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Informazioni generali

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Informazioni sul volume

This study looks closely at the evolution and basic tenets of the juridical concept of *sustainable development*, investigating in particular its potential capacity to bind together or integrate the diversity and the plurality of interests nowadays existing within the international community. It argues that the international law principle of sustainable development can thus act as a powerful force for integration between *conflicting* legal regimes.

The regimes examined to test these hypotheses are those of the 1992 UN Framework Convention on Climate Change and its 1997 Kyoto Protocol (particularly, the *Clean Development Mechanism* and *Emissions Trading* provisions) and the World Trade Organization, which – in our opinion – have to be considered as *regimes* in a technical sense - i.e., according to the definition provided in our study *Il 'regime' internazionale per la protezione delle foreste*, Napoli (Satura) 2012, at p. 19.

The practical importance of this investigation is evident. The 2007 *Fourth Assessment Report* of the Intergovernmental Panel on Climate Change makes it clear that climate change processes have already begun, that major mitigation efforts will be necessary to avert

dangerous climate change and that to avoid the worst effects further emission reductions of greenhouse gases of 25-40% by 2020 will be essential. In developing a post-Kyoto regime to meet rigorous targets such as these the international community seems likely to continue to look to 'cap-and-trade' systems at national, regional and international levels. These systems easily come however into *conflict* with the WTO regime. It is precisely in this perspective that the principle of sustainable development provides a force for integration; it can provide indeed a legal basis for the argument that the community interest in a stable global climate juridically (that is, mandatorily) prevails over the economic and welfare interest protected by the international trade regime. However this can *only* happen *if* the climate mitigation measures themselves pass the 'sustainable development' litmus test.

At a time of rising 'fragmentation' of the international legal architecture this study therefore proposes a positive role that the principle of sustainable develop ment might play in *integrating* (therefore, in *de-fragmenting*) different regimes, using – as testing ground – the case of the normative conflicts between trade and climate regulations.

Under such a perspective, this study investigates into their roots the *normative conflicts* that certain climate (mitigation) measures undertaken by State Parties to the international climate regime (particularly, those measures provided for by the Kyoto Protocol provisions on the so called 'flexibility mechanisms') may give rise to with the trade rules of the WTO multilateral system.

These conflicts are first illustrated under the perspective of their normative basis and – also – within the (larger) context of the (doctrinal and jurisprudential) debate on the 'environment and trade' relationship; afterwards, they are examined in the light of the international customary rules and principles on treaty (interpretation and) conflict (resolution).

Aim of such investigation is, therefore, to provide for a *new*, *further* instrument of 'balance' (*rectius*, of reconciliation and harmonization) of conflicting rights and interests, which might work, eventually and when necessary, as an alternative instrument to traditional legal means of conflict avoidance and resolution provided for by, respectively, (treaty) *interpretation* and *conflict resolution* principles. This instrument could be useful, particularly, in those cases where the latter principles do *not* succeed, in fact, in providing for adequate solutions to the normative conflicts at stake.

Such (a new) instrument could be, in our opinion, the principle of sustainable development. In other words, in cases where the application of the general principles on interpretation (as codified by the Vienna Convention on the Law of Treaties) and/or the choice of law principles on conflict resolution (*lex posterior*, *lex specialis*) do *not*, eventually, provide for adequate solutions to avoiding or resolving a normative conflict (as it happens, as we will see, in the case

of the ‘trade and climate conflicts’), the principle of sustainable development may play the role, as a general principle of international law, of a *judicial* means of ‘integration’. That is, an instrument of interpretation and/or conflict resolution *as a principle*, thereby influencing (directly or indirectly) the outcome of judicial decisions.

In such a perspective, as it will be illustrated, the principle of sustainable development could operate, in the hand of judges and States, as some sort of “intervening principle” mediating between the interstices of (potentially) conflicting (treaty) rules, ‘coloring’ the understanding and the application of these rules, thereby also establishing the relationship among them, through a ‘principle based approach’ to integration in treaty interpretation and application.