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Research Article

Sustainable Development Clauses in the International Law of the Sea[1]

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Abstract. The international legal content of the concept of sustainable development, so common in international treaties and sometimes expressed in different terms, undoubtedly requires clarification today, as does its place in the system of international law.

Firstly, it is interesting to answer the question of how ideas of sustainable development have resulted in their crystallization as a concept of international law. Secondly, using treaty sources of the international law of the sea, where this notion is particularly common, it is meaningful to identify the intentions of states parties to such treaties to consider sustainable development clauses as legal obligations. Thirdly, it is important to determine whether these clauses now constitute a principle of the international law of the sea or whether they retain the status of separate treaty obligations that are not interrelated.

The article is based on an analysis primarily of the norms of the international law of the sea, in which the term "sustainable development" is applied, with reference to the scientific and legal literature and judicial decisions relevant to the topic.

The research involves methods of legal construction, legal modelling, analysis and synthesis, systematic, structural-functional, formal-logical, formal-legal, historical and chronological methods.

The analysis of international treaties and other international legal instruments relating to this issue has shown that the long-standing ideas of "sustainable development" are now normatively well-established; that the provisions of international treaties on sustainable development have already developed as an inter-branch (cross-cutting) principle of international law at the intersection, primarily, of the international law of the sea and international environmental law; and that in practice states undertake explicit obligations and exercise relevant rights in the framework of upholding this cross-cutting principle.

The authors' vision of the content of this principle is offered and its various manifestations in the international law of the sea are shown.

The study critically evaluates the prevailing view in the Western international legal literature that the idea of sustainable development was first suggested by the 1987 Report "Our Common Future" (the Brundtland Report). It is shown that the idea predates this report, and that the initial mechanisms for sustainable development had already been reflected in existing international treaties by 1987. The suggestion is made that the

[1] English translation from the Russian text: Vylegzhanin A. N., Korzhenyak A. M. 2023. Klauzuly ustoychivogo razvitiya v mezhdunarodnom morskom prave. *Moskovskiy Zhurnal Mezhdunarodnogo Prava* [Moscow Journal of International Law]. No. 4. P. 6–33. https://doi.org/10.24833/0869-0049-2022-4-6-33

international legal concept of sustainable development has several cumulative components that together define its content. Among these there are elements that are part of this concept primarily because they are means of achieving sustainable development goals, having a much narrower scope if interpreted in isolation. The international legal principle of sustainable development seeks to resolve the tensions primarily between the right of states to development and their duty to protect the environment, serving as a nexus that ensures that neither the one nor the other is neglected. Its social dimension is undoubtedly significant, although it has been interpreted very differently in the international legal literature.

In the context of contemporary international law, it would be wise to assert an interbranch (cross-cutting) nature of the sustainable development principle: its legal content extends beyond the scope of specific branches of international law, including international law of the sea, international environmental and economic law. However, most international treaties of a universal and especially regional character that contain some form of sustainable development clauses currently refer to sources of the international law of the sea, which may certainly change in the future.

Keywords: sustainable development; sustainable use; sustainable management; principles of international law; protection of the marine environment; precautionary principle; environmental cooperation; ecosystem approach; international law of the sea; international environmental law

The issue of the international legal content of the concept of "sustainable development" and its significance in international law has not yet been fully elaborated at the expert level. Studies of numerous legal acts containing provisions on sustainable development tend to cautiously conclude that such provisions do not constitute norms of international law that establish the rights and obligations of states, much less the established principles of international law. Many legal scholars describe these provisions in terms of the intentions of the respective states, which only affects the interpretation and application of the norms of a given international treaty. What is more, the authors of these studies mainly focus on "soft law" acts, rather than on the texts of international treaties. In this context, they argue that sustainable development clauses in international law are indeed present, but their status remains uncertain (Luff 1996: 91–144; Klauer 1999: 114–121; Lang 1999: 157–172; Sands 1999: 389–405; Sands 2003: 252–266; Schrijver, Weiss 2004: 7–38; Schrijver 2008: 162–221; Kates, Parris, Leiserowitz 2005: 8–21; Birnie, Boyle, Redgwell 2009: 115–127).

This article presents the results of the authors' attempts to clarify the role of the sustainable development provisions contained in global, and some regional, maritime treaties, as well as to address the issue of whether or not they constitute international legal norms. We do this in full awareness of the fact that there is no generally accepted definition of the concept of "sustainable development" at the level of an international treaty. That said, we do not ignore the "Our Common Future" report (also called the Brundtland Report), the most cited document in terms of an attempt to put forward

an appropriate definition of the concept.[2] A number of Russian[3] and foreign[4] publications refer to this document as the genesis of the legal idea of sustainable development. In this paper, we demonstrate that this opinion is not entirely correct, due to the fact that an analysis of relevant international legal documents reveals that the history of the formation of the legal components of the sustainable development concept goes back much further, and that the definition of sustainable development proposed in the Brundtland Report has some major shortcomings, none more glaring than the fact that it is abstract and anthropocentric. Consequently, in this article, we present our understanding of the legal content of the concept of "sustainable development" and a vision of its place in international law. Additionally, we identify the concept's main elements in the context of the law of the sea. The focus here on the sustainable development clauses contained in international treaties on the law of the sea is primarily due to the fact that most international treaties today (global and regional) that contain provisions on sustainable development refer specifically to the sources of the international law of the sea.

The Concept of "Sustainable Development" in International Law: Content

As is known, environmental issues are both regional and global in nature, which is why it is generally agreed that appropriate international legal regulation and the cooperation of states is required at all levels. In this regard, as L. Speranskaya has rightly noted, "in international law, under the influence of environmental categories, new concepts arise, and some well-known institutions acquire new content" (Speranskaya 1978: 144). In her monograph on the protection of the marine environment, Speranskaya singles out (among the new concepts that have arisen in international law as result of the "aggravation" of environmental problems): "environmental security," "environmental expansion," "ecocide," "weather war," "marecide," etc. (Speranskaya 1978: 146–151). Professor M. Kopylov defines the concept of "environmental security" as a priority component of the "global security of the world community that implements the transition to sustainable development, as well as a priority criterion for social development" (Kopylov 2003: 244). Against this theoretical background, "sustainable development" can be classified as a new concept that has emerged in international law in the process of its progressive development.

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[2] The report was written and published by the United Nations World Commission on Environment and Development in 1987 under the supervision of then Prime Minister of Norway Gro Harlem Brundtland; hereinafter referred to as "the 1987 Report" or "the Brundtland Report."

[3] In the abstract to his 2004 doctoral dissertation, Lee Seung Min noted that the concept of "sustainable development," previously "formulated in the report 'Our Common Future,' was 'first' introduced into scientific circulation at the 'United Nations Conference on Environment and Development in 1992.'" See: Lee Seung Min. 2004. *Ekologicheskaya sostavlyayushchaya kontseptsii ustoychivogo razvitiya (mezhdunarodno-pravovye aspekty)* [The Environmental Component of the Concept of Sustainable Development (International Legal Aspects]. Doctoral dissertation. Moscow. P. 4. (In Russian).

[4] "In the Brundtland Report the interdependence between economy, ecology and development is the main thing." Cited from: (Towards an Ecologically Sustainable Economy… 1990: 11).

The idea of not causing damage to the environment through anthropogenic activities is not a monopoly for defining the concept of sustainable development. For example, we suggest looking at the issue from the point of view that the broader concept of sustainable development has "displaced" the narrower concept of environmental protection (Andresen 2016: 78). But it is hardly "displacement" here. Rather, the first concept has incorporated the second as part of its definition; environmental issues (among others) are now part and parcel of the concept of "sustainable development." According to the meaning put forward in the relevant documents, the essence of the concept of sustainable development is determined by a combination of at least three key components – economic, environmental, and social[5] – although not necessarily these components exclusively. Some have proposed singling out other components of this concept: 1) the cultural component (Hawkes 2001: 5–60);[6] 2) the spiritual component (Brinchuk 2014: 15–24); and 3) the "human" component (Duran et al. 2015: 806–811). These, however, can all be grouped together as part of the social component.

In order to identify the content of the concept of sustainable development, a wide-reaching and multicomponent approach is required, one that is based on an awareness of the continuity, integrity and complexity of economic, environmental and social relations regulated by international law, interpenetrating one another. The concept of sustainable development is based on the postulate: the economic development of states and regions (due to the interests of people) and environmental protection (due not only to these interests) should be considered goals that and interdependent and mutually complementary, rather than in opposition with each other.[7] According to the "Our Common Future" report mentioned earlier, "sustainable development seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future." Based on this definition, sustainable development consists of two key components only: 1) the desire to meet the "needs" of the current generation, which is important in the context of the pressing issue of global poverty; and 2) the proposal of "limitations" imposed by states on activities that have negative consequences for the environment in connection with the growing technological tools for such activities. The essence of ensuring the "sustainability" of the development of

[5] The 1995 Copenhagen Declaration on Social Development (para. 6): "economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development"; the Programme for the Further Implementation of Agenda 21 (para. 3 and para. 23); the Johannesburg Declaration on Sustainable Development (para. 5); the 2005 World Summit Outcome (para. 48); the Future We Want – Outcome Document, etc.

[6] For example, the preamble to the 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat notes the "great economic, cultural, scientific and recreational value" of the wetlands; ND the preamble to the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area mentions the "historical and present economic, social and cultural values of the Baltic Sea Area for the well-being and development of the peoples of that region."

[7] "We need to stop talking about conservation and development as if they were in opposition and recognize that they are essential parts of one indispensable process." Cited from: United Nations Environmental Programme. 1991. *Caring for the Earth: A Strategy of Sustainable Living.* P. 8. URL: https://wedocs.unep.org/handle/20.500.11822/30889 (accessed: 08.04.2022).

any state or region lies in the fact that, when using natural resources today, the goal of development should be pursued, but not at the expense of future generations – that is, natural resources must remain in a sustainable state so that future generations can also use them. At the same time, attention is typically focused on the sustainability of the economic and social development of humankind, rather than the planet as a whole or its ecosystems. This is why the 1987 Report has been described as "anthropocentric."[8] In 1992, a number of legally non-binding documents ("soft law" acts) were adopted,[9] and the United Nations Commission on Sustainable Development was established under the United Nations Economic and Social Council (ECOSOC) (following the results of the United Nations Conference on Environment and Development held in Rio de Janeiro in 1992 – the so-called "Earth Summit).[10]

The definition of sustainable development proposed in the Brundtland Report is, as we shall illustrate in this paper, not the only one. A number of other international documents contain references to the concept of "sustainable development,"[11] or related terms, including those that make up its core elements (Ascher, Mirovitskaya 2002: 74–77). Accordingly, it is important to determine the legal context of the provisions on sustainable development provided for in specific international treaties and other international legal sources.

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[8] See: Boklan D. S. 2016. *Vzaimodeystvie mezhdunarodnogo ekologicheskogo i mezhdunarodnogo ekonomicheskogo prava* [The Interaction of International Environmental and Economic Law]. Dissertation for the degree of Juris Doctor. Moscow. P. 88. (In Russian).

[9] 1) The 1992 Rio Declaration on Environment and Development. URL: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (accessed: 09.04.2022); 2) Agenda for the 21st Century. Adopted by the UN Conference on Environment and Development held in Rio de Janeiro on June 3–14, 1992. URL: https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf (accessed: 09.04.2022); 3) Statement of Forest Principles. Adopted by the UN Conference on Environment and Development held in Rio de Janeiro on June 3–14, 1992 (accessed: 09.04.2022).

[10] United Nations Conference on Environment and Development. Rio de Janeiro, Brazil, June 3–14, 1992. URL: https://www.un.org/en/conferences/environment/rio1992 (accessed: 09.04.2022).

[11] For example, the preamble of the 1994 Marrakesh Agreement Establishing the World Trade Organization stipulates that the participating states recognize that their economic relations should be conducted with a view to "expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development." See: Marrakesh Agreement Establishing the World Trade Organization. URL: https://www.wto.org/english/docs_e/legal_e/04-wto_e.htm (accessed: 12.03.2022). Note here that the word "objective" is used in the singular here, although it would be more correct to say that "sustainable development" is itself an objective. Accordingly, it is "sustainable development" that should be ensured, rather than compliance with its objectives. For more detail on this, see: (Van den Bossche, Zdouc 2022: 94–96). Much like the preamble of the 1994 Marrakesh Agreement Establishing the World Trade Organization, the preambles of mega-regional investment agreements also mention the objective of achieving and promoting sustainable development. For example: 1) The 2020 Agreement between Canada, the United States of America, and the United Mexican States (CUSMA). URL: https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf (accessed: 09.04.2022); 2) The 2018 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). URL: https://www.dfat.gov.au/sites/default/files/tpp-11-treaty-text.pdf (accessed: 09.04.2022); 3) The 2004 Dominican Republic – Central America – United States Free Trade Agreement (DR–CAFTA). URL: https://wits.worldbank.org/GPTAD/PDF/archive/UnitedStates-DominicanRepublic(CAFTA).pdf (accessed: 09.04.2022). In this regard, the wording of the objective of sustainable development in Art. 19, para. 1 ("Environmental Aspects") of the provisions of the 1994 Energy Charter Treaty is also noteworthy: "In pursuit of sustainable development […] each Contracting Party shall strive to minimise in an economically efficient manner harmful Environmental Impacts…" The International Energy Charter Consolidated Energy Charter Treaty with Related Documents. URL: https://can-mex-usa-sec.org/secretariat/assets/pdfs/usmca-aceum-tmec/agreement-eng.pdf (accessed: 12.03.2022).

For example, the first term in the list of definitions (Article 3) in the **2002 Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific** is "sustainable development," defined as: " the process of progressive change in the quality of life of human beings, which places it as the centre and primordial subject of development, by means of economic growth with social equity and the transformation of methods of production and consumption patterns, and which is sustained in the ecological balance and vital support of the region."[12] This process, as the 2002 Convention states, implies "respect for regional, national and local ethnic and cultural diversity, and the full participation of people in peaceful coexistence and in harmony with nature, without prejudice to and ensuring the quality of life of future generations." This definition, which appears to be more detailed than the one offered in the 1987 Report, reveals the legal context of sustainable development. It places an emphasis on ensuring the quality of life of the current generation "in harmony with nature," thus ensuring the interests of future generations, including their health, as well as on the intrinsic value of objects of contractual protection.

The question also arises of the relationship between the concept of "sustainable development" and the term "sustainable management," which is often referred to when promoting the so-called "blue economy," when the emphasis is placed on the systemic and sustainable development of those sectors of the economy that are associate with the environmentally conscious use of natural resources and the World Ocean Space (Spalding, Braestrup, Refosco 2021: 27–60; Alam 2021: 61–80). In 2015, the International Tribunal for the Law of the Sea interpreted the term "sustainable management" to mean "conservation and development,"[13] but only in the context of Art. 63 para. 1 of the 1982 United Nations Convention on the Law of the Sea. Many international treaties aim for "conservation and development," as well as for the rational management of maritime species, primarily the protection of the maritime environment. The so-called Waigani Convention of 1995 (the Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region)[14] defines the term "management" as the "prevention and reduction of hazardous

[12] Convention for Cooperation in the Protection and Sustainable Development of the Marine and Coastal Environment of the Northeast Pacific of February 18, 2002. URL: https://www.ecolex.org/details/treaty/convention-for-cooperation-in-the-protection-and-sustainable-development-of-the-marine-and-coastal-environment-of-the-northeast-pacific-tre-001350/ (accessed: 09.04.2022).

[13] See para. 191 of the Advisory Opinion of the International Tribunal for the Law of the Sea. International Tribunal for the Law of the Sea: Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal). 02.04.2015. P. 4. https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf (accessed: 09.04.2022).

[14] Convention to Ban the Importation into Forum Island Countries of Hazardous Wastes and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific of September 16, 1995. URL: https://www.ecolex.org/details/treaty/convention-to-ban-the-importation-into-forum-island-countries-of-hazardous-wastes-and-radioactive-wastes-and-to-control-the-transboundary-movement-and-management-of-hazardous-wastes-within-the-south-pacific-tre-001241/ (accessed: 09.04.2022).

wastes and the collection, transport, storage, and treatment or disposal, of hazardous wastes including after care of disposal sites" (Art. 1). This document also focuses on the "environmentally sound management of hazardous wastes." On the whole, "management" is understood here as the sum total of a number of legally defined measures aimed at sustainable development.

The legal definition of the term "sustainable use" emphasizes, first of all, the long-term availability and management of natural resources, and, second, the demand to meet human needs not only now, but in the future, accounting for the future development of science and technology. The term "sustainable use" is thus defined as "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations." This is the definition proposed in Art. 2 of the 1992 Convention on Biological Diversity,[15] and it speaks to the intention to build on the understanding of the essence of sustainable development set out in the 1987 Report. What is curious about the text of the 1992 Convention, however, is the addition of wording relating to "speed." This aspect is also reflected, for example, in the 2005 Protocol Concerning the Conservation of Biological Diversity and the Establishment of Network of Protected Areas in the Red Sea and Gulf of Aden.[16] Here, the term "sustainable use" receives an entry in the list of definitions (Art. 2, para. 22), while "sustainable development" does not, even though it is used in the text, and the definition is similar to that proposed in the Convention on Biological Diversity.

The 1999 Provisional Measures Order on Southern Bluefin Tuna Cases delivered by the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") stressed that the parties had an obligation to "intensify their efforts to cooperate with other participants in the fishery for southern bluefin tuna with a view to ensuring conservation and promoting the objective of optimum utilization of the stock" (para. 78).[17] It is clear that "optimum utilization" here is aimed at ensuring the harmony of environmental and economic interests (the preservation of bluefin tuna in the first case, and the continuation of this type of economic activity in the second). In its Provisional Measures Order on the 2001 MOX Plant Case, the Tribunal pointed to the duty of states to cooperate as "a fundamental principle in the prevention of pollution of the marine environment under Part XII of the Convention and general international law"

[15] Convention on Biological Diversity (CBD) of 5 June 1992. URL: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-8&chapter=27&clang=_en (accessed: 09.04.2022).

[16] Protocol Concerning the Conservation of Biological Diversity and the Establishment of Network of Protected Areas in the Red Sea and Gulf of Aden of 12 December 2005. URL: http://www2.ecolex.org/server2neu.php/libcat/docs/TRE/Full/En/TRE-147472.pdf (accessed: 09.04.2022).

[17] International Tribunal for the Law of the Sea: Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan). Provisional Measures. Order of 27 August 1999. P. 280. URL: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_3_4/published/C34-O-27_aug_99.pdf (accessed 09.04.2022).

(para. 82).[18] Accordingly, in the operative part of the Order, the Tribunal ruled that the parties are obliged to cooperate in the exchange of information, the monitoring of the risks or effects of the operation of the plant, and the development of measures to prevent pollution of the marine environment. Within the meaning of this legal instrument, the obligation to cooperate includes: 1) conducting an environmental impact assessment; 2) exchanging information, including on emergency situations; and 3) complying with environmental standards. At the same time, the Tribunal did not designate those provisions of international treaties that aim for sustainable development as a principle.

The issue of the international legal content of the concept of "sustainable development" is thus addressed both in legal documents and in legal science, although there is clearly no consensus on what this content actually is, and various definitions have been offered. Note that no other reasonable alternative to this "new paradigm" has thus far been proposed in international law (Brinchuk 2011: 18–19).[19] Accordingly, the only way to resolve the issue is to study the context, primarily international treaties that include provisions on sustainable development.

Analysis of the Contractual and Legal Mechanisms for the Sustainable Development of the Maritime Activities of States

As we have already noted, most international treaties (global and regional) that touch in one way or another on the idea of sustainable development refer to the sources of the international law of the sea. The analysis presented in this section suggests that the legal notion of sustainable development was formed over the course of an extended period of time, since long before 1987, and its crystallization, not only in "soft law" acts, but also in international (including global) treaties.

Universal International Maritime and Environmental Treaties

(1) The **1946 International Convention for the Regulation of Whaling** is a universal international maritime treaty to tackle the idea of sustainable development. The preamble to the Convention emphasizes the common interest of the nations of the world in "safeguarding for future generations" the great natural resources represented by the whale stocks and achieving "the optimum level of whale stocks as rapidly as possible without causing wide-spread economic and nutritional distress." The 1946 Convention aims to create a system of international regulation for whale fisheries to

[18] International Tribunal for the Law of the Sea: MOX Plant (Ireland v. United Kingdom). Provisional Measures. Order of 3 December 2001. P. 95. URL: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/published/C10-O-3_dec_01.pdf (accessed: 09.04.2022).

[19] See: Boklan D. S. Op. cit. P. 101.

ensure the proper and effective conservation and development of whale stocks. The inclusion of the goal of sustainable development in the preamble of the 1946 Convention undoubtedly affects the interpretation and application of this international treaty. In other words, the 1946 Convention must be interpreted and applied in the context of that goal and the subject of the treaty (whale stocks). For the purposes of interpreting the 1946 Convention, it follows from Art. 31, para. 2 of the 1969 Vienna Convention on the Law of Treaties that the objective of ensuring the sustainability of whale populations is included in the "context" of the treaty and is considered a legal obligation. This approach to the interpretation and application of the 1946 Convention was confirmed by the International Court of Justice in the "Whaling in the Antarctic" case.[20]

The wording used in the Convention – the "proper and effective conservation and development of whale stocks," the recognition of a "common interest" of states in the development of sustainable whaling, and the concern for "future generations" of coastal and other communities engaged in whale fisheries – have become components of the legal concept of "sustainable development" in its current form. These components of the concept are not reflected in the preamble of the 1946 Convention only. In fact, they permeate other provisions of the text, for example: the provision on the "conservation and development of whale fisheries and the products arising therefrom" (Art. III, para. 6); and the provision on the "conservation, development, and optimum utilization of the whale resources" (Art. V, para. 2). It should be noted here that the annually updated Schedule to the 1946 Convention classifies whale stocks in three categories in accordance with the recommendations of the Scientific Committee. One of these is the Sustained Management Stock (SMS), which means that the whale stock remains at a stable level for a considerable period under a regime of approximately constant catches, but not more than 10% of "maximum sustainable yield" (MSY) stock level below MSY stock level and not more than 20 per cent above that level (Vylegzhanin 2001: 172–173).[21] That is, we are talking about legal measures aimed at maintaining the sustainability of the population, preventing population decline and controlling population numbers. The term "maximum sustainable yield" would later be used in the 1982 United Nations Convention on the Law of the Sea (hereinafter "the 1982 Convention").

In this context, it can be argued that the 1946 Convention set out provisions for sustainable development, that is, long before the 1987 Brundtland Report, although its wording was far from perfect. In any case, the 1987 Report laid the foundation for the

[20] International Court of Justice: Whaling in the Antarctic (Australia v. Japan: New Zealand intervening). Judgment of 31 March 2014. Para. 57. URL: https://www.icj-cij.org/public/files/case-related/148/148-20140331-JUD-01-00-EN.pdf (accessed: 02.03.2022).

[21] For more on the legal interpretation of the term maximum sustainable yield, see: Gureev, S. A., ed. 2003. *Mezhdunarodnoe morskoe pravo: uchebnoe posobie* [International Maritime Law: Study Guide]. Moscow: Yuridicheskaya literatura. P. 350–351.

subsequent (and terminologically less ambiguous) formulation of the international legal concept of sustainable development, as well as for the introduction of this concept into international legal consciousness.[22]

(2) Another universal international maritime treaty in which certain legal components of sustainable development can be found is the **1958 Convention on Fishing and Conservation of Living Resources of the High Seas**. The preamble to the treaty points to the "exploitation of the living resources of the sea." The conservation of these resources requires the coordinated actions of interested states. Article 2 of the 1958 Convention defines the term "conservation of the living resources of the high seas" as "the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products."

We should note here that this convention clearly references not only the combination of environmental and economic interests, but also the social component of sustainable development, the desire to find a balance between the primary need to meet human food needs, support and maintain the maritime industry, and conserve the living resources of the world's oceans for future generations.

(3) The **1971 Convention on Wetlands of International Importance especially as Waterfowl Habitat** (the Ramsar Convention) defines wetlands as "areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres" (Art. 1). In accordance with Art. 2, para. 6 of the Convention, "each Contracting Party shall consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl." Further, Art. 3, para. 1 stipulates that the Contracting Parties "formulate and implement their planning so as to promote the conservation of the wetlands" and their "wise use." The set of provisions contained in the Convention on "conservation," "management" and the "wise use" of these resources are practical implementations of the task of sustainable development, which at that time had not yet been formulated as a contractual legal principle. We should, however, note the importance of the emphasis placed in the preamble of the Ramsar Convention on "the great economic, cultural, scientific and recreational value" of wetlands, "the loss of which would be irreparable." Similar wording about the value of a given natural resource appears with increasing frequency in international treaties containing provisions on sustainable development concluded since then. The list of such "values" continues to expand in various agreements, although they are nevertheless aimed at achieving sustainable development.[23]

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[22] It was only after the publication of the 1987 Report that the term "sustainable development" started to appear with increasing frequency in the media and in the speeches of political figures, including during election campaigns.

[23] For example, the **1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter** uses the wording "vital importance to humanity;" and the **1979 Convention on the Conservation of Migratory Species of Wild Animals** notes the "ever-growing value of wild animals from environmental, ecological, genetic, scientific, aesthetic, recreational, cultural, educational, social and economic points of view."

(4) The **1972 Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter** stresses that "all people have an interest in assuring that [the marine environment] is so managed that its quality and resources are not impaired." At the same time, it notes the importance of the use by states of the "best practicable means to prevent such pollution and develop products and processes which will reduce the amount of harmful wastes." Article I of the 1972 Convention establishes the obligation of the parties to take measures to prevent the pollution of the sea, as well as to promote the effective control of all sources of pollution of the marine environment. The **1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972** further develops the legal mechanisms laid down in the Convention, emphasizing the "sustainability" of development, and offering a more robust understanding of the content of the sustainable development concept: "the need to protect the marine environment and to promote the sustainable use and conservation of marine resources"; "to protect and preserve the marine environment and to manage human activities in such a manner that the marine ecosystem will continue to sustain the legitimate uses of the sea and will continue to meet the needs of present and future generations." Article 2 of the Protocol states that the goal is to "protect and preserve the marine environment from all sources of pollution," and, to achieve this goal, states are obliged to take all effective possible measures, including, as Art. 3 suggests, obliging the polluter to "bear the cost of pollution" (Art. 2).

(5) The **1979 Convention on the Conservation of Migratory Species of Wild Animals** (the Bonn Convention) does not use the term "sustainable development," but the language used in the document does hint at such a concept. For example, the preamble to the Convention states that "wild animals in their innumerable forms are an irreplaceable part of the earth's natural system which must be conserved for the good of mankind"; "each generation of man holds the resources of the earth for future generations and has an obligation to ensure that this legacy is conserved and, where utilized, is used wisely"; and "the effective management of migratory species of wild animals require the concerted action of all States." Article I then offers a definition of the term "conservation status" of a migratory species as "favourable" or "unfavourable," which is determined based on the viability of the species as part of the ecosystem and the stability of its population. At the same time, the term "wise wildlife management" is used, while Art. V introduces the concept of "sound ecological principles" on which the control and management of the use of migratory species should be based. Articles III and V of the Bonn Convention outline measures for the management of wildlife: the obligation of the Parties to "conserve" and "restore" habitats; "prevent, remove, compensate for or minimize […] the adverse effects of activities"; and "to prevent, reduce or control" the impact of negative factors.

(6) The **1982 United Nations Convention on the Law of the Sea** emphasizes the need to promote the use of seas and oceans, "the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment" (Preamble). At the same time, the docu-

ment points to the benefits that sustainable development can bring: "the achievement of these goals will contribute to the realization of a just and equitable international economic order which takes into account the interests and needs of mankind as a whole and, in particular, the special interests and needs of developing countries"; to "promote the economic and social advancement of all peoples of the world." Article 61 of the Convention ("Conservation of the living resources") establishes the obligation of states, on the basis of scientific evidence, to "ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation" (para. 2). Paragraph 3 of the same article states that it is necessary to maintain or restore "populations of harvested species at levels which can produce the maximum sustainable yield,[24] as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States." Similar wording is used in Art. 119, par. 1 ("Conservation of the living resources of the high seas"), although this is understandable given the difference in the legal mechanisms for managing marine biological resources on the high seas and in the exclusive economic zone.

These provisions, in addition to the goal of maintaining the sustainability of the yield, imply that a balance be sought between the relevant environmental, economic and social factors. Article 62, paragraph 1 of the 1982 Convention ("Utilization of the living resources") notes "the objective of optimum utilization of the living resources in the exclusive economic zone." Article 145 reads: "Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area[25] to ensure effective protection for the marine environment from harmful effects which may arise from such activities," in particular, "the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment."[26] This search for a balance between (sometimes competing) economic, social and environmental needs permeates other articles of the 1982 Convention, which reflect the goal of sustainable development. Article 150 ("Policies relating to activities in the Area) is particularly significant in this respect, as it points out the need to "foster healthy development of the world economy and balanced growth of international trade, and to promote inter-

[24] For the legal content of the term "maximum sustainable yield" as used in the Convention, see, for example: (Vylegzhanin 2001: 172).

[25] This refers to the "International Seabed Area," the boundaries of which can be established if all coastal states delineate their continental shelf from it in the manner provided for in Art. 76 of the 1982 Convention. The prospect of this happening is fairly bleak at present, if only for the reason that a number of countries, including the United States, are not parties to the 1982 Convention. What is more, there is no mechanism in international law to prevent such countries from setting up a regime of their own for exploiting the mineral resources beyond the continental shelf, other than the mechanism established by the 1982 Convention and the 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea, which is full of red tape. For more detail, see: Vylegzhanin A. N., Savaskov P. V. 2021. *Mezhdunarodnoe pravo. V 2-kh chastyakh. Chast' 2* [International Maritime Law. International Law. In Two Volumes. Volume 2]. Fourth Edition. Moscow: Yurait, P. 231–232.

[26] See also: Art. 207 ("Pollution from land-based sources"); and Art. 234 ("Ice-covered areas").

national cooperation for the over-all development of all countries." Note the provisions on the "orderly, safe and rational management of the resources of the Area, including the efficient conduct of activities in the Area and, in accordance with sound principles of conservation"; the "enhancement of opportunities for all States Parties […] to participate in the development of the resources of the Area"; the "protection of developing countries from adverse effects on their economies"; and to exploit the mineral resources of the area "for the benefit of mankind as a whole."

(7) Article 4 of the **1992 United Nations Framework Convention on Climate Change** contains the obligation to promote sustainable management, as well as the conservation and enhancement of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol." Note the use of the term "promote sustainable management" as a reflection of the obligation of States Parties to the Convention. The English text of the treaty uses the modal verb "shall," thus conveying this obligation.

(8) The preamble to the **2015 Paris Agreement**, negotiated by the Parties to the 1992 United Nations Framework Convention on Climate Change, notes "the importance of ensuring the integrity of all ecosystems, including oceans."

(9) Article 2 of the **1992 Convention on Biological Diversity** defines its key concept ("biological diversity") as "the variability among living organisms from all sources including, *inter alia,* terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part." Within the meaning of the Convention, this concept includes "diversity within species, between species and of ecosystems." According to Art. 22, para. 2, with respect to the marine environment, Contracting Parties shall implement the provisions of the Convention "consistently with the rights and obligations of States under the law of the sea." That is, the norms of the law of the sea are considered *lex specialis.* The 1992 Convention uses the term "sustainable development," as well as other wordings and formulation that reflect this concept. First of all, it should be noted that Article 1 explicitly states that the goal of the Convention is to achieve the "sustainable use of biological diversity." The definition of "sustainable use" used in the Convention is also noteworthy: according to Art. 2, it means "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations." As we can see, this wording is similar to the definition of "sustainable development" given in the 1987 Report. However, we should point out here that the 1992 Convention establishes a number of specific obligations of the Contracting Parties: 1) Art. 6 and Art. 10 contain obligations to integrate measures for the sustainable use of biodiversity into national strategies, plans or programmes; 2) Art. 8 includes the obligation to "promote environmentally sound and sustainable development in areas adjacent to protected areas; and 3) Art. 5 stipulates cooperation between Contracting Parties "for the conservation and sustainable use of biological diversity." From the point of view of determining the legal content of the concept of sustainable development, Article 11 ("Incentive Measures") is also interesting, as it reflects the three components of sustainable development noted above – moreover,

in terms of the dynamics of their interaction with each other. Contracting Parties to the Convention are required to "adopt economically and socially sound measures that act as incentives for the conservation and sustainable use of components of biological diversity." The 1992 Convention also includes provisions on the priority of socioeconomic development, the elimination of poverty in developing countries (Preamble, Art. 20), public education and awareness (Art. 13), the transfer of technology (Art. 16), the handling of biotechnology and distribution of its benefits (Art. 19), the exchange of information (Art. 17), and Technical and Scientific Cooperation (Art. 18).

(10) The text of the **1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas** does not use the term "sustainable development" specifically. However, the preamble does mention a commitment to following Agenda 21, including to ensuring the conservation and sustainable use of marine living resources on the high seas."

(11) Article 5 ("General principles") of the **1995 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** (hereinafter "the 1995 Agreement") establishes the obligations of states, in particular, to "adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization" (par. a), and "assess the impacts of fishing, other human activities and environmental factors on target stocks and species" (para. d). Article 6 states that the precautionary approach shall be applied with due account of "existing and predicted oceanic, environmental and socio-economic conditions." The 1995 Agreement thus also outlines, in the context of ensuring the sustainability of these reserves, the relationship between economic, environmental and social factors.

(12) Article 5 of the **1997 Convention on the Law of the Non-navigational Uses of International Watercourses** establishes the principle of the use by States if an international watercourse in an "equitable and reasonable manner," with a view to attaining its "optimal and sustainable utilization" and obtaining the "benefits therefrom, taking into account the interests of the watercourse States concerned, consistent with adequate protection of the watercourse." Article 24 explains the content of the concept of the "management" of an international watercourse: firstly, it means "Planning the sustainable development of an international watercourse," and, secondly, it means "Otherwise promoting the rational and optimal utilization, protection and control of the watercourse."

(13) The purpose of the **2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing**,[27] is to prevent, deter and eliminate IUU fishing "through the implementation of effective port State

[27] The latter phrase is often abbreviated as "IUU fishing."

measures, and thereby to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems" (Art. 2). That is, in this case, measures to prevent IUU fishing are seen as a means of achieving sustainable development.

Based on the above, we can propose the following approach to understanding the content of the provisions outlined in the Convention. They testify to the formation of the principle of sustainable development, which should not be considered in isolation from other provisions on the environment and natural resources, but rather interpreted as a broad principle expressed by contractual provisions that promote the sustainability of the environment and its ecosystems, including natural resources, as well as the sustainability of the existing nature of the population's economic development. The environmental component of the principle of "sustainable development" alone includes at the very least a set of three measures to prevent negative factors ("prevention"); reduce their impact ("reduction"); and establish environmental control measures ("control").[28]

Examples of Regional Contractual and Legal Sustainable Development Mechanisms

A review of the Regional Seas Conventions and Action Plans (RSCAPs) reveals that the number regional instruments in this sphere focus on sustainable development is even greater than that of universal instruments.[29] For example, back in **1952**, Peru, Chile and Ecuador signed the **Agreement Relating to the Organization of the Permanent Commission of the Conference on the Exploitation and Conservation of the Marine Resources of the South Pacific**.[30] The very use of the term "optimum development" in the 1952 agreement, along with the word "conservation," in addition to the measures outlined in the document for the "conservation and optimum development" of marine resources (para. 3), speak to the desire of the States Parties to implement some idea of optimal development in which the goals of protecting the marine environment and the industrial development of marine resources are harmonized.

Another compelling example of the use of the concept of sustainable development in regional treaty mechanisms prior to 1987 is the **1985 ASEAN Agreement on the Conservation of Nature and Natural Resources**.[31] For example, the terms "sus-

[28] For example, in Art. 207 of the 1982 Convention, this set of measures is complemented by the need to promote the economic development of developing countries. The same set of measures is also reflected in Art. 5, par. 2 of the **1992 Bucharest Convention on the Protection of the Black Sea against Pollution**.

[29] Regional Seas Conventions and Action Plans (RSCAPs). URL: https://www.unep.org/ru/issleduyte-temy/okeany-i-morya/nasha-deyatelnost/programma-regionalnykh-morey (accessed: 20.04. 2022).

[30] Geographically, and judging by the states parties to this and other similar regional agreements, we would classify this as a group of treaties relating to the South-East Pacific. Permanent Commission of South Pacific. URL: https://www.unep.org/explore-topics/oceans-seas/what-we-do/workingregional-seas/regional-seas-programmes/south-east?_ga=2.182598374.1599707732.1648410010-1467993082.1648052064 (accessed: 21.04.2022).

[31] For more detail, see: Nguyen K. T. *Mezhdunarodno-pravovaya zashchita okruzhayushchey sredy v ramkakh assotsiatsii gosudarstv Yugo-Vostochnoy Azii* [International Legal Protection of the Environment in within the framework of the Association of Southeast Asian Nations]. Dissertation for the degree of Juris Doctor. Moscow. Ch. 2.2.

tainability of development," "management compatible with sustainable development," "the goal of sustainable development," "conservation measures and their relationship with sustainable development objectives," "sustainable utilization," "sustainable use" and "optimum sustainable land use" appear (in the Preamble and paras. 1, 3, 4, 6, 9, 12 and 16).

Below, we will examine the provisions on sustainable development contained in those regional international treaties that are of particular importance for the economic, social and environmental interests of the Russian Federation, specifically in the Baltic, Caspian, Black Sea, North Pacific and Antarctic regions. The intensity of economic activities in these sea regions, including in terms of natural resources, poses a number of environmental challenges to Russia's future national interests, primarily as a coastal state, and in the case of Antarctica, as a state with special, historical interest in the region. The specifics of the Arctic's status call for a separate study, which is why we will not touch upon it in this paper.[32]

The Baltic Region

The most important document in this region for the purposes of this study is the **1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area** (which replaced the 1974 convention of the same name). The States-Parties to the Convention are Denmark, Estonia, the European Union, Germany, Finland, Latvia, Lithuania, Poland, Russia and Sweden. The Preamble to the Convention recognizes "the historical and present economic, social and cultural values of the Baltic Sea Area for the well-being and development of the peoples of that region," which, as we noted above, confirms the existence of the so-called "cultural component" in the concept of sustainable development. In addition, the tasks of the Convention include the "protection and enhancement of the marine environment of the Baltic Sea Area," which can only be successfully addressed through the cooperation of states. Article 3 of the Convention (paras. 1–3) states that the precautionary principle shall be applied in the fulfilment of its principles and obligations, aimed at promoting "the ecological restoration of the Baltic Sea Area and the preservation of its ecological balance." In this case, the best environmental practices, technologies, and scientifically based methods should be used. Article 3 paragraph 4 establishes the application of the "polluter-pays principle," while Art. 3, para 6 stipulates the prevention of transboundary pollution. This obligation correlates directly with the principle of international environmental law – to not cause damage to the environment outside their jurisdiction. This latter point was written into Art. 194, para. 2 of the 1982 United Nations Convention on the Law of the Sea.

[32] For more on this, see the MGIMO report prepared as part of the "Priority 2030" project: (Vylegzhanin et al. 2021: 50–51).

Article 15 of the Helsinki Convention ("Nature conservation and Biodiversity) establishes the obligation of the Contracting Parties to take all appropriate measures to "ensure the sustainable use of natural resources within the Baltic Sea Area." That is, the 1992 Convention is also an example of obligations aimed at supporting sustainable development being written into a legal instrument. What is more, this international treaty shows the interaction of the principle of sustainable development with other international legal principles.

The Caspian Sea Region

The Preamble to the **2003 Framework Convention for the Protection of the Marine Environment of the Caspian Sea** concluded by Azerbaijan, Iran, Kazakhstan, Russia and Turkmenistan reflect the attention to the wellbeing of present and future generations, in this case in relation to the preservation of the ecological complex of the Caspian Sea.

In Art. 1, the term, "Action Plan" focuses on the sustainable development and protection of the marine environment of the Caspian Sea. Article 2 outlines the purpose of the agreement: to ensure, first and foremost, the "protection, preservation, restoration and sustainable and rational use of the biological resources of the Caspian Sea."

Article 14 of the Convention describes ways to achieve this goal and establishes specific obligations for the Contracting Parties, in particular, to take measures to "develop and increase the potential of living resources for conservation, restoration and rational use of environmental equilibrium in the course of satisfying human needs in nutrition and meeting social and economic objectives"[33] (Art. 14, para. 1). As is the case with most international conventions that touch upon the issue of the protection of the marine environment, the 2003 Framework Convention also applies a mechanism for establishing a "maximum sustainable yield" for marine species (Art. 14), which takes relevant environmental and economic factors into account. Thus, the principle of sustainable development appears in this agreement in all three dimensions we identified earlier: the economic dimension, the environmental dimension, and the social dimension.

Of the four protocols to the 2003 Framework Convention agreed to date, the following three are of greatest interest for the purposes of this article (although they have not yet entered into force). The Preamble to the **2012 Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities** defines the protection and conservation of the marine environment and coastal areas and the sustainable use of natural resources of the Caspian Sea, while at the same time meeting the needs of present and future generations in an equitable manner, as "an integral

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part of the development process."[34] The general obligations outlined in Art. 4, para. 1 of the Protocol relate to the consolidation of activities within the framework of the environmental component of sustainable development (prevention, control, reduction and elimination of adverse effects on the marine environment). According to Art. 4, para 2, the Contracting Parties are obliged to apply both the precautionary and the "polluter pays" principles. The same Article also provides for the obligation of the Contracting Parties to "promote sustainable development of the coastal areas through the integrated approach to development of coastal areas," as well as a provision on environmental cooperation. We should note here that, based on the meaning of Art. 4, the norms listed above (with regard to control, the precautionary principle, etc.) are not legally subordinate to each other. But they all establish legal obligations for the Contracting States.

The **Protocol for the Conservation of Biological Diversity to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (2014)**[35] is notable for the fact that its definition of the term "sustainable use" in Art. 1 essentially repeats the wording of the 1987 Report in its definition of "sustainable development": "the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations." That is, emphasis is placed, first of all, on the long-term sustainability and viability of the living resources of the Caspian Sea and, second, on their actual and potential ability to satisfy human needs both now and in the future. One of the objectives outlined in Article 2 of the Protocol is "to ensure the sustainable use of biological resources," which is seen as both a goal in itself and the context in which activities are carried out in order to preserve the Caspian ecosystem. The commitments for all Contracting Parties are underpinned by the context, purpose and need for sustainable development (Art. 5). According to this Article, sectoral strategies and action plans must be consistent with "the principles of conservation of biological diversity and sustainable and rational use of biological resources." Such an approach to the wording of legal norms on sustainable development, in turn, implies cooperation in this area (Art. 16), including the exchange of information (Art. 17), and raising public awareness (Art. 18).

The Preamble of the **2018 Protocol on Environmental Impact Assessment**[36] **in a Transboundary Context to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea**[37] states that the application of EIA in the

[34] Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea dated December 12, 2012. URL: https://tehranconvention.org/ru/tc/protocols (accessed: 12.03.2022).

[35] Protocol for the Conservation of Biological Diversity to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea dated May, 30 2014. URL: https://tehranconvention.org/ru/tc/protocols (accessed: 12.03.2022).

[36] Hereinafter also referred to as EIA.

[37] Protocol on Environmental Impact Assessment in a Transboundary Context to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea dated July 20, 2018. URL: https://tehranconvention.org/ru/tc/protocols (accessed: 12.03.2022).

decision-making process for proposed activities "promotes the implementation of the principles of sustainable development." On the whole, our analysis of the legal acts relating to the Caspian Sea confirms our conclusion that the interpretation of the concept of "sustainable development" is particularly broad, and includes a number of special provisions relating to the environment and economic and social norms.

The Black Sea Region

The most important document in terms of analysing the norms on sustainable development contained in international treaties that apply to the Black Sea region is the **1992 Convention on the Protection of the Black Sea Against Pollution (the Bucharest Convention)**,[38] as well as its protocols. One thing that sets the Bucharest Convention apart from other documents is the wording it uses to express the components of sustainable development: in addition to the obligatory clause on economic and social significance, the Preamble also draws attention to the special mention of the health values of the marine environment of the Black Sea. Moreover, the document also takes the principles, customs and rules of general international law regulating the protection and preservation of the marine environment and the conservation of the living resources thereof" into account. According to Art. 5 of the Convention, the Contracting Parties are obliged to protect and preserve the marine environment of the Black Sea, as well as to prevent, reduce and control pollution there. This norm reflects, first of all, the precautionary principle, and, second, the triad of measures we outlined earlier ("prevention + reduction + control"). These provisions are corroborated in Art. 1 of the **1992 Protocol on the Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources** (adopted at the same time as the Bucharest Convention).[39]

Russia is not a signatory of the **2002 Black Sea Biodiversity and Landscape Conservation Protocol to the Convention on the Protection of the Black Sea against Pollution**. To date, it has been ratified by four of the five states that were involved in its development: Bulgaria, Georgia, Turkey and Ukraine. However, a close examination of the provisions of the Protocol in the context of the subject of our discussion is useful nevertheless. The document notes the commitment to the agreed responsibility of the Contracting Parties to protect, preserve, improve and manage in, as we have already noted, "a sustainable and environmentally sound way" areas of particular biological or landscape value and the "nature, historical, cultural and aesthetic resources and heritage of the Black Sea states for present and future generations" (Art. 1; Art. 4). The

[38] Convention on the Protection of the Black Sea against Pollution of 21 April 1992. https://www.ecolex.org/details/treaty/convention-on-the-protection-of-the-black-sea-against-pollution-tre-001149/ (accessed: 12.03.2022). The signatories to the 1992 Convention were Bulgaria, Georgia, Romania, Russia, Turkey and Ukraine.

[39] Protocol on the Protection of the Black Sea Marine Environment against Pollution from Land-Based Sources of 21 April 1992. URL: https://www.ecolex.org/details/treaty/protocol-on-the-protection-of-the-black-sea-marine-environment-againstpollution-from-land-based-sources-tre-001392/ (accessed: 12.03.2022).

document also includes the obligation of the Contracting Parties to ensure the integrity, sustainability and development of protected areas. The combination of the environmental and economic components is reflected in Art. 4, which states that Contracting Parties must "ensure that species of economic importance, especially living marine resources, are used sustainably," as well as in Art. 7, which contains a provision on the need to promote "environmentally friendly human activities in the coastal zone."

The Preamble to the **2009 Protocol on the Protection of the Marine Environment of the Black Sea from Land-Based Sources and Activities**,[40] signed by all six parties to the Bucharest Convention, is of particular interest for our analysis, as it defines the rational use of resources, as well as the protection and conservation of the marine environment, as "an integral part of the process of sustainable development in the region, aimed at meeting the needs of present and future generations in an equitable manner." This is similar to the wording used in the Preamble to the 2012 **Protocol for the Protection of the Caspian Sea against Pollution from Land-Based Sources and Activities to the Framework Convention for the Protection of the Marine Environment of the Caspian Sea** analysed earlier in this paper.

The North Pacific Region

Article III of the **1990 Convention for a North Pacific Marine Science Organization**[41] states that the purpose of the Organization shall be, inter alia, to conduct scientific research "with respect to the ocean environment and its interactions with land and atmosphere, its role in and response to global weather and climate change, its flora, fauna and ecosystems, its uses and resources, and impacts upon it from human activities." We are essentially talking here about scientific support in maintaining a sustainable balance of environmental and economic interests of the states that have a coast on this sea region.

The Preamble of the **1992 Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean**[42] stipulates that the states of origin of anadromous stocks should "forego economic development opportunities to establish favourable conditions to conserve and manage those stocks." To this end, the parties coordinate their efforts and are developing an effective mechanism for international cooperation.

Article II of the **1994 Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea**[43] defines the objectives of the international treaty thus: "to establish an international regime for conservation, management,

[40] Protocol on the Protection of the Marine Environment of the Black Sea From Land Based Sources and Activities of 7 April 2009. URL: http://www2.ecolex.org/server2neu.php/libcat/docs/TRE/Full/En/TRE-154598.pdf (accessed: 12.03.2022).

[41] Convention for a North Pacific Marine Science Organization dated December 12, 1990. URL: https://lawrussia.ru/texts/legal_310/doc310a558x582.htm (accessed: 12.05.2022). Russia acceded to the Convention on December 16, 1994.

[42] Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean dated February 11, 1992. Consultant Plus legal information database. URL: https://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=INT&n=15382#Xiq3mLTzZA2kvvXB (accessed: 12.05.2022). Russia is a party to the Convention.

[43] Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. Garant legal information database. URL: https://base.garant.ru/2555840/ (accessed: 12.05.2022). Russia is a party to the Convention.

and optimum utilization of pollock resources in the Convention Area"; "to restore and maintain the pollock resources in the Bering Sea at levels which will permit their maximum sustainable yield"; and "to cooperate in the gathering and examining of factual information." That is, the sustainability of pollock resources is ensured by a set of measures governing their rational management, which includes conservation and optimal use.

The preamble to the **2012 Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean**[44] stresses the commitment of the signatories to "ensuring the long-term conservation and sustainable use of fisheries resources in the North Pacific Ocean" and "safeguarding the marine ecosystems in which these resources occur." This is, in fact, the stated objective of the Convention (Art. 2). According to Art. 3, the applicable legal principles include "promoting the optimum utilization and ensuring the long-term sustainability of fisheries resources;" maintaining fish resources at "levels capable of producing maximum sustainable yield"; and "ensuring that levels of fishing effort or harvest levels are based on the best scientific information available and do not exceed those commensurate with the sustainable use of the fisheries resources" without overexploitation. Article 3 also establishes the need to conduct a preliminary assessment of the impacts of fishing activities on the "long-term sustainability of fisheries resources and a determination that those activities would not have significant adverse impacts on vulnerable marine ecosystems." That is, the provisions of the Convention are aimed at the long-term, sustainable use of the living resources of the high seas of the North Pacific region while preserving their ecological complexes.

The Antarctic

The provisions of the **1972 Convention for the Conservation of Antarctic Seals**[45] aim to promote the conservation, scientific study, and rational and humane use of Antarctic seals, and to maintain a sustainable balance within the Antarctic ecological system (Preamble, Art. 3). The Preamble to the Convention recognizes the need to regulate the industry so that Antarctic seal stocks not be "depleted by over-exploitation" and that the harvest does not exceed the levels of the "optimum sustainable yield."

Article II of the **1980 Convention on the Conservation of Antarctic Marine Living Resources** (hereinafter referred to as the CAMLR Convention)[46] notes that, for the purposes of the Convention, the term "conservation" will include "rational use." The Article also notes as one of the obligations of Contracting Parties the "prevention of

[44] Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean dated February 24, 2012. URL: http://publication.pravo.gov.ru/Document/View/0001201507290036?index=20&rangeSize=20 (accessed: 12.05.2022). Russia is a party to the Convention.

[45] Convention for the Conservation of Antarctic Seals dated June 1, 1972. URL: https://treaties.un.org/doc/Publication/UNTS/Volume%201080/volume-1080-I-16529-Other.pdf (accessed: 12.05.2022). Russia is a party to the Convention.

[46] CAMLR Convention of 20 May 1980. URL: https://www.ccamlr.org/en/organisation/convention (accessed: 12.03.2022). Russia is a party to the Convention.

changes or minimisation of the risk of changes in the marine ecosystem." The objective of the document is to make possible the "sustained conservation of Antarctic marine living resources."

The **1991 Protocol on Environmental Protection to the Antarctic Treaty (the Madrid Protocol)**[47] also reflects the ideas of sustainable development, although the term itself does not appear anywhere in the document. The Preamble to the Protocol notes that the "development of a comprehensive regime for the protection of the Antarctic environment and dependent and associated ecosystems" is "in the interest of mankind as a whole." This provision is reinforced in Art. 3, which sets out principles of conservation that confirm Antarctica's status as a Special Conservation Area. One of these principles, described in Art. 3, para. 1 of the Protocol, states that the "intrinsic value" of Antarctica, "including its wilderness and aesthetic values" and "its value as an area for the conduct of scientific research" must be taken into account in the "planning and conduct of all activities in the Antarctic Treaty area." These legal provisions can be interpreted as navigating the achievement of a stable balance between the various components of the concept of sustainable development. At the same time, priority is clearly given here to the environmental dimension of activities in Antarctica, which "scans" the declared economic and social needs, correcting them if necessary.

We can thus conclude that a feature of the international treaties we have analysed is that they all contain the main substantive elements of the concept of sustainable development (economic, environmental and social), although to different degrees, due to the involvement of other norms, for example, the EIA, the ecosystem approach, and precautionary mechanisms as a means of achieving sustainable development. As with our analysis of universal international treaties, the general conclusion is that states that have concluded such regional agreements have designated sustainable development clauses as legally binding obligations.

Summary of Theoretical Assessments of Sustainable Development Provisions Contained in the Sources of Treaties on the International Law of the Sea

The analytical review of the provisions on sustainable development contained in existing international treaties on the international law of the sea presented in the previous section quite demonstrably refute the position of numerous legal scholars who consider the phenomenon of sustainable development exclusively as the designated intentions of states, rather than as legal norms. Allow us to offer a different opinion: the sustainable development provisions we have looked at inherently include rights and obligations, including the obligation to create appropriate international legal mecha-

[47] Protocol to the Antarctic Treaty on Environmental Protection of 4 October 1991. URL: https://www.ecolex.org/details/treaty/protocol-to-the-antarctic-treaty-on-environmental-protection-tre-001120/ (accessed: 12.03.2022). Russia is a party to the Treaty.

nisms. These are understood as norms of international maritime and environmental law. We propose, based on an analysis of these provisions and a reading of the relevant international legal research, a list of elements that reveal the content of the norms of sustainable development:

– the common concern of humanity in the stable development of the world; care for future generations, ensuring inter-generational equity (Dupuy, Viñuales 2018: 88–90); integration of an environmental dimension into the development process);[48]

– effective and balanced economic growth; maintaining a balance in the ecosystem; sustainable and equitable use of natural resources; protecting and managing the natural resource base of economic and social development);[49]

– poverty eradication, equitable social development and inclusion; a well thought out democratic policy; account for the special needs of developing countries; the principle of common but differentiated responsibility of states (Jiang 2016: 169–184);

– changing unsustainable and promoting sustainable patterns of consumption and production; an ecosystem-based approach;[50]

– the exchange of scientific, technical and technological information; the exchange of technologies on an equitable basis, with due account for the special needs of developing countries (including assistance in education, etc.); environmental, economic, scientific and technological cooperation; the obligation not to cause damage to the environment of other states or to areas beyond national jurisdiction; the polluter pays principle; the precautionary approach; environmental impact assessment (Schrijver 2008: 162, 208).[51]

While there is certainly plenty of room for debate about the proposed components of the international legal norms on sustainable development, especially given the questions regarding the internal logic of combining them, they are nevertheless aimed at sustainable development,[52] and serve as means to achieve it, although they may also have their own very specific scope of application. At the same time, the prevailing opinion among analysts is that a simpler approach to the content of sustainable development clauses is needed, and this typically boils down to "two main elements": a) meeting the needs of the present without compromising the ability of future generations to meet their own needs; and b) the integration of environmental considerations in economic development projects (Barral 2012: 380–381). However, another simpli-

[48] This wording, commonly used in the preambles of international treaties, includes the three components of sustainable development.

[49] Draft International Covenant on Environment and Development. 2017. P. 68. URL: https://portals.iucn.org/library/sites/library/files/documents/EPLP-031-rev4.pdf (accessed: 09.04.2022).

[50] See, for example, Art. 2 of the Convention on the Determination of the Minimal Conditions for Access and Exploitation of Marine Resources within the Maritime Areas under Jurisdiction of the Member States of the Sub-Regional Fisheries Commission dated June 8, 2012.

[51] Nico Schrijver identifies seven principles (EIA and the precautionary principle constitute a single principle) and seven dimensions of sustainable development.

[52] For more on this, see: Zapata Lugo J. V. 1994. *Sustainable development: A role for international environmental law.* [Thesis]. ProQuest Dissertations & Theses Global. P. 46–48, 71–116.

fied version has been proposed, where the sustainable development clause reflects three types of justice: a) intragenerational justice; b) intergenerational justice; and c) justice to nature (Keyuan 2016: I–XVII). This variability of scientific and legal opinions is taken into account in the final document of the **United Nations Sustainable Development Summit 2015 "Transforming our World: The 2030 Agenda for Sustainable Development,"** which laid out a total of 17 sustainable development goals.[53]

Equally important is the question: Are the norms on sustainable development a principle of international law? As we know, the principle of international law is an international legal norm, although it is a norm of a special level (Talalaev 1958: 513). The principles of international law are "concentrated" expressed norms of international law; and the basic principles of international law are of a core nature, expressing fundamental ideas and key provisions of international law, and have "supreme legal force."[54] "Specific rights and obligations of states" emerge from the principles of international law (Tunkin 1970: 222). Modern Russian international legal science confirms the distinction between general and sectoral principles of international law (Nefedov 2019: 9, 14). Intersectoral features are highlighted, and the shortcomings of the binary opposition between "principles" and "norms," as well as the "dichotomy of general/sectoral principles" are demonstrated (Anufrieva 2021: 6–34). Foreign experts do not adhere so strictly to such a developed conceptual apparatus, often using terms with the word "principle" interchangeably: "basic principle" (Shaw 2021: 473), "absolute principle" (Shaw 2021: 564), "general principle"[55] (Evans 2003: 75, 281; Orakhelashvili 2019: 320; Shaw 2021: 84, 87, 233, 820, 1160), "fundamental principle" (Evans 2003: 336, 379; Jennings, Watts 1996: 85; Shaw 2021: 117, 473, 677, 871), "generally accepted principle" (Evans 2003: 378, 581; Jennings, Watts 1996: 110; Malanczuk 1997: 287; Shaw 2021: 444, 687, 949) etc. That is, Russian international legal science demonstrates a more detailed and scientifically sophisticated approach to the applicable conceptual apparatus.

However, no matter which approach we adopt, it can be concluded that, first of all, the norms on sustainable development outlined in international treaties cannot be attributed to the "general principles of law recognized by civilized nations" in the context of Art. 38, para. 1 of the Statute of the International Court of Justice. Second, it would be wrong to quality the norms on sustainable development as one of the basic principles of international law, since the latter are listed in the UN Charter. In our opinion, the set of norms for sustainable development should be qualified as a principle of international law in the context of branches of international law, primarily international environmental and maritime law, and, more precisely, in an intersectoral format, bear-

[53] Final Document of the United Nations Sustainable Development Summit 2015: Agenda for Sustainable Development. URL: https://www.un.org/sustainabledevelopment/ru/about/development-agenda/ (accessed: 31.03.2022).

[54] Lukashuk I. I. 1996. *Mezhdunarodnoe pravo. Obshchaya chast': uchebnik dlya vuzov* [International Law. General Part: Textbook for Universities]. Moscow: BEK. P. 120–121.

[55] For more on what foreign experts mean when they use the term "general" in various contexts, see: (Abashidze 2017: 24).

ing in mind the norms of international economic law. At the same time, the principle of sustainable development, as we have demonstrated, appears at both the universal and regional levels of legal relations between states.

As we have already noted, an analysis of the sectoral principles of the international law of the sea reveals that the principle of the protection of the marine environment is of particular importance (Speranskaya 1978: 156–166; Kiselev 1986: 13–24), although some legal experts argue that it was originally formed as an international custom (Vitzthum et al 2011: 602). Articles 192–196 of the 1982 United Nations Convention on the Law of the Sea describe the content of this principle in relatively great detail: 1) to prevent, reduce and control pollution of the marine environment; 2) to ensure the protection and rational use of marine natural resources; 3) to prohibit activities that cause damage to the marine environment beyond the areas of their national jurisdiction; and 4) to cooperate in the protection of the marine environment and compensate for damage caused.[56]

Long before the signing of the 1982 Convention, L. Speranskaya outlined a number of principles of international law that are applicable to the protection of the marine environment, some of which were still being developed at the time: 1) the principle of protecting the ecological balance; 2) the principle of protecting the marine environment; 3) the principle of the inadmissibility of a state, through its actions within its own jurisdiction, causing damage to the marine environment of other states; 4) the principle of state responsibility for damage caused to the environment of other states; 5) the principle of the inadmissibility of polluting open sea waters as a result of any type of activity; and 6) the principle of the equality of coastal and non-coastal states in the exploitation of the freedoms of the high seas. Two additional principles of the international law of the sea concerning the protection of the marine environment have been proposed: 7) the principle of the mandatory compliance of all states with international standards; and 8) the principle of mandatory consultations between states (in the event that the marine environment is at risk of pollution) (Speranskaya 1978: 156–166). Note that the principle of sustainable development does not appear here. However, we should keep in mind that there is no list of principles of the international law of the sea that is recognized by all states. The crystallization of a new international legal principle in any sector depends on a number of factors. For example, some experts in international law identify branch principles that are "derived from the basic principle of marine environmental protection" (Speranskaya 1978: 158), or principles of preventing specific types of pollution (Ioirysh 1975: 207; Malinin 1976: 84–86; Chichvarin 1966: 220).

[56] For more detail, see: Gureev S. A. ed. 2003. *Mezhdunarodnoe morskoe pravo: uchebnoe posobie* [International Maritime Law: Study Guide]. Moscow: Yuridicheskaya literatura. P. 32.

The issue of qualifying international legal norms on sustainable development as a principle of current international was first raised some 20 years ago (Luff 1996: 91–144; Klauer 1999: 114–121; Lang 1999: 157–172; Sands 1999: 389–405; Sands 2003: 252–266; Schrijver, Weiss 2004: 7–38; 97–118; Schrijver 2008: 162–221; Kates, Parris, Leiserowitz 2005: 8–21; Birnie, Boyle, Redgwell 2009: 115–127). This position had both its supporters and detractors (Dijan Widijowati et al. 2019: 524–527). Even then, experts cited specific international treaties, "soft law" instruments, state practice, the decisions of international judicial institutions, and the stated intentions of the subjects of international law to comply with the relevant norms of that law.

In 1997, Judge Christopher Weeramantry, in a dissenting **opinion on the decision of the International Court of Justice on the Gabčíkovo-Nagymaros case**, formulated his position thus: the rules on sustainable development constitute a principle of international law. However, a certain scepticism regarding this position prevailed for some time. Are the norms on sustainable development a principle of international law today? Is the judge of the International Court of Justice correct in his conclusion that these norms should be taken into account when making a decision, and that they deserve to be considered by the Court itself, since these norms can now be regarded as international customary law?[57] This decision was subsequently referred to by the International Court of Justice itself, as well as by the International Tribunal for the Law of the Sea, arbitration panels and the Appellate Body of the World Trade Organization, and the Permanent Court of Arbitration. It can be argued that the principle of sustainable development has been increasingly taken into account over the past 25 years, with the emphasis being on the ecological aspects: ensuring the sustainability of the planet's ecosystems as a whole, and not just the people living on it (Schrijver 2008: 218).

Judge Weeramantry was not the only one to adopt this legal approach: Judges Awn Al-Khasawneh and Bruno Simma too referred to the principle of sustainable development in their dissenting opinion on the 2010 Pulp Mills on the River Uruguay Case,[58] as did Judge Cançado Trindade in his own dissenting opinion on the same decision, concluding that sustainable development can already be considered an established principle of environmental law.[59]

Other bodies besides the International Court of Justice qualify the norms on sustainable development as a principle of international law. States also refer to the use of the concept of the "principle of sustainable development" in bilateral contractual

[57] International Court of Justice: Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997. Separate Opinion of Vice-President Weeramantry. P. 88–89, 94–95, 104. URL: https://www.icj-cij.org/public/files/case-related/92/092-19970925-JUD-01-03-EN.pdf (accessed: 12.01.2022).

[58] International Court of Justice: Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of 20 April 2010. Joint dissenting opinion Judges Al-Khasawneh and Simma. P. 120. URL: https://www.icj-cij.org/public/files/case-related/135/135-20100420-JUD-01-01-EN.pdf (accessed: 12.01.2022).

[59] International Court of Justice: Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of 20 April 2010. Separate opinion of Judge Cançado Trindade. Paras. 6, 132, 133, 138, 139, 147. URL: https://www.icj-cij.org/public/files/case-related/135/135-20100420-JUD-01-04-EN.pdf (accessed: 01.12.2022).

practice.[60] A telling example here is the written statement of the Caribbean Regional Fisheries Mechanism (2013)[61] on the Advisory Opinion of the International Tribunal for the Law of the Sea.[62] Specifically, the statement mentions that the status and content of the principle of sustainable development were examined in detail by three committees of the International Law Association: 1) the Committee on the Legal Aspects of Sustainable Development (1992–2002);[63] 2) the Committee on International Law on Sustainable Development (2003–2012);[64] and 3) the Committee on the Role of International Law in Sustainable Natural Resource Management for Development (2012– present).[65] In the 2013 document, the principle of sustainable development, in combination with the norms on the precautionary approach and the management of the ecosystem, is seen as guiding the implementation of the rights and the fulfilment of the obligations of flag states and coastal states to ensure the sustainable management of marine living resources, including straddling stocks and highly migratory stocks of fish.[66]

Conclusion

Our analysis of the applicable international legal sources shows that provisions aimed at sustainable development already have a solid history of legal recognition and reflection in other sources of international law. Most international treaties continue to adhere to the wording of the 1987 Brundtland Report in their definition of the concept of "sustainable development" or its individual elements (in particular, sustainable management and sustainable use), although there are exceptions (the 2002 Convention for Cooperation in the Protection and Sustainable Development of the Marine

[60] See, for example: International Court of Justice: Pulp Mills on the River Uruguay (Argentina v. Uruguay). Judgment of 20 April 2010. Joint dissenting opinion Judges Al-Khasawneh and Simma, para. 55. URL: https://www.icj-cij.org/public/files/case-related/135/135-20100420-JUD-01-00-EN.pdf (accessed: 12.01.2022).

[61] International Tribunal for the Law of the Sea: Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC). Written Statement of the Caribbean Regional Fisheries Mechanism (CRFM) of 27 November 2013. P. 11–12. URL: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/written_statements_round1/C21_Response_Round_1_CRFM.pdf (accessed: 12.01.2022).

[62] International Tribunal for the Law of the Sea: Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion submitted to the Tribunal). 02.04.2015. P. 4. URL: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf. (accessed: 21.04.2022).

[63] ILA Committee on the Legal Aspects of Sustainable Development (1992–2002). URL: http://www.ila-hq.org/en/committees/index.cfm/cid/25 (accessed: 21.04.2022).

[64] ILA Committee on International Law on Sustainable Development (2003–2012). URL: http://www.ila-hq.org/en/committces/index.cfm/cid/1017 (accessed: 21.04.2022).

[65] ILA Committee on the Role of International Law in Sustainable Natural Resource Management for Development (2012 – present). URL: https://www.ila-hq.org/en_GB/committees/role-of-international-law-in-sustainable-natural-resource-management-for-development (accessed: 21.04.2022).

[66] International Tribunal for the Law of the Sea: Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (SRFC). Written Statement of the Caribbean Regional Fisheries Mechanism (CRFM) of 27 November 2013, para. 35. URL: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/written_statements_round1/C21_Response_ Round_1_CRFM.pdf (accessed: 12.01.2022).

and Coastal Environment of the Northeast Pacific mentioned earlier). Before the term "sustainable development" gained wide traction in the treaty practice of states, the most frequently used terms in international treaties reflecting the principle of sustainable development were: "conservation, management and reasonable (rational/optimal) use of natural resources"; "sustainable use and conservation"; "fair and efficient use of natural resources"; "sustainable (reasonable/rational/environmentally safe and justified) management of natural resources"; "healthy economic development, balanced growth of trade with orderly, safe and rational use of resources," etc.

Against the backdrop of this reality, we cannot agree with legal scholars who deny the normative content of the concept of "sustainable development" and see it only as the intention of states. Sustainable development clauses are international legal norms that set out the rights and obligations of states under specific international treaties to which they are parties. The fact that the scope of such rights and obligations varies depending on the agreement is another matter entirely. Accordingly, the practice of executing these agreements will also serve to clarify the content of the applicable rules. As for the nature of the principle of sustainable development that is emerging in international law, it would not be entirely correct to attribute this principle, as some of the works cited above do, to either environmental or maritime law, or to the principle of general international law. Rather, it is an intersectoral principle of international law. The intersectoral nature of the principle of sustainable development is a consequence, first of all, of the fact that it covers legal relations in various – and often closely interconnected – spheres of activity of states, and it is sometimes difficult to make a clear distinction between them. The legal content of the principle of sustainable development stretches beyond certain branches of international law, namely international maritime, environmental and economic law. At the same time, the majority of international treaties of a universal, and particularly a regional, nature that contain sustainable development clauses in some form are derived from the sources of the international law of the sea. In regulating maritime, environmental and economic relations, states undertake to uphold and comply with this principle in the relevant areas.

From the point of view of interpretation and legal enforcement, the principle of sustainable development is aimed at resolving the contradictions between the rights of states to develop their economies on the one hand, and their obligation to protect the environment, which is so significant for future generations, on the other, serving as a nexus that ensures that neither the one nor the other is neglected.

The principle of sustainable development is an intersectoral international legal principle from which, in the context of the international treaties examined above, it is no longer acceptable to deviate. Sustainable development is achieved through special mechanisms established in international maritime, environmental and economic law – and this is by no means a complete list of the sectors that touch on the issue. It is too early to conclude that the current contractual practice of states has revealed the full scope of the legal content of sustainable development clauses.

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