



THE PRECAUTIONARY PRINCIPLE – KEY ELEMENT OF SUSTAINABLE DEVELOPMENT

Charlotte ENE

Law Department, Bucharest University of Economic Studies, Romania, E-mail: enecharlotte@gmail.com

Abstract Sustainable development represents a very complex legal concept, being described as an “umbrella principle, drawing together a series of legal and policy principles” (Ellis, 2008), such as precautionary principle, intergenerational equity and intragenerational equity, polluter pays principle etc. (Marong, 2003). This approach to the concept stresses their procedural dimension consisting in guidance on decision-making processes, “implying a legitimate expectation ... that States and other actors should conduct their affairs in a manner consistent with the pursuit of economic development, social development and environmental protection as equal objectives.” (Marong, 2003) Hence, sustainable development as an integrative policy is based on the precautionary principle most of all when “there are threats of serious or irreversible damage, and lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.” The common denominator of sustainable development and precautionary principle is their goal consists in preventing the degradation of the environment, the irreversible damages, as we will examine in this paper.

Key words:
International law,
precautionary principle,
sustainable development,
intergenerational equity

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1. Introduction

During the eighties, the international legal community has developed the concept of sustainable development in order to “provides a framework for the integration of environment policies and development strategies” (World Commission on Environment and Development, 1987) In other words, the Brundtland Commission emphasized that the economic growth could not be achieved without taking in consideration the environmental concerns.

In recent times, another concept has been defined, the precautionary principle, a “principle that requires public decision makers to take scientific uncertainty seriously in the pursuit of the regulatory goals of environmental and public health protection” (Fisher and Harding, 2006).

Therefore, sustainable development as an international policy relies on precautionary principle, which it used to anticipate or/and minimize potentially serious or irreversible risks for development (Som *et al.*, 2009).

In this paper, we stress that there is a very strong connection between sustainable development and the precautionary principle, having the same goal: to prevent irreversible damage of the nature, caused by the human action, as the academics argued (Ellis, 2009). We will describe the concept of sustainable development and precautionary principle, underlying

the link between those international legal concepts, in the end.

2. Sustainable Development

The most synthetic definition of sustainable development was provided by Brundtland Commission, as follows:

“Humanity has the ability to make development sustainable – to ensure that it meets their own needs”.

The concept of sustainable development was formulated coherently by Rio Declaration on Environment and Development–the outcome document of the United Nations Conference on Environment and Development (the Earth Summit, 1992), which contains twenty-seven principles regarding the matter of sustainable development. In this regard, the most important is the Principle no.4:

“In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered isolation from it”.

As we can notice, the main idea emerged from this principle is the integration; sustainable development represents a multifaceted concept (Barral, 2012), having three main goals: economic development, social development and environmental protection. (para.5 of

Johannesburg Declaration on Sustainable Development).

Therefore, the balance of environmental, economic and social needs is usually seen as the core philosophy of the concept (Boyle and Freestone, 1999).

As scholars outlined, “ecological and social needs are mentioned together as two equal parts which must be taken into account when dealing with the process of sustainable development.” (Lapka and Cudlinova, 2009) But implementation of the concept in international framework has revealed that one or other of these categories of needs prevails, according to different approaches of sustainable development “that come from two starkly differing economic paradigms” of this concept (Lapka and Cudlinova, 2009)

Weak sustainability is based on the idea that we have to take in account the total man-made and natural capital of the earth must be preserved for future generation. In this context, natural capital could be substitutable by human-created capital of the equal economic value. (Figge, 2005)

Strong sustainability referring to the natural capital as non-substitutable; hence, industrial activities and consumer behavior may continue only if used renewable resources. (Neuymayer, 1999)

Other scholars have approached sustainable development as an umbrella concept (Sands, 1995) bringing together “a range of existing or evolving international legal and political principles” (Ellis, 2009). Usually, the most emphasized by the literature are precautionary principle, intergenerational equity, intragenerational equity, common but differentiated responsibility, the polluter pays principle. (Mayeda, 2004)

Among those principles the most important is precautionary principle assessed as a tool for preserving “the potential for future developments” (Som et al., 2009).

3. The Precautionary Principle (PP)

According to Principle no.15 of Rio Declaration on Environment and Development,

“in order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

If this wording was qualified as a weak approach to PP the 1982 United Nations World Charter for Nature provided that “potential adverse effects are not fully understood, the activities should not proceed”, represents the strong version. (Fitzmaurice, 2009)

Therefore, in the weak version, PP is related to major and irreversible risks; and the strong version of PP is

correlated with any speculative evidence of risk. (Som et al., 2009)

As Fitzmaurice concluded, “it appears that the role of the precautionary principle is primarily in risk management and that it is one of its few uncontested features.”

But some scholars argued that the PP should not be analyzed as “an all-inclusive risk principle”, taking into account that in several situation of application of PP the risk is connected with uncertainty. (van Asselt and Vos, 2006)

Based on this view, de Sadeleer comes to the conclusion that the PP implies uncertain risks, meaning the situations characterized by suspicions of danger and poor scientific evidence. This type of risk emerges from the real life and changing society. “The PP pertains to uncertain risks which are not, or at least not fully, calculable and controllable, because the probability of occurrence of the effect in terms of damage cannot be estimated, and even the potential danger and the relevant causalities may not be established, although there are suspicions of danger.” (van Asselt and Vos, 2006)

Taking into account the fact that uncertain risks are an invariable dimension of our contemporary society, it is important to reconsider the conditions for application of the PP together with the role of science in the regulatory process.

The scholars came to the conclusion that there are several common features of the PP, such as: risk, damage, scientific uncertainty, and differentiated capabilities of the states to tackle the risk management. (Boissons de Chazournes, 2002)

The main finality of the application of PP is “safeguards the endangered part of the environment” (Trouwborst, 2009) But their application involve a proportionality test based on the balancing of costs and benefits. (Marr, 2003)

4. The Precautionary Principle (PP)-Framework of Sustainable Development

The international legal doctrine and the international regulation have developed an integrative dimension of the PP as a prerequisite for sustainable development, taking into account the fact that both of the concepts share common grounds and have the same goals (Som et al., 2009)

Moreover, according to Bergen Declaration:

“In order to achieve sustainable development, policies must be based on the PP ... Where there are threats of serious or irreversible damage; lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.”

Therefore, in order to achieve an effective sustainable development it is necessary to take precautionary

measures by the all stakeholders, at all level (international, regional and municipal).

The analysis of these above mentioned concepts provided a very important outcome regarding to the common denominator of them, i.e. the principle of intergenerational equity.

The principle of intergenerational equity was stipulated by Rio Declaration, as Principle no.3:

“The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”

As was underlined, “intergenerational equity could be seen as dealing with the relation between today’s generation and the generations to come [...]” (Farchakh, 2003).

The principle of intergenerational equity depends on “inherent relationship that each generation has to other generations, past and future, in using the common patrimony of natural and cultural resources of our planet.” (Brown Weiss, 1989)

It important to stress that intergenerational equity implies the idea of the “optimum basis for the relationship between one generation and the next” (Birnie and Boyle, 2002) In this regard, the present generation has to utilize the natural resources very carefully taking into account that future generation has the right to receive these resources in same condition as the current generation.

The main problem of equity between present and future generations consists in the increasing degradation of the environment, in the depletion of a specific resources, etc.

Referring to this catastrophic phenomenon as Brown Weiss noticed, the present generation cannot terminate the resources, having the obligation to preserve these resources for the future generation.

Therefore, the present generation has the duty to conserve resources, to use them in an equitable manner, to take all necessary measures to stop the degradation of our planet, to prevent the natural disasters or minimize damages, to compensate for any environmental harm, etc. All this obligations represents the “planetary obligations” that present generation has to fulfill toward future generations. (Brown Weiss, 1989) In connection with this planetary obligations future generation have several planetary rights “derived from the temporal relationship between generations in using the natural environment and cultural resources,” without any temporal limit to the application of them. (Farchakh, 2003)

According to Fitzmaurice, *apud* Alder and Wilkinson, “strong sustainable development requires each generation to pass what are in essence the same environmental goods to the future generation.”

5. Conclusions

From this analysis emerged the conclusion that the main condition of achieving sustainable development consists in taken environmental measures in order to minimize potential damages of natural resources.

The principal outcome of this paper is that sustainable development and the precautionary principal have the common core principal, such as intergenerational equity, representing an aggregate of planetary of rights and obligations emerged from the relation between present and future generations.

As Som *et al.*, noticed “This view is supported by the so-called free space theory of the PP”. Therefore, the precautionary approach has the aim “to preserve free space for the decisions and activities of future generation.”

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