

Tilburg University

Introduction

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Published in:
Regional Environmental Law

Publication date:
2015

Document Version
Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Scholtz, W., & Verschuuren, J. (2015). Introduction. In W. Scholtz, & J. Verschuuren (Eds.), *Regional Environmental Law: Transregional Comparative Lessons in Pursuit of Sustainable Development* (pp. 1-17). [1] (New Horizons in Environmental and Energy Law). Edward Elgar Publishing Ltd..

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1. Introduction

Werner Scholtz and Jonathan Verschuuren

1. REGIONAL COOPERATION AND SUSTAINABLE DEVELOPMENT

The World Commission on Environment and Development (WCED) coined the definition of sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.¹ Since the inception and progressive international acceptance of this concept, sustainable development has been a source of controversy among scholars. International legal scholarship still disputes the normative content and status of sustainable development.² Certain scholars hold the view that sustainable development possesses a normative quality, whereas other do not attribute it any normative value.³ Although sustainable development may be clouded by confusion, it has emerged as a crucial approach for the integration of economic development, social equity and environmental protection.⁴ The

¹ World Commission on Environment and Development, *Our Common Future* (Oxford 1987) 43.

² For instance: Wilfried Lang (ed.) *Sustainable Development and International Law* (Graham & Trotman 1995) and Alan Boyle and David Freestone *International Law and Sustainable Development: Past Achievements and Future Challenges* (Oxford 1999).

³ Judge Weeramantry, in his separate opinion in the *Hungary/Slovakia* case, considered sustainable development to be ‘a principle with normative value’. See para. 88. See, however, the different opinion of Lowe and Verschuuren. Vaughn Lowe, ‘Sustainable Development and Unsustainable Arguments’ in Alan Boyle and David Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges* (Oxford 1999) 19–37; Jonathan Verschuuren, ‘Sustainable Development and the Nature of Environmental Legal Principles’ (2006) 9:1 *Potchefstroom Electronic Law Journal* 209–261.

⁴ Principle 4 of the Rio Declaration provides that ‘environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it’. This principle of integration is the most

International Court of Justice (ICJ) in its judgment in the 1997 *Gabčíkovo-Nagymaros* case stated that the ‘concept of sustainable development’ is an appropriate expression of the ‘need to reconcile the economic development with protection of the environment’.⁵ Accordingly, environmental protection constitutes an integral part of any developmental measures, and vice versa. The inclusion of the temporal dimension in sustainable development necessitates a long-term outlook on economic and environmental policy goals.⁶ Unfortunately, the criteria for the balancing of environmental protection and economic development under sustainable development remain elusive. This very problematic issue underlying the implementation of sustainable development has not been clarified by the Rio Declaration or any subsequent instruments. This shortcoming of sustainable development may result in the predominance of economic interests and hint at the problems with the implementation of this notion.⁷

Notwithstanding the vagueness and confusion concerning sustainable development, it has been included in nearly every important legal instrument since the 1992 United Nations Conference on Environment and Development (UNCED).⁸ Hence, sustainable development has been embraced at the national, regional and international level in order to constitute a global *Leitmotiv* for environmental and economic governance of the international community. As such, sustainable development constitutes a common goal of *inter alia* states.

States increasingly act together in various ways to pursue common objectives. Regional cooperation is one of the mechanisms that may

‘fundamental and operationally significant’ element of sustainable development. Christina Voigt, *Sustainable Development as a Principle of International Law Resolving Conflicts between Climate Measures and WTO Law* (Marthinus Nijhoff 2009) 36.

⁵ *Hungary v. Slovakia (Gabčíkovo-Nagymaros Case)* (1997) *ICJ Rep* 7, at para. 140.

⁶ Principle 3 of the Rio Declaration on Environment and Development of 1992, hereafter Rio Declaration, affirms this by stating that ‘[t]he right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations’. See UN Doc A/CONF.151/26/Rev 1 vol. I, 3.

⁷ Jorge E Viñuales, ‘The Rise and Fall of Sustainable Development’ (2013) 22 *RECIEL* 3–13.

⁸ See for a discussion: Ulrich Beyerlin, ‘The Concept of Sustainable Development’ in Rüdiger Wolfrum (ed.), *Enforcing Environmental Standards: Economic Mechanisms as Viable Means* (Springer 1996) 95–112.

provide a platform for states to act in a concerted manner.⁹ The new wave of regionalism is comprehensive and extends regional cooperation to areas such as the environment as well as human rights.¹⁰ Nearly every continent has made use of regional cooperation and, albeit to a different degree, of institutionalisation. Regional cooperation has been well established in the Americas and Europe. The African continent initiated regional cooperation after decolonisation whereas Asian states have been more reluctant to pursue effective cooperation. In general, regional cooperation complements universal cooperation towards universal rules under mechanisms that enable interaction between universal and regional cooperation within a multilateral system.¹¹ States may institutionalise regional cooperation through the establishment of regional organisations, which may be vested with normative powers to pursue common goals of Member States.

Thus, the current age of globalisation is characterised by the proliferation of regional organisations in the international arena, which facilitate regional cooperation concerning environmental protection pursuant to the promotion of sustainable development. The European Union (EU), Organisation of American States (OAS), Association of Southeast Asian Nations (ASEAN) and the African Union (AU) serve as examples of organisations that have an increasingly essential role in global environmental governance. The EU is the most developed model for regional cooperation and has some of the most progressive environmental laws in the world. Originally set up in 1957 as the European Economic Community, the organisation now has a focus that is much wider than the economy. Through the 2010 Lisbon Treaty, the various building blocks of

⁹ Mathias Forteau, 'Regional Co-operation' in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*.

¹⁰ For a historical perspective on regionalism: Louise Fawcett, 'Regionalism in Historical Perspective' in Louise Fawcett and Andrew Hurrell (eds), *Regionalism in World Politics: Regional Organization and International Order* (Oxford 1995) 9. The first wave of regionalism (1945–1965) focused on economic integration. The second wave (1965–1985) of regionalism had a distinct security dimension. The third wave of regionalism, so-called 'new regionalism' (1985–present) is characterised by the establishment of a diversity of forms and organisations. See also Edward D Mansfeld and Helen V Milner, 'The New Wave of Regionalism' (1999) 53 *International Organization* 595 *et seq.* The latter authors, however, opine that four waves of regionalism may be distinguished.

¹¹ For a discussion: Rüdiger Wolfrum (ed.), *Strengthening the World Order: Universalism v. Regionalism: Risks and Opportunities of Regionalization* (Duncker and Humblot 1990) and Christopher Schreuer, 'Regionalism v. Universalism' (1995) 6 *EJIL* 477–499.

the European Communities were all integrated to become to European Union, which focuses on such objectives as sustainable development, freedom and security, scientific and technological advance, combating social exclusion and discrimination, protection and enhancement of Europe's cultural heritage, eradication of poverty, the protection of human rights, and the development of international law.¹² The OAS was established in 1948 as the primary governmental forum in the hemisphere and comprises 35 states.¹³ Article 1 of the Charter of the OAS indicates that it was established in order 'to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence'. ASEAN is Southeast Asia's primary regional organisation, which was established in 1967.¹⁴ ASEAN consists of ten states, which joined together in order to, among other things, 'maintain and enhance peace, security and stability'¹⁵ as well as 'to promote sustainable development so as to ensure the protection of the region's environment, the sustainability of its natural resources, the preservations of its cultural heritage and the high quality of life of its peoples'.¹⁶ The Constitutive Act of the AU was signed in Lomé, Togo on 11 July 2000 and it entered into force on 26 May 2001.¹⁷ The AU was officially inaugurated on 9 July 2002 in Durban, South Africa. It is *inter alia* the objectives of the AU to accelerate political and socio-economic integration¹⁸ and to promote peace and security,¹⁹ democratic principles and good governance,²⁰ human and peoples' rights,²¹ sustainable development²² and 'cooperation in all fields of human activity to raise the living standards of African peoples'.²³

¹² Article 3, Treaty on European Union (TEU), Official Journal of the EU (OJ) 2010, C 8313.

¹³ See Mônica Herz, *The Organisation of American States* (Routledge 2010).

¹⁴ See Peter Malanczuk, 'Association of Southeast Asian Nations' in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law*.

¹⁵ Article 1(1) of the Charter of ASEAN.

¹⁶ Article 1(9) of the Charter of ASEAN.

¹⁷ See T Maluwa, 'The Constitutive Act of the African Union and Institution-building in Postcolonial Africa' (2003) 16 *LJIL* 157–170

¹⁸ Art 3(c).

¹⁹ Art 3(f).

²⁰ Art 3(g).

²¹ Art 3(h).

²² Art 3(j).

²³ Art 3(k).

2 AIM OF STUDY

It is therefore the aim of the book to discuss and dissect the way in which the aforementioned regional organisations facilitate cooperation concerning regional environmental law towards the pursuit of the global *Leitmotiv* of sustainable development. Accordingly, the objective of this book is to provide an analysis of the environmental law of the respective regional organisations which address environmental degradation. This book focuses on some of the foremost environmental issues that require regional cooperation. Hence, this book contains chapters on human rights and the environment, climate change, as well as shared watercourses, in relation to the respective regional organisations. In addition, every part on regional organisations includes an introduction on the environmental law of that regional institution.

Several interesting conclusions emerge from the various chapters in this book, conclusions both on the specific region (EU, ASEAN, AU, OAS), and more overarching conclusions. We will briefly highlight both categories, starting with the conclusions for each region.

3. BREAKDOWN OF CHAPTERS

3.1 The African Union (AU)

Initially, regional cooperation in Africa, facilitated by the Organisation of African Unity (OAU), focused on the eradication of colonialism and racism. In the early years, African regional instruments only occasionally made cursory reference to natural resources when economic development, desperately needed at the time, was addressed. The establishment of the African Union (AU) introduced a new era of regional cooperation, which elevated sustainable development to a primary objective of the AU. Hence, the normative framework of the AU embraces sustainable development. The ambitious normative framework towards continental integration, however, faces several obstacles which stifle the materialisation of the goals of the AU. Hennie Strydom indicates in Chapter 2 that the various initiatives for the protection of the environment and the promotion of sustainable development form an integral part of the economic integration initiatives of the AU and are therefore likely to be hindered by the same obstacles that impede regional integration. This leads the author to bemoan the fact that instruments are not implemented and institutions are inactive, which implies that the ambitious goals will not be realised. Hence, the AU needs to urgently focus on the implementation of

progressive norms in order to pursue the sustainable development needs of African peoples. Clearly the major problem in relation to the AU is not the absence of progressive instruments or the non-recognition of sustainable development, but the political will and commitment of Member States of the AU to implement measures conducive to sustainable development.

Chapter 3 affirms the urgent need for a continental response to climate change in order to promote the objective of sustainable development. Africa is one of the most vulnerable continents to the effects of climate change. Weak adaptive capacity exacerbates the vulnerability of African states, which are unable to respond in a meaningful manner to this challenge. The mere fact that Africa has not contributed to climate change does not imply that African countries may ignore the consequences thereof. This realisation has caused the AU to facilitate regional cooperation in response to climate change. Hence, the AU as a regional organisation has initiated actions to respond to this dismal challenge. The pursuit of adaption remains a major concern for African states. Accordingly, the AU has facilitated the development of a common position on climate change, which serves as the point of departure for the pursuit of adaptive capacity at international negotiations. Pallangyo and Scholtz commend this important initiative, but argue that past events indicate that the African bloc does not always adhere to the common position, which defeats the purpose thereof. A second initiative is the development of climate change programmes, which may continue to play an important role towards the increase of technical capacity to deal with climate change. Lastly, the authors indicate that AU instruments mostly regulate climate change in an incidental manner. Currently, no specific climate change instruments deal with the consequences of climate change. Hence, it is important for Member States to remain committed to the common position during climate change negotiations and furthermore to expand the normative framework of the AU that deals with climate change. This recommendation affirms the general concern raised by Strydom in Chapter 2 in relation to the lack of implementation and political will. However, the progressive development of a common position is a positive consequence of regional cooperation between Member States.

Chapter 4 focuses on African, in particular Sub-Saharan, regional cooperation in relation to shared watercourses. Barnard and Lubbe explain that global water demands have increased gradually with population growth and the subsequent rise of various types of human activities. Thus, a sustainable approach to water management is necessary in order to mitigate the potential impacts of the increasing demands on

water. Hence, sustainable water management systems should be reflective of the fact that water dependence is borne from ecological demands and the need for socio-economic development. Water management systems which include the environmental, social and economic dimensions of water needs will most likely be capable of contributing to the promotion of sustainable development. This is of particular importance in relation to Southern Africa, which consists of arid and semi-arid regions. The increase in the sharing of transboundary water sources by co-basin countries leads the authors to the main question of the chapter, namely: how to develop and manage the various transboundary water sources sustainably in full agreement and cooperation between the appropriate co-basin countries? The authors investigate this question *via* reference to the Incomati River Basin. The authors indicate that most suitable way to achieve a sustainable water system is through Integrated Water Resource Management (IWRM). Accordingly, Barnard and Lubbe investigate Transboundary River Basin Management (TRBM) as a hybrid of IWRM. In so doing, the discussion focuses on the IncoMaputo Agreement as a management tool of the Incomati River Basin. The chapter indicates that, in general, the latter agreement facilitates regional cooperation on the sustainable utilisation of the IncoMaputo.

Another progressive instrument of the AU is the African Charter on Human and People's Rights of 1981 (Banjul Charter), which is the regional human rights framework of the AU. This regional human rights instrument was the first treaty that explicitly recognised the potential role of human rights in the protection of the environment since it includes a right to a satisfactory environment in Article 24, which reads that '[a][a]ll peoples shall have the right to a general satisfactory environment favourable to their development'. The linkage between development and the environment raises several questions, especially due to the explicit recognition of a right to development in the same instrument. Scholtz accordingly discusses Article 24 in the context of the relationship between the environmental right and the right to development. Subsequent to a critical analysis of the meaning and scope of Articles 22 and 24, the author argues that the potential conflict between the aforementioned rights must be reconciled *via* sustainable development. Sustainable development functions as a bridge between the right to a satisfactory environment and the right to development in the Banjul Charter in order to respond to the specific needs of the African continent. The Banjul Charter also provides fertile ground for an analysis of the human rights–environment relationship due to the fact that it does not include a jurisdiction clause, the lack of which opens the door for the extraterritorial application of the rights contained in it. These findings

therefore affirm the important role that the regional human rights framework may play in relation to the promotion of sustainable development. The author, however, indicates that the findings of the African Commission on Human and People's Rights, which is a pivotal adjudicative body of the Charter, are frequently ignored. This finding once again resonates with the viewpoints in Chapter 2. Scholtz opines that the findings of the Commission may nonetheless contribute to the global dialogue between courts and tribunals.

The section on AU law indicates that Member States of the AU consider regional cooperation as an important mechanism to respond to the environmental challenges of the African continent and to facilitate the pursuit of sustainable development. This is also evident from the objectives of the AU, which include the acceleration of political and socio-economic integration²⁴ and the promotion of human and peoples' rights,²⁵ as well as the promotion of sustainable development.²⁶ The AU has embarked on an ambitious process in order to institutionalise regional cooperation through regional integration. The chapters here provide evidence of the important role that sustainable development has as an ultimate goal of regional cooperation. Furthermore, an array of progressive instruments has been developed in order to address environmental degradation on the African continent. Unfortunately, the chapters allude to a major shortcoming in relation to AU law, namely implementation. Frequently treaties are negotiated but not ratified, such as the Revised Natural Resources Convention of 2003. The establishment of the AU introduced the advent of a new era on the African continent. It is supposed to symbolise a departure from the impotence of the OAU, which applied a policy of non-intervention and as such did not succeed in its efforts to influence the policies of its Members. In effect, the OAU was a 'toothless talking shop'. It would be unfortunate if the ambitious goals of the AU remain merely laudable glimmers of hope. Member States of the AU need to harness political will to ensure regional cooperation towards sustainable development in order to raise the living standards of African people as required in Article 3(k) of the Constitutive Act of the AU. This, however, requires the AU to address the various

²⁴ Art 3(c).

²⁵ Art 3(h).

²⁶ Art 3(j).

shortcomings in relation to the manner in which it institutionalises regional cooperation.²⁷

3.2 The Organization of American States (OAS)

The Americas have a long tradition of environmental law-making, dating back as far as the 1940s. In more recent years, the OAS has started to adopt comprehensive sustainable development instruments, particularly the Inter-American Program on Sustainable Development, as discussed in depth by De Windt and Orellana in Chapter 5. A wide range of more specific legal instruments exist, such as instruments aimed at protecting biodiversity, at trade related environmental impacts and at procedural environmental rights. These instruments, however, did not prevent the emergence of a large number of environmental conflicts between American states, several of which even reached the ICJ. De Windt and Orellana conclude from all of these cases that neighbouring countries in the Americas fail to achieve a meaningful dialogue over the environmental risks associated with certain activities having cross-border environmental implications as well as the numerous available approaches that could be undertaken to address the substantive issues on the basis of science, MEAs and sub-regional agreements.

Probably the most influential OAS instrument is its human rights instrument, which provides for a central role for the Inter-American Court of Human Rights and the Inter-American Commission of Human Rights. Meijknecht shows that the regional human rights instruments in the Americas are not geared towards protection of the environment 'as such' and do not contain a justiciable right to a healthy environment. This means that petitioners wanting to address instances of environmental degradation before the Inter-American Commission need to demonstrate the interconnections between an environmental issue and violations of the OAS instruments, the so-called, 'reflex pathway technique'. Meijknecht shows that due to progressive case law by the Commission and the Court, this 'pathway' is starting to look like a highway! First, an exceptionally broad *ius standi* was accepted, enabling NGOs and other organisations, individuals and groups who want to raise issues of environmental degradation to address the Commission and the Court. Big steps forward towards achieving sustainable development were especially made in cases concerning environmental degradation in indigenous territories. Several

²⁷ See for an extensive analysis of the shortcomings of the legal framework: Richard Frimpong Oppong, *Legal Aspects of Economic Integration in Africa* (Oxford 2011).

duties were distilled from human rights, such as: the duty to actively consult and, in the case of large-scale development or investment projects, to obtain the free, prior and informed consent of the members of the community regarding any development, investment, exploration or extraction plan within their territory, and the duty for states to only allow activities within indigenous territories after an environmental and social impact assessment has been carried out. Meijknecht concludes that this enables local communities to direct these projects into a more sustainable direction and to benefit from these projects, in an economic and developmental sense.

Garcia and Calasans then discuss regional cooperation in the field of water management in the Amazon river basin. Considering the importance of the Amazon region as one of the world's most important biodiversity hotspots, it is disappointing that neither the OAS, nor any other regional organisation, was able to facilitate the creation of a binding legal framework for multilateral cooperation in the Amazon basin. As a consequence, for instance, currently, no single river basin commission manages the Amazon basin. Cooperation does exist, but only to a limited extent, and largely thanks to bottom-up initiatives, such as the MAP initiative, consisting of the departments of Madre de Dios (Peru), Acre (Brazil) and Pando (Bolivia), and which was formed by a group of researchers from the region, as a social movement, independent of governments or political parties, with the aim of improving livelihoods and promoting a better management of ecosystems. Reasons for the lack of formal cooperation are the central role of Brazil, which is wary about its sovereignty over the basin, lack of financial resources and technical capacity caused by poverty in the region, and, generally, the complexity and size of the Amazon basin. These circumstances seem to lead to the conclusion that it is probably sensible to aim for small-scale cooperation, involving smaller sub-basins and fewer countries, such as that proposed under the MAP Initiative. Garcia and Calasans, however, do argue that the OAS could play a key role in promoting sustainable development in the Americas, which could, or perhaps should, be strengthened, at the discretion of the Member States, in the field of water management and in the Amazon basin specifically, for example by providing assistance and funding for national and regional water-related initiatives, by supporting the drafting of treaties and regional water policies and by helping to settle disputes and preventing water-related conflicts.

Despite its long history, the OAS has not grown into a powerful organization that has managed to significantly raise the level of environmental protection across the continent. It does facilitate cooperation in various fields, but through voluntary mechanisms only. A firm exception

to this somewhat disappointing conclusion is the role of the Inter-American Court (and Commission) of Human Rights. Through their case law, the Commission and the Court have granted environmental rights to individuals and their communities, thus offering Americans across the continent a certain minimum level of environmental protection.

3.3 The Association of Southeast Asian Nations (ASEAN)

ASEAN initially focused on regional cooperation concerning political and economic issues. Nonetheless, ASEAN has also exhibited a commitment to environmental management, which resulted in the development of an institutional framework for cooperation between its members. Recently, a number of policy shifts have also affirmed sustainable development as an important objective of regional cooperation. Boer explores the legal, institutional and policy framework relating to environmental management and sustainable development in the Southeast Asia region in Chapter 9. The 'ASEAN Way', which entails a rigid adherence to the doctrine of non-interference and sovereignty as well as consensus building and a preference for national implementation, constitutes an obstacle to successful regional cooperation. The 'ASEAN Way' also results in a preference for 'soft law' instruments which may hamper compliance. While the concept of sustainable development has slowly begun to permeate regional environmental policy and law, its incorporation into a national level varies considerably, as demonstrated by the brief discussion of the environmental legislation and policy of ASEAN states. The chapter concludes that there is a disconnect between regional environmental law and policy and national environmental legislation, and that implementation must be more vigorously addressed in order for a coherent framework of regional environmental management to be generated. This conclusion resembles the finding in Chapter 2 pertaining to the AU. On a more positive note, Boer opines that the ASEAN Charter of 2007 may indicate a slight departure from some of the elements of the 'ASEAN Way'. This promising development may therefore have an influence on regional environmental cooperation amongst ASEAN members.

The following chapter focuses on regional cooperation of ASEAN in relation to climate change. Koh Kheng-Lian and Lovleen Bhullar indicate that South-east Asia is also, as with the African continent, one of the most vulnerable regions in the world to the impacts of climate change. The consequences of climate change will hamper the pursuit of sustainable development in the region. ASEAN has an important role to play in this regard. ASEAN has increasingly become involved in facilitating the

implementation of multilateral environmental agreements (MEAs), including the United Nations Framework Convention on Climate Change 1994 (UNFCCC) and its Kyoto Protocol 1997. Furthermore, ASEAN has also initiated action to respond to climate change in South-east Asia. The Singapore Declaration on Climate Change, Energy and the Environment (Singapore Declaration) constitutes an important response to climate change. Hence, the analysis of the authors focuses on the Singapore Declaration in order to provide an appraisal of the response of ASEAN to climate change. Furthermore, the chapter considers developments concerning the ASEAN climate change regime subsequent to the Singapore Declaration. The authors find that the Singapore Declaration has moved ASEAN towards regional cooperation concerning climate change. Recently, ASEAN has identified measures to mitigate and adapt to the adverse impacts of climate change, and has engaged in building structural frameworks to ensure their effective implementation at the national and sub-national levels in the long term. This chapter affirms that Member States favour the establishment of 'soft law' climate-change instruments. The 'soft law' nature of the commitments coupled with the absence of compliance procedures lead to serious implementation deficits. The nature of the ASEAN decision-making process, which is based on the achievement of consensus among Member States, is also not conducive to the establishment of binding instruments on climate change. The authors identify the latter issues as constraints to the promotion of sustainable development. In a more positive light, Kheng-Lian and Bhullar opine that ASEAN has provided the foundation for regional cooperation and coordination on climate change. It is therefore important to build on the successes of ASEAN and to create the necessary framework for implementation and monitoring of concrete actions by the Member States in order to further sustainable development. It is evident from the chapters on ASEAN that Member States have opted for a careful approach to regional cooperation. The 'ASEAN Way' hampers political commitment to the further development of a regional environmental framework conducive to sustainable development. ASEAN has, however, laid the foundations for regional environmental cooperation and it is now time for Member States to commit to and intensify regional cooperation. The ASEAN Charter may constitute a positive first step towards promoting sustainable development in the region.

3.4 The European Union (EU)

The EU is often considered to be a forerunner in the field of environmental law. A high level of protection of the environment and, more

generally, sustainable development, have been basic goals of the EU and its predecessors since the late 1980s, and already in the 1970s, environmental laws were drafted aimed at harmonizing domestic environmental law throughout the EU. Although these and later environmental laws are often considered to be among the strictest of the world, Krämer shows that much remains to be desired. Krämer argues that a sustainable environmental policy requires that the environment should be, within five years, ten years, or a generation, depending on the parameter that is chosen, in a better state than at present. He concludes that generally, there has been an improvement of the state of the European environment since 1990, especially in such areas as transparency, fresh water quality, air pollution (for some pollutants), and waste management. However, matters did not change, or even deteriorated, in such areas as public participation in environmental decision-making, biodiversity, air pollution (particulate matter), tropospheric ozone, noise and waste generation. No significant improvement has been reached in, what Krämer calls the 'big five' sectors: climate change, the loss of biodiversity, the omnipresence of chemicals in the environment, resource management, and the fight against poverty.

Two chapters then deal with specific policy areas of the EU: climate change and water management. These chapters underpin Krämer's conclusions that in the field of water management good achievements were reached, whereas in the field of combatting climate change, much more progress is needed. De Cendra has tested the effectiveness of EU climate law, by checking whether the current legal framework for climate change mitigation and change adaptation (1) is based upon solid normative underpinnings, (2) has sufficient public support, (3) sets long-term targets, (4) addresses indirect emissions as well as direct emissions, (5) requires a proper policy design, and (6) facilitates and monitors implementation and (7) enforcement. De Cendra focuses on the normative underpinnings of climate law and finds that although in legal texts, references are made to achieving sustainable development and, on paper, the EU adopted a stewardship approach, implying an acknowledgement that future generations have an expectation to a certain level of welfare implicit within the concept of sustainable development, there does not seem to be much discussion about the foundations of the choices made and possible alternatives. In fact, the debate about what is the best possible conception of human nature and human good and which policies are best at providing it is virtually absent in the EU. De Cendra also reaches some positive conclusions, for example that there is a strong emphasis on providing a credible commitment to decarbonisation, that there has been a progressive deepening and broadening of the EU's

climate change law throughout the years; and that there is a great deal of attention on implementation and enforcement.

In the field of water law, McIntyre's assessment of the EU's basic instrument to protect transboundary waters, the Water Framework Directive, is generally more positive, especially when looked at in conjunction with the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki Convention, 1992). McIntyre concludes that the detailed institutional, procedural and technical requirements under the Water Framework Directive, and under the wider corpus of EU environmental rules more generally, can play a constructive role in assisting the effective implementation of the Convention. He also finds that the compatibility of these rather different instruments is indicative of a general convergence occurring in international water law around a number of core principles and approaches, including basin-level water resources management by means of cooperative institutional arrangements, ecosystems approaches to environmental protection, active monitoring and assessment for effective compliance and enforcement, and broad public participation in water resources management. All of these basic elements follow, as McIntyre rightfully argues, from the paradigm of sustainable development.

Another international organization in Europe is the Council of Europe, which is responsible for various environmental treaties, and for the European Convention on Human Rights (ECHR) and the European Court of Human Rights. Verschuuren addresses the question in how far this Court, through its case law on the human rights laid down in the convention, has contributed to regional cooperation and sustainable development. Even without the recognition of an explicit right to a satisfactory environment in the ECHR, the Court rendered an impressive range of judgments in environmental cases through which it established a continent-wide safety net protecting all Europeans against severe environmental pollution and through which it forces the authorities in 47 states to offer their citizens and NGOs procedural rights whenever the environment is at stake, assess the impact on the environment of their decisions, implement and enforce existing standards, and carry out domestic court rulings. The Court's case law did not lead to a harmonization of environmental standards across Europe, nor to the adoption of progressive environmental policies, nor to an explicit recognition of the need to completely integrate economic, social and environmental considerations so as to contribute to a sustainable development. For Europe, therefore, it seems that the EU's approach towards sustainable development is a more promising road to travel. The EU's impact on the environment has been far greater. Accession of more European states to

the EU can, therefore, be considered a more fruitful approach to achieve sustainable development across the continent than relying on further expansion of the work of the European Court of Human Rights, for instance through the adoption of a specific right to a healthy or safe environment within the ECHR.

It is obvious from the European chapters that regional cooperation in Europe in the field of sustainable development is intense. Most environmental laws have been harmonized throughout the EU at a high level of protection. Thanks to the transfer of powers to the institutions of the EU, most importantly the European Commission, the European Parliament and the Court of Justice of the EU, effective implementation of these harmonised environmental procedures, rights, norms, and standards is assured.

4. APPRAISAL

The proliferation of regional organisations coupled with the existence of global environmental problems, such as climate change, provide a valid justification for the transnational comparative investigation undertaken in this publication. The usage of the comparative legal method in this book also adheres to the calls of scholars for legal comparison that takes cognisance of globalisation and the changing role of states.²⁸ This necessitates a departure from a strict adherence to domestic systems in legal comparison towards an integration of transnational legal systems in legal comparison.

Regional organisations are spanning the globe. The differences among these organisations, though, are enormous. In this book, regional cooperation facilitated by some of the most significant regional organisations is discussed in relation to the pursuit of sustainable development. ‘Sustainable development’ is a global *Leitmotiv* for environmental and economic governance in the international community. Although sustainable development is an abstract and vague notion, it also creates opportunities for the pooling of resources *via* regional cooperation. By setting an overarching, albeit vague, global goal, the notion of sustainable development has opened up room for cooperation between Member States of regional organisations on a wide range of issues.

We have seen that this room for collaboration is occupied in the various regional organisations in quite different ways, ranging from

²⁸ Matthias Reimann “Beyond National Systems: A Comparative Law for the International Age” 75 (2001) *Tulane Law Review* 1103.

cautious and even somewhat reluctant forms of collaboration (such as ASEAN), to the powerful and substantial joint processes of the EU. The first forms of collaboration usually lead to non-legally binding instruments. It is clear that the latter instruments indeed have value in that they may facilitate further progressive developments. It is not unthinkable that the 'soft law' instruments may ultimately culminate in the establishment of standards that are enforceable upon individual states. This study investigates the regional cooperation of three regional organisations that comprise predominantly 'developing' states and a regional organisation that consists of 'developed states'. In general, it is evident that the institutionalisation of regional cooperation is more advanced in relation to the EU. Regional cooperation in the latter instance has resulted in a more comprehensive *corpus* of environmental law that pursues sustainable development.

The lack of implementation of regional law, in particular by regional organisations of developing states, has been identified as a key concern. This lack of implementation is linked with the absence of political commitment and the reluctance to relinquish sovereignty to a regional organisation. Hence, scholars frequently bemoan the lack of progress in relation to regional integration in organisations, such as ASEAN and the AU. It is, however, important to take cognisance of the historical, cultural and socio-economic differences that exist between regions in comparing the different regional organisations. Developing states face several obstacles in term of deeper regional integration. The existence of these obstacles and the need for sustainable development, however, induces the urgent need for regional cooperation amongst Member States. States are frequently unable to respond to the challenges of globalisation and revert to the pooling of resources in order to escape marginalisation. This is evident in relation to the array of environmental challenges, such as climate change, that states face. The acknowledgement of the vulnerability of states in this regard may therefore serve as an important catalyst for regional cooperation on environmental matters pursuant to sustainable development. This may result in a progressive realisation of deeper regional integration. Reluctant regional cooperation may therefore gradually make way for more political commitment and intensified regional cooperation. Regional cooperation pursuant to integration is recognised as pivotal for the pursuit of the laudable goal of sustainable development and therefore constitutes an important common denominator.

The existence of a Court that has the power to oversee compliance of Member States with regional law constitutes an important impetus to meaningful regional cooperation in the pursuit of sustainable development. Without such a 'higher power', much, if not all, remains at the

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discretion of politically motivated organs of single states. In this sense, it is reassuring that in the regions without firm and legally binding collaborations, at least human rights courts are actively involved in guaranteeing a minimum level of environmental protection. This certainly is the case in the Americas and, to a lesser extent, also in Africa, where the African Commission and the African Court on Human and Peoples Rights have been responsible for progressive decisions in relation to the rights in the Banjul Charter. The various chapters in this book indicate that regional cooperation on environmental matters pursuant to sustainable development serve as proof of how regionalism may contribute to the pursuit of multilateral initiatives. Ultimately, regional cooperation is an important, albeit not perfect, mechanism to strive for much-needed development that not only caters for the needs of current generations but also pays heed to the needs of future generations.

