

Book Reviews

The Principle of Sustainability: Transforming Law and Governance

Klaus Bosselmann

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Hermann Backer

1 Which Sustainability?

To appreciate the subject of *The Principle of Sustainability* by Klaus Bosselmann¹ one should firstly be aware of the blur surrounding the concept of *sustainable development*. This is the result of the long debate on the concept's actual legal and political substance which has taken place before and after the Rio Declaration of 1992².

Many would agree that a central component in any definition of the concept is the environment and a need to limit the impact of human activities on it. Sustainable development would thus involve some kind of controlled development, even economic growth, which does not endanger, or permanently harm, the environment.

This view, however, is far from being accepted by all. Some seem to claim that the word *sustainability* in contexts like sustainable development should instead simply be read as a synonym of words like “stability” and “continuity”³. Sustainable development should according to this viewpoint thus be simply read as *uninterrupted* development.

1 University of Auckland Professor of Law.

2 UN, “Annex I: Rio Declaration on Environment and Development” in “Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992)”, (1992). A/CONF.151/26 (Vol. I).

3 Different uses of the word can be illustrated with the previous EU treaty valid until 1st December 2009 (Treaty of Nice) in which the word “sustainable” occurs six times, mainly in phrases like “sustainable balance of payments” (Art 4.), or “sustainable development of economic activities” (Art. 2) which could be interpreted simply as non-interrupted economic development. The presently valid Treaty of Lisbon includes wordings with clearer link to environment when mentioning sustainable development.

Given this kind of divergence in the semantic space of sustainability one is hardly surprised by the content of the officially adopted phrases in international documents involving the concept sustainable development. These commonly reiterate that social, economic and environmental issues are somehow the key elements of this concept, and claim that they should be balanced – but leave commonly most details how they interrelate in mid-air.

As a contribution to these discussions *The Principle of Sustainability* outlines ecological sustainability as the core concept to underlie various secondary composites, including sustainable development. The book further attempts to link this core concept of sustainability to ethics, justice, human rights, state sovereignty and finally outline a path to some elements of an ecologically sustainable global governance and international law.

The central claim of the book is simple – the limits⁴ that ecosystems place on socioeconomic development has always been the core of sustainable development. For Bosselmann the alternative interpretation, that economic growth should be on equal footing with environment when balancing environmental exploitation and protection, is a misconception about sustainable development. The interpretation of sustainability as a requirement to maintain (or achieve) the ecological integrity of our global ecosystem, in which our social and economic systems are embedded, is according to him actually the only way to give the concept of sustainable development any meaning at all.

2 Applying Sustainability – Laws and Obligations?

In his quest for the essence and history of his interpretation of sustainability the author goes through a number of historic European examples of theory and praxis. 17th century forestry management and laws in Germany (based on *Nachhaltigkeit*), France (based on *bon usage de la nature*) and in England, as well as the English Commons and German Allmenden systems

⁴ Cf. figures like the global +2°C limit for climate change included in e.g. the Copenhagen Accord of 2009 (p. 4 in UNFCCC. "Report of the Conference of the Parties on its fifteenth session, held in Copenhagen from 7 to 19 December 2009-Decisions adopted by the Conference of the Parties". (2009) available from <http://unfccc.int>.)

of land ownership⁵ are among provided examples where the essence of the sustainability concept has been applied historically. In addition to other historic and more recent examples around the world Bosselmann draws also from the Gabcikovo-Nagymaros case (Hungary/Slovakia)⁶ and the separate opinion of Judge Weeramantry⁷.

As mentioned the legal nature of sustainable development and sustainability is under continuing debate. These concepts have in international legal adjudication so far been touched upon only in *obiter dicta* terms, never as a *ratio decidendi*⁸, and most states have since 17th century drifted quite far from the kinds of historic practices cited in the book.

Bosselmann points out that the disagreement on their legal nature is not surprising given the lack of substantial content in many definitions of sustainable development. In contrast, he makes the case that his concept of sustainability has full potential of a strong legal principle based on its moral foundation (respect for ecological integrity), inherent sense of direction (ensuring ecological integrity) and interpreting the statements in various international agreements and declarations, as well as national laws, related to sustainable development.

Underlying the new kind of, ecological, justice proposed by Bosselmann to actually apply his concept of sustainability are the moralities of the Brundtland report⁹, namely 1) concern for the poor (intragenerational equity) and 2) concern for the future (intergenerational equity), but supplemented by a third point 3) concern for the non-human natural world (interspecies justice).

The book further highlights the potential, and often silenced, tension between some aspects of human rights and the environment. According to

5 Allowing only community controlled, and restricted, property use.

6 ICJ, "Gabcikovo-Nagymaros project (Hungary/Slovakia). Judgement of 25 September 1997" (1997) I.C.J. Reports.

7 C. Weeramantry, "Separate opinion of Vice-President Weeramantry (in ICJ 1997 The Gabcikovo-Nagymaros Project)" (1997) I.C.J. Reports.

8 Cf. the Gabcikovo-Nagymaros judgement *supra*.

9 World Commission on Environment and Development, "Our Common Future, Report of the World Commission on Environment and Development" (1987) Published as Annex to UN General Assembly document A/42/427, Development and International Co-operation: Environment August 2, 1987.

the author the focus on the concept of rights is a reason why liberal theories are facing problems with environmental issues. Solving environmental problems requires not only limiting certain human rights (e.g. property rights), but also taking ecological responsibilities and obligations. But he argues such limits make sense also from a more anthropocentric viewpoint. In a world with limited resources human rights need to respect ecological boundaries to be able to deliver what they were conceived for.

3 Sustainable States and the International Community?

The Principle of Sustainability recognizes the potential of states as guardians of a global environment, but simultaneously points at the principle of state sovereignty as one of the major obstacles in the required shift to more sustainable practices. According to the book the global nature of recent environmental issues, like climate change, present a radically new type of challenge to state sovereignty, and to the current approaches. Looking at existing international environmental law, which admittedly appears often more geared towards protecting property rights of states vis-à-vis the environment – rather than on protecting the environment *per se*, one is inclined to accept the existence of a potential problem.

Bosselmann sees the lack of an overarching agreement on fundamental rights and obligations of states in relation to the global environment, in line with international labour, trade and human rights law a major failing of the present system of international law. He points out that even if a number of principles signaling “commonality of interests”¹⁰ exist in international environmental law none of them amount to a general duty not to harm the environment comparable to the principle of *erga omnes* in human rights.

In order to transform states to a positive force in implementing the principle of sustainability, grounded on such a hypothetical imperative to ensure the ecological integrity of the global ecosystem, Bosselmann (like, e.g., Peter Sand¹¹) envision states as Environmental Trustees of their allotted share of

10 “Interest of all mankind”, “common concern of humanity”, “common heritage of mankind” and so forth.

11 P. H. Sand, “Sovereignty Bounded: Public Trusteeship for Common Pool Resources?” (2004) *Global Environmental Politics* 4:1, 47–71.

the global environment. As the outcome of the 2009 UNFCCC meeting in Copenhagen illustrate the international community is still to reach a consensus on overarching obligations to protect the global environment, as envisioned by Bosselmann.

Professor Martti Koskenniemi recently mentioned that he does not favour policy proposals issued from the academia. For him the underlying ideas, critique and reflection, commonly forgotten after the proposal has been tabled, are often more valuable than the proposal itself¹². *The Principle of Sustainability*, nevertheless, promotes a specific policy proposal as a step towards a global governance system compatible with the outlined principle of sustainability. This is the Earth Charter¹³, initially developed as a civil society response¹⁴ to the Rio Summit in 1992 and later promoted by various international meetings, albeit never at the intergovernmental level.

4 Final Remarks

Whether one agrees with all of the arguments in *The Principle of Sustainability* likely depends on the worldviews of the reader. The main strength of the book lies in its integrative grip which should be interesting to many readers perplexed, or exhausted, by the complexities of the sustainable development debate. A plethora of concepts related to international environmental law are put in one specific perspective and consequently sustainable development is given a clear meaning. From a purely educational experience this in itself is reason enough to read the book.

12 L. Dingle and D. Bates, "Conversations with Professor Martti Koskenniemi. Second Interview: 2nd August 2009" (2009) Eminent Scholars Archive <http://www.squire.law.cam.ac.uk>.

13 <http://www.earthcharterinaction.org/content/>.

14 But it should be noted that one chief architect behind this paper was the Secretary General of the 1992 Rio Earth Summit, Maurice Strong.