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Sustainable Development Goals, Between Politics and Soft Law: The Emergence of “Political Normativity” in International Law

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**SUSTAINABLE DEVELOPMENT GOALS, BETWEEN
POLITICS AND SOFT LAW: THE EMERGENCE OF
“POLITICAL NORMATIVITY” IN INTERNATIONAL LAW**

*Ilias Bantekas**

*Katerina Akestoridi***

ABSTRACT

International lawyers tend to draw sharp distinctions between law and politics. Yet, despite the Sustainable Development Goals (SDGs) and its predecessors being a product of politics, the commitments undertaken therefrom suggest a new brand of politics where functionality overrides the search for normative characteristics. The political dimension of the SDGs overshadows its legal dimension because the implementation of the key stakeholders’ political commitments is crucial in achieving the SDGs’ stated aims. As international law and international relations are moving towards universal common interests and away from strict international normativity, the SDGs can best be described as a hybrid between soft law and politics, which we may call “political normativity.”

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INTRODUCTION

By the end of the 1990s, it became evident that the gap between the poor and those living in multidimensional poverty had widened so much that even the slightest fluctuation in global food prices could produce waves of famine across the globe.¹ Human development could no longer be left to the devices of poor nations or the occasional donor conference set up in the aftermath of a humanitarian disaster. In 2000, the United Nations General Assembly (UNGA) responded to these inadequacies by adopting the Millennium Declaration, a political pledge by the world's leaders to establish concrete financial commitments under well-identified targets.² The Millennium Declaration was meant as a testament to solidarity against global poverty, suffering, and respect for human rights. The centrality of human rights and the right to development in the Millennium Declaration's aims is stark. Paragraphs 11 and 24, for example, state that:

We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want We will spare no effort to promote democracy and strengthen the rule of law, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development.³

Following the Millennium Summit, the U.N. Secretary-General finalized the text of the eight agreed-upon Millennium Development Goals (MDGs).⁴ Industrialized states pledged to contribute 0.7 percent of their GDP⁵ to meet these targets, to support exports from least developed nations, to offer debt relief

¹ By 2014 more than 2.2 billion people were either near or living in multidimensional poverty. This means that more than 15 per cent of the world's population remains vulnerable to multidimensional poverty. At the same time, nearly 80 per cent of the global population lack comprehensive social protection. About 12 per cent (842 million) suffer from chronic hunger. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2014, at 3 (2014), <https://hdr.undp.org/system/files/documents/human-development-report-2014.human-development-report-2014>.

² G.A. Res. 55/2, ¶¶ 11, 24 (Sept. 18, 2000).

³ *Id.* ¶ 11

⁴ MDG Gap Task Force, Taking Stock of the Global Partnership for Development: Report 2015, at xi–xii (2015), https://www.un.org/millenniumgoals/pdf/MDG_Gap_2015_E_web.pdf.

⁵ See International Conference on Financing for Development, *Monterrey Consensus*, ¶ 42, U.N. Doc. A/CONF.198/11 (Mar. 2002) [hereinafter *Monterrey Consensus*].

by canceling all official bilateral debts in return for demonstrable commitments to poverty reduction, and to provide generous development assistance.⁶

Despite their undoubted importance for international development, the rights-language entrenched in the Millennium Declaration was not reiterated in the MDGs for fear that somehow the goals might be transformed into justiciable entitlements. One might naturally think that, although unfortunate, a lack of justiciability was a small price to pay for securing the much-needed aid to the world's poor. After all, the goals and their indicators are strikingly similar to the rights found in the International Bill of Human Rights.⁷

Sadly, the provisions of the MDGs and the International Bill of Human Rights do not completely align.⁸ While there are many similarities between the MDGs and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) rights, these ICESCR rights apply to all persons indiscriminately, thus reaching the poorest of the poor.⁹ The MDGs often only require states to

⁶ See G.A. Res. 55/2, *supra* note 2, ¶¶ 15–18 (MDGs Goal 8, Targets A–D).

⁷ See Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755, 759, 762 (2005) (offering human rights critique on the MDGs); see also U.N. System Task Team on the Post-2015 U.N. Development Agenda, Discussion Note, Review of the Contributions of the MDG Agenda to Foster Development: Lessons for the Post-2015 U.N. Development Agenda (Mar. 12, 2012) [hereinafter Review of the Contributions of the MDG Agenda], <https://sustainabledevelopment.un.org/content/documents/843taskteam.pdf>.

⁸ In a 2006 report, the Organization for Economic Cooperation and Development (OECD) estimated that approximately fifty-eight percent of bilateral aid was tied. Tied aid refers to aid granted under condition that the recipient purchase goods and services from the donor. Richard Manning, *Development Co-operation Report 2005: Efforts and Policies of the Members of the Development Assistance Committee*, OECD J. ON DEV. 31 (2006), https://read.oecd-ilibrary.org/development/development-co-operation-report-2005_dcr-2005-en#page1. By 2010, tied aid had fallen to less than twenty percent. There is no consensus on the ethical or legal perspectives of tied aid under international law, although states are generally keen to hide so-called “aid for trade.” This was the case in the early 1990s where the UK financed the construction of the Pergau dam in Malaysia. In turn, Malaysia proceeded to buy £1 billion worth of British arms. In *R v. Secretary of State for Foreign Affairs, ex parte World Development Movement* [1995] EWHC Admin 1 (UK), the High Court ruled that the project was not of any economic or humanitarian benefit to the Malaysian people. It should also be noted that the drafters of the Paris Declaration on Aid Effectiveness have pledged to minimize tied aid and the Development Assistance Committee (DAC) of the OECD issued a revised recommendation on untying Official Development Assistance to the Least Developed Countries and Heavily Indebted Poor Countries, in which the DAC suggested the lifting of all tied aid. Org. for Econ. Coop. & Dev. [OECD], *Revised DAC Recommendation on Untying ODA to the Least Developed Countries and Heavily Indebted Poor Countries*, at 2, DCD/DAC(2014)37/FINAL (Aug. 12, 2014), <https://www.oecd.org/dac/untied-aid/Revised%20DAC%20Recommendation%20on%20Untying%20Official%20Development%20Assistance%20to%20the%20Least%20Developed.pdf>.

⁹ International Covenant on Economic, Social and Cultural Rights Part 1, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

halve certain poverty indicators. Given the absence of any obligation to disaggregate results in the MDGs, it is tempting for target states to focus on the relatively well-off among the poor and make no special provision for vulnerable groups.¹⁰ As a result, the universal element of the relevant right is lost. Moreover, some goals are clearly inconsistent with human rights. Goal two calls for universal primary education, ignoring the requirement of accessible, (progressively) free and quality education at the secondary and tertiary levels as enshrined in Article 13 of ICESCR.¹¹ More worrying was the technocratic trend set in the MDGs that emphasized the mobilization of financial resources over and above the transformation of the power relations that play a large part in creating poverty and under-development.¹² The MDGs, therefore, ignored the fundamental role of civil and political rights in achieving economic, social, and cultural (ESC) rights.¹³

The need to adjust the MDGs into more concrete, realistic, target-oriented entitlements implemented through a central mechanism was evident even from the outset. This need was addressed with the advent of the Sustainable Development Goals (SDGs).¹⁴ Undoubtedly, the SDGs have not fully resolved all the shortcomings of its predecessor, nor indeed the funding required to achieve their various targets. The 2020 SDGs Report emphasized that the absence of security-restricted access to justice and weak governance were

¹⁰ See OFF. OF THE HIGH COMM'R FOR HUM. RTS., CLAIMING THE MILLENNIUM DEVELOPMENT GOALS: A HUMAN RIGHTS APPROACH, at 4, U.N. Doc. HR/PUB/08/3, U.N. Sales No. E.08.XIV.6 (2008); Sakiko Fukuda-Parr, *Reducing Inequality-The Missing MDG: a Content Review of PRSPs and Bilateral Donor Policy Statements*, 41 IDS BULL. 26 (2010).

¹¹ U.N. Secretary-General, *The Millennium Development Goals Report 2015*, at 24–27 (2015), [https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%2015\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%2015).pdf); ICESCR, *supra* note 9, art. 13.

¹² The Goals' technocratic trend is due to the influence of Results-Based Management (RBM). RBM is a managerial strategy to development programming and implementation that lays emphasis on performance by setting and measuring specific outcomes. Notwithstanding the value that lies in such a strategy, its prevalence in the design of the MDGs narrowed down the agenda to quantifiable targets and indicators that didn't capture the qualitative elements of human development and the scope of objectives in the Millennium Declaration. Ultimately, given the inordinate focus on producing results, the MDGs became a minimalist agenda that reflected a narrow understanding of the goals and gave rise to non-inclusive and structurally non-reformist development policies. See David Hulme, *Lessons from the Making of the Millennium Development Goals: Human Development meets Results-based Management in an Unfair World*, 41 INST. DEV. STUD. BULL. 15 (Jan. 13, 2010).

¹³ U.N. Human Rights Council, *Consolidation of Findings of the High-level Task Force on the Implementation of the Right to Development*, ¶¶ 65–66, U.N. Doc. A/HRC/15/WG.2/TF/2/Add.1 (Mar. 25, 2010).

¹⁴ G.A. Res. 70/1, *Transforming our World: The 2030 Agenda for Sustainable Development* (Oct. 21, 2015) [hereinafter *Agenda 2030*].

significant obstacles to sustainable development.¹⁵ The report noted that more than 79.5 million people around the globe were fleeing conflict and persecution.¹⁶ Even so, there is new momentum towards development gained by the introduction of the SDGs because, as will become evident in subsequent sections of this article, they embody the notion of sustainable development¹⁷ while simultaneously assuming a human rights approach to development¹⁸ that was absent in the MDGs and the entire global funding agenda.¹⁹ The SDGs build upon and expand the notion of the right to development, as which was timidly conceived in the early 1980s.²⁰

This paper aims to shed light on the historical and political realities underpinning the development movement that began in the 1980s and ultimately culminated in the first coordinated effort towards global development objectives, firstly in the form of the MDGs and secondly, as currently transformed into SDGs. Unlike other international processes, the SDGs cannot be predicated solely on strict normative considerations; that is, they could never be set up and operated on a contractual basis. At the same time, a structure so extensive and global could not seriously aspire to function through soft law and political pledges. As our analysis will demonstrate, the SDGs set out what we call “international political normativity”; that is, the political commitments encompassed therein are viewed as crucial to the parties’ stated aims and self-interests which allows the parties to implement the SDGs as if they were based on normative commitments. This does not work in every arena. For instance, while of equal global importance, climate change law is chiefly predicated on contractual commitments, even if some political normativity is evident. The SDGs are a unique product of their time, and it remains to be seen if other

¹⁵ U.N. Secretary-General, *The Sustainable Development Goals Report 2020*, at 56 (2020).

¹⁶ *Id.*

¹⁷ Virginie Barral, *Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm*, 23 EUR. J. INT’L L. 377, 377 (2012); Andrea Ross, *Modern Interpretations of Sustainable Development*, 36 J. L. & SOC’Y 32 (2009); Americo B. Zampetti, *Entrenching Sustainable Human Development in the Design of the Global Agenda after 2015*, 43 DENV. J. INT’L L. & POL’Y 277, 298 (2015).

¹⁸ See generally Andrea Cornwall & Celestine Nyamu-Musembi, *Putting the “Rights-Based Approach” to Development into Perspective*, 25 THIRD WORLD Q. 1415 (2014).

¹⁹ It is instructive to take heed of voices rejecting the human-centric nature of development, arguing that self-determination only provides a right to pursue development, not a right to live in a developed society. Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development*, 15 CAL. W. INT’L L.J. 473, 482, 491 (1985) (“The innate responsibility to help one’s fellow man establishes at most a moral obligation to act to promote development, not a right to development.”).

²⁰ Bonny Ibhawoh, *The Right to Development: The Politics and Polemics of Power and Resistance*, 33 HUM. RTS. Q. 76 (2011); Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 HARV. HUM. RTS. J. 137 (2004).

processes entailing global common interests and lacking common contractual intent follow suit.

I. THE IDEA OF POLITICAL NORMATIVITY IN INTERNATIONAL LAW

The notion of international political normativity set forth in this paper requires some clarification and qualification for two reasons: first, the term has already been coined in the political science domain and its scholarship,²¹ and, second, because it has not been employed in international legal parlance. It is instructive to provide a brief survey of how the term is used by political scientists. Moralists contend that the underlying tools and the validation of a political process must be predicated on moral arguments and objectives.²² The outcome of such a process produces “political normativity” among those involved and broader stakeholders.²³ Realists, on the other hand, argue that political processes must be governed by political principles distinct from moral justifications and, hence, distinguish between moral and political normativity.²⁴ In the middle of these two positions exists a uniting ideological movement, chiefly influenced by moralists, which contends that there is only a single political normativity, wherein morality and politics are inseparable.²⁵ The politics scholarship, whether moralist or realist, applies the notion of political normativity to inadvertently explain matters pertinent to legal questions, while attempting to understand the rationale of political processes.²⁶ This theory has been developed by political scientists in domestic politics, whereby it is taken for granted that any political process culminates in its ratification by a parliamentary entity and becomes law.²⁷ Such political processes include parliamentary debates, typically preceded by white, green, or other papers, and political dialogue between political parties, elites, lobby groups, private stakeholders, and many others. In such processes, political scientists effectively

²¹ See BERNARD WILLIAMS, *IN THE BEGINNING WAS THE DEED: REALISM AND MORALISM IN POLITICAL ARGUMENT* (2007); Robert Jubb & Enzo Rossi, *Political Norms and Moral Values*, 40 J. PHIL. RSCH. 455 (2015).

²² John Horton, *Realism, Liberal Moralism and a Political Theory of Modus Vivendi*, 9 EUR. J. POL. THEORY 431 (2010).

²³ *Id.*

²⁴ See Enzo Rossi & Matt Sleat, *Realism in Normative Political Theory*, 9 PHIL. COMPASS 689 (2014); William Galston, *Realism in Political Theory*, 9 EUR. J. POL. THEORY 385 (2010).

²⁵ Jonathan L. Maynard & Alex Worsnip, *Is There a Distinctively Political Normativity?*, 128 ETHICS 756 (2018).

²⁶ See Charles Larmore, *What Is Political Philosophy?*, 10 J. MORAL PHIL. 276, 277–78 (2013)

²⁷ *See id.*

refer to *procedural* political normativity through either moralism²⁸ or realism, even though these are clearly contested and largely opposed, as mentioned. If an agreement is reached, this gives rise to *substantive* political normativity. In political scholarship, procedural political normativity is far more important than its substantive counterpart because the latter is, by necessity, shaped by the range of moral and realist arguments used by the participants. Hence, if the tools are moralistic in nature, the outcome will have a moralistic outlook, which will be reflected in the legislation that embodies it.²⁹

In international law, there is no guarantee of normativity for any process, no matter how long it takes, unlike in domestic politics, where even a negative or stalemate political process produces some normative outcome.³⁰ One of the greatest challenges in international politics is the inability to rationalize why some inter-state processes effectively produce certain normative outcomes when the participants make it clear from the very outset that the outcome was political and not normative.³¹ The SDGs and the OECD's Financial Action Task Force (FATF) are paradigmatic examples.³² In both cases, state participants to the SDGs and the OECD clarified that they were under no legal obligation to make financial contributions to the SDGs or adhere to FATF recommendations.³³ The absence of any obligation, or normativity, was, in fact, the foundation of both the SDGs and FATF. Although, until recently, there was little debate in international law about the morality of treaty-making or institution-making (such as the SDGs), moralism has become integral to treaty negotiations.³⁴ This is not surprising, given that it was generally desirable to "water down" a multilateral treaty to attract as many participants as possible. In the context of

²⁸ By way of illustration, while endorsing the position that certain principles are politics-specific, many moralists still contend that they qualify as moral principles. *See generally id.*

²⁹ Eva Erman & Niklas Möller, *Why Political Realists Should Not Be Afraid of Moral Values*, 40 J. PHIL. RSCH. 459 (2015).

³⁰ By way of illustration, since its inception the U.N. International Law Commission has worked on a number of topics, some for several decades, but has been unable to codify all of these into treaties, or always flesh out topics into customary principles. On the contrary, when state legislatures or parliamentary assemblies fail to reach consensus on a particular issue, the matter left unregulated may still be acted upon through administrative acts.

³¹ Political scientists have long argued that there is no normative correctness. *See* CHRISTINE KORSGAARD, *THE SOURCES OF NORMATIVITY* (1996).

³² FINANCIAL ACTION TASK FORCE (FATF), <https://www.fatf-gafi.org> (last visited Jan. 19, 2023).

³³ *See* Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT'L ORG. 421, 440 (2000) (arguing that while OECD member states iterate that Financial Action Task Force recommendations are not binding, they nonetheless implement them in their domestic sphere).

³⁴ *See* Alexander Boldizar & Outi Korhonen, *Ethics, Morals and International Law*, 10 EUR. J. INT'L L. 279 (1999).

the SDGs and FATF, there was never any intention to render the outcome normative. Yet, because the SDGs' purpose was predicated on moral grounds, procedural political normativity was imperative to convince all participants, both industrialized and non-industrialized states, that this was not an indirect attempt to impose neo-colonialism or create an enterprise that would harm taxpayers without producing any tangible outcomes. The stated intention against any substantive political normativity could only be counter-balanced by a robust procedural political normativity predicated wholly on moralistic grounds. Conversely, international treaty-making processes that are intended to produce a substantive normative outcome irrespective of the parties' political differences have no need for moralistic underpinnings at the procedural level because any transparency or moralistic arguments may harm the attainment of outcomes that other stakeholders find abhorrent or immoral. By way of illustration, some people in Europe and North America find it immoral to use Russian gas, even if not using it will raise their cost of living exponentially. In trying to find alternative energy sources, European and North American governments may make agreements with un-democratic governments through negotiations where political bargaining is obscure and secretive.³⁵

With this in mind, it is apposite to explain why an otherwise political process, predicated on moralistic considerations, such as the SDGs, may claim to lead to sui generis normative outcomes, which in this paper we label as "political normativity."³⁶ International lawyers generally distinguish between normative claims that give rise to an obligation for one or more entities and claims that do not. Normative claims may be found in unilateral acts, treaties, custom and general principles. Non-normative claims, encompassed chiefly under the broad banner of soft law, although devoid of a hard normative content, is increasingly employed as incubators of hard international law.³⁷ Experience shows that hard international law is not always desirable, let alone achievable.³⁸ However,

³⁵ Samantha Schmidt et al., *Biden Administration Begins Easing Restrictions on Venezuelan Oil*, WASH. POST (May 17, 2022), <https://www.washingtonpost.com/world/2022/05/17/venezuela-oil-sanctions-chevron/>.

³⁶ There is no doubt today that international law is understood as a "social conception." See MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA, THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 187–91 (Oxford Univ. Press 2006).

³⁷ Alhaji B.M. Marong, *From Rio to Johannesburg: Reflections on the Role of International Legal Norms in Sustainable Development*, 16 GEO. INT'L ENV'T L. REV. 21, 52 (2003) (arguing soft law is considered unripe law or law that is being constructed); Christine M. Chinkin, *The Challenge of Soft Law: Development and Change in International Law*, 38 INT'L & COMPAR. L. Q. 850, 856 (1989).

³⁸ The paradigm of the International Law Commission's (ILC's) Articles on State Responsibility and the wisdom of then ILC Rapporteur James Crawford to reject the draft treaty option resulted in their unequivocal recognition as principles of customary international law. See James Crawford, *The ILC's Articles on*

neither normative theories of international law nor their soft law counterparts can sufficiently explain the sort of outcomes derived from processes such as the SDGs and FATF—whereby the political commitments of the sovereign participants, while not normative, are effectively transformed into a web of interconnected actions that are not free from normative claims.³⁹ To illustrate, let us assume that state A pledges 0.7 percent of its GDP, and this is earmarked for the reform of the water sector in country X.⁴⁰ In doing so, the government of state A will need to seek approval from its electorate and then ratify the pledge in parliament through the pertinent constitutional channels and procedures. At the international level, succeeding government officials of state A may negotiate trade-offs for their pledge and, in the process, commit themselves and others to a diverse range of actions. Once the pledged amount is placed in a trust fund and is applied to the water reform project of country X, other distinct and overlapping pledges will come into being and will have to be distributed and applied in country X. An entire SDG mechanism with several layers of complexity is already set up to receive, administer, and oversee the implementation of the Goals. This level of complexity and interconnectedness between the various participants and their actions, and the interconnectedness between the participants and private stakeholders, is such that it cannot readily be explained by reference to the otherwise stated political (i.e., non-normative) character of the SDGs.

In the traditional conception of soft law, there may well exist extensive international law-making mechanisms, such as assemblies of international organizations, but what is at stake are the decisions or declarations of the participants in these mechanisms; in this sense, the mechanism is a mere facilitator. Whether or not a claim ultimately gives rise to a multilateral obligation depends on the stance of states with voting power in the mechanism in question. The U.N. General Assembly and the Security Council are paradigmatic of this approach. These entities are facilitators of claims, but the

Responsibility of States for Internationally Wrongful Acts: A Retrospect, 96 AM. J. INT'L L. 874, 877 (2002); Marcel Brus, *Soft Law in Public International Law: A Pragmatic or Principled Choice? Comparing the Sustainable Development Goals and the Paris Agreement*, SOC. SCI. RSCH. NETWORK (Mar. 22, 2017), <https://ssrn.com/abstract=2945942>.

³⁹ See Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AM. J. INT'L L. 413, 413 (1983) (warning against the dangers stripping international law and institutions of their normative character); see also Susan Block-Lieb, *Soft and Hard Strategies: The Role of Business in the Crafting of International Commercial Law*, 40 MICH. J. INT'L L. 433, 434–35 (2019); Dinah Shelton, *International Law and 'Relative Normativity'*, in INTERNATIONAL LAW 137, 137 (Malcom D. Evans ed., 4th ed. 2014).

⁴⁰ This goal relates to SDG 6: “Ensure availability and sustainable management of water and sanitation for all.” U.N. Secretary-General, *The Sustainable Development Goals Report 2022*, at 13, 38–39 (2022).

normative character of claims entertained therein is distinct from the nature of the mechanism producing them. The mechanism underlying the SDGs is of a different nature; it is not a facilitator of claims. It is an outcome producer in and of itself. The outcomes produced by this SDG mechanism are different from those delivered by an assembly or other entity of an intergovernmental organization in the following three ways. First, the SDG mechanism does not make claims. Second, normativity is not an essential feature of the outcome produced by the SDG-type mechanism, in the sense that the participants can just as well continue to operate in the absence of normativity. This is not possible in the context of other mechanisms, such as the U.N. Security Council. Third, the SDG mechanism is multi-layered, complex, and inter- and intra-connected in such a way that it makes neither political nor financial sense for powerful participants to abruptly terminate their participation.

As a result of these considerations, while it is wrong to label the SDGs' outcomes as normative, as this goes against the participants' intended will, it is equally wrong to suggest that they constitute non-binding soft law.⁴¹ The thesis made here is that the outcome produced by the SDGs is best described as a species of *international political normativity*. This type of "normativity" is wholly distinct from claims supporting an international obligation and is in no way justiciable. Moreover, despite the interconnectedness of related actions, none of the actions and outcomes resulting from the SDGs' mechanism give rise to legitimate expectations.⁴² Notwithstanding the absence of truly legally-binding obligations in the pledges and actions of participants, especially wealthy industrialized states, the outcomes of the SDGs are not in doubt, even if states may occasionally decrease their contributions because of budgetary or other constraints. Although this thesis is as yet untested, it is the belief of the authors that the moralistic dimension of the negotiating process renders the substantive outcome politically robust even in the absence of a treaty framework.⁴³ This high level of mutual trust created by the moralistic underpinnings of the project in

⁴¹ See Alan E. Boyle, *Some Reflections on the Relationship of Treaties and Soft Law*, 48 INT'L & COMPAR. L. Q. 901, 906 (1999); Chinkin, *supra* note 37, at 865.

⁴² This claim is chiefly raised by investors against host states (where the burden of proof is very high), but this claim also comes from a principle in the law of contracts. See Jay M. Feinman, *Good Faith and Reasonable Expectations*, 67 ARK. L. REV. 525, 533, 537 (2014); Michel Potestà, *Legitimate Expectations in Investment Treaty Law: Understanding the Roots and the Limits of a Controversial Concept*, 18 INT'L CTR. SETTLEMENT INV. DISPS. REV. 88, 94 (2013).

⁴³ It is generally accepted that constant progress or progress along a single particular path is a "false necessity." See Roberto Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* 1 (1987). This in turn allows us to reconsider whether normativity is in fact the right process for attaining all types of outcomes, particularly ethical ones.

question has led to a *process*, rather than a claim, that is far more effective than any binding treaty mechanism. Since the late 1990s, many of the powers traditionally associated with parliamentary assemblies of intergovernmental organizations were assumed by trust funds⁴⁴ lacking inter-governmental status, as well as conferences of parties (COP), otherwise known as assembly of parties (ASP), meetings of states parties (MOP), and conferences of states parties (COSP).⁴⁵ Some COP, such as that of the Global Crop Trust, have assumed powers and functions typically conferred on inter-governmental organizations.⁴⁶

Political normativity is hence an outcome-based process that is meant to operate under the parties' mutual and enduring trust, which is why it is bereft of a strict normative dimension predicated on international legal obligations. The relative success of the SDGs demonstrates that absolute normativity is not an essential feature of a successful system of mutual undertakings. What is important is an elevated level of mutual trust among participants, a relatively similar level of domestic laws and human rights, and a common plan by which to implement a morally sound project (e.g., human rights, climate change, sustainable development, and others).⁴⁷ These elements combined override the need for strict obligations, albeit international law has a crucial role to play in this system of international political normativity. That is, in order to reach a sufficient level of mutual trust, states must first build capacity and multilateral

⁴⁴ See Ilias Bantekas, *Effective Management of International Aid through Inter-governmental Trust Funds*, 17 LOY. CHI. INT'L L. REV. 1, 1 (2021).

⁴⁵ See Jutta Brunnée, *COPing with Consent: Law-Making under Multilateral Environmental Agreements*, 15 LEIDEN J. INT'L L. 1, 4 (2002); Convention Against Corruption Conference of the State Parties, Summary of the State of Implementation of the Convention Against Corruption, U.N. Doc. CAC/COSP/2015/5 (Aug. 15, 2015) (demonstrating the elaborate review mechanism of CAC, which was established by Art 63(1) of the 2003 UN Convention against Corruption to improve capacity and cooperation between states, as well as promote and review the implementation of CAC); Off. of the High Comm'r for Hum. Rts., Expert Paper on Existing Monitoring Mechanisms, Possible Relevant Improvements and Possible Innovations in Monitoring Mechanisms, at 65–66, U.N. Doc. A/AC.265/2006/CRP.4 (2006) (analyzing COSP in the context of the negotiation of Article 40 of the Convention on the Rights of Persons with Disabilities).

⁴⁶ It is exactly the expression of this pragmatism in practice that has led commentators to argue that the MOP (otherwise known as COP) to Multilateral Environmental Agreements (MEP), while lacking Secretariats and permanent seats, operate not as mere treaty bodies but as “international organisations with a distinct legal personality.” Robin R. Churchill & Geir Ulfstein, *Autonomous Institutional Arrangements in Multilateral Environmental Agreements: A Little-Noticed Phenomenon in International Law*, 94 AM. J. INT'L L. 623, 625 (2000). This perceived inter-governmental organization status is objective and is based, in the opinion of said commentators, on the ability of MOPs to, inter alia, establish subsidiary bodies, amend the treaties establishing them, adopt protocols and interact with other inter-governmental organizations. *See id.* at 648.

⁴⁷ See Matiangai Sirleaf, *Ebola Does Not Fall from the Sky: Global Structural Violence and International Responsibility*, 51 VAND. J. TRANSNAT'L L. 477, 553 (2018) (arguing that global health epidemics cannot be overcome in the absence of international cooperation and capacity building of poor developed state healthcare infrastructure).

institutions. This trust-building role can only be played by the processes and institutions of international law. The European Union (EU) is an excellent example of an organization seeking to crystallize trust among its member states in order to achieve its stated aims. Even so, there are few institutions in the EU, to the best knowledge of the authors, that operate on the basis of political normativity. A good example is offered by the so-called Eurogroup.⁴⁸ International law is also important because it sets out the minimum standards of what is expected of sovereign actors in their international relations. The political normativity of the SDGs might today seem obvious, but it is only possible because each and every Goal in the SDGs was debated and framed multilaterally. Of course, it would be naïve to ignore the fact that in the multifaceted web making up the SDGs, there is a plethora of contractual relationships and unilateral undertakings, all of which are underpinned by treaties, custom, and domestic laws. These do not operate on the same political normativity basis as the pledges of the participants and the functioning of the SDGs' mechanism. Hence, the international political normativity of the SDGs is a phenomenon that is best explained by the rules and processes of public international law, with input from political theory, but not by the political science scholarship on so-called political normativity. Here, we have attempted to sketch the contours of international political normativity in order to better understand the legal nature of the participants' pledges, but the authors hope that a fuller and perhaps more empirically-based analysis will be offered in the not-too-distant future.

The sections that follow flesh out the process whereby the MDGs and SDGs were configured, giving rise to the international political normativity in international development cooperation and governance.

⁴⁸ The Eurogroup is a ministerial-level informal mechanism that discusses the shared responsibilities of EU member states related to the Eurozone. *See How the Eurogroup Works*, EUR. COUNCIL (Oct. 6, 2022),

II. THE CONTOURS OF INTERNATIONAL POLITICAL NORMATIVITY IN GLOBAL DEVELOPMENT INITIATIVES

A. *The Millennium Development Goals*

The beginning of the new millennium marked a pivotal moment in the history of international development as leaders of all member states to the United Nations adopted with one accord a set of international development objectives that would permeate the organization's policy agenda for the coming fifteen years. The MDGs encompassed eight aims and twenty-one further targets through which the development challenges of the century would be tackled in a collective endeavor to improve people's lives and set the foundations for a better future. Eradication of extreme poverty and hunger (MDG1), universal primary education (MDG2), gender equality and the empowerment of women (MDG3), reduction in child mortality (MDG4), improvement of maternal health (MDG5), confrontation of chronic and infectious diseases (MDG6), and environmental sustainability (MDG7) comprised the list of the specific priorities set, fulfilled through a global partnership for development (MDG8).⁴⁹

The MDGs echo the international community's noble call for the creation of a global environment in which the person is situated at the center of concerns for social progress.⁵⁰ Upon this premise, development is measured against the values of freedom, dignity, fairness, solidarity, and tolerance to ensure not only socio-economic security but also the circumstances for equal opportunities within which one can thrive and live a life of value. In this respect, the MDGs explicitly draw upon the foundational principles of the Universal Declaration of Human Rights for a peaceful, just and prosperous world,⁵¹ which were reaffirmed later in the Millennium Declaration,⁵² the MDGs' immediate forerunner. It is along these lines that a strong quest for cooperation between the rich and poor developed, with the goal of promoting and advancing these aims.⁵³ This shared responsibility attaches a bold character to a political commitment

⁴⁹ *Official List of MDGs and Indicators for Monitoring Progress 2008*, U.N. STAT. DIV. (Jan. 15, 2008), <https://unstats.un.org/unsd/mdg/Host.aspx?Content=Indicators/OfficialList.htm>.

⁵⁰ Kofi A. Annan, *'We the Peoples': The Role of the United Nations in the 21st Century*, U.N. DEP'T PUB. INFO. (2000), https://digitallibrary.un.org/record/413745/files/We_The_Peoples%2520%281%29.pdf?ln=en.

⁵¹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948) ("Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services . . .").

⁵² G.A. Res. 55/2, *supra* note 2.

⁵³ *Id.* ¶¶ 2, 6.

towards the MDGs and asserts that the MDGs entrenched an unparalleled international consensus on a strategic vision for development.

The direct reference to a joint pledge to achieve the MDGs denotes a major swing in the way the international society is conceived and supports further the claims that the MDGs imparted a new impetus to development thinking. What is now being prioritized is a purposive understanding of the international community, whereby the agreed common ends are the driving force in the interplay of state relations. This lies in contrast to an earlier “procedural conception” of the international society in which alliance resembles a “level playing-field” where, despite a common respect for the norms governing state affairs, states still strive to advance their own distinct interests.⁵⁴ Under the new paradigm, the focus shifts to shared outcomes, and international relations become critical for cooperative ventures.⁵⁵ Since individual state objectives are expected to defer to mutual aims, development practices tend to move away from targeting national economies per se to better capture the needs of people within nation states. Consequently, development practices are not merely intended to bridge the inequality gap between developed and developing countries. Rather, they point towards particular groups of the population, aspiring to guarantee minimum subsistence levels and create the circumstances that will enable them to climb the welfare ladder.⁵⁶ The MDGs’ policy agenda seems to embrace this individual-oriented approach to development, introducing for the first time clear, concise, and time-bound goals.

Yet, reflections of the MDGs’ novelty are not solely confined to the changes they created in the way the international community understood development. Evidence of their dynamic nature that is capable of global transformation is also found in the international community’s response to the challenge of on-ground implementation. Broad coalitions and capacity building of key national and international constituencies evolved under the aegis of the U.N. Millennium

⁵⁴ Charles Gore, *The Global Development Cycle, MDGs and the Future of Poverty Reduction*, DEV. STUD. ASS’N, 2008, at 2, https://web.archive.org/web/20150919140740/http://www.devstud.org.uk/downloads/4b9e9da140e21_Gore_PAPER.pdf.

⁵⁵ *Id.*; see also Margot E. Salomon, *Sources and Content of an International Responsibility to Cooperate for Human Rights*, in GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW 64, 64 (2007).

⁵⁶ Minimum subsistence levels are referred to in the literature as “basic needs.” The concept emerged in the framework of research during the International Labour Organisation’s World Employment Program. Richard Jolly, *The World Employment Conference: The Enthronement of Basic Needs*, A9 DEV. POL’Y REV. 31, 32 (1976).

Campaign⁵⁷ and the U.N. Millennium Project, which were exclusively commissioned to support the implementation of the MDGs.⁵⁸ Their procedures opened the floor for concerted discussions among a great network of development practitioners. In those discussions, governmental policymakers, representatives of international financial institutions, U.N. agencies, and the private sector provided an action plan that embodied practical investment strategies to achieve the MDGs' initiative and created an operational outline to monitor its progress.⁵⁹ The MDGs movement became institutionalized, and development planning was reshaped as well. Indeed, the conversion of global goals into sensible outcomes for natural persons and the launch of a core package of wide-ranging interventions to accomplish them contributed to the setup of an intensively coordinated and results-oriented model for international development, which until then the international community lacked.⁶⁰ The new "institutional apparatus" featured concrete outputs and informed decision-making by countries and supervisory bodies, favoring at the same time political accountability and social feedback.⁶¹ Consequently, it constituted a robust operational platform at the service of the MDGs agenda.

1. *The Historical and Political Undercurrents of the MDGs: Political Normativity Contested*

Criticism of the MDGs framework has not eclipsed, bringing to the forefront the flip side of their abovementioned positive aspects. To appreciate the origins of the more restrained voices that were raised as an offset against the enthusiasm for the MDGs, it is crucial to have a detailed look at the historical political context and the ideological underpinnings that nurtured their inception. It would be overly simplistic to argue that a single U.N. summit in the year 2000 led to the agreement on the MDGs. Quite the opposite, the final outcome unfolded following multiple, complex, and long-winded phases during which sociopolitical ideas and the interests of international institutions and financially powerful countries exercised great influence to shape mechanisms for achieving

⁵⁷ Eveline Herfkens, *The Millennium Campaign: Successes and Challenges in Mobilizing Support for the MDGs*, U.N. CHRONICLE (2022), <https://www.un.org/en/chronicle/article/millennium-campaign-successes-and-challenges-mobilizing-support-mdgs>.

⁵⁸ *We Can End Poverty: Millennium Development Goals and Beyond 2015*, UNITED NATIONS, <https://www.un.org/millenniumgoals/bkgd.shtml>.

⁵⁹ *Id.*

⁶⁰ Casey Dunning & Molly Elgin-Cossart, *Can the SDGs Really 'Leave No One Behind'?*, CTR. FOR GLOB. DEV. (July 1, 2015), <https://www.cgdev.org/blog/can-sdgs-really-leave-no-one-behind>.

⁶¹ Alston, *supra* note 7, at 756–57.

global development goals. As validation of the process was sought in each one of these tenets, it may be said that political normativity was born from the conflicting dynamics between political and moral justifications for the necessity of global development initiatives and the form they would take.

a. The Political Economy as a Validation of Development Theory and Practice

i. National Developmentalism

The chronological benchmark for the emergence of development initiatives aimed at the elimination of poverty and human deprivation can be traced back to the development decades that followed substantial fiscal growth for most nations in the mid-twentieth century.⁶² A retrospective analysis of that period reveals that the synthesis of the development policy landscape was strongly associated with the substantive meaning attached to the notion of prosperity, which, due to the unprecedented financial growth, was unavoidably interpreted in terms of economic progress. Consequentially, poverty reduction strategies were delineated in the wake of the economic models deployed over this timespan in order to realize economic progress. Two main schools of thought dominated the debate about the best practice for countries to develop and eradicate destitution: at first, national developmentalism and, subsequently, with the progressive preeminence of neoliberalism in the political realm, global integration.⁶³

National developmentalism emerged at the decay of the colonial era as a development theory whose implementation would reverse the negative impact of the economic practices effectuated by the Europeans in their colonies.⁶⁴ Arguably, this historical period was symbolic of the exploitation of resources of the non-European world by its conquerors. Yet, behind such an attitude lay the rationale that active interference in the economic affairs of the colonies constituted part of a “civilizing devoir” that was believed to enhance global affluence levels. The presumption was that the colonies lacked the technical capacity or willingness to harness their natural assets in a resourceful way and join the rest of the world that was moving to an industrialized stage of

⁶² Kenneth K.S. Dadzie, *National and International Policies for Development*, in *FACING THE CHALLENGE: RESPONSES TO THE REPORT OF THE SOUTH COMMISSION* 230, 231 (1993).

⁶³ Gore, *supra* note 54, at 4.

⁶⁴ Immanuel Wallerstein, *After Developmentalism and Globalization, What?*, 83 *SOC. FORCES* 1263, 1263–64 (2005).

development.⁶⁵ The Europeans, therefore, perceived their intervention to be a necessity for triggering the modernization of their colonies, although, in practice, their stance led to the net transfer of wealth from the colonized to them and left the former suffering economic, political and moral ruin.⁶⁶ Notwithstanding the ethical matters concerning the colonizers' behavior, the embedded logic was that those nations could only be developed under their influence.⁶⁷

As such, in the post-World War II period, development was bestowed a national character which became the only source from which development strategies derived legitimacy. Just like developed states designed their post-war development programs according to their own standards to maximize their national gains,⁶⁸ the countries of the Global South should also have had (and actually did have) the potential to develop themselves, provided Southern states implemented appropriate policies. This affirmation of Global Southern autonomy, by and large, stems from the empowerment received as a result of the colonized peoples' battles for freedom, which left little scope for the sovereign powers of the Global North to continue with their externally imposed policies. Hence, wealth accumulation and the creation of a steady environment that would foster the sustenance of economic growth and citizens' welfare continued to be the most important elements of development strategies. However, the design and implementation of such strategies became an issue of domestic affairs for those countries, and the involvement of the West was restricted to providing technical and advisory support (aid) to developing nations as opposed to being in actual control of all actions that would mobilize the evolution of the developing world.⁶⁹

The heyday of national developmentalism came to its end amidst the global economic crisis of the 1970s that sprung from the increase in oil prices and affected the Global North and the Global South alike, albeit not equally. Persistent high inflation, combined with high unemployment rates and stagnant demand, were the dominant traits of the economy of Global North countries. The countries of the Global South suffered disequilibrium in their balance of

⁶⁵ *Id.* at 1263.

⁶⁶ *Id.* at 1263–64.

⁶⁷ *Id.*

⁶⁸ To the extent, thus, that developmentalism signifies a national program of action for development, it is a term that can be used to describe the policy for economic advancement applied by developed countries too. *See id.* at 1264.

⁶⁹ *Id.*

payments given that their export value declined dramatically, whereas the cost of imports was set higher due to the doldrums the economy had entered worldwide.⁷⁰ The scarcity in liquid assets resulted in excessive borrowing from developed states, which culminated in a serious and unsustainable debt crisis as industrialization in these countries slowed down, their currencies depreciated, and interest rates rose, making debt service impossible.⁷¹ This crack in the international economy paved the way for a polemic against developmentalism as an ultimately dysfunctional system. The national identity embedded in the development system was now considered mere protectionism, which trapped states in economic policies that eventually neither gave them a competitive advantage in the markets nor proved to have equipped them with effective mechanisms to deal with the crisis that had emerged.⁷²

ii. Neoliberalism

The aforementioned polemic against the presiding development model was backed by the expansion of neoliberalism, which was promoted as the ideological corrective against the concept of “nation” upon which developmentalism was premised.⁷³ Although globalization is generally viewed as a complex, unavoidable, and multi-layered phenomenon,⁷⁴ in reality, it is neither complex, global, nor a phenomenon. It is a wholly artificial construct that was purposely engineered by a handful of states in order to pursue a particular economic agenda.⁷⁵ Its theoretical underpinning is neoliberal theory and particularly the so-called Washington Consensus, which posits that free, unregulated markets and trade liberalization, is the only way to spur financial growth.⁷⁶ As a result, any governmental interference with market forces constitutes an impediment to growth and by extension to the potential to human

⁷⁰ *Id.*

⁷¹ *Id.* at 1264–65; see also SOVEREIGN DEBT AND HUMAN RIGHTS 210 (Ilias Bantekas & Cephias Lumina eds., 2018).

⁷² Wallerstein, *supra* note 64, at 1265.

⁷³ Susan George, A Short History of Neoliberalism: Twenty Years of Elite Economics and Emerging Opportunities for Structural Change, Speech at the Conference on Economic Sovereignty in a Globalising World (Bangkok, Mar. 24, 1999), <https://www.tni.org/en/article/short-history-neoliberalism>.

⁷⁴ Rhoda E. Howard-Hassmann, *The Second Great Transformation: Human Rights Leapfrogging in the Era of Globalization*, 27 HUM. RTS. Q. 1, 3 (2005).

⁷⁵ See Paul O’Connell, *On Reconciling Irreconcilables: Neo-liberal Globalisation and Human Rights*, 7 HUM. RTS. L. REV. 483, 489 (2007).

⁷⁶ See John Williamson, *A Short History of the Washington Consensus*, 15 LAW & BUS. REV. AM. 7 (2009); Arne Ruckert, *Towards an Inclusive Neoliberal Regime of Development: From the Washington Consensus to the Post-Washington Consensus*, 39 LAB., CAP. & SOC’Y 36 (2006); Erlend Krogstad, *The Post-Washington Consensus: Brand New Agenda or Old Wine in a New Bottle?*, 50 CHALLENGE 67 (2007).

well-being. This theory is largely discredited, not because increased trade and investment are inimical to human progress – quite the contrary; rather, it has been aptly demonstrated that economic and financial growth does not necessarily translate into human well-being, nor is there any direct correlation between the two.⁷⁷ Proponents of neoliberalism assume that because the competitive forces inherent in markets drive competition and innovation to produce better and cheaper products and services, this model should be encouraged worldwide, citing as examples the progress of industrialized nations, particularly in developing nations. No doubt, inefficient and corrupt governments in the developing world have failed to make any tangible gains from the nationalization of their natural resources and other industries and have instead accumulated significant debts. Therefore, it was natural for neoliberalism's advocates to maintain that besides trade and financial liberalization, states should accept deregulation, privatization, unhindered foreign direct investment (FDI), and competitive exchange rates in order to attract foreign capital. They also maintained that since the public sector generally tends to expand and become inefficient, governments should be flexible, downsized, and subject to strict fiscal discipline.⁷⁸

There are several deficiencies to this otherwise laudable agenda. It suffices to note that none of the initial pursuits of neoliberalism were directly geared towards alleviating poverty, joblessness, universal health care, or other social goals. Privatization, one of the mantras of neoliberalism, is a good example. By way of illustration, although the privatization of the health and water sectors may render the provision of these public goods cost-effective and efficient, private operators naturally deny them to those unable to afford them; yet the right to health and water are fundamental rights whose provision is incumbent on the state.⁷⁹ As a result, privatization that is unregulated and not subject to any social controls will move towards the deprivation of resources from and discrimination against the vulnerable by the wealthy.⁸⁰

A comparison of the economic theories of developmentalism and neoliberalism demonstrates that they share common ground to the extent that

⁷⁷ U.N. Secretary-General, *Globalization and its Impact on the Full Enjoyment of All Human Rights*, ¶ 13, U.N. Doc. A/55/342 (Aug. 31, 2000).

⁷⁸ WILLIAM K. TABB, *ECONOMIC GOVERNANCE IN THE AGE OF GLOBALIZATION* 3 (2005).

⁷⁹ ICESCR, *supra* note 9, arts. 11, 12; G.A. Res. 70/169 (Feb. 22, 2016).

⁸⁰ U.N. Comm'n on Hum. Rts., Sub-Comm'n on the Promotion and Protection of Hum. Rts., Report on Economic, Social and Cultural Rights: Liberalization of Trade in Services and Human Rights, ¶¶ 44–45, U.N. Doc. E/CN.4/Sub.2/2002/9 (June 25, 2002).

both associate development with fiscal returns and assume that an end to hardship will stem from economic growth as a natural consequence. However, there is a stark contrast between them that is apparent: national developmentalism was empowered by the intention to improve the conditions that affected people's lives through the rebuilding of nations after the end of World War II, whereas neoliberalism and its upshots, i.e., globalization, propagated growth having put on the sidelines the question of who the beneficiaries should be. In this context, *growth* became the key political pursuit for states. Therefore, development has been typically associated with the overall wealth of states and is often linked to indicators such as growth, per capita income, and balance of payments, among others.⁸¹ The particular indicators of this type of development are intended to measure the overall wealth of states, not the well-being of their citizens. By way of illustration, whereas a country's gross domestic product (GDP), which represents the market value of its products and services, may be high, the standard of living of its people may remain relatively low. This is because GDP is neither a measure of personal income nor does it take into account the disparity in the distribution of wealth or the enjoyment of essential services and goods such as health care, education, water, and food. The measurement of human well-being is a relatively new phenomenon in economics and human rights literature. In 1990, the United Nations Development Programme (UNDP) published its first Human Development Report with the aim of demonstrating how economic growth translates into human development, as shown below.⁸²

*b. The Early Role of International Organizations in Development
Finance: Human Development as the Moral Justification for
International Development Policy Meets Institutional and Political
Interests*

In the frame of the described changeover from one economic policy to the other, the influence of international organizations was pivotal in bringing the issue of poverty and inequality from the shadows into the light. The landmark year for the resurgence of interest in the topic was 1990, with the publication of the World Bank's first World Development Report that emphasized the

⁸¹ Growth has been central to the four proclaimed U.N. development decades. See G.A. Res. 1710 (XVI) (Dec. 19, 1961); G.A. Res. 2626 (XXV) (Oct. 24, 1970); G.A. Res. 35/36 (Nov. 14, 1980); UNGA Res 45/199 (Dec. 21, 1990); see also Hamid Hosseini, *Why Development is More Complex than Growth: Clarifying Some Confusions*, 61 REV. SOC. ECON. 91 (2003).

⁸² U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 1990, at 9 (1990).

staggering dimensions of poverty worldwide and the importance of a two-part strategy for development: the implementation of macroeconomic adjustment so that the least developed countries would be enabled to accede to the new economic order, in conjunction with social policies enhancing living standards.⁸³ On a parallel course, the idea that people must be at the center of development emerged in clear language in the U.N.'s inaugural Human Development Report. In a robust tone, the report articulated that the purpose of development is to offer people options in life that are not limited to the acquisition of material things but to capture a wider spectrum that encompasses increased life expectancy, education, political stability and freedom, personal security, community participation, productivity, involvement in social and cultural affairs, and the safeguarding of human rights.⁸⁴ Therefore, it became recognizable that development as a process goes beyond the attainment of income, which helps formulate human choices and therefore is a *means* rather than the *end* of development. The distinction between means and ends is key to the human development approach and differentiates the human centered approach to development from the wealth-based neoliberal approach.⁸⁵ Sen and Anand explain that the two approaches to development, namely wealth maximization and human development, differ in two respects: their ultimate objectives and the effectiveness of distinct instruments.⁸⁶ With regards to ultimate objectives, the human development approach affords intrinsic value to the quality of life that people can lead (*end*) and only instrumental relevance to other elements, such as income and wealth, that are important only to reach the goal of human well-being (*means*). In recognizing the importance of economic growth as a means for human development, they argue that the contingent nature of its effectiveness as a means (how it is used to promote human development) should be considered.⁸⁷ This is also true of its non-uniqueness as means, although others are important too, such as social organization.⁸⁸

⁸³ THE WORLD BANK, WORLD DEVELOPMENT REPORT 1990: POVERTY (1990), <https://openknowledge.worldbank.org/handle/10986/5973>.

⁸⁴ HUMAN DEVELOPMENT REPORT 1990, *supra* note 82, at 10.

⁸⁵ Ilias Bantekas, *Wealth and Growth-based Policies have Augmented Global Poverty and Eroded Human Rights: A Return to Human-Centred Thinking*, 1 INT'L HUM. RTS. L. REV. 30, 52 (2012).

⁸⁶ SUDHIR ANAND & AMARTYA SEN, U.N. DEV. PROGRAMME, SUSTAINABLE HUMAN DEVELOPMENT: CONCEPTS AND PRIORITIES (1994), <https://hdr.undp.org/system/files/documents/anandsudhir-sustainablehumandevelopment-conceptsandprioritiespdf.pdf>.

⁸⁷ *Id.* at 7–16.

⁸⁸ *Id.*

The call for a reorientation of development strategies found fertile ground within U.N. bodies, which, in a series of summits, broadened the concept of poverty as being multidimensional and started to shape a practical proposal for an alternative model of development that would not be preoccupied by economic growth.⁸⁹ With the human development hypothesis as a roadmap, the attention of country delegates in those summits was predominately drawn towards income poverty, employment, infant and maternal mortality, access to inclusive primary education, decrease in malnutrition, clean water, the environment, social integration, and gender equality in light of discussions about reproductive health and women's empowerment.⁹⁰ The necessity for a multi-sectoral approach to poverty reduction was embedded in respective declarations, confirming the mounting commitment of national leaders for a target-driven global policy agenda on development. For the U.N., freedom from poverty constituted an "ethical, social, political and economic imperative of humankind"⁹¹ that was validated by the principles of human dignity, equality, democracy, peace, and mutual responsibility, as enshrined in the U.N. Charter and the respective human rights conventions concluded by then.⁹² Upon this basis, the urge for coordinated efforts amongst national governments, the U.N., development banks, and civil society to achieve these targets did not emanate merely from solidarity among nations. Rather, its thrust derived from a human rights approach and imperative.⁹³

Even so, as discussions intensified, the more evident it became that politics were inevitably interwoven into the formation of large-scale programs intended to be transformative. To begin with, the magnitude of the proclaimed transformation caused concern for the most conservative voices, for whom

⁸⁹ Among many, the most important were: a) UNICEF's "Children's Summit" in New York in 1990, b) the International Conference on Population and Development (Cairo 1994), c) the World Summit for Social Development in Copenhagen and the U.N. Fourth World Conference in Beijing (both in 1995), and d) the U.N. Conference on the Environment and Development (Earth Summit) in 2001 in Rio. See David Hulme, *The Millennium Development Goals (MDGs): A Short History of the World's Biggest Promise 2* (Univ. of Manchester Brooks World Poverty Inst., Working Paper No. 100, 2009) [hereinafter *A Short History*].

⁹⁰ *Id.*

⁹¹ World Summit for Social Development, *Copenhagen Declaration on Social Development*, U.N. Doc. A/CONF.166/9, annex I, at 10 (Mar. 14, 1995).

⁹² See International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); ICESCR, *supra* note 9; Convention on Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sep. 3, 1981); Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sep. 2, 1990).

⁹³ Notably, the UNDP restructured its program and made poverty eradication its overriding priority, becoming the U.N.'s principal antipoverty arm. See U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 1997, at 106 (1997).

market-based growth was the source of welfare.⁹⁴ Without a doubt, the dynamic of the rights-based approach advocated in U.N. summits was inspiring and motivating, but the discussions still took place within the confines of the economic climate established by neoliberalism. Under neoliberalism's influence, the most conservative voices speaking for the Global North argued that poverty predicated on the reduction of income took precedence over the broader facets of development, supposedly because the principal denominator for a better quality of life and for people to have power over their future was economic well-being.⁹⁵ Consequently, they remained intransigent in their view that a new development framework should not deviate from fostering economic growth by placing social development higher in the hierarchy of development goals. Those conservative voices still believed development should be pursued within the new global context, that being the single global economic system. This was to be achieved through developing countries' accession into this system. In addition, the new synergy of states ought to promote the emulation of the market structures of the industrialized world.⁹⁶ In this light, rich donor countries regarded the increase of affluence in the developing world as an opportunity to expand their investments and find new target audiences for their goods and services.⁹⁷ There was, thus, a guided self-interest⁹⁸ on their behalf that underlaid the formation of the new action plan, although existing data about people living in conditions of extreme poverty had a moderating effect on it.⁹⁹ Accordingly, donor countries' support of the agenda through foreign aid would rather assist the process of modernization and industrialization.¹⁰⁰

⁹⁴ *A Short History*, *supra* note 89, at 14.

⁹⁵ *Id.*

⁹⁶ This was largely the approach taken by the Development Assistance Committee (DAC) of the Organisation of Economic Cooperation and Development (OECD) which, in its 1977 Statement on Development Co-operation and Economic Growth, stipulated that: "meeting basic human needs is not a substitute for, but an essential component of, more economic growth which involves modernisation, provision of infrastructure and industrialization. . . . a basic needs approach is not primarily welfare or charity but productivity-oriented, aiming at increasing the productive income of the poor and strengthening the basis for long-term self-generating development." Helmut Führer, Org. of Econ. Coop. and Dev. [OECD], *The Story of Official Development Assistance: A History of the Development Assistance Committee and the Development Co-operation Directorate in Dates, Names and Figures*, OECD/GD(94)67, at 30–31 (1996).

⁹⁷ Org. of Econ. Coop. and Dev. [OECD], Dev. Assistance Comm. [DAC], *Shaping the 21st Century: The Contribution of Development Co-operation*, at 6 (May 1996) [hereinafter *Shaping the 21st Century*].

⁹⁸ *Id.*

⁹⁹ THE COMM'N ON GLOB. GOVERNANCE, OUR GLOBAL NEIGHBORHOOD: THE REPORT OF THE COMMISSION ON GLOBAL GOVERNANCE 139 (1995).

¹⁰⁰ This insistence on growth can be traced back to the 1970s. David Williams explains that development policy was shaped in the years up to the 1970s by "development economics" and the "modernization theory." Even in the decades of structural adjustment that followed the financial and debt crisis of the 1980s, lending

While politicians strove to keep the debate about development initiatives within the spectrum of economic liberalization, aid agencies' economic and organizational issues were equally influential in channeling the deliberations toward a specific direction. At the time of the meetings, there was a dramatic decline in the budgets of official development assistance (ODA) and a general unwillingness by governments to fund development projects, leaving aid agencies both with a shortfall in funds and without a mandate.¹⁰¹ As a result, allocations of ODA decreased significantly, and donor institutions found themselves being marginalized.¹⁰² The chance for a dialogue regarding a new development agenda was a ripe opportunity for them to redefine and justify their purpose. Just like politicians who, for reasons of mutual gains, focused their attention on the economic aspects of the strategy-in-formation, members of the donor club laid emphasis on those parts that would boost their organizational performance. For this, they needed a set of specific, measurable, agreed, realistic, and time-bound goals (SMART) that would remobilize action for development projects and defend aid provision by demonstrating its effective contribution to fixed objectives.¹⁰³ Clearly, their outcome-based standpoint brought to the forefront a managerial approach to the agenda that resembled a more results-oriented public policy reform rather than a model at the service of a broad-based vision for development.¹⁰⁴ It is therefore not surprising that the concept of tied aid emerged, whose political dimension overrode all other considerations.¹⁰⁵

towards developing states by the World Bank Group (WBG) and the International Monetary Fund (IMF) aimed at economic liberalization and governance reforms so that they could participate in the global economic system of free trade and achieve macroeconomic stability. The influence of social goals in poverty alleviation didn't seem to be significant in practice, although the new development strategies were gradually proclaimed in a language of "participation," "partnership," and "ownership" in an effort to include governments from both industrialized and developing countries, and civil society in the process. See DAVID WILLIAMS, *INTERNATIONAL DEVELOPMENT AND GLOBAL POLITICS: HISTORY, THEORY AND PRACTICE* (2012); David Williams, *The History of International Development Aid*, in *HANDBOOK OF GLOBAL ECONOMIC GOVERNANCE* 233, 242 (Manuela Moschella & Catherine Weaver eds., 2014).

¹⁰¹ Net ODA, OECD DATA, <https://data.oecd.org/oda/net-oda.htm#indicator-chart> (last visited Oct. 13, 2022); Jean-Michel Severino & Olivier Ray, *The End of ODA: Death and Rebirth of a Global Public Policy* 2–3 (Ctr. for Glob. Dev., Working Paper No. 167, 2009).

¹⁰² *A Short History*, *supra* note 89, at 12–13.

¹⁰³ Hulme, *supra* note 12, at 15–16.

¹⁰⁴ ANNETTE BINNENDIJK, DAC WORKING PARTY ON AID EVALUATION, RESULTS BASED MANAGEMENT IN THE DEVELOPMENT CO-OPERATION AGENCIES: A REVIEW OF EXPERIENCE 3–4 (2000).

¹⁰⁵ See Bruce Bueno de Mesquita & Alastair Smith, *Foreign Aid and Policy Concessions*, 51 J. CONFLICT RESOL. 251 (2007); Tomi Ovaska, *The Failure of Development Aid*, 23 CATO J. 175 (2003).

Be that as it may, consultations regarding development metamorphosed into a balancing assessment of the donors' challenges, the politics of economic growth, and the U.N. promulgations for a human-centered development.¹⁰⁶ The culmination of this agenda-setting exercise was a list of seven International Development Goals (IDGs) that aspired to render the idea of human development practical and effective without undermining the premise that economic growth is central to development.¹⁰⁷ Simultaneously, the donor agencies' persistence for recording progress encouraged the prioritization of goals that were measurable and easy to quantify.¹⁰⁸

To regain its title as prime mover in the development initiative, the Secretariat reconfigured the poverty discourse at its Millennium Summit.¹⁰⁹ This time, the discussions drew keenly upon its plan to revise the U.N.'s institutional role in the 21st century and re-establish the broad vision for development. Declaring that men and women should be freed from "abject and dehumanizing poverty," the organization put forward a framework of poverty eradication aims that differed from the IDGs' listing both in scope and substance.¹¹⁰ Growth remained the stepping-stone to poverty reduction and the most promising route to engage globalization. Nonetheless, the outline was more expansive since it included technology as a means of development for transition for the economies of the developing world, and specified rich countries' duties towards the less fortunate as far as debt relief, trade, and official development assistance were concerned.¹¹¹ Conversely, it touched vaguely upon matters of gender equality, women's reproductive health, and child mortality,¹¹² tempering the human development crux that was present in the IDGs. Finally, the aims were presented in a rather descriptive way that was lacking the results-based management approach that donors preferred.¹¹³

¹⁰⁶ See generally *A Short History*, *supra* note 89.

¹⁰⁷ Hulme, *supra* note 12, at 17 (describing the stance of developing countries and financial institutions, such as the WBG and the IMF, to the IDGs).

¹⁰⁸ See, e.g., *Shaping the 21st Century*, *supra* note 97, at 9–11.

¹⁰⁹ See G.A. Res. 53/948 (May 10, 1999).

¹¹⁰ Annan, *supra* note 50, at 77.

¹¹¹ *Id.* at 31–40.

¹¹² *A Short History*, *supra* note 89, at 27–29.

¹¹³ RBM is a managerial strategy for program development and implementation that emphasizes performance by setting and measuring specific outcomes. Notwithstanding the value that lies in such a strategy, its prevalence in design of the MDGs narrowed the agenda to quantifiable targets and indicators that didn't capture the quantitative elements of human development and the scope of objectives in the Millennium Declaration. Ultimately, given the overly focus on producing results, the MDGs became a minimalist agenda that reflected a narrow understanding of the goals and gave rise to non-inclusive and structurally non-reformist development policies. Hulme, *supra* note 12, at 15–16; BINNENDIJK, *supra* note 104, at 3–4.

Those differences signaled two risks: firstly, a disagreement on what should finally comprise a plan for development and, secondly, the establishment of a dual process in the formation of development policies. That dual process includes, on the one hand, a U.N.-led poverty reduction strategy and, on the other, a plan that developed under the influence of the donor community.¹¹⁴ To avoid the application of double standards, the floor opened for an additional round of deliberations, this time collectively, with all major players of the development sector collaborating to design a single framework of development goals that would guide their programs and assess their effectiveness.¹¹⁵ The product of the negotiations was enunciated in the Millennium Declaration, which constituted a merger of the aforesaid competing poverty reduction agendas.¹¹⁶ A global consensus was achieved, first and foremost, on the elimination of extreme material poverty, including lack of income, food, and clean water.¹¹⁷ Universal primary education; infant, child, and maternal mortality; the extinction of serious and life-threatening diseases; and rich countries' contribution and accountability regarding the realization of the new frame constituted the other themes that gained universal political endorsement and upon which an agreement on collaboration was reached.¹¹⁸ These thematic subjects were imprinted as the Millennium Development Goals in the first U.N. Millennium Summit follow-up report¹¹⁹ subsequent to consultations with international public servants and technical advisors from all multilateral organizations who defined the individual targets and indicators.¹²⁰ The roadmap

¹¹⁴ Hulme uses the term “twin-track process” to explain that the goal-setting exercise had been proceeding in parallel tracks. See *A Short History*, *supra* note 89, at 31–33.

¹¹⁵ The intention of all development institutions to coordinate their efforts was expressed in the common report compiled by the IMF, OECD, U.N. and WBG, which was published in 2000. In this document, all four institutions agreed that poverty eradication is the crucial challenge of development and that the most effective way to tackle the issue is by setting quantitative goals against which performance would be measured. See IMF, OECD, U.N., & WBG, 2000: *A Better World for All*, Report on the Progress towards the International Development Goals (June 2000), <https://www.imf.org/external/pubs/ft/jointpub/world/2000/eng/bwae.pdf>.

¹¹⁶ G.A. Res. 55/2, *supra* note 2.

¹¹⁷ *Id.* ¶ 19.

¹¹⁸ *Id.* ¶¶ 2, 5, 6, 19, 26, 29–32.

¹¹⁹ U.N. Secretary-General, *Report of the Secretary-General: Road Map Towards the Implementation of the United Nations Millennium Declaration*, U.N. Doc A/56/326, at 18–20, 56–58 (Sept. 6, 2001).

¹²⁰ Consultations took place in the framework of World Bank meeting on 19–21 March 2001 at Washington D.C. World Bank Grp. [WBG], Transcript of Proceedings, *From Consensus to Action: A Seminar on the International Development Goals*, (Mar. 20, 2001). Decent work (MDG1, target 1b) and reproductive health (MDG5, target 5b) were finally added in 2005. See G.A. Res. A/RES/60/1, ¶¶ 47, 57(g), 58(c) (Sept. 16, 2005).

for a global mechanism on poverty reduction was finalized, and efforts henceforward would focus on its implementation.¹²¹

2. *The Implications of the MDGs Process for the Development Paradigm: Bold Political Commitments but Weak Normative Force*

As much as the MDGs depict a universal agreement to confront a set of global social and environmental challenges, their adoption did not constitute a simple and straightforward process. The primitive stage for their conceptualization can be found in moral reflections on poverty and income inequality, which developed on the margins of the process of national economies' evolution and transformation towards global integration and the harmonization of living standards worldwide.¹²² The idea of human development was blended with a managerial tactic to form a policy narrative that captured a spectrum of the multi-dimensional problem of poverty but widely offered the probability of tangible results—an important element of the agenda, whereby the world's leaders could maintain a political advantage, aid organizations could regain their purpose, and civil society could be comforted by reporting on the progress towards a kind of development that aspired to dissolve the uneven spread of prosperity in the world.¹²³ Over the long haul, the MDGs arose from the fermentation of ideas about development, state politics, and the objectives of each development organization in an open-ended process of formatting global public policy. The interaction of these parameters, while being the motivating force for a consensus on their content, caused simultaneously the fragmentation of their formulation that challenged the goals' success at four different tiers: their conceptualization, their execution, ownership, and equity.¹²⁴

¹²¹ After the adoption of the MDGs, cooperation on development was established further at the first International Conference on Financing for Development that took place in Monterrey in 2002. The principles of a holistic and integrated approach to the multifaceted challenges of development were expressed in the Monterrey Consensus, which also introduced the Financing for Development follow-up meetings that continue to date. See *Monterrey Consensus*, *supra* note 5; U.N. Dept. of Pub. Info., *Monterrey Consensus of the International Conference on Financing for Development* (Oct. 2003), https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CON_F.198_11.pdf; see *Monterrey Conference*, UNITED NATIONS, <http://www.un.org/esa/ffd/overview/monterrey-conference.html> (last visited Oct. 13, 2022).

¹²² *A Short History*, *supra* note 89, at 43–48.

¹²³ *Id.*

¹²⁴ Jeff Waage et al., *The Millennium Development Goals: A Cross-Sectoral Analysis and Principles for Goal Setting After 2015*, 376 LANCET 991, 991–92 (2010).

a. *Conceptualization and Execution*

Results-based management had a much more direct impact on the making of the Goals and triumphed over its ideational counterpart. Its “common-sense nature and linearity” were the tenets that, in effect, specified the goals and narrowed the scope of the development agenda to quantifiable proposals that were built around targets and indicators.¹²⁵ Based on this premise, an aspired-to-be inclusive action plan for development was converted into a minimalist or incomplete agenda that neither captured the breadth of the objectives enclosed in the Millennium Declaration nor empowered the links between aims in the same or different development fields.¹²⁶ For all the value that can be found in measuring and monitoring performance through indicators, the focus on metrics undermines the complexity of the targets themselves and the quantitative nature of the development progress overall, not least since—as the words “performance indicators” imply—they are meant to be indicative of progress and not divert efforts towards their fulfillment in their own right. As a result, the execution of such a results-oriented system of the Goals is overly reliant on the precision, accuracy, and relevance of the targets and indicators and becomes susceptible to their weaknesses; quite often, data used to define indicators are either not available or of poor quality. In turn, indicators cannot be measured systematically, thereby causing complications at the target level, mainly due to the targets’ vagueness and lack of implementation mechanisms. Ultimately, this leads to a very narrow understanding of a respective goal and to non-inclusive and small-scale policies that give piecemeal solutions.¹²⁷

To illustrate the argument with an example, a critical study of MDG1 (halve global poverty and hunger) revealed the operational weaknesses of the MDGs: Target 1A prompted the world community to collaborate on halving the proportion of people whose income was below one dollar a day by 2015.¹²⁸ At the outset, one can acknowledge the statistical notation of the Goal and the corollary it has on the conceptualization of poverty, which was conceived too narrowly as income-based destitution, contrary to the broad understanding of the

¹²⁵ David Hulme, *Governing Global Poverty?: Global Ambivalence and the Millennium Development Goals*, in *GLOBAL GOVERNANCE, POVERTY AND INEQUALITY* 135, 147 (Jennifer Clapp & Rorden Wilkinson eds., 2010).

¹²⁶ *Id.* at 150–51.

¹²⁷ Waage et al., *supra* note 124, at 997.

¹²⁸ *Id.* at Supplemental Webappendix, [https://www.thelancet.com/cms/10.1016/S0140-6736\(10\)61196-8/attachment/bf104151-4d32-4b00-9b17-97dcf5afa27e/mmc1.pdf](https://www.thelancet.com/cms/10.1016/S0140-6736(10)61196-8/attachment/bf104151-4d32-4b00-9b17-97dcf5afa27e/mmc1.pdf).

concept under the theory of human development.¹²⁹ Furthermore, it is doubtful that using the dollar-a-day poverty threshold accurately reflects the reality of poverty's prevalence. It has been criticized as arbitrary in its construction and as one that is calculated based on consumption and purchasing power parity, excluding other facets of human well-being, like health or education.¹³⁰ In addition, the inconsistencies between household survey data and national statistics on growth have further raised questions about an existing bias in determining poverty levels.¹³¹ The problems with the Goal are aggregated at the indicator level by the fact that they lack reference to the exact intervention actions or required resources for the target to be achieved.¹³² Quantifying the proportion of the population earning below one dollar and twenty-five cents a day, the poverty gap ratio, and the share of the poorest in national consumption serve their roles in achieving a result-based outcome, namely to reduce poverty by fifty percent, but is of no avail towards outputs in terms of policy practices.¹³³ Within this framework, the effective execution of the Goal seems less promising.

b. Ownership

Questions around the ownership of the Goals emanated from an ex-post evaluation of their actual impact on national development strategies and donors' practices in their effort to substantiate their promise for partnership. Regarding the impact on national development strategies, the crux of the matter lay primarily in the relevance of MDGs' priorities and targets found in the Poverty Reduction Strategy Papers (PRSPs), as they relate to developing countries' national planning framework for development and, therefore, their perception as national targets. One would logically expect that, given the universal political consensus on the Goals, PRSPs would include the whole spectrum of the MDGs and reflect an individual country's strong commitment to their implementation. Contrary to these expectations, not only were the Goals picked upon selectively by policymakers, but, as an analysis of PRSPs of 22 countries demonstrates, a

¹²⁹ Poverty is defined as a situation of sustained or chronic deprivation of resources, capabilities, choices, security, and power for the enjoyment of an adequate standard of living and other political, socioeconomic, and cultural entitlements. Comm. on Econ., Soc. and Cultural Rts. (CESCR), Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2001/10, ¶ 8 (2001).

¹³⁰ SANJAY G. REDDY & THOMAS W. POGGE, HOW NOT TO COUNT THE POOR (2005). *But see* MARTIN RAVALLION, HOW NOT TO COUNT THE POOR? A REPLY TO REDDY AND POGGE (2008).

¹³¹ REDDY & POGGE, *supra* note 130, at 26.

¹³² Waage et al., *supra* note 124, at 998–99.

¹³³ U.N. STAT. DIV., *supra* note 49.

discrepancy concerning the degree of implementation was also noted, even among those Goals that constituted priority areas.¹³⁴ There is a two-fold explanation for this: first, the fact that developing countries' involvement in the development of the MDGs framework was actually limited, due to a lack of participation; second, the misapprehension that the MDGs, which were targets set at the global level, could be transposed effectively into domestic jurisdictions unchanged and successfully bring about the desired outcomes at a global scale. However, without taking into consideration local circumstances and the differences in technical and financial capabilities among countries, the Goals were stripped of country-specific pragmatism.¹³⁵ As a consequence, there was a mismatch with the particular development situation of countries, and preoccupation with the goals was either downgraded to a passing mention in the reporting process of monitoring progress on the MDGs, or the Goals were instrumentalized by countries to attract donor resources for governmental aims that were simply easier to achieve¹³⁶—a tactic that casts doubts as to whether the MDGs were translated from “consensus objectives” to “planning targets” that would actually encourage development in line with national priorities.¹³⁷

The problem of the MDGs' ownership within the international community is directly linked to the process that led to the formulation of the MDGs, as described in the previous section. The involvement of so many organizations in the identification of the Goals and targets crafted a complex institutional structure comprised of U.N. agencies, funds, multilateral and bilateral donor organizations,¹³⁸ each of which asserted expertise either on the whole of a Goal

¹³⁴ See Sakiko Fukuda-Parr, *Are the MDGs Priority in Development Strategies and Aid Programmes? Only Few Are!* 13 (Int'l Poverty Centre, Working Paper No. 48, 2008).

¹³⁵ Jan Vandemoortele, *The MDGs: 'M' for Misunderstood?*, U.N. UNIV. WORLD INST. FOR DEV. ECON. RSCH.: WIDER ANGLE BLOG (2007), <https://www.wider.unu.edu/publication/mdgs-'m'-misunderstood> (“First, the global MDG targets must be tailored to make them [context sensitive]—which is essential for generating a sense of national ownership. Global targets are meant to encourage countries to strive for accelerated progress. Their applicability, however, can only be tested and judged against what is realistically achievable under country-specific circumstances. To be meaningful, national targets require adaptation; not a mindless adoption of global targets.”).

¹³⁶ For example, targets concerned with the empowerment of the most vulnerable groups, such as gender violence or women's empowerment, and political representation were neglected. See Fukuda-Parr, *supra* note 10, at 26, 32.

¹³⁷ Fukuda-Parr, *supra* note 134, at 1, 3–4 (distinguishing between three functional uses of global goals: as consensus objectives, monitoring benchmarks, and as planning targets).

¹³⁸ *Peace, Dignity and Equality on a Healthy Planet*, U.N. SYSTEMS, <http://www.un.org/en/sections/about-un/funds-programmes-specialized-agencies-and-others/> (listing the U.N.'s funds, programs and specialized agencies); see *Canadian Trade Commissioner: Bilateral Agencies*, GOV'T OF CAN., <http://tradecommissioner.gc.ca/development-developpement/bilateral-agencies-organismes-bilateraux.aspx?lang=eng> (displaying an indicative list of bilateral donors).

or on its specific targets. Compartmentalization of key responsibilities was an unavoidable consequence of this complexity and rendered the coordination of activities difficult, in particular, because of ambiguity as to who should assume leadership in the implementation of the respective Goal.¹³⁹ The accomplishment of the MDGs was constrained by the absence of a clear action plan with defined duties and obligations for every actor. Lack of leadership resulted in a lack of accountability¹⁴⁰ of the institutions charged with the realization of the MDG agenda and also weakened the relationships with civil society organizations and other public and private entities that agreed to work together on the Goals and the development process in general.¹⁴¹ Against this background, the international community's ambition to bolster global partnership in the identified key sectors for development was threatened by fragmentation as policy coherence was hindered by the ad hoc nature of the cooperation between stakeholders and their focus mostly on short-term issues rather than the promotion of systemic change.¹⁴²

c. Equity

The challenge to the MDGs' success at the fourth tier, equity, is a corollary to the problems at the level of conceptualization, which led to a very narrow understanding of the Goals and delinked them from the core objectives of the Millennium Declaration and the U.N.'s development agenda. Human development and a wider share of the benefits of economic globalization between and within countries comprised the essence of both the Millennium Declaration and the U.N.'s development agenda. Although the ideology of neoliberalism remained untangled, the content and character of the agenda were

¹³⁹ Waage et al., *supra* note 124, at 1002–03 (providing examples of MDG4 & MGD5).

¹⁴⁰ U.N. Off. of the High Comm'r, *Who Will Be Accountable: Human Rights and the Post 2015 Development Agenda*, U.N. Doc. HR/PUB/13/1 (2013); Wouter van Ginneken, *Social Protection, the Millennium Development Goals and Human Rights*, 42 IDS BULL. 111, 115 (2011).

¹⁴¹ G.A. Res. 60/215, ¶¶ 2–3 (Mar. 29, 2006).

¹⁴² Global partnerships for development included MDG8 and targets on aid, trade, debt relief, and improved access to essential medicines and new technologies. After the Monterrey Consensus and the Johannesburg Plan of Implementation, states incorporated resource mobilisation, global governance, and policy coherence. *See* G.A. Res. 55/2, *supra* note 2, ¶ 5; *Monterrey Conference*, *supra* note 121; World Summit on Sustainable Development, *Johannesburg Declaration*, U.N. Doc. A/CONF.199/20, at 88 (Sept. 4, 2002); *see also* U.N. System Task Team on the Post-2015 UN Development Agenda, *A Renewed Global Partnership for Development: Report of the U.N. System Task Team on the Post-2015 U.N. Development Agenda*, at 2, http://www.un.org/en/development/desa/policy/untaskteam_undf/faqs.pdf (last visited Oct. 16, 2022).

permeated by the values of human freedom, dignity, solidarity, and tolerance. A fundamental concern for equity and equality of all persons was also present.¹⁴³

Equity stems from the idea of “moral equality,” namely the principle that people in a society should be treated as equals because they share a common humanity or human dignity. It is a normative concept and is concerned with equality, fairness, and social justice.¹⁴⁴ In the context of development, it finds application in three areas: equal life chances; equal concern for people’s needs; and meritocracy in order to “level the playing field” for everyone. Equality, on the other hand, is concerned with the distribution of goods or outcomes, ensuring that people receive equal distribution or equal treatment.¹⁴⁵ Equality aims to promote fairness so long as everyone starts from the same place and is offered the same aid.¹⁴⁶ However, both concepts have built-in the notion of universality, which presupposes that the benefits of a policy reach out to all people, not just particular groups or a proportion of certain groups. The well-being of a society as a whole should be maximized. This concern for society as a whole was absent in the formulation of the MDGs, given that the targets were framed in a way that optimized the living conditions for some, by and large in poor countries, rather than ameliorating the gap between wealthy and poor people within and between countries.¹⁴⁷ Hence, the MDGs were not relevant to rich countries, which supported the process through finance and technology transfer only. But their implementation in developing countries was problematic too. The Goals’ minimalistic approach—with the focus on the attainment of *minimum* levels of economic and societal goods for the respective target groups—did not redress unfair social constructions beyond the line of minimum adequacy. That meant that hardship would be sustained, albeit at lower levels, and one could plausibly argue that it could also be deemed acceptable since “basic needs” would be enjoyed at an absolute minimum.¹⁴⁸ However, equity is concerned with the relative distribution in society of things that are not only *needed* for people but constitute a prerequisite for their full participation in society.¹⁴⁹ As the MDGs

¹⁴³ U.N. Department of Economic and Social Affairs, *The United Nations Development Agenda: Development for All*, at iii (June 2007).

¹⁴⁴ Harry Jones, *Equity in Development: Why it is Important and How to Achieve It* 3–7 (Overseas Dev. Inst., Working Paper No. 311, 2009).

¹⁴⁵ *Id.* at 9.

¹⁴⁶ Carolyn Solomon Pryce, *Is Equity the Same as Equality?*, LSE: EQUITY, DIVERSITY AND INCLUSION BLOG (Dec. 9, 2015), <http://blogs.lse.ac.uk/equityDiversityInclusion/2015/12/is-equity-the-same-as-equality/>.

¹⁴⁷ Waage et al., *supra* note 124, at 1005–07.

¹⁴⁸ See Koy Thomson, *A Universal Social Minimum as a Foundation for Citizenship*, 38 IDS BULL. 57, 58–59 (2007).

¹⁴⁹ Jones, *supra* note 144, at 6 & n.6.

were constructed, concentrating on improving poverty levels on average and to a minimum standard, they did not take account of the particularities of certain groups (such as the worst off amongst the poor), nor did they give everyone the means to become agents of their own development.¹⁵⁰ Reducing inequity was the MDGs' "missing target."¹⁵¹

d. Human Rights

The exclusion of equity from the agenda stressed yet another dimension of the MDGs' critique and validated the argument that the Goals moved away from the spirit of the Millennium Declaration and the human development approach: the neglect of human rights standards.¹⁵² As lofty and important as the MDGs were, they risked denigrating the very values they sought to exalt and protect. First and foremost, the rights language entrenched in the Millennium Declaration was not iterated in the MDGs for fear that somehow the goals might be transformed into justiciable entitlements.¹⁵³ One might naturally think that, although unfortunate, lack of justiciability was a small price to pay for securing the much-needed aid to the world's poor. After all, the Goals and their indicators are strikingly similar to the rights found in the International Bill of Human Rights.¹⁵⁴ Sadly, this is not the case, although there are many similarities between the goals and ESC rights.¹⁵⁵ However, as proclaimed in the ICESCR, these rights are meant to apply against all persons without any discrimination, thus reaching the poorest of the poor. The MDGs, on many occasions, only require states to halve certain poverty indicators.¹⁵⁶ Given the absence of an obligation to disaggregate results in the MDGs, it is tempting for target states to focus on the relatively well-off among the poor and make no special provision for more vulnerable groups.¹⁵⁷ As a result, the universality element of the

¹⁵⁰ Jan Vandemoortele, *The MDGs and Pro-Poor Policies: Related but not Synonymous* 6–7 (U.N. Dev. Programme, Int'l Poverty Ctr., Working Paper No. 3, 2004) (explaining why the MDGs framework was critiqued as not taking a pro-poor approach); Maya Fehling et al., *Limitations of the Millennium Development Goals: A Literature Review*, 8 GLOBAL PUB. HEALTH 1109, 1114 (2013) (noting the criticism that some population groups were left out of the MDGs framework).

¹⁵¹ Fukuda-Parr, *supra* note 10, at 28.

¹⁵² Review of the Contributions of the MDG Agenda, *supra* note 7.

¹⁵³ See Alston, *supra* note 7, at 760.

¹⁵⁴ See *id.* at 759–60; see also Review of the Contributions of the MDG Agenda, *supra* note 7.

¹⁵⁵ See U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2003, at 29 (2003) (stating that the MDGS reflect a human rights agenda); U.N. Off. of the High Comm'r for Hum. Rts., Rep. of the United Nations High Commissioner for Human Rights to the Economic and Social Council, at 3–4, U.N. Doc. E/2002/68 (May 20, 2002).

¹⁵⁶ See G.A. Res. 55/2, *supra* note 2, ¶ 19.

¹⁵⁷ TABB, *supra* at 78, at 4; Fukuda-Parr, *supra* note 10, at 30.

relevant human right is lost. Moreover, some Goals were clearly inconsistent with human rights. By way of illustration, Goal 2 called for universal primary education, ignoring the requirement of free and quality education at the secondary and tertiary levels as enshrined in Article 13 of ICESCR. More worrying was the technocratic approach of the MDGs, which stressed the mobilization of financial resources over and above the need to change the power structures that play a major role in the creation of poverty and underdevelopment. The MDGs, therefore, ignored the fundamental role of civil and political rights in achieving ESC rights.¹⁵⁸

All things considered, one can infer that incorporating human rights language would give a forceful impetus to the MDGs, converting the socioeconomic issues they address into rights with clearly defined scope and content that raise specific commitments on behalf of states which should be fulfilled at least to a minimum amount.¹⁵⁹ Unfortunately, as much as the human rights dogma underlined UN proclamations about the purpose of development, it faded away during the making of the MDGs. As a result, the two paradigms pointed to different directions in terms of strategy and design, despite their shared concern to advance the dignity, well-being and freedom of individuals in general. The potential to supplement each other fruitfully and practically facilitate their shared concern was real but could only be realized through their integration.¹⁶⁰ Nevertheless, such a synergy was not contemplated.

B. The Sustainable Development Goals: Procedurally Robust Political Normativity

The quest for comprehensiveness in the design and implementation of development policies became the centerpiece of the Sustainable Development Goals (SDGs) that were adopted in the framework of Agenda 2030 for Sustainable Development.¹⁶¹ By considering economic, social, and

¹⁵⁸ G.A. Res. A/HRC/15/WG.2/TF/2/Add.1, ¶¶ 65–66 (Mar. 25, 2010).

¹⁵⁹ U.N. Off. of the High Comm’r for Hum. Rts., *CESCR General Comment No. 3: The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, ¶ 10, U.N. Doc E/1991/23 (Dec. 14, 1990).

¹⁶⁰ U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2000, at 19 (2000), http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf; Alston, *supra* note 7, at 761, 827 (offering a critical analysis on the MDGs/human-rights divide, arguing that the lip service paid to one another was reciprocal since reference to the MDGs within the human rights system was also not systematic and “the human rights community has itself shown a significant degree of obstinacy when it comes to making the necessary outreach to ensure that its own agenda is effectively promoted within the context of the international community’s development agenda”).

¹⁶¹ See Agenda 2030, *supra* note 14, ¶ 2.

environmental issues as components and overarching objectives of development and combining them with a broader spectrum of topics such as prosperity, the planet, peace, security, and justice, the SDGs present an action plan that is more transformative in scope, responding to new and existing development challenges for both developing and developed states in the current century. The new set of global goals consists of: No Poverty (SDG1); Zero Hunger (SDG2); Good Health and Well-being (SDG3); Quality Education (SDG4); Gender Equality (SDG5); Clean Water and Sanitation (SDG6); Affordable and Clean Energy (SDG7); Decent Work and Economic Growth (SDG8); Industry Innovation and Infrastructure (SDG9); Reduced Inequalities (SDG10); Sustainable Cities and Communities (SDG11); Responsible Consumption and Production (SDG12); Climate Action (SDG13); Life Below Water (SDG14); Life on Land (SDG15); Peace, Justice and Strong institutions (SDG16); Partnerships for the Goals (SDG17).¹⁶²

Much like the MDGs, the SDGs are set against targets and indicators focused on measurable outcomes, yet their holistic approach to development is evident at a glance. To illustrate this point, it suffices to consider the wording of the SDGs. To name a few, SDG1 is concerned with the eradication of poverty in its multidimensional nature and with giving individuals the means necessary for human well-being. This makes the goal relevant not only to poor countries but also to developed regions where poverty in relative terms is also recorded. Targets on education are not limited to universal primary education but include secondary, tertiary, and lifelong learning (SDG4). Thus, the SDGs constitute a broader framework of development goals that are intended to become relevant to all individuals. The SDGs do this not solely by completing the MDGs' unfinished business but by expanding the mandate of the systemic framework for development to include the interplay between poverty, inequalities, environmental degradation, and institutional impediments to development—such as the lack of the rule of law in domestic orders, transparency and accountability of public and private entities, and weak regulations to tackle corruption and organized crime.¹⁶³

Indeed, alongside the interdependence and indivisibility of the SDGs, states declared that the agenda is applicable to everyone based on the full respect for human dignity and the principles of equity, equality, and non-discrimination

¹⁶² *Id.* at 14–27.

¹⁶³ G.A. Res. 70/1, ¶ 11 (Sept. 25, 2015) (explaining that the SDGs reflect in their content the outcomes of previous U.N. summits and conferences).

expressed in the U.N. Charter, the Universal Declaration of Human Rights (UDHR) and other human rights treaties and declarations, such as the Millennium Declaration. In fact, Agenda 2030's third preambular paragraph states that the SDGs "seek to realize the human rights of all."¹⁶⁴ Within this framework, the right to development holds a prominent status, and its importance for the realization of the goals is explicitly recognized.¹⁶⁵ In light of this, human rights seem to have been embedded in the new financing for development framework as well, set at the Third International Conference on Financing for Development in Addis Ababa.¹⁶⁶ Respect for all human rights underlines states' commitments under the Addis Ababa Action Agenda (AAAA), which pledges to provide a social protection floor for everyone¹⁶⁷ and emphasizes development actors' accountability in relation to their financing promises.¹⁶⁸ Besides the equitable distribution of resources so that all persons have their most basic needs met, human rights are a key objective for the AAAA,¹⁶⁹ which, in this regard, aims to establish an international development financing system that is just, cooperative, transparent, and premised on human rights standards.¹⁷⁰ Furthermore, the AAAA constitutes an integral part of Agenda 2030,¹⁷¹ meaning that the human rights principles applicable to the realization of the socioeconomic and environmental SDGs apply to the means-of-implementation targets too, which are equally as important as the rest of the Goals.¹⁷²

¹⁶⁴ Agenda 2030, *supra* note 14, at 1.

¹⁶⁵ *Id.* ¶¶ 10, 35.

¹⁶⁶ G.A. Res. 69/313, ¶ 1 (Aug. 17, 2015).

¹⁶⁷ *Id.* ¶ 12.

¹⁶⁸ *Id.* ¶¶ 130–34.

¹⁶⁹ During the third international conference on financing for development and the negotiations of the AAAA, the OHCHR raised human rights considerations that should permeate development finance programs. It emphasized that the objective of financing development should be the equitable distribution of resources so that all persons have their most basic needs met, and human rights are made a reality for all. See U.N. Off. of the High Comm'r for Hum. Rts., *Key Messages on Human Rights and Financing for Development*, <https://www.ohchr.org/sites/default/files/Documents/Issues/Development/KeyMessageHRFinancingDevelopment.pdf>.

¹⁷⁰ Civil society expressed skepticism about the new financing framework to achieve Agenda 2030's goals for sustainable development. Although the AAAA promulgates the realignment of financial flows with public goals, the Agenda does not tackle the structural injustices in the current economic system and that development finance is not people-centered. Addis Ababa, *Third FfD Failing to Finance Development: Civil Society Response to the Addis Ababa Action Agenda on Financing for Development*, GLOBAL POL'Y WATCH (July 16, 2015), <https://www.globalpolicywatch.org/blog/2015/07/16/civil-society-response-agenda-financing-development/>.

¹⁷¹ Agenda 2030, *supra* note 14, ¶¶ 40, 62.

¹⁷² *Id.* ¶ 61.

Notwithstanding the direct influence of human rights in the making of the goals, the SDG agenda has been criticized for failing to conform to both human rights and the normative standards of the concept of sustainable development. The cornerstone of the critique is in the predominant role of economic growth as the means to eradicate poverty and in the favoritism towards mainstream development that reinvigorates the poor-rich divide.¹⁷³ SDG8 not only requires that per capita economic growth be sustained, but it sets a specific threshold of seven percent of GDP per year, although this is mostly required in developing countries.¹⁷⁴ SDG8 also advocates for expanded access to financial services as a means for stimulating economic growth. While economic growth is certainly important for the eradication of poverty, there is considerable evidence demonstrating that the annual increase in GDP per capita worldwide maintains itself alongside moderate poverty (less than two dollars and fifty cents a day), and income disparities are widening while wealth is increasingly concentrated in a small portion of the world's population.¹⁷⁵ Aggregate economic growth is not enough for the eradication of poverty.¹⁷⁶ The elimination of poverty may require a restructuring of the world's wealth-extracting mechanism, meaning that the rules on trade, taxation, and debt should be changed. Yet the SDGs, which strive to eliminate poverty, do not take the bold step necessary to address these issues. The language of the Goals is vague and does not include any concrete measures.¹⁷⁷ This signals that the SDGs are not as transformative as they purport to be.

¹⁷³ See Jaakko Kuosmanen, *Sustainable Development Goals: A Beacon of Light or Another Stumble in Global Governance?*, OXFORD HUM. RTS. HUB (Sept. 26, 2015), <https://ohrh.law.ox.ac.uk/sustainable-development-goals-a-beacon-of-light-or-another-stumble-in-global-governance/>; U.N. Hum. Rts. Council, Rep. on the Parlous State of Poverty Eradication, ¶¶ 41–42, U.N. Doc. A/HRC/44/40 (Nov. 19, 2020); Jason Hickel, *The Problem with Saving the World*, JACOBIN MAG. (2015), <https://jacobin.com/2015/08/global-poverty-climate-change-sdgs>; Jason Hickel, *The Contradiction of the Sustainable Development Goals: Growth Versus Ecology on a Finite Planet*, 27 SUSTAINABLE DEV. 873 (2019).

¹⁷⁴ See *Promote Inclusive and Sustainable Economic Growth, Employment and Decent Work for All*, OUR WORLD IN DATA, <https://sdg-tracker.org/economic-growth> (last visited Oct. 21, 2022).

¹⁷⁵ See World Bank Grp. [WBG], *Global Economic Prospects*, at 139–45 (June 2022), <http://www.worldbank.org/en/publication/global-economic-prospects#data>; Francisco Ferreira et al., *The 2017 Global Poverty Update from the World Bank*, WORLD BANK BLOGS (Oct. 16, 2017), <https://blogs.worldbank.org/developmenttalk/2017-global-poverty-update-world-bank>.

¹⁷⁶ Press Release, Ending Poverty Requires More Than Growth, Says WBG, World Bank Grp. [WBG] Press Release No. 2014/434/DEC (Apr. 10, 2014), <https://www.worldbank.org/en/news/press-release/2014/04/10/ending-poverty-requires-more-than-growth-says-wbg>.

¹⁷⁷ Thomas Pogue & Mitu Sengupta, *The Sustainable Development Goals (SDGs) as Drafted: Nice Idea, Poor Execution*, 24 WASH. INT'L L.J. 571, 575 nn. 14–15 (2015); see also Inga T. Winkler & Carmel Williams, *The Sustainable Development Goals and Human Rights: A Critical Early Review*, 21 INT'L J. HUM. RTS. 1023 (2017).

1. *A Political History of the SDGs*

a. *1949-1987: The Moral Impetus of Sustainable Human Well-being and its Translation into the Three Pillars of Sustainable Development*

Just like the MDGs, the SDGs have their genesis in several U.N. summits and consultations among development institutions. A central theme of this series of talks was how the relationship between human beings and their natural environment is an essential element of the global system within which development is pursued. The economic exploitation of natural resources, upon which much of the postwar vision of development for growth maximization was grounded, raised concerns about the detrimental impact of development practices on the environment¹⁷⁸ and the ability of nature to replenish its reserves at a pace allowing continuous and unlimited economic growth.¹⁷⁹ The environment's role in development was underscored for the first time at the 1949 U.N. Scientific Conference on Conservation and Utilization of Resources (UNSCCUR),¹⁸⁰ but it was not until the 1970s that environmental and economic sustainability became an urgent matter for the international community.¹⁸¹

At the 1972 Conference on the Human Environment, states declared that “man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being.”¹⁸² This statement acknowledged that the natural environment gives people physical sustenance and affords them the opportunity for social, economic, and scientific progress, setting the foundations for a direct link

¹⁷⁸ See e.g., U.N. DEV. PROGRAMME, 2021/22 HUMAN DEVELOPMENT REPORT 2021/2022, U.N. Sales No. E.22.III.B.4 (2022), https://hdr.undp.org/system/files/documents/global-report-document/hdr2021-22pdf_1.pdf.

¹⁷⁹ Preoccupation with the issue of availability of natural resources can be documented in 18th Century German laws regulating the forestry industry, according to which the extent a forest could be harvested was dependent upon the capacity of the forest to regenerate each year. This is also when “sustainable development” as a term is first documented. See *Nachhaltigkeit [Sustainability]*, LEXIKON DER NACHHALTIGKEIT [ENCYCLOPEDIA OF SUSTAINABILITY], https://www.nachhaltigkeit.info/artikel/definitionen_1382.htm? (Nov. 13, 2015). Similarly, Ricardo admits that economic growth will be hindered due to the scarcity of natural resources and points to the necessity for effective conservation measures if human survival is to be ensured. See HANS CHRISTIAN BUGGE, SUSTAINABLE DEVELOPMENT IN INTERNATIONAL AND NATIONAL LAW: WHAT DID THE BRUNDTLAND REPORT DO TO LEGAL THINKING AND LEGAL DEVELOPMENT, AND WHERE CAN WE GO FROM HERE? 93 (2008) (citing DAVID RICARDO, THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION (J. M. Dent & Sons Ltd. Publishers 1965) (1817)).

¹⁸⁰ 1946-47 U.N.Y.B. 492, U.N. Sales No. 1947 I. 18.

¹⁸¹ DONELLA H. MEADOWS ET AL., THE LIMITS TO GROWTH (1972).

¹⁸² U.N. Conference on the Human Environment, *Stockholm Declaration on the Human Environment*, 5-16, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

between development and environmental sustainability.¹⁸³ Development as a collective process of change should aim at “sustainable living”—improving the quality of human life while living within the environment’s carrying capacity.¹⁸⁴

This new quest was explicated a decade later by the World Commission on Environment and Development (Brundtland Commission).¹⁸⁵ The Brundtland Commission addressed development within the broader context of uneven economic growth and the unbalanced distribution of that growth’s costs and benefits among rich and poor countries and addressed the inappropriate use of technology putting the resource base at risk. The Brundtland Commission highlighted the lack of informed decision-making merging environmental, economic, and human needs in development planning. The Brundtland Report, which resulted from the Brundtland Commission, stated that the major objective of development is the satisfaction of everyone’s human needs and aspirations for an improved quality of life in perpetuity.¹⁸⁶ Conditions of poverty and inequity are associated with ecological and other crises that hinder the realization of this objective; hence there is a need for a development path that deals with these issues in a comprehensive and integrated manner.¹⁸⁷ The Commission introduced the concept of sustainable development to development discourse, defining development as “meet[ing] the needs of the present without compromising the ability of future generations to meet their own needs.”¹⁸⁸

Crucially, the Commission restated the centrality of human beings in the development process. By making clear that everyone should have their needs met, whether now or in the future, it sets an explicitly universal ethical value to guide development. Furthermore, there is an implicit plea for social justice in the Commission’s aim to fulfill each generation’s needs, appealing to a desire for fair and just economic and social relations between individuals and institutions. The Commission bases its concept of fairness on the axiom that humans are fundamentally equal and strives for a more equal distribution of

¹⁸³ *Id.* at 70.

¹⁸⁴ See, e.g., U.N. ENV’T PROGRAMME, CARING FOR THE EARTH: A STRATEGY FOR SUSTAINABLE LIVING (1991), <https://wedocs.unep.org/handle/20.500.11822/30889>; G.A. Res. 37/7, World Charter for Nature (Oct. 28, 1982).

¹⁸⁵ G.A. Res. A/38/161, ¶ 2–3 (Dec. 19, 1983).

¹⁸⁶ World Commission on Environment and Development, *Report of the World Commission on Environment and Development: Our Common Future, From One Earth to One World*, U.N. Doc. A/42/427, annex (Aug. 4, 1987) [hereinafter Brundtland Report].

¹⁸⁷ *Id.* ¶ 4, at 54.

¹⁸⁸ *Id.* ¶ 27, at 24.

wealth and for institutions that give people equal access to decision-making.¹⁸⁹ The Commission appreciates human needs *lato sensu*, including the freedom to achieve dignity and respect of the person through active involvement in society's organizational system alongside the enjoyment of material goods.¹⁹⁰ The objective of sustainable development is for current and future societies to provide people with the opportunity to lead meaningful lives, defined by the achievement of adequate standards of living and the empowerment to actively decide upon the full range of factors that determine the quality of their lives.¹⁹¹ The Commission pointed towards a wider spectrum of well-being, incorporating the content of sustainable development into the concept of human development.¹⁹²

The responsibility to guarantee this outcome of well-being and equity for present and future generations does not merely reflect the just allocation of specific natural, physical, and human capital resources. It should instead be construed as a general duty to afford generations the entitlement of access to the same opportunity to fulfill their aspirations for a better, dignified life.¹⁹³ This duty necessitates sharing the capacity to create well-being based upon distributional equity that applies to individuals within the same generation (intra-generational equity) and between those in the future (inter-generational equity).¹⁹⁴ On account of this freedom-based understanding of sustainable development, the concept can be defined as "development that prompts the capabilities of present people without compromising the capabilities of future generations."¹⁹⁵

¹⁸⁹ See JOHN RAWLS, A THEORY OF JUSTICE (Harvard Univ. Press ed. 1999) (1971). This is a reflection of Rawls's two principles of justice, namely: equal liberty and difference and fair equality of opportunity. *Id.* at 266.

¹⁹⁰ Brundtland Report, *supra* note 186, ¶ 39, at 63.

¹⁹¹ *Id.* ¶ 4, at 54.

¹⁹² John Robinson, *Squaring the Circle? Some Thoughts on the Idea of Sustainable Development*, 48 ECOLOGICAL ECON. 369, 372–73 (2004).

¹⁹³ This has been defined as *sustainability* by Sudhir Anand and Amartya K. Sen. ANAND & SEN, *supra* note 86, at 19–21, 27–28. When considered solely as an obligation to maintain resources, a further distinction is made between weak and strong sustainability. See Achala Chandani, *Distributive Justice and Sustainability as a Viable Foundation for the Future Climate Regime*, 2 CARBON CLIMATE L. REV. 152, 160. However, it is more appropriate to define it from a normative perspective as an exemplification of the commitments to equity inherent in the morals of social justice and universalism which are the normative foundation of the concept of sustainable development.

¹⁹⁴ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26, annex I & II (Aug. 12, 1992) [hereinafter *Rio Declaration*] ("The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.").

¹⁹⁵ Amartya Sen, *The Ends and Means of Sustainability*, 14 J. HUM. DEV. & CAPABILITIES 6, 11 (2013).

Thus, to the extent that sustainable development represents everyone's shared claim to the opportunity to lead worthwhile lives, it could be argued that the purpose of development is to create an environment enabling all people to expand their capabilities and to create greater opportunities for both present and future generations.¹⁹⁶ This is a broader interpretation of the approach taken in the first U.N. Human Development Report, which identified the elements of human well-being.¹⁹⁷ Due to the broad notion of sustainability as encompassing both present and future, the objective of development can be depicted in the pursuit of *sustainable human well-being*.¹⁹⁸ Just like human development professes development outcomes beyond the economic outputs of growth, so too does sustainable human development purport to achieve a wider range of results in the economic, social, and environmental fields.¹⁹⁹ Indeed, since the Brundtland Commission, sustainable development has been embedded in the international development discourse including poverty eradication, the protection of natural resources, and changing unsustainable production and consumption patterns. Sustainable development is a multidimensional undertaking aimed at achieving a higher quality of life for all people that encompasses economic, social, and environmental components that are interdependent and mutually reinforcing.²⁰⁰ These three pillars of sustainable development are equally important, and it is assumed that each pillar brings about a holistic human-centered approach to development. It therefore follows that sustainable human well-being stems from the balanced integration of its three pillars, premised upon the principles of dignity, equity, justice,

¹⁹⁶ U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 1994, at 13 (1994).

¹⁹⁷ HUMAN DEVELOPMENT REPORT 1990, *supra* note 82, at 10.

¹⁹⁸ Zampetti, *supra* note 17, at 299.

¹⁹⁹ ILIAS BANTEKAS & LUTZ OETTE, INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE 624 (3d ed. 2020).

²⁰⁰ There is no one single definition of sustainable development. *See e.g.*, G.A. Res. 51/240, ¶ 1 (Oct. 15, 1997); *Johannesburg Declaration*, *supra* note 142, at ¶ 11 ("Poverty eradication, changing unsustainable patterns of production and consumption and protecting and managing the natural resource base of economic and social development are overarching objectives of, and essential requirements for, sustainable development."); World Summit on Sustainable Development, *New Delhi Declaration of Principles of International Law Relating to Sustainable Development*, G.A. Doc. A/Conf.199/8 (Aug. 9, 2002) ("[T]he objective of sustainable development involves a comprehensive and integrated approach to economic, social and political processes, which aims at the sustainable use of natural resources of the Earth and the protection of the environment on which nature and human life as well as social and economic development depend and which seeks to realize the right of all human beings to an adequate living standard on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, with due regard to the needs and interests of future generations.").

participation, and good governance, as well as conforming to states' obligations under the U.N. Charter and human rights treaties.²⁰¹

However, the three pillars of sustainable development cannot be equally balanced because the three pillars are not qualitatively equal. While they may be equally important, their determinative characteristics and their divergent functioning are fundamentally incompatible (e.g., the contradiction between increasing material, economic well-being and environmental protections). While all three dimensions are necessary for sustainable development, sustainable human well-being requires that a choice be made regarding the degree of satisfaction of each tenet. The question to ask is how this choice is made, particularly since policy choices in the context of development are not detached from moral and political claims regarding the relationship between the three components of development. This may give rise to different conceptions of sustainable development, which itself becomes a blanket term encompassing a wide and inconsistent array of approaches. It is for this reason that sustainable development is considered a contested and vague concept. The three-pillar model does not address the overarching point of development, so it is of little avail to look for an answer to the question in it.²⁰²

b. 1992-2012: Twenty Years of Rigorous Deliberations for a Consensus-Based Framework of Action for Sustainable Development

Let us now move a few years later to the 2002 World Summit for Sustainable Development (WSSD) in Johannesburg, South Africa, which produced the first specific and time-bound targets that emphasized the practical side of the Brundtland Report's definition of sustainable development. These targets were exemplified in the Johannesburg Plan of Implementation (JPOI), a blueprint for implementation of the Rio Declaration and Agenda 21.²⁰³ More specifically, the JPOI elaborated on the issue of poverty eradication, setting the year 2015 as the deadline to halve the proportion of people who live on less than one dollar a day,

²⁰¹ G.A. Res. 66/288, annex, The Future We Want, ¶ 75 (Sept. 11, 2012).

²⁰² See Markku Lehtonen, *The Environmental–Social Interface of Sustainable Development: Capabilities, Social Capital, Institutions*, 49 *ECOLOGICAL ECON.* 199, 201 (2004); Steve Connelly, *Mapping Sustainable Development as a Contested Concept*, 12 *LOC. ENV'T* 259, 259–60 (2007). Recourse to the normative foundation of sustainable development (i.e. universality, human dignity, equity, and justice) offers clarification for its foundational principles that are uncontested in the international human rights and development discourse. They can serve as the objective criteria to determine the degree of satisfaction of sustainable development components, as well as to provide necessary clarity. Consequently, it could be said that the balancing of the pillars is achieved through their prioritization of normative standards.

²⁰³ *Johannesburg Declaration*, *supra* note 142, ¶¶ 7(a), 8, 25, 26; *Rio Declaration*, *supra* note 194.

suffer from hunger, and do not have access to safe drinking water and basic sanitation.²⁰⁴ A number of actions were proposed to defeat the causes of ill health and their impact on development, especially for the most vulnerable groups of society, such as women, children, and the disabled.²⁰⁵ Priority was also given to matters such as suspending the adverse effects of chemicals on human health and the environment,²⁰⁶ the protection of ecosystems²⁰⁷ and biodiversity,²⁰⁸ and energy production and efficiency.²⁰⁹

For the most part, the goals restated the MDGs, making one wonder about the added value of the JPOI in development policy apart from the detailed inclusion of environmental issues. Yet, reference to environmental protection and development concerns in a document that sets priorities for action in the field of development demonstrates that these issues were considered to be more than merely interrelated. Those concerns were the subject of a global consensus that economic, social, and environmental issues constituted components and overarching objectives of, now, sustainable development and should be dealt with evenly.²¹⁰ To this end, the JPOI took a step forward to cure the observed fragmentation in the institutional architecture for development, which was one of the major drawbacks to the MDGs' success. It linked all the relevant bodies and organizations in the development sector at the international, national, and regional/sub-regional, making ECOSOC the focal point for supervision of the U.N.'s inter-agency activities in the framework of sustainable development and for the promotion of their collaboration with affiliated institutions such as international financial institutions and the World Trade Organization (WTO). At the same time, the mandates of each U.N. body (economic, social, and environmental) were defined more clearly, being tailored to address on-the-ground challenges in all three development sectors through particular mechanisms, specific operation measures, and detailed review processes.²¹¹

Attention to the praxis of sustainable development continued to be high on the international community's agenda. Ten years after the WSSD, at a new U.N.

²⁰⁴ *Johannesburg Declaration*, *supra* note 142, ¶¶ 7(a), 8, 25, 26.

²⁰⁵ *See id.* §VI.

²⁰⁶ *See id.* ¶ 23.

²⁰⁷ *See id.* ¶¶ 30(d), 31, 32(c).

²⁰⁸ *Id.* ¶ 44.

²⁰⁹ *Id.* ¶¶ 9, 15, 20, 25, 38 & 44.

²¹⁰ *Id.* ¶ 2.

²¹¹ SUSTAINABLE DEVELOPMENT PRINCIPLES IN THE DECISIONS OF INTERNATIONAL COURTS AND TRIBUNALS 107–113 (Marie-Claire Cordonier Segger & H.E. Judge C.G. Weeramantry eds., 2018).

Conference for Sustainable Development held again in Rio de Janeiro, Brazil,²¹² world leaders issued a political outcome document that contained clear and practical measures for implementing sustainable development. In “The Future We Want,”²¹³ governments and civil society organizations declared their determination to realize their commitments in the social, economic, and environmental fields undertaken in all preceding U.N. summits and conferences and bridge the gaps in promoting inclusive economic growth, social development, and environmental protection that would benefit all people.²¹⁴ The report incorporated the progressive decisions on the thematic areas of the WSSD, JPOI, and others, such as food security, cities, and clean oceans.²¹⁵ The report also agreed on the importance of a strategy to finance projects in these areas and established a high-level political forum for follow-up and review of progress.²¹⁶

Within this context, it was recognized that focused and coherent action on sustainable development could be pursued more effectively using goals as the drivers of implementation and mainstreaming sustainable development in the post-2015 U.N. agenda.²¹⁷ These goals should be action-oriented, concise, limited in number, global in nature, and universally applicable to all countries without prejudice to the development particularities and capabilities of each country. In terms of content, they should reflect Agenda 21, the JPOI, and the Rio Principles, addressing the three-dimensional nature of development and the interlinkages of its three pillars.²¹⁸

The mandate to form a new set of goals was assigned to an Open Working Group (OWG) under the auspices of the U.N. Secretary-General and in open consultation with governments, civil society organizations, the scientific community, representatives from the business sector and the U.N. system in

²¹² U.N. Conference for Sustainable Development, *Report of the Conference on Sustainable Development*, U.N. Doc. A/CONF.216/16 (June 20–22, 2012).

²¹³ The Future We Want, *supra* note 201.

²¹⁴ *Id.* ¶¶ 5, 6.

²¹⁵ *Id.* ¶¶108–18, 134–37, 158–80.

²¹⁶ *Id.* ¶¶253–68; *United Nations Conference on Sustainable Development*, U.N. SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM, <https://sustainabledevelopment.un.org/rio20> (last visited Oct. 17, 2022); *High Level Political Forum on Sustainable Development*, U.N. SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM, <https://sustainabledevelopment.un.org/index.php?menu=1556> (last visited Oct. 17, 2022).

²¹⁷ The Future We Want, *supra* note 201, ¶¶ 245, 246.

²¹⁸ *Id.* ¶¶ 246, 247.

general.²¹⁹ This was a breakthrough in multilateral negotiations given that deliberations were not restricted to governments, whose participation interest here was higher than in any previous international meeting. As a result, allocated seats to each region were shared between state representatives, a practice that was not common for U.N. proceedings. Most importantly, however, what distinguished the OWG's mandate was the design of goals instead of a resolution to be submitted to the U.N. General Assembly and its working method.²²⁰ Sessions were divided into two phases: the stocktaking phase (March 2013 through February 2014), during which delegates sought to establish a uniform conceptualization of sustainability through knowledge sharing, and the actual negotiation (March 2014 through July 2014) on the basis of the OWG's "focus area" document that drew upon the previous sessions.²²¹ This setup made it clear to participants that development matters go beyond the interests of particular groups of countries. Thereafter, negotiations on the SDGs could not be perceived as an extension of bilateral or regional political affairs. Furthermore, the power dynamics between states, U.N. technocrats, and civil society were leveled out because equal footing was given to all contributors, although states remained the key interlocutors.²²² These attributes gave effect to the principles of openness, inclusiveness, and transparency and to decision-making by consensus that guided the OWG's mandate.²²³

The OWG's proposal comprised of seventeen SDGs and 169 targets,²²⁴ which would be "further elaborated through indicators focused on measurable

²¹⁹ *Id.* ¶¶ 248, 249; U.N. Secretary-General, *A Life of Dignity for All: Accelerating Progress Towards the Millennium Development Goals and Advancing the United Nations Development Agenda Beyond 2015*, ¶ 79, U.N. Doc. A/68/202 (July 26, 2013).

²²⁰ MACHARIA KAMAU ET AL., TRANSFORMING MULTILATERAL DIPLOMACY: THE INSIDE STORY OF THE SUSTAINABLE DEVELOPMENT GOALS 71–72, 82–85, 96, 103–10 (2018); G.A. Open Working Grp. on Sustainable Dev. Goals, *Methods of Work*, ¶ 6, https://sustainabledevelopment.un.org/content/documents/1692OWG_methods_work_adopted_1403.pdf (last visited Oct. 18, 2022).

²²¹ *E.g.*, *Tenth Session of the Open Working Group on Sustainable Development Goals, Focus Area Document*, U.N. DEPT. OF ECON. & SOC. AFFS. (Mar. 19, 2014), https://sdgs.un.org/sites/default/files/documents/3402Focus%2520areas_20140319.pdf; *see* FELIX DODDS ET AL., *NEGOTIATING THE SUSTAINABLE DEVELOPMENT GOALS: A TRANSFORMATIONAL AGENDA FOR AN INSECURE WORLD* (2017) (providing detailed information about the negotiation phase of the SDGs); KAMAU ET AL., *supra* note 220 (providing similar information).

²²² DODDS ET AL., *supra* note 221, at 24–69.

²²³ *Methods of Work*, *supra* note 220, ¶ 6.

²²⁴ Open Working Grp. of the G.A., *Proposal for Sustainable Dev. Goals*, <https://sustainabledevelopment.un.org/content/documents/1579SDGs%20Proposal.pdf> (last accessed Oct. 18, 2022); *see also* Open Working Grp. of the G.A., *Rep. on Sustainable Dev. Goals*, U.N. Doc. A/68/970 (Aug. 12, 2014).

outcomes.”²²⁵ Relying on the MDGs’ archetype, the new scheme of goals appeared to be more comprehensive and responsive to the new development challenges that had been previously identified. In addition, their content was largely influenced by broader topics such as the connection between peaceful societies, good governance, human rights, the rule of law and development, the importance of which had been highlighted by several studies on the post-2015 development agenda.²²⁶ Of course, the principles of equity, equality, non-discrimination, and inclusion that had been missing from the MDGs continued to be highlighted as a key prerequisite for a people-centered development agenda²²⁷ in accordance with the U.N. Charter, the UDHR, and other human rights treaties that seemed to be the direct source of the Goals’ legitimacy.²²⁸ Hence, the Goals were organized around the rudiments of human dignity, economic prosperity, the environment, peace, security, and justice. As with the MDGs, global partnership would play a catalytic role in the realization of the Goals.

2. *The SDGs’ Transformative Dimension: Normative Consensus on Development in the Context of Progressive-Pragmatism*

The SDGs are wider in scope and more ambitious in guiding development efforts post-2015 for sustainable improvements in human well-being than the MDGs. They capture and consolidate the practical elements and substantive

²²⁵ U.N. Doc. A/68/970, *supra* note 225, §IV ¶ 18.

²²⁶ *A Life of Dignity for All*, *supra* note 219; Sustainable Dev. Sol. Networks, *An Action Agenda for Sustainable Development: Report for the U.N. Secretary-General*, at ix (June 6, 2013), <https://unstats.un.org/unsd/broaderprogress/pdf/130613-SDSN-An-Action-Agenda-for-Sustainable-Development-FINAL.pdf>; Rep. of the High Level Panel on Eminent Persons on a Post-2015 Development Agenda, ¶ 3 (May 30, 2013), <https://sustainabledevelopment.un.org/content/documents/8932013-05%20-%20HLP%20Report%20-%20A%20New%20Global%20Partnership.pdf>; Erik Solheim, *Development Co-operation Report 2013: Ending Poverty*, ORG. FOR ECON. COOP. AND DEV. [OECD] (Dec. 5, 2013), https://www.oecd-ilibrary.org/development/development-co-operation-report-2013_dcr-2013-en; U.N. System Task Team on the Post-2015 U.N. Development Agenda, *Realizing the Future We Want for All*, ¶ 93 (June 2012), https://sustainabledevelopment.un.org/content/documents/614Post_2015_UNTTreport.pdf; U.N. Global Compact, *Report to the U.N. Secretary-General on Corporate Sustainability and the United Nations Post-2015 Development Agenda*, 12 (June 17, 2013), <https://www.unglobalcompact.org/library/1981>; *Monterrey Consensus*, *supra* note 5, ¶ 11; Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, *Doha Declaration on Financing for Development*, ¶ 2, U.N. Doc. A/CONF.212/L/1/Rev.1 (Dec. 9, 2008); Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) (2015), https://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf; G.A. Res. 69/313, *supra* note 166.

²²⁷ U.N. Secretary-General, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet*, ¶ 43, U.N. Doc. A/69/70 (Dec. 4, 2014); *The Future We Want*, *supra* note 201, ¶ 8.

²²⁸ *The Future We Want*, *supra* note 201, ¶¶ 5–9.

aspects of sustainable development, including its economic, social, and environmental pillars. The text of the Agenda 2030 itself backs this observation when it mentions explicitly in the preamble that the goals are integrated, indivisible, and balance the three dimensions of sustainable development.²²⁹ The same is repeated in the second introductory paragraph of the incorporated declaration as the international community's commitment to achieving sustainable development in its three dimensions.²³⁰ Furthermore, the aim of the new agenda is elaborated in the subsequent paragraphs, where the interplay between the three pillars is better elucidated. Point 13 of Agenda 2030 is representative with the characteristic wording that “[s]ustainable development recognizes that eradicating poverty in all its forms and dimensions, combating inequality within and among countries, preserving the planet, creating sustained, inclusive and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent.”²³¹ The SDGs are concerned with global well-being and capture their multidimensional nature thanks to the participatory and transparent process that preceded their adoption.²³² The SDGs, therefore, possess a great potential to guide development efforts post-2015 for sustainable improvements in human well-being.

Nonetheless, skepticism overshadowed the SDGs' transformative potential for reasons that are more profound than the complexity of the Goals and the difficulty of communicating them to stakeholders or the public in general.²³³ The critique contends that the SDGs represent nothing less than a “development as usual” model. That is, the acclaimed change they aim towards is not grounded on a radical restructuring of the world's economic system and its wealth-extracting mechanisms that have constantly been blamed for perpetuating global poverty and inequality.²³⁴ In fact, the status quo and the power relationships between countries in crafting the world's poor-rich divide are maintained. The main argument in support of this thesis rests on the prevalence of economic growth within the SDGs' framework as the tool to eradicate poverty.²³⁵ SDG8

²²⁹ Agenda 2030, *supra* note 14, ¶ 3.

²³⁰ *Id.* ¶ 2.

²³¹ *Id.* ¶ 13.

²³² Ved P. Nanda, *The Journey from the Millennium Development Goals to the Sustainable Development Goals*, 44 *DENV. J. INT'L L. & POL'Y* 389, 406 (2016).

²³³ Kuosmanen, *supra* note 173.

²³⁴ See Ilias Bantekas, *The Linkages Between Business & Human Rights & Their Underlying Causes*, 43 *HUM. RTS. Q.* 117, 118 (2021).

²³⁵ See Kuosmanen, *supra* note 173; Parlous State of Poverty Eradication, *supra* note 173, ¶¶ 41–42; Hickel, *The Problem with Saving the World*, *supra* note 173; Hickel, *The Contradiction of the Sustainable Development Goals*; *supra* note 173.

speaks lucidly about the promotion of economic growth in terms of GDP and the invigoration of national financial institutions to expand access to financial services for all.²³⁶ On its face, the correlation between economic growth and poverty reduction results from logical inductive reasoning: if poverty exists due to a lack of financial resources, then an annual GDP increase of a specific percentage means a greater share in consumption, thus less poverty and hunger. This logic begs the question about the effectiveness of aggregate economic growth. As the most recent data by the World Bank indicates, global growth has been climaxing year after year, reaching 3.0% GDP in 2017, with growth in emerging markets and developing economies scaling up to 4.3%.²³⁷ However, there is also evidence showing that the increasing trend in global income has not been profitable for all people. The 2017 global poverty update from the World Bank demonstrates that the total number of poor people, for the reference year 2013, was 2.5 million more than the initial quote, leaving the share of the population that is classified as extremely poor to unchanged levels (10.7%).²³⁸ Interestingly, the number of extremely poor people rose to 830 million in 2015,²³⁹ and it is estimated presently that fifty percent of the global population lives in moderate poverty levels (less than two dollars and fifty cents a day).²⁴⁰ Moreover, an estimated eighty percent of the world's population lives in countries where income differentials are widening, while seventy-five percent of global wealth is concentrated in just twenty percent of the world's population.²⁴¹

Clearly, the data points to the fact that only a fraction of the global wealth generated benefits the poor. However, the value of growth is void altogether. Yet, if growth doesn't "trickle-down" to the poorest, poverty would not be reduced even if all countries grew at accelerated rates.²⁴² For poverty to reach zero levels by 2030, systemic changes to the arrangements of the wealth-generating sources are necessary, putting issues such as the current trading practice, illicit financial flows, tax collection, and sovereign debt under scrutiny for causing the exacerbation of poverty. Unfortunately, the SDGs lack precise

²³⁶ Agenda 2030, *supra* note 14, at 19–20.

²³⁷ *Global Economic Prospects*, *supra* note 175.

²³⁸ Ferreira et al., *supra* note 175, at 4.

²³⁹ U.N. Conference on Trade and Development (UNCTD), *Development and Globalization: Facts and Figures 2016*, at 3, (2016), <https://stats.unctad.org/dgff2016/DGFF2016.pdf>.

²⁴⁰ *World Poverty Statistics*, STAT. BRAIN RSCH. INST. (Mar. 24, 2017), <https://www.statisticbrain.com/world-poverty-statistics/>.

²⁴¹ *Id.*

²⁴² Press Release, *Ending Poverty Requires More than Growth*, *supra* note 176.

language when it comes to addressing such thorny questions. For instance, SDG16 and SDG17 call only in general terms for a significant reduction in illicit financial and arms transactions and an increased cooperation in building up developing countries' capacity for mobilizing domestic resources for development through tax and other revenue collection.²⁴³ There is an obvious omission of specific measures in light of these matters, such as harmonizing anti-laundering regulation internationally, subjecting governments' fiscal policy-making to public participation, legislating for criminal penalties and other sanctions against agents (government officials, banks, and corporations) for facilitating illicit financial flows.²⁴⁴ Hickel also criticizes SDG8 for opposing the environmental sustainability objectives of the SDGs: "even growth at 3% makes it impossible to reduce resource use and carbon emissions enough to stay within the 2°C warming limits."²⁴⁵ How, thus, can one make the case that growth should be "sustained," as SDG8 proclaims? Kallis asserts that instead of aiming for economic growth, the SDGs should aim at building upon advances in the field of "sustainable degrowth," which acknowledges the limits of the earth's systems to cope with continued growth, the inability of technological efficiency to meet growing demands, and the need to "down-shift" sustainably to reduce society's emissions and related use of resources.²⁴⁶

The same inferences can be drawn when looking at the inequality goal. SDG10 aspires to reduce inequality among and between countries. But, according to Alston, issues regarding wealth redistribution and an international economic system that produces structural disadvantages are masked.²⁴⁷ For example, development stakeholders' efforts are oriented towards raising the income growth of the bottom forty percent of the population without considering that attention should be diverted to the rich.²⁴⁸ Analogously, targets 1.3 and 10.4 put on the table social protection schemes as a means to reduce poverty and achieve greater equality.²⁴⁹ They are vague, but on the other hand, they purport

²⁴³ Agenda 2030, *supra* note 14, ¶59, at Goals 16.4 & 17.1 ("By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime . . . Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection . . .").

²⁴⁴ Pogge & Sengupta, *supra* note 177, 575 & n.14, n.15.

²⁴⁵ Hickel, *The Contradiction of the Sustainable Development Goals*, *supra* note 173.

²⁴⁶ Giorgos Kallis & Jason Hickel, *Is Green Growth Possible?* 25 *NEW POL. ECON.* 469 (2019); *see also* World Bank Grp. [WBG], *Poverty and Shared Prosperity 2016: Taking on Inequality*, at 2 (2016) ("Achieving the same poverty reduction during a slowdown in growth therefore requires a more equal income distribution.").

²⁴⁷ Parlous State of Poverty Eradication, *supra* note 173, ¶¶ 41–42.

²⁴⁸ *See* Agenda 2030, *supra* note 14, at 21 (SDG10.1).

²⁴⁹ *Id.* at 15, 21.

to rectify injustices through ameliorative technical policy interventions that address the needy individual or household. Of course, fundamental social security benefits, in the form of social protection floors, are provided by national social protection systems. Those systems contribute to the betterment of people's well-being and satisfy their minimum needs for subsistence. On this footing, policies do not radically address socio-economic injustice. The mitigating solutions they offer sustain the neoliberal model of growth instead of provoking radical alternatives to the commodification of social goods. Furthermore, they confine the efforts to reduce inequality to the domestic realm while marginalizing the fact that states are subordinate to the power structures of the global financial, economic, and institutional order.²⁵⁰ Clearly, reading of SDGs 1.3 and 10.4 as encapsulating the human right to social security, cross-fertilized with the commitment to equality of opportunity in its national and international exhortations (as a claim and duty to international cooperation) under the Declaration on the Right to Development (DRtD), which in principle advocates for a transformative reform of international economic governance, would not only lead to better redistribution but potentially allow for pre-distributive policies, changing the terms that generate and sustain suffering. The SDGs don't seem to take this bold step.²⁵¹

Last but not least, the targets on trade are pursued under the regulatory framework of the WTO despite the declaration to endorse a universal, open, and non-discriminatory multilateral trading system.²⁵² This means that orthodox positions on trade liberalization, including free trade agreements between individual governments, removal of tariffs for imported goods, deregulation of the economy, and concentration of trading power in prominent multinational corporations, afford developing countries no latitude in regulating their national economies according to their development needs. Therefore, developing countries are caught in a cycle of unfair competition that reduces state revenue and dismantles the societal net and gives rise to unemployment and lower incomes, hence deepening the impoverishment of their people.²⁵³ The same is to

²⁵⁰ How much policy space is there for the least powerful sovereign states when everything should be done "consistent with relevant international rules and commitments"? Agenda 2030, *supra* note 14, ¶¶ 21, 63; see JOHN LINARELLI ET AL., *THE MISERY OF INTERNATIONAL LAW* 260 (2018).

²⁵¹ Parlous State of Poverty Eradication, *supra* note 173, ¶¶ 72–74; LINARELLI ET AL., *supra* note 250, at 226–70.

²⁵² Agenda 2030, *supra* note 14, ¶59, at Goal 17.10.

²⁵³ See generally SHARE THE WORLD'S RES., FINANCING THE GLOBAL SHARING ECONOMY 158–63 (Oct. 2012), https://www.sharing.org/sites/default/files/images/PDFs/Report_FinancingGlobalSharingEconomy.pdf (an excellent overview of trade liberalization and its impact on developing countries).

be said about the pressure inflicted on poor countries because of their unsustainable debt stock. Target 17.4 captures the problem with providing for debt financing, debt relief, and restructuring. Although all three options constitute ways to manage existing debt and make its repayment viable, they do not lead to debt cancellation, which remains developing countries' request, especially for illegitimate debts.²⁵⁴ Surprisingly, developing countries pay over \$1.4 billion dollars a day in debt service and return over 400% in repayments compared to the sums they receive from ODA.²⁵⁵ Had this money been put into strengthening the development capacity of states, it would have been a step forward in realizing their people's needs.

The SDGs' shortcomings are not simply technicalities on the policy level. They have noticeable ramifications for Agenda 2030's theoretical underpinning that brings into the spotlight the second critique: are development goals founded on a specific theory of development, and if so, which one? The question is debatable, especially since it is difficult to ignore that development issues are complex and, most of the time, politically sensitive. It falls beyond the scope of this piece to provide a deep analysis on this, but it suffices to say that irrespective of the choice on a theory of development, development goals portray an ideology or normative assessment of aspired political, social, and economic changes in a society. The SDGs are no exception to that. They stemmed from the concept of sustainable development, which seeks to provide a more holistic approach to development, highlighting the gaps in pre-existing development thinking demonstrated in capturing the whole spectrum of development matters. The SDGs should have been a projection of the normative standards the concept entails, namely "human development" and the virtues of justice and equity that lie at the core of the concept and should be applied in the economic, social, and environmental context—exactly as the Agenda 2030 proclaimed. Along these lines, the SDGs should drive a dynamic process of change that permits the full realization of human potential, offering enhanced freedom to individuals to choose and lead the life they esteem and fostering for everyone within present and future generations the accumulation of an "inclusive wealth"—physical

²⁵⁴ SHARE THE WORLD'S RES., BEYOND THE SUSTAINABLE DEVELOPMENT GOALS: UNCOVERING THE TRUTH ABOUT GLOBAL POVERTY AND DEMANDING THE UNIVERSAL REALISATION OF ARTICLE 25 (Sept. 29, 2015), https://www.sharing.org/sites/default/files/images/PDFs/Sustainable%20Development%20Goals_JB_5.1%28Single-Page%29.pdf.

²⁵⁵ *Id.* at 146.

capital (infrastructure), human capital (skills, knowledge), and natural capital (environmental supplies).²⁵⁶

When conditions like the above-indicated exist, it is hard to say unquestionably that the SDGs absolutely conform to the normative standards of sustainable development; hence, they project their “full moral force and appeal,” especially with regard to equity and the realization of human rights.²⁵⁷ It may be that Agenda 2030 embraces the values of human dignity, universality, equity, and justice by reference to the U.N. Charter, the UDHR, the Millennium Declaration, the DRtD, human rights treaties, and the various U.N. conferences’ outcome documents which constitute the main body of instruments that have already mapped out normative claims in the context of development. Yet to what extent states conform to them, as common higher-order principles that determine their actions in their relations to one another and as members of the international community in the framework of the SDGs’ implementation, is dubious. If that were the case, these values would have become “the standards that define how rules and policies are to be made, interpreted and applied,” thus, international policy and rulemaking would unfold around them.²⁵⁸ Rules and policies underlined by higher-order principles are coherent and enjoy enhanced legitimacy since international actors view them as stipulations with normative

²⁵⁶ Viktoria Spaiser et al., *The Sustainable Development Oxymoron: Quantifying and Modelling the Incompatibility of Sustainable Development Goals*, 24 INT’L J. SUSTAINABLE DEV. & WORLD ECOLOGY 457, 458 (2016) (citing Partha Dasgupta, *Measuring Sustainable Development: Theory and Application*, 24 ASIAN DEV. REV. 1 (2007)). Accordingly, the Inclusive Wealth Index (IWI) was developed to measure sustainability. See UNU, *UNEP Launch Inclusive Wealth Index for Measuring Sustainability*, IISD: SDG KNOWLEDGE HUB (June 21, 2012), <http://sdg.iisd.org/news/unu-unep-launch-inclusive-wealth-index-for-measuring-sustainability/>; Press Release, Environment Programme, Growth Masks Fact that Natural Resources Facing Rapid Depletion in 19 out of 20 Countries Assessed (June 17, 2012), <https://us2.campaign-archive.com/?u=33cf89da7ade3a85156c5eda4&id=2326160347&e=69fb50bd2f>.

²⁵⁷ Pogge & Sengupta, *supra* note 177, at 572, 576–77; see Kate Donald, *Winning a Place For Human Rights in the New Sustainable Development Agenda*, OPEN DEMOCRACY (Sept. 24, 2015), <https://www.opendemocracy.net/en/openglobalrights-openpage/winning-place-for-human-rights-in-new-sustainable-development-agenda/> (discussing human rights in the SDGs); see also Steve Bernstein, *The United Nations and the Governance of Sustainable Development Goals*, in GOVERNING THROUGH GOALS: SUSTAINABLE DEVELOPMENT GOALS AS GOVERNANCE INNOVATION 213, 216 (Norichika Kanie & Frank Biermann eds., 2017) (discussing the Goals normative contestation); Arild Underdal & Rakhyun E. Kim, *The Sustainable Development Goals and Multilateral Agreements*, in GOVERNING THROUGH GOALS: SUSTAINABLE DEVELOPMENT GOALS AS GOVERNANCE INNOVATION 241, 253 (Norichika Kanie & Frank Biermann eds., 2017) (identifying a “normative anarchy” in the SDGs, mentioning that only a few goals cut across all domains of development policy). *But see Human Rights and Sustainable Development*, HARV. UNIV. PRESS BLOG (Oct. 2, 2015), https://harvardpress.typepad.com/hup_publicity/2015/10/human-rights-and-sustainable-development-goals.html (stating that the SDGs lack a robust human rights framework).

²⁵⁸ Zampetti, *supra* note 17, at 289 (quoting THOMAS FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 16 (1990)).

underpinning that ought to be observed or followed due to their moral validation and wide acceptance.

However, behind the proclamations of the SDGs lie political compromises that may undermine the transformative character the agenda is claimed to have.²⁵⁹ The highly participatory deliberations and final negotiation of the goals to which they owe their broad scope permitted, at the same time, the entry of diverse and conflicting interests of various groups—U.N. agencies, NGOs, civil society, businesses, and crucially international state politics. All of these groups influenced the design of the Agenda, “which created the conditions for ‘progressive’ deadlock,” as Langford puts it.²⁶⁰ The trade-offs in the aforementioned goals of inequality and growth, for instance, are a good illustration of the admittance of certain stakeholders’ proposals and showcase the conflict between developed and developing countries. Principles of universality, equity, and justice, which constitute the normative origins of a distributive development model, co-exist with the higher-order principles of the international economic order. Still, although it makes compromises, Agenda 2030 moves away from the MDGs’ “humanitarian cosmopolitanism,”²⁶¹ and, while not made explicit or properly addressed, it is apparent that the success of sustainable development rests on institutional reforms domestically and at the international level. As such, the Agenda demonstrates that holistic development outcomes cannot and ought not to marginalize the international norms, guidelines, and regulations that comprise the economic, social, and environmental policy fields from which development stakeholders derive certain actions. A new approach to the processes that formulate the sectorial rules and principles of the economy, society, and the environment is needed so that those areas can be strengthened, harmonized, and made more coherent. This will assist in governing the intersections between the economic, social, and environmental regimes and channel them toward sustainable outcomes.²⁶² Indeed, the SDGs offer the framework for cross-sectoral development planning that enjoys the support of all stakeholders involved in their making, despite their ideological differences. Insofar as institutional actors can relate to the SDGs’ normative prescriptions and their pursued objectives, the SDGs possess a particular

²⁵⁹ Malcolm Langford, *Lost in Transformation? The Politics of the Sustainable Development Goals*, 30 *ETHICS & INT’L AFFS.* 167, 168 (2016).

²⁶⁰ *Id.* at 171.

²⁶¹ *Id.* at 172.

²⁶² *SUSTAINABLE DEVELOPMENT LAW 5* (Marie-Claire Cordonier Segger & Ashfaq Khalfan eds., Oxford Univ. Press rev. ed. 2005).

discursive and institutional strength. Thanks to that, the goals can be validated as governance and advocacy tools and gain legitimacy in setting global priorities. In turn, they enjoy a considerable “compliance pull.”²⁶³ Notwithstanding the possibility of developing conflicting norms, the process of the SDGs’ making, considered an exercise of global participatory democracy,²⁶⁴ has led to a normative consensus on development that content-wise builds upon the previous intergovernmental summits from which the concept of sustainable development emerged. Truly, the understanding of sustainable development as translated in the SDGs may not be as transformative as Agenda 2030 declares. There is an understanding of the procedural and substantive elements of development in the light of “progressive-pragmatism,” such as the achievement of sustainable human well-being without straying too far from the status quo. But it is the best framework for development currently in place that purports to be comprehensive and legitimate. Subsequently, the degree of compliance with Agenda 2030 on behalf of international actors is not determined solely by moral obligation (as one could argue about the MDGs) but also by its prescribed normative justification, giving rise to shared understandings of preferred courses of action among actors and creating the expectation of commitment to them.²⁶⁵ To conclude, Agenda 2030 has the potential to be an instrument for advocacy, evaluation, and social mobilization that is not disengaged from normativity (and could trigger consensus on the concept of sustainable development as well).

C. Final Remarks: International Political Normativity as a Product of Pragmatism and Instrumentalism

International political normativity is the result of a struggle that can best be appreciated by an examination of some of the forces underpinning it. Every bilateral or multilateral inter-governmental process (including aspirations and standard-setting) requires some degree of cooperation and commitment. This is true of peacekeeping operations, enforcement of human rights, and trade treaties, as well as ad hoc actions such as addressing short-term drought and famine.²⁶⁶ While all participants agree on both cooperation and commitment, they generally disagree, for reasons already explained, on how these should be

²⁶³ Brus, *supra* note 38, at 14.

²⁶⁴ Langford, *supra* note 259.

²⁶⁵ Zampetti, *supra* note 17, at 289–94.

²⁶⁶ See Jutta Bruneë & Stephen J. Toope, *International Law and Constructivism: Elements of an International Theory of Law*, 39 COLUM. J. TRANSNAT’L L. 19 (2000).

framed.²⁶⁷ The incorporation of co-operation and commitment in formal agreements (treaties or contracts) has given rise to two opposing perspectives, namely legal formalism and legal realism. Formalism disregards the social, political, economic, or other institutions underpinning agreements and focuses only on the objective application of the rules in question.²⁶⁸ Its opposing counterpart, legal realism, supports the view that law is meaningful only if it is viewed in relation to the forces and institutions from which it is derived, namely social, political, financial, and others. Legal realism is enhanced by liberal movements, such as *critical legal theory*, which maintains that law is driven by the desires of elites to maintain the status quo, despite the negative impact on marginalized groups.

It is clear that legal formalists, typically composed of states and institutions lobbying and drafting agreements, reject any direct or indirect dilution of their agreement. In equal measure, legal realists refuse to endorse the ratification of those agreements whose structural foundations are ignored. The only way to resolve this impasse has been through the media of *instrumentalism* and *pragmatism*, which follow the tradition of *anti-formalism*. Instrumentalism, as a philosophical theory, moves away from ascribing any fixed value or normative character to an activity and instead regards it as a tool for achieving a practical purpose. In the sphere of international law, instrumentalists are not concerned with the legal characteristics of a multilateral effort to deliver humanitarian relief but with how to best collaborate to bring about the desired outcome. If this cannot be achieved with a formal agreement, then any framework, even if devoid of all normativity, suffices.²⁶⁹ While instrumentalism might involve some degree of political moralism (or political ethics), this is not the primary objective of its key stakeholders.²⁷⁰ This is not to say that instrumentalism is not predicated on

²⁶⁷ Guyora Binder, *Beyond Criticism*, 55 U. CHI. L. REV. 888, 895–96 (1988).

²⁶⁸ See ABRAM CHAYES & ANTONIA H. CHAYES, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 1 (1998) (note that the authors did not necessarily endorse the idea of international legal formalism). See generally Hans J. Morgenthau, *Positivism, Functionalism, and International Law*, 34 AM. J. INT'L L. 261 (1940); Anne Orford, *The Gift of Formalism*, 15 EUR. J. INT'L L. 179 (2004).

²⁶⁹ Fish has been instrumental in shaping instrumentalist notions, although he never expounded on these in any way. See generally STANLEY FISH, *DOING WHAT COMES NATURALLY: CHANGE, RHETORIC AND THE PRACTICE OF THEORY IN LITERARY AND LEGAL STUDIES* (1989).

²⁷⁰ See generally Martti Koskienniemi, *Legal Universalism: Between Morality and Power in a World of States*, in *LAW, JUSTICE AND POWER: BETWEEN REASON AND WILL* (Sinkwan Cheng ed., 2004).

national self-interests.²⁷¹ Instrumentalists are not concerned with passing moral judgment on the political actions of others, chiefly because many aspects of international regulation, including the SDGs, do not involve a battleground of ideas,²⁷² as is the case with the invasion of Ukraine by Russia. In the case of the SDGs, all stakeholders are content with the underlying instrumentalism, each driven by personal or common *pragmatism*, in the sense that each participant's values and beliefs are not abstract beliefs but constitute drivers of their actions toward the specific outcomes sought.²⁷³

In the opinion of the authors, the pragmatism underlying the core values of industrialized states participating in the SDGs process is predicated on a relatively healthy tradition of human rights and development. It is also in their interest to decrease dependency on aid and foster new and dynamic consumer markets. This value-based pragmatism, in turn, necessitates a species of multilateral cooperation that is bereft of legal formalism altogether. Here, the pragmatism of participating states meets and is shared by non-state entities, such as national charities and other NGOs. Value-driven outcomes where the participants share the same beliefs (as to outcome at least) do not require formal agreements, and the SDGs exemplify this; however, this is a rarity in international relations. The degree of cooperation demonstrated in the SDGs is quite high if one considers the enormity of the projects involved and their rate of completion. This is in contrast to the outcomes and targets reported with respect to other multilateral treaties.²⁷⁴ It is within this context of competing

²⁷¹ See Robert O. Keohane, *International Relations and International Relations Theory: A New Generation of Interdisciplinary Scholarship*, 92 AM J. INT'L L. 367, 381 (1997) (describing rationalist regime theory, which views self-interests as central to law-making, irrespective of outcome).

²⁷² Of course, there are many political battlegrounds in international affairs where the relevant actors strive to pursue their national interests through legal discourse and law-making. See Martha Finnemore, NATIONAL INTERESTS IN INTERNATIONAL SOCIETY 129 (1996); TERRY NARDIN, LAW, MORALITY AND THE RELATIONS BETWEEN STATES (1983) (arguing that even if states maintain and foster moralist ideas, it is not always reflected in the exercise of their foreign policies); Eric Posner, *Do States have a Moral Obligation to Obey International Law?*, 55 STAN. L. REV. 1901, 1902 (2003) (arguing that no moral obligation exists for states, and, in any event, states demonstrate a reluctance to prescribe moral agency to their international actions). *But see* John R. Bolton, *Is There Really "Law" in International Affairs?*, 10 TRANSNAT'L L. & CONTEMP. PROBS. 1, 48 (2000) ("International law is not law; it is a series of political and moral arrangements that stand or fall on their own merits, and anything else is simple theology and superstition masquerading as law.").

²⁷³ See Martti Koskiemi, *Solidarity Measures: State Responsibility as a New International Order?*, 2001 BRIT. Y.B. INT'L L. 337, 339 (building on the idea of international solidarity as a necessity of international relations, even if the participants cannot agree on a regulatory framework).

²⁷⁴ A recent study from York University's Global Strategy Lab suggests international treaties have been mostly ineffective at achieving their intended effects and, in some cases, can do more harm than good. Steven J. Hoffman et al., *International Treaties Have Mostly Failed to Produce Their Intended Effects*, PNAS, Aug. 1, 2022, <https://www.pnas.org/doi/10.1073/pnas.2122854119>. With the exception of trade and financial treaties,

theories and ideas that the notion of international political normativity dominates the conception and operation of the SDGs and its predecessors.²⁷⁵

CONCLUSION

The prior sections demonstrated that the notion of development is determined by the historical and social context of a particular period of time. How development's theoretical underpinnings are shaped and translated into practical outcomes rests in policy choices dictated by the need to best remedy real life socioeconomic and environmental problems and the need to advance human well-being.²⁷⁶ Predominantly, this process takes place at a high political level due to the complexity of the issues and their sensitivity to the vested interests of stakeholders, such as governments, international financial institutions, or non-governmental organizations. As these international actors exercise their global policy-making authority, they affect the mechanisms, processes, and institutions through which common development affairs are managed, conflicting interests are accommodated, and cooperative action is taken in order to best administer the economic, financial, human, and natural resources for sustainable development. The effective response to development challenges is thus a matter of economic, social, and environmental governance.²⁷⁷

the researchers found international treaties “mostly failed to produce their intended effects.” *Id.* at 1. Not only did many treaties have no measurable impact, but some treaties “may actually have led to unintended harmful effects.” *Id.* at 3. The study found the U.N. Convention of the Rights of the Child was the treaty that produced the “most harmful effects.” *Id.* Ratification of that treaty was associated with poorer human rights records, no improvements with health outcomes, and even an increase in child labor, according to the study. *Id.* The study suggested that “these counter-intuitive impacts could stem from repressive governments seeking diplomatic rewards for signing human rights treaties while facing few consequences for failures to comply with treaty provisions,” Poirier said in the release. *Landmark Study finds Most International Treaties Ineffective*, YORK U: YFILE (Aug. 3, 2022), <https://yfile.news.yorku.ca/2022/08/03/landmark-study-finds-most-international-treaties-ineffective/>.

²⁷⁵ Koskeniemi has long argued that states prefer, on certain occasions, to undertake multilateral action in the absence of a concrete regulatory framework, without at the same time perceiving such absence as an impediment to the goal pursued. See Martti Koskeniemi, *Miserable Comforters: International Relations as a New Natural Law*, 15 EUR. J. INT'L L. 395, 406–07 (2009).

²⁷⁶ Ilias Bantekas, *Wealth and Growth-based Policies have Augmented Global Poverty and Eroded Human Rights: A Return to Human-Centred Thinking*, 1 INT'L HUM. RTS. L. REV. 30, 30–32 (2012); Ilias Bantekas, *The Human Rights and Development Dimension of Foreign Investment Laws: From Investment Laws with Human Rights to Development-Oriented Investment Laws*, 31 FL. J. INT'L L. 339, 340 (2021).

²⁷⁷ See THOMAS G. WEISS & RAMESH THAKUR, GLOBAL GOVERNANCE AND THE UN: AN UNFINISHED JOURNEY 155–256 (2010); INTERNATIONAL DEVELOPMENT GOVERNANCE 3–50 (Ahmed Shafiqul Huque & Habib Zafarullah eds., 2017).

In this respect, the international community has employed goal setting as an efficacious tool for sustainable development governance. Indeed, global goals and their targets are deemed a unique intellectual achievement of the U.N.²⁷⁸ because they specify policy priorities, help steer action, mobilize resources, and offer a structure for benchmarking stakeholders' performance towards the achievement of common development aims.²⁷⁹ As a result, the content of U.N. declarations and resolutions, in which development agendas are framed as normative prescriptions, is clarified. Moreover, it becomes possible to hold stakeholders accountable for their conduct since goals are "prescriptive norms that define what 'ought to be done' and are intended to lead to behavior change."²⁸⁰ Perceived in this sense, goal setting simulates rulemaking, which also purports to prompt individual or collective behavior of key actors towards desired outcomes and political normativity. Yet, there is an intrinsic difference between goal setting and rulemaking as a means of governance. Rules govern actors' conduct by virtue of binding laws or regulations, and their enforcement is induced through compliance mechanisms, whereas goals articulate aspirations for a specific timeframe, and their compliance pull derives from the enthusiasm, support, and stimulus for the delineated outcomes generated from the process of their making. Even the High-Level Political Forum that is tasked with monitoring progress on the SDGs lacks legally binding decision-making powers and enforcement capability. The SDGs build on the political rhetoric for an inclusive international society by which the international community sought to inspire and rally its members to cooperate for a sustainable world. In the very words of the Declaration in Agenda 2030: "The Sustainable Development Goals and targets are integrated and indivisible, global in nature and universally applicable Targets are defined as aspirational and global, with each government setting its own national targets guided by the global level of ambition but taking into account national circumstances."²⁸¹ Because of this tone of inspiration and ambition, it has been argued that while the SDGs and their targets cannot be converted into legally binding obligations, they display a move away from mere exhortation towards a complex web of inter-twined actions and

²⁷⁸ See generally RICHARD JOLLY ET AL., UN IDEAS THAT CHANGED THE WORLD (2009).

²⁷⁹ Oran R. Young, *Conceptualization: Goal Setting as a Strategy for Earth System Governance*, in GOVERNING THROUGH GOALS: SUSTAINABLE DEVELOPMENT GOALS AS GOVERNANCE INNOVATION 30, 31–34 (Norichika Kanie & Frank Biermann eds., 2017).

²⁸⁰ Sakiko Fukuda-Parr, *Global Goals as a Policy Tool: Intended and Unintended Consequences* 15 J. HUM. DEV. & CAPABILITIES 118, 120 (2014).

²⁸¹ Agenda 2030, *supra* note 14, ¶ 55.

synergies shaped by a deep international political commitment.²⁸² By implication, Agenda 2030 is a political declaration of intent, and the Goals are politically binding by reference to their moralistic nature. Against this background, the status of the SDGs in international law has been controversial, and their legal nature has not been susceptible to neat distinctions and delineations.

The SDGs declaration is a manifestation of and within international law. Agenda 2030 is guided by the purposes and principles of the U.N. Charter, is grounded in the UDHR, human rights treaties, the Millennium Declaration, and is informed by the DRtD. In addition, the landmark soft-law documents that have laid the foundation for sustainable development and compose the body of international environmental law are key sources of the Agenda.²⁸³ Beyond these instruments, however, the Agenda is meant to be implemented in a manner that is consistent with the rights and obligations of states under general international law.²⁸⁴ Within this framework, the Goals can be seen to represent, to a great extent, existing international commitments, and they can be assigned to corresponding legal frameworks.²⁸⁵ Truly, for some Goals it is relatively straightforward to identify the international agreements in which they are embedded. To name a few, the environmental goals (climate change and biodiversity) or the goals on education, gender equality, decent work, water, and sanitation reflect the substance and underlying norms of environmental and human rights law respectively. It follows that the Goals can be read as international norms, further defining the rights and obligations that States assume in international agreements and even extending those rights and obligations to other actors.²⁸⁶ In this capacity, they could also serve as a “‘coordinating and synthesizing framework’ for addressing the fragmentation of international law.”²⁸⁷ Undoubtedly, the SDGs have neither been inserted into a normative vacuum nor have they emerged without law existing in the background. A nexus between the SDGs and international law exists. It is

²⁸² See Duncan French, *The Global Goals: Formalism Forgone: Contested Legality and Re-Imaginations of International Law*, 2016 ETHIOPIAN Y.B. INT'L L. 151.

²⁸³ See *Stockholm Declaration on the Human Environment*, *supra* note 182; *Rio Declaration*, *supra* note 194; *Johannesburg Declaration*, *supra* note 142; *Report of the Conference on Sustainable Development*, *supra* note 211; *The Future We Want*, *supra* note 201.

²⁸⁴ Agenda 2030, *supra* note 14, ¶ 18.

²⁸⁵ Rakhyun E. Kim, *The Nexus between International Law and the Sustainable Development Goals*, 25 REV. EUR. CMTY. & INT'L ENV'T L. 15, 16–17 (2016).

²⁸⁶ Brus, *supra* note 38, at 11.

²⁸⁷ Kim, *supra* note 285, at 16–17.

exactly at this interchange that international political normativity emerges and distinguishes the legal nature of the SDGs from legally binding and soft law commitments.

The interplay between embedded international law and the SDGs is central to the normative status of Agenda 2030. U.N. General Assembly resolutions adopt recommendations, not decisions, that create legal effects in international law per se. Agenda 2030, while seemingly of a soft nature, possesses all the attributes of political normativity by reference to how carefully it was negotiated, debated, drafted, and universally endorsed as an effective formula towards an internationally agreed regulatory framework and policy strategy on sustainable development. In this regard, the statements made therein intend to establish certain standards for state practice and decision-making, creating, in turn, the legitimate expectation that actors will commit to and observe the pertinent goals in good faith and streamline their conduct in accordance with sustainable development's economic, social, and environmental objectives.²⁸⁸ Having said that, Agenda 2030, as well as the Stockholm, Rio, and Johannesburg Declarations, unavoidably influence the interpretation and application of existing rules of international law in their respective fields by the articulation of specific principles relating to sustainable development.²⁸⁹

The SDGs do not create binding obligations, yet their observance is not entirely optional either, given their universal acceptance and legitimacy. Consequently, the Goals may contribute to the development of international law when associated with existing norms.²⁹⁰ Scholars have already defended this proposition, for instance, in the context of the use and conservation of water crossing international boundaries and in regard to managing water resources in a way that fulfills the human right to safe drinking water and sanitation.²⁹¹ International instruments relevant to those issues may be interpreted in light of

²⁸⁸ Fabian Augusto Cárdenas Castañeda, *A Call for Rethinking the Sources of International Law: Soft Law and the Other Side of the Coin*, 2013 ANUARIO MEXICANO DE DERECHO INTERNACIONAL [MEX. Y.B. INT'L L.] 335, 369 (2013).

²⁸⁹ Zampetti, *supra* note 17, at 287–88 (noting the transformation of some of the Millennium Declaration commitments into customary international law).

²⁹⁰ Werner Scholtz & Michelle Barnard, *The Environment and the Sustainable Development Goals: 'We Are on a Road to Nowhere'*, in SUSTAINABLE DEVELOPMENT GOALS: LAW, THEORY AND IMPLEMENTATION 222, 225, 227–28 (Duncan French & Louis Kotzé eds., 2018).

²⁹¹ Owen McIntyre, *International Water Law and SDG6: Mutually Reinforcing Paradigms*, in SUSTAINABLE DEVELOPMENT GOALS: LAW, THEORY AND IMPLEMENTATION 173, 174–75 (Duncan French & Louis Kotzé eds., 2018).

SDG6.²⁹² Hence, the political commitments undertaken with respect to the Goals reinforce the existing legal dimension of obligations, such as socioeconomic and participatory human rights in the case of water, as well as new perspectives on water management stemming from the environmental dimension of sustainable development.²⁹³ Similarly, the targets of goals comprising the environmental cluster of the SDGs (e.g., climate change, oceans conservation, air pollution) can be linked to specific international obligations. Thereafter, SDGs 13–15 may not only reinforce current international law but also contribute to the integration of the different international agreements within the cluster in those instances where their targets overlap.²⁹⁴

It follows that the SDGs do possess *sui generis* normative consequences for the progressive development of international law by clarifying the meaning of already established legal frameworks or by shaping the content and paving the way for the formulation of new norms. The principle of sustainable development is crucial in this manner, being the signpost for this assimilation. Hence, all goals will obtain a normative underpinning, and new norms for the development of the economic, social, and environmental legal regimes will be created. Ultimately, the fact that the Goals fall outside the ambit of classical lawmaking in international law (its formal sources included) and are not formulated with content and form that is unequivocally legal does not decrease their legal value. They are legitimate because they mirror the shared values and interests of the members of the international community, who have the authority to make them and accept them as appropriate. Hence, the intent to regulate, even in the absence of well-embedded law, is present. Recognizing the Goals' impact on the progressive development of "hard" law on sustainable development, there seems to be no reason to deny the Goals' transformative potential in both policy and law.²⁹⁵

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ Scholtz & Barnard, *supra* note 290, at 241; see also Nadia Sánchez Castillo-Winckels, *How the Sustainable Development Goals Promote a New Conception of Ocean Commons Governance*, in *SUSTAINABLE DEVELOPMENT GOALS: LAW, THEORY AND IMPLEMENTATION* 117, 122 (Duncan French & Louis Kotzé eds., 2018).

²⁹⁵ Brus, *supra* note 38, at 11.