

# SUSTAINABLE DEVELOPMENT AND THE UNITED NATIONS DIALOGUES: LIVING IN HARMONY WITH NATURE?

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*The Earth Summit (1992) heralded what was anticipated to be a new era in environmental regulation with the advent of sustainable development. The concept was based on integrating environmental protection with economic development, supported by specific objectives, such as protection of biodiversity and achievement of intergenerational equity. By the early part of the 21<sup>st</sup> century it was apparent that sustainable development had become equated with continuous economic growth, human domination and commodification of nature. This article argues that shortcomings in sustainable development, apparent over the past 25 years, are partly due to the concept's initial formulation and also attributable to the way the concept has been interpreted and implemented. This validates calls for reconfiguring society's value systems by better integrating law and policy with Earth-centric principles. The discussion argues that this involves more than tinkering with the key tenets of sustainable development, instead of necessitating their reconceptualisation in accordance with philosophies of Earth jurisprudence.*

## I INTRODUCTION

The 1980s were dominated by a series of high-profile pollution disasters and the realisation that human-generated problems, including ozone depletion and climate change, were inexorably leading to environmental degradation.<sup>1</sup> Events such as the Bhopal Gas Tragedy of 1984, the nuclear power plant explosion at Chernobyl in 1986 and the Exxon Valdez oil spill in 1989<sup>2</sup> placed human impacts on the environment

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1 V Haynes and M Bocjun, *The Chernobyl Disaster* (Hogarth Press, 1988); John F Piatt et al, 'The Immediate Impact of the 'Exxon Valdez' Oil Spill on Marine Birds' (1990) 107(2) *The Auk* 387; TR Chouhan, 'The Unfolding of Bhopal Disaster' (2005) 18 *Journal of Loss Prevention in the Process Industries* 2; Rafe Pomerance, 'The Dangers from Climate Change, a Public Awakening' (1986) 12 *EPA Journal* 15; JL Foster, 'The Significance of the Date of Snow Disappearance on the Arctic Tundra as a Possible Indicator of Climate Change' (1989) 21(1) *Arctic and Alpine Research* 60; Ozone depleting substances led to the negotiation of the 1987 *Montreal Protocol on Substances that Deplete the Ozone Layer*, opened for signature on 16 September 1987 [1989] *ATS* 18 (entered into force on 1 January 1989). It has 197 ratifications, ascensions, acceptances and successions.

2 Generally, Haynes and Bocjun (n 1); Piatt et al (n 1); Chouhan (n 1).

firmly on the international agenda. Moreover, they contributed to a creeping awareness, starting from at least the 1960s, that humans needed to reassess their interactions with the Earth and its ecological systems.<sup>3</sup>

In 1992, the Earth Summit heralded what was anticipated to be a new era in environmental regulation, integrating environmental protection with economic development. Of paramount importance was the objective of intergenerational equity, designed to protect the earth for future generations. This principle was central to the definition of sustainable development, already adopted in 1987 by the *Brundtland Report*: 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.<sup>4</sup> The concept of intergenerational equity wove its way through several instruments adopted at the Earth Summit, such as the *Convention on Biological Diversity* ('CBD'), the *Rio Declaration on Environment and Development* ('Rio Declaration') and the *United Nations Framework Convention on Climate Change* ('UNFCCC').<sup>5</sup> Article 3 of the UNFCCC calls on the parties to 'protect the climate system for the benefit of present and future generations of humankind'. In accepting intergenerational equity as the foundation for sustainable development, these instruments also implicitly acknowledged that limitations to development were critical if society were to maintain the potential for biodiversity 'to meet the needs and aspirations of present and future generations'.<sup>6</sup>

While the wording of intergenerational equity places humans at the forefront of sustainable development, this did not necessarily mean that human needs were the only consideration. The CBD, for example, also toyed with the notion of intrinsic value of biodiversity, a vision that attributes worth to biodiversity, independently of human needs.<sup>7</sup> In an analogous manner, the *Rio Declaration* acknowledged that while humans are 'at the centre of concerns for sustainable development', this was tempered by objectives of living in harmony with nature.<sup>8</sup> These perspectives foreshadowed expectations that sustainable development would allow humanity to

3 Gerry Bates, *Environmental Law in Australia* (LexisNexis Butterworths, 9<sup>th</sup> ed, 2016) 7; United Nations Conference on Environment and Development, 1992, available from <<https://sustainabledevelopment.un.org/milestones/unced>>; also Thomas R Dunlap, *Saving America's Wildlife* (Princeton University Press, 1991) 99 referring to Fairfield Osborn, *Our Plundered Plant* (Faber & Faber, 1948).

4 *Report of the World Commission on Environment and Development: Note by the Secretary-General*, UN GAOR, 42<sup>nd</sup> sess, Agenda Item 83(e), UN Doc A/42/427 (4 August 1987) pt 2.1 ('*Brundtland Report*').

5 *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force on 29 December 1993) art 2 ('CBD'); *Rio Declaration on Environment and Development*, UN GAOR, UN Doc A/CONF.15 1/26 (vol 1) (12 August 1992) principle 4 ('Rio Declaration'); *The United Nations Framework Convention on Climate Change 1992*, opened for signature 9 May 1992, [1994] ATS no 2 (entered into force on 21 March 1994) Preamble and art 3 ('UNFCCC'). The *Convention* has 201 parties.

6 *Rio Declaration* (n 5) principle 3.

7 *CBD* (n 5) preamble.

8 *Rio Declaration* (n 5) principle 1.

reconfigure its interactions with the Earth, reining anthropocentrism within broad scientific and ethical parameters.<sup>9</sup>

In a practical sense, appeals for harmonious relationships with the Earth did not prevail. The version of sustainable development that evolved over the next 25 years was grounded in utilitarian economics that subsumed intrinsic value into use prerogatives – an outcome foreshadowed by several provisions of the *CBD*.<sup>10</sup> This occurred in tandem with scientific and technological advances that allowed society to use the Earth's resources with increasing efficiency, yet did not provide a solution to the problem of how to avoid economic growth, which occurs at the expense of the environment.<sup>11</sup>

Instead, economic standpoints entrenched views that nature and biodiversity were resources to be exploited. This led to sustainable development becoming equated with human domination and the commodification of nature.<sup>12</sup> Changing sensibilities, however, have generated debate, questioning whether continual exploitation of nature is consistent with initial formulations of sustainable development and whether the concept can be rehabilitated; or, whether its key principles should be replaced by new paradigms, realigning humanity's relationship with the Earth.<sup>13</sup> This article contributes to that discussion by evaluating the progress of sustainable development against the backdrop of the series of meetings held by the United Nations ('UN') under the umbrella title 'Dialogues of the General Assembly on Harmony with Nature' ('UND'). Since 2011, the meetings have been convened annually and adopted by way of resolutions of the General Assembly.<sup>14</sup> In accordance

- 9 David G Victor, Kal Raustiala and Eugene B Skolnikoff, 'Introduction and Overview' in David G Victor, Kal Raustiala and Eugene B Skolnikoff (eds), *The Implementation and Effectiveness of International Environmental Commitments: Theory and Practice* (MIT Press, 1998) 7; James Justus et al, 'Buying into Conservation: Intrinsic Versus Instrumental Value' (2009) 24(4) *Trends in Ecology and Evolution* 187, 187.
- 10 *CBD* (n 5) Preamble, arts 1, 5, 6(a), 7(a), 7(c), 8(c), 8(g), 8(j), 10(a), 11, 12(b), 13(a), 16(1), 18(1), 21(4), 25(2)(c), annex I (2); *Harmony with Nature – Report of the Secretary-General*, 69<sup>th</sup> sess, Provisional Agenda Item 19(h), UN Doc A/69/322 (18 August 2014) ('HN-69') para 2.
- 11 Michael Redclift, 'Sustainable Development, Needs, Values, Rights' (1993) 2(1) *Environmental Values* 3, 7.
- 12 Val Plumwood, *Environmental Culture: The Ecological Crisis of Reason* (Routledge, 2002) 99–100; *Harmony with Nature – Report of the Secretary-General*, 66<sup>th</sup> sess, Provisional Agenda Item 19(h), UN Doc A/66/302 (15 August 2011) paras 62, 66 ('HN-66').
- 13 *HN-66* (n 12); *Harmony with Nature – Report of the Secretary-General*, 67<sup>th</sup> sess, Provisional Agenda Item 20(h), UN Doc A/67/317 (17 August, 2012) paras 8, 55 ('HN-67'); *Harmony with Nature – Note by the Secretary-General*, 71<sup>st</sup> sess, Provisional Agenda Item 19(h), UN Doc A/71/266 (1 August 2016) paras 95, 96 ('HN-71').
- 14 *HN-66* (n 12); *HN-67* (n 13); *Harmony with Nature – Report of the Secretary-General*, 68<sup>th</sup> sess, Provisional Agenda Item 19(h), UN Doc A/68/325 (15 August 2013) ('HN-68'); *HN-69* (n 10); *Harmony with Nature – Report of the Secretary-General*, 70<sup>th</sup> sess, Provisional Agenda Item 20(g), UN Doc A/70/268 (4 August 2015) ('HN-70'); *HN-71* (n 13); *Harmony with Nature – Report of the Secretary-General*, 72<sup>nd</sup> sess, Provisional Agenda Item 20(h), UN Doc A/72/175 (19 July 2017) ('HN-72'); *Harmony with Nature – Report of the Secretary-General*, 73<sup>rd</sup> sess, Provisional Agenda Item 20(h), UN Doc A/73/221 (23 July 2018) ('HN-73'); *Harmony with Nature – Report of the Secretary-General*, 74<sup>th</sup> sess, Provisional Agenda Item 19(i), UN Doc A/74/236 (26 July 2019).

with the UN's *Charter*, such resolutions are not binding.<sup>15</sup> Given that the UND are conducted under the auspices of the UN's Development Agenda, they have proved influential.<sup>16</sup> The UND have been particularly critical of how society has implemented sustainable development, noting that measures have not been successful, either in halting the decline of biodiversity or in grappling with the philosophical underpinnings of sustainability.<sup>17</sup> For these reasons, the delegates at the UND propose a new approach, based on *Earth jurisprudence*.<sup>18</sup>

Earth jurisprudence represents a legal response to the problem of environmental exploitation and domination and is based on 'formal recognition [of] the reciprocal relationship between humans and ... nature'.<sup>19</sup> It calls for a shift away from the idea that humans form the summit of a governance hierarchy, and a move towards recognising that humans are only one component of an interconnected web of life. As such, Earth jurisprudence proposes that human laws need to be consistent with, and limited by, the laws of nature.<sup>20</sup>

In investigating these themes, the analysis in this article uses a frame of reference provided by international law at large, focusing on textual analyses of instruments developed around the Earth Summit. More specific examples and illustrations are sourced from the protection of biodiversity. The discussion commences by evaluating the conceptual basis of sustainable development, including intergenerational equity, which draws on the work of Brown Weiss<sup>21</sup>. This highlights the fact that at its inception intergenerational equity was sufficiently comprehensive to encompass broader equities, such as intragenerational equity and equity for the Earth. These perspectives could have infused sustainable development with strong ecological and ethical underpinnings beyond traditional economic utilitarianism. It is argued that the focus on economic growth, however, has made it difficult to allocate meaningful regulatory space for the Earth.

15 *Charter of the United Nations* arts 10, 13, 14. The *Charter* has 193 parties.

16 For example, *Harmony with Nature*, GA Res 67/214, UN Doc A/RES/67/214 (15 March 2013, adopted 21 December 2012) para 10.

17 *HN-67* (n 14) para 40; *HN-70* (n 14) 3.

18 *HN-71* (n 13) Introduction.

19 Generally, RHS Tur, 'What is Jurisprudence' (1978) 28(111) *The Philosophical Quarterly* 149; Begonia Filgueira and Ian Mason, 'Wild Law: Is there Any Evidence of Earth Jurisprudence in Existing Law?' in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 192, 195; Cormac Cullinan, 'A History of Wild Law' in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 12, 12–13.

20 Peter Burdon, 'The Great Jurisprudence' in Peter Burdon (ed) *Exploring Wild Law: The Philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 59, 59–61.

21 Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1992) 8(1) *American University International Law Review* 19.

The article then evaluates the UND, elaborating on their critiques of anthropocentrism and their calls for society to live in harmony with nature (by adhering to principles of Earth jurisprudence). To achieve the latter requires profound changes to humanity's value systems, transforming the view that the environment is predominantly a resource for human use. It is argued that the nature of these transformations calls for more than reinterpreting key principles of sustainable development – justifying their replacement with principles of Earth jurisprudence.

## II SUSTAINABLE DEVELOPMENT AND BROADER EQUITIES

Sustainable development became a widely-accepted concept in the 1990s as it provided a way of demonstrating an awareness that development needs to have limits, potentially transforming pathways that would otherwise lead to environmental degradation.<sup>22</sup> Society's reluctance to modify its underlying set of values, particularly those concerning the role of economics and regard for long-term environmental sustainability, meant that the concept faced many challenges in its implementation.<sup>23</sup>

### A *Sustainable Development and Neoclassical Economics*

The influence of neoclassical economics, with its emphasis on supply, demand and consumption, has been succinctly summarised by Bates who stated:

in our Western democratic, capitalist system of government, it is arguable that political values are already weighted towards economic and social issues, and although environmental values are important, the prevailing assumption is that development and growth should be allowed to proceed unless there are proven reasons for limiting it.<sup>24</sup>

These conclusions are supported by textual analyses of instruments adopted at the Earth Summit. Although at the time of the Earth Summit, society had acknowledged the need to grapple with human-induced environmental degradation,<sup>25</sup> the decade prior to 1992 was also a period of economic hardship, especially for developing countries.<sup>26</sup> Consequently, international concern at alleviating environ-

22 Robert F Blomquist, 'Clean New World: Toward an Intellectual History of American Environmental Law, 1961–1990' (1990) 25 *Valpraiso University Law Review* 1, 23.

23 Frank Biermann et al, 'Earth System Governance: A Research Framework' (2010) 10 *International Environmental Agreements*, 277, 279; Jamie Murray, 'Earth Jurisprudence, Wild Law, Emergent Law: The Emerging Field of Ecology and Law—Part 1' (2014) 35 *Liverpool Law Review* 215, 220.

24 Bates (n 3) [8.23].

25 Lee Godden, 'Globalized Localisms': Three Phases of International Environmental Governance for Biodiversity Protection' in Shawkat Alam, Natalie Klein and Juliette Overland (eds) *Globalisation and the Quest for Social and Environmental Justice: The Relevance of International Law in an Evolving World Order* (Routledge, 2010) 11, 11.

26 *Brundtland Report* (n 4) ch 3 II para 8; Brian Preston, 'The Role of the Judiciary in Promoting Sustainable

mental deterioration was tempered by the need to provide financially for humans.<sup>27</sup> Sustainable development was not intended to (a) equate with environmental conservation; or (b) impose a caveat against development.<sup>28</sup>

The importance of economic security was evident in the way the putative focus at the Earth Summit rested on biodiversity, climate change and forests, yet the most contentious debates were provoked by population growth, consumption and the right to develop.<sup>29</sup> The range of objectives and statements adopted in 1992 reflect these controversies and run the gamut from propositions that states enjoy sovereign rights to exploit resources found in their territory, to the notion that equitable use of biodiversity can contribute to social good by alleviating poverty and promoting peace.<sup>30</sup> Underscoring the environment's instrumental values – particularly pronouncements relating to the sovereign right of exploitation – creates an inherent tension which arguably limits the influence of a global conception of sustainable development.<sup>31</sup>

In the *CBD*, for example, the phrase *sustainable development* is used interchangeably with *sustainable use*, even though the two concepts differ.<sup>32</sup> Sustainable use is an ancient notion, based on the idea that exploitation of resources should not lead to their depletion.<sup>33</sup> In contrast, sustainable development, which started appearing in the literature from approximately the early 1970s, implies that humans can improve their standard of living by using nature and natural resources, but in a way that does not lead to its depletion.<sup>34</sup> This objective seems to suggest the possibility of continual growth and (irrespective of its feasibility) has been widely translated into domestic regulation.<sup>35</sup> Acceptance of economic growth as an outcome of sustainable develop-

Development: The Experience of Asia and the Pacific' (2005) 9(2&3) *Asia Pacific Journal of Environmental Law* 109, 114.

27 *Brundtland Report* (n 4) ch 3, II para 8; Preston (n 26) 114.

28 Michael Kidd, 'Removing the Green-Tinted Spectacles: the Three Pillars of Sustainable Development in South African Environmental Law' (2008) 15 *South African Journal of Environmental Law and Policy* 85, 85, 102.

29 Simon Dalby, 'Reading Rio, Writing the World: the New York Times and the 'Earth Summit'' (1996) 15(6-7) *Political Geography* 593, 593-4.

30 *CBD* (n 5) art 3, Preamble.

31 *Rio Declaration* (n 5) Principle 2; *CBD* (n 5) art 3, Preamble.

32 *CBD* (n 5) conservation is linked to sustainable development/sustainable use: 3 times in the Preamble; and Articles 1, 5, 6(a), 7(a), 7(c), 8(c), 8(g), 8(j), 10(a), 11, 12(b), 13(a), 16(1), 18(1), 21(4), 25(2)(c), Annex I (2) – see further discussion in this part of the article, surrounding footnotes 24-6.

33 Ben Boer, 'Implementing Sustainability' (1992) 14 *Delhi Law Review* 1, 4-5.

34 John Harlow, Aaron Goluband and Braden Allenby, 'A Review of Utopian Themes in Sustainable Development Discourse' (2013) 21 *Sustainable Development* 270, 271, where he refers to the 1974 joint UN Environment Program and UN Conference and Trade and Development and the 1972 Conference on the Human Environment held in Stockholm.

35 *Brundtland Report* (n 4) pt 2.1; Hans Christian Bugge and Lawrence Waters, 'A Perspective on Sustainable Development After Johannesburg on the Fifteenth Anniversary of Our Common Future: An Interview

ment is also consistent with other provisions of the *CBD*, which aim at sustainable exploitation under the aegis of sustainable development.<sup>36</sup> Textual analysis reveals that the word *conservation* is used 27 times in the *CBD* and 20 of these are in conjunction with sustainable development/sustainable use.<sup>37</sup> Article 2 of the *CBD* defines sustainable use as using biodiversity in a ‘way and at a rate that does not lead to [its] long-term decline’. This presupposes that although conservation will have corresponding use components, this will occur in ways that are sustainable, prudent, rational, wise, or appropriate and are also integrated into decision-making processes.<sup>38</sup>

Decision-makers rarely acknowledge that the three foundational pillars of sustainable development (economic, environmental and social) create challenges deriving from inconsistent objectives and unequal values.<sup>39</sup> Although the *Brundtland Report* was based on integration, in reality, the aims of each foundation may not be sufficiently compatible to permit integration, leading regulators to balance the relative merits of each pillar as if they were equivalent.<sup>40</sup> Were this failing to be acknowledged, it would question the application of neoclassical economic theory that regards natural capital – in the form of nature, natural resources and the environment – as equivalent and interchangeable with economic capital, such as wealth and assets.<sup>41</sup> In reality, it is doubtful whether these types of capital are truly interchangeable. It is even more doubtful whether reductions of natural capital, offset by increases in economic capital, can be said to be sustainable in the long-term.<sup>42</sup> Even if regulators could ensure that natural capital as a whole is not reduced, the substitution of natural and economic capital leads to a form of weakened

with Gro Harlem Brundtland’ (2003) 15 *Georgetown International Environmental Law Review* 359, 359.

36 Godden (n 25) 14, 15–16.

37 *CBD* (n 5) (excluding headings) “conservation” is used five times in the preamble, Articles 1, 2 (twice) 5, 6(a), 7(a), 7(c), 8(c), 8(g), 8(j), 9(b), 9(e), 13(a) 10(a), 11, 12(b), 13(a), 16(1), 18(1), 21(4), 25(2)(c), Annex I (2). Conservation is linked to sustainable development/sustainable use: three times in the preamble; and Articles 1, 5, 6(a), 7(a), 7(c), 8(c), 8(g), 8(j), 10(a), 11, 12(b), 13(a), 16(1), 18(1), 21(4), 25(2)(c), Annex I (2).

38 Preston (n 26) 127; Joseph Chun, ‘Animal Welfare and Nature Conservation Laws in Singapore: A Moral Duty to Non-Human Nature?’ (2005) 9(1) *Asia Pacific Journal of Environmental Law* 39, 60; *CBD* (n 5) art 10.

39 Preston (n 26) 127; Chun (n 38) 60; *CBD* (n 5) art 10.

40 *Brundtland Report* (n 4) para 72; Bates (n 3) [7.33]. These assumptions are duplicated in Paul James Brown, ‘Calculation of Environmentally Sustainable Residual Income (eSRI) from IFRS Financial Statements: An Extension of Richard (2012)’ in D Bensadon and N Praquin (eds) *IFRS in a Global World* (Springer, 2016) 141, 141, 142, 145.

41 Robert Costanza and Herman E Daly, ‘Natural Capital and Sustainable Development’ (1992) 6(1) *Conservation Biology* 37, 41, 44; Zandra Balbinot and Rafael Borim-De-Souza, ‘Sustainable Development and Sustainability as Quasi-objects of Study in Management: A search for Styles of Reasoning’ (2012) 10(3) *Management Research: The Journal of the Iberoamerican Academy of Management* 153, 159; *HN-68* (n 14) paras 10, 55; Allan Holland, ‘Sustainability, Should We Start from Here?’ in Andrew Dobson (ed) *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (Oxford University Press, 1999) 46, 50–5.

42 Costanza and Daly (n 41) 41, 44.

sustainability where sustainable development reduces to a process, rather than an outcome.<sup>43</sup> In such circumstances, regulators do not undertake a robust evaluation whether development should proceed, but instead, evaluate how it can proceed.<sup>44</sup> As a result, evaluation processes frequently subordinate environmental protection to economic gain.<sup>45</sup> This form of weak sustainability exemplifies how economic growth can shape the evolution of sustainable development, as well as debates which surround it.<sup>46</sup> In contrast, strong sustainability regards natural and economic capital as dissimilar and non-interchangeable, so that decision-makers need to maintain them separately.<sup>47</sup> Strong sustainability would also limit economic growth by Earth system functioning, thus retaining natural capital at a level that does not compromise principles of intergenerational equity.<sup>48</sup> The notion of intergenerational equity challenges whether, in a practical sense, it is feasible for society to enjoy continual economic growth while still being sustainable.<sup>49</sup>

### B Sustainable Development and Broader Equities

Balancing the needs of the present against the needs of the future necessarily imbues sustainable development with strong elements of distributive justice – traditionally understood in terms of intergenerational rights and responsibilities in the allocation of resources.<sup>50</sup> These duties oblige current generations to ‘hold the environment in trust for the benefit of future generations’.<sup>51</sup> Such obligations do not mandate that current generations sacrifice themselves for the sake of the future. They do, however, need to maintain environmental resources at an acceptable level so that subsequent generations are not deprived of choices in fulfilling their own needs and aspirations.<sup>52</sup> At the same time, the phrase ‘needs of the present’ extends distributive justice towards consideration of human needs among generations at a given point in time, (that is,

43 Redclift, ‘Sustainable Development, Needs, Values, Rights’ (n 11) 7.

44 Matthew Cashmore, ‘The Role of Science in Environmental Impact Assessment: Process and Procedure Versus Purpose in the Development of Theory’ (2004) 24(4) *Environmental Impact Assessment Review* 403, 417; for practical ramifications, generally, Sophie Riley, ‘Prioritizing and the Environment in Sustainable Development: Lessons from Australian Environmental Impact Assessment’ in Volker Mauerhofer (ed) *Legal Aspects of Sustainable Development* (Springer, 2015) 271.

45 Cashmore (n 44) 403, 417.

46 John Harlow, Aaron Goluband and Braden Allenby, ‘A Review of Utopian Themes in Sustainable Development Discourse’ (n 34) 271.

47 Costanza and Daly (n 41) 44; Bates (n 3) [8.7]; *Brundtland Report* (n 4).

48 Costanza and Daly (n 41) 44; Bates (n 3) [8.7]; *Brundtland Report* (n 4).

49 Yosef Jabaree, ‘A New Conceptual Framework for Sustainable Development’ (2008) *Environment, Development and Sustainability* 179, 184.

50 Brown Weiss (n 21) 19–20; Lynda M Collins, ‘Revisiting the Doctrine of Intergenerational Equity in Global Environmental Governance’ (2007) 30 *Dalhousie Law Journal* 79, 101–2.

51 Bates (n 3) [8.7].

52 Brown Weiss (n 21) 22–3; *CBD* (n 5) art 2, definition of sustainable use.

towards consideration of intragenerational equity).<sup>53</sup> In a hypothetical sense, these needs are likely to be broadly similar.<sup>54</sup> As the *Brundtland Report* notes, development is ‘what we all do in attempting to improve our lot’.<sup>55</sup> Societies and generations do not derive from points of equality and needs are shaped by a range of values and aspirations, as well as pragmatic pressures stemming from levels of affluence or poverty. Accordingly, needs are likely to differ across societies and change over time.<sup>56</sup>

The links between poverty and environmental degradation are particularly significant.<sup>57</sup> States whose inhabitants lack basic services, such as access to clean air and water, may emphasise concern for survival, weakening intergenerational equity by regarding the future as something expendable and non-essential.<sup>58</sup> Society has traditionally categorised this problem as one of uneven development, proposing solutions that re-allocate burdens towards developed states.<sup>59</sup> Thus, in the context of climate change, developed countries (those listed in *UNFCCC* Annexes I and II), committed to reductions of greenhouse gas emissions as well as assisting developing countries by providing financial assistance.<sup>60</sup>

In theory, these types of concessions allow developing states to reap more benefits from their environment and also free up regulatory space to consider the future.<sup>61</sup> Solutions to poverty and inequality are therefore seen through the lens of economic growth, increased trade and greater use of the Earth’s resources.<sup>62</sup>

By focusing on the allocation of resources, burdens and benefits, both intergenerational and intragenerational equity reflects a classic form of distributive justice based on Western ideologies. These tend to be human-centred, viewing development as sustainable if it supports people and communities, rather than

53 Brown Weiss (n 21) 19; Justin Lee, ‘Rooting the Concept of Common but Differentiated Responsibilities in Established Principles of International Environmental Law’ (2015) 17 *Vermont Journal of Environmental Law* 27, 41.

54 Dudley Seers, *The Meaning of Development* (IDS Communication Series No 44, 1969) 2 and 5 <<https://www.ids.ac.uk/files/dmfile/themeaningofdevelopment.pdf>>.

55 *Brundtland Report* (n 4) Chairman’s Foreword.

56 Reinhard Steurer, ‘Sustainable Development as Governance Reform Agenda: An Aggregation of Distinguished Challenges for Policy-making’ (Discussion Paper No 1, Institute of Forest, Environmental, and Natural Resource Policy, 2009) 1.

57 *CBD* (n 5) Preamble; *Agenda 21: Programme of Action for Sustainable Development*, (adopted at the United Nations Conference On Environment and Development (UNCED), 3–14 June 1992, Rio De Janeiro, Brazil) paras 3.1–3.12 <<https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>>.

58 Bugge and Waters (n 35) 366; Collins (n 50) 97.

59 *Brundtland Report* (n 4) Chairman’s Foreword.

60 *UNFCCC* (n 5) arts 4(2), 4(4), 4(5).

61 Nico Schrijver, *The Evolution of Sustainable Development in International Law: Inception, Meaning and Status* (Martinus Nijhoff Publishers, 2008) 218, quoting Patricia Birnie and Alan Boyle, *International Law and the Environment* (Oxford University Press, 2002) 45.

62 Carmen G Gonzales, ‘Bridging the North-South Divide: International Environmental Law in the Anthropocene’ (2015) 32(2) *Pace Environmental Law Review* 407, 419–20.

evaluating development for its environmental sustainability.<sup>63</sup> The corollary is that human needs have become the justification for the exploitation of nature, a tendency that has lost sight of the fact that distributive justice cannot be fulfilled without maintaining the integrity and functioning of the Earth.<sup>64</sup>

In reality, distributive justice is closely linked with environmental sustainability, so that fair allocation of resources should also ensure that the environment has sufficient room to fulfil its biological and geophysical potential.<sup>65</sup> For these reasons, although the formulation of intergenerational equity stresses human needs, it is more readily captured by Earth-centred paradigms that include elements of environmental justice, which limit the quality of life and right to develop by the functioning of the Earth and its ecological systems.<sup>66</sup> Society has partially implemented such restraints, typified by the creation of protected areas, adoption of law and policy that gives rights to nature, as well as the integration of non-traditional knowledge and philosophies.<sup>67</sup> The latter may also be particularly useful in enhancing understanding of human-nature interactions by identifying how best to accommodate the needs of the Earth.<sup>68</sup>

Notwithstanding anthropocentric themes apparent at the Earth Summit, several provisions in the *Rio Declaration* and *Agenda 21* are consistent with Earth-centred approaches because limitations to development extend beyond the allocation of resources, to include protection of biodiversity, the application of the precautionary principle and intergenerational equity.<sup>69</sup> In a similar vein, the *CBD* notes that the protection of biodiversity needs to be guided by intrinsic values as well as instrumental ones, reflected in the variety of ecological, scientific, cultural and aesthetic uses biodiversity proffers.<sup>70</sup> Although the language of the *CBD* appears to conflate inherent and intrinsic values, the acknowledgment is nevertheless important for its juxtaposition of intrinsic and instrumental values.<sup>71</sup> This signals that the importance

63 James C Wood, 'Intergenerational Equity and Climate Change' (1996) 8 *Georgetown International Environmental Law Review* 293, 295; Jabaree (n 49) 183; Michael Redclift, 'Sustainable Development (1987–2005): An Oxymoron Comes of Age' (2005) 13(4) *Sustainable Development* 212, 223; Preston (n 26) 130–2; Schrijver (n 61) 217; Balbinot and Borim-De-Souza (n 41) 159.

64 Redclift, 'Sustainable Development (1987–2005): An Oxymoron Comes of Age' (n 63), 223; Preston (n 26) 130–2; Schrijver (n 61) 21; Balbinot and Borim-De-Souza (n 41) 159; Brown Weiss (n 50), 19–20.

65 Redclift, 'Sustainable Development (1987–2005): An Oxymoron Comes of Age' (n 63) 223.

66 Jabaree (n 49) 183.

67 Filgueira and Mason (n 19) 196–8.

68 *HN-69* (n 10) para 11; *HN-70* (n 14) para 16; Gonzalez (n 62) 423; *HN-72* (n 14) paras 27–54.

69 Schrijver (n 61) 217.

70 *CBD* (n 5) Preamble.

71 Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (Cambridge University Press, 2<sup>nd</sup> ed, 2010) Chapter 3, where they discuss the nature of value and pages 62–4, 68–73 where they state that non-instrumental value to humans, is more correctly described as inherent value.

of non-instrumental values is potentially consistent with sustainable development and also with broader equities deriving from intergenerational equity<sup>72</sup>.

The fact that this potential was not realised, has led commentators such as Gonzales to critique sustainable development. She concluded that the predominant influence of economic growth has led humanity to the edge of a ‘precipice of global environmental catastrophe ... [having already laid] the groundwork for an increasingly dangerous, unpredictable, and unstable environment inconsistent with a flourishing society’.<sup>73</sup> In a similar vein, Godden points out that protection of biodiversity is now regarded as ‘an adjunct to other goals of a global environmental or economic character’ which transform nature to a value vector for human purposes.<sup>74</sup> Likewise, Plumwood notes that nature is primarily valued when its interests align with human interests.<sup>75</sup>

Such critiques evince changing sensibilities on the advantages of sustainable development, assessments that have been taken up by the delegates of the UND to explore whether current practices have led to sustainable development and if not, whether society should adopt new paradigms.<sup>76</sup>

### III UN DIALOGUES: LIVING IN HARMONY WITH NATURE

As noted in the introduction to this article, the UND are held annually (since 2011). The meetings are summarised in the form of reports of the Secretary-General and adopted by way of resolutions of the General Assembly.<sup>77</sup> UND delegates are representatives of UN member states, as well as experts from around the globe. While the UND are not binding, they serve to signpost the direction of discourse and debate and to introduce a new paradigm – Earth jurisprudence – into the domain of sustainable development. At the time of writing, the UND have released nine specially-themed report, which are summarised in Table 1, overleaf.

72 *CBD* (n 5) Preamble; *Rio Declaration* (n 5) Principle 1.

73 Gonzales (n 62) 407.

74 Godden (n 25) 13–14.

75 Plumwood (n 12) 109–10.

76 *HN-67* (n 13) paras 8, 55; *HN-71* (n 13) paras 95, 96.

77 For example, *HN-73* (n 14); Resolution adopted by the General Assembly on 20 December 2018, *Harmony with Nature*, General Assembly, 11 January 2019, A/RES/73/235. The complete listing of reports and resolutions is available from United Nations, *Harmony with Nature, Chronology*, <<http://www.harmonywithnatureun.org/chronology/>>.

*Table 1: UN Dialogues – Report Themes*

Year	Theme
2011	Humanity's evolving relationship with nature
2012	Human impacts on the Earth
2013	Economic aspects of environment and development
2014	Social dimension of sustainable development
2015	Sustainable development in the era of climate change
2016	Earth jurisprudence as a means of achieving living in harmony with nature
2017	Implementation of Earth-centred law
2018	Commemorates International Mother Earth Day
2019	Commemorates 10 years of International Mother Earth Day and Harmony with Nature

The conclusions, findings and recommendations from the UND reports (summarised in Tables 2 and 3) help to identify aspects of the human-nature relationship that need to change, as well as providing guidance on how to modify human values to allow humans to live in harmony with nature. The themes are subdivided into topics, which provide the building blocks for living in harmony with nature and also epitomise societal shifts that question anthropocentrism and its economic influence.<sup>78</sup>

Of particular significance are society's non-engagement with meaningful ethical principles and prioritisation of economic exploitation.<sup>79</sup> For these reasons, the UND conclude that society needs to transform environmental regimes with the objective of living in harmony with nature, an aim that requires reconsideration of ideals that elevate humans and their needs above the functioning of Earth's ecological processes.<sup>80</sup> These aims necessarily entail developing respect for nature, starting with earth-centred law and policy, in the manner promoted by Earth jurisprudence.<sup>81</sup>

78 *HN-68* (n 14) para 2.

79 *HN-67* (n 13) para 40; *HN-70* (n 14) 3; *HN-69* (n 10) para 3; *HN-71* (n 13) para 15.

80 *HN-67* (n 13) para 40; *HN-69* (n 10) para 3; *HN-70* (n 14) 3; *HN-71* (n 13) para 15.

81 *HN-71* (n 13) para 15.

*Table 2: Theme of UN Dialogues – The Place of Humans in Nature*

Topic	Comment
Humans are merely one life form and are not superior to others	<ul style="list-style-type: none"> <li>• There is no scientific basis for anthropocentric paradigms that consider humans superior to other life forms or as being separate from nature.<sup>(a)</sup> Humans, however, have obligations to use their foresight and empathy for the benefit of nature.<sup>(b)</sup></li> <li>• Society needs to find a way to live in a mutually beneficial relationship with nature and disavow philosophies that regard the Earth as a collection of resources for human exploitation at will.<sup>(c)</sup></li> </ul>
Living well	<ul style="list-style-type: none"> <li>• Living well is based on ethical principles and living in harmony with nature, that replace domination and the commodification of nature, especially where it is expressed in purely economic values.<sup>(d)</sup></li> <li>• The challenge for regulators is to change consumption patterns to create a society where people see nature as their home rather than a source of capital.<sup>(e)</sup></li> </ul>
Empathy with nature	<ul style="list-style-type: none"> <li>• A paradigm that re-connects humans with nature and changes consumerist models that regard nature as a resource to be exploited.<sup>(f)</sup></li> </ul>
Respect for the Earth and deep ecology	<ul style="list-style-type: none"> <li>• The starting point is a recognition that humans are guardians, rather than masters, of the Earth.<sup>(g)</sup> From this perspective flow responsibilities to: <ul style="list-style-type: none"> <li>• restore the health and integrity of the Earth system;<sup>(h)</sup></li> <li>• promote the flourishing of all living components of the earth, which in accordance with deep ecology, have intrinsic value, and equal rights to live and flourish;<sup>(i)</sup></li> <li>• there are limits to economic growth, and society needs to engage with principles of deep ecology.<sup>(j)</sup></li> </ul> </li> </ul>
Rights of Mother Earth	<ul style="list-style-type: none"> <li>• Society needs to adopt systems based on ethical practices that lead to life in harmony with nature.<sup>(k)</sup></li> </ul>

*Note:* Referenced UN documents may be found by searching for the symbol at <<https://www.un.org/en/ga/documents/symbol.shtml>>.

*Source:* (a) A/67/317, paras 34, 63; (b) A/67/317, para 34; (c) A/72/175, para 9; (d) A/69/322, para 15; (e) A/73/221, paras 16, 18; (f) A/66/302, para 62, 66; (g) A/67/317, para 35; (h) A/67/317, para 35; (i) A/68/325, para 17; (j) A/68/325, paras 60–4; (k) A/69/322, para 2.

Table 3: Theme of UN Dialogues – Reconstructing Regimes

Topic	Comment
The need for a new paradigm	<ul style="list-style-type: none"> <li>• Society has established highly developed technology as well as unsustainable consumption and production methods that are beyond the capacity of the Earth, and have already resulted in ecosystem deterioration, soil erosion, desertification, climate change, loss of biodiversity and ocean acidification.<sup>(a)</sup></li> <li>• The problems stem from the interpretation of sustainable development as an anthropocentric paradigm that has focused on promoting economic growth rather than supporting diverse natural and social life.<sup>(b)</sup></li> <li>• Society needs to accept that there are limits to economic growth and revise neoclassical economics by taking environmental concepts into account.<sup>(c)</sup></li> <li>• The absence of ethics makes it easy to misuse economic principles, by separating humans from nature and also exploiting and marginalising nature.<sup>(d)</sup></li> </ul>
Ethical principles to balance economic principles	<ul style="list-style-type: none"> <li>• Laws should reflect growing ethical awareness and be Earth-based.<sup>(e)</sup></li> </ul>
Legal system in balance	<ul style="list-style-type: none"> <li>• Traditional and non-traditional knowledge can work together to provide an enhanced understanding of human lives and the Earth.<sup>(f)</sup></li> <li>• Society can gain inspiration from indigenous peoples who maintain spiritual traditions and relate to the Earth within ecological and Earth-centred parameters.<sup>(g)</sup></li> </ul>

Note: Referenced UN documents may be found by searching for the symbol at <<https://www.un.org/en/ga/documents/symbol.shtml>>.

Source: (a) A/67/317, paras 49, 55, A/70/268, para 3; (b) A/68/325, para 55, A/71/266, para 32; (c) A/68/325, para 60–64; (d) A/67/317, para 40, A/68/325, para 10, A/71/266, para 36; (e) A/69/322 para 59; (f) A/70/268, para 16; (g) A/72/175, paras 14, 23.

Topic	Comment
Earth jurisprudence and rights of nature	<ul style="list-style-type: none"> <li>• Replace anthropocentrism with a new world view that encompasses:               <ul style="list-style-type: none"> <li>• a holistic system of governance;<sup>(h)</sup></li> <li>• an understanding that humanity's well-being depends on a healthy Earth that can be achieved by living in harmony with nature;<sup>(i)</sup></li> <li>• an acknowledgement that traditional indigenous views of the world share features of many of the world's spiritual traditions that are based on humanity's connection with nature;<sup>(j)</sup></li> <li>• advancing the rights of nature in our governance systems. Replace views of nature as something to be exploited with views that recognise nature as the source of Earth rights;<sup>(k)</sup></li> <li>• Earth jurisprudence, that is acknowledged as the thread that increasingly binds the disciplines together and which should be used to develop governance systems to implement living in harmony with nature;<sup>(l)</sup> and</li> <li>• a recognition of Earth jurisprudence as the fastest-growing legal movement of the 21<sup>st</sup> century.<sup>(m)</sup></li> </ul> </li> </ul>

*Note: Referenced UN documents may be found by searching for the symbol at <<https://www.un.org/en/ga/documents/symbol.shtml>>.*

*Source: (h) A/71/266, para 15; (i) A/71/266, para 2; (j) A/71/266, para 36; (k) A/71/266, para 32, 113; (l) A/74/236, para 129.*

#### IV UN DIALOGUES: FROM ANTHROPOCENTRISM TO EARTH JURISPRUDENCE

The UND acknowledge that the original inception of sustainable development incorporated eco-centric principles, that could have restrained anthropocentrism, averting inappropriate development.<sup>82</sup> Over the past 25 years, sustainable development has come to be seen as synonymous with continued growth, profit-making and increasing consumerism, on the false premise that ‘more goods make people happier’.<sup>83</sup> Delegates at the UND pointedly conclude that the combination of human-centred approaches and a trajectory of never-ending economic growth has fostered an economic system that, ‘since the industrial age ... has not been determined by what is good for people, much less for nature, but rather by what is good for the growth of the economic system’.<sup>84</sup> Consequently, sustainable development has come to entrench the elevation of humans and their needs, paying scant regard to environmental issues, unless this also coincides with human wants.<sup>85</sup>

While it is not feasible or desirable to remove economic considerations from sustainable development, as already explained, economic philosophies that have driven the sustainable development agenda have also skewed the long-term environmental health of the planet. Even before 1992 and the formal adoption of sustainable development, commentators had identified ecological limits to cost-benefit analyses based on utilitarian economics. In a telling article published in 1976, David Pearce concluded that cost-benefit accounting, which factored in the assimilative capacity of the earth, could easily become ‘a mechanism for shifting ... [environmental costs] forward in time to future generations’.<sup>86</sup>

The notion of intergenerational equity potentially could have addressed these types of issues but was interpreted in an overwhelmingly anthropocentric manner, not including a fair allocation of resources for the Earth. Accordingly, the UND delegates save some of their most forceful criticisms for policies that evolved at the intersection of anthropocentrism and economic ideologies, calling for new models that integrate economic concerns with Earth-centred values.<sup>87</sup> The key to reform is seen in replacing anthropocentric trajectories with philosophies that prevent nature

82 *HN-67* (n 13) para 55; *HN-68* (n 14) para 48.

83 *HN-66* (n 12) para 62; *HN-67* (n 13) para 49.

84 *HN-66* (n 12) para 76.

85 *HN-68* (n 14) para 48; *HN-69* (n 10) para 54; *HN-67* (n 13) paras 34, 63.

86 David Pearce, ‘The Limits of Cost-Benefit Analysis as a Guide to Environmental Policy’ (1976) 29 (1) *Kyklos* 97, 104.

87 *HN-67* (n 13) paras 55, 58–66; *HN-68* (n 14) para 64; *HN-69* (n 10) paras, 3, 54, 59; *HN-71* (n 13) paras 15, 36; *HN-72* (n 14) para 9; also, Jules Cashford, ‘Dedication to Thomas Berry’ in Peter Burdon (ed) *Exploring Wild Law: The philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 3, 3–4.

being marginalised and commodified.<sup>88</sup> Such reforms would potentially allow humans to reconnect with nature and construct relationships with the Earth that are not primarily driven by economic interests.<sup>89</sup> Against this backdrop, the UND advocate using Earth jurisprudence as the basis for a new order.<sup>90</sup>

Earth jurisprudence derives from the works of Thomas Berry, a Catholic priest and environmentalist who was highly critical of humanity's relationship to the environment.<sup>91</sup> In his seminal tome, Berry argued in favour of an Earth-centred approach, steering human-nature interactions away from exploitation, towards exchanges that are mutually beneficent.<sup>92</sup> The foundation of Berry's approach lies in recognising that humans comprise only one component of life on Earth – one that does not form the apex of an Earth hierarchy.<sup>93</sup> Berry's standpoints, which have been adopted into legal philosophies such as wild law and Earth jurisprudence, have the potential to achieve sustainable development in a way that has thus far eluded the practical operation of that concept.<sup>94</sup>

The legal foundations of Earth jurisprudence may be epitomised as: 'the philosophy of law and regulation that gives formal recognition to the reciprocal relationship between humans and the rest of nature'.<sup>95</sup> The legal dimensions of Berry's ideology have been termed the *great law* or *great jurisprudence*.<sup>96</sup> In accordance with Berry's views, this law, which is based on the needs of nature, sits in a hierarchical position above human laws, proscribing human laws where they contravene nature's laws.<sup>97</sup> An unsettled issue stems from the scope and content of the great jurisprudence because at present, broad references to the needs of nature, or the laws of nature, are not sufficiently certain to be translated into law and policy.<sup>98</sup> Nevertheless, at a minimum the needs of nature can be discovered by scientific research and investigation, leaving the door open for science to assist in guiding law and policy.<sup>99</sup>

88 Generally, *HN-66* (n 12); *HN-67* (n 13) para 3; and *HN-68* (n 14).

89 Generally, *HN-66* (n 12) and *HN-68* (n 14); *HN-69* (n 10) para 11; *HN-71* (n 13) para 15.

90 *HN-71* (n 13) para 15.

91 Thomas Berry, *The Great Work: Our Way into the Future* (Three Rivers Press, 1999) 132–5.

92 Berry (n 91); Cashford (n 87), 5; Michelle Maloney, 'Earth Jurisprudence and Sustainable Consumption' (2011) 14 *Southern Cross University Law Review* 119, 119.

93 Berry (n 91) 3–5; Ian Mason, 'One in All: Principles and Characteristics of Earth Jurisprudence' in Peter Burdon (ed) *Exploring Wild Law: The philosophy of Earth Jurisprudence* (Wakefield Press, 2011) 35, 35–6.

94 Cullinan, 'A History of Wild Law' (n 19) 12–13, 19.

95 Tur (n 19); Filgueira and Mason (n 19) 195; Cullinan, 'A History of Wild Law' (n 19) 13; Maloney (n 92) 119.

96 Cormac Cullinan, *Wild Law: A Manifesto for Earth Justice* (Green Books, 2003) 84; Burdon, 'The Great Jurisprudence' (n 20) 65.

97 Burdon, 'The Great Jurisprudence' (n 20) 59, 61.

98 *Ibid* 66.

99 *Ibid* 60, 66.

In this respect, Earth jurisprudence has much in common with deep ecology, a movement that calls on society to transform its relationship with the Earth by living harmoniously with the planet.<sup>100</sup> Among other things, the movement entails setting ecological limits to economic growth and allowing the environment to be natural.<sup>101</sup> As with Earth jurisprudence, deep ecology acknowledges the inherent value of human and nonhuman life, independent of the latter's usefulness to humans.<sup>102</sup> This principle also underscores that humans are merely one component of the Earth's biosphere, behoving humans to minimise their ecological impacts.<sup>103</sup>

Although humans are part of the biosphere, deep ecology admits that humans may need to reduce their population numbers and that humanity cannot aspire to ever-increasing standards of living.<sup>104</sup> For these reasons, deep ecology has been criticised for being anti-human, 'politically misguided ... and impractical'.<sup>105</sup> One pointed criticism derives from the fact that the movement is strongly grounded in biology and lacks engagement with social theory.<sup>106</sup> Proponents of deep ecology, however, highlight that environmental concerns are invariably seen through the lens of economics and human desires, so that engagement with social issues would diminish the environmental message of deep ecology.<sup>107</sup>

In contrast, Earth jurisprudence incorporates both science and social issues. The core tenet of Earth jurisprudence, Earth rights, acknowledges the interconnectedness of nature (science-based) and shows an appreciation of rights of Mother Earth (social and legally-based).<sup>108</sup> Important principles include the following:

- the Earth community and all the beings that constitute it have fundamental rights, including the right to exist, to habitat or a place to be and to participate in the evolution of the Earth community;
- human acts or laws that infringe these fundamental rights violate the fundamental relationships and principles that constitute the Earth community (great jurisprudence) and are consequently illegitimate and unlawful; and

100 George Sessions, 'Deep Ecology, New Conservation, and the Anthropocene Worldview' (2014) 30(2) *The Trumpeter* 106, 109.

101 *Ibid.*

102 Ronnie Hawkins, 'Why Deep Ecology Had to Die' (2014) 30(2) *The Trumpeter* 206, 226–7; Arne Naess, 'Basics of the Deep Ecology Movement' in Anne Naess, Alan Drengson and Bill Bevall (eds) *The Ecology of Wisdom: Writings by Arne Naess* (Counterpoint, 2018) 105, 111.

103 Hawkins (n 102) 226–7; Naess (n 102).

104 Naess (n 102).

105 Mick Smith, 'Deep Ecology: What is Said and (to be) Done?' (2014) 30(2) *The Trumpeter* 141, 141.

106 *Ibid.* 143.

107 *Ibid.* 150–1.

108 Peter Burdon, 'A Theory of Earth Jurisprudence' (2012) 37 *Australian Journal of Legal Philosophy* 28, 30; *HN-69* (n 10) paras 3, 4; *HN-71* (n 13) para 21.

- humans must adapt their legal, political, economic and social systems to be consistent with the great jurisprudence and to guide humans to live in accordance with it, which means that human governance systems at all times take account of the interests of the whole Earth community.<sup>109</sup>

Generally speaking, rights stemming from Earth jurisprudence centre on the ability of entities and components of the Earth to exist and fulfil their evolutionary role.<sup>110</sup> These rights are role-specific or species-specific, so that the rights of trees and rivers are different from the rights of birds or mammals.<sup>111</sup> A fundamental similarity, however, stems from the fact that such rights do not depend on human law and policy.<sup>112</sup> Instead, they derive from the very existence of entities,<sup>113</sup> a notion that is also consistent with the interconnectedness of nature and the entitlements of nature; perspectives that are acknowledged in their own right by the UND.<sup>114</sup>

Examining the above principles, it is clear that giving rights to the Earth or using science to determine limits to development does not automatically ignore the needs of people. Humans are part of the community of life, meaning their needs ought to be taken into account.<sup>115</sup> In particular, Earth jurisprudence does not authorise restrictions that lead to ‘economic hardship ... [and/or] irreversible cultural impacts’.<sup>116</sup> Rather, the concept is inclusive, providing a framework for unifying science, philosophy, spirituality and law.<sup>117</sup> It is a call to move away from anthropocentrism and to live in harmony with the Earth.

Human law, shaped by the great jurisprudence, forms the backbone of Earth jurisprudence, being necessary to give practical effect to the rights of nature, a realisation that is gaining traction nationally and internationally. At the national level, the recent New Zealand determination in the Whanganui River Claims Settlement saw legislation enacted that declared *Te Awa Tupua*, a river, to be a legal person.<sup>118</sup> Internationally, events such as the adoption of the Universal Declaration of Rights of Mother Earth, at the 2010 World People’s Conference on Climate Change and the Rights of Mother Earth, held at Cochabamba in Bolivia, signal a shift away

109 Cullinan, ‘A History of Wild Law’ (n 19) 20, 13.

110 Maloney (n 92) 140.

111 Cashford (n 87) 3, 9.

112 *HN-68* (n 14) paras 16–17; *HN-69* (n 10) para 22.

113 Maloney (n 92) 140.

114 Arne Naess, ‘The Shallow and the Deep, Long-Range Ecology Movement. A Summary’ (2008) 16 *Inquiry*, 95, 95; *HN-68* (n 14) paras 16–17; *HN-69* (n 10) paras 1–6.

115 Peter R Wilshusen et al, ‘Reinventing a Square Wheel: Critique of a Resurgent ‘Protection Paradigm’ in International Biodiversity Conservation’ (2002) 15 *Society and Natural Resources* 17, 25.

116 *Ibid.*

117 *HN-71* (n 13) paras 30–2, 113.

118 *Te Awa Tupua (Whanganui River Claims Settlement) Act 2017* (NZ) s 14 <[http://www.nzlii.org/nz/legis/consol\\_act/tatrcsa2017470/](http://www.nzlii.org/nz/legis/consol_act/tatrcsa2017470/)>.

from economic anthropocentrism towards earth-centred perspectives.<sup>119</sup> In reality, societies across the globe are increasingly embracing the rights of nature, a trend evinced by the Secretary-General's report, which discusses numerous state activities in this field.<sup>120</sup> Actions include:

- judicial recognition, or granting, of rights to rivers;<sup>121</sup>
- recognition of the rights of nature included in local constitutions;<sup>122</sup> and
- the enactment of local ordinances and by-laws recognising the rights of nature.<sup>123</sup>

Notwithstanding these developments, the impact of Earth jurisprudence in a practical sense remains to be seen. Sustainable development is still the mainstay of environmental regulation and in a broader sense, it is arguable that there is little point in normative pleas for action, without specific proposals for law and policy reforms. Further evaluation of the linkages among sustainable development, the UN and Earth jurisprudence reveals that states are forging pathways towards reforms that can provide the basis for more specific proposals to amend laws/policy.

## V SUSTAINABLE DEVELOPMENT, THE UN DIALOGUES AND EARTH JURISPRUDENCE

The discussion thus far has evaluated how the concept of sustainable development failed to challenge underlying growth patterns, leading the UN to recommend the adoption of an alternative paradigm, that of Earth jurisprudence. At least two issues flow from this recommendation: whether it is possible to rehabilitate sustainable development, or whether society should replace it with new ideologies;<sup>124</sup> and whether society is willing to traverse the ideological terrain from sustainable development to Earth jurisprudence.<sup>125</sup>

119 'Universal Declaration of the Rights of Mother Earth' (World People's Conference on Climate Change and the Rights of Mother Earth, 22 April 2010) arts 1(2), 1(3) and 1(4), <<http://therightsofnature.org/wp-content/uploads/FINAL-UNIVERSAL-DECLARATION-OF-THE-RIGHTS-OF-MOTHER-EARTH-APRIL-22-2010.pdf>>.

120 *HN-72* (n 14) paras 27–39, implementation of Earth-centred law, paras 40–54, policy development of Earth-centred law; further discussion, David R Boyd, 'Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution' (2018) 32(4) *Natural Resources and Environment* 13, 13–16.

121 *HN-72* (n 14) paras 27–31 recognition by the Constitutional Court of Colombia that the Atrato River had rights; para 32, granting of legal personhood to the Ganga and Yamuna Rivers by the High Court of Uttarakhand, India.

122 *HN-72* (n 14) para 32 referring to the constitution of Mexico City.

123 *HN-72* (n 14) para 39 referring to municipalities in the United States; para 46 referring to the United Kingdom.

124 Mumta Ito, 'Nature's Rights: Why the European Union Needs a Paradigm Shift in Law to Achieve its 2050 Vision' in Chris Maser and Cameron La Follette (eds) *Sustainability and the Rights of Nature in Practice* (Taylor and Francis, 2020) 311, 325.

125 Mike Bell has discussed issues in navigating from human jurisprudence to Earth jurisprudence, Mike Bell,

Turning to the first issue, it is significant that the UN has placed its dialogues within the sustainable development agenda, suggesting that sustainable development can be rehabilitated. This appears to be the trajectory in mind when in 2015, the General Assembly adopted the Sustainable Development Goals ('SDG').<sup>126</sup> It appears that Earth jurisprudence can be used to rehabilitate sustainable development because the Earth itself forms the foundation of the goals, thus making it possible to integrate the rights of nature with economic and societal objectives.<sup>127</sup> This would require policy shifts beyond the four corners of the SDG, particularly in the area of economic reform.

By 2015, five UND had been held that critiqued human impacts on the earth and highlighting the links between environmental degradation and unrestrained economic growth. The 17 goals and 169 targets outlined in the SDG do not come to grips with these issues in a meaningful way. There are no references to the intrinsic or inherent value of nature or to Earth jurisprudence. Consequently, sustainable development is still seen as human-centred,<sup>128</sup> although in a nod to the UND, it is recognised on an international level that:

there are different approaches, visions, models and tools available to each country ... to achieve sustainable development; and we reaffirm that planet Earth and its ecosystems are our common home and that 'Mother Earth' is a common expression in a number of countries and regions.<sup>129</sup>

Elsewhere, the notion of living in harmony with nature is partially reflected in the preamble to the resolution and also in target 12.8 of the goals that aim at ensuring 'people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature'.<sup>130</sup>

The challenges presented by economic issues, have not been addressed. While the resolution is littered with references to sustainable economic growth,<sup>131</sup> paragraph 18 more or less repeats Principle 2 of the Rio Declaration, confirming that every state has sovereignty over its natural resources and economic activity. As already discussed, this approach is not conducive to establishing a global concept of sustainable development. Goal 8 envisages that states will achieve higher levels of economic productivity through diversification, while simultaneously improving global resource

<sup>126</sup> 'Thomas Berry and an Earth Jurisprudence an Exploratory Essay' (2003) 19(1) *The Trumpeter* 69, 75–6.

<sup>126</sup> *Transforming Our World: The 2030 Agenda for Sustainable Development*, GA Res 70/1, Agenda Items 15 and 116, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) ('*Sustainable Development Goals*').

<sup>127</sup> Ito (n 124) 325.

<sup>128</sup> *Sustainable Development Goals* (n 126) paras 8, 10, 14, 15, 19, 20, 34, 50.

<sup>129</sup> *Sustainable Development Goals* (n 126) para 59.

<sup>130</sup> *Sustainable Development Goals* (n 126) Preamble under 'Prosperity', para 9.

<sup>131</sup> *Sustainable Development Goals* (n 126) paras 8, 9, 13, 27.

efficiency in consumption and also separating economic growth from environmental degradation.<sup>132</sup> Conceivably, these objectives may not be consistent with each other, leaving in abeyance fundamental reforms comprehended by Earth jurisprudence.<sup>133</sup>

To be precise, unchecked economic growth, with its basis in neoclassical economics and its focus on 'outputs and income distributions ... through supply and demand', presents significant challenges for achieving sustainable development.<sup>134</sup> From the discipline of economics, suggestions for reform include standpoints based on the steady-state economy and/or ecological economics. Each aims at achieving sustainability, although by a slightly different mechanism. A steady-state economy eschews continuous growth, replacing it with a 'dynamic market economy that efficiently allocates goods and services but uses the lowest feasible rates of natural capital depletion to achieve a high quality of life';<sup>135</sup> while ecological economics concentrates on integrating ecosystems with economic systems, to achieve sustainability.<sup>136</sup> Earth jurisprudence requires that ecological frames of reference provide boundaries for economic systems so that society regards 'nature as their home instead of an endless source of capital'.<sup>137</sup> These types of considerations seriously question whether the economic imperatives of sustainable development are compatible with eco-centric approaches and whether sustainable development can be rehabilitated.

In the context of protecting biodiversity, outcomes within the *CBD* reinforce these difficulties. The Conference of the Parties to the *CBD* ('COP') has followed the *UND* with interest, acknowledging in 2016 that living in harmony with nature proffers strong critiques of anthropocentrism and its role in sustainable development.<sup>138</sup> Moreover, the COP also admit that greater emphasis needs to be placed on the intrinsic value of nature and the interdependent relationship of humans to the Earth.<sup>139</sup> Although in 2010 – before the initiation of the *UND* – the COP had adopted the Aichi Targets, which promote living in harmony with nature, however, the targets

132 *Sustainable Development Goals* (n 126) para 8.4.

133 Ito (n 124) 326.

134 Haydn Washington and Michelle Maloney, 'The Need for Ecological Ethics in a new Ecological Economics' (2020) 169 *Ecological Economics* 1, 1.

135 James Magnus-Johnston, 'What Is the Steady State Economy?' in Haydn Washington (ed) *Positive Steps towards a Steady State Economy* (Casse, 2017) 31, 33.

136 Robert Costanza, 'Ecological Economics: A Research Agenda' (1991) 2(2) *Structural Change and Economic Dynamics* 335, 355.

137 *HN-73* (n 14) Summary, paras 8, 16; Washington and Maloney (n 134) 2, 4.

138 *Interactive Dialogue: 'Living in Harmony with Nature' – Note by the Executive Secretary*, Item 2 of the Provisional Agenda, UNEP/CBD/COP/13/9 (13<sup>th</sup> mtg, Cancun, Mexico, 4–17 December, 2016) paras 18–20 <<https://www.cbd.int/doc/meetings/cop/cop-13/official/cop-13-09-en.pdf>>.

139 *Ibid* para 19.

do not appear to have led to a fundamental change.<sup>140</sup> These matters are exacerbated by concerns as to how the needs of future generations are taken into account. Decision-makers who identify and evaluate economic, environmental and social interests determine what is just and equitable, not only for the present but also for generations to come.<sup>141</sup> In some cases, such as agriculture and energy production, development creates long-tail risks and problems whose impacts may not be fully felt for decades.<sup>142</sup> This situation largely stems from mechanisms that evaluate developments on a project-by-project basis and that concentrate on benefits to humans, without adequately taking cumulative impacts and ecosystem detriments into account.<sup>143</sup> Consequently, the process undermines notions of intergenerational equity by not adequately considering long-term impacts, providing another reason for reconceptualising what is understood by sustainable development.

In contrast, Earth jurisprudence starts from the premise that humans are guardians of the Earth rather than its master, thus a compelling change to how society visualises its relationship to the environment.<sup>144</sup> In the 1990s, Brown Weiss reached a similar conclusion, noting that intergenerational equity necessarily entails obligations to the planet, so that current generations should leave the Earth ‘in no worse condition’ than they received it.<sup>145</sup> Earth jurisprudence strengthens this stance by crystallising legal obligations formulated for the good of the planet, rather than the advancement of economic systems.

Nevertheless, while arguments can be made that Earth jurisprudence can address the shortcomings of sustainable development, whether it is adopted and implemented depends on society’s willingness to traverse the ideological terrain from sustainable development to Earth jurisprudence. Critiques of eco-centric approaches suggest that some parts of society will find this difficult, as demonstrated by the fact that criticism of deep ecology is now mirrored by criticism of Earth jurisprudence.<sup>146</sup> One barbed assessment of rights for nature, states that the concept panders to

140 Stuart Harrop, ‘2010 Nagoya Conference of the Convention on Biological Diversity’ (2011) 23(1) *Journal of Environmental Law* 117, 122–5 critiquing the limitations to the Aichi Target.

141 Collins (n 50) 184.

142 Wood (n 63) 298.

143 Jessica T Dales, ‘Death by a Thousand Cuts: Incorporating Cumulative Effects in Australia’s Environment Protection and Biodiversity Conservation Act’ (2011) 20(1) *Pacific Rim Law & Policy Journal Association* 149, 174–6.

144 *HN-67* (n 13) para 35; *HN-68* (n 14) paras 60–4.

145 Brown Weiss (n 50) 21; also Collins (n 50) 107 where she discusses Brown Weiss’ doctrines and concludes that this could also include restoration of degraded ecosystems.

146 Discussion, Boyd (n 120) 16–17.

deep ecologists, global warming alarmists, and other assorted green radicals [who] want to accord legally enforceable ‘rights’ to ‘nature’, thereby subverting human exceptionalism by demoting us, in effect, to just another species in the forest.<sup>147</sup>

Such an appraisal does not engage with the failings of sustainable development and the need for fundamental reform. Others, who would favour the evolution of rights for nature, nevertheless urge caution, because there is little point to appeals for improvement, without specific proposals for law and policy reforms. Taking a pragmatic approach, these commentators identify the need for governments to appoint strong regulators, with access to sufficient resources to enable them to enforce the law.<sup>148</sup> In the face of these challenges, society’s push towards the rights of nature has not been dampened.<sup>149</sup> Although momentum may be building up slowly and in a piece-meal manner, state practice nevertheless demonstrates a willingness to engage with Earth jurisprudence and the rights of nature.

## VI CONCLUSION

This article has argued that sustainable development has not successfully established an eco-centric basis for humanity’s relationship to the Earth. This flaw is partly explained by the way sustainable development evolved and partly understood by the fact that from the outset the concept was infused with economic anthropocentrism.<sup>150</sup> The focus pre-*Brundtland* settled on humanity’s relationship with the environment in terms of economic development, economic growth and income levels.<sup>151</sup> Meanwhile, post-*Brundtland*, society came to accept a framework of exploitation limited by equity in the allocation of resources for current generations.<sup>152</sup> While humanity has made great strides in understanding nature, institutional mechanisms have not used these advances to achieve environmental sustainability, but rather to exploit nature more efficiently.<sup>153</sup> Accordingly, it is questionable whether the very mechanisms that led to environmental failings can transform society’s relationship to the Earth; this has

147 Ibid 17, quoting Welsley J Smith from the Conservative Discovery Institute.

148 Nick Kivert, ‘There’s a Growing Push to Give Nature Legal Rights, but What Would that Mean?’, *ABC Science* (online, 16 March 2019) <<https://www.abc.net.au/news/science/2019-03-16/rights-of-nature-science/10899778>> interview with Dr McGrath.

149 Discussion surrounding footnotes 122–5 above.

150 Redclift, ‘Sustainable Development (1987–2005): An Oxymoron Comes of Age’ (n 63) 224.

151 Seers (n 55).

152 David Freestone, ‘The Road from Rio: International Environmental Law After the Earth Summit’ (1994) 6(2) *Journal of Environmental Law* 193, 209.

153 Michael M Crow, ‘None Dare Call it Hubris: the Limits of Knowledge’ (2007) 23(2) *Issues in Science and Technology* 29.

resulted in the UND recommending principles of Earth jurisprudence.<sup>154</sup> States have taken up the call, engaging with the concept, and also with its key foundation, the rights of nature. As Boyd indicates:

to move from exploiting nature to respecting nature will require a massive transformation of law, education, economics, philosophy, religion, and culture. Rights for nature impose responsibilities on humans to [phase out or revise behaviour that] ... threaten[s] the survival of species, or undermine[s] the ecological systems upon which all life depends.<sup>155</sup>

The extent to which states take up these appeals and adopt Earth jurisprudence remains to be seen, as does the extent to which Earth jurisprudence principles can transform the anthropocentric and economic cornerstones that characterise sustainable development. Nevertheless, the rights of nature have been described as a spearhead concept. Given that states are adopting it, confronts society's anthropocentric constructs, providing a new platform for a new relationship with the Earth.<sup>156</sup>

154 Biermann et al (n 23) 279; Murray (n 23) 220.

155 Boyd (n 120) 17.

156 Kivert (n 148) interview with Michelle Maloney.

