

THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT

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ABSTRACT

The principle of sustainable development comes from the fusion of two major legal principles, 1) the right to development and 2) the preservation of the environment. The first major principle comes from development law, a branch of law that was born from the independence movement after the Second World War within the broader field of international economic law. Development law was defended by developing countries against the positions of developed countries, with rare exceptions. International economic law has been its main forum for legal formulation. Development law had several concrete repercussions until the 1980s when its norms were dismantled by the advance of liberal theories. International environmental law, which for a long time was presented as antithetical to development, especially by developing countries, absorbed the principles of development law from the Stockholm Conference in 1972 onwards, but especially from the framework conferences of the 1990s. What constitutes development is controversial to this day. Several authors relate it

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to economic development; others add education and health, such as the Human Development Index, which is used in many countries to destinate public resources. There is also the idea of a multifunctional poverty index, recently proposed by the United Nations. Finally, several authors consider that it would be necessary to evaluate other relevant criteria, such as the environment, cultural diversity, and others to really measure sustainable development. It is from this evolution and its understanding that we will be able to appreciate the values that make up today's international environmental law, based on the environment-economic growth binomial. At the end, we explore what sustainable development is and some ideas on how to measure it.

Keywords: Principle of Sustainable Development; Development Law; International Environmental Law; International legal inequalities.

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INTRODUCTION

The principle of sustainable development comes from the fusion of two major legal principles, 1) the right to development and 2) the preservation of the environment.¹ The first major principle comes from development law, a branch of law born from the independence movement after the Second World War, which is within the broader field of international economic law.² The second is derived from environmental law, which was developed in the 1970s.³

Development law was defended by developing countries against the positions of developed countries, with rare exceptions.

1. U.N. Conference on Environment & Development, *Agenda 21*, ¶¶ 1.1–1.4, U.N. Doc. A/CONF.151/26/Rev.1(Vol.I) (June 3, 1992).

2. Felix Kirchmeier, *The Right to Development – Where Do We Stand?*, DIALOGUE ON GLOBALIZATION: OCCASIONAL PAPERS 23, July 2006, at 4, <https://library.fes.de/pdf-files/iez/global/50288.pdf>.

3. Virginie Barral, *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, 23 EUR. J. OF INT'L L. 377, 379 (2012).

International economic law has been its main forum for legal formulation.⁴ It had several concrete repercussions until the 1980s when its norms were dismantled by the advance of neo-liberal theories.⁵

International environmental law, which for a long time was presented as antithetical to development, especially by developing countries, absorbed the principles of development law from the Stockholm Conference in 1972 onwards, particularly during the framework conferences in the 1990s.⁶ Even though development law seems almost non-existent today in international economic law, it continues to consolidate and grow within international environmental law.⁷ All this contributes to the accumulation of distinct logics in international law, which reinforces its incoherence and makes possible the presence of parallel and contradictory legal systems, where the effectiveness of one results in the non-effectiveness of the other. This inevitably leads to work on the articulation between the different branches of law, instead of advancing the contradictory points.

The very content of what development includes is controversial to this day. Several authors relate it to economic development, while others add education, health, and the human development index.⁸ There is also the idea of a multifunctional poverty index.⁹ Finally, several authors consider that it would be necessary to evaluate other relevant criteria, such as the

4. Kirchmeier, *supra* note 2, at 4.

5. See Haley Pedersen, *Promoting and Fulfilling the Right to Development: Case Studies*, in *ASIA PACIFIC*, ASIA PACIFIC F. ON WOMEN, L. & DEV., 2019, at 1, 17 (2019).

6. Barral, *supra* note 3, at 379.

7. See David Hunter, *International Environmental Law*, AM. BAR. ASS'N: INSIGHTS ON LAW AND SOCIETY, (Jan. 05, 2021), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol—19—issue-1/international-environmental-law/ (explaining that “international environmental law aims to achieve sustainable development”).

8. Hugo Slim, *What is Development?*, 5 DEV. IN PRAC. 143, 143–45 (1995).

9. OXFORD POVERTY AND HUMAN DEVELOPMENT INITIATIVE, GLOBAL MULTIDIMENSIONAL POVERTY INDEX, at 6 (2022).

environment, cultural diversity, and others to really measure development.¹⁰

In order to understand this evolution, it is necessary to study the separate formation and evolution of these two branches of law, as well as their fusion. By first examining the law of development, which is older; then examining the creation of environmental law, which is more recent; finally turning to the relations between developed and developing countries included in these legal formulation processes. It is from this evolution and its understanding that we will be able to apprehend the values that make up today's international environmental law, based on the environment-economic growth binomial. At the end, we explore what development is and some ideas on how to measure it.

II. DEVELOPMENT LAW

Development law originated within international economic law in the aftermath of the Second World War, in particular, development law was shaped when developing countries brought it to the forefront of the international economic negotiations.¹¹ The concept of development itself was elaborated at that time, initially around economic growth, then as an expansion of freedoms.¹² Some organizations continue to adopt the first criterion, while others adopt the second, each marking their vision of development.¹³ If development is measured by criteria such as the development of basic infrastructure, sewage, drinking water, educational development, and increase in life expectancy, these become anchor points and major issues for an organization concerned with development.¹⁴ On the other hand, if the main

10. See Slim, *supra* note 8.

11. Kirchmeier, *supra* note 2, at 7–8.

12. Arjun Sengupta, *Right to Development as a Human Right*, ECON. AND POL. WKLY., July 7, 2001, at 2527.

13. Kirchmeier, *supra* note 2, at 14–15.

14. See Pederson, *supra* note 5, at 16, 46; Daniel J. Whelan, *The Right to Development: Origins, History and Institutional Development*, in OPERATIONALIZING THE RIGHT TO DEVELOPMENT IN IMPLEMENTING THE SUSTAINABLE DEVELOPMENT GOALS: CHAPTER 1 23 (Mihir Kanade & Shyami Puvimanasinghe ed., 2015).

instrument adopted to measure development is the expansion of trade between nations, international trade becomes the central focus of concern.¹⁵ While these elements may have relationships with each other, they are not always direct or proportional.

Development law is based on the principles of non-reciprocity, compensatory inequality, and the creation of a general system of preferences that allows the products of developing countries to compete in the markets of rich countries. This means that developing countries are not obliged to accept the same legal constraints linked to free trade, established by international agreements such as the General Agreement on Tariffs and Trade (GATT); that they have rights of access to the markets of these countries under better conditions; as well as the right to financial aid and technology transfers aimed at promoting their development; thus putting an end to the global inequality.¹⁶

These principles, like development law itself, are directly linked to socialist doctrines. With the loss of credibility of socialism and the rise of neo-liberalism, the whole concept of the need for legal norms to compensate for economic inequality has disappeared. Development would be achieved by liberal rules, without compensatory measures for developing countries. Since this system has already been analyzed by many authors, we will summarize the genesis of development law and its promotion by developing countries, and then we will verify the disappearance of the norms of development law within international economic law.

A. The Genesis of Development Law and its Promotion by Developing Countries

The right to development was born in the 1950s as a result of the impetus given to it by developing countries within the United Nations and other international organizations in a series of resolutions that concerned the abandonment of the principle of

15. Sengupta, *supra* note 12, at 2529.

16. Marie-Angèle Hermitte, *Le Concept de Diversité Biologique et la Création d'un Statut de la Nature*, in *L'HOMME LA NATURE ET LE DROIT* 270-271 (1988).

commercial reciprocity, the creation of the principle of compensatory inequality, and the creation of a general system of preferences for commercial products from developing countries within GATT.¹⁷ This was made possible by the rapid increase in the number of member countries of the United Nations, resulting from the decolonization process, and by a certain degree of union among them.¹⁸ The right to development is understood through two aspects; first, the right to development is the specific branch of law composed of the set of norms and principles that ensure more favorable conditions for the development of developing countries.¹⁹ This differs from the second aspect, which understands the right to development as the right, in the *strict sense of the word*, of each individual or each country to develop.²⁰ This evolution can be explained by tracing the stages as documented below.

1. The Havana Charter of 1946

Development is perceived as a construction requiring successive stages.²¹ It became a central aspect of the international agenda from 1945 onwards, stemming from the process of European reconstruction, and after the 1950s, during the process of decolonization.²² In 1946, the Havana Charter, along with the first round of GATT negotiations, considered the economic development of States as an important tool for the promotion of world peace.²³ The Charter had already contained the concept of development but it was limited exclusively to economic growth, and there was nothing specific about a preferential system for

17. Kirchmeier, *supra* note 2, at 4, 8.

18. *Id.* at 8.

19. *Id.* at 12–13.

20. *Id.* at 10.

21. See W.W. Rostow, *The Stages of Economic Growth*, 12 ECON. HIST. REV. 1, 1 (1959).

22. See Kirchmeier, *supra* note 2.

23. U.N. Economic and Social Council, Final Act of the United Nations Conference of Trade and Employment, art. 72, U.N. Doc. E/Conf. 2/78 (1948).

developing countries.²⁴ Article XVIII of the GATT is based on four important ideas.²⁵ First, it affirms the existence of States that are only in their "early stages of development"²⁶ must advance by implementing "economic development policies."²⁷ Self-admittedly, these policies justify a general regime of protection, which appears as a legitimate exception to the policy of openness.²⁸ The GATT leans on the idea that it is economic development alone that will be able to bring about an improvement in living standards.²⁹ The underlying model is a simple one that reduces development to economic growth. Article XVII of the GATT, titled Governmental Assistance to Economic Development, states:

1. The contracting parties recognize that the attainment of the objectives of this Agreement will be facilitated by the progressive development of their economies, particularly of those contracting parties the economies of which can only support low standards of living and are *in the early stages of development*.

2. The contracting parties recognize further that it may be necessary for those contracting parties, in order to implement programmes and policies of economic development designed to raise the general standard of living of their people, to take protective or other measures affecting imports, and that such measures are justified in so far as they facilitate the attainment of the objectives of this Agreement. They agree, therefore, that those contracting parties should enjoy additional facilities to enable them *(a) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection*

24. *Id.* at art. 1.

25. General Agreement on Tariffs and Trade, art. 18, Oct. 30, 1947, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

*required for the establishment of a particular industry and (b) to apply quantitative restrictions for balance of payments purposes in a manner which takes full account of the continued high level of demand for imports likely to be generated by their programmes of economic development.*³⁰

As a result of the language in the Charter, States who needed to implement the free trade provisions, for a temporary period, could not do so, as long as their economy was harmed by the reduction of tariffs.³¹ The process of decolonization followed, leading to the Bandung Conference of 1955.

2. The Bandung Conference of 1955.

The idea of a specific treatment was reinforced with the mobilization of the recently independent developing countries.³² But it was in fact “imposed” by the South on the North, which was made possible by the choice of an active neutrality of developing countries within the East-West competition and the American position in favor of the decolonization process.³³ The Bandung Conference—held from April 18–25, 1955—are some of the most

30. GATT, *supra* note 25, at art. 17.

31. “4. a. Accordingly, any contracting party whose economy can provide only a low standard of living for its population and is in the early stages of development shall be free to derogate temporarily from the provisions of the other articles of this Agreement as provided in sections A, B and C of this Agreement. (a) Accordingly, any contracting party whose economy can provide only a low standard of living for its population and is in the early stages of development shall be free to derogate temporarily from the provisions of the other Articles of this Agreement as provided in Sections A, B and C of this Article.

b. Any contracting party with a developing economy that does not fall under subparagraph (a) above may make requests to contracting parties under section D of this article.” *Id.* at art. 18, ¶ 4.

32. JULIO FAUNDEZ, BETWEEN BANDUNG AND DOHA: INTERNATIONAL ECONOMIC LAW AND DEVELOPING COUNTRIES 14 (Warwick L. Sch., 2015).

33. See Sally P. Wood, *Retrieving the Bandung Conference . . . moment by moment*, 43 J. OF SE. ASIAN STUD. 523, 523–24 (2012).

pivotal dates in shaping the idea of development.³⁴ It brought together 29 Asian and African countries, most of which had gained independence within the previous ten years, representing a significant part of the world population. It was the first collective event for the decolonized countries. The Bandung Conference was sponsored by Sukarno, President of Indonesia; Nasser, President of Egypt; Nehru, President of India; Mohamed Ali, President of Pakistan; and Zhou Enlai, President of China. It was from this Conference that the relations between developing countries were strengthened, and the following year, the formation of the “non-aligned movement” began, which was composed of “third world” countries, who were trying to distance themselves from the opposition between the capitalist and socialist worlds, a divisive characteristic of the Cold War. The “non-aligned movement” was later embodied at the United Nations in the Group of 77 (G77), which became an important pressure group in international negotiations and the most salient, in terms of numbers, in the UN General Assembly. The legal norms in favor of development multiplied, such as the resolutions on progress and development,³⁵ and the resolution on sovereignty over natural resources,³⁶ especially in relation to the process of nationalization of mining resources.

At that time, development law was therefore born and grown within international economic law; the United Nations agencies focused mainly on economic aspects. Development was assimilated to economic growth, in the sense that no aspect of the environment, health, or human rights was directly included.

34. *Bandung Conference*, BRITANNICA ONLINE ENCYCLOPEDIA (May 11, 2023), <https://www.britannica.com/event/Bandung-Conference>.

35. See G.A. Res. 2542 (XXIV), at 49 (Nov. 12, 1969).

36. See G.A. Res. 523 (VI), at 20 (Jan. 12, 1952); G.A. Res. 626 (VII), at 18 (Dec. 21, 1952); G.A. Res. 1803 (XVII), at 15 (Dec. 14, 1962); G.A. Res. 2158 (XXI), at 29 (Nov. 25, 1966); G.A. Res. 3281 (XXIX), at 52 (Dec. 12, 1974); HOSSAIN & CHOWDHURY, *PERMANENT SOVEREIGNTY OVER NATURAL LAW AND RESOURCES IN INTERNATIONAL LAW: PRINCIPLE & PRACTICE* (1984).

Then in 1964, thanks to the constant pressure of developing countries and the personal commitment of Raul Prebisch,³⁷ the UN created the United Nations Conference on Trade and Development (UNCTAD). UNCTAD acquired considerable legitimacy because of its orientation in favor of global development and its intense participation in international negotiations.³⁸ The influence of developing countries within UNCTAD has always been predominant, with the main objective being—or at least having to be—development and not world trade.³⁹ In fact, UNCTAD enjoys a fair amount of freedom of action within the United Nations and the international community. Developed countries allow and accept positions and advocacy for development values that are hardly expressed elsewhere. UNCTAD has changed the balance of power between developing and developed countries.

UNCTAD organized important conferences for the discussion of international trade and development.⁴⁰ Before each conference, the G77 held meetings to build a common platform and to form a united block against other blocks led by the United States, Europe, and the Soviet Union.⁴¹ It is precisely this modality of union between developing countries, specifically between the 1960s and 1970s, that led to obtaining the elaboration of legal norms favorable to development, which no longer exists today.

37. Mr. Prebisch was at that time President of ECLAC. He became the first secretary-general of UNCTAD. Some U.N. officials have been very influential in the construction of development law, see Kalecki, Jacobi, Hammarskjöld, Myrdal, Mahler, among many others. See, e.g., FAUNDEZ, *supra* note 32, at 4; U.N. CONF. ON TRADE AND DEV., THE HISTORY OF UNCTAD 1964–1984, at 1, U.N. Doc. UNCTAD/OSG/286, U.N. Sales No. E.85.II.D.6 (1985).

38. FAUNDEZ, *supra* note 32, at 6.

39. *Id.* at 3–4, 6–7.

40. See e.g., Karl P. Sauvart, *The Early Days of the Group of 77*, U.N. CHRONICLE (May 2014), <https://www.un.org/en/chronicle/article/early-days-group-77>.

41. Thus, before the second UNCTAD in New Delhi, in 1968, we see the formation of the G77, which later met in the framework of the Algiers conference; before the third UNCTAD in Santiago, in 1972, in the framework of the Lima conference; before the fourth UNCTAD in Nairobi, in 1976, the meeting was organized during the Manila conference. *Id.*

One year after the creation of UNCTAD, in 1965, the United Nations Development Programme (UNDP) was formed.⁴² It was part of a context in which international cooperation was increasing, especially between 1946 and 1964.⁴³ In 1948, the Western States, which had a majority in the United Nations, created a regular program, which was replaced in 1949 by the Expanded Program of Technical Assistance. In 1965, this program became the United Nations Development Programme,⁴⁴ which received voluntary contributions. The UNDP was conceived more as an executing agency, rather than as an agency for reflection on development, that was redefined in the 1980s with the creation of the Human Development Report.⁴⁵

At the end of the 1960s, there were a whole series of amendments that were approved, which were in favor of fairer trade conditions for developing countries, cooperation, technology transfer, the strengthening of South-South relations, non-intervention, non-discrimination, etc.⁴⁶ These resolutions have become universal principles, which have been adopted by the United Nations and the international community, but these

42. G.A. Res. 2029 (XX), at 20–21 (Nov. 22, 1965).

43. Maurice Flory, *Mondialisation et Droit International du Développement*, in 101 *REVUE GENERALE DE DROIT INTERNATIONAL PUBLIC* 610, 615 (Pierre-Marie Dupuy & Jean-Pierre Queneudec eds., 1997).

44. *Id.*

45. Interview with Igancy Sachs, March 2000. From the 1990s onwards, this “do without thinking” posture changed, especially after the creation of the Human Development Report, which analyses global development in more detail. These UNDP reports now serve as a basis for development analysis and are also an interesting basis for comparison with the development analyses of other international organizations. The comparison is interesting and even essential because the identification of the information that is considered crucial for the realization of these studies shows the real concerns of each international organization. See e.g., G.A. Res. 2029, *supra* note 42, at 20; *Report of the United Nations Development Programme, Human Development Report 2020: The Next Frontier: Human Development and the Anthropocene* (Dec. 15, 2020), <https://hdr.undp.org/content/human-development-report-2020>.

46. See e.g., G.A. Res. 2158 *supra* note 36, at 29; G.A. Res 2542, *supra* note 35 at 49–53.

resolutions have not been enforced.⁴⁷ The Declaration on Social Progress and Development, Resolution 2542 (XXIV) of 1969, voted by the United Nations General Assembly is an example.⁴⁸ Carrying a much stronger language on development than the language later voted on in the 1980s, XXIV affirms the right of developing countries to participate in the expansion of international trade, with a non-discriminatory system of non-reciprocal preferences, giving preference to exports from developing countries over developed countries, creating the establishment and implementation of a general and extended system of marketable goods, and the financing of stocks⁴⁹ by international institutions.

3. The New International Economic Order of 1974

The 1970s marked another significant moment for developing countries, culminating in the formation of the New International Economic Order (NIEO), which advocated for changes in developing countries favorable to these countries' development.⁵⁰ In fact, it reinforces the idea of cooperation instead of simple coexistence.⁵¹ The concept was created in 1974, at a time when the General Assembly was dominated by developing countries and was chaired by the Algerian Minister of Foreign Affairs, Abdelaziz Bouteflika. The decision of developing countries taken in meetings during 1973,⁵² is considered by some authors as the great North-South schism.⁵³ The increase in the price of oil obtained by the Arab countries and Venezuela through the Organization of the Petroleum Exporting Countries (OPEC) and

47. See e.g., Homera L. Hernandez, *The UNCTAD Review of Institutional and Programme Issues*, ¶¶ 3, 11, 35, U.N. Doc. JIU/REP/96/1 (1996); Richard Schwartz, *Are the OECD and UNCTAD Codes Legally Binding*, 11 INT'L LAW. 529, 531 (1977).

48. See G.A. Res. 2542, *supra* note 35.

49. The original expression is "buffer stocks." *Id.* at 52.

50. G.A. Res. 3201 (S-VI), at 3-4 (May 1, 1974).

51. *Id.* at 3.

52. On the occasion of the fourth conference of non-aligned countries, in Algiers.

53. MOHAMMED BEDJAOU, *TOWARDS A NEW INTERNATIONAL ECONOMIC ORDER* 34 (1979).

the vote in the UN of the majority held by developing countries allowed the unanimous approval of the resolutions on the NIEO.⁵⁴

Among the three most important documents are the "Declaration on the New International Economic Order,"⁵⁵ its "Program of Action," and the "Charter of Economic Rights and Duties of States,"⁵⁶ which criticize the form that developed countries give to capitalism. The whole capitalist system is said to be favorable to the rich countries, in particular the international division of labor and the unequal distribution of technological progress, which contribute to the widening gap between the development of rich and developing countries.⁵⁷ The economic order and the rules of law on which it is based should, according to the United Nations General Assembly, disappear to allow the construction of a more equitable system, "which will correct inequalities and redress existing injustices."⁵⁸ This is the apex of the development law discourse in international economic law.

The Declaration on Social Progress and Development is one of the first documents to integrate a social perspective into the concept of development.⁵⁹ It is contrary to the monopolies of transnational companies, which were important at the time because of the expansion of nationalizations, especially for oil.⁶⁰ It also invokes the principle of sovereignty over natural resources⁶¹ as well as the principles of non-reciprocity and special

54. *Id.*; Jerome I. Levinson, *New Proposals for the Debt Crisis*, in 1 CURRENT LEGAL ISSUES AFFECTING CENTRAL BANKS 79–80 (Robert C. Effros, eds., International Monetary Fund 1992); Mohamed Bennouna, *Le Droit International Réel aux Matières Premières*, in 177 RECUEIL DE COURS 159 (4th ed. 1982); Flory, *supra* note 43, at 618.

55. G.A. Res. 3201, *supra* note 50.

56. G.A. Res. 3281, *supra* note 36.

57. G.A. Res. 3201, *supra* note 50, at 3.

58. *Id.*

59. G.A. Res. 2542, *supra* note 35, at 49.

60. *Id.* at 51; *Brief History*, ORGANIZATION OF THE PETROLEUM EXPORTING COUNTRIES, https://www.opec.org/opec_web/en/about_us/24.htm (last visited Nov. 16, 2023).

61. G.A. Res. 2542, *supra* note 35, at 49–50, 52.

conditions for developing countries. The Declaration on Social Progress and Development states:

(a) The creation of conditions for rapid and sustained social and economic development, particularly in developing countries; changes in international economic relations; new and effective methods of international co-operation in which equality of opportunity should be as much a prerogative of nations as of individuals within a nation;

(c) The elimination of all forms of foreign economic exploitation, particularly that practised by international monopolies, in order to enable the people of every country to enjoy in full the benefits of their national resources.

Social progress and development shall finally aim at the attainment of the following main goals:

....

Article 23

(e) The expansion of international trade based on principles of equality and non-discrimination, the rectification of the position of developing countries in international trade by equitable terms of trade, a general non-reciprocal and non-discriminatory system of preferences for the exports of developing countries to the developed countries, the establishment and implementation of general and comprehensive commodity agreements, and the financing of reasonable buffer stocks by international institutions.”⁶²

62. *Id.* at 51–52.

On the other hand, the NIEO associates sovereignty with the right to development.⁶³ The economic domination by foreign actors of the resources of developing countries and the consolidation of the process of independence in a significant part of these countries is helpful in understanding this relationship.⁶⁴ Each state would have the sovereign right to choose its means of development, including the inalienable right to nationalize and exploit its natural resources, to transfer ownership to its citizens, and to regulate the activities of transnational corporations.⁶⁵ The accompanying program of action includes, among other things, more than a hundred instruments for development and the correction of inequalities, greater assistance from rich countries to poor countries, an end to the instruments of economic and political domination, the industrialization of raw materials in developing countries, improved access to international markets for developing countries, and a reform of the international monetary system.⁶⁶

The Charter of Economic Rights and Duties⁶⁷ of States is based on a core of classic principles, such as the sovereign equality of States, non-intervention, and adding permanent sovereignty over natural resources.⁶⁸ The Charter demands the application of the notion of the common heritage of humanity to technologies, the free transfer of technologies between developed and developing countries, as well as the control over foreign investments and transnational companies. The slogan "*trade not aid*" developed during this period.⁶⁹

63. G.A. Res. 3201, *supra* note 50, at 3-4.

64. *Id.*

65. *Id.* at 4.

66. Mahmoud Salem, *Le développement de la protection conventionnelle des investissements étrangers*, 113 J. DE DROIT INT'L 579 (1986).

67. G.A. Res. 3281, *supra* note 36, at art. 2. Other important contemporary examples could also be the Law of the Sea Convention and the exploitation of nodules in the Area.

68. *Id.* at art. 2, 13. This principle also serves as a basis for the construction of international environmental law.

69. Flory, *supra* note 43, at 617.

4. The Tokyo Round of 1979.

Part IV of the GATT, and a little later, the General System of Preferences (GSP) were created and lobbied for by UNCTAD,⁷⁰ consolidating the principles of developmental law in international economic law, such as special and differential treatment, compensatory inequality, and the non-reciprocity of trade concessions.⁷¹ It was in 1979, during the Tokyo Round, that a concrete text in favor of developing countries was finally included in international law.⁷² Article XXXVI, section 1, indicates that priority should be given to the elimination of obstacles to market access for products from developing countries, the establishment of better treatment for products of interest whose trade is essential for less developed countries, and the non-establishment of new tariff and non-tariff barriers limiting the access of these countries to the market.⁷³

1. The developed contracting parties shall to the fullest extent possible—that is, except when compelling reasons, which may include legal reasons, make it impossible give effect to the following provisions:

(a) accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms;

(b) refrain from introducing, or increasing the incidence of, customs duties or non-tariff import barriers on products

70. Guy Feuer, *L'Uruguay Round, les Pays en Voie de Développement et le Droit Int'l du Développement*, XL ANNUAIRE FRANÇAIS DE DROIT INT'L 758, 760 (1994).

71. See Gabrielle Marceau, *General Presentation of the WTO Agreement*, 1, 31, https://legal.un.org/avl/pdf/ls/Marceau_RelDoc4.pdf (last visited Nov. 12, 2023).

72. See *id.* at 13, 31.

73. See *id.* at 31.

currently or potentially of particular export interest to less-developed contracting parties; and

(c)

(i) refrain from imposing new fiscal measures, and

(ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures, which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.⁷⁴

Every decade, new legal norms are approved, of which the United Nations General Assembly is the main source.⁷⁵ The resolutions concerning the development agenda are marked by an innovative discourse each time, with concrete proposals, in favor of changes in the distribution of power.⁷⁶ These resolutions are conceived periodically and propose progressive strategies to ensure development.⁷⁷ Thus, the first decade gave rise to Resolution 1710 (XVI) of December 19, 1961; the second decade to Resolution 2626 (XXV) of October 24, 1970; the third decade to Resolutions 35/36 of December 5, 1980; and the fourth decade to Resolutions 45/199 of December 21, 1990.⁷⁸ As a result, the right

74. GATT, *supra* note 25, at art. 37.

75. See *International Law and Justice*, U.N., <https://www.un.org/en/global-issues/international-law-and-justice> (last visited Nov. 12, 2023).

76. See Marceau, *supra* note 71, at 10 (requiring that countries providing a trade concession to one trading partner extend the same treatment to the others, also known as the Most-Favored Nations MFN clause).

77. See G.A. Res.66/288, pmbl., 3, 5,12 ¶ (July 27, 2012) (displaying the UN's continued and evolving commitment to establishing development goals).

78. Peter Jackson, *A Prehistory of the Millennium Development Goals: Four Decades of Struggle for Development in the United Nations*, U.N. CHRONICLE, <https://www.un.org/en/chronicle/article/prehistory-millennium-development-goals-four-decades-struggle-development-united-nations> (last visited Nov. 12, 2023); see G.A. Res. 45/199 (Dec. 21, 1990).

to development has had several concrete consequences. The development program of former colonies, such as Algeria, Morocco, and Tunisia in the French case; the growth of financial and technological aid to developing countries; and the validity of the differentiated trade rules were established between developed and developing countries.⁷⁹

Despite these efforts, this discourse gave way to neo-liberal ideologies and weakened⁸⁰ the discourse of developing countries at the end of the century, which in the 1990s was already identical to that of developed countries.⁸¹ In the same way, the NIEO, too dogmatic, may have posed pertinent questions, but it was not able to maintain and continue the expansion of the conquered spaces.⁸²

B. The Rapid Disappearance of Development Law within International Economic Law

It is from the 1980s onwards, with the rise of neo-liberal doctrines, that the basic principles of development law, such as the principle of non-reciprocity, compensatory inequality, and the general system of preferences were weakened, causing a significant reduction of development law within international economic law.⁸³

It was also at this time that jurists commented on the non-binding value of the resolutions of the United Nations General Assembly.⁸⁴ Instead of being consolidated, these legal

79. See *World Economic and Social Survey 2017 Reflecting on seventy years of development policy analysis*, Dep't of Econ. and Soc. Aff, at 25, U.N. Doc. E/2017/50/Rev.1 ST/ESA/365 (2017); see Lisa Anderson, *The State in the Middle East and North Africa*, 20 COMPARATIVE POLITICS 1, 11(1987).

80. See generally Robert Fletcher, *Neoliberal Environmentalism: Towards a Poststructuralist Political Ecology of the Conservation Debate*, 8 CONSERVATION & SOC'Y 172 (2010).

81. See Robert W. Cox, *New International Economic Order: Reflections on Some Recent Literature*, 33 INT'L ORG. 251, 263 (1979).

82. See *id.* at 275–76.

83. See Fletcher, *supra* note 80, at 174.

84. Stephen M. Schwebel, *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, 73 AM. SOC'Y INT'L L. 301, 301 (1979).

norms are considered *soft norms* and became dead letter for most of these countries, according to repercussions on the world economy. Others, like binding texts, run the risk of having no repercussions. The disappearance of development law comes from several fronts: the end of its expansion, the weakening of new legal norms emanating from international organizations, such as the United Nations Environmental Programme (UNEP), UNCTAD, and the General Assembly, and the advance of legal theories on the invalidity of previous norms.⁸⁵

1. The Increase in Economic Dependence, from the Late Seventies and Eighties

This economic dependence is aggravated by the problem of increasing debt and growing economic dependence of developing countries on developed countries.⁸⁶ The excess of financial resources in the international financial system due to the oil industry and the low interest rates pushed developing countries to proceed with their industrialization, resulting in further debt.⁸⁷ Initially advantageous, international contracts have become a trap. The capitalization of the great resources illustrated by the modalities of the sale of oil, after the process of nationalization and the use of these resources demonstrates the problem: OPEC States recycled their financial resources in the banks within developed countries, which is at the origin of the system of credits granted at derisory rates, sometimes even negative; this was quite attractive for developing countries.⁸⁸ These interest rates increased significantly and most developing countries became

85. See James M. Boughton, *The IMF and the Silent Revolution Global Finance and Development in the 1980s*, IMF (Sept. 11, 2000), <https://www.imf.org/external/pubs/ft/silent/index.htm> (explaining how philosophical trends in approaches to economics affected international organizations).

86. See *World Economic and Social Survey 2017*, *supra* note 79 (explaining how economic growth of developing countries is dependent on economic stability of developed countries).

87. See *id.* at 50–51, 54.

88. See Sauvant, *supra* note 40 (explaining that developing countries in the UN form the largest intergovernmental organization known as The Group of 77).

hostages to their debts and to the foreign public banks, represented by the Paris Club, and private banks, by the London Club; the debt service became considerable.⁸⁹

2. The End of the Bipolar System USA-Soviet Union.

The loss of space occupied by the socialist system,⁹⁰ and consequently, its loss of legitimacy allowed an increased valorization of neo-liberal theories, especially with the access to power of Mrs. Thatcher in the United Kingdom, and according to M. Touraine, in second place, the government of Mr. Reagan, in the United States.⁹¹ According to I. Sachs, "The credibility of the New International Economic Order has become null and void and capitalism has returned to its pre-1929 arrogance, giving scope to neo-capitalism and killing the whole legacy of Keynesianism."⁹²

3. The Disunity of Developing Countries between the Eighties and Nineties

Developing countries have not been able to maintain their position of strength within the main international organizations.⁹³ Some diplomatic leaders, such as Brazil, Argentina, Mexico, and China, preferred to adopt individualistic, bilateral policies. The advantage of numerical superiority has been offset by the advantage of economic, technical, and legal prowess, diplomatic preparedness, and the unity of developed countries on critical issues. The unity of developing countries has come to an end and after the beginning of the 1980s, it is rarely perceptible in international meetings, even on important issues. After this disunity of developing countries, block bargaining is

89. See Boughton, *supra* note 85.

90. It is interesting to note that Mr. Sachs also considers the occupation of Czechoslovakia as a turning point, when the credibility of development theories became less strong. Interview with I. Sachs (Mar. 2000).

91. Interview with M. Touraine (Jan. 11, 2001).

92. Sachs, *supra* note 90.

93. See Sauvart, *supra* note 40 (discussing how the international economic environment effects developing countries' ability to maintain a coalition).

giving way to multilateral bargaining—where each developing country tries to ally itself individually with certain countries of the North that have more influence over them—rather than individual bargaining. Finally, within international economic law, the development discourse is giving way to the neo-liberal discourse, where negative or positive discrimination is not accepted.

The GATT rules, starting with the 1991 revision at the end of the Uruguay Round, consolidated the end of trade standards that are more advantageous to developing countries. The basic principles of development law, such as compensatory inequality and the abandonment of reciprocity, were reduced to incidental and occasionally applicable standards.⁹⁴ Moreover, the Marrakesh Agreement in 1994 put an end to most of the preferences granted to developing countries in the short and medium term.⁹⁵ Although the Marrakesh Agreement includes provisions that are more favorable to least developed and developing countries, the entire system reverts to the logic of the 1940s, when derogations were only valid until the development of the poorest states, but for a specified period of time.⁹⁶ The provisions for differential treatment are not numerous compared to previous agreements.⁹⁷ The Agreement instituted the World Trade Organization (WTO), establishing the existence of differential treatment, which is certainly proclaimed in the agreements, but for most agreements, it is only included in the

94. See Marrakesh Agreement Establishing the World Trade Organization, pmbl., Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement] (establishing a single institutional framework that encompasses the GATT).

95. See *generally id.* (demonstrating the elimination of discriminatory treatment in international trade relations).

96. See *generally id.* (recognizing the need for lesser developed countries to share in the growth of international trade).

97. See Incorporation of Special and Differential Treatment in Int'l Trade Agreements and the Implications for Caribbean Econ., The Econ. Comm'n for Latin Am. and the Caribbean, at 4–5, U.N. Doc. LC/CAR/G. 693 (2002) (explaining that Annex VI to the GATT (1964) provided the first time a legal framework was used to address developing countries' concerns over differentiation ideas like trade liberalization and economic integration).

preamble.⁹⁸ In several agreements, the science provisions are vague and limited in time, with developing countries having preferences only for the first five or ten years.⁹⁹ This is the case with the agreements on trade-related intellectual property rights, which give five years to developing countries and ten years to less developed countries to bring their legislation into compliance; or the case with the agreement on technical barriers to trade, which does not recognize differences between developed and developing countries, which will be analyzed in the second part of the thesis.

Development law is gradually being suppressed by international economic law.¹⁰⁰ Thus, development law is almost dead within international economic law. The Marrakesh Agreement is the mark of development law's weakening, even if it is difficult to predict what will happen when the deadlines conceded to developing countries expire.¹⁰¹ However, development law continues its evolution within international environmental law through the notion of sustainable development. This fusion is taking place thanks to the participation of developing countries in the formation of international environmental law. Paradoxically, at the beginning, the participation of developing countries in international agreements on nature protection was the result of pressure from the developed countries.¹⁰²

98. Marrakesh Agreement, *supra* note 94.

99. See General Agreement on Trade-Related Aspects of Intellectual Property art. 24, 65, Apr. 15, 1994, 1869 U.N.T.S. 299.

100. See Multilateral Agreements on Trade in Goods: Agreement on Technical Barriers to Trade, Apr. 15, 1994, 1868 U.N.T.S. 120.

101. See generally Mark Drumbl, *Poverty, Wealth, and Obligation in International Environmental Law*, 76 TUL. L. REV. 843, 949, 954–56 (2002) (explaining how developed countries have had trouble implementing environmental agreements and that their ability to comply is essential to the success of these agreements).

102. See Edith Brown Weiss, *The Evolution of International Environmental Law*, 54 JAPANESE Y. B. INTL. L. 1, 4 (2011).

III. INTERNATIONAL ENVIRONMENTAL LAW

International environmental law was initially pushed by developed countries.¹⁰³ It rapidly gained extension and legitimacy within international law.¹⁰⁴ The resistance of developing countries faded away in the 1970s and especially from the 1990s onwards, with the inclusion of the principles of development law in environmental agreements.¹⁰⁵ International environmental law has become a forum for the expansion of development law.

The principles of compensatory inequality, non-reciprocity, and a system of preferences are experiencing a paradoxical evolution. In international economic law, these principles are retreating in the face of the advance of neoliberal doctrines, of which the agreements concluded by the World Trade Organization are the most illustrative.¹⁰⁶ In international environmental law, they continue to advance, through the principle of sustainable development, especially within framework conventions, such as those on climate change, biological diversity, and human settlements, among others.

This process has two important moments. First, the genesis of environmental law and its promotion by developed countries. Second, the expansion of international environmental law and the legal construction of sustainable development.

A. International Environmental Law: Disordered Law and Its Promotion by Developed Countries

International environmental law was born in a particularly complex forum. This branch of law is the result of a disordered process that draws its origin from different sources, such as

103. *Id.* at 2-4.

104. *See generally id.* at 6-11 (explaining how in the decades following the Stockholm Conference the amount of environmental agreements proliferated).

105. *Id.* (explaining how following the Stockholm Conference in 1972, and especially after the Rio Conference in 1992, the needs of developing countries were increasingly addressed).

106. *See generally* Fletcher, *supra* note 80 (discussing how conservation policy has become infused with neoliberal economic philosophy).

norms of distinct values and the superimposition of rules on the same subjects, for which each State votes for or against a law, inspired by different logics. Moreover, this law is constructed outside of any coordination at the international level. Because of its complexity, it is difficult to participate in its control and implementation. This observation is particularly true for countries that are less technologically equipped, such as developing countries.

Moreover, I consider that international environmental law was imposed mainly by developed countries. In contrast to development law, which was imposed by developing countries, developing countries initially resisted environmental norms.

It is therefore necessary to expose this double reality. On the one hand, the disorder of international environmental law is a disorder that we will appreciate through the genesis of this branch of law. On the other hand, is the imposition of this same branch on developing countries by developed countries.

1. The Disordered Genesis of International Environmental Law

International environmental law is the result of the process of expansion of voluntary international law.¹⁰⁷ Originally, it was imposed by developed countries on developing countries, which were still reluctant or not very interested.¹⁰⁸ Even if there were already norms for the protection of nature, international environmental law really came into being at the end of the 1960s and beginning of the 1970s, but it is only since the 1980s that it has taken on a real global dimension, with instruments accepted by the majority of the international community.¹⁰⁹

107. See Weiss, *supra* note 102, at 12 (noting new developments in international environmental law, including the rise of non-legally binding instruments and private sector actors using voluntary codes of conduct and green standards).

108. *Id.* at 4.

109. See *id.* at 6–7 (discussing the Stockholm Conference in 1972 and the Rio Conference in 1992 in which developing countries, along with developed countries, were actively included in climate talks and the amount of international agreements increased).

Several factors have contributed to the formation and consolidation of environmental law, including the high rates of increase in the world's population as a result of improved health conditions, the development of medical sciences after World War II, and the massive use of environmental resources which has led to the destruction of many ecosystems throughout the world, but mainly in developed countries,¹¹⁰ the development of medical sciences after the Second World War; the massive use of environmental resources, which caused the destruction of many ecosystems around the world but mainly in developed countries; the first major accidents that had immediate effects, with the mass destruction of certain environments;¹¹¹ the arrival of man on the Moon when humanity was able to see the Earth as a fragile structure, from an external observation point;¹¹² impact simulation models, which brought a catastrophic vision of the future of humanity, sometimes announcing the depletion of certain biological and energy resources for the end of the century or for a not very distant future, among others.¹¹³

It is in this context that we see the emergence of theories that place limits on economic growth at all costs and advocate for the redefinition of development concepts.¹¹⁴ The theory of zero

110. See Michael McCally, *Environment and health: an overview*, 165 CAN. MED. ASS'N J. 533, 533–535 (2000); Hunter, *supra* note 7; see Weiss, *supra* note 102, at 1.

111. Such as Silent Spring, USA; in the chemical plants built around Minamata Bay, Japan, 1957; in Flixborough, Great Britain, 1974; in Seveso, Italy, 1976; in Bhopal, India, 1984; the oil spills, Torrey Canyon, England and France, 1967; Amoco-Cadiz, 1978; Ixtoc, Mexico, 1979, Tanio, 1980; Ekofisk, Norway, 1980, or accidents in land transport: Liévin France, in 1688, St-Amand-les-Eaux, France, 1973, Los Alfaques, Spain, 1978; nuclear accidents, Three Mile Island, USA, 1979, Chernobyl, USSR, 1986, to name a few. See e.g., RACHEL CARSON, *SILENT SPRING* (Houghton Mifflin, 1962).

112. See Marie-Angele Hermitte, *Le Droit et la Vision Biologique du Monde*, in *MAÎTRES ET PROTECTEURS DE LA NATURE* 85, 86 (A. Roger & F. Guéry eds., 1991).

113. See UN Report: *Nature's Dangerous Decline 'Unprecedented'; Species Extinction Rates 'Accelerating'*, U.N. (May 6, 2019), <https://www.un.org/sustainabledevelopment/blog/2019/05/nature-decline-unprecedented-report/> (highlighting the global rates of species extinctions occurring as a result of human activity).

114. See Rex Weyler, *Limits to Growth: 50 years later*, GREENPEACE (May 1, 2022) <https://www.greenpeace.org/international/story/53539/limits-to-growth-book-eccology-50->

growth, which implies less aggressive rates of development for nature, such as the one developed in the essay "*Limits to Growth*" sponsored by the Club of Rome—published in several languages and several countries just before the 1972 Stockholm Conference—had significant impacts on establishing the basis of international environmental law.¹¹⁵ But the theory of zero growth was opposed in Stockholm by theorists who, although in favor of respect for the environment, were opposed to zero growth.¹¹⁶ At that time, developing countries were still suspicious of this right because they believed it was yet another legal barrier to prevent their development.¹¹⁷ However, it was at this time that the category "ecodevelopment" was born and that international environmental law was constructed.¹¹⁸

The formation of international environmental law is neither linear nor organized. It is a disordered branch of law. Several factors contribute to this complexity: first, it is not possible to identify directly the level of constraint contained in the norms or their hierarchy. Second, the different levels of norms and its characteristics are produced by several sources, having different spheres of effectiveness and that have accumulated in the regulation of the same subject. Moreover, the logic of regulation, sometimes anthropocentric or biocentric, contributes to the formation of a right that is difficult to predetermine. Finally, there is no coordinating institution, but a plethora of institutions that regulate several international agreements in a

years/ (explaining the theories that advocate limiting economic growth to protect the environment).

115. See *id.*; Mathew Kahn, *What the controversial 1972 'Limits to Growth' report got right: Our choices today shape future conditions for life on Earth*, THE CONVERSATION (Jul. 12, 2022), <https://theconversation.com/what-the-controversial-1972-limits-to-growth-report-got-right-our-choices-today-shape-future-conditions-for-life-on-earth-184920>.

116. See Renzhong Ding, *Economic growth: the theoretical debate on resources, the environment and growth limits and the choices faced by human beings*, 4 CHINA POL. ECON. 2, 5–10 (May 12, 2021).

117. See Weiss, *supra* note 102, at 4.

118. See Douglas Weiner, *International Environmental Policy: Emergence and Dimensions*, by Lynton Keith Caldwell, 9 MD. J. OF INT'L L. 293, 294 (1985).

heterogeneous way. All this forms a law that is difficult to put into practice, especially for the least prepared countries.

First of all, it is important to note the irregularity of the formation of this law.¹¹⁹ Most binding norms and *soft norms* are intertwined. The evolution is irregular and takes place at both national and international levels, without a logical temporal succession.¹²⁰ This means that there is no phase in the history of environmental normative production in which non-binding environmental norms were produced and there is no phase that marks the beginning of the production of binding norms.¹²¹ Until today, the accumulation of *soft norms* and binding norms is one of the main characteristics of international environmental law.¹²² The norms of the different levels of constraint follow one another. Moreover, the level of constraint of the norms cannot generally be easily identified. Rather, it is the behavior of the contracting States that will determine the level of effectiveness and the constraint of each legal norm. This contributes to uncertainty and therefore creates legal uncertainty.

Then, we identify the production of either broad conventions or framework conventions, or specific agreements. From the beginning of the creation of environmental standards, these two models of conventions alternate.¹²³ Environmental protection standards can be found as early as the Middle Ages.¹²⁴ They concern the protection of forests, wildlife (to guarantee hunting),

119. See Oscar Schachter, *The Emergence of International Environmental Law*, 44 J. OF INT'L AFF. 457, 457-458 (1991).

120. See *id.* at 459, 492-93.

121. See generally Weiss, *supra* note 102, at 24.

122. See *id.* at 24.

123. *Id.* at 6-8.

124. See William Kovarik, *Middle Ages 5th-15th centuries*, ENV'L HIST., <https://environmentalhistory.org/ancient/middle-ages/> (last visited Oct. 28, 2023) (explaining that in the year 1150, a Sri Lankan King carved into a stone a decree ordering that no animal be killed in a certain radius of his city; in 1300, a forest code was introduced in France to order to regulate wood production for the Navy; in 1388, the English parliament passed an act forbidding the throwing of filth and garbage into ditches, rivers, and waters).

or waters.¹²⁵ The 1933 Convention on the Protection of Fauna and Flora in their Natural States is one of the first important documents¹²⁶ It was followed by the 1940 Convention on the Protection of Nature and Wildlife in the Western Hemisphere.¹²⁷ These are conventions with broad objectives.

On the other hand, the international conventions relating to the protection of nature that follow are more specific conventions, such as the 1946 International Convention on the Regulation of Whaling, and the Convention on the Establishment of the Inter-American Tuna Commission.¹²⁸ Then there are conventions in the broad sense, such as the 1949 Convention on Fishing in General and the 1950 Convention on the Protection of Birds.¹²⁹ In other words, international environmental law has been built on these two axes: narrow conventions and conventions in the broad sense, without regularity.

Since the 1970s, when international environmental law began to be identified, there has been an expansion in the formation of framework conventions, the most common examples being the Stockholm Convention, the Convention on Biological Diversity, and the Convention on Climate Change.¹³⁰ The framework conventions deal with a number of different topics that have a

125. *Id.*

126. *See Weiss, supra* note 102, at 3 n.5.

127. *Id.*

128. *Id.* at 3 n.6; *Inter-American Tropical Tuna Commission*, FOOD & AGRIC. ORG. UNITED NATIONS, <https://www.fao.org/fishery/en/organization/iattc> (last visited Nov. 10, 2023).

129. The International Convention for the Northwest Atlantic has since been replaced by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries. *See* International Convention for the Northwest Atlantic, Feb. 8, 1949, 157 U.N.T.S. 157; *see also* Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Oct. 24, 1978, 1135 U.N.T.S. 369; International Convention for the Protection of Birds, Oct. 18, 1950, 638 U.N.T.S. 186.

130. *See generally* Stockholm Convention on Persistent Organic Pollutants, May 22, 2001, 2256 U.N.T.S. 119 [hereinafter Stockholm Convention]; *see generally* Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 [hereinafter Convention of Biological Diversity]; *see generally* United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 [hereinafter Convention on Climate Change].

relationship with the central core, namely sustainable development.¹³¹ The objective of development becomes a common and ever-present element, especially in the more recent conventions, in the 1990s.¹³² These framework conventions are later consolidated by resolutions and other specific conventions.¹³³ Indeed, although the conventions are linked from an ecological point of view—climate change, seas, forests, biological diversity, endangered species—they are isolated from a legal point of view, which will be discussed further.

Second, the logical basis for legal education is not stabilized either. This branch of law is neither totally anthropocentric nor totally biocentric. One finds norms with different characteristics, which follow one another without regularity. The conventions consider the elements of nature either as economic resources or independently of their relations with man and protect nature for nature's sake. The aim of the treaties is therefore not always the same. They aim either at the conservation of nature as such, or at the conservation of nature as an economic resource or instrument, which will later lead to the concept of sustainable development. The first objective is illustrated by the 1933 Convention on the Preservation of Fauna and Flora in their Natural States, as well as by the 1973 Convention on International Trade in Endangered

131. See generally Stockholm Convention, *supra* note 130; Convention of Biological Diversity, *supra* note 130; Convention on Climate Change, *supra* note 130.

132. See generally Stockholm Convention, *supra* note 130; Convention of Biological Diversity, *supra* note 130; Convention on Climate Change, *supra* note 130.; see also United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Oct. 14, 1994, 1954 U.N.T.S. 3; see generally Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, Aug. 4, 1995, 2167 U.N.T.S. 3; see generally Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Sept. 10, 1998, 2244 U.N.T.S. 337.

133. See generally Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 2303 U.N.T.S. 162; Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, 3156 U.N.T.S. 79; Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208.

Species of Wild Flora and Fauna (CITES).¹³⁴ This will be called the biocentric approach. The Convention of 1933 provides:

Considering that the natural fauna and flora of certain parts of the world, and in particular of Africa, are in danger, in present conditions, of extinction or permanent injury;

Desiring to institute a **special** regime for the **preservation of fauna and flora**.¹³⁵

The CITES provides:

Recognizing that wild fauna and flora in their many **beautiful** and varied forms are an irreplaceable part of the natural systems of the earth which must be protected for this and the generations to come;

Conscious of the ever-growing value of wild fauna and flora **from aesthetic**, scientific, cultural, recreational and economic points of view;

Recognizing that peoples and States are and should be the best protectors of their own wild fauna and flora.¹³⁶

Two other examples illustrate conservation of nature as an economic resource or instrument: the Convention on the Protection of Birds Useful to Agriculture, and the 1989 Convention on the Prohibition of Fishing with Driftnets in the

134. Convention Relative to the Preservation of Fauna and Flora in their Natural State, pmbl., Nov. 8, 1933, 172 L.N.T.S. 241; Convention on International Trade in Endangered Species of Wild Fauna and Flora, pmbl., Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S.

135. Convention Relative to the Preservation of Fauna and Flora in their Natural State, *supra* note 134.

136. Convention on International Trade in Endangered Species of Wild Fauna and Flora, *supra* note 134.

South Pacific.¹³⁷ This is known as the Anthropocentric approach. The 1989 Convention on the Prohibition of Fishing with Large-Scale Driftnets in the South Pacific provides:

Recognizing the importance of marine living resources to
the peoples of the South Pacific region;

Deeply concerned for the damage now being done by the
yellowfin tuna fishery to the environment and economy of
the South Pacific region.”¹³⁸

The purpose of the treaties, in general, is rarely clear enough to reveal an anthropocentric or biocentric vision on its own. Certainly, when nature protection is used as an economic instrument or object, one can speak of an anthropocentric view, but the mere fact of having a nature protection convention for nature is not sufficient to identify a biocentric view. Some States may have passed a convention with an economic purpose, but the economic good was ancillary to the protection of a certain species.¹³⁹ Since it is the whole of the States that form a norm, it is difficult to know the reason for the participation of each State. Authors may, for example, want to protect the environment because it is considered a human right or to avoid cruel treatment of an animal to avoid suffering to humans, who would not support the act in itself. The texts on the protection of the whale clearly demonstrate the disputes between these two visions: on the one hand, States want to conserve this animal for its own sake, and on the other hand, States want to use it as a natural resource.¹⁴⁰

137. Convention for the Protection of Birds Useful to Agriculture, art. 2., Mar. 19, 1902, 102 B.S.P. 969; Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, pmbl., Nov. 24, 1989, 1899 U.N.T.S. 3.

138. Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, *supra* note 13.

139. See, e.g., *id.* (recognizing the importance of protecting marine life as both an environmental and economic concern).

140. See International Convention for the Regulation of Whaling, pmbl., Dec. 2, 1946, 161 U.M.T.S. 74.

The final texts are an example of the uncertainty that reigns as to what will inspire the content of an international agreement.

In this trajectory of the evolution of international environmental law, several interrelated topics are integrated. Over the past thirty years, for example, the promotion of respect for cultural diversity has gained ground through studies that have shown the links between the activities of indigenous peoples and the protection of nature.¹⁴¹ Cultural diversity is perhaps one of the most important foundations for maintaining biological diversity because of the level of anthropomorphization of much of the world's forests.¹⁴² It is now recognized how important it is to preserve these peoples and their cultures in order to protect the environment, yet man continues to destroy them through a process of homogenization of global cultures.¹⁴³ Beyond culture, which is considered essential to the protection of the environment, other important subjects appear, which at first would not be conceivable objects of this right, such as urbanization, land use, human settlements, noise pollution, and, in some countries, social relations¹⁴⁴ or urbanization. These subjects are not treated in accordance with each other and are integrated into the broad objectives that form this right.

Finally, there is no coordination between environmental agreements. There is no coordinating institution or even coordination of subjects at the State level.¹⁴⁵ States develop law

141. See Philippe Descola, *Diversité Biologique Et Diversité Culturelle*, 135 *Aménagement Et Nature* 25, 28 (1999).

142. See *id.* at 27 (explaining that humans are an essential element for the maintenance of most of the world's ecosystems. There is almost no forest without a high level of human influence, even the largest forests, such as the Amazonian forest or the Soviet taiga).

143. See *id.* at 27, 36.

144. See *id.* at 35.

145. See Natalia Escobar-Pemberthy & Maria Ivanova, *Implementation of Multilateral Environmental Agreements: Rationale and Design of the Environmental Conventions Index*, 12 *SUSTAINABILITY* 2020 1, 5 (2020) ("A common understanding of terminology simply does not exist, and key concepts for assessing the effectiveness of the measures taken and their impact on the state of the environment are missing ... in some cases, existing evidence shows that states do not carry out these changes and behave contrary to expectations.").

according to their needs and their political agreement with other States, and not according to the coherence of the norms established on the same subject.¹⁴⁶ For example, the United Nations Environment Programme (UNEP) is a collection of specific sub-programs, with no real coordination between the different conventions.¹⁴⁷ Moreover, this UN institution does not have sufficient resources to become an important global institution, on par with other large UN institutions such as UNDP, the Food and Agriculture Organization, the World Health Organization, or even certain non-governmental organizations such as the Wild Wildlife Fund or Greenpeace.¹⁴⁸ The UNEP structure is opaque, heavy, and complex, and it has received several criticisms from States and scholars.¹⁴⁹

All of this contributes to the lack of coherence of international law, and to the accumulation of distinct norms, without any determined hierarchy.¹⁵⁰ This situation is aggravated by the expansion of international environmental law and its increasing specialization, as well as by its increasing technicality. All of these elements are important because they contribute to the gap in participation in the law-making process, as well as in its

146. *See id.*

147. Maria Ivanova, *Can the Anchor Hold? Rethinking the United Nations Environment Programme for the 21st Century*, 7 YALE FORESTRY & ENV'L STUD. PUBL'N SERIES 17, 18 (2005).

148. If we consider the resources made available by the Global Environment Facility (GEF), these figures increase significantly to U.S. \$119 million for the projects of the year 1999/2000. *See generally* United Nations Environment Programme, *2001 Annual Evaluation Report*, at 36, 74–75, U.N. Doc. UNEP/GC.22/6/Add.1 (2001); *see generally* United Nations Development Programme, *Partnerships to fight poverty: UNDP annual report 2001*, at 1, 11 U.N. Doc. A238/2001 (2001) (“GEF-UNDP programme funding has amounted to \$1.2 billion in the last 10 years; and leveraged a further \$1.7 billion of funding from other sources.”).

149. Elina Raitanen, *Legal Weaknesses and Windows of Opportunity in Transnational Biodiversity Protection: As Seen Through the Lens of an Ecosystem Approach-Based Paradigm*, in THE EFFECTIVENESS OF ENVIRONMENTAL LAW 81, 89 (Sandrine Maljean-Dubois ed., 2017).

150. *See id.* at 203, 223 (highlighting that several “twilight” norms, such as precaution, polluter pays, common but differentiated responsibilities, equitable utilization of shared natural resources, intergenerational equity, and sustainable development are at the low end of the normative hierarchy in modern international environmental law).

implementation and control, between developed and developing countries. While the negative effect of the gap is increasing, there is also a positive effect, which is the increase in efficiency. The heterogeneity of international environmental law contributes to the increase in its effectiveness in environmental terms and to its growth. It is precisely this diversity and flexibility that gives international environmental law more chances to grow.

Thus, the evolution of international environmental law has been neither logical nor linear, with respect to the specificity of norms and biocentric and anthropocentric logics, and to the constraint. It has not moved from the national to the international or vice versa. It is a non-linear evolution. In any case, it is easy to see that international environmental law was created in developed countries and imposed on developing countries.

2. The Push for International Environmental Law by Nordic Countries

The rise of the environment as an important element of the national and international political scene occurred in the late 1960s and early 1970s.¹⁵¹ It was at this time that the Scandinavian countries and Germany created ministries of the environment.¹⁵² They were followed by the United States and England. It was only four years later, from 1972 onwards, that other European countries, including France, and certain developing countries, created their own.¹⁵³ From then on, we

151. See Melina Antonia Buns, *Making a model: the 1974 Nordic Environmental Protection Convention and Nordic attempts to form international environmental law*, 48 SCANDINAVIAN J. OF HIST. 93, 97 (2023).

152. See *id.* at 96; see also *The History of the Bavarian State Ministry of the Environment*, BAYERISCHES STAATSMINISTERIUM FÜR UMWELT AND VERBRAUCHERSCHUTZ, <https://www.stmuv.bayern.de/english/topics/history.htm#> (last visited Oct. 30, 2023).

153. See Ivano Alogna, *Prolegomena*, in ENVIRONMENTAL LAW OF FRANCE 2, 2 (Nicholas Robinson ed., 2021) (noting France's main national institution in 1971 was the Ministry of Nature and Environment Protection); see also Michaël Aklin & Johannes

observe a continuous development of the awareness of environmental problems, as well as a multiplication of standards, both at the internal and international levels.¹⁵⁴ The progression of the Green Party is an important factor in this evolution.¹⁵⁵ The pressure of non-governmental organizations has been essential in the expansion of environmental protection as a common value, although based on different elements, depending on the culture of each region.

The awareness begins in the Nordic and Anglo-Saxon countries, such as Sweden, Norway, Denmark, the Netherlands, the United States, England, and Germany. Several factors have contributed to the fact that environmental law has been received and developed in these countries, the main one being the relationship between man and nature, which is an inherent part of their culture.¹⁵⁶ Then, the other European countries and some developing countries started a process of construction of environmental values. The process followed the North to South trajectory. With the growth of the environmental movement, this relationship based on the export of values and norms has become bilateral, with the South being able to influence the North, but it is still not symmetrical¹⁵⁷.

Urpelainen, *The Global Spread of Environmental Ministries: Domestic-International Interactions*, 58 INT'L STUD. Q. 764, 770 (2014) (acknowledging that Great Britain established their first ministry in 1970, and Iran was one of the first developing countries to create their ministry in 1971. Since then, Kenya set up their ministry in 1974 then Venezuela in 1976.).

154. See Aklin & Urpelainen, *supra* note 153 at 764–65, 768.

155. See *id.* at 768–69 (emphasizing that environmental protection is integral to a well-functioning government and provides benefits both nationally and internationally).

156. See Thomas Hylland Eriksen, *The role of nature in the Nordic countries*, NORDICS.INFO (April 1, 2019), <https://nordics.info/show/artikel/preview-nature>.

157. Even though we find the participation of some developing countries in some international agreements for the protection of the environment, as the Convention of 1933 Relative to the Preservation of the Fauna and Flora in their Natural state, for example, where we find presently Africa, Egypt, and Anglo-Egyptian Sudan. But these countries were rather colonies with a certain autonomy or zones of very strong influence of developed countries, which cancels a possible affirmation of their important participation before. Moreover, at that time, international environmental law did not exist as a branch of law.

Although today developing countries accept this branch of the law, this was not well seen at the beginning of discussions on nature protection. The pressure for environmental limits on developing countries was seen as an instrument used by developed countries to block economic development; this attitude is reflected in the speeches of diplomats from developing countries, who were opposed to the environmental issue and defended the same right to destroy the environment that developed countries had used at the time of their economic development.¹⁵⁸ Of course, this position cannot be considered general in developing countries, but the most representative countries, such as Brazil, India, and China, have adopted it.¹⁵⁹

The Brazilian representative at the preparatory meeting for the Stockholm Conference, organized in Founex,¹⁶⁰ declared that his country was big enough to receive all the polluting industries of the planet.¹⁶¹ All these assertions were based on the existence of a right to development, which itself logically entailed a right to the destruction of natural resources.¹⁶²

Developing countries began to accept environmental law gradually, especially after the Stockholm Conference in 1972,

What existed was a small set of international agreements for the protection of nature or natural resources used by man, in isolation. See Amrita Jaiswal, *Global Environmental Politics and the North-South Divide*, 76 THE INDIAN J. OF POL. SCI. 816, 817–18 (2015) (depicting the North-South divide in dealing with global environmental concerns).

158. See *id.* (recognizing that developed nations have benefitted from the current economic arrangements and approach environmental concerns as separate to economic relations, while developing nations consider economics to be paramount when tackling environmental concerns).

159. See Clyde Sanger, *Environment and Development*, 28 INT'L J. 103, 104 (Winter 1972–73); S. Ravi Rajan, *A History of Environmental Justice in India*, 7 ENV'T JUST. 117, 117–18 (2014); Jianguo Liu & Jared Diamond, *China's Environment in a Globalizing World*, 435 NATURE 1179, 1181 (2005); see generally Michael W. Manulak, *Developing World Environmental Cooperation: The Founex Seminar and the Stockholm Conference*, in INTERNATIONAL ORGANIZATIONS AND ENVIRONMENTAL PROTECTION: CONSERVATION AND GLOBALIZATION IN THE TWENTIETH CENTURY 103, 105 (Wolfram Kaiser & Jan-Henrik Meyer eds., 2017).

160. Manulak, *supra* note 159, at 103.

161. Sachs, *supra* note 90; see also Sanger, *supra* note 159.

162. Sachs, *supra* note 90; see also Sanger, *supra* note 159, at 112–13.

when the right to development and environmental law were articulated and even united.¹⁶³ And it is from the position of developing countries that developed countries have given a more important space to the norms linked to development in environmental law.¹⁶⁴ Even if development law has not found a concrete form, environmental law has made much progress by carrying the concept of sustainable development.

It is only with the expansion of the environmentalist conscience, coming from the organized civil society, that developing countries began to be concerned with the protection of nature.¹⁶⁵ From the end of the 1970s and especially in the 1980s, the developing states, such as Brazil, Mexico, and India, began to experience strong internal pressure for the approval of more rigorous laws concerning the protection of nature.¹⁶⁶

The environmental movement thus moves from the outside to inwards at first, and then, as it grows; it develops among the populations of developing countries and no longer constitutes exclusively as a tool imposed from the outside. The consolidation of an internal legal order in developing countries is sometimes more rigorous than that of developed countries. The standards relating to air pollution in India, or the Brazilian rules of access to justice for civil society, have no equivalent in developed

163. Manulak, *supra* note 159, at 120.

164. Some countries were suspicious of international environmental law until the mid-1980s. See Janelle E. Kellman, *The Brazilian Legal Tradition and Environmental Protection: Friend or Foe*, 25 HASTING INT'L & COMPAR. L. REV. 145, 151 (2002); but see Magnus Franzén, *From Resistance to Cooperation: The Evolution of Brazilian Foreign Policy in the Area of Environment* 1, 24–25 (Fall 2011) (B.A. thesis, Stockholm University) (on file with Stockholm University) (highlighting Brazil as one of the countries suspicious of international environmental law until the mid-1980s); Antonio Teixeira de Barros, *Brazil's Discourse on the Environmental Arena, 1972–1992*, 39 CONTEXTO INTERNACIONAL 421, 428–29 (2017) (recounting the position of Brazilian Ministers of Foreign Affairs da Silveira and Guerreiro that economic development could not be “hamper[ed] or frustrate[d] [. . .] on ecological grounds.”).

165. See Paul F. Steinberg, *From Public Concern to Policy Effectiveness: Civic Conservation in Developing Countries*, 8 J. INT'L WILDLIFE L. & POL'Y 341, 344 (2005).

166. *Id.* at 349, 353, 360.

countries.¹⁶⁷ These standards are therefore no longer the result of external pressure, but rather the fruit of an environmental concern that has become specific to developing countries.

It is with the introduction of development law norms within environmental law that developing countries accepted environmental law and became important actors in the construction of this branch of international law. The international community is gradually taking into account the links between the two subjects and their inseparability: environment and development are two sides of the same issue. This last point will allow international environmental law to absorb the principles of development law, forming the principle of sustainable development, a fundamental principle of almost all post-Stockholm environmental agreements.

B. The Expansion of International Environmental Law through the Idea of Sustainable Development

It is from the weakening of the right to development within international economic law that the rules and principles of development begin to appear in multilateral environmental agreements, especially in the framework conventions of the 1990s, on climate, biological diversity, human settlements, and habitat.¹⁶⁸ However, links between nature protection and development can be found in international law as early as the 1930s.¹⁶⁹ The 1933 Convention on the Preservation of Fauna and

167. See Sunil Gulia et al., *Evolution of Air Pollution Management Policies and Related Research in India*, 6 ENV'T CHALLENGES 1, 2–4 (2022) (discussing the advent of air pollution legislation and regulation in India); GLOBAL LEGAL GROUP, *THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO: ENVIRONMENT & CLIMATE CHANGE LAW* 28 (15th ed. 2018) (highlighting the strict, joint, and several liability standards applied in Brazilian civil environmental litigation).

168. See Philippe Sands, *International Law in the Field of Sustainable Development*, 65 BRITISH Y.B. INT'L L. 303, 305 (1994) (discussing the various difficulties with specifying the concept of “sustainable development”).

169. See Weiss, *supra* note 102, at 1, 3.

Flora,¹⁷⁰ the 1946 International Convention for the Regulation of Whaling,¹⁷¹ and the 1949 Agreements for the Establishment of a General Fisheries Council for the Mediterranean,¹⁷² already contained references to development. The construction of sustainable development has been consolidated since the 1970s, and today it is still evolving.¹⁷³

The first major international conference on the subject was the Stockholm Conference in 1972.¹⁷⁴ The scientific basis of the concept of sustainable development, adopted at the Stockholm Conference, was established by several documents, including the work of the economist Barbara Ward and the biologist René Dubos. In Stockholm, a position was already emerging that demonstrated the complex dialectic existing between poverty and the destruction of the environment,¹⁷⁵ while denouncing the problems of excessive consumption. In short, the destruction of nature was located at both ends of the social pyramid.

The first formulations revolved around the idea of *ecodevelopment*. I. Sachs¹⁷⁶ recalls that this concept was born thanks to an expression of Maurice Strong during the preparatory meetings for the Stockholm Conference. It was a concept without content. The determination of content has evolved over the years thanks to several authors, such as Amartya Sen and Ignacy

170. See Convention Relative to the Preservation of Fauna and Flora in their Natural State, *supra* note 134, art. 3, ¶ 2.

171. See International Convention for the Regulation of Whaling, *supra* note 140, at art. 3, ¶ 6.

172. See Agreement for the Establishment of The General Fisheries Commission for the Mediterranean, pmbl., Sept. 24, 1949, 126 U.N.T.S. 237.

173. Sands, *supra* note 168, at 312-14, 379.

174. *Id.* at 307-09 (noting that the United Nations held a conference in 1949 on the conservation and use of resources, finding that there were no significant concrete repercussions, and that the Stockholm Conference is considered the more significant international conservation effort).

175. See Philippe Sands, *Greening International Law*, 1 IND. J. OF GLOB. LEGAL STUD. 293, 309-310 (1994).

176. Sachs, *supra* note 90.

Sachs.¹⁷⁷ But at the beginning, it was an expression that sought to define what was meant: a promotion of development that would preserve the environment. The concept had to change because of resistance from developed countries. But the concept of “sustainable development” is not fundamentally different from that of ecodevelopment.¹⁷⁸ Several important documents have been published, giving a more scientific basis to the concept. In 1980, World Wildlife Fund (WWF), UNEP, and International Union for Conservation of Nature (IUCN) published the *World Conservation Strategy*, which presented a new reflection on the concept of sustainable development.¹⁷⁹ This joint working method of UNEP and important non-governmental organizations was essential for the expansion of UNEP and for the consolidation of sustainable development as a key concept on the international agenda.¹⁸⁰

The Brundtland Report was the basis for the second major conference, that of Rio de Janeiro, in 1992.¹⁸¹ This document set the tone by advocating the necessary union between development and the environment.¹⁸² It did not, in fact, bring anything new to the state of the question, but it brought together the main theories that demonstrated the possibility of sustainable development and the consequences of its non-adoption. It thus contributed to the promotion of environmental protection and sustainable development within the United Nations, and above

177. See Christian Magnus De Marco & Orides Mezzaroba, *The Human Right to Sustainable Development: Historical and Conceptual Contours*, 14 VEREDAS DO DIREITO 323, 327, 329–30 (2017).

178. See Camelia-Cristina Dragomir, Eduard Ionescu & Stelian Pânzaru, *Economic Sustainable Development and Eco-Development*, 18 REV. GEN. MGMT. 58, 59, 61 (2013).

179. See INT’L UNION FOR CONSERVATION OF NATURE AND NAT. RES., ET AL., *WORLD CONSERVATION STRATEGY: LIVING RESOURCE CONSERVATION FOR SUSTAINABLE DEVELOPMENT* 17-18 (1980).

180. See R.D. Schwass, *World Conservation Strategy of the International Union for the Conservation of Nature and Natural Resources*, in *INTRODUCTION TO SUSTAINABLE DEVELOPMENT* 146, 147–48 (David V.J. Bell & Yuk-Kuen Annie Cheung eds., Encyclopedia of Life Support Sys. 2009).

181. See Backgrounder, U.N. Comm’n on Sustainable Dev., *Framing Sustainable Development: The Brundtland Report—20 Years On* (Apr. 2007).

182. *Id.*

all, within the agencies most closely linked to trade, such as the World Bank, which later created a division to deal specifically with the environment and considered the environment as an important element to be taken into account in the financing of development projects, thus modifying the previous policy.¹⁸³

The two United Nations Conferences on Environment and Development marked a turning point in this historical evolution.¹⁸⁴ Indeed, even the titles of the conferences show the evolution of the logic. In English, the Stockholm Conference was called the "United Nations Conference on the Human Environment," and in French, it was called "*Conférence des Nations Unies pour l'Environnement*."¹⁸⁵ In Rio de Janeiro, in 1992, the name showed the emphasis on the concept of sustainable development.¹⁸⁶ Finally, the Rio Conference was seen by its organizers, as Maurice Strong said, as a "decisive point in the search for a new international order".¹⁸⁷

The United Nations Environment Programme was created in the wake of the Stockholm Conference.¹⁸⁸ The UNEP's interference in development issues has been criticized several

183. See Philippe Sands, *Environmental Protection in the Twenty-First Century: Sustainable Development and International Law*, in ENVIRONMENTAL LAW, THE ECONOMY, AND SUSTAINABLE DEVELOPMENT 369, 371 (Richard L. Revesz, Philippe Sands & Richard B. Stewart eds., 2000) (outlining six areas of innovation in the 1992 U.N. Convention on Environment and Development: 1) risk assessment and decision-making mechanisms; 2) subsidiarity and federalism, the appropriate level for law-making and decision-making; 3) reform of international institutions; 4) determining the role of non-governmental actors; 5) integration between different branches of international law (especially trade and environment); and 6) strengthening the effectiveness of international environmental law).

184. *Id.* at 380–81.

185. See U.N. Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev.1 (1973); U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26/Rev.1 (1993) (indicating how the title of the conference evolved due to an increasing global awareness of the intersection between sustainable development and environmentalism) [hereinafter "UNCED"]

186. See UNCED, *supra* note 185.

187. Maurice Strong, *Preface* of I. SACHS, L'ÉCODEVELOPPEMENT, STRATEGIES POUR LE SIÈCLE XXI 9 (1997).

188. See G.A. Res. 2997 (XXVII), art. 1 (Dec. 15, 1972).

times by developed countries, especially by the United States.¹⁸⁹ After the Cocoyoc Conference, for example, the United States threatened to cut the UNEP’s resources if it continued to report on economic issues. Similarly, the European Community, after the four UNEP conferences, claimed that proposing development models was not part of its remit.¹⁹⁰

The following table illustrates the evolution of the concept of sustainable development through the successive texts of several international conventions and institutions:

Table 1: Evolution of Sustainable Development¹⁹¹

United Nations Conference on the Human Environment, Stockholm, 1972¹⁹²
Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.
World Commission on Environment and Development (Brundtland Report), 1987¹⁹³
Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

189. See Pamela S. Chasek, *U.S. Policy in the U.N. Environmental Arena: Powerful Laggard or Constructive Leader?*, 7 INT’L ENV’T AGREEMENTS 363, 374–75 (2007); B.J. Bramble & G. Porter, *Non-Governmental Organizations and the Making of U.S. International Environmental Policy*, in THE INTERNATIONAL POLITICS OF THE ENVIRONMENT 313, 323 (Andrew Hurrell & Benedict Kingsbury eds., 1992); see generally Ivanova, *supra* note 147, at 22.

190. Strong, *supra* note 187.

191. Dessislava Yougova, *Towards a Sustainable Europe by 2030 - Follow-up of the UN Sustainable Development Goals and the Paris Agreement on Climate*, LEGISLATIVE TRAIN SCHEDULE: EUR. PARLIAMENT (Nov. 20, 2019), <https://www.europarl.europa.eu/legislative-train/theme-new-boost-for-jobs-growth-and-investment/file-towards-a-sustainable-europe-by-2030>.

192. U.N. Conference on the Human Environment, *supra* note 185, at ch. 1, princ. 1.

193. World Comm’n on Env’t & Dev., *Our Common Future* [Brundtland Report], ¶ 1, 1987.

Objective of UNCED, defined by the United Nations Resolution 44/228, 44e session, December 1989¹⁹⁴
[The General Assembly] Conference should elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of increased national and international efforts to promote sustainable and environmentally sound development in all countries[.]
Caring for the earth A Strategy for sustainable living. IUCN/UNEP/WWF, 1991¹⁹⁵
[In this Strategy] sustainable development is defined as improving the living conditions of human communities while remaining within the carrying capacity of ecosystems.
<u>Principle 3 of the Rio Declaration, 1992¹⁹⁶</u>
The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
<u>Resolution H1 of the Helsinki Conference, 1993¹⁹⁷</u>
Sustainable management means the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality, and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems.

194. G.A. Res. 44/228, art. I, ¶ 3 (Dec. 22, 1989).

195. INT'L UNION FOR CONSERVATION OF NATURE, ET AL., CARING FOR THE EARTH: A STRATEGY FOR SUSTAINABLE LIVING 1, 10 (1991).

196. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, princ. 3, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

197. Forest Europe, *Resolution H1: General Guidelines for the Sustainable Management of Forests in Europe*, ¶ D, (June 16–17, 1993).

Article 1 of the Convention on Climate Change¹⁹⁸

“Adverse effects of climate change” means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience, or productivity of natural and managed ecosystems or on the *operation of socio-economic systems or on human health and welfare*.

The International Court of Justice has given life to the concept by recognizing the principle. In the *Gabčíkovo-Nagymaros* case, the concept of sustainable development was taken up several times and became one of the bases for the decision:

Throughout the ages, mankind has, for economic and other reasons, constantly interfered with nature. In the past, this was often done without consideration of the effects upon the environment. Owing to new scientific insights and to a growing awareness of the risks for mankind - for present and future generations - of pursuit of such interventions at an unconsidered and unabated pace, new norms and standards have been developed, set forth in a great number of instruments during the last two decades. Such new norms have to be taken into consideration, and such new standards given proper weight, not only when States contemplate new activities but also when continuing with activities begun in the past. *This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development.*¹⁹⁹

198. U.N. Framework Convention on Climate Change, art. 1, ¶ 1, May 9, 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

199. *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, 1997 I.C.J. 7, at ¶ 140 (Sept. 25).

New environmental conventions take up the principles of development law and implement them.²⁰⁰ Thus, sustainable development is not a specific principle, but a general principle, composed of several more specific principles and implicit rules. The Convention on Biological Diversity, Agenda 21, and the Habitat Convention, for example, recognize the importance of technology transfer, property rights over biological resources, and international cooperation, principles that are typical of development law.²⁰¹ The mechanisms of the 1970s, such as compensatory inequality, differential treatment, and nonreciprocity, as well as the principle of common but differentiated responsibility,²⁰² have been consolidated in recent treaties, since these ideas have been in all framework conventions since 1992. The Convention on Climate Change establishes a system of different carbon emission quotas, depending on the level of development. The justification is given by Article 3 of the Convention, which emphasizes the principles of equity and the common, but differentiated the responsibility of States in their contribution to the implementation of the Convention.²⁰³ It is on the basis of these principles that it establishes differentiated burdens for each State. The language of Article 3 provides:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of *equity* and in accordance with their *common but differentiated responsibilities and respective capabilities*. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

200. See generally UNFCCC, *supra* note 198; UNCED, *supra* note 185.

201. U.N. Convention on Biological Diversity, art. 1, June 5, 1992, 1992 U.S.T. LEXIS 188, 1760 U.N.T.S. 79; UNCED, *supra* note 185, ¶¶ 15.1, 33.15.

202. PHILIPPE CULLET, RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 209 (Fitzmaurice et al. eds., 2d ed. 2021) (enshrining the common responsibility of States to protect the environment, but differentiates the States according to their capacity to act based on different levels of development).

203. UNFCCC, *supra* note 198, art. 3, princ. 1–2.

2. The *specific needs* and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a *disproportionate or abnormal burden* under the Convention, should be given full consideration.²⁰⁴

The principle of non-reciprocity is implemented in the same way. Developing countries are not obliged to achieve the reductions required by the Kyoto Protocol.²⁰⁵ Even developed countries with more vulnerable economies, such as Portugal, have benefited from less demanding quotas.²⁰⁶ Non-reciprocity is then respected, depending on the unequal treatment between countries and their stage of development.

The creation of funds for global assistance is consolidated in international environmental law through the establishment of several funds, the main one being the Global Environment Facility.²⁰⁷ The stipulation of fixed minimum percentages allocated to aid is set by Agenda 21.²⁰⁸ Technology transfer is

204. *Id.* (emphasis added).

205. Kyoto Protocol to the UNFCCC, Dec. 10, 1997, 2303 U.N.T.S. 162, at art. X.

206. See Vivek Tulpule et al., *The Kyoto Protocol: An Economic Analysis Using GSTEM*, 20 THE ENERGY J. 257 (1998) (listing Greece and Portugal as developed (annex b) countries with the lowest level of quotas); but see Allister Doyle & Gerard Wynn, *Greece suspended from U.N. Kyoto carbon trading*, REUTERS, (April 22, 2008, 11:34 AM), <https://www.reuters.com/article/us-climate-kyoto/greece-suspended-from-u-n-kyoto-carbon-trading-idUKL2224279620080422/> ("Greece has been suspended from U.N. carbon trading in an unprecedented punishment for violating greenhouse gas reporting rules that underpin a fight against global warming . . .").

207. See *Overview*, located within *Funding*, GLOB. ENV'T FACILITY (2023), <https://www.thegef.org/who-we-are/funding> ("GEF funding is provided by participating donor countries and made available to developing countries and countries with economies in transition to meet the objectives of international environmental conventions and agreements.").

208. UNCED, *supra* note 185, at ¶ 18.42 ("It is important that a minimum percentage of funds for water resource development projects is allocated to research and development, particularly in externally funded projects.")

present in several conventions and protocols, in a concrete way, and the mode of transfer is fixed.²⁰⁹ Article 3 states:

The developed country Parties and other developed Parties included in Annex II shall provide *new and additional financial resources* to meet the agreed full costs incurred by 14 developing country Parties in complying with their obligations under Article 12, paragraph 1. They shall also provide such financial resources, including for the transfer of technology, needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by paragraph 1 of this Article and that are agreed between a developing country Party and the international entity or entities referred to in Article 11, in accordance with that Article. The implementation of these commitments shall take into account the need for adequacy and predictability in the flow of funds and the importance of appropriate burden sharing among the developed country Parties.

...

7. The *extent to which developing country Parties will effectively implement* their commitments under the Convention *will depend on the effective implementation by developed country Parties* of their commitments under the Convention related to *financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.*"²¹⁰

209. See e.g., U.N. Convention on Biological Diversity, *supra* note 201, art. 1, art 16 ¶¶ 1-3.

210. UNFCCC, *supra* note 198, at art. 4.

The Convention on Biological Diversity is less clear than the Convention on Climate Change and the Convention on Biological Diversity does not have the same level of adoption of development law standards.²¹¹ In any case, Article 16, section 2, also makes a contribution to technology transfer:

Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms **where mutually agreed**, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. **In the case of technology subject to patents and other intellectual property rights**, such access and transfer shall be provided **on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.**²¹²

The evolution and consolidation of development law within environmental rules and the limited role given to these same norms and principles in international economic law stem from the accumulation of two distinct logics in international law. Each logic has its own norms and principles: the norms of international economic law, of which the WTO norms are the most important, are the result of a process derived from a liberal perspective, favoring equal treatment between States, with few exceptions.²¹³ Environmental norms, especially the norms of the framework conventions, always contain important elements of development

211. See generally, U.N. Convention on Biological Diversity, *supra* note 201; UNFCCC, *supra* note 198.

212. U.N. Convention on Biological Diversity, *supra* note 201, art. 16, ¶ 2.

213. See WORLD TRADE ORGANIZATION, GLOBAL TRADE OUTLOOK AND STATISTICS – UPDATE: OCTOBER 2023 2. (“The World Trade Organization is the international body dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field for all its members.”).

law, inscribed in a social perspective, without it being known how the two can be articulated.²¹⁴

This is evidence that international environmental law has in some cases been the ground on which development law has been perpetuated. This law is not dead; it is trying to express itself through international environmental law, which is based on the concept of sustainable development. We are therefore faced with two logics that are evolving in parallel in opposite directions: a liberal logic, which prevails in international economic law, where development principles are almost non-existent, and an environmental logic, which is favourable to these environmental principles, and is defended above all by developing countries and certain Nordic countries, such as the Scandinavian countries and the Netherlands. This conflict of logic demonstrates both the shifting focus of international law and its inconsistencies.

IV. THE ENVIRONMENT—ECONOMIC GROWTH BINOMIAL

The conceptual variation of the term “development” in international law is quite remarkable. The use of certain content is directly related to the logic according to which the institution works. In a liberal logic, development is rather linked to the volume of trade and the growth of gross domestic product. The more trade there is or the more the gross national product increases, the more development there is. From a more political and social logic, development is measured by the expansion of freedoms, such as access to health, education, environmental protection, and democracy. This vision makes it possible for human rights defenders to appropriate the discourse of development. The construction of legal norms and international agreements on human rights are marked by the need to promote development as a solution to poverty and as a guarantee of equality and freedom. The environment itself is included in these agreements as a human right, especially in the most anthropocentric cultures. Thus, a union is formed between the concepts of human rights (finality), the concepts of environmental

214. See Hunter, *supra* note 7, at 1, 3.

rights (conditionality), and economic development (economic growth), which is at the origin of the concept of development. The more freedom there is for individuals, the more development there is. This is the basis of international, economic, and environmental law. The more contradictions there are between these branches of law, the more incoherent the law becomes.

A. Sen defines development as a process of expanding the real freedoms that people have. This understanding will be adopted in this thesis. Freedoms include the right to work, to opinion, to food, to education, to health, to vote, to information, and to any other possible freedom.²¹⁵ The extension of one freedom contributes to the strengthening of the others.²¹⁶ The extension of social rights (health and education) contributes to the extension of economic opportunities.²¹⁷ The expansion of economic opportunities (participation in commerce and production) contributes to the increase of public resources necessary to satisfy social needs.²¹⁸ The expansion of political freedoms (opinion and voting) contributes to the promotion of all other opportunities.²¹⁹ This is the concept adopted in this thesis.

Democracy is the key element of development. The process of increasing democratic bodies, through which most countries in the world are going through, is the best instrument likely to ensure development. But the implementation of the increase of democratic bodies is also inserted in the process of globalization. The decrease of the right to choose delays development. The extension of commercial oligopolies by transnational companies, the reduction of cultural diversity, and the control of politics by economics, which is more centralized, gives the illusion of a democracy, which is, in fact, false since it masks the limitation of freedoms that constitutes its postulate.

215. AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 116 (1999).

216. *Id.* at 30.

217. *Id.* at xii.

218. *Id.* at 11.

219. *Id.* at 11, 38 (discussing five types of freedoms and their interrelatedness: 1) political freedoms; 2) economic opportunities; 3) social opportunities; 4) guarantees of transparency, and; 5) public security).

For all these reasons, the key to development is about the *real* extension of freedoms and democracy. Indeed, no independent country with a democratic form of government and some freedom of the press has ever gone through a period of catastrophic hunger crises (famine).²²⁰ The largest famine in history, occurred in China (1958–1961) in which 30 million people died, under a non-democratic regime, while in neighboring and more democratic India, there has been no famine problem since independence in 1947. The same is true for other countries in the world.²²¹

This concept of development is much more appropriate than a concept that is restricted to commercial expansion. The expansion of freedom is much better than the imposition of rigid rules. Take, for example, China's and India's approach. China has chosen a birth control system based primarily on coercion.²²² Since 1979, families with more than one child have been penalized.²²³ In India, in the state of Kerala, an intensive family education program has also been implemented, based mainly on literacy and education for women.²²⁴ The birth rate in China in 1979 was 2.8 children per family.²²⁵ Kerala's birth rate in 1979 was also 3.0, higher than China's.²²⁶ In 1991, the birth rate in Kerala was 1.8 children per family, while in China it was 2.0, thus higher.²²⁷ This illustrates that the extension of freedoms—in this case education and the right to choose—has proven more effective than the use of force. This scenario is not based on a difference between countries but on a difference between a country—China—and a region—the Indian state of Kerala. Other Indian states, such as Punjab and Haryana, which have not made the same investments

220. *Id.* at 152; see also AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 6–7 (1st ed. 1981).

221. SEN, *supra* note 215, at 43.

222. See *id.* at 220–21.

223. *Id.* at 221–22.

224. *Id.* at 222. (describing Kerala and Tamil Nadu's cooperative family planning and education initiatives versus the coercive methods deployed in China).

225. *Id.*

226. SEN, *supra* note 215, at 222.

227. *Id.*

in women's education, have not had as significant of a reduction in their birth rates.²²⁸ Moreover, these states have a higher Gross National Product (GNP) per capita than Kerala,²²⁹ showing that GNP per capita is not a reliable indicator for development.²³⁰

Nor should the assessment of freedoms be limited by any cultural view that establishes its own development values as universal, as is done today for most development indexes. Cultural diversity must be taken into account when measuring the development of countries, although this makes it more difficult to compare different stages of development. One of the most restrictive, but widely used, methods is GNP per capita. It is ineffective in measuring development. On the contrary, its use can be adopted to satisfy the interests of the dominant elites, to hide social inequality, a common feature of most developing countries.²³¹

There are several signs to recognize characteristics of a democratic political regime: freedom of the press, independence of the media, expansion of elementary education and schooling (including women's schooling), strengthening of the country's economic and political independence, access to information, and other freedoms.²³² In fact, it is a dialectical relationship, since the consolidation of these freedoms increases the level of democracy, which in turn is produced by the expansion of these same freedoms.²³³

Environmental protection has become a fundamental element of this development process. It has been recognized that any form of unsustainable development contributes to the reduction of the freedoms for future generations, and is therefore naturally

228. *Id.* at 218.

229. *Id.*

230. *Id.* at 3, 226.

231. See Tim Hyde, *What are the GDP data hiding? Moving toward a more nuanced accounting of economic well-being*, AM. ECON. ASSOC. (Sep. 16, 2016) (explaining that GDP data makes the world look much more unequal); Adam Hayes, *Gini index Explained and Gini Co-efficients Around the World*, INVESTOPEDIA (May 27, 2023) (explaining that the Gini index is an indicator that measures economic equality).

232. SEN, *supra* note 215, at 281.

233. *Id.* at 287–88.

opposed to the concept of development itself, which provides for the expansion of these freedoms. According to this view, there can be no development that is unsustainable. The Convention on Biological Diversity, Agenda 21, the Convention on Climate Change, the Habitat Convention, the Convention on Social Development as well as the other major framework conventions are based on this conception that no form of unsustainable growth can be considered as development.²³⁴

Thus, measuring development can be done in many ways, according to different criteria. The adoption of one of these criteria by an international actor demonstrates what it values most. If it takes gross national product or gross national product per capita as an indicator, like the International Monetary Fund, it values the economy, and not necessarily education, life expectancy, or the environment, because these indices are not directly proportional to these other elements. The volume of trade is also frequently used as an index of development: this is the criterion used, for example, by the World Trade Organization.²³⁵ Of course, there may be a relationship between the two, but it is not always real, nor directly proportional. The United Nations Development Program uses a more complex index and explains, "Human poverty is not just a matter of income: it is a denial of choices and opportunities for living a tolerable life."²³⁶

234. See e.g., Secretariat of the Convention on Biological Diversity, *Sustaining life on Earth: How the Convention on Biological Diversity promotes nature and human well-being* (2000); UNCED, *supra* note 185, at ¶ 1.4; *United Nations Framework Convention on Climate Change (UNFCCC)*, UNITED NATIONS: DEPT. OF ECON. & SOCIAL AFFS. (last accessed Nov. 15, 2023) (discussing the implementation of sustainable development goals under the UNFCCC), <https://sdgs.un.org/un-system-sdg-implementation/united-nations-framework-convention-climate-change-unfccc-34588>; *Habitat III*, U.N. HABITAT (last visited Nov. 15, 2023), <https://unhabitat.org/habitat-iii>; *Conferences: Social Development*, UNITED NATIONS (last visited Nov. 15, 2023), <https://www.un.org/en/conferences/social-development>.

235. WORLD TRADE ORGANIZATION, *supra* note 213, at 3, 11.

236. UNITED NATIONS DEV. PROGRAMME, *HUMAN DEVELOPMENT REPORT 1997* 1 (1997).

We therefore return to the notion of the expansion of freedoms, proposed by A. Sen.²³⁷ The UNDP uses a criteria of a mixture of information, including formal education, life expectancy, and also gross domestic product per capita.²³⁸ From this perspective, although human poverty is far from being eradicated, it has decreased significantly in the last fifty years.²³⁹ In the span of less than a generation, in developing countries, infant mortality has been reduced by more than half, the rate of malnutrition has fallen by almost a third, the proportion of children without access to elementary school has fallen from more than half to less than a quarter, and the number of families living in rural areas without access to drinking water has fallen from nine-tenths to about a quarter.²⁴⁰ Thus, if we take into consideration the human development index, proposed by the UNDP, the world has improved today in all these aspects compared to the previous thirty years.

However, there are other important elements that are not captured in the UNDP Human Development Index, which helps explain why major development programs do not improve them. Among the most striking elements are material living conditions, social cohesion, culture, and most importantly, the environment.²⁴¹ These elements are not taken into account by the main international organizations in the construction of their development indexes.²⁴² Contrary to the UNDP Human Development Index, these indicators are declining significantly.

Material and psychological living conditions can be measured against the deterioration of living conditions in rural areas, but also in the suburbs of large cities throughout the world. For

237. See SEN, *supra* note 215, at xii.

238. *Id.* (listing the indicators in three main groups— health, education, and standard of living— by measuring things like life expectancy, literacy, and access to sanitation and drinking water).

239. *Id.*

240. See, e.g., *id.*

241. CHRISTIAN COMELIAU, *THE IMPASSE OF MODERNITY: DEBATING THE FUTURE OF THE GLOBAL MARKET ECONOMY* 13 (Patrick Camiller, trans., Zed Books Ltd. 2002 (2000)).

242. *Id.* at 15.

example, Paris may not have the 300 favelas²⁴³—working-class neighborhoods—of São Paulo, but the Parisian suburbs are much more violent than they were thirty years ago, while São Paulo has far fewer favelas and less violence during the same time. It is the lack of choices for a decent life, as Christian Comelieu explains,²⁴⁴ manifested above all by the multiplication of begging in the most developed cities of the world, that characterizes the regression of this element. Inequalities are growing. Despite the progress made, with the decrease in North-South inequalities, revealed by various indicators, there are still gaps that are widening: between sub-Saharan Africa and the rest of the world, between the poor and the rich in the United States, and between the urban middle classes and the rural majority in India or China. The figures quoted by the UNDP and other sources are clear: the smallest part of the world's population concentrates an increasingly large fraction of the world's income and resources.²⁴⁵

Secondly, social cohesion is measured by the relationships between people, such as those within a family, whether close or extended; between proximity groups and social classes, between young and old; the relationship between town and country; and relationships with churches or associations. It is not only the material conditions of life, marked by the lack of security, but also the viability of societies and their organization that are at stake.

But just now, when societies are becoming richer and more powerful, but also more unequal, there is talk of the inevitable drying up of public resources. In a move that is sometimes strangely muddled up with notions of decentralization, or even democracy, public authorities are denied the right to raise the necessary resources through personal and corporate taxation, and their responsibility for welfare protection looks set to be transferred to

243. Leila da Costa Ferreira, *A busca de alternativas de sustentabilidade no poder local*, in INCERTEZAS DE SUSTENTABILIDADE NA GLOBALIZAÇÃO 140 (Leila da Costa Ferreira & Eduardo J. Viola, eds. 1996).

244. See COMELIEU, *supra* note 241, at 14.

245. *Id.* at 15.

individuals (now supposed to be capable of protecting themselves) and private organizations.²⁴⁶

The lack of social cohesion is marked by the deterioration of the collective value system, the loss of commonly accepted points of reference, the growth of the feeling of insecurity, and the isolation considered more and more as a way of life by the majority.²⁴⁷ This of course has measurable consequences; one only has to look at the growth of heavy drug use, the proliferation of sects, and the ever-increasing number of teenage suicides.²⁴⁸

. The loss of cultural diversity is another significant issue. It encompasses the disappearance of languages and customs, as well as the assimilation of indigenous peoples into dominant cultures. This phenomenon extends further to the assimilation of peripheral cultures into central cultural values, alongside the global dominance of English as the unique global language. For example, on average, during this century, one culture per year has disappeared²⁴⁹ in the Amazon region alone. Added to this are genocides and ethnic cleansing.²⁵⁰

Finally, the environment is affected by all of the above as well, and the environment has been affected by countless old and recent environmental disasters. The oldest accidents of Bhopal, Exxon Valdez, and Chernobyl are still claiming victims, both in the natural and human environment.²⁵¹ More recent accidents

246. *Id.* at 16.

247. *Id.*

248. *Id.* at 19.

249. See Darrell Posey, *Intellectual Property Rights: And Just Compensation for Indigenous Knowledge*, 6 ANTHROPOLOGY TODAY 13 (1990).

250. Asako Okai, *Supporting refugees through development solutions*, UNDP (Dec. 13, 2019), <https://www.undp.org/blog/supporting-refugees-through-development-solutions> (noting that in 2019, there was a record high number of forced displacement of over seventy million people, including twenty-five million refugees).

251. See Hannah Ellis-Petersen, *'Bhopal's tragedy has not stopped': the urban disaster still claiming lives 35 years on*, GUARDIAN (Dec. 8, 2019), <https://www.theguardian.com/cities/2019/dec/08/bhopals-tragedy-has-not-stopped-the-urban-disaster-still-claiming-lives-35-years-on>; Andrew Hartsig & Chris Robbins, *Exxon*

such as the Eriba oil spill in 2000 and the collapse of the world's largest oil rig in Brazil in 2001 are not included in the elements of sustainable development programs or in the development indexes, although they are of extreme importance. The expansion of forest destruction, biodiversity loss, and ecosystem destruction has declined rapidly, but these degradations are still ongoing, and the volume destroyed is increasing.²⁵² This loss of biological diversity is permanent.²⁵³

The index for measuring sustainable development should be based on the expansion of freedoms. For this reason, we argue that the human development index, used by the United Nations Development Program, should add considerations on the four elements defined above: material living conditions, social cohesion, culture, and environmental protection. In several countries around the world, such as Brazil, the distribution of public resources for public policies uses variations of the HDI (education, health) to highlight one or more aspects of development. However, it is difficult to identify a concept that can rank cities or states according to cultural losses or social cohesion, for example. In this case, it's a challenge to be faced.

This conceptual evolution is present in every international convention on human rights and especially on international environmental law. Examples are the Beijing Convention on Women and the Cairo Convention on Human Settlements, which clearly demonstrate the inclusion of broader concepts of development, whereas in the legal norms of international economic law, such as those set by the WTO, the concept of

Valdez: *29 Years Later*, OCEAN CONSERVANCY (Mar. 22, 2018), <https://oceanconservancy.org/blog/2018/03/22/exxon-valdez-29-years-later/>; see also Lydia B. Zablotska, *30 years After the Chernobyl Nuclear Accident: Time for Reflection and Re-evaluation of Current Disaster Preparedness Plans*, 93 J. URBAN HEALTH 407 (Apr. 29, 2016) (describing how the Chernobyl Nuclear Accident caused long-term health risks such as cancer to some impacted by the disaster).

252. *Threats: Deforestation and Forest Degradation*, WORLD WILDLIFE FUND, <https://www.worldwildlife.org/threats/deforestation-and-forest-degradation> (last visited Nov. 1, 2023).

253. U.S. NAT'L RSCH. COUNCIL: PANEL OF THE BD. ON SCI. & TECH. FOR INT'L DEV., *CONSERVING BIODIVERSITY: A RESEARCH AGENDA FOR DEVELOPMENT AGENCIES* 1 (1992).

development seems to have stagnated, limited to a concept reduced to the expansion of trade.²⁵⁴

V. CONCLUSION

The construction of international environmental law is non-linear. There is no movement from the international to the national or vice versa. Anthropocentric and biocentric visions follow one another without logical sequence, as do more or less binding agreements. Even though, following this unsystematic evolution, international environmental law has evolved significantly. Nevertheless, it is a law that is difficult to predict and difficult to interpret.

Global relations have not always demonstrated agreement on development and environmental law. Developing countries were initially opposed to the introduction of rules for the protection of nature, but later agreed with this logic. Today there is a common evolution of this law between the two groups of countries. This participation of developing countries is linked to the absorption of the development discourse by international environmental law. The construction of a concept of sustainable development has given rise to the evolution of development law, despite the fact that this law has been considerably annihilated within international economic law, where it was born.

254. Compare Praew Grittayaphong, *Beyond GDP: Three Other Ways to Measure Economic Health*, Fed. Rsrv. Bank of St. Louis (April 19, 2023), <https://www.stlouisfed.org/open-vault/2023/apr/three-other-ways-to-measure-economic-health-beyond-gdp>; with WORLD TRADE ORGANIZATION, *supra* note 213 (demonstrating how the World Trade Organization measures trade volume growth and GDP growth).

