

# **11th International Conference of the European Society for Ecological Economics, University of Leeds, UK, 30 June – 3 July 2015**

**Submitted for Special Session 7.19. Legal Institutions and Ecological Economics**

**Title: The contribution of legal institutions to achieving a sustainable development**

## **Summary**

This paper aims firstly to provide a conceptual overview on the two main objectives of international environmental law that should be addressed when modifying it and subordinated law in a more sustainable direction. This first aim is addressed based on ongoing research on '3-D Sustainability', a concept providing decision-making support for priority setting between environmental, social and economic dimensions within sustainable development. The two main objectives identified within this aim are to stay by means of international environmental law within the ecologically sustainable scale and to legally define flexible trade-off mechanisms, which in a more sustainable way deal with conflicts among the three sustainability dimensions. Secondly, the paper strives to identify ways to further strengthen the application of the existing international law in this respect. Thus, several innovative mechanisms within international law are identified that overcome current implementation deadlocks, without necessarily changing the existing law.

## **Abstract**

Legal Institutions and Ecological Economics are interrelated in multifaceted ways. Ecological Economics is considered as the economics of a sustainable development; and sustainable development as a process as well as outcome is heavily dependent on how its three internationally recognised environmental, social and economic dimensions are balanced day by day. The integration of these dimensions establishes a challenge for decision-making also under the rule of law. Legislation, implementation and enforcement are requested on all geo-political levels to address a wide range of thematic issues in a sustainable manner.

This paper has two distinct aims. Firstly, it strives to provide based on ongoing research about '3-D Sustainability' a conceptual overview on the two main objectives that should be addressed when modifying international law and subordinated law in a more sustainable direction. Secondly, the paper aims to identify ways to further strengthen the law in this same direction. By addressing the first aim, an approach is applied that looks on how law should be ('de-lege ferenda'). The second aim is assessed based on the law how it is ('de-lege lata').

'3-D Sustainability' is a rather young interdisciplinary concept that offers decision-making support for priority setting between environmental, social and economic dimensions within Sustainable Development. 3-D Sustainability aims at the maintenance or restoration of environmental and social carrying capacities in terms of safe minimum standards in the sense of Ecological Economics. The paper explores potential future improvements and extensions of the use of 3-D Sustainability in connection with legal institutions and Ecological Economics. 3-D Sustainability is particularly applicable for cases of uncertainty based on the precautionary principle and emphasising the distribution as well as extent of the burden of proof. It introduces a preliminary order of six criteria for the assessment of hierarchies within as well as conflicts between social, environmental and economic sustainability, and the theoretical application of

the criteria of 3-D Sustainability on several real examples of legal acts indicates its usefulness in practice (Mauerhofer, 2008). Newly, the concept provided also the basis for the application of a tool called the Legislation Check (Mauerhofer, 2012; Elbakidze et al., 2013) assessing legal norms as the “rules of the game” as well as for another tool called the Governance Check (Mauerhofer, 2013) which focuses more on the analysis of governmental organizations as “players of the game” and their mutual relationship. After revisiting the concept of 3-D Sustainability and the recently developed checks based thereon, the further potential of the concept and the checks is critically explored. This analysis leads to a more detailed description of the criteria and their relationship. Furthermore, new application situation for the concept and the checks are presenting from ongoing work (Mauerhofer, 2014). This increases the range of case studies and fields of impact, both leading to further support for the theoretical and practical usability of 3-D Sustainability.

The second part of the paper aims to implement the existing law towards sustainable development and the perspectives therefor are identified – also based on ongoing research - to be numerous. They include voluntary approaches such as a ‘Convention Check’ through organizations managing protected areas, an increased capacity building among civil servants and judges about the direct effect of MEAs, the extension of the geographic scope of MEAs based on the ‘accession of regions’ and the re-interpretation of MEAs towards a more scientific basis (Mauerhofer, 2014).

In summary, the paper innovatively offers - based on ongoing research - several ‘de lege ferenda’ solution proposals for addressing in a sustainable manner geopolitical and organizational scales as well as trade-offs when it comes to modifying existing law. It further provides proposals for the innovative implementation of existing international environmental law regimes (‘de-lege lata’) without changing the text of the law.

**Key words:** pillars, sustainable, review, trade-off, criterion, law

**Literature cited:**

- Elbakidze M., Hahn T., Mauerhofer V., Angelstam P. and Axelsson R., 2013. Legal Framework for Biosphere Reserves as Learning Sites for Sustainable Development: A Comparative Analysis of Ukraine and Sweden, *Ambio* 42,174-187
- Mauerhofer V., 2008. 3-D Sustainability: An approach for priority setting in situation of conflicting interests towards a Sustainable Development, *Ecological Economics* 63, 496-506
- Mauerhofer V., 2012. A ‘Legislation-Check’ based on ‘3-D Sustainability’ - Addressing global precautionary land governance, *Land Use Policy* 29, 652– 660
- Mauerhofer V., 2013. The ‘Governance-Check’: Assessing the sustainability of public spatial decision-making structures, *Land Use Policy* 30, 328-336
- Mauerhofer V., 2014. Challenging the labyrinth: sustainable scales, trade-offs and perspectives through Environmental Law. In V. Sancin and M. Kovič-Dine (Eds.) *International Environmental Law: Contemporary Concerns and Challenges in 2014*. Ius Software, d.o.o, GV Založba, 25-42