

## LAW AND SUSTAINABILITY AT THE UNIVERSITY OF BERN

How should Switzerland – and the international community – organize their future legal frameworks to support sustainable processes and prevent unsustainable ones? How, and through what procedures, can the current law be further developed to this effect?

One of the tasks of the study of law is to further develop the legal system together with policymakers and society, and to make it fit for the purpose of meeting new societal challenges. Legal scholars working in the field of sustainability sciences are primarily concerned with further developing the current legal framework. They relate sub-areas of current law in the fields of economy, ecology, and society to each other; highlight existing conflicts of interest and conflicting goals; and look for possible synergies and solutions in the form of innovative regulations. The aim is for such regulations to help tackle the major sustainability challenges facing society (see e.g. [1]). For example, for its “Sustainable Economy” National Research Programme, the Swiss National Science Foundation (SNSF) explicitly sought legal scholars. Their task was to use interdisciplinary and transdisciplinary research to help develop ideas for a legal framework aimed at achieving the Sustainable Development Goals [2]:

*“For the functioning of any society a legal framework is essential. Such a framework explicitly or implicitly sets behavioral incentives and imposes costs on deviation. Independent of the kind of incentives, the most innovative attempts towards a sustainable economy can be realized only, if embedded into a functioning and well-designed legal framework.”*

### How is law linked to sustainable development, and how has this influenced practice?

Worldwide, states have started to incorporate the concept of sustainable development into their legal systems. In Switzerland, the concept of sustainability is now enshrined in several places in the Federal Constitution (Cst) of 18 April 1999. For example, the **Preamble** includes the two core ideas of sustainable development: “responsibility towards creation” and “responsibility towards future

generations”. As stated by **Art. 2 Cst** (Aims), the Confederation shall promote “sustainable development” (**para 2**) and “is committed to the long-term preservation of the natural resources” (para. 4). According to **Art. 73 Cst**, titled “Sustainability”, the “Confederation and the Cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population.” Finally, the concept of sustainability is also reflected in **Art. 54 Cst**, according to which the Confederation shall “assist in the alleviation of need and poverty in the world”; in **Art. 75 Cst**, according to which principles on spatial planning serve to ensure the “appropriate and economic use of the land”; and, in **Art. 126 Cst**, according to which the Confederation “shall maintain its income and expenditure in balance over time.” At the same time, the principle of sustainability has been enshrined in various laws: explicitly in the Forest Act (Art. 20) or implicitly in the Environmental Protection Act, the Spatial Planning Act, or the Financial Budget Act. The Federal Supreme Court also refers – intermittently – to the principle of sustainability (e.g. Decision 149 I 182 [3]).

The references to sustainable development in the Constitution and in legislation emerged in response to international developments in recent decades. The concept of “sustainable development” was consolidated in the **Brundtland Report**, which was commissioned by the UN in **1987** [4]. The report recommended that governments consider the basic needs of current and future generations as well as limits to environmental resources in every decision. The legal contours of the concept were worked out in the following years. Key documents include the **Rio Declaration of 1992**, which assigns 27 legal principles to sustainable development, and the **International Law Association’s New Delhi Declaration of 2002**, which identifies seven legal principles that are key to sustainable development. The principle of integration and interrelationship of the different dimensions – “human rights and social, economic and environmental objectives” – is of particular importance. The terms “sustainable development” and “sustainability” are also contained within numerous international treaties, such as the Paris Agreement of 2015, the WTO Agreement of 1995, and the UN Convention to Combat Desertification of 1994. International case law also refers to sustainable development when interpreting open legal terms.

In principle, many national and international rules in the fields of human rights, labour standards, biodiversity, climate, trade, constitutional governance, and the welfare state support the implementation of individual Sustainable Development Goals (SDGs) of the United Nations [5]. However, the potential of sustainability as a general principle of lawmaking is not yet fully realized: some legal scholars see the constitutionally enshrined principle of sustainability as **multidimensional legal principle** and **methodical norm** that can facilitate coherent **law-making** and specifically align laws with the SDGs [6, 7]. Conflicting objectives should be identified as early as possible, so that optimal solutions can be found. An expression of this is Art. 141 para. 2 lit. g of Switzerland’s Parliament Act, according to which the Federal Council must justify the “the consequences for the economy, society, the environment and future generations” of draft legislation. However, implementation of this provision has remained rudimentary to date (see e.g. [8]). A sustainability law that would define the conditions for coherent legislation in terms of sustainability is still missing [9].

### Example: A hypothetical federal law on sustainable agricultural trade

The sustainability principle helps to consistently orient research projects towards the UN SDGs and make them relevant to practice. One example is the SNSF project “Sustainable Trade Relations for Diversified Food Systems”: Diversified food systems are ecologically and economically valuable (**SDGs 2, 12, 13, 14, and 15**), and they come with a range of social benefits (**SDGs 1, 2, 3, and 5**). They also contribute to a diverse food supply (**SDGs 2 and 3**). However, they face challenges in competing with specialized food systems that focus mainly on large-scale production, as markets do not sufficiently cater to them.

An important lever for promoting diversified food systems are nuanced trade rules (**SDG 17**). States can use trade rules to promote products from “valuable areas” and prevent harmful production methods. But how can a state implement such “product differentiation” in a way that is effective, proportionate, context-sensitive, reliable, and non-discriminatory, as well as being compliant with constitutional objectives and international obligations?

In addition to conducting disciplinary studies, a broad interdisciplinary team of researchers modelled a coherent legislative process geared towards the SDGs and jointly developed a proposal for a “Federal Act on Sustainable Agricultural Trade” [10]. The legislative proposal shows in concrete terms how the state could proceed (e.g. by maintaining a positive list of products that are particularly

worthy of promotion and granting these products preferential treatment in public procurement or quota allocation). The **project** pursued a transdisciplinary approach by drawing on expertise from a wide range of fields. Jurisprudence provided the methodology for recording and synthesizing the key findings.



### How does the University of Bern’s Faculty of Law incorporate sustainability into research and teaching?

The Faculty of Law is committed to sustainable development. Many courses deal with partial aspects of sustainable development, for example in the fields of human rights, environmental law, commercial law, or legal history [11]. The principle of sustainability – as a coherence principle that brings these partial aspects together – is examined in more detail in the main lecture on public law and in specific, targeted seminars. Legal scholars are increasingly involved in inter- and transdisciplinary research projects that search for “sustainable regulations” in various areas.

## References

URLs last accessed on 4 December 2023. Sources indicated in German are not available in English.

- [1] Richardson K, Steffen W, Lucht W, Bendtsen J, Cornell SE, Donges JF, Drüke M, Fetzer J, Bala G, von Bloh W, et al. 2023. Earth beyond six of nine planetary boundaries. *Science Advances* 9(37): eadh245. <https://doi.org/10.1126/sciadv.adh2458>.
- [2] Swiss National Science Foundation. 2018. *National Research Programme 73, Sustainable Economy: Second Call for Proposals*. Bern, Switzerland: Swiss National Science Foundation. [https://www.snf.ch/media/en/MKoxrWWCiLzPDgIm/NRP73\\_2nd\\_Call\\_Document\\_EN.pdf](https://www.snf.ch/media/en/MKoxrWWCiLzPDgIm/NRP73_2nd_Call_Document_EN.pdf).
- [3] Bundesgericht. 2023. BGE 149 I 182. *Rechtssprechung*. Lausanne und Luzern, Schweiz: Bundesgericht. [https://www.bger.ch/ext/eurospider/live/de/php/clir/http/index.php?lang=de&type=highlight\\_simple\\_query&page=1&from\\_date=&to\\_date=&from\\_year=1954&to\\_year=2023&sort=relevance&insertion\\_date=&from\\_date\\_push=&top\\_subcollection\\_clir=bge&query\\_words=BGE+149+I+182&part=all&de\\_fr=&de\\_it=&fr\\_de=&fr\\_it=&it\\_de=&it\\_fr=&orig=&translation=&rank=1&highlight\\_docid=atf%3A%2F%2F149-I-182%3Ade&number\\_of\\_ranks=1&azaclir=clir](https://www.bger.ch/ext/eurospider/live/de/php/clir/http/index.php?lang=de&type=highlight_simple_query&page=1&from_date=&to_date=&from_year=1954&to_year=2023&sort=relevance&insertion_date=&from_date_push=&top_subcollection_clir=bge&query_words=BGE+149+I+182&part=all&de_fr=&de_it=&fr_de=&fr_it=&it_de=&it_fr=&orig=&translation=&rank=1&highlight_docid=atf%3A%2F%2F149-I-182%3Ade&number_of_ranks=1&azaclir=clir).
- [4] World Commission on Environment and Development. 1987. *Report of the World Commission on Environment and Development: Our Common Future*. United Nations General Assembly Document A/42/427. New York, NY, USA: United Nations.
- [5] United Nations. No date. The 17 goals. *SDG Knowledge. Sustainable Development*. New York, NY, USA: United Nations Department of Economic and Social Affairs. <https://sdgs.un.org/goals>.
- [6] Gehne K. 2008. *Nachhaltige Entwicklung als Rechtsprinzip. Normativer Aussagegehalt, rechtstheoretische Einordnung, Funktionen im Recht*. Tübingen, Germany: Mohr Siebeck.
- [7] Bürgi Bonanomi E. 2015. *Sustainable Development in International Law Making and Trade: International Food Governance and Trade in Agriculture*. Cheltenham, UK and Massachusetts, USA: Edward Elgar Publishing.
- [8] Federal Office for Spatial Development ARE. No date. *Sustainability assessments within the federal government. Sustainability Assessment. Data. Sustainable Development*. Bern, Switzerland: Federal Office for Spatial Development ARE. <https://www.aren.admin.ch/aren/home/sustainable-development/data/nachhaltigkeitsbeurteilung/nachhaltigkeitsbeurteilung-beim-bund.html>.
- [9] Wachter D. 2014. *Nachhaltige Entwicklung*. 4<sup>th</sup> Edition. Glarus and Chur, Switzerland: Edition Rüegger.
- [10] Bürgi Bonanomi E, Schläli J, editors. 2024. *Federal Act on Sustainable Trade in Agriculture? A Proposal for the Implementation of Art. 104a lit. d of the Swiss Federal Constitution*. Zurich, Switzerland: Dike.
- [11] Rechtswissenschaftliche Fakultät. 2018. *Anhang Nachhaltigkeit zum Bachelor und Master Rechtswissenschaft – Version vom 21.12.18*. Bern, Switzerland: Universität Bern. [https://www.unibe.ch/e152701/e154048/e191232/e191240/e210802/rw\\_sp\\_ba\\_ma\\_mono\\_final\\_ger.pdf](https://www.unibe.ch/e152701/e154048/e191232/e191240/e210802/rw_sp_ba_ma_mono_final_ger.pdf).

### University of Bern

Centre for Development and Environment (CDE)  
Mittelstrasse 43  
3012 Bern  
Switzerland  
[www.cde.unibe.ch](http://www.cde.unibe.ch)

**Contact:** [sustainability.cde@unibe.ch](mailto:sustainability.cde@unibe.ch)

**Author:** Elisabeth Bürgi Bonanomi, Dr. iur., Head of Sustainability Governance Impact Area, CDE; Senior Lecturer in Law and Sustainability, Faculty of Law, University of Bern.

Reviewed by Prof. Markus Kern, Professor of Constitutional, Administrative, and European Law, Department of Public Law, University of Bern.

**Series editors:** Jonas Frédéric Chastonay, Camilla Steinböck, Dr. Lilian Julia Trechsel (CDE)

**Copyediting of German version:** Dr. Marion Leng (CDE)

**English translation:** Tina Hirschbuehl and Marlène Thibault (CDE)

**Layout:** Simone Kummer (CDE)

**This publication is available for free download at:**  
[https://www.bne.unibe.ch/material/publications\\_further\\_reading/links\\_to\\_sd/index\\_eng.html](https://www.bne.unibe.ch/material/publications_further_reading/links_to_sd/index_eng.html)

Version 1.0

© 2024, the authors and CDE



This work is licensed under a Creative Commons Attribution- NonCommercial 4.0 International License. See <https://creativecommons.org/licenses/by-nc/4.0/> to view a copy of the license. For any commercial use of the content, it is mandatory to obtain permission from the authors of the corresponding content.

This document was compiled within Project 7.9, Education for Sustainable Development (ESD), of the University of Bern. Project 7.9 supports the Vice-Rectorate Quality in incorporating sustainable development into teaching at the University of Bern. Project 7.9 focuses on disciplinary and interdisciplinary connections with sustainable development, helping the faculties and institutes to identify these connections and make them visible to a wider audience.

**u<sup>b</sup>**

**UNIVERSITY OF BERN**

**CDE  
CENTRE FOR DEVELOPMENT  
AND ENVIRONMENT**