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Entrenching Sustainable Human Development in the Design of the Global Agenda after 2015

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ENTRENCHING SUSTAINABLE HUMAN DEVELOPMENT IN THE DESIGN OF THE GLOBAL AGENDA AFTER 2015

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I. INTRODUCTION

Since the dawn of the 21st century, the Millennium Development Goals ("MDGs")[1] have largely dominated the development discourse. The new concept of "sustainable development goals" ("SDGs") was launched at the 2012 Rio conference on Sustainable Development.[2] The General Assembly of the United Nations was called on to develop them. Due to the proximity in time with the conclusion of the MDGs framework in 2015, the project to define such goals has been subsumed in the design of a new, broad U.N. development agenda, which is to be adopted by heads of state and government at a U.N. Summit (the "Summit") in September 2015.[3]

This article aims to elucidate the importance of the conceptual framework for such development agenda and the related goals and sees an opportunity for the Summit to entrench some crucial elements of sustainable human development and the allied capability approach at the international level. In particular, the emphasis that the capability approach places on ends, rather than means, on well-being rather than simply income and wealth, and the close association of human development with human rights makes this approach particularly relevant for the ongoing discussion at the United Nations.

This article starts with Sections II and III reviewing, on the basis of the MDGs' experience, plausible understandings of what international goals are, and what they can aim to achieve, as policy and cooperation instruments. Or, in other words, what are their perceived nature and purpose(s). Sections IV and V look at the MDGs' ideational foundation as one possible explanation of why international commitments, such as the MDGs, can achieve considerable impact and success in delivering on their functions.

On the basis of the existing experience and of the ongoing debates at the United Nations, the article explores the normative questions that need to be addressed in the design of the new global agenda. These questions essentially relate to the

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 1. The MDGs are contained in U.N. Secretary-General, *Road Map Towards the Implementation of the United Nations Millennium Declaration: Rep of the Secretary-General*, ¶ 80, U.N. Doc. A/56/326 (Sept. 6, 2001).

 2. To see the outcome document of that conference, *see* G.A. Res. 66/288, U.N. Doc. A/RES/66/288 (July 27, 2012) [hereinafter The Future We Want].

 3. The Summit has been called in G.A. Res 68/6, ¶ 26, U.N. Doc. A/RES/68/6 (Oct. 9, 2013).

interpretation of the normative core of sustainable development as set out and understood through state practice at multilateral level, how this core is grounded in a shared notion of human dignity, and whether such understanding promises to provide a firm basis for action (Section VI). A consensus on the normative core would indeed provide a solid and ethically grounded foundation for a universal agenda, thus promoting sustainable human development across people, countries, and generations. The contention is that understanding the meaning and purpose of international goals-setting, and the source of their compliance pull, can help in the process of designing and then successfully implementing the new agenda, and thus contribute to moving the world towards sustainable human development (Section VII).

II. A BIT OF HISTORY OF INTERNATIONAL DEVELOPMENT GOALS

After some considerable debate, the concept of SDGs, first proposed by Colombia in 2011 during the negotiations leading up to the 2012 Rio conference, was retained in the conference outcome document (in the part setting out the "Framework for Action and Follow-up").[4] The agreement on the notion came late, which explains its positioning in the outcome document after the substance of thematic and cross-sectoral issues was already addressed.[5] The document does not define what the SDGs are, or what exactly they are meant to achieve, it only sets out some of the characteristics they should have.[6] The existing experience with goals-setting at the United Nations, and especially the experience of the MDGs, of which the SDGs are considered the immediate successors, can provide useful lessons.

The establishment of development-related and sectoral goals has a long tradition at the United Nations.[7] The classic, and arguably most successful, example relates to the goal of eliminating smallpox, which was set by the World Health Assembly in 1966 and achieved by 1977.[8] Many other objectives were set over time, and especially in the U.N. conferences of the 1990s, such as those dealing with children, education, environment, women, population, urbanization, and social development.[9] In the debates of the second half of the decade, a sub-set of the objectives established in such conferences, summarized and partly recast, started to be referred to as "development goals."[10] Such reframing and distillation took place

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4. The Future We Want, *supra* note 2, ¶ 104.

5. Late in the negotiations there were attempts at defining such goals, a task that proved impossible to realize in the limited time that remained before the conclusion of the conference. For an informed account of the conference, *see* FELIX DODDS, JORGE LAGUNA-CELIS & LIZ THOMPSON, FROM RIO+20 TO A NEW DEVELOPMENT AGENDA: BUILDING A BRIDGE TO A SUSTAINABLE FUTURE (2014).

6. The Future We Want, *supra* note 2, ¶¶ 246-47.

7. Richard Jolly, *Global Development Goals: The United Nations Experience*, 5 J. OF HUM. DEV. 69, 69 (2004).

8. *Id.* at 70.

9. *Id.* at 69-70.

10. A 1996 Organization for Economic Co-operation and Development ("OECD") report stated: "[m]any goals have been formulated through the series of recent United Nations conferences addressing subjects important to development . . . . These conferences have identified a number of targets to measure

within the relevant international organizations, especially in the United Nations, the World Bank, and the Organization for Economic Co-operation and Development ("OECD"), with the contribution of the related epistemic communities and civil society.[11]   The "development goals" finally found their way, not without considerable debate and controversy, in the 2000 Millennium Declaration,[12] which incorporated the majority of them (albeit with some noticeable differences).[13]

The Millennium Declaration is a rather unusual document, which departs from the tradition of long, and often convoluted, U.N. documents that by their nature include formulaic passages, compromises, and obfuscation of underlying disagreements. The Millennium Declaration, on the contrary, is relatively terse and clear, but also wide-ranging and visionary. In its first part devoted to "Values and Principles" it displays a "constitutional" tone.[14] The following sections, while short, provide a rather clear sense of direction and set specific, and in some cases time bound, objectives in the areas of peace and security, human rights, environment, and development, among others.[15]

These objectives were further elaborated upon in 2001 in a U.N. Secretary General report requested by the General Assembly as a follow-up to the Summit.[16] The Secretary General's report was meant to set out in detail how the Millennium Declaration commitments could be implemented and fulfilled.[17] Goals were set in all areas, but in the field of "development and poverty eradication" specifically, these were named the "millennium development goals" and were said to "highlight some of the priority areas that must be addressed to eliminate extreme poverty."[18]

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the progress of development in particular fields. They reflect broad agreement in the international community, arrived at with the active participation of the developing countries. The selection of an integrated set of goals, based on these agreed targets, could provide valuable indicators of progress. We are suggesting several such indicators in the fields of economic well-being, social development and environmental sustainability. The particular indicators we have chosen reflect our judgment of their importance in their own right and as meaningful proxies for broader development goals. Our selection does not indicate any diminished commitment to other goals accepted by the international community, at international conferences or elsewhere." DEV. ASSISTANCE COMM., OECD, SHAPING THE 21ST CENTURY: THE CONTRIBUTION OF DEVELOPMENT CO-OPERATION 9 (1996); *see also* David Hulme, *The Making of the Millennium Development Goals: Human Development Meets Results-based Management In an Imperfect World* (Brooks World Poverty Inst., Working Paper No. 16, 2007); INT'L MONETARY FUND, OECD, UNITED NATIONS & WORLD BANK GRP., A BETTER WORLD FOR ALL: PROGRESS TOWARDS THE INTERNATIONAL DEVELOPMENT GOALS (2000).

11. *See* DEV. ASSISTANCE COMM., *supra* note 10, at 19.

12. U.N. Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000) [hereinafter Millennium Declaration]. Heads of States and Governments adopted it at the Millennium summit.

13. For instance, access to reproductive health was in the end omitted from the Declaration and the MDGs. Millennium Declaration. *Id.*

14. *Id.* part I.

15. *Id.* parts II-VIII.

16. *See Road Map Towards the Implementation of the United Nations Millennium Declaration*, *supra* note 1.

17. *Id.* ¶ 2.

18. *Id.* ¶ 80. For an insider's account of the genesis of the MDGs, see Michael W. Doyle, *Dialectics of a Global Constitution: The Struggle Over the UN Charter*, 18 EUR. J. OF INT'L REL. 601 (2012).

In particular, the Millennium Declaration set out the goal to "to halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day."[19] The focus on poverty eradication had already been firmly established at the 1995 Copenhagen Social Summit, albeit in more ambitious but also open-ended fashion.[20] The actual formulation, which was retained as Target 1 in the MDG framework, is definitively less ambitious (halving instead of eradicating poverty) but time-bound (by 2015), and is essentially the same as the one set out in a 1996 OECD Development Assistance Committee document.[21] The MDGs also set out several other objectives (especially in the areas of health and education), which are necessary to address basic needs and foster human development in developing countries.[22]

The MDGs as such (with the goals/targets/indicators construction) were informally discussed but never formally agreed by governments.[23] The MDGs were established essentially through consultation among members of the U.N. Secretariat and representatives of other international organizations. The experts established specific targets and selected relevant indicators with a view to developing a comprehensive evaluation framework for the MDGs.[24] The Secretary General report was only "noted with appreciation" by the General Assembly in 2002 with no mention of the MDGs.[25] They were formally endorsed, *ex post facto*, after a few years when a sense that they could actually be at least partly successful emerged.[26]

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19. *See* Millennium Declaration, *supra* note 12, ¶ 19.

20. Commitment 2 adopted at the 1995 Copenhagen Social Summit stated: "[w]e commit ourselves to the goal of eradicating poverty in the world, through decisive national actions and international cooperation, as an ethical, social, political and economic imperative of humankind." World Summit for Social Development, Copenhagen, Den., Mar. 6-12, 1995, *Report of the World Summit for Social Development*, U.N. Doc. A/Conf.166/9 (Apr. 19, 1995).

21. DEV. ASSISTANCE COMM., *supra* note 10, at 9.

22. *Id.* at 10.

23. During the negotiation of the 2005 U.N. World Summit Outcome, the United States voiced strong opposition to inclusion of reference to the MDGs in the document. In September 2005 the then Assistant Secretary of State K. Silverberg clarified the U.S. position in an interview stating that the United States continues to "strongly support" the goals it agreed to in the Millennium Declaration, such as reducing world poverty by half by 2015 and reducing instances of HIV/AIDS. "Sometimes people use [the term] MDGs to mean other things, in particular of a list of targets and indicators that were in a document the [U.N.] secretariat produced" following the Millennium Declaration. "The United States did not negotiate that document or agree to it and neither did many other states. It is solely a document of the secretariat." Confusion about the U.S. stance on the MDGs was a result of erroneous reports presented by some media about the meaning of the term Millennium Development Goals. "The outcome [final summit] document clarifies the term MDGs, which means goals in the Millennium Declaration." Kathryn McConnell, *U.N. Document Clarifies Development Goals, State's Silverberg Says*, IIP DIGITAL (Sept. 16, 2005), http://iipdigital.usembassy.gov/st/english/article/2005/09/20050916110129akllennoccm0.3649256.html#axzz3LAMxFVEw (alterations in original).

24. Experts were also subsequently involved in supporting implementation of the MDGs, *see UN Millennium Project*, MILLENNIUM PROJECT, http://www.unmillenniumproject.org/index.htm.

25. In U.N. practice, noting with appreciation a document connotes no opposition, but no full embrace either. *See* Jan Vandemoortele, *The MDG Story: Intention Denied*, 42 DEV. & CHANGE 1, 6 (2011).

26. At the 2005 U.N. follow-up summit whose outcome document stated at paragraph 17: "[w]e strongly reiterate our determination to ensure the timely and full realization of the development goals and

Their functions thus need to be gleaned from sparse textual references and ensuing practice.

As noted the Millennium Declaration exhibited some novel characteristics of clarity and simplicity, as well as a renewed sense of purpose for the United Nations. However, it is fair to say that at the time of its adoption, and despite the excitement at the turn of the millennium, few would have expected that the objectives it included, and the derivative MDGs, would turn out to be, or at least be perceived, as successful, as they have been.[27]

III. UNDERSTANDING THE INTERNATIONAL GOALS: AN INSTRUMENTAL APPROACH

Many international documents, both mandatory and not, establish goals expressed with some precision, including by way of numerical levels (e.g. percentages of growth or reduction) and are accompanied by timelines. The MDGs are a prime example of this approach, and arguably among the most successful. The set of accompanying targets and indicators made them even more specific, actionable, and measurable.

However, the actual nature of goals and targets, such as the MDGs, has never been fully established in an internationally agreed-upon document.[28] The 2001 Secretary General report clearly stated the aim to "harmonize reporting," which apparently gave rise to the goals/targets/indicators apparatus.[29] However, the report also stressed the importance for the goals/targets to "focus national and international priority-setting," and to "trigger action."[30] In order to do so, the report also noted that the goals/targets need to be "limited in number, be stable over time and communicate clearly to a broad audience."[31] These references speak to three

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objectives agreed at the major United Nations conferences and summits, including those agreed at the Millennium Summit that are described as the Millennium Development Goals, which have helped to galvanize efforts towards poverty eradication." 2005 World Summit Outcome, G.A. Res. 60/1, ¶ 17, U.N. Doc. A/RES/60/1 (Sept. 16, 2005).

27. On the importance of the MDGs in addressing some of the most pressing world's problems, *see* JEFFREY D. SACHS, COMMON WEALTH: ECONOMICS FOR A CROWDED PLANET (2008). The extent of their success, while widely recognized by many experts and government representatives, is not without qualification. 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, (2005); Ashwani Saith, *From Universal Values to Millennium Development Goals: Lost in translation*, 37 DEV. & CHANGE 1167-99 (2006); THOMAS POGGE, POLITICS AS USUAL: WHAT LIES BEHIND THE PRO-POOR RHETORIC 57-71 (2010); Sakiko Fukuda-Parr & Alicia Ely Yamin, *The Power of Numbers: A Critical Review of MDG Targets for Human Development and Human Rights*, 56 DEV. 58, 58-65 (2013).

28. *See* Goal, Targets and Indicators, MILLENNIUM PROJECT, http://www.unmillenniumproject.org/goals/gti.htm (last visited Apr. 10, 2015).

29. *Road Map Towards the Implementation of the United Nations Millennium Declaration, supra* note 1, at Annex ¶ 1.

30. *Id.* at Annex ¶ 3.

31. *Id.*

distinct, but not incompatible, understandings of the goals/targets as policy and cooperation instruments.[32]

The first understanding (which was probably among the main objectives pursued by the Secretary General in 2001 when setting out the MDGs) relates to the establishment of an evaluation framework.[33] Clearly spelled out goals and targets, accompanied by indicators, allow governments and other stakeholders to monitor progress towards broad objectives such as those set out in the Millennium Declaration. This framework also creates some transparency, and some limited accountability (i.e. clarifying who does what, in which area and with what results) through regular, institutionalized review, as it has been done with modest success within the U.N. Economic and Social Council ("ECOSOC"),[34] and by means of periodic progress reports prepared by the U.N. Secretariat.[35]

The second understanding is to see the goals/targets as communication and messaging tools to frame issues, increase awareness, signal commitment, and catalyze and galvanize action.[36] The 2012 Rio document recognized this function when it noted that the MDGs were "a useful tool . . . for mobilization of stakeholders and resources."[37] As a result of their specificity, the goals/targets/indicators approach moves beyond generic rallying calls, and has proven to be a powerful advocacy instrument. This also allows for some non-institutional accountability through social pressure and naming and shaming in the court of public opinion, which has proven to be a critical force to promote implementation of the MDGs.

The third understanding is to consider the goals/targets/indicators as a management tool, or even more ambitiously as a governance tool.[38] This is in line with the drive for reform in the public sector worldwide, which has focused attention on the measurement and improvement of performance, the delivery of better results and the means of achieving them. The uptake of strategic management concepts and practices[39] developed in the private sector with the aim to clarify objectives, set goals, develop indicators, and collect and analyze data on results has become a

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32. Sakiko Fukuda-Parr, *Global Development Goal Setting as a Policy Tool for Global Governance: Intended and Unintended Consequences* 1-3 (Int'l Policy Ctr. for Inclusive Growth, Working Paper No. 108, 2013).

33. *Id.* at 9.

34. The 2005 World Summit Outcome document mandated the Economic and Social Council with ensuring the follow-up of the outcomes of the major U.N. conferences and summits, including the internationally agreed development goals, and to hold annual ministerial-level substantive reviews to assess progress, also drawing on the work of its functional and regional commissions and other international institutions. 2005 World Summit Outcome, *supra* note 26, ¶ 155.

35. The annual MDGs reports and MDG Gap Task Force reports related to MDG 8. *See MDG Gap Task Force*, U.N. DESA: DEVELOPMENT POLICY AND ANALYSIS DIVISION, http://www.un.org/en/development/desa/policy/mdg_gap/.

36. For instance, by simplifying the issue of poverty in terms of income poverty (albeit to the exclusion of key non-material elements of poverty, such as lack of voice, vulnerability and insecurity) MDG 1 has certainly been successful in focusing attention on it. .

37. The Future We Want, *supra* note 2, ¶ 245.

38. *See* GOVERNANCE BY INDICATORS: GLOBAL POWER THROUGH QUANTIFICATION AND RANKINGS (Kevin Davis et. al. eds., 2012); Fukuda-Parr, *supra* note 32, at 3.

39. *See e.g.*, PETER F. DRUCKER, MANAGING FOR RESULTS 217 (2nd ed.1986).

central orientation for public sector management. In many countries—at least since the 1990s—establishing performance goals and indicators, assessing progress in achieving goals, as well as reporting periodically on such progress, has become established policy aimed at improving the efficiency and effectiveness of government.[40]

Performance (or results-based) management has also been adopted at the international level, in the United Nations and many international agencies. While this approach is generally used at the level of the individual organization or process, quantification, goal setting and use of indicators can be, and are, also used as broader governance instruments through which policy priorities are set, objectives defined and clarified, budget and resources allocated, and progress monitored.[41] For most organizations, the setting out of goals and outcomes (results) is linked to the general vision and mission of the organization.[42] Similarly, goal setting for public policy is,

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40. *See* DAVID OSBORNE & TED GAEBLER, REINVENTING GOVERNMENT: HOW THE ENTREPRENEURIAL SPIRIT IS TRANSFORMING THE PUBLIC SECTOR (1993); OECD, PERFORMANCE MANAGEMENT IN GOVERNMENT: PERFORMANCE MANAGEMENT AND RESULTS-ORIENTED MANAGEMENT, PUBLIC MANAGEMENT OCCASIONAL PAPER NO. 3 (1994). In some cases this approach has been enshrined into law, as in the case of the U.S. Government Performance and Results Act of 1993. *See* John C. Dernbach, *Targets, Timetables and Effective Implementing Mechanisms: Necessary Building Blocks for Sustainable Development*, 27 WM. & MARY ENVTL. L. & POL'Y REV. 79, 93 (2002); Hulme, *supra* note 10. Entrenching a numerically expressed goal in legislation is obviously no guarantee for success. For instance in the Dominican Republic the right to education is constitutionally affirmed and Law 66-97 of 1997 mandates that annual public spending has to attain a minimum of 16% of total public expenditure or 4% of GDP, whichever is higher. However, it took over 15 years and a sustained social movement to finally achieve the implementation of the target in the 2012 budget. *See ECOSOC . Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Dominican Republic*, Nov. 1-19, 2010, U.N. Doc. E/C.12/DOM/CO/3; *Observatorio del Presupuesto en Educación, Macro Visión del Presupuesto de la Educación Preuniversitaria 2013: Consideraciones sobre las prioridades presupuestarias de la asignación del 4% del PIB*, EL OBSERVATORIO DEL PRESUPESTO EDUCATIVO (Foro Socioeducativo, República Dominicana), June 2013.

41. "Specific objectives also focus efforts of governmental and nongovernmental actors over the long term. Political and other leaders come and go, but properly established targets and timetables remain in place. Goals are a management tool for focusing the efforts of administrative agencies, corporations and other organizations, and even national governments and the international community. Goals become the basis around which budgets are developed and implemented; personnel are hired and allocated; programs are created, modified, or harmonized; and rewards and punishments are meted out." Dernbach, *supra* note 40, at 99.

42. Companies often have a mission statement, which "tells the people in the company what their values are, and what effectiveness means for the company and for their own work. Like all effective mission statements, it makes a team out of what otherwise would be a mob, with each employee doing his or her own work rather than focusing on a common purpose. Without an effective mission statement, in other words, there will be no performance. . . . [T]he effective mission statement is not a statement of financial goals. . . . The mission statement has to express the contribution the enterprise plans to make to society, to economy . . . It has to express the fact that the business enterprise is an institution of society and serves to produce social benefits. . . . Mission statements that express the purpose of the enterprise in financial terms fail inevitably, to create the cohesion, the dedication, the vision of the people who have to do the work so as to realize the enterprise's goal." PETER F. DRUCKER, DRUCKER ON ASIA: A DIALOGUE BETWEEN PETER DRUCKER AND ISAO NAKAUCHI 128 (1997) [hereinafter DRUCKER & NAKAUCHI].

or surely ought to be, underpinned by the agreed values and political choices of the underlying society (which brings us to the later section on the constitutional understanding of the goals).

The Rio text does not provide a definitive answer on which of the three understandings outlined above is specifically intended or should prevail. The document states that the goals "should be action-oriented, concise and easy to communicate,"[43] thus stressing their expected advocacy function. They are "to be assessed and accompanied by targets and indicators,"[44] suggesting their importance as an evaluative framework.

The text also notes that "the goals should address and be focused on priority areas for the achievement of sustainable development."[45] This would appear to hark back to the existing—albeit incomplete and open to contestation—understanding of sustainable development (and what that really means in policy terms), as contained in earlier documents going back at least to the 1992 Rio conference and Agenda 21,[46] as well as the 2012 Rio outcome document itself, and indicates that the priorities for the achievement of sustainable development are in good measure already set. In this account, the definition of the goals/targets/indicators would just be a quasi-technocratic (evidence-based) establishment of "what works" in the various areas and what the best metric to measure progress is.[47]

However, this rather technocratic approach does not appear to prevail due to the expectations for, and the interest in, the process of designing the SDGs that have arisen since the adoption of the Rio document. This process has led to a wide consultation and debate within the General Assembly,[48] and also, and perhaps even more significantly, at national and regional level, and within civil society since 2013.[49] For an international system that is often criticized for the absence of *demos*,[50] the debates that the post-2015 agenda has generated have been particularly

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43. The Future We Want, *supra* note 2, ¶ 247.

44. *Id.* ¶ 250.

45. *Id.* ¶ 247.

46. *See* U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1192, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I) (Aug. 12, 1992).

47. On the problems related to such a technocratic approach, see Charles Sabel & Sanjay Reddy, *Learning to Learn: Undoing the Gordian Knot of Development Today*, 50 CHALLENGE 73, 73-95 (2007).

48. *See* U.N. Secretary-General, *The Road to Dignity by 2030: Ending Poverty, Transforming all Lives and Protecting the Planet, Synthesis Report of the Secretary-General on the Post-2015 Sustainable Development Agenda*, U.N. Doc. A/69/700 (Dec. 4, 2014).

49. *Post-2015 Process*, U.N. SUSTAINABLE DEVELOPMENT KNOWLEDGE PLATFORM, https://sustainabledevelopment.un.org/post2015.

50. *See, e.g.*, J.H.H. Weiler, *The Geology of International Law - Governance, Democracy and Legitimacy*, 64 ZAÖRV. 547, 547-62 (2004).

vibrant,[51] approximating to some extent what Habermas refers to as the "global public sphere" or Sen by "government by discussion."[52]

For any country, group of countries, constituency within or outside governments, or interest group, the fact that an issue area (and the related objectives) of specific concern or interest acquires the status of an internationally agreed goal (or at least of an associated target) is considered highly desirable. It is a recognition of priority, a sanctioning of the legitimacy of the related policies and actions, a guarantee that the issue will remain under the policy spotlight, and an enhanced probability that funds will be allocated (at the national and regional level, through international cooperation and in the budget of international agencies). This heightened expectation of the pay-off from "making the list" appears to explain, at least in part, the wide interest that the SDGs' process has elicited and the flurry of potential candidates for goals and targets that have been put forward. The many months of difficult deliberations within the General Assembly working group tasked to elaborate them have produced a "proposal" for a set of seventeen goals and 169 targets that is testimony to these expectations.[53]

A multi-level impact on policy and agenda-setting was the ambition expressed in the 2001 Secretary General report for the MDGs.[54] An ambition that has been in

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51. People around the world have expressed their views in many different ways. Countless NGOs, from large international ones, such as OXFAM, Human Rights Watch and WWF, to small local ones are participating in the debates. The U.N. Development Group organized an unprecedented consultation and global conversation and millions of people, especially young persons, took part in these processes, through national, thematic, and on-line consultations and surveys. *See* U.N. DEVELOPMENT GROUP, A MILLION VOICES: THE WORLD WE WANT (2013); MY WORLD: THE UNITED NATIONS GLOBAL SURVEY FOR A BETTER WORLD, http://vote.myworld2015.org/. These were also mirrored in THE GLOBAL PARTNERSHIP FOR YOUTH IN THE POST-2015 AGENDA, THE GLOBAL YOUTH CALL, *available at* http://www.un.org/youthenvoy/wp-content/uploads/2014/09/The_Global_Youth_Call.pdf. National Parliaments have shown significant interest. *See* HOUSE OF COMMONS ENVIRONMENTAL AUDIT COMMITTEE, CONNECTED WORLD: AGREEING AMBITIOUS SUSTAINABLE DEVELOPMENT GOALS IN 2015 (2014), *available at* http://www.publications.parliament.uk/pa/cm201415/cmselect/cmenvaud/452/452.pdf. The European Parliament adopted a resolution on 25 November 2014 on the EU and the global development framework after 2015. European Parliament Resolution on the EU and the Global Development Framework after 2015, EUR. PARL. DOC. P8_TA-PROV 0059 (2014, *available at* http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2014-0059&language=EN&ring=A8-2014-0037). The Inter-Parliamentary Union has also debated the new agenda. *See* Inter-Parliamentary Union, *Quito Communique*, 128th Assemb. (2013), *available at* http://www.ipu.org/conf-e/128/quito-comm.htm. The private sector has also shown heightened interest in the discussion and has actively participated through the International Chamber of Commerce, other business coalitions and through the U.N. Global Compact. INTERNATIONAL CHAMBER OF COMMERCE, http://www.iccwbo.org/ (last visited Apr. 10, 2015); U.N. GLOBAL COMPACT, https://www.unglobalcompact.org/ (last visited Apr. 10, 2015).

52. *See* Jürgen Habermas, *The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society, in* EUROPE: THE FALTERING PROJECT 109, 124, 109-31 (2009); AMARTYA SEN, THE IDEA OF JUSTICE 324 (2009) [hereinafter SEN, JUSTICE]

53. *See* G.A. Res. 68/309, U.N. Doc. A/RES/68/309 (Sept. 10, 2014); Rep. of the Open Working Group of the General Assembly on Sustainable Development Goals, Aug. 12, 2014, U.N. Doc. A/68/970 [hereinafter Rep. on Sustainable Development Goals].

54. U.N. Secretary-General, *supra* note 1, ¶ 81 ("It is crucial that the millennium development goals

good measure realized, as acknowledged in the Rio document,[55] as well as by many commentators.[56] However, beyond agenda-setting, the assessment of the impact that the increased policy priority engendered by the individual MDGs ultimately produced on the ground and in the life of the concerned people (which is indeed what really matters) remains quite complex, despite the efforts spent at refining indicators and gathering data.

In conclusion, by examining the Rio text, looking at the MDGs' experience, and considering the heightened expectations of stakeholders in governments, civil society, and the private sector, it appears that a possible shared understanding is for international goals to work—at the same time—as a policy priority-setting instrument (with purchase on resource allocation, both nationally and internationally), an evaluative and accountability framework and an advocacy tool.

Of course, the priority-setting function is particularly complex. Already in the case of the MDGs, it has given rise to significant criticism,[57] and controversy has not diminished in the discussions surrounding the setting of goals aimed at achieving sustainable development, a much broader concept than development per se and surely not confined to environmental protection. And one that, while at the center of at least three major U.N. conferences (Rio 1992, Johannesburg 2002 and Rio 2012), as well as countless references at the United Nations, in other international fora and documents and domestic law,[58] remains to be fully defined, understood and unpacked from a policy perspective (and to use a term of the U.N. vernacular, "operationalized").

In addition, the 2012 Rio text's description of the SDGs grafts the requirements of an advocacy tool, which needs to communicate simple and short messages, onto a process of priority setting, which requires context and explanation.[59] This may lead to some unintended consequences, such as the crowding out of important elements and an excessive simplification of complex issues, as it was the case for the MDGs (e.g. with the reduction of "poverty" to "income poverty").[60] Similarly, the design of the evaluation framework may lead to distortion as action and attention

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become national goals and serve to increase the coherence and consistency of national policies and programmes.").

55. The Future We Want, *supra* note 2, ¶ 245.

56. *See* EUROPEAN REPORT ON DEVELOPMENT 2013, POST 2015: GLOBAL ACTION FOR AN INCLUSIVE AND SUSTAINABLE FUTURE (2013).

57. Fukuda-Parr, *supra* note 32, at 13, specifically laments that numerically expressed goals and targets "remove much of the ambiguity that is embedded in the concept of poverty as a dehumanizing condition, but they also remove the very concept of poverty as an affront to human dignity and a denial of human rights. They simplify the complex human condition, abstract it out of local realities and theories and reify an intangible concept into a tangible, measurable condition."

58. For instance, the concept of sustainable development is recalled in the Preamble of Marrakesh Agreement Establishing the World Trade Organization, in Article 2 of the Treaty of Lisbon, as well as many national constitutions and other legal texts. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154; Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, Dec. 13, 2007, 2007 O.J. (C 306) 1, 11.

59. *See generally* The Future We Want, *supra* note 2.

60. Millennium Declaration, *supra* note 12, ¶ 19.

may tend to be concentrated on the elements subject to measuring and verification (through statistical indicators).[61]

Finally and most significantly, the importance that the MDGs have had over time and their (at least partial) success on the ground cannot be explained solely by their instrumental nature and the fact that they were expressed with simple and clear numerical references. As Watkins noted, "the MDGs are more than hitting numerical targets. They enshrine principles based on human rights, equity and social justice."[62]

IV. UNDERSTANDING THE GOALS: ENHANCED LEGITIMACY AND COMPLIANCE PULL

From a strictly formalistic perspective documents such as the Millennium Declaration, the results of U.N. conferences, as well as the expected outcome of the planned 2015 Summit (which should incorporate the SDGs as part of the new agenda post 2015) have the status, and exhibit the same legal features, of General Assembly resolutions, even if they may have different designations (declarations, plans of action, agendas and the like).[63] As such, they pertain to the realm of "soft law" and are not formally binding on states or individuals.[64] This point was clearly acknowledged in the 2012 Rio outcome document which characterizes the SDGs as "aspirational."[65]

However, U.N. resolutions, while soft, may still possess considerable legal and political authority, to the extent that they often represent widely held expectations that affect in a variety of ways the actual behavior of economic and political actors, as well as broader civil society.[66] This is a reason why they are so intensely debated

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61 Saith, *supra* note 27, at 1174 (arguing that statistics can be misused or selectively used and manipulated, and outcomes misrepresented (with averages hiding individual realities) leading to "perverse incentives and behaviour").

62. KEVIN WATKINS, THE MILLENNIUM DEVELOPMENT GOALS: THREE PROPOSALS FOR RENEWING THE VISION AND RESHAPING THE FUTURE 5 (2008), *available at* http://www.astrid-online.it/rassegna/Rassegna-25/30-04-2008/WATKINS-Relaz-ProgressiveGovernanceSummit-05_04_08.pdf.

63. Jose Alvarez, *Governing the World: International Organizations as Lawmakers*, 31 SUFFOLK TRANSNAT'L L. REV. 591, 602 (2008).

64. Interestingly, despite the non-binding character of the source, states still often consider qualifying their consensus necessary especially when the issues in discussion are of particular sensitivity. *See, e.g.*, U.N. Conference on Population and Development, Sept. 5-13, 1994, *Report of the International Conference on Population and Development*, Sales No. E.95.XIII.18. Similarly, the Report of the Open Working Group on Sustainable Development Goals has been accompanied by several reservations. *See* U.N. Secretary-General, *Report of the Open Working Group on Sustainable Development Goals Addendum: Explanations of Position and Reservations on the Report*, U.N. Doc A/68/970/Add.1 (Oct. 27, 2014).

65. The Future We Want, *supra* note 2 ¶ 247.

66. BENEDETTO CONFORTI & CARLO FOCARELLI, THE LAW AND PRACTICE OF THE UNITED NATIONS 407 (4th ed. 2010) ("It is worth emphasizing that the hortatory nature of recommendations— and more generally of so-called soft law—is far from insignificant in international relations. The hortatory function of recommendations should not be seen as a pure and simple 'entrustment' of the international organs of an improbable 'good will' of States. The point is that in the absence of a world

and negotiated. Even apart from an eventual transformation of their status into binding rules,[67] and an argument can be made that some of the Millennium Declaration commitments have acquired customary international law status,[68] "soft law" standards may serve to lend increased legitimacy to actions, policies and rules that conform to them. The most important role of non-binding instruments, such as U.N. declaration and recommendations, "lies not so much in the production of legal effects . . . as in the impetus they give to the *transformation* of international law in a manner more consistent with the values and interests shared by the community of all States and their peoples."[69]

While the record of implementation of the Millennium Declaration commitments and the derivative MDGs is mixed,[70] it is clear that—at least some of them—have exercised considerable influence on the actual behavior and policies of the relevant actors (in particular by increasing the acceptability and desirability, if not the sense of obligation, associated with MDG-induced policies).[71]

Viewed from a broad realist perspective, it would be easy to dismiss the pronouncements contained in documents such as the Millennium Declaration or the Rio outcome as either exercises in futility, smokescreens or at best self-serving efforts in boosting reputation. However, while the issue of reputation is certainly important in international relations, "soft" commitments seem to matter beyond that. Even formally non-binding international commitments exhibit an autonomous "compliance pull," whereby states feel compelled—at least to an extent—to respect them even when they otherwise have an incentive to ignore or break them and free-ride.[72] Indeed complete failure to act upon "soft" commitments, or worse acting in

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authority superior to the States it is of the utmost importance for each State, and for other international organs . . . to know what behavior is approved and even solicited, rather than condemned, by the generality of the States without materializing into a positive rule, possibly because of the resistance of one or a few more powerful States.").

67. JAMES CRAWFORD, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 42 (8th ed. 2012) ("Even when they are framed as general principles, [U.N. General Assembly] resolutions . . . provide a basis for the progressive development of the law and the speedy consolidation of customary rules."); *see also* South West Africa (Eth. v. S. Afr.), 1966 I.C.J. 248, 289 (July 18) (dissenting opinion of Judge Tanaka) (arguing that when trying to prove the existence of a certain customary norm of international law, General Assembly Resolutions can be used as evidence of general practice. He also observed that the General Assembly can accelerate the formation of customs by providing a forum where a state "has the opportunity, through the medium of an organization, to declare its position to all members of the organization and to know immediately their reaction on the same matter.").

68. Alston, *supra* note 27, at 771.

69. CONFORTI & FOCARELLI, *supra* note 66, at 408.

70. *See, e.g.*, Mac Darrow, *The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda*, 15 YALE H.R. & DEV. L.J. 55, 70 (2012).

71. Xuan Li, *Soft Law-making on Development: The Millennium Development Goals and Post-2015 Development Agenda*, 10 MANCHESTER J. INT'L ECON. L. 362, 364 (2013).

72. Kal Rustiala & Anne-Marie Slaughter, *International Law, International Relations and Compliance*, *in* THE HANDBOOK OF INTERNATIONAL RELATIONS 538, 541 (Walter Carinaes et al. eds., 2002).

a way that hampers other states' action in pursuit of common commitments, may entail significant political costs.[73]

The strength of the compliance pull is in good measure linked to the extent to which specific commitments, rules or regimes are regarded as legitimate. Following Franck, legitimacy, which can be viewed as the quality of prescriptions making states abide by them voluntarily,[74] is dependent on a number of dimensions related to textual clarity and validation through adherence to the "standards that define how rules are to be made, interpreted, and applied."[75] On both accounts, the Rio call for the SDGs to be "concise and easy to communicate" and established by the U.N. General Assembly by means of an "inclusive and transparent intergovernmental process . . . open to all stakeholders,"[76] if fully realized, would enhance their legitimacy. But perhaps even more importantly, legitimacy derives from "coherence." "Rules, to be perceived as legitimate, must emanate from principles of general application."[77] Thus, the degree of legitimacy depends in large part on the "connectedness between rules united by underlying principles . . . manifest[ing] the existence of an underlying rule-skein which connects disparate ad hoc arrangements into a network of rules 'governing' a community of states, the members of which perceive the coherent rule system's powerful pull towards voluntary compliance."[78] It is this link between rules and higher-order principles that leads states to comply, in good measure, with the rules, even when their contingent interests would indicate a different course of action.[79] This respect for the fundamental structure of the international society and of its legitimate rules creates a sense of community, which in turns leads to a tendency to disapprove of and often sanction free-riding.[80] Among the higher order principles there are

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73. From a legal perspective it has been convincingly argued that recommendations entail an obligation for states, rather an important one from an accountability perspective, to take their content into consideration in good faith and to provide an explanation in case no compliance is intended. Voting Procedure on Questions Relating to Reports and Petitions Concerning Territory of South-West Africa, Advisory Opinion, 1955 I.C. J. Reports 95, p. 117-9 (Separate Opinion of Judge Lauterpacht) ("What has been challenged—and, I believe, properly challenged—is its right simply to ignore the recommendations and to abstain from adducing reasons for not putting them into effect or for not submitting them for examination with the view to giving effect to them. What has been questioned is the opinion that a recommendation is of no legal effect whatsoever. A Resolution recommending . . . a specific course of action creates some legal obligation which, however rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision. The State in question, while not bound to accept the recommendation, is bound to give it due consideration in good faith.").

74. THOMAS FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS 16 (1990) (defining legitimacy partially as "a property of a rule or rule-making institution which itself exerts a pull towards compliance on those addressed normatively").

75. *Id.* at 184.

76. The Future We Want, *supra* note 2, ¶ 247-48.

77. FRANCK, *supra* note 74.

78. *Id.* at 180-81.

79. Americo B. Zampetti, *Democratic Legitimacy in the World Trade Organization: The Justice Dimension*, 37 J. WORLD TRADE 105, 107 (2003).

80. *See* HEDLEY BULL, THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS 13 (1977) ("A society of states (or international society) exists when a group of states, conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be

certainly some that derive from international human rights,[81] but arguably and increasingly also the values and principles set out in part I of the Millennium Declaration and the shared understanding of justice that can be derived therefrom.[82]

These principles lend a particular compliance pull to the commitments, rules and policies linked to them. They provide the normative justification and the sense of moral obligation that leads the relevant actors to conform to a provision or support an action. As Hurrell put it:

> Rules and norms of this kind do not develop as a result of a distinct interplay of state interests or because of the functional benefits which they provide. Rather they depend on the common moral awareness that works directly, if still in fragile and uneven ways, on the minds and emotions of individuals within states.[83]

It would appear that the compliance pull of the MDGs is directly linked to the wide embrace and ethical purchase of the values and principles set out in the Millennium Declaration and the connectedness of the objectives included in the Millennium Declaration with such values and principles.

V. UNDERSTANDING THE INTERNATIONAL GOALS: A CONSTITUTIONAL VIEW

This leads us to a different way of looking at the Millennium Declaration and the set of goals derived therefrom and to think of them as normative materials that contribute to the (re)constituting of the international community.[84] This can help

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bound by a common set of rules in their relations with one another, and share in the workings of common institutions.").

81. *See* Barcelona Traction, Light and Power Co., Ltd (Belg. v. Spain), 1970 I.C.J. 3, ¶¶ 33-34 (Feb. 5) ("[A]n essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State. . . . By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. . . . Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination."); Rep. of the Int'l Law Comm'n, 53 Sess., Apr. 23-June 1, July 2-Aug. 10, 2001, U.N. Doc. A/56/10, ch. 1, art. 1 (recognizing the category of *erga omnes* obligations). On the risks related to the variable normativity that this type of concepts pose to international law, *see generally* Prosper Weil, *Towards Relative Normativity in International Law?*, 77 AM. J. INT'L L. 413 (1983).

82. Millennium Declaration *supra* note 12, ¶ 2 ("We recognize that, in addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs.").

83. Andrew Hurrell, *International Society and the Study of Regimes: A Reflective Approach*, in REGIME THEORY AND INTERNATIONAL RELATIONS 49, 65-66 (Volker Rittberger & Peter Mayer eds., 1993); *see also* IAN HURD, AFTER ANARCHY: LEGITIMACY AND POWER IN THE UNITED NATIONS SECURITY COUNCIL 7 (2007) (describing legitimacy as "an actor's normative belief that a rule or institution ought to be obeyed.").

84. There are several important constitutionalizing trends in the international community, including

elucidate the higher compliance pull that they at times exhibit. If we make a parallel with a generally accepted account of a democratic constitution, which aims at defining the form and the limits of government, and also at setting out "the goals for which the government is empowered to act,"[85] it is possible to regard a text such as the Millennium Declaration as a contribution to the objective of entrenching the goals that the international community set for itself. The Millennium Declaration spells out in quite some detail a set of principles that are often found in domestic democratic constitutions.[86] For instance, Paulus considers that the Millennium Declaration contributes to the building of the constitutional principle of solidarity into the international system.[87] Indeed, the whole first part of the Millennium Declaration sets out some very important values and principles that on the basis of a long normative accretion within the United Nations, one made of countless resolutions, declarations and conference documents, could be consensually considered by the world leaders assembled in New York in the year 2000 as "essential to international relations in the twenty-first century"—a constitutive approach, at least on its face.[88] The Millennium Declaration can then be understood as serving the constitutional function of elaborating on the values and aims of the international community.[89] It is an expansion of the provisions of the Preamble and of article 1 of the Charter (especially article 1(3), but also of article 55) giving them further meaning and content.[90] Such an elaboration is important and necessary as governance at the global level expands, perhaps not so much by rational and

the trend towards conferring a higher legal status to same part of human rights and humanitarian law and the limits they imposes on domestic law, and the trend towards enhanced multilateral law-making powers and adjudicative procedures within international organizations. *See e.g.*, Anne Peters, *Are We Moving Towards Constitutionalization of the World Community?*, *in* REALIZING UTOPIA – THE FUTURE OF INTERNATIONAL LAW 118, 118-135 (Antonio Cassese ed., 2012).

85. Stephen Holmes, *Constitutions and Constitutionalism*, *in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 189, 189-90 (Michel Rosenfeld & András Sajó eds., 2012); INDIA CONST. art. 37-38 (incorporating socio-economic rights as "directive principles" rather than explicitly enforceable rights). Even liberal constitutions principally designed to limit the power of government and regulate public authority, such as that of the United States, can be interpreted by giving pre-eminence to the substantive goals stipulated in its preamble and especially the promotion of the "general welfare." *See generally* SOTIRIOS A. BARBER, WELFARE AND THE CONSTITUTION (2003).

86. Millennium Declaration *supra* note 12, ¶ 6 (addressing specifically freedom, equality, solidarity and tolerance).

87. Andreas L. Paulus, *The International Legal System as a Constitution*, *in* RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE 69, 106 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009).

88. Millennium Declaration *supra* note 12, ¶ 6.

89. *See* Bardo Fassbender, *Rediscovering a Forgotten Constitution: Notes on the Place of the U.N. Charter in the International Legal Order*, *in* RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE 133, 137 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009).

90. While it is well known that no organ of the United Nations has the formal power to interpret the Charter, "[i]t is however unreasonable to think that the interpretation of the Charter would not be affected by the passage of time and by practice. . . . [T]his is the core of the thesis according to which the Charter should be regarded as a constitution, namely like an act that while remaining formally unaltered, or nearly so, acquires new meanings over time adapting its principles to changed social circumstances." *See* CONFORTI & FOCARELLI, *supra* note 66, at. 21.

considered design,[91] but in good measure as a result of the reduced ability of individual nations to cope with global challenges, the increased cooperation requirements for the provision of global public goods, as well as the growing realization that the international community is no longer an aggregate of relations among sovereign countries,[92] but also a genuine community of both states and individuals,[93] ("We the peoples of the United Nations" of the Charter's Preamble) with shared and universal objectives, interests and concerns.[94] Together with the growing body of human rights law, the elaboration of values and principles in the Millennium Declaration and the derived goals are part of the "transition from *international* to *cosmopolitan* norms of justice," which "whatever the condition of their legal origination, accrue to individuals as moral and legal persons in a worldwide legal society."[95]

However, it is also clear that the (re-)constitution of the international community remains contested, and norm-making and goal-setting at the United Nations is often met by skepticism.[96] States continue often to use the organization in a naked realist fashion.[97] The normative production of the organization, as well as of many of the agencies in the U.N. system, is frequently maligned or ignored, including due to an excessive, often formulaic production of texts, a sort of "inflation" in norm-making. The participation of civil society is still largely opposed by several states. But, as in all long-term processes, the matter is one of trends. And the trend appears to be moving in the direction of transcending the old state-centric paradigm in favor of a different understanding of the international community, more democratic, more conscious of its shared values and objectives.[98]

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91. Clearly the development of regionalism in many part of the world and the unique experience of the European Union are very significant trends.

92. *See* Louis Henkin, *That "S" Word: Sovereignty, and Globalization, and Human Rights, Et Cetera*, 68 FORDHAM L. REV. 1, 6 (1999) (speaking on the partial demise of sovereignty in the face of globalization).

93. *See* Samantha Besson, *Whose Constitutionalism(s)? International Law, Constitutionalism and Democracy, in* RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW, AND GLOBAL GOVERNANCE 381, 395 (Jeffrey L. Dunoff & Joel P. Trachtman eds., 2009); *see also* HABERMAS, *supra* note 52, at 119 ("Today any conceptualization of a juridification of world politics must take as it starting point individuals and states, as constituting the two categories of founding subjects of a world constitution.").

94. On the idea of common interest, see W. M. REISMAN, THE QUEST FOR WORLD ORDER AND HUMAN DIGNITY IN THE TWENTY-FIRST CENTURY: CONSTITUTIVE PROCESS AND INDIVIDUAL COMMITMENT 126 (2012).

95. SEYLA BENHABIB, ANOTHER COSMOPOLITANISM 16 (Robert Post, ed. 2006).

96. However, even a realist as Kissinger recognizes the importance for the international community to have shared goals. HENRY KISSINGER, WORLD ORDER 2 (2014) ("Thus while 'the international community' is invoked perhaps more intensively now than in any other era, it presents no clear or agreed set of goals, methods, or limits.").

97. Francis Deng, *Idealism and Realism: Negotiating Sovereignty in Divided Nations* 11 (2010), *available at* http://www.un.org/en/preventgenocide/adviser/pdf/DH_Lecture_2010.pdf.

98. For the move from a state- to a humanity-centric approach in international law, *see* RUTI G. TEITEL, HUMANITY'S LAW (2011).

This consciousness and the need of ethical justification through open and public reasoning translates in a diminished ability of states to decide behind closed doors and in a much larger reliance on discourses in their cooperative (and particularly in institutionalized) relationships in order to arrive at a common understanding of the desired or required behavior in any given situation.[99] The United Nations is one of the main fora for this purpose, where the discussion stage is often more important than the decision stage. In many areas of international relations, including those related to economic, social and environmental fields, the use of force has lost much its relevance;[100] due to globalization and interdependence, even "soft" power is increasingly difficult to use, and national interests are increasingly difficult to identify.[101] As a result discourse and persuasion have become even more important instruments of state interaction and coordination.

In their discourses, especially in multilateral settings, which often now involve various types of formal and informal interactions with civil society, states argue for a preferred course of action, and they do so primarily in terms of the perceived legitimacy of their positions.[102] Their arguments are more convincing, and their positions more acceptable, the more they are grounded in general (constitutional) principles and shared understandings—or, in other words, the more legitimate they are perceived. Higher-order principles, such as justice, equity, and human rights, lend moral justification and hence legitimacy. The emerging understanding that the principle of sustainable development has also acquired this higher status is of particular salience for the design of the new global agenda and the SDGs.

According to Judge Weeramantry, sustainable development is a principle with normative value, which demands striking a balance between development and environmental protection.[103] But it is not merely that. "It is one of the most ancient of ideas in the human heritage."[104] As a result, and due to its wide and general acceptance by the global community, the principle forms "an integral part of modern

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99. ANDREAS HASENCLEVER, PETER MAYER & VOLKER RITTBERGER, THEORIES OF INTERNATIONAL REGIMES 176 (1997) ("A practical discourse is a debate conducted by members of a community aiming at establishing or re-establishing a consensus on common norms of conduct as well as on their interpretation and proper application in concrete situations.").

100. The international use of force has certainly diminished over time. A different conclusion may be drown when considering the use of violence as a direct attack to basic human needs, such as the needs of survival, well-being, identity and meaning, and freedom. See Johan Galtung, *Cultural Violence*, 27 J. PEACE RES. 291, 293 (1990) (emphasizing the importance of the category of "structural violence" where the issue of allocation of resources becomes fundamental. "The archetypal violent structure . . . has exploitation has his centerpiece. This simply means that some people, the top-dogs, get much more (here measured in needs currency) out of the interaction in the structure than others, the underdogs.").

101. See Joseph S. Nye, *The Decline of America's Soft Power*, FOREIGN AFFAIRS (May/June 2004), http://www.forcignaffairs.com/articles/59888/joseph-s-nye-jr/the-decline-of-americas-soft-power.

102. Martha Finnemore and Stephen J. Toope, *Alternatives to "Legalization": Richer Views of Law and Politics*, 55 INT'L ORG. 743, 749 (2001) ("Legal claims are legitimate and persuasive only if they are rooted in reasoned argument that . . . attend[s] to contemporary social aspirations and the larger moral fabric of society.").

103. Gabčikovo-Nagymaros Project (Hung. v. Slovk.), 1997 I.C.J. 7, 88 (Sept. 25) (separate opinion of Vice President Weeramantry) [hereinafter Gabčikovo-Nagymaros,Weeramantry].

104. *Id.* at 110; *see also* C. G. WEERAMANTRY, UNIVERSALISING INTERNATIONAL LAW 431 (2004).

international law."[105] "It reaffirms in the arena of international law that there must be both development and environmental protection, and that neither of these rights can be neglected."[106] Anchoring the new agenda and the SDGs in a shared understanding of what sustainable development normatively means, including through reference to internationally agreed-upon texts, would lend them considerable compliance pull.

While it remains true that states often make only rhetorical reference to principles to conceal their interests and still amply use bargaining and sometime coercion, it is also true that most of the time they engage in serious discourse in order to justify their actions and do so out of the "sense of obligation" they perceive.[107] This stresses the important role of ethical ideas in international relations, in particular because of the constitutive function these ideas fulfill for the international society, and also in light of the role they play in shaping the identity of states, and groups of states, and their conception of the self as it relates to other actors.[108] The self-understanding of states and their behavior and policies are inter-subjective and iterative processes, which are much influenced by ideas, rules, and institutions. It is in this sense that "soft" commitments, such as those of the Millennium Declaration, have a powerful meaning and guide action. They are (or at least they ought to be) indicative of the emerging of "shared understandings" and expectations among states. And as such they do matter in the process of international policy- and rule-making.

The new agenda and the related SDGs, if firmly grounded in higher order and common principles and in a shared ethical understanding, will acquire enhanced impact as a governance tool for priority setting and policy shaping (with influence on resource allocation). While remaining, at least formally, outside the "juridical paradigm of implementation,"[109] the new agenda and goals will nonetheless provide a valuable instrument for advocacy, evaluation, accountability and social mobilization.[110] As a result ethical grounding would still go a long way towards achieving the requisite legitimacy and compliance pull for them to make a real difference for humanity.

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105. Gabčíkovo-Nagymaros,Weeramantry, *supra* note 103, at 89.

106. *Id.* at 95.

107. Raustiala & Slaughter, *supra* note 72.

108. *See* Alexander Wendt, *Collective Identity Formation and the International State*, 88 AM. POL. SCI. REV. 384, 387 (1994) ("Identification is a continuum along which actors normally fall between the extremes, motivated by both egoistic and solidaristic loyalties.").

109. CHARLES R. BEITZ, THE IDEA OF HUMAN RIGHTS 32 (2009) (under a juridical paradigm of implementation human rights are expected "to be embodied in domestic law and enforced in domestic courts or, in the case of rights not easily made justiciable, . . . [to] be accepted as priorities for state policy.").

110. It may well be that social mobilization is the critical factor in catalyzing change. *See* Richard Falk, *The Global Promise of Social Movements: Explorations at the Edge of Time*, 12 ALTERNATIVES 173, 173 1987); Mary Robinson, *Advancing Economic, Social, and Cultural Rights: The Way Forward*, 26 HUM. RTS. Q. 866 (2004); *see generally* NEIL STAMMERS, HUMAN RIGHTS AND SOCIAL MOVEMENTS (2009).

VI. SUSTAINABLE DEVELOPMENT AS A CONSTITUTIONAL VALUE OF THE INTERNATIONAL COMMUNITY

As argued above, international goals of the kind included and derived from the Millennium Declaration can be conceived both as (more modest) public policy tools and, more significantly, as the expression of a consensus over the broader values and objectives of the global community.   Their constitutive character for the international community does not derive from a formal (higher) status of the legal source—on the contrary they are generally incorporated in a non-binding instrument—but rather from the heightened legitimacy they command because of the depth of engagement in, and the inclusive character of, the deliberative process and the ensuing consensus they represent both among states and people (the full scope of the international community), as well as the ethical ground on which they stand.

The political authority and legitimacy of the new agenda and the SDGs will directly derive from the principle of sustainable development,[111] which has acquired broad acceptance since the influential World Commission on Environment and Development report (so-called Brundtland report) of 1987.[112] The report famously defines sustainable development as follows: "Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[113]

It also goes on to say:

> The satisfaction of human needs and aspirations is the major objective of development.   The essential needs of vast numbers of people in developing countries for food, clothing, shelter, jobs—are not being met, and beyond their basic needs these people have legitimate aspirations for an improved quality of life. A world in which poverty and inequity are

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111. At least two decades of discussions at the United Nations contributed to the forging of the concept. In the late 1960s the concept of the "common heritage of mankind" started to emerge with a view to designating some localities as belonging to all humanity and available for everyone's use and benefit. The idea of heritage clearly points to the need to take account of the intergenerational perspective. The U.N. *Convention on the Law of the Sea* declares the seabed and ocean floor to be the "common heritage of mankind," whose resources cannot be claimed, appropriated, or owned by any state or person. These resources belong to mankind as a whole. *U.N. Convention on the Law of the Sea, art. 136,* Dec. 10, 1982, 1833 UNTS 397; Edith Brown Weiss, *In Fairness to Future Generations and Sustainable Development,* 8 AM. U. INT'L. L. REV. 19, 19 (1992). Laura Horn, *'Sustainable Development'—Mere Rhetoric or Realistic Objective?,* 30 U. TAS. L. REV. 119, 128 (2011). At the same time in the 1960s and 1970s concerns for environmental degradation had been growing leading to the 1972 U.N. Conference on the Human Environment in Stockholm. Quite importantly Principle 1 of the 1972 Stockholm Declaration already stated that "[m]an 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." U.N. Conference on the Human Environment, Stockholm, Swed., June 5-16, 1972, *Stockholm Declaration on the Human Environment,* U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972); *see generally* FELIX DODDS, MICHAEL STRAUSS, & MAURICE STRONG, ONLY ONE EARTH: THE LONG ROAD VIA RIO TO SUSTAINABLE DEVELOPMENT (2012).

112. World Comm'n on Env't and Dev., *Our Common Future,* U.N. Doc. A/42/427 (Mar. 20, 1987).

113. *Id.* at ch. 1, ¶ 27.

endemic will always be prone to ecological and other crises. Sustainable
development requires meeting the basic needs of all and extending to all
the opportunity to satisfy their aspirations for a better life.[114]

Soon thereafter, the principle of sustainable development was at the center of
the 1992 Rio conference. Among the set of principles adopted at the conference,
Principle 1 tellingly states: "Human beings are at the centre of concerns for
sustainable development. They are entitled to a healthy and productive life in
harmony with nature."[115] Since then the principle has been reaffirmed in countless
instances at the United Nations and in many other fora, even though there is no
settled or synthetic definition of the principle.[116]

Very importantly, around the same time the principle of sustainable
development entered the international discourse in the United Nations, another
powerful concept, that of "human development," started to gain acceptance
internationally.[117] This latter approach, originally championed by Sen and Haq,[118]
moves the focus of development from the attainment of economic growth and
material welfare, as generally measured in per-capita gross domestic product, to a
focus on freedom, human well-being, and life achievements. What ultimately count
are not the means: income, or resources, but the ends: the well-being, and quality of
life of people. This approach was preceded, already in the 1970s, by an attention to

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114. *Id.* at ch. 2, ¶ 4.

115. U.N. Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992,
Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (Vol. I), Annex I (Aug.
12, 1992).

116. At the 2002 Johannesburg summit, states agreed: "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 Dev., Johannesburg S. Afr., Aug. 26-Sept. 4,
2002, *Johannesburg Declaration on Sustainable Development*, U.N. Doc. A/CONF.199/20 (Sept. 4,
2002). The same elements were reaffirmed at the 2012 Rio conference. Around the same time, the
International Law Association noted: "[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." *ILA New Delhi Declaration of Principles of
International Law Relating to Sustainable Development*, 2 April 2002, 2 POL. L. & ECON. 211, 212
(2002); *see* NICO SCHRIJVER, THE EVOLUTION OF SUSTAINABLE DEVELOPMENT IN INTERNATIONAL
LAW: INCEPTION, MEANING AND STATUS 231 (2008).

117. *See e.g.*, U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1990 (1990)
(noting this is the first effort to produce an annual report on the human dimension of development),
available at http://hdr.undp.org/sites/default/files/reports/219/hdr_1990_en_complete_nostats.pdf; *see
generally* MAHBUB UL HAQ, REFLECTIONS ON HUMAN DEVELOPMENT (1995).

118. *See* Amartya Sen, *Equality of What?* (May 22, 1979), in THE TANNER LECTURES ON HUMAN
VALUES, *available at* http://tannerlectures.utah.edu/_documents/a-to-z/s/sen80.pdf; AMARTYA SEN
COMMODITIES AND CAPABILITIES (1985); *see generally* MAHBUB UL HAQ, REFLECTIONS ON HUMAN
DEVELOPMENT (1995).

the fulfillment of basic human needs.[119]   And indeed, the basic needs and human development approaches were largely reflected in, and recognized by, the international community through the Millennium Declaration and the subsequent uptake of the MDGs.[120] The concern with environmental degradation also advanced and was incorporated as one of the values set out in the Millennium Declaration—"respect for nature"—and through MDG 7, which aims at ensuring environmental sustainability.[121]

At the 2012 Rio conference and in the run-up to the September 2015 Summit (at the deadline of the MDGs framework), a wider and stronger confluence of the basic needs and human development approach and the sustainable development notion is taking place around the common concern over the centrality of the human being, human dignity, and humanity's relation with nature and planet earth.[122] The various elements constituting this complex normative principle are far from new and indeed have very deep roots.[123] However it is only now, after a long gestation period, that a consensus seems to be in the making to set this enhanced understanding of development as a cornerstone of international cooperation and action. This could give rise to a constitutional moment for the international community if the latter manages in 2015 to articulate a renewed set of shared values and goals, which governments and people will be called upon to uphold and promote. The promise is even greater as the SDGs, as called for by the 2012 Rio outcome document, are meant to be "global in nature and universally applicable to all countries,"[124] and thus no longer address global challenges exclusively in a "North-South," aid-based context, but try to define what actions should be collectively and cooperatively undertaken by the international community to move towards the future as it "ought" to be for all.

If the new agenda and the SDGs are to acquire enhanced constitutional legitimacy and compliance pull, and hence also be successful as an instrument for priority setting, advocacy, evaluation, accountability, and social mobilization, they need to be firmly steeped in a shared understanding of sustainable development as a normative principle. In a sense countries are called upon to set out with some clarity and agree on the crucial, foundational values, principles and objectives that should define the future they collectively want (to paraphrase the title of the 2012 Rio

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119. INT'L LABOR ORG., EMPLOYMENT, GROWTH AND BASIC NEEDS: A ONE WORLD PROBLEM 31 (1976); PAUL STREETEN ET AL., FIRST THINGS FIRST: MEETING BASIC HUMAN NEEDS IN DEVELOPING COUNTRIES 8 (1981).

120. DES GASPER, THE ETHICS OF DEVELOPMENT 157 (2004).

121. Millennium Declaration, *supra* note 12, ¶ 6.

122. For a compelling examination of sustainable development for a policy perspective see JEFFREY D. SACHS, THE AGE OF SUSTAINABLE DEVELOPMENT (2015).

123. These go back, inter alia, to the teachings of Buddhism, to Aristotle and the Stoics, as well as the ancient wisdom of indigenous people. *See generally* C. G. WEERAMANTRY, UNIVERSALIZING INTERNATIONAL LAW (2004); ULRICH GROBER, SUSTAINABILITY: A CULTURAL HISTORY 8-9 (Ray Cunningham trans., Green Books 2012); Martha Nussbaum, *Constitutions and Capabilities: "Perception" Against Lofty Formalism*, 121 HARVARD L. REV. 5, 10-52 (2007) [hereinafter Nussbaum, *Constitutions and Capabilities*].

124. The Future We Want, *supra* note 2, ¶ 247.

outcome document).[125] From that consensus (which needs to involve the wide deliberation now taking place within civil society),[126] legitimate and coordinated priorities for action can then be derived and implemented at international, but above all, on the ground, at national and local levels. A shared understanding of sustainable development is already at least partly set out in the relevant international documents, such as the Millennium Declaration and various U.N. conferences outcome documents, but should be confirmed and elaborated upon in 2015, not least through the SDGs themselves.

Starting again from the 1987 canonical definition of the Brundtland report, sustainable development entails at least adopting the twin objectives of: (a) achieving societies where the needs of all individuals are met (and poverty is thus eradicated), which could be understood as societies where a decent life (with secured access to an adequate level of well-being in its various components)—a life worth of human dignity for all—is guaranteed, and (b) achieving this objective in such a way that the needs and decent lives of future generations are also guaranteed (while respecting the limitedness and frailty of the earth or what is often referred to as the "planetary boundaries").[127]

The crucial normative claim is that all human beings, regardless of the physical and social conditions in which they are or will be born, are entitled to live a decent life.[128] This locates sustainable development within the conceptual outlook of human development, and justifies adopting the wider perspective often referred to as "sustainable human development."[129] Specifying the parameters of a "decent life" or a life of dignity requires looking at the appropriate constituent elements and metric, whether basic needs, freedoms, capabilities, resources, Rawlsian primary goods or well-being.[130] While the theoretical differences between these various dimensions are important, it is also true that there is a good deal of common ground around the notions of dignity,[131] human flourishing,[132] and quality of human lives to

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125. *Id.*

126. *See supra* note 51.

127. *See generally* Johan Rockström et al., *Planetary Boundaries: Exploring the Safe Operating Space for Humanity*, 14 ECOLOGY & SOC'Y 32 (2009) (on the notion of planetary boundaries).

128. *See* Brundlandt Report, U.N. World Committee on Environment and Development: Our Common Future, ¶ 54, Annex to U.N. Doc. A/42/427 1987) ("every human being, those here and those who are to come has the right to life, and to a decent life").

129. In describing the concept of sustainable human development the 1994 Human Development Report states: "Human beings are born with certain potential capabilities. The purpose of development is to create an environment in which all people can expand their capabilities, and opportunities can be enlarged for both present and future generations. The real foundation of human development is universalism in acknowledging the life claims of everyone." *See* HUMAN DEVELOPMENT REPORT 1994, *supra* note 117, at 13.

130. G. A. Cohen, *On the Currency of Egalitarian Justice,* 99 ETHICS 906 (1989).

131. Human dignity is as foundational and complex a concept for the international community as it is for many domestic constitutional systems. *See generally* MICHAEL ROSEN, DIGNITY: ITS HISTORY AND MEANING (2012); GEORGE KATEB, HUMAN DIGNITY (2011); Matthias Mahlmann, *Human Dignity and Autonomy in Modern Constitutional Orders, in* THE OXFORD HANDBOOK OF COMPARATIVE CONSTITUTIONAL LAW 370-96 (Michel Rosenfeld & András Sajó eds., 2012).

132. *See generally* THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS 27-51 (2008) (on human

which all these dimensions contribute.[133] These notions are all consonant with the Kantian admonition to treat humanity as an end never as a means only. The notions of dignity and freedoms have very strong roots in the Preamble of the Charter, as well as in the Universal Declaration of Human Rights, which affirm "the dignity and worth of the human person," and call for equal rights and the promotion of "social progress and better standards of life in larger freedom."[134]   The Millennium Declaration includes "freedom" among the fundamental values stating that "men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice."[135]

Sustainable human development thus embodies a concept of development that goes far beyond economic or income growth to include the development and well-being of the human person as a main objective and desired outcome, superseding the concept of "welfare" as generally understood in the utilitarian and welfare economics tradition. "The idea of human development focuses directly on the progress of human lives and wellbeing. Since wellbeing includes living with substantial freedoms, human development is also integrally connected with enhancing certain capabilities—the range of things a person can do and be in leading a life."[136] Hence, sustainable human development is not only the acquisition of more goods and services, but also the larger freedom to choose (including how best to use goods and service), and the empowerment, the opportunity (or capability) to lead the kind of life one values.[137]

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flourishing).

133. *See generally* Mozzafar Qizilbash, *Development, Common Foes and Shared Values,* 14 REV. OF POL. ECON. 463 (2002). Sen sees an important difference between needs and freedoms: "Certainly, human beings do have needs and it is good to have them met. But should people be seen only in terms of their needs (something human beings share with other animals), and not in terms of the importance of their freedom to decide what they want (including what needs to fulfil), to live the way they would like (whether or not the chosen lifestyle is seen as a need), and to do what they have reason to want to do (even if the reason is not one of fulfilling needs)? There is a big issue of individual choice here." Amartya Sen, *The Ends and Means of Sustainability,* 14 J. HUM. DEV. & CAPABILITIES: A MULTI-DISCLINPLINARY J. FOR PEOPLE-CENTERED DEV. 6, 10 (2013). On the quality of lives, *see* JOSEPH STIGLITZ, AMARTYA SEN, & JEAN PAUL FITOUSSI, THE MEASUREMENT OF ECONOMIC PERFORMANCE AND SOCIAL PROGRESS REVISITED: REFLECTIONS AND OVERVIEW 1, 39 (2009), *available at* http://www.stiglitz-sen-fitoussi.fr/documents/overview-eng.pdf ("[W]hat really matters for citizens, [is] their well-being, or more generally, the quality of their lives . . . [which] includes in effect the full range of factors that make life worth living, reaching beyond its material side.").

134. Clearly these roots reach President Franklyn D. Roosevelt's seminal 1941 State of the Union Message to Congress where he laid out the vision of the post-war international society ("In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression—everywhere in the world. The second is freedom of every person to worship God in his own way—everywhere in the world. The third is freedom from want . . .—everywhere in the world. The fourth is freedom from fear . . .—anywhere in the world. That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation."). *See* TERRY GOLWAY, AMERICAN POLITICAL SPEECHES 77 (2012).

135. Millennium Declaration, *supra* note 12, ¶ 6.

136. *See* U.N. DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000, at 19 (2000), *available at* http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf.

137. Capabilities are thus the substantive freedom to achieve alternative "functionings"

In terms of the scope of the normative claim sustainable human development entails the universality of the "dignity of life" claim, placing the lives of contemporaries on the same plane as those of future generation. "Ethical universalism is basically an elementary demand for impartiality—applied within generations and between them. It is, in the present context, the recognition of a shared claim of all to the basic capability to lead worthwhile lives."[138] In addition, decent lives are to be secured in a world that is limited and subject to ecological constraints that can severely curtail or negate the opportunities of people, including crucially the opportunities to move out of poverty in its various dimensions, and to significantly improve the quality of people's life.

Sustainable human development is predicated upon the realization of the close integration and inter-linkages of the economic, the social and the environmental. Well-being (in terms of actual achievements) involves and requires a variety of enabling components (freedoms and opportunities,[139] such as the freedom from hunger, the ability to secure adequate shelter and to live in a healthy environment) that are plural and incommensurable, although often mutually supporting (since e.g. while we cannot compensate for the lack of educational opportunities with larger access to health services, often better education leads to better health and vice-versa). Similarly the natural world provides a set of—in many cases indispensable and incompensable—ecosystem services (since e.g. we cannot compensate the lack of clean water with more clean air), which are necessary for sustaining and improving the opportunities for well-being of both present and future people.[140]

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combinations. Indeed, "living may be seen as consisting of a set of interrelated 'functionings,' consisting of beings and doings. A person's achievement in this respect can be seen as the vector of her functionings. The relevant functionings can vary from such elementary things as being adequately nourished, being in good health, avoiding escapable morbidity, and premature mortality, etc. to more complex achievements, such as being happy, having self-respect, taking part in the life of the community and so on." *See* AMARTYA SEN, INEQUALITY RE-EXAMINED, 139-55 (1992).

138. *See* Sudhir Anand & Amartya Sen, *Human Development and Economic Sustainability*, 28 WORLD DEV'T 2029, 2030 (2000).

139. Sen discusses the concept of opportunity in details. He notes: "[i]n contrast with the utility-based or resource-based lines of thinking, individual advantage is judged in the capability approach by a person's capability to do things he or she has reason to value. A person's advantage in terms of opportunities is judged to be lower than that of another if she has less capability— less real opportunity— to achieve those things that she has reason to value. The focus here is on the freedom that a person actually has to do this or be that—things that he or she may value doing or being." *See* SEN, JUSTICE, *supra* note 52, at 231-32.

140. "Ecosystem services are the benefits people obtain from ecosystems. These include *provisioning services* such as food, water, timber, and fiber; *regulating services* that affect climate, floods, disease, wastes, and water quality; *cultural services* that provide recreational, aesthetic, and spiritual benefits; and *supporting services* such as soil formation, photosynthesis, and nutrient cycling. . . The human species, while buffered against environmental changes by culture and technology, is fundamentally dependent on the flow of ecosystem services." MILLENNIUM ECOSYSTEM ASSESSMENT, ECOSYSTEMS AND HUMAN WELL-BEING: SYNTHESIS 1, v (2005), *available at* http://www.millenniumassessment.org/documents/document.356.aspx.pdf. In many cases there is a need for: "separately maintaining the quantity or quality of many different environmental resources. It is motivated by a concern that we may not be able, for instance, to deal with the worsening of the atmosphere by increases in the amounts of physical capital, or more generally, that even if we could, there is a high

Nature[141] thus provides a set of key functions of an intrinsic,[142] existential value (as the natural habitat within certain climatic conditions is a necessary condition for and an integral feature of human life),[143] as well as of an instrumental value as inputs to generate valuable opportunities for well-being.[144] Sustainable human development recognizes that a decent life for all needs to be realized within the boundaries of the planet where economic, social, and environmental systems are interconnected.[145]

The notion of sustainable human development, and its central normative claim of seeking a decent human life for all, also needs to account for the patterns and

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degree of uncertainty about the trade-offs, so much so that it is worth focusing on each of the key resources separately." *See* STIGLITZ, SEN, & FITOUSSI, *supra* note 135, at 53.

141. The constitution of Ecuador sets out what are referred to as "the rights for living well" (*"derechos de buen vivir"*), including the rights to water, food, and a healthy environment and it also interestingly recognizes the "rights of Nature" (articles 71-74). *See generally* Marco Aparicio Wilhelmi, *Nuevo Constitucionalismo, Derechos y Medio Ambiente en Las Constituciones de Ecuador y Bolivia*, 9 REVISTA GENERAL DE DERECHO PUBLICO COMPARADO 1, 1-24 (2011). These rights are linked to the principles declared in the 1982 World Charter for Nature the concept of Harmony with Nature as recognised in Principle 1 of the 1992 Rio Declaration, and more broadly to the spiritual value attributed to "Mother Earth" by various indigenous peoples. G.A. Res. 37/7, ¶ 1, U.N. Doc. A/RES/37/7 (Oct. 28, 1992). The issue of "harmony with nature" was further addressed in the 2012 Rio outcome document. The Future We Want, *supra* note 2, ¶ 39. We recognize that the planet Earth and its ecosystems are our home and that Mother Earth is a common expression in a number of countries and regions and we note that some countries recognize the rights of nature in the context of the promotion of sustainable development. We are convinced that in order to achieve a just balance among the economic, social and environment needs of present and future generations, it is necessary to promote harmony with nature. *Id.*, ¶ 40. We call for holistic and integrated approaches to sustainable development which will guide humanity to live in harmony with nature and lead to efforts to restore the health and integrity of the Earth's ecosystem, as well as in annual General Assembly resolutions on "Harmony with Nature."

142. The debate over the intrinsic v. instrumental value of nature is a complex one. While it is often noted that the human development/capability approach is anthropocentric, it is also true that Nussbaum in her core list of capabilities promisingly opens up to a limited extent to other species and "the world of nature." *See* MARTHA NUSSBAUM, CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH 34 (2013). *See also* Peter Burdon, 'The Rights of Nature: Reconsidered' (2010) 49 *Australian Humanities Review* 69. Sustainable Human Development is more capacious in this regard as it posits the interconnectedness of the economic, social and environmental systems and the incommensurability of (most of) their components for well-being across generations.

143. Nature and climate even have an existential value for states, in particular island and low-lying countries whose territorial integrity is endangered by climate change, but also for states in general as all can be threatened by cataclysmic disasters.

144. "[P]eople are integral parts of ecosystems and that a dynamic interaction exists between them and other parts of ecosystems, with the changing human condition driving, both directly and indirectly, changes in ecosystems and thereby causing changes in human well-being. At the same time, social, economic, and cultural factors unrelated to ecosystems alter the human condition, and many natural forces influence ecosystems. . . . [T]he actions people take that influence ecosystems result not just from concern about human well-being but also from considerations of the intrinsic value of species and ecosystems." MILLENNIUM ECOSYSTEM ASSESSMENT, *supra* note 140. *See generally* Jérôme Pelenc, Minkieba Kevin Lompo, Jérôme Ballet & Jean-Luc Dubois, *Sustainable Human Development and the Capability Approach: Integrating Environment, Responsibility and Collective Agency*, 14 J. HUM. DEV'T AND CAPABILITIES: A MULTI-DISCLIPLINARY J. FOR PEOPLE-CENTERED DEV'T 77, 77-94 (2013).

145. *See generally* Marius Christen & Stephan Schmidt, *A Formal Framework for Conceptions of Sustainability—A Theoretical Contribution to the Discourse in Sustainable Development*, 20 SUSTAINABLE DEV'T 400, 400-10 (2012).

levels of distribution of benefits (i.e. the elements constitutive of a decent life, a life worth living). Different distributive rules can be considered, but the common thread is to combat inequalities, which at least would require achieving a minimum set of substantial freedoms (capabilities) or opportunities, including the opportunities to satisfy the basic needs, up to a threshold which secures a life of dignity.[146] In this respect, equitable access to ecosystem services also needs to be guaranteed, together with the protection of the ecological systems.[147]

Determining what the relevant freedoms and opportunities are is open to contestation, but it is essential to move from the level of principles to that of practice and real outcomes. Nussbaum insists on the need for that move, and considers that it is important to list "those human capabilities that can be convincingly argued to be of central importance in any human life, whatever else the person pursues or choses."[148] Agreeing on a list of the necessary components of a life worth of human dignity, the components of well-being, around which cooperative actions can be organized, would certainly be a major advance for the international community.

The capabilities approach, as elaborated by Sen and Nussbaum,[149] provides a rich way to better understand the sustainable human development imperative to achieve societies in which the needs of all individuals are met, opportunities are available and their dignity secured; societies that also preserve opportunities for posterity. As Nussbaum puts it, "a world in which people have all the capabilities on the list is a minimally just and decent world."[150] It is indeed a critical constitutional function to "secure for citizens the prerequisite of life worthy of human dignity—a core group of 'capabilities'—in areas of central importance to human life."[151] This should also be a crucial concern from the perspective of international constitutionalism.

The international efforts to agree on the new global agenda at the United Nations can in good measure be understood as the elaboration of a list of key human entitlements for a decent life for all (and a shared understanding of some necessary means and actions to achieve them). These efforts, if successful, would essentially mean achieving what would amount to an overlapping, minimum consensus,[152] thus

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146. Nussbaum defends such a sufficentarian approach, which demands equality for all in the distribution of the central capabilities up to a threshold. Other even stricter equalitarian rules are also possible but would appear less likely to muster international consensus.

147. *See generally* Brenda Holland, *Nussbaum, Rawls, and the Ecological Limits of Justice: Using Capability Ceilings to Resolve Capability Conflicts, in* CAPABILITIES, GENDER, EQUALITY: TOWARDS FUNDAMENTAL ENTITLEMENTS (Martha Nussbaum & Flavio Comin, eds., 2014).

148. *See generally* MARTHA NUSSBAUM, WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH 74 (2000).

149. Among the many contributions, *see* MARTHA NUSSBAUM, FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP (2006); AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); SEN, JUSTICE, *supra* note 52.

150. See Martha Nussbaum, *Beyond the Social Contract: Capabilities and Global Justice*, 32 OXFORD DEV. STUDIES 3, 12 (2004) [hereinafter Nussbaum, *Beyond the Social Contract*].

151. Nussbaum, *Constitutions and Capabilities*, *supra* note 123, at 7.

152. Rawls maintains that people, notwithstanding their diverging "comprehensive religious, philosophical, or moral doctrines," may still reach an "overlapping consensus" on a political conception

further entrenching the "constitutional value" of sustainable human development for the international community, and defining what it ought to mean for *all* people in the world. Nussbaum's attention to the need to set thresholds in terms of the opportunities (or capabilities) that societies (and the international community) ought to secure for justice to prevail is thus quite consonant with the current international debates and the search for a list of goals to advance the sustainable development of all.

From the broad normative principle of sustainable human development, which essentially defines a core of universal (intra- and inter-generational) justice, priorities for policy, and action can then be derived and designed. Such priorities would instrumentally aim at the realization of an agreed set of desired outcomes ("goals") that aim at guaranteeing the realization of the normative standard, or in other words, that would work towards a more just future for the world where all can enjoy a decent life. It would thus be important to distinguish between the justice imperative (the guarantee of a decent life for all, present and future generations), the related desired outcomes (goals), and the policies, actions, and instruments to be prioritized in order to reach them and bring individuals and societies closer to such desired outcomes according to a specified timetable. This would mean prioritizing the means, not the ends.[153]

VII. DESIGNING AND IMPLEMENTING A UNIVERSAL SUSTAINABLE HUMAN DEVELOPMENT AGENDA

Multilateral negotiations are almost by definition messy and often incoherent. When discussing profound issues of justice, while marred by political and economic considerations (sometime ideological or parochial), the result may be suboptimal. But this situation does not appear so different from the struggles that characterize domestic policy- and law-making. This is why the design of the new development agenda to be agreed upon in 2015 at the United Nations (including the set of desired and prioritized outcomes (the SDGs)) has proved far from easy. Leaving aside politics, and looking at conceptual issues, many questions remain, and many will most likely not be answered through U.N. deliberations. The text that will

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of justice. *See* JOHN RAWLS, POLITICAL LIBERALISM 133-72, 385-96 (1996). Sustainable human development engages many elements which bear on aspects of relevance for such doctrines. This is why only an overlapping (rather than a complete) consensus can be sought. A complete consensus is very difficult in a domestic context. It is virtually impossible and probably undesirable in an international context. Donnelly convincingly argues that human rights integrate an overlapping consensus at the international level. *See generally* Jack Donnelly, *The Relative Universality of Human Rights*, 29 HUM. RTS. Q. 281, 281-306 (2007).

153. The end encompass realizing the opportunity for all to live a life worthy of human dignity in all its components (across which trade-off are generally not possible). Means relate to policies, actions and resources needed for people to be capable to, and ultimately functionally realize, the requisite components of well-being. Most of these capabilities can also be expressed as entitlements, which are enshrined in international human right law. For the relations between capabilities and rights and the preference for the former, *see* Martha Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice*, 9 FEMINIST ECON. 33, 33-59 (2003).

eventually be adopted will require an exercise of interpretation and further consideration in many fora, both at the national and international levels. The depth of the entrenchment of sustainable human development will derive from the strength and justification of the arguments used in these debates.

The search for an agreement at the United Nations on the new global agenda and the set of goals is an attempt at reaching an overlapping consensus defining the international community's shared understanding of the necessary components of well-being, thus elaborating on the central normative claim of sustainable development: the guarantee of a life in dignity for all.[154] Or what Nussbaum defines as "a minimal conception of social justice in terms of the realization of certain positive outcomes, what people are actually able to do and be."[155] The proposal elaborated by the General Assembly working group[156] appears to locate and ground consensus on several important issues, which will essentially define minimum entitlements and thresholds (sometimes expressed in numerical levels) to be realized in the next fifteen years and beyond.

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154. In a similar vein the Secretary General stressed that U.N. member states in defining the post-2015 development agenda must heed the world peoples' "calls for peace and justice, eradicating poverty, realizing rights, eliminating inequality, enhancing accountability and preserving our planet. The world's nations must unite behind a common programme to act on those aspirations. No one must be left behind. We must continue to build a future of justice and hope, a life of dignity for all." *See* 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: Report of the Secretary-General*, UN doc. A/68/202 (July 26, 2013).

155. Nussbaum, *Beyond the Social Contract, supra* note 150, at 8.

156. Rep. on Sustainable Development Goals, *supra* note 53, lists the following sustainable development goals (also accompanied by 169 specific targets): "Goal 1. End poverty in all its forms everywhere; Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture; Goal 3. Ensure healthy lives and promote well-being for all at all ages; Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all; Goal 5. Achieve gender equality and empower all women and girls; Goal 6. Ensure availability and sustainable management of water and sanitation for all; Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all; Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all; Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation; Goal 10. Reduce inequality within and among countries; Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable; Goal 12. Ensure sustainable consumption and production patterns; Goal 13. Take urgent action to combat climate change and its impacts* (*acknowledging that the United Nations Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change); Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development; Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss; Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels; Goal 17. Strengthen the means of implementation and revitalize the global partnership for sustainable development." Of course these objectives do not exhaust the set of components of well-being, and indeed many can only be defined and pursed at the domestic or local levels. For instance some of the central capabilities set out by Nussbaum could only be partly or auxiliary addressed at international level, for instance the one related to "emotions."

As for the metric of sustainable development for the new agenda, a broader concept of well-being appears to prevail. Poverty is understood as deprivation with many dimensions, not just lowness of income. Indeed, income growth does not always or automatically translate into individual achievements in terms of wellbeing. Although income inequality is of crucial importance,[157] it does not exhaust all deprivations that lead to poverty, including unemployment, ill health, lack of education, and social exclusion. Hence, the emphasis is placed on the broader notion of social and economic (not just income) opportunities. The importance of accounting for special needs and vulnerabilities is also recognized.[158] Similarly there is a (modest) acknowledgment of the need to foster empowerment and agency.[159]

On the scope of sustainable development, ethical universalism seems firmly grounded with repeated references to the need to cover "all people." However, the relation between universalism and national partiality is likely to remain in large measure unresolved. Thematically the scope of the proposal is also broad and in line with the integration and interconnectedness that is a conceptual hallmark of sustainable human development. As a result the set of desired outcomes (goals) are also seen as integrated and internally consistent, mutually supportive, but non-commensurable as they define and make explicit what the emerging overlapping consensus on the components of a decent life for all mean and require. The desired outcomes are "for all," are universal in nature, while the means will need to be adapted. For instance, there should be no prevalence of consideration for economic aspects over environmental ones, or vice-versa. This is one of the core normative features of sustainable development, which aims to "steering a course between the needs of development and the necessity to protect the environment."[160] Integrated policymaking is one of the instruments to ensure this reconciliation.

The pattern of distribution of the benefits, of the components of well-being, agreed as shared goals, appears to respond to the logic of thresholds.[161] Interestingly, the proposal makes reference to the importance to implement social protection systems and floors.[162] The internationally-agreed normative framework for social

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157. *See* Rep. on Sustainable Development Goals, *supra* note 53. This is recognized with a prioritarian approach in proposed Target 10.1, "[b]y 2030, progressively achieve and sustain income growth of the bottom 40 per cent of the population at a rate higher than the national average."

158. *See id.* at Target 1.5 ("By 2030, build the resilience of the poor and those in vulnerable situations and reduce their exposure and vulnerability to climate-related extreme events and other economic, social and environmental shocks and disasters.").

159. *See id.* at Target 16.7 ("Ensure responsive, inclusive, participatory and representative decision-making at all levels.").

160. Gabčikovo-Nagymaros,Weeramantry, *supra* note 103, at 87.

161. *See* Rep. on Sustainable Development Goals, *supra* note 53 at Target 3.4 ("By 2030, reduce by one third premature mortality from non-communicable diseases through prevention and treatment and promote mental health and well-being." Implying health policy actions are required to achieve that minimum.)

162. *See id.* at Target 1.3 ("Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.")

protection floors[163] is based on a set of universal minimum guarantees, which "should allow life in dignity."[164]

While the overall design for the new global goals appears internally consistent and ethically grounded, trade-offs are bound to arise when prioritizing policies and instruments for implementation at all levels (from local to global), and for collective action. Beyond the obvious respect for regional, national, and local conditions and priorities, the general standard (i.e. dignity for all) aims to ultimately guarantee achieving minimum thresholds for all and in all areas. Defining what the minimum thresholds are will in good measure be a matter for further deliberation at domestic level within the parameters set by the global goals. However, when the objectives pursued by the goals (as further specified by targets) overlap with the objects covered by internationally-agreed human rights and environmental law, the new agenda, and the derivative goals will need to be interpreted consistently with the provisions of the respective regimes. As sustainable human development shares the same normative core—human dignity for all—with the human rights regime, the new agenda and its goals need to be understood and interpreted as "taking the realization of rights as a fundamental objective to be pursued."[165] The agreed interpretation of the relevant rights and obligations should be upheld and used to guide implementation of the agenda.[166]

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163. *See* Int'l Labour Org. ("ILO"), *Recommendation No. 202: Recommendation Concerning National Floors of Social Protection*, at ¶ 5 (2012), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202. Article 5 states "social protection floors" to comprise at least the following basic social security guarantees: "(a) access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability and quality; (b) basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services; (c) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and (d) basic income security, at least at a nationally defined minimum level, for older persons." *See generally* ILO, *World Social Protection Report 2014/15: Building Economic Recovery, Inclusive Development and Social Justice* (2014); Special Rapporteur on Extreme Poverty and Human Rights, *Extreme Poverty and Human Rights*, U.N. Doc. A/69/297 (Aug. 11, 2014), (focusing on social protection floors). *See also* Joseph Stiglitz, *Social Protection without Protectionism*, in THE QUEST FOR SECURITY: PROTECTION WITHOUT PROTECTIONISM AND THE CHALLENGE OF GLOBAL GOVERNANCE (Joseph Stiglitz & Mary Kaldor, eds., 2013).

164. *See Recommendation No. 202, supra* note 163, at ¶ 8.

165. *See* Amartya Sen, *Rights as Goals*, in EQUALITY AND DISCRIMINATION: ESSAYS IN FREEDOM AND JUSTICE 12, 22 (Stephen Guest & Alan Milne, eds., 1985). On the notion that some human rights are indeed very close to goals, just formulated differently, *see* James W. Nickel, *Goals and Rights: Working Together?*, in MALCOLM LANGFORD ET AL., THE MILLENNIUM DEVELOPMENT GOALS AND HUMAN RIGHTS: PAST, PRESENT, AND FUTURE 42 (2013) ("Many human rights are fairly abstract with the consequence that their associated duties are also abstract. Perhaps some international human rights are actually important political goals that are dressed up to look like rights. If some human rights are really goals then they do not just overlap with goals: they are goals that are merely formulated differently. For example, the commitment clause of the ICESCR calls upon participating countries to use fully their available resources to achieve progressively the realisation of its rights (ICESCR Article 2).")

166. For instance, countries which have ratified some or all the relevant human rights instruments are clearly obligated to fulfill the right to education. As it is the norm with the majority of obligations

All components of the agenda, because of their interconnection, need to be simultaneously addressed. Implementation will, however, need to be adapted to take into account the diversity of conditions prevailing in different localities and for different people, for instance with rich or middle-income countries giving relative priority to changes in life-styles and fragile countries to institution-building. Policy targets will also need to be tested for relative cost-effectiveness, considering that certain policies and actions may be, while desirable, not strictly necessary, or comparatively too costly or not sufficiently effective to achieve a desired outcome, and may deprive the needed resources to help the pursuit of other similarly important targets. In addition, policy target and actions should be prioritized when they contribute to the realization of multiple desired outcomes.[167]

Implementing an agenda and a set of goals essentially aimed at transforming the world and making sustainable development a reality, what we argued to be an emerging constitutional principle of the international community, will certainly be a daunting task. As noted in devising the new global agenda, the international community is not engaged in a law-making exercise and the result of the ongoing negotiation process will remain outside the "juridical paradigm of implementation."[168] While the agenda and the goals will not engender specific legal obligations (perhaps beyond the good faith obligations not to undermine the implementation of the agenda and explain total inaction), a "political" responsibility for acting upon goals and targets will arise. And the more the agenda will be considered by both peoples and states to be grounded in shared views, values, aspirations, and common interests, the stronger the demand for action will be.

The very nature of the exercise, a U.N. process, would see countries as primarily responsible for the implementation of the new global agenda, including the SDGs. In this context, the perspective presented by Young in terms of shared responsibility (which is also one of the values of the Millennium Declaration) is particularly apposite. She stresses that in relation to structural injustice (and indeed a world where sustainable development does not prevail cannot be called just),

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related to economic, social and cultural rights the realization of the right to education must be achieved over time, progressively, subject to the availability of resources. *See* International Covenant on Economic, Social and Cultural Rights, art. 2(1), *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3. (entered into force Jan. 3, 1976). However, this should not be interpreted as depriving states parties' obligations of all meaningful content as progressive implementation is no excuse for inaction. Progressive realization means that states parties have a specific and continuing obligation "to move as expeditiously and effectively as possible" towards the "full realization" of the right" and to take steps, which should be "deliberate, concrete and targeted." (General Comment 3, International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3, (1990), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 14 (2003), http://www1.umn.edu/humanrts/gencomm/epcomm3.htm). In addition some core obligations are of immediate application: States must ensure non-discrimination and equality in all forms of education and they must provide compulsory primary education that is available to all free of charge.

167. By way of example a possible target to prioritize educational policies that require the inclusion in the curricula of sustainable development education may be considered as instrumental in achieving the goal of ensuring quality education, as well as the goal of fostering sustainable consumption patterns.

168. *See generally* Falk, *supra* note 110.

responsibility is essentially shared and "can be discharged only through collective action. It is a *political* responsibility because it involves enjoining one another to reorganize collective relationships, debating with one another how to accomplish such reorganization, and holding one another to account for what we are doing and not doing to undermine structural injustice."[169] It will definitively require an enhanced sense of community by states and peoples, which should include reviewing the institutional arrangements that organize international cooperation.[170]

While all states bear the primary responsibility to take the necessary steps to move towards the realization of the desired outcomes (goals) for the benefit of their people, as well as of humanity as a whole, issues of available resources and respective capabilities are also relevant, and call for a measure of differentiation.[171] Countries which specifically contribute to a problem may need to bear an enhanced responsibility to address it, as was set out in 1992 Rio principle 7 in the area of environmental degradation.[172] Countries which are in a position to assist and cooperate with other states in the implementation of particular policies should do so under a general duty of solidarity (again a principle set out in the Millennium Declaration).[173] This, however, remains a contested area. When looked from a

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169. *See* IRIS MARION YOUNG, RESPONSIBILITY FOR JUSTICE 153 (2011). Young deals mainly with the domestic case, but she briefly considers the international issues as well.

170. Indeed, when announcing the need for the world to free itself from want, President Roosevelt went on to say: "[t]he third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants - everywhere in the world." GOLWAY *supra* note 134, at 77. A similar requirement was set out in the Universal Declaration of Human Rights in article 28 which states: "[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/RES/217(III), art. 28, (Dec. 10, 1948). About 60 years later addressing institutional arrangements for cooperation seems to remain a necessary component of any new global agenda.

171. This partly engages the argument for "historical justice." Sen notes: "The argument takes the form of presenting the case for making the already industrialized countries pay some kind of a price—of a 'fine'—for their polluting roles in the past. I am quite sceptical of this argument. . . . Also it must be recognised that when the old industrialized countries polluted the world, the understanding of pollution and its lasting effects were little known. Furthermore, people in Europe and America today were not even born when their ancestors polluted the atmosphere. No, that is not a fruitful line of analysis. Rather, the important issue is that today—right now—the developed countries take up an unequally large share of what are called 'the global commons'—the common pool of air, water and other natural space that we collectively can share. The present-day unequal sharing of the global commons, resulting from historical differences, is a contemporary fact that has to be taken into account in looking for a plausible contract about how to share the burdens of environmental control among different countries today. . . . What had to be addressed—and still has to be—Is to face fully the hard question of sharing the benefits and costs of having a friendly environment today—and in the future. *See* Amartya Sen, *Sustainable Developments and our Responsibilities*, 98 NOTIZIE DI POLITEIA, 129, 134 (2010).

172. Rio Declaration, G.A. Res. 66/288, ¶ 247, U.N. DOC. A/RES/66/288 (July 27, 1992).

173. "Solidarity is neither charity nor welfare; it is an agreement among formal equals that will all refrain from actions that would significantly interfere with the realization of common goals and fundamental interests. Solidarity requires an understanding that every member of the community must consciously and constantly conceive of its own interests as being inextricable from the interests of the whole." *See* R. St. J. Macdonald, *The Principle of Solidarity in Public International Law*, *in* ÉTUDES DE DROIT INTERNATIONAL EN L'HONNEUR DE PIERRE LALIVE 293 (Christian Dominicé et al. eds., 1993).

narrower redistributive perspective an overlapping minimum consensus can at best be located (but with many developing states demanding for more) in a moral duty of assistance.[174]   To move beyond that will require much further deliberation. Nonetheless, the interdependence that sustainable human development exposes should lead to further reflection and deliberation on how to reconcile the interests of states and their respective peoples and the interest of the international community and humanity.   Increasingly these interests tend to coincide.   Climate change, biodiversity loss, health pandemics, migration flows, and so on affect all or have such vast set of repercussions that strict national compartmentalization is no longer meaningful.[175] As a result, cooperation can no longer be based only on seeking to fulfill national interests, but needs to be based on a heightened sense of human fellowship and global partnership. For states and for people even more, "[a] central part of our own good, each and every one of us, is to produce, and live in, a world that is morally decent, a world in which all human beings have what they need to live a life with human dignity."[176]

Ultimately, it will be the legitimacy and ethical strength of the new global agenda, as well as the increased recognition by states of the mutuality and commonality of interests and concerns that will reinforce the sense of political responsibility and determine the level of implementation of the new global agenda, as well as the resources made available to it. And this is crucially prompted by social awareness and mobilization.[177] As Young put it: "the state's power to promote justice depends to a significant extent on the active support of its citizens in that endeavor."[178] Transparency and accountability mechanisms will be particularly important to ensure not only that assistance is provided, but also that all countries and relevant actors, including from the private sectors and civil society at large, promote the realization of the agenda and the derivative goals, domestically as well as internationally.

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174. On the difference between a duty of assistance and (re-) distributive justice, *see* RAWLS, *supra* note 152, at 105-20 (1999).

175. "When different nations led more separate lives, it was more understandable – though still quite wrong – for those in one country to think of themselves as owing no obligations, beyond that of non-interference, to people in another state. But those times are long gone." *See* PETER SINGER, ONE WORLD 197 (2004).

176. Nussbaum, *Constitutions and Capabilities, supra* note 123, at 12.

177. "Social movements in general are energized by . . . ethical passion, which enables people to experience the more active knowledge associated with formed awareness. That was the case in the movement against nuclear weapons. Emotions related to individual conscience were pooled into a shared narrative by enormous numbers of people. In earlier movements there needed to be an overall theme, even a phrase, that could rally people of highly divergent political and intellectual backgrounds. . . . Could the climate swerve come to include a 'climate freeze,' defined by a transnational demand for cutting back on carbon emissions in steps that could be systematically outlined? With or without such a rallying phrase, the climate swerve provides no guarantees of more reasonable collective behavior. But with human energies that are experiential, economic and ethical it could at least provide—and may already be providing—the psychological substrate for action on behalf of our vulnerable habitat and the human future."   Robert   Jay   Lifton,   *The   Climate   Swerve*,   N.Y.   TIMES,   Aug.   24,   2014, http://www.nytimes.com/2014/08/24/opinion/sunday/the-climate-swerve.html?_r=0. Human dignity for all could be the rallying phrase for the new agenda.

178. YOUNG, *supra* note 169, at 169.

VIII. CONCLUSION

In conclusion, anchoring the forthcoming universal sustainable human development agenda and the related SDGs in a common understanding of what sustainable development is and requires, and grounding it in shared, albeit thin, account of justice, would lend to the new framework and goals considerable compliance pull. The 2015 Summit holds the promise to be a constitutional moment capable of establishing a common vision for the international community, but, as is often the case, the risk of political fudge or bickering at the United Nations may squander the opportunity. A deeper understanding of the issues at stake should help the process.