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Report on the Concept of "Related Notions"

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In the area of climate change, we have found a noteworthy trend of States having recourse to arguments that are not strictly human rights-based but rely on notions that are connected to human rights. Examples of such notions in connection with climate change include sustainable development, the protection of health, the welfare state, intergenerational equity, and consumers' interests.

Some of these notions are more closely related to the idea of the protection of rights of individuals and groups (e.g., consumers' interests or intergenerational equity), while others are more easily located in the sphere of public/State interest (e.g., security in the area of migration). Many can be placed in the middle – such as development, which can be conceived as the object of both a State interest and an individual or group right; or the protection of health. More generally, "related notions" appear to blur the lines between the protection of the public interest and the protection of the rights of others and therefore constitute a phenomenon worthy of examination in the context of human rights justifications (HRJs).

[1] The analysis of trade- and investment-related litigation has been carried out by Caterina Milo. The rest of the report has been authored by Chiara Tea Antoniazzi, who mainly developed the concept of "related notions".

1. Examples of the use of related notions in the area of climate change

a) Litigation

With regard to **dispute settlement before the World Trade Organization** (WTO), express references to human rights in general by States parties to the dispute are almost non-existent. Still, international trade law includes a specific system of exceptions (e.g., the general exceptions outlined in Article XX of the General Agreement on Tariffs and Trade (GATT)), which offer leeway for States to justify their measures using related notions. These are mainly the exceptions outlined in letters (a), "public morals"; (b), measures "necessary to protect human, animal or plant life or health"; and (g), measures "relating to the conservation of exhaustible natural resources". For this reason, States and the EU have often referred, for example, to the need to protect human health (*Canada – Certain Measures Affecting the Renewable Energy Generation Sector*, WT/DS412 / *Canada – Measures Relating to the Feed-In Tariff Program*, WT/DS426; *European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS593; *European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels*, WT/DS600).

References can also be found to notions like sustainable development. This happened, for example, in *India – Certain Measures Relating to Solar Cells and Solar Modules*, WT/DS456, where India argued that it adopted the contested measures in order "to ensure ecologically sustainable growth, fundamental to which is the concept of sustainable development".

Within **investor-State dispute settlement**, States also rarely use direct references to their human rights obligations to justify their conduct before arbitral tribunals.[2] [3] More frequent is the use of arguments based on related notions, by incorporating human rights-related considerations into the arguments employed to legitimise their conduct under their right to regulate – i.e., the right that permits host States to regulate in derogation of the commitments they undertook towards investors. States have first of all resorted to related notions – in particular, the protection of human health and of local ecosystems – to justify their climate action: examples are *Rockhopper Exploration Plc, Rockhopper Italia S.p.A. and Rockhopper Mediterranean Ltd v. Italian Republic*, where Italy justified its ban on offshore oil drilling near its coastline, citing environmental and social considerations; and *Eco Oro v. Colombia*, where Colombia justified its choice to implement measures prohibiting mining activities in certain areas as aimed at protecting the local ecosystems. Secondly and more frequently, States have justified their actions having negative impacts on investments in more sustainable energy sources by invoking the need to protect consumers and the welfare of their citizens as the public interest justifying their conduct. Examples are *SolEs Badajoz GmbH v. Kingdom of Spain*, *ESPF Beteiligungs GmbH, ESPF Nr. 2 Austria Beteiligungs GmbH, and InfraClass Energie 5 GmbH & Co. KG v. Italian Republic* and *Encavis and others v. Italian Republic*.

Apart from these sectoral contexts, related notions have also been used by States, for instance, before the European Court of Human Rights. In its reply to the application in *Greenpeace Nordic and Others v. Norway*, the Norwegian Government stated that

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[2] A notable exception is the case of *RWE and Uniper v. the Netherlands*, where the Netherlands cited its obligations under the European Convention on Human Rights and environmental treaties as a defence for adopting measures that negatively impact fossil fuel investments. Specifically, the Netherlands referred to the need to protect individuals' rights to health and a healthy environment. The case before the investment tribunal was, however, discontinued upon request of the parties and it was never decided on the merits.

[3] The following analysis on investor-State dispute settlement has been more extensively developed in Caterina Milo, *Environmental and Human Rights Justifications in Investment Arbitration: Probing the Limits of ISDS for the Adjudication of Climate-Related Disputes,* 26 JOURNAL OF WORLD INVESTMENT & TRADE 512 (2025).

> [t]he choice between available measures [to combat climate change] and their precise timing are complex issues with society-wide implications, including *a state's national budget and welfare state*, at a larger scale than any one environmental issue. Considering the many options regarding measures and their consequences, including consequences for *interests protected under the Convention*, there is even greater reason – and need – for the choice of measures to remain within the margin of appreciation of the Contracting State to be influenced through participation in democratic processes.[4]

b) Legislation

Recourse to related notions is also evident in **key EU legislative acts** that have been adopted in the area of climate change.[5] For instance, in the relevant Communication from the Commission it is stated that the European Green Deal

> aims to protect, conserve and enhance the EU's natural capital, and *protect the health and well-being* of citizens from environment related risks and impacts. At the same time, this transition must be *just and inclusive*. It must put people first, and pay attention to the regions, *industries and workers* who will face the greatest challenges.[6]

The preamble of the so-called European Climate Law mentions "high-quality jobs" and "sustainable growth" (recital 4) and expands on the need to protect health (recital 5). The creation of jobs (rather than the protection of the right to work), sustainable development and the protection of health can also be found as drivers, among others, of the Renewable Energy Directive (as revised in 2018 and 2023) and of the so-called Taxonomy Regulation.

The **Deforestation Regulation,** on its part, includes explicit references to both human rights (especially of indigenous people) and related notions. In the first recital of the preamble, the Regulation highlights how "forests provide *subsistence and income* to approximately one third of the world's population and the destruction of forests has serious consequences for *the livelihoods of the most vulnerable people*, including indigenous peoples and local communities who depend heavily on forest ecosystems" (emphases added). Furthermore, it is argued that deforestation makes the emergence of new diseases and epidemics more likely, which threatens human health. The fight against deforestation and forest degradation is also considered to contribute to sustainable development (recital 20). Finally, the Regulation also refers to the "legitimate expectations of operators and traders" (rather than referring to, for instance, the freedom to conduct a business), which are to be balanced against the protection of the environment (recital 45).

2. Possible reasons for the use of related notions

Investigating the reasons for the use of related notions instead of HRJs or instead of justifications which do not have any relation with human rights arguably goes beyond the

[4] Emphases added. On the difficulties in distinguishing between HRJs and positive obligations before the European Court of Human Rights, see Maria Nääv, *The Doctrinal Void – Human Rights Justifications and Positive Obligations under the European Convention of Human Rights* (forthcoming).

[5] For a more in-depth examination of this aspect, see Chiara Tea Antoniazzi, *Human Rights Justifications, Climate Change and the Role of the European Union* (report last updated January 2026).

[6] Emphases added.

empirical legal approach mainly adopted for the HRJust Project. Nevertheless, some hypotheses might be put forward. First of all, at least in certain instances, the use of related notions rather than HRJs might be highly influenced by the institutional context: e.g., by the fact that the WTO Dispute Settlement Body and investment arbitration tribunals do not as such adjudicate on the basis of human rights instruments. Accordingly, human rights-related arguments are "filtered" through the general exceptions under Article XX GATT; and, as far as investment is concerned, the right to regulate of States allows the advancement of non-economic arguments, including human rights-related arguments of general character. Moreover, it might be that the State actor in question is not familiar with the use of human rights language in certain contexts and therefore resorts to more well-known related notions.

Nevertheless, it appears that not all uses can be explained on the basis of contextual constraints or lack of knowledge. Accordingly, related notions might be used strategically to rely on the legitimacy connected to human rights and human rights-related arguments, while potentially circumventing the obligations connected to human rights in the strict sense and maintaining more leeway in a proportionality test. Further analysis is required to prove this hypothesis.

While uses of related notions vary in their forms, contexts and frequency, they seem worthy of mention as a phenomenon that is less visible than the use of HRJs but can be a prelude to or in some way be connected to it and therefore carries similar benefits and risks.

Recommendations:

- Civil society organisations should be able to recognise uses of related notions by States and holding States accountable in this respect.
- Public authorities should be aware of the risks and benefits of using related notions.