications for Human Action: Literature Review” 2019 *Cogent Social Sciences* 5–6.

107 Mensah and Castro “Sustainable Resource Use and Sustainable Development: A Contradiction?!” 2004 *Center for Development Research University of Bonn* 4.

local community support are called for. The current intra-generational responsibility is also encapsulated in SDG 6(1) and 6(2), which call for universal and equitable access to water and sanitation for all. The wording of these particular targets is underpinned by the concept of intra-generational equity, ensuring that everyone, everywhere has access to this basic necessity for living. Indeed, the afore-mentioned targets 6(3), 6(4), 6(5) and 6(6) also holds dual functionality for intra-generational equity, as they aim to ensure equal water quality and protection for all people.

5 CONCLUSION

Sustainable development is an important concept, not only for the environment, but for law, policy, cooperation and decision-making. It has principles and ideals that can benefit the manner in which mankind lives and evolves. Legally speaking, there is still debate about the nature and content of sustainable development with its idealistic rhetoric.¹⁰⁸ However, the ever-increasing use, mention and implementation of the concept in domestic and international laws and policies should avoid any misconceptions of the legal nature of the concept. That said, goals affixed with the term “sustainable development” should be met holistically with the same fervour. The current SDGs are steering mankind in a direction that facilitates the common-good approach and consider the good for all of mankind, both present and future. In addition, sustainable development could further minimise the North–South divide that has been a constant feature of international politics and relations.¹⁰⁹

Sustainable development, and the ideal concept of equity, can affect water use and management and the overall realisation of SDG 6, especially since these two principles are based on preservation for effective growth and use. This common nexus encapsulates a move towards a more sustained future for all of humanity. It is therefore important to ensure that the concept of sustainable development, when dealing with SDG 6 and the SDGs in general, gains more momentum and that we use its true meanings, where applicable, to ensure the effective management and use of water resources.

Sustainable development comprises various facets. This can increase confusion and the failure of cooperation, as it requires the efforts of various parties in order to be progressively realised, let alone achieved.¹¹⁰ The idea of looking out for current and future generations creates obligations upon all states and parties, and some of these obligations may even be unwanted, especially when considering the circumstances of poorer countries. However, since sustainable development calls for a harmony and synergy of various pillars, including environmental, economic, social and cultural, the issue here is that even though this is an ideal objective, the manner in which to achieve these objectives is far from ideal. The ever-increasing use of the term sustainable development in international law and decisions cannot be ignored. Its continued use in environmental matters hints at its actual importance in environmental law and life in general. Sustainable development provides the platform for human development, through the protection and sustainable use of natural resources, of which water is one. Therefore, the sustainable use and management of water are integral to sustainable development itself. The idea of using water sustainably for food production and even for conserving for future generations has many merits.

The link between sustainable development and water cannot be undermined. Sustainable development has as one of its branches, sustainable water use and management. This culminated in SDG 6 on water. The idea of changing perceptions from purely legal to moral ones when it comes to conservation and preservation of natural resources is important. Equity and moral

108 Verschuuren 244.

109 Beyerlin 2006 *Heidelberg Journal of International Law Journal* 260.

110 Barral 2012 *European Journal of International Law* 398.

human responsibility should be a major consideration in effectively realising SDG 6, as life without water would mean no life at all. The targets set by SDG 6 encapsulate the overall aims of sustainable development, sustainable use and equity, so it is essential that a paradigm shift in mindset is realised. A global goal for equal water access, conservation, preservation and use is a global goal for all mankind — current and future. Therefore, creating confusion with purely legal obligations over moral and societal obligations will likely hinder the achievement of the intended outcome of the goal. The principles of sustainable development, equity, generational obligations and the SDGs are intertwined and should therefore be interpreted with these links in mind. Thus, an interpretative change is needed and may indeed lead to the outcome as intended by the drafters of SDG 6. If the interpretation is shifted towards the common good, it will create not only a new-found understanding of realising SDG 6, but also attached to the stronger legal identity of sustainable development, it may create a stronger sense of obligations on member states to actively ensure that the targets are met. In addition, linking SDG 6 to international water conventions further legitimises the goals and will ensure that active steps are taken by various member states in realising the goal. This has the potential to lead to better global water governance, realise SDG 6 and play a role in bridging the North-South divide.

Irrespective of whether sustainable development and the SDGs are viewed as ideals or some form of legal or moral obligation, the meanings entrenched in the overall sustainable development concept should be emphasised when interpreting and realising goals attached to sustainable development. Indeed, it is within an ideal society where there is no wastage and where natural resources are used sparingly and not excessively. In an ideal society, considering the environment is linked to development. In an ideal society, everyone is entitled to equal benefits of natural resources. However, without sustaining natural resources, there will be no environment in which an ideal society can be realised.