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## **The United Nations and the Evolution of Global Values**

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# SOCIAL PROGRESS AND DEVELOPMENT

## 1 INTRODUCTION

Article 55 of the United Nations Charter allows the Organization to promote, *inter alia*, “higher standards of living, full employment, [...] conditions of economic and social progress and development, solutions of international economic, social, health, and related problems and international cultural and educational cooperation.” This chapter deals with the background and drafting of this article, as well as the way in which the United Nations, especially the General Assembly, has clarified, modernized and elaborated upon the purpose as defined in Article 55.

The UN General Assembly has adopted more declarations on social progress and development than on any of the other global values examined in this study. This suggests that the General Assembly devoted more energy and time to the promotion of social progress and development than to the promotion of the other values. This was probably the case, at least for a large group of developing States, but the number of declarations on a particular topic does not tell the full story. Relatively few of the declarations on social progress and development have ended up as multilateral treaties, or have been recognized as authoritative statements of existing customary international law. Many declarations on social progress and development have essentially remained no more than political declarations. They have not added any new legal obligations for the Organization or its Member States. Consequently they have also had relatively little influence on actual State behaviour. Thus they lack the authority which some of the declarations relating to other values have acquired.

A summary of the General Assembly’s general declarations on social progress and development is given below. These declarations generally contain strategies and action plans for development. The meaning of the global value of social progress and development can be deduced from those plans. These UN resolutions are compared with philosophical ideas about a fair distribution of resources and responsibilities at the global level. In philosophy a distinction is often made between responsibilities relating to an equitable distribution of goods and responsibilities relating to immediate needs. In line with this distinction, a separate section of this chapter is devoted to the UN’s strategy for responding to immediate needs. There is also a special section on the series of declarations about *sustainable* development, as well as those introducing a human rights based approach to development.

## 1.1 Putting the role of the UN into perspective

Most of the principal international institutions promoting the global value of social progress and development were not established by the United Nations Charter. The International Bank for Reconstruction and Development, a specialized agency of the United Nations, and the World Trade Organization, both play a much more significant role in regulating trade than any of the main organs of the UN. These international financial institutions are at best rather loosely linked to the UN system.

When the UN and these financial institutions were established in the 1940s, it was not the intention to separate them so drastically. The International Bank for Reconstruction and Development and the International Monetary Fund were established in 1945,<sup>1</sup> and the General Agreement on Tariffs and Trade was signed in 1947.<sup>2</sup> The intention was also to establish an International Trade Organization to oversee the implementation of that agreement. The Havana Charter for an International Trade Organization was adopted at the end of the United Nations Conference on Trade and Employment, held in Havana (Cuba) in 1947-1948. This was intended to be the constitution for this new trade organization.<sup>3</sup> Article 1 of that Charter showed that the primary purpose of this new Organization was the “realiz[ation of] the aims set forth in the Charter of the United Nations, particularly the attainment of the higher standards of living, full employment and conditions of economic and social progress and development, envisaged in Article 55 of that Charter.”<sup>4</sup>

The Havana Charter never entered into force. The World Trade Organization was established only in 1995.<sup>5</sup> In contrast with the Havana Charter, there was no reference at all to the purposes of the UN Charter in the Agreement establishing the World Trade Organization. Therefore when the declarations of the United Nations on the issue of development are examined, it is important to bear in mind that “we live with a global economic governance system in which discussion

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<sup>1</sup> See the Bretton Woods Agreements, which consist of the Articles of Agreement of the International Monetary Fund and the Articles of Agreement of the International Bank of Reconstruction and Development, both signed at Washington, on 27 December 1945, entry into force on the same day. See *United Nations Treaty Series* vol. 2 (1947), pp. 40-132 and pp. 134-204, respectively.

<sup>2</sup> The Final Act of the second session of the Preparatory Committee of the United Nations Conference on Trade and Employment, the General Agreement on Tariffs and Trade, and the Protocol of Provisional Application of the General Agreement on Tariffs and Trade, were all signed at Geneva, on 30 October 1947.

<sup>3</sup> Havana Charter for an International Trade Organization, pp. 9-115 of the Final Act of the United Nations Conference on Trade and Employment, adopted 24 March 1948. UNDoc. E/Conf. 2/78.

<sup>4</sup> *Idem*, Article 1.

<sup>5</sup> Marrakesh Agreement establishing the World Trade Organization (with final act, annexes and protocol), concluded at Marrakesh on 15 April 1994. See *United Nations Treaty Series*, volume 1867 (1995), pp. 154-164, for the agreement itself.

and implementation are the responsibility of different international organizations.”<sup>6</sup> The United Nations serves as a forum for discussion and for the adoption of non-binding declarations on global economic policy, with a strong focus on the element of global justice and duties of assistance to developing States. The international financial institutions, on the other hand, function as centres for the implementation of economic policy. However, what they implement is not necessarily UN policy.

## 1.2 The role of the Economic and Social Council

According to the Charter, the Economic and Social Council (ECOSOC) is the main organ specialized in social progress and development.<sup>7</sup> In reality, ECOSOC acts more like a subsidiary organ of the General Assembly. Most of the declarations adopted by ECOSOC were later also adopted by the General Assembly. Moreover, the General Assembly and ECOSOC both include the promotion of social progress and development in their mandate, and thus it is not a task primarily given to ECOSOC.

The UN Charter had already clearly referred to this subordinate role of ECOSOC. According to Article 62 of the UN Charter, the Economic and Social Council had the following tasks:

To make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and [to] make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

To prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

To call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

According to the Dumbarton Oaks proposals, the Economic and Social Council was meant to “make recommendations, on its own initiative, with respect to international economic, social and other humanitarian matters,” and to coordinate

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<sup>6</sup> Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 108. The failure of the Havana Charter was perceived as a major defeat for the United Nations. See e.g., Walter M. Kotschnig, “The United Nations as an Instrument of Economic and Social Development” (1968), p. 18.

<sup>7</sup> For the “prehistory” of the Economic and Social Council, and its relationship with the other economic institutions, see Nico Schrijver, “International Organization for the Management of Interdependence: Alternative Ideas in Pursuit of Global Decision Making” (1988), especially pp. 175-176.

the work of all kinds of organizations working in the socio-economic field.<sup>8</sup> Expert commissions could be established to assist the Council in its work.<sup>9</sup>

Many of the States which suggested broadening the socio-economic purpose of the UN also suggested amendments to broaden the mandate of the “first international agency in the history of man designed to coordinate the activities of the nations in the solution of social and economic problems,” *i.e.* ECOSOC.<sup>10</sup> Great things were expected of this Council in 1945. Some experts, who saw socio-economic development as the main tool to eliminate the causes of war, even suggested that “[i]f the Economic and Social Council succeeds in its broad objectives [...] it should finally reduce the Security Council to the status of the human appendix, which [...] is an organ with a history but no remaining functions.”<sup>11</sup>

The same group of States also suggested broadening ECOSOC’s powers. For example, Bolivia suggested that the Economic and Social Council of the United Nations (ECOSOC) be mandated:

To achieve concerted action destined to promote the economic development, the industrialization, and the raising of the standard of living of the less favoured nations as well as the protection of the international rights of man, the perfecting of social security and the provision of the material opportunities for work, the solution of problems of health and population and others of a similar nature.<sup>12</sup>

Bolivia did not explain how ECOSOC could achieve such concerted action. This would require more than just recommendatory powers. Australia proposed that ECOSOC be allowed “to initiate, for promoting the economic and social objectives declared in this Charter, the making of conventions (subject always to ratification by the members of the United Nations in accordance with their constitutional processes).”<sup>13</sup>

Other States, which proposed ambitious new socio-economic purposes, believed that it would be too much for one Council to promote them all. Brazil

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<sup>8</sup> United Nations: Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, pp. 20-21.

<sup>9</sup> *Idem*, p. 21.

<sup>10</sup> John H. Crider, “World Economic Council Emerging,” in *New York Times* of May 27, 1945. References to “culture” can be found in the Amendments to the Dumbarton Oaks Proposals Submitted on Behalf of Australia, UNCIO, vol. 3, p. 547; Proposed Amendments to the Dumbarton Oaks Proposals Submitted by the Philippine Delegation, UNCIO, vol. 3, p. 540; Amendments Proposed by the Governments of the United States, the United Kingdom, the Soviet Union and China, UNCIO, vol. 3, p. 627.

<sup>11</sup> Porter, “Economic Council is Key Peace Aid,” in *New York Times* of June 12, 1945.

<sup>12</sup> Proposals of the Delegation of the Republic of Bolivia for the Organization of a System of Peace and Security, UNCIO, vol. 3, p. 586.

<sup>13</sup> UNCIO, vol. 3, p. 547.

therefore suggested the establishment of a Council of Cultural Relations, working independently from ECOSOC, to promote education and culture worldwide.<sup>14</sup> Similarly, the French Delegation called for the establishment of a separate “international Organization on intellectual and educational questions.”<sup>15</sup> Lebanon, Costa Rica and Ecuador made similar proposals.<sup>16</sup> There were also ideas about establishing specialized organizations under the umbrella of the Council.<sup>17</sup>

Belgium suggested changing the name of the Economic and Social Council to “International Cooperation Council,” because the old name no longer covered all the tasks assigned to it.<sup>18</sup>

Morales of Guatemala, the Rapporteur of the relevant Committee in San Francisco, stressed the importance of ECOSOC’s ambitious goals:

[...] international cooperation in any of the many fields of human concern brought within the purview of the Social and Economic Council will be – to the extent that it is successful – of practical significance in itself in improving the conditions of human existence. But it will do more. It will contribute to the attainment of peace in this world by substituting the method of joint action for unilateral action, and by progressively shifting the emphasis of international cooperation to the achievement of positive ends in lieu of the negative purpose of preventing the outbreak of war by way of organized security measures.<sup>19</sup>

France also saw the potential of ECOSOC’s work as a way of maintaining peace and security. In its enthusiasm, the French delegate explained that if ECOSOC carried out its task effectively, the Security Council would have nothing left to do. After all, “[i]f the Economic and Social Council is successful in its task of preparing the future basis of peace by securing effective international cooperation to insure the rights of man and to insure the essential freedoms, then we consider that we will never need the coercive measures which are provided under other parts of the Charter through the Security Council.”<sup>20</sup>

But ECOSOC never became the International Cooperation Council. It never became the centre of all social, cultural and economic cooperation between States.

<sup>14</sup> Addition to Chapter XII Submitted by the Brazilian Delegation, UNCIO, vol. 3, p. 252.

<sup>15</sup> Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chapter IX, Sections A and C: Draft Amendments Submitted by the French Delegation, UNCIO, vol. 3, p. 391.

<sup>16</sup> See Lebanon’s Suggestions on the Dumbarton Oaks Proposals, UNCIO, vol. 3, p. 473; Cuba, pp. 506-508; Ecuador, p. 402 (see also pp. 417, 424); Haiti, p. 53.

<sup>17</sup> See e.g., Comments of the French Ministry of Foreign Affairs, UNCIO, vol. 3, p. 388 (see also Sixth Plenary Session, May 1, 1945, UNCIO, vol. 1, p. 436); Netherlands, p. 321; Brazil, p. 249; Haiti, p. 53; Philippines, p. 540; Uruguay, p. 42.

<sup>18</sup> Propositions of the Belgian Delegation, UNCIO, vol. 10, p. 209. See also Fernand Dehousse, *Cours de politique internationale* (1945), p. 60.

<sup>19</sup> UNCIO Selected Documents, p. 642-643.

<sup>20</sup> Second Meeting of Commission II, June 11, 1945, UNCIO, vol. 8, p. 62.

It did not reduce the Security Council to an appendix in the corpus of the United Nations Organization. Article 7 of the UN Charter included ECOSOC among the principal organs of the United Nations, but it is clear from Article 62 UN Charter, as well as from subsequent practice, that ECOSOC was merely meant to assist the General Assembly in its work, particularly that on social progress and development.<sup>21</sup>

## 2 SOCIAL PROGRESS AND DEVELOPMENT IN SAN FRANCISCO

This chapter continues by addressing the value of social progress and development itself. Like all the chapters on values, it begins by examining the *travaux préparatoires* of the UN Charter.

### 2.1 The Preamble

According to Smuts' first draft of the Preamble, the United Nations was established, *inter alia*, to re-establish faith "in the enlargement of freedom and the promotion of social progress and the possibility of raising the standards of life everywhere in the world."<sup>22</sup> Smuts himself later changed the wording to "to promote social progress and better standards of life in larger freedom."<sup>23</sup> This phrase ended up unchanged and without discussion in the Preamble of the UN Charter.<sup>24</sup>

### 2.2 The Purpose

The Dumbarton Oaks plan was essentially a plan to prevent all future wars. As Egypt rightly pointed out, it focused on the "negative side of the international problem."<sup>25</sup> It focused on what States ought *not* to do. At the same time, it did not neglect the positive side, which, according to the Egyptian delegate, "consist[ed] in the development of international solidarity and cooperation."<sup>26</sup> The Dumbarton Oaks plan listed as one of the purposes of the Organization the "achieve[ment of]

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<sup>21</sup> ECOSOC has been criticized, more than any other of the principal organs of the United Nations, for a lack of relevance. See *e.g.*, Gert Rosenthal, "Economic and Social Council" (2007).

<sup>22</sup> Draft Preamble to the Charter of the United Nations Proposed by the Union of South Africa, 26 April, 1945, UNCIO, vol. 3, pp. 474-475.

<sup>23</sup> See Preamble to the Charter of the United Nations Submitted by the South African Delegation in Revision of Draft of April 26, 1945, 3 May 1945, UNCIO, vol. 3, pp. 476-477, and Documentation for Meetings of Committee I/1, UNCIO, vol. 6, p. 530.

<sup>24</sup> Thirteenth Meeting of Committee I/1, June 5, 1945, UNCIO, vol. 6, p. 367. Colombia wanted to add to this phrase a reference to the Atlantic Charter, but that motion failed. See Report of Rapporteur of Committee 1 to Commission I, UNCIO, vol. 6, p. 452.

<sup>25</sup> Third Plenary Session, April 28, 1945, UNCIO, vol. 1, p. 234.

<sup>26</sup> *Idem*.

international cooperation in the solution of international economic, social and other humanitarian problems.”<sup>27</sup>

This provision did not specify the ultimate aim of all this cooperation.<sup>28</sup> Australia suggested that it was “[t]o promote human welfare in all lands.”<sup>29</sup> According to Guatemala, the aim of all this socio-economic cooperation was to “enable all the countries of the world to raise the standard of living of their people, and to banish misery from the face of the earth.”<sup>30</sup> Other States saw socio-economic cooperation as a means to maintain international peace and security,<sup>31</sup> or as a means to a more sustainable and more comprehensive peace, or “positive peace.”<sup>32</sup> The issue of solidarity also came to the fore here. Bolivia believed that poorer people had a right to socio-economic assistance simply because they were part of the human race.<sup>33</sup> The Philippines pointed out that it was no longer defensible not to care about the plight of fellow human beings in other parts of the world. In the words of the Philippines delegation, “[u]ntil the weakest link in our human chain is made safe, not one of us is safe.”<sup>34</sup> These considerations were also the basis for suggestions to have the UN promote fair and equitable international trade.<sup>35</sup>

Despite all these interesting amendments, very little happened to the Dumbarton Oaks provision in San Francisco. The provision had called for “international cooperation in the solution of international economic, social and other humanitarian problems.” The relevant Subcommittee only slightly rephrased

<sup>27</sup> Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, p. 2.

<sup>28</sup> Other additions were also suggested. The most popular additions were references to “cultural,” “educational,” or “intellectual” problems. The sponsors decided to add only “cultural” problems. See Amendments Submitted by the United States, the United Kingdom, the Soviet Union and China, UNCIO, vol. 3, p. 622.

<sup>29</sup> Amendments Submitted by Australia, UNCIO, vol. 3, p. 543. Similarly, Canada (*idem*, p. 591) believed that “attaining higher standards of living and economic and social progress and development” should be a purpose of the Organization.

<sup>30</sup> Sixth Plenary Session, May 1, 1945, UNCIO, vol. 1, p. 441. See also the views of the delegates from the Philippines (Fourth Plenary Session, April 28, 1945, *idem*, p. 293), Norway (Eighth Plenary Session, May 2, 1945, *idem*, p. 554), and Uruguay (Fourth Plenary Session, April 28, 1945, *idem*, p. 299).

<sup>31</sup> See *e.g.*, Amendments Submitted by Chile, UNCIO, vol. 3, p. 294; Panama, *idem*, pp. 259-260; Czechoslovakia, *idem*, p. 470.

<sup>32</sup> See *e.g.*, Amendments Submitted by Bolivia, UNCIO, vol. 3, pp. 577 and 581, and First Plenary Session, April 26, 1945, UNCIO, vol. 1, pp. 186-187; Norway, UNCIO, vol. 3, pp. 355 and 366; Uruguay, *idem*, p. 43.

<sup>33</sup> First Plenary Session, April 26, 1945, UNCIO, vol. 1, p. 187.

<sup>34</sup> Fourth Plenary Session, April 28, 1945, UNCIO, vol. 1, p. 293. The Philippines used a nice metaphor to stress the interdependence of nations in the modern world. According to the Philippines, “[t]he mountain of man’s progress is great and terrible, and they who climb must adjust their pace to the weakest or the entire chain of climbers will go down.”

<sup>35</sup> See *e.g.*, Amendments Submitted by Cuba, UNCIO, vol. 3, p. 498; Dominican Republic, *idem*, pp. 564, and 571; Uruguay, *idem*, p. 43.



the provision, correcting “the defective use of adjectives.”<sup>36</sup> The UN Charter provision now reads that it is one of the Organization’s purposes “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character.”<sup>37</sup>

In addition to this provision in the list of purposes, there was also a “purpose in disguise” slightly further down in the list of the Dumbarton Oaks proposals, which stated that “[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the Organization should facilitate solutions of international economic, social and other humanitarian problems.”<sup>38</sup> This is a purpose in disguise because it is not included in the list of purposes, but does read like a purpose.<sup>39</sup> In contrast with the genuine purpose referred to earlier, this purpose in disguise *did* explicitly refer to the link between socio-economic cooperation and the maintenance of peace,<sup>40</sup> in which the former appears to be subordinate to the latter. At the same time, socio-economic cooperation was also considered as a purpose in and of itself.<sup>41</sup> Some of the amendments to this provision echo those made to the genuine purpose.<sup>42</sup> It was also felt that the phrase “to facilitate solutions” was too weak, and it was therefore replaced with the word “promote.”<sup>43</sup> Other than that, no significant changes were made to the Dumbarton Oaks provision that listed different types of cooperation.<sup>44</sup>

<sup>36</sup> Report of Rapporteur, Subcommittee I/1/A, to Committee I/1, June 1, 1945, UNCIO, vol. 6, p. 704.

<sup>37</sup> UN Charter, Article 1(3). The French version refers to “intellectual” as opposed to “cultural” problems.

<sup>38</sup> Dumbarton Oaks Proposals for a General International Organization, UNCIO, vol. 3, p. 19. Bedjaoui later suggested that the order of this sentence should be reversed, *i.e.* that friendly relations among nations would facilitate the solution of various international problems. See Mohammed Bedjaoui, “Article 1” (2005), p. 318.

<sup>39</sup> Canada suggested moving the text of this purpose-in-disguise to the list of purposes. Amendments Submitted by Canada, UNCIO, vol. 3, p. 591. See also the Coordination Committee’s Summary Report of Thirty-First Meeting, June 18, 1945, UNCIO, vol. 17, pp. 228-232.

<sup>40</sup> This link was emphasized in the Report of the Rapporteur Committee II/3, Approved by Committee II/3, June 8, 1945, UNCIO, vol. 10, p. 279.

<sup>41</sup> It thus, as Kaeckenbeeck pointed out, treated socioeconomic cooperation “à la fois comme fins et comme moyens.” Georges Kaeckenbeeck, “La Charte de San-Francisco dans ses rapports avec le droit international” (1948), p. 253.

<sup>42</sup> For example, more or less the same countries made more or less the same suggestions to add references to “culture”. The sponsors adopted this reference to “culture” in their amendments. See Amendments Submitted by the United States, the United Kingdom, the Soviet Union and China, UNCIO, vol. 3, p. 626. See also the Tenth Report of Drafting Subcommittee II/3/A, UNCIO, vol. 10, p. 409. See also Fourteenth Meeting of Committee II/3, May 29, 1945, UNCIO, *idem*, p. 127, and Report of the Rapporteur Committee II/3, Approved by Committee II/3, June 8, 1945, UNCIO, *idem*, p. 280.

<sup>43</sup> Report of the Rapporteur Committee II/3, Approved by Committee II/3, June 8, 1945, UNCIO, vol. 10, p. 271.

<sup>44</sup> Working Draft of Paragraphs Approved by Committee II/3, UNCIO, vol. 10, p. 181 (this text is already identical to what was to become article 55 of the UN Charter); Fifth Report of Drafting

One suggestion for a new field of international cooperation, which was ultimately rejected, is particularly interesting. According to the French delegate, “[w]ars do not arise simply because two rival armies want to match their strength against each other.”<sup>45</sup> In fact, “[t]hey arise from a number of other causes, including economic rivalries and rivalries over raw materials.”<sup>46</sup> According to France, “the inequality in the distribution of raw materials among the various countries was one of the great causes of war.”<sup>47</sup> The country therefore proposed “ensuring access, on equal terms, to trade, raw materials, and to capital goods” as a new purpose of the Organization, and of the Economic and Social Council in particular.<sup>48</sup> The Netherlands objected. It believed that “the French amendment took account only of the interests of consumers of raw materials [and] any mention of raw materials in the Charter should provide for protection of producers as well as consumers.”<sup>49</sup> New Zealand stated that if the French proposal meant “that nations pledged themselves to abandon tariffs, exchange controls, quotas, and trade agreements,” then the New-Zealand delegation would be hesitant to accept it.<sup>50</sup> Peru believed that to abandon such trade barriers was the only effective way to achieve higher standards of living and full employment.<sup>51</sup> In response to the French amendment, Peru also pointed out that “specific reference to the question of raw materials was unnecessary, as international raw material problems are clearly within the sphere of international economic problems.”<sup>52</sup> In its report the Committee explicitly stated that the wording used in the article should be interpreted very broadly, and covered the international problems relating to the distribution of raw

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Committee of Committee II/3, *idem*, p. 390; Tenth Report of Drafting Subcommittee II/3/A, *idem*, p. 409; Twentieth Meeting of Committee II/3, June 6, 1945, *idem*, p. 212.

<sup>45</sup> Second Meeting of Commission II, June 11, 1945, UNCIO, vol. 8, p. 62.

<sup>46</sup> *Idem*. The importance of providing access to the world’s raw materials was already pointed out in the Atlantic Charter, adopted on the 14<sup>th</sup> of August 1941, by President Roosevelt (USA) and Churchill (UK)

<sup>47</sup> Minutes of the Fifteenth Five-Power Informal Consultative Meeting on Proposed Amendments, June 4, 1945, in FRUS, 1945, *General*: Volume I, p. 1149.

<sup>48</sup> Fourteenth Meeting of Committee II/3, May 29, 1945, UNCIO, vol. 10, p. 128. See also Mexico, during the Fifteenth Meeting of Committee II/3, May 30, 1945, *idem*, p. 141. See also Lawrence E. Davies, “Ask World Rights to Raw Materials,” in *New York Times* of May 27, 1945.

<sup>49</sup> Fourteenth Meeting of Committee II/3, May 29, 1945, UNCIO, vol. 10, p. 129. See also the Minutes of the Sixteenth Meeting of the United States Delegation, May 31, 1945, in FRUS, 1945, *General*: Volume I, p. 1027, and Ministerie van Buitenlandse Zaken (Netherlands), *Het ontstaan der Verenigde Naties* (1950), p. 100.

<sup>50</sup> Fourteenth Meeting of Committee II/3, May 29, 1945, UNCIO, vol. 10, p. 130.

<sup>51</sup> Second Meeting of Commission II, June 11, 1945, UNCIO, vol. 8, p. 63.

<sup>52</sup> Fifteenth Meeting of Committee II/3, May 30, 1945, UNCIO, vol. 10, p. 141.

materials.<sup>53</sup> The French delegation could not claim a victory, but it was not a defeat either.<sup>54</sup>

Canada suggested adding “attaining higher standards of living and economic and social progress and development” as an entirely new element in the purpose in disguise.<sup>55</sup> The Ukraine wanted a “guarant[ee] for all the working people of the right to work.”<sup>56</sup> Greece urged that the “Organization should be empowered to assist in the reconstruction of territories devastated by the war.”<sup>57</sup> The Greek suggestion was not adopted, but the other two were basically combined into the following new purpose: to promote “higher standards of living, high and stable levels of employment and conditions of economic and social progress and development.”<sup>58</sup> At New Zealand’s request, the Committee changed “high and stable levels of employment” to “full employment.”<sup>59</sup>

The Organization therefore promotes “higher standards of living, full employment, and conditions of economic and social progress and development,” and “solutions of international economic, social, health, and related problems,” and “international cultural and educational cooperation.”<sup>60</sup> This shows that the purpose in disguise was significantly changed, compared to the original Dumbarton Oaks version.<sup>61</sup> Thus it was rightly referred to as “one of the best illustrations to date of what can happen to the language of the Dumbarton Oaks agreement at this [San Francisco] conference.”<sup>62</sup> The adoption of all these new socio-economic purposes was of particular concern to the US, but there was little even the US could do to stop it.<sup>63</sup>

<sup>53</sup> Report of the Rapporteur Committee II/3, Approved by Committee II/3, June 8, 1945, UNCIO, vol. 10, p. 271.

<sup>54</sup> See also Jean Dupuy, *San Francisco et la Charte des Nations Unies* (1945), pp. 52-53.

<sup>55</sup> Amendments Submitted by Canada, UNCIO, vol. 3, p. 591.

<sup>56</sup> Fifth Meeting of Committee II/3, May 14, 1945, UNCIO, vol. 10, p. 27.

<sup>57</sup> Eleventh Meeting of Committee II/3, May 24, 1945, UNCIO, vol. 10, p. 84.

<sup>58</sup> First Report of Drafting Subcommittee, UNCIO, vol. 10, p. 373.

<sup>59</sup> Seventh Meeting of Committee II/3, May 16, 1945, UNCIO, vol. 10, p. 39. The subcommittee chose “high and stable” over “full” by a difference of just one vote.

<sup>60</sup> Article 55 UN Charter. In the French version, “cultural cooperation” is translated this time as “coopération internationale dans les domaines de la culture intellectuelle.”

<sup>61</sup> For the provision on human rights, see Chapter VI on human dignity.

<sup>62</sup> “Widen Definition of Human Rights,” an article that appeared in the *New York Times* of May 18, 1945.

<sup>63</sup> Mrs. Gildersleeve, the US representative in the Committee, remarked that “it was frightening to observe what the members of the Committee expected in the way of results,” and that “this development [of adopting more and more socio-economic purposes] was alarming and would be difficult to hold in check.” See Minutes of Fifty-third Meeting of the United States Delegation, May 25, 1945, in FRUS, 1945, *General*: Volume I, pp. 886-887.

### 2.3 The Principle

In the Dumbarton Oaks proposals there was no principle that obliged the Member States or the Organization to cooperate on socio-economic issues. Australia saw the “fullest collaboration in the economic fields with the object of securing for all improved labour standards, economic advancement, and social security” as one of the three great starting points of the Organization.<sup>64</sup> It therefore suggested adding a brand new principle that “[a]ll members of the United Nations pledge themselves to take action both national and international for the purpose of securing for all peoples, including their own, improved labour standards, economic advancement, social security and employment for all who seek it.”<sup>65</sup> This article became known simply as “the pledge.”<sup>66</sup> In Australia’s view, the central idea of the pledge was that it consisted of two types of obligations: first, all Member States had a duty to cooperate with each other in promoting socio-economic purposes at the international level. Secondly, each State should pursue the same socio-economic purposes at the national level “by its own action in its own way.”<sup>67</sup>

The US was strongly opposed to the pledge.<sup>68</sup> Stettinius believed it was “dangerous,” and Dulles suggested that the US would attempt to “have this clause ruled out of order because it constituted, in effect, a multilateral agreement – a pledge to take individual action.”<sup>69</sup> The US was alone in its opposition, and was confronted by all the other nations, described by Pasvolsky as a “stampede under way,” which could not be stopped.<sup>70</sup> When the relevant Subcommittee and Committee of the San Francisco Conference were looking at ways of redrafting the Australian provision in an attempt to please the Americans, Australia had to fight

<sup>64</sup> First Plenary Session, April 26, 1945, UNCIO, vol. 1, p. 170.

<sup>65</sup> Amendments Submitted by Australia, UNCIO, vol. 3, pp. 546-547. See also First Plenary Session, April 26, 1945, UNCIO, vol. 1, p. 177, where Australia defends the amendment in plenary session.

<sup>66</sup> See *e.g.*, Department of External Affairs (Canada), *Report on the United Nations conference on international organization* (1945), pp. 46-47.

<sup>67</sup> Twelfth Meeting of Committee II/3, May 25, 1945, UNCIO, vol. 10, p. 100. According to the UK, the pledge had not two, but three elements, namely a pledge “for separate action, for joint action, and for cooperation with the Organization.” See Fifteenth Meeting of Committee II/3, May 30, 1945, UNCIO, vol. 10, p. 140.

<sup>68</sup> Evatt later described the attitude of the US and other major powers as “extremely unresponsive.” Herbert Vere Evatt, *The United Nations* (1948), p. 31.

<sup>69</sup> See Minutes of Fifty-fourth Meeting of the United States Delegation, May 26, 1945, in FRUS, 1945, *General*: Volume I, p. 893. See also Rüdiger Wolfrum, “Article 56” (2002), p. 942.

<sup>70</sup> *Idem*, p. 894. In order to at least slow down the stampede, the US proposed an alternative formulation, that “[a]ll members undertake to cooperate with the Organization and with each other and to take separate action, consistent with their own political and economic institutions, to the achievement of the [socioeconomic] purposes.” See Minutes of Fifty-sixth Meeting of the United States Delegation, May 28, 1945, in FRUS, 1945, *General*: Volume I, p. 945.

hard to ensure that this twofold nature of the pledge survived.<sup>71</sup> Australia was successful, and the pledge ended up in the Charter as follows:

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55 [*i.e.* the purpose in disguise].<sup>72</sup>

When the work was finished, Stettinius referred to the pledge in surprisingly positive terms as “epoch-making in the history of international organization.”<sup>73</sup> Australia later claimed credit for being the drafter of the pledge, and the records show they certainly deserved it.<sup>74</sup>

### 3 SOCIAL PROGRESS AND DEVELOPMENT

#### 3.1 Introduction

This section examines the general ideas on social progress and development presented by the Assembly. Where relevant, these ideas are compared with suggestions from outside the UN framework, especially in the (philosophical) literature.

What can be expected from the General Assembly’s declarations on social progress and development when they are examined from a value-based perspective?<sup>75</sup> First, we might expect some general ideas on what various actors should do to ensure the fair distribution of goods, opportunities and resources at the global level,<sup>76</sup> as well as something about global social justice or global distributive justice.

Before looking at the declarations, some of the more influential literature on this topic is presented, so that the ideas in the literature can be compared with those in the UN’s declarations.

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<sup>71</sup> See *e.g.*, the Fourteenth Meeting of Committee II/3, May 29, 1945, UNCIO, vol. 10, p. 130, and especially the Fifteenth Meeting of Committee II/3, May 30, 1945, *idem*, pp. 139-140.

<sup>72</sup> The pledge’s meaning is explained by the Rapporteur at the Ninth Plenary Session, June 25, 1945, UNCIO, vol. 1, p. 622.

<sup>73</sup> Edward R. Stettinius, “Human Rights in the United Nations Charter” (1946), p. 1.

<sup>74</sup> Herbert Vere Evatt, *The United Nations* (1948), p. 9.

<sup>75</sup> The cross-fertilization between economics and “UN ideas” has been studied elsewhere. See especially the work of the United Nations Intellectual History Project, *e.g.*, Richard Jolly, Louis Emmerij, Dharam Ghai & Frédéric Lapeyre, *UN Contributions to Development Thinking and Practice* (2004), and Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009).

<sup>76</sup> As examples of goods, one might think simply of money, but also of the most basic needs, such as food, health care, education, and a healthy environment.

Principles of social or distributive justice are normative principles designed to allocate goods that are limited in supply relative to demand, on the basis of a mechanism that is considered fair.<sup>77</sup> The problem is how to interpret the word “fair”. According to a strictly egalitarian concept of fairness, the distribution is fair when all individuals receive an equal share of the goods.<sup>78</sup> But there are alternatives. John Stuart Mill suggested a deserts-based approach to social justice.<sup>79</sup> In general, these deserts refer to certain acts or qualities of the recipient.<sup>80</sup> For example, all humans are equally deserving because they are humans.<sup>81</sup> But certain acts by specific individuals may positively or negatively affect what they deserve.<sup>82</sup> In 1971, Rawls introduced the now famous difference principle: within a community, inequalities in the distribution of goods and opportunities are only morally acceptable if they are to everyone’s advantage.<sup>83</sup> Most theories of social justice have in common that they require that all inequalities in the distribution of resources and opportunities must be justified in some way, and that any inequality that is unjustifiable by any standard of justice is an injustice.<sup>84</sup> The big question is whether such theories, most of which were originally applied at the national level or to some other clearly defined community, can be applied at the global level. Rawls

<sup>77</sup> “Distributive Justice”, entry in the Stanford Encyclopedia of Philosophy, available online at <http://plato.stanford.edu/>. This definition should not give the suggestion that there is unanimous agreement on what global social/distributive justice is. It is actually rather difficult to give a definition of global social justice. Perhaps for that reason, David Miller wrote in the preface of his book *Social Justice*, that the reader should be warned he was not to be provided with a definition of social justice. Miller, *Social Justice* (1979).

<sup>78</sup> *Idem*. See also Kok-Chor Tan, “The Boundary of Justice and the Justice of Boundaries” (2006), pp. 319-344.

<sup>79</sup> Mill: “If it is a duty to do to each according to his deserts, returning good for good as well as repressing evil by evil, it necessarily follows that we should treat all equally well (when no higher duty forbids) who have deserved equally well of us, and that society should treat all equally well who have deserved equally well of it, that is, who have deserved equally well absolutely. This is the highest abstract standard of social and distributive justice; towards which all institutions, and the efforts of all virtuous citizens, should be made in the utmost possible degree to converge.” This quote is from “On the Connection between Justice and Utility”, chapter V of Mill, *Utilitarianism* (1863).

<sup>80</sup> On the problems of defining “desert” in this context, see Julian Lamont, “The Concept of Desert in Distributive Justice” (1994).

<sup>81</sup> They may deserve equally, but the needs of different people and States can be quite different: cold countries require heating, mountainous and landlocked countries require more expensive infrastructure, hot countries require air-conditioning, etc. The question one may raise is how a concept of global justice can take into account differences in the requirements to achieve a “common” level of living. Marx’s adage comes to mind: “From each according to his ability, to each according to his needs!” Marx, *Critique of the Gotha Program*, Part I, first published in 1875.

<sup>82</sup> See Peter Vallentyne, “Desert and Entitlement: An Introduction” (2003); Alan Zaitchik, “On Deserving to Deserve” (1977).

<sup>83</sup> John Rawls, *A Theory of Justice (Revised Edition)* (1999, original of 1971), p. 55. Rawls’ theory is generally seen as a form of egalitarianism, albeit not strict egalitarianism.

<sup>84</sup> This may seem like an unhelpful play with words, but the point is that inequality caused by chance or mere factual circumstances alone is unjust.

did not believe that his theory of justice could be applied to the international community.<sup>85</sup> Many disagree with him on this point.<sup>86</sup>

One of the main problems one encounters when transposing theories of national justice to the international level, is that it is difficult to speak of distributive justice if there is no “distributor.” It has often been argued that if there is no global institution mandated to (re)distribute goods, it is probably impossible to speak about global social justice at all.<sup>87</sup> No international institution, not even the United Nations, has been given a mandate to distribute goods evenly over all Member States, let alone all the individual people in the world.<sup>88</sup>

None of the General Assembly declarations go so far as to introduce any system of global social/distributive justice. At best, the proposals aim to enable States to get what they need through participation in the international economic order.<sup>89</sup> Therefore the idea is to create a level playing field, but the game is still one of the survival of the fittest, a game in which States provide for themselves. Most people agree that there is something immoral about this system when it leads to extreme forms of misery in those communities that fail to provide for themselves. Even Charles Darwin, the champion of natural selection and of the “survival of the fittest” theory, believed this to be so. After all, he wrote that “if the misery of our poor be caused not by laws of nature, but by our own institutions, great is our sin.”<sup>90</sup> At the very least, the world should provide a safety net for those who do not benefit from participating in the existing international economic order. If this is

<sup>85</sup> John Rawls, *The Law of Peoples* (1999), p. 83.

<sup>86</sup> See e.g., Charles R. Beitz, *Political Theory and International Relations* (1999); Pogge, *Realizing Rawls* (1989). Many articles have also made this point: See e.g., Thomas W. Pogge, “An Egalitarian Law of Peoples” (1994), pp. 195-224; Andrew Kuper, “Rawlsian Global Justice: Beyond a Law of Peoples to a Cosmopolitan Law of Persons” (2000), pp. 640-674; the contributions of Allen Buchanan and Charles Beitz in *Ethics*, Volume 110, Number 4, July 2000 (which contained a Symposium on John Rawls’ *The Law of Peoples* (1999)). There are many others...

<sup>87</sup> See e.g., Thomas Nagel, “The Problem of Global Justice” (2005); Charles R. Beitz, *Political Theory and International Relations* (1999), p. 194; Darrel Moellendorf, *Cosmopolitan Justice* (2002).

<sup>88</sup> As other candidates, one might think of the Bretton Woods institutions: the World Trade Organization (WTO), the World Bank and the International Monetary Fund (IMF). There has been a big debate about whether the Bretton Woods institutions should be reformed or rather be replaced by fundamentally different institutions or mechanisms at the international level. See e.g., Anne O. Krueger, “Whither the World Bank and the IMF?” (1998); Christopher L. Gilbert & David Vines (editors), *The World Bank* (2006).

<sup>89</sup> That is also the main aim of official development assistance: it is not to (re)distribute the goods evenly over all participants, but it is intended to assist developing nations in being able to cope for themselves. Development aid is thus based on the idea that the rich have a duty to assist those that do not prosper in the economic world order. See Thomas W. Pogge, “Recognized and Violated by International Law: The Human Rights of the Global Poor” (2005); Pogge, “The International Significance of Human Rights” (2000); Pogge, *World Poverty and Human Rights* (2002).

<sup>90</sup> Cited in Thomas W. Pogge, *World Poverty and Human Rights* (2002), p. 67, who refers to Gould, “The Moral State of Tahiti”, p. 19, who then refers to the original source: Charles Darwin, *Voyage of the Beagle* (1839).

implemented seriously, it is reminiscent of the very beginning of a rather minimalist global welfare system.<sup>91</sup>

Compared to theories calling for the equal or fair (re)distribution of global goods, theories calling for international duties of assistance are much more modest. The General Assembly has acknowledged that the poor nations should be given assistance, and not simply because they need help to survive. They *deserve* such assistance. They are entitled to it. In philosophy, a distinction is generally made between needs-based assistance, and assistance based on rights and duties. No one would argue that there is no duty to save people who are in desperate need when we have the ability to do so at a reasonable cost.<sup>92</sup> This duty to come to the rescue of the needy is an absolute duty. It is different from a duty to assist based on principles of social justice. In case of the absolute duty, those who are rescued are indebted to their rescuer. The rescuer can reclaim the emergency relief money at a later stage, or decide not to reclaim it on the basis of good will or charity. This does not apply in the case of the duty of social justice. This duty to assist is based on the idea that it is unfair and unjust for the poor to be poor while others are rich. For that reason alone, the misery of the poor must be remedied.<sup>93</sup> If global social justice could be described as a duty to remedy the most fundamental lack of basic needs in the world, then there is global social justice in the declarations of the General Assembly of the United Nations. The declaration that comes closest to setting out the rules and principles of a system of global social justice is the Millennium Declaration.

The absolute duty to help those who are in immediate danger, and some minimalist duties based on global social justice, are the two main themes of all General Assembly declarations on social progress and development. The two general purposes are:

To win the fight against an absolute lack of development in certain parts of the world, *i.e.* to find ways to ban absolute poverty and the lack of basic services from all States in the world;

To win the fight against unequal development, *i.e.* to repair the international economic order to halt and possibly reverse the growing inequality of opportunities for development, both between States and between individuals within States.<sup>94</sup>

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<sup>91</sup> See also Thomas W. Pogge, *World Poverty and Human Rights* (2002), Chapter 8: Eradicating Systemic Poverty: Brief for a Global Resources Dividend. For a critique, see Tim Hayward, "Thomas Pogge's Global Resources Dividend (2005).

<sup>92</sup> For the practical consequences, see the article by Peter Singer in the *New York Times* of 5 September, 1999, "The Singer Solution to World Poverty".

<sup>93</sup> Thomas W. Pogge, *World Poverty and Human Rights* (2002), p. 23.

<sup>94</sup> The formulation of these two goals is consistent with the general tendency to use military language, such as the "fight against poverty," and the "strategy for development," when talking about development. See also Maurice Flory, "International Development Strategy for the Third United



These two main purposes constitute the common thread in the Assembly's list of general declarations on development.<sup>95</sup> The first is discussed in a special section devoted to programmes of assistance for the least developed nations of the world.<sup>96</sup> Most of this chapter deals with resolutions of the second category.

When it comes to the strategy for action, most – if not all – resolutions distinguish between obligations for States at the national level, and obligations at the international level. When it comes to the national aspect of the strategy, the United Nations General Assembly has continuously emphasized the primary responsibility of States – or Governments – for their own development. The Assembly set certain goals, and then advised States on how to achieve those goals. It subsequently examined the progress of developing States in achieving them.<sup>97</sup> In general, the results can be described as falling somewhere between “full achievement” and “total failure,” but they come closer to the latter.<sup>98</sup>

When it comes to the international aspect of the UN strategy to promote the value of social progress and development, the Assembly has always been hesitant about obliging States to behave in a certain way in their economic relations. At best, the Assembly has suggested that developed States have a duty to assist the developing States in their development.<sup>99</sup> The Assembly has consistently focused on three types of obligations to assist:

An obligation for all States to help revise the rules of the international economic order so that preferential treatment is provided to developing States;

An obligation for developed States to spend a small part of their gross domestic product on official development assistance to developing States;

And an obligation for all States, and especially developing States, to facilitate foreign direct investment.<sup>100</sup>

These three obligations taken together represent a rather drastic change in international economic affairs. In contrast, the concrete obligations have

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Nations Development Decade” (1982), pp. 69-70, where this trend was noticed already in the earlier days.

<sup>95</sup> For an overview of the UN's work on development, see Thomas G. Weiss, David P. Forsythe, Roger A. Coate & Kelly-Kate Pease, *The United Nations and Changing World Politics* (2009).

<sup>96</sup> See section 4 of Chapter V.

<sup>97</sup> See also Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), pp. 87-88.

<sup>98</sup> *Idem*, p. 88.

<sup>99</sup> Unfortunately, even these rather weak duties of assistance have generally not been complied with. See *idem*.

<sup>100</sup> See also *idem*, p. 101.

consistently been drafted in more careful language. This careful formulation of the strategy in most resolutions can be explained in the same way as the language of Article 56 UN Charter. It is a direct result of the friction between the duty of all States to cooperate in the realization of certain common interests and values, and the duty of all States – and the United Nations itself – to respect the sovereign independence of all States and therefore to refrain from interference in their internal affairs.<sup>101</sup>

When it comes to international development cooperation, a problem arises which is in many ways unique to the realization of the value of social progress and development. This problem is the dominant role of non-State actors in this field, and the lack of control that States have over them.<sup>102</sup> The flow of capital and resources from private investors, often based in the developed States, to developing nations, dwarfs the flow of capital from developed States to developing States, *i.e.* official development aid.<sup>103</sup> The United Nations has an influence on the relations between States. But the United Nations has very few means to influence the behaviour of those non-State actors, whose role is much more substantial when it comes to the realization of the value of social progress and development.

### 3.2 The First United Nations Development Decade

The Assembly's work on defining and developing the value of social progress and development essentially started in the 1960s.<sup>104</sup> Since then, the developing world has had an almost automatic majority in the General Assembly.<sup>105</sup> Therefore it is not surprising that the declarations on development focused on the interests of the developing States. There is no definition for a "developing State". When the

<sup>101</sup> See section 2.1 and 4 of Chapter VII.

<sup>102</sup> As White rightly noted, "a major export of most developed nations has been technological information and know-how and quite obviously this is as important a "resource" in the international economic environment as raw materials such as oil or sugar." Robin C. A. White, "New International Economic Order" (1975), p. 550.

<sup>103</sup> As the US Legal Adviser rightly pointed out, "since World War II, ninety percent of the investment in the developing world has been from private sources; only ten percent has come from public sources." See Leigh, on p. 349 of Paxman (rapporteur), "Discussion" (1975).

<sup>104</sup> Earlier, some assistance programmes were initiated by the UN to assist developing States, such as the United Nations Expanded Program of Technical Assistance, and the United Nations Special Fund. For the first, see Technical assistance for economic development, General Assembly resolution 200 (III), adopted 4 December 1948. For the latter, see Establishment of the Special Fund, General Assembly resolution 1240(XIII), adopted 14 October 1958. For comments, see David Owen, "The United Nations Expanded Program of Technical Assistance - A Multilateral Approach" (1959); and Ronald A. Manzer, "The United Nations Special Fund" (1964).

<sup>105</sup> The United Nations had 82 Members in 1958, and 127 in 1970; nearly all the 45 nations that were welcomed to the UN family in the 1960s were developing nations.

Assembly refers to development, it is mainly concerned with the allocation of resources. According to this approach, a developing country is defined simply as a country in which most people have fewer resources and opportunities than those in developed countries. It is a relative term, and the distinction is rather arbitrary. Sometimes it is clear whether a State is relatively developed or developing, but the distinction becomes problematical near the borderline.

One of the earliest general declarations on the topic of social progress and development proclaimed the First United Nations Development Decade, an initiative launched by President Kennedy of the United States of America.<sup>106</sup> In this resolution, the Assembly set a specific target for the growth of developing States – 5% of average national income – and suggested various measures to support the developing States to reach that target.<sup>107</sup> The plan was essentially to make it easier for them to flourish in the international economic order, to increase official development aid, and to stimulate foreign direct investment. This is a clear example of the Assembly's general three-pronged strategy to achieve the value of social progress and development for everyone. This strategy might not sound all that extraordinary, but it actually was very different from the approach of the past. For example, with regard to the pledge of developed States to devote part of their domestic product to development assistance, the UN Secretary-General remarked that it "showed that the concept of shared resources is beginning to enter the philosophy of States in relation not simply to their own citizens but to other States as well."<sup>108</sup> The plan was not developed in great detail and was therefore, in Tinbergen's words, "a plan in embryo."<sup>109</sup>

One year later, the Assembly adopted the Declaration on Permanent Sovereignty over Natural Resources.<sup>110</sup> Although the resolution was initially meant to emphasize the exclusive and sovereign right of States to exploit their own natural resources, it imposes many conditions for this. It is these conditions that are the most interesting elements of the resolution.<sup>111</sup> Foreign direct investment was seen as one of three possible strategies for the development of developing States, although it also had a negative side: a foreign multinational corporation can exploit the

<sup>106</sup> United Nations Development Decade: A Programme for International Economic Co-operation, General Assembly resolutions 1710 (XVI) and 1715 (XVI), both adopted on 19 December 1961.

<sup>107</sup> All are quotes from para. 2, General Assembly resolution 1710 (XVI).

<sup>108</sup> The United Nations Development Decade at Mid-Point, UN Secretary-General's report, UNDoc. E/4071/Rev.1, p. 6, as cited on pp. 22-23, of Walter M. Kotschnig, "The United Nations as an Instrument of Economic and Social Development" (1968).

<sup>109</sup> Jan Tinbergen, "International Economic Planning" (1966), p. 538.

<sup>110</sup> Declaration on Permanent Sovereignty over Natural Resources, General Assembly resolution 1803(XVII), adopted 14 December 1962. For a detailed overview of the *travaux préparatoires* of this resolution, see Nico Schrijver, *Sovereignty over natural resources* (1997), pp. 57-76.

<sup>111</sup> For a similar view, see Stephen M. Schwebel, "The Story of the U.N.'s Declaration on Permanent Sovereignty over Natural Resources" (1963), p. 464. The resolution will also be discussed in Chapter VII on self-determination.

developing States' natural resources solely for its own benefit (to make a profit), and not for the benefit of the local population. Thus the resolution attempted to find a balance between respect for the rights of the foreign investor and the sovereign rights of States to exploit their own resources for the benefit of their population.<sup>112</sup> The result of this balancing act was the emergence of a conditional right of States to expropriate, for the public interest, the property rights of foreign investors.<sup>113</sup> Thus expropriation was not forbidden entirely, but was allowed only in certain exceptional cases. In all cases of expropriation, the foreign investor was entitled to "appropriate compensation."<sup>114</sup> According to Garcia-Amador, the resolution outlined the "basic principles of traditional international law which govern expropriation, nationalization, and compensation."<sup>115</sup> It could certainly be argued that this is still the case.

The Permanent Sovereignty Declaration also proclaimed certain principles to protect the interests of the foreign investor. Thus it was a balanced resolution, not wholly focused on improving the situation of developing States. Many of the resolutions that followed in the 1970s were primarily concerned with the interests of the developing States, although they continued to stress the responsibility of States for their own development. This can be explained by the fact that since the early 1960s, the developing States had not only gained a numerical majority in the Assembly, but they had also started to organize themselves. The developing nations first organized themselves formally by adopting the Joint Declaration of the Developing Countries in 1963. This declaration was not adopted by the General Assembly, but by a group of developing countries within the Assembly.<sup>116</sup> It was the precursor to the Joint Declaration of the Seventy-Seven Developing Countries, adopted by more or less the same group at the end of the first United Nations Conference on Trade and Development in 1964. This marked the establishment of

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<sup>112</sup> The resolution sets out certain conditions which had to be fulfilled before a State could expropriate the property of foreign investors. See especially para. 4, Declaration on Permanent Sovereignty over Natural Resources, General Assembly resolution 1803(XVII), adopted 14 December 1962.

<sup>113</sup> See Karol N. Gess, "Permanent Sovereignty over Natural Resources" (1964).

<sup>114</sup> Declaration on Permanent Sovereignty over Natural Resources, General Assembly resolution 1803(XVII), adopted 14 December 1962, para. 4. The United States, who defended the interests of the foreign investor at the time, wanted the Assembly to state explicitly that "appropriate compensation" should be interpreted as "prompt, adequate and effective" compensation, but an amendment to make this explicit was withdrawn after the United States understood that the words "appropriate compensation" were to be interpreted in such a way. See Stephen M. Schwebel, "The Story of the U.N.'s Declaration on Permanent Sovereignty over Natural Resources" (1963), pp. 465-466. See also Karol N. Gess, "Permanent Sovereignty over Natural Resources" (1964), pp. 427-428.

<sup>115</sup> Francisco V. García-Amador y Rodríguez, "Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation" (1980), p. 23.

<sup>116</sup> Joint Declaration of the Developing Countries, annexed to General Assembly resolution 1897(XVIII), adopted 11 November 1963.

the Group of 77.<sup>117</sup> The developing nations focused on the establishment of a new international economic order, friendly to developing nations, and much less on the reform of their own national development strategies. The G77 Declaration is itself a good example of this approach. It called for a “new and just world economic order,” the basic premises of which “involve[d] a new international division of labour oriented towards the accelerated industrialization of developing countries.”<sup>118</sup> It is striking that the declaration said very little about the responsibilities of developing nations themselves to improve their own domestic development policies.<sup>119</sup>

In 1969, the General Assembly adopted a Declaration on Social Progress and Development.<sup>120</sup> The declaration set specific goals<sup>121</sup> and objectives,<sup>122</sup> and described the means to achieve these goals and objectives. The Declaration also assigned the responsibility for achieving them. The Assembly stressed that “each Government ha[d] the primary role and ultimate responsibility of ensuring the social progress and well-being of its people.”<sup>123</sup> The efforts of the international community were meant to “supplement, by concerted international action, national efforts to raise the living standards of peoples.”<sup>124</sup> These international obligations of assistance included, as was the case in previous declarations, international development assistance, and the “expansion of international trade based on principles of equality and non-discrimination.”<sup>125</sup>

### 3.3 The Second United Nations Development Decade

In 1970, the General Assembly came up with an International Development Strategy for the Second Development Decade, prepared by the UN Committee for Development Planning, chaired by the Dutch economist Jan Tinbergen.<sup>126</sup> In the

<sup>117</sup> The Group of 77 has its own website. See <http://www.g77.org>.

<sup>118</sup> Joint Declaration of the Seventy-Seven Developing Countries made at the Conclusion of the United Nations Conference on Trade and Development, Geneva, 15 June 1964, para. 2. See also Para. 5 of the Joint Declaration.

<sup>119</sup> See *idem*, paras. 7-10.

<sup>120</sup> Declaration on Social Progress and Development, General Assembly resolution 2542(XXIV), adopted 11 December 1969 (“Declaration on Social Progress and Development”).

<sup>121</sup> *Idem*, Articles 10 and 11.

<sup>122</sup> *Idem*, Articles 12 and 13.

<sup>123</sup> *Idem*, Article 8.

<sup>124</sup> *Idem*, Article 9.

<sup>125</sup> *Idem*, Article 23. The Article further called for “the rectification of the position of developing countries in international trade by equitable terms of trade [and] a general non-reciprocal and non-discriminatory system of preferences for the exports of developing countries to the developed countries.”

<sup>126</sup> International Development Strategy for the Second United Nations Development Decade, General Assembly resolution 2626(XXV), adopted 24 October 1970 (“International Development Strategy for the Second United Nations Development Decade”).

Preamble, the Assembly acknowledged that during the First Development Decade, not much progress had been made in the fight against an absolute lack of development in many parts of the world, or in the fight against unequal development.<sup>127</sup> In the Assembly's view, "the level of living of countless millions of people in the developing part of the world [was] still pitifully low," and "while a part of the world live[d] in great comfort and even affluence, much of the larger part suffer[ed] from abject poverty, and in fact the disparity [was] continuing to widen."<sup>128</sup> Thus "the ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all."<sup>129</sup> The Assembly emphasized that domestic Governments had primary responsibility, and that the international community had a secondary obligation to provide aid and assistance.<sup>130</sup> These international obligations of aid and assistance were stated in much more detail than had been the case earlier.<sup>131</sup> Included in the long list was a pledge by developed States to spend at least 0.7 per cent of their gross domestic product on official international development assistance.<sup>132</sup>

The first half of the Second United Nations Decade was not a success. A series of economic crises had worsened the situation in most developing nations.<sup>133</sup> Therefore there was a general feeling that more drastic measures were needed. In 1974 the Assembly adopted the very ambitious Declaration on the Establishment of a New International Economic Order.<sup>134</sup> This new order divided not only the community of States, but also the academic community.<sup>135</sup>

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<sup>127</sup> This was also noted in the Declaration on the Occasion of the Twenty-Fifth Anniversary of the United Nations, General Assembly resolution 2627(XXV), also adopted on 24 October 1970, para. 9. Some authors see the First Development Decade as a success. See Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 105.

<sup>128</sup> International Development Strategy for the Second United Nations Development Decade, para. 3.

<sup>129</sup> *Idem*, para. 7.

<sup>130</sup> *Idem*, para. 11.

<sup>131</sup> *Idem*, paras. 21-78. They included pledges that are not normally considered to be the concern of the United Nations Organization, such as the pledge that "no new tariff and non-tariff barriers will be raised." See *idem*, para. 25.

<sup>132</sup> This paragraph is preceded by a paragraph in which the main responsibility of developing countries for their own development is emphasized. See *idem*, paras. 41-42.

<sup>133</sup> See the First Biennial Over-All Review and Appraisal of Progress in the Implementation of the International Development Strategy for the Second United Nations Development Decade, General Assembly resolution 3176(XXVIII), adopted 17 December 1973.

<sup>134</sup> Declaration on the Establishment of a New International Economic Order, General Assembly resolution 3201(S-VI), adopted 1 May 1974 ("Declaration on the Establishment of a New International Economic Order").

<sup>135</sup> In the 1970s alone, over 300 books and articles were published on the new international economic order (they were not necessarily all about the Assembly's declaration). For an overview, see Linus A. Hoskins, "The New International Economic Order: A Bibliographic Essay" (1981). See also Robert W. Cox, "Ideologies and the New International Economic Order: Reflections on Some Recent Literature" (1979).

In the Declaration, the Assembly acknowledged that “it ha[d] proved impossible to achieve an even and balanced development of the international community under the existing international economic order,” and that “the gap between the developed and the developing countries continue[d] to widen in a system which was established at a time when most of the developing countries did not even exist as independent States and which perpetuate[d] inequality.”<sup>136</sup> It therefore proposed to

Work urgently for the establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems, which shall correct inequalities and redress existing injustices, make it possible to eliminate the widening gap between the developed and the developing countries and ensure steadily accelerating economic and social development and peace and justice for present and future generations.<sup>137</sup>

This proclaimed new order was based on a very strong respect for the sovereign independence and equality of States, especially of the newly independent States. A number of specific rights and obligations were derived from the principle of sovereign independence, such as the right of States to use their own natural resources for the benefit of the local population, and in this way supervise the activities of transnational corporations active within their territory, and, if necessary, expropriate the property of foreign investors.<sup>138</sup> Furthermore, the Assembly recognized a “right of all States, territories and peoples under foreign occupation, alien and colonial domination or *apartheid*, to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples.”<sup>139</sup> This gave the impression that one of the elements of the new international economic order was to rectify historic wrongs by means of expropriation. In the words of Boutros-Ghali, “generations of colonial exploitation made the development effort seem to be a debt owed by the post-imperial powers to the lands they had in the past sought to rule,” and that “the only solution, it was thought, was to ‘expropriate the expropriators.’”<sup>140</sup> This was not acceptable to the former colonizers. The Assembly also listed far-reaching obligations for all States to contribute to an international economic order that was friendly to developing States, based on “preferential and non-reciprocal treatment for developing countries, wherever feasible, in all fields of

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<sup>136</sup> Declaration on the Establishment of a New International Economic Order, para. 1.

<sup>137</sup> *Idem*, Preamble.

<sup>138</sup> *Idem*, paras. 4(e) and (g).

<sup>139</sup> *Idem*, para. 4(f).

<sup>140</sup> Boutros Boutros-Ghali, “A New Departure on Development” (1995), p. 45. Boutros-Ghali was not referring to any General Assembly declaration in particular.

international economic co-operation whenever possible.”<sup>141</sup> The Assembly suggested introducing a minimal form of distributive justice into the international legal order. The developed States, especially the United States, were rather overwhelmed by this resolution, which was adopted “by consensus,” *i.e.* without a recorded vote.<sup>142</sup>

The distributive justice element of this economic order made it a truly “new” order. The new economic order was based on the principle that the developing States deserved some preferential treatment.<sup>143</sup> The principal flaw in the “old” international economic order was that, at a time when many States were experiencing tremendous economic growth, other States were lagging behind. As time passed it became increasingly difficult for the “laggards” to catch up with the successful States. The fact that they had lagged behind also negatively affected their ability to compete effectively in the global market.<sup>144</sup>

Contrary to what its title suggests, the Declaration on the Establishment of a New International Economic Order was presented merely as a prelude to, or as an “additional source of inspiration” for the Charter of Economic Rights and Duties of States.<sup>145</sup> This Charter was presented as the key document of the new economic order.<sup>146</sup> It was adopted by the Assembly in December 1974, approximately half a year after the adoption of its predecessor.<sup>147</sup> The developing States, which were the

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<sup>141</sup> Declaration on the Establishment of a New International Economic Order, para 4(n).

<sup>142</sup> Many developed States made declarations expressing their reservations at the time of the vote. See Branislav Gosovic and John G. Ruggie, “On the Creation of a New International Economic Order” (1976), p. 314 (footnote 8). On the US position, see Clarence Clyde Ferguson, “The Politics of the New International Economic Order” (1977).

<sup>143</sup> See also John F. Dorsey, “Preferential Treatment: A New Standard for International Economic Relations” (1977), pp. 113-116; David R. Lindskog, “The New International Economic Order” (1986), p. 22; Francisco V. García-Amador y Rodríguez, “Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation” (1980), pp. 17-20; and Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 249. Schrijver did not refer to preferential treatment, but focused more on the idea that the rules needed to be changed so that the “best cards would no longer automatically fall in the hands of the rich countries and multinational corporations.”

<sup>144</sup> The word “laggards” was used by Fred Hirsch, “Is there a New International Economic Order?” (1976), p. 523. See also Hans W. Singer, “The New International Economic Order: An Overview” (1978), pp. 539-541. He argued that the new international economic order was more a response to the collapse of the old order in the early 1970s than a dissatisfaction with that old order.

<sup>145</sup> Declaration on the Establishment of a New International Economic Order, para. 6.

<sup>146</sup> Tiewul rightly warned not to draw too many conclusions from the use of the word “Charter,” which reminds one of the UN Charter. It does not affect the non-binding nature of the resolution. See S. Azadon Tiewul, “The United Nations Charter of Economic Rights and Duties of States” (1975), pp. 655-658.

<sup>147</sup> Charter of Economic Rights and Duties of States, General Assembly resolution 3281(XXIX), adopted 12 December 1974 (“Charter of Economic Rights and Duties of States”). It was adopted by voting, and thus we can see that many (16) of the developed nations either voted against or abstained.



main supporters of the Charter, hoped that it would not be considered as just another non-binding declaration, but that it would genuinely “alter the rules of the game.”<sup>148</sup> These new rules of the game were very similar to those in the Declaration that preceded it. The right to sovereign independence of States was once again emphasized, as well as the corresponding obligation of non-interference.<sup>149</sup> The Charter emphasized every State’s “primary responsibility to promote the economic, social and cultural development of its people,” but this did not constitute the main theme of the document.<sup>150</sup> Almost all the other articles were about international cooperation and assistance. They imposed obligations on developed countries.<sup>151</sup> The obligation to right historic wrongs, which had appeared in the Declaration on the Establishment of a New International Economic Order, was also included in the Charter.<sup>152</sup>

The most controversial part of the Charter, and the reason why most of the developed States either abstained from voting or voted against, was the article describing some of the supposed consequences of the right to sovereign economic independence of States in matters relating to the regulation of foreign investment.<sup>153</sup> The more general consequence, which was acceptable to most States, was that “every State ha[d] and sh[ould] freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities.”<sup>154</sup> The more controversial consequences were those regarding the relationship between the foreign investor, often a national of a developed State,

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However, since the developing nations constituted a majority in the Assembly, it was nonetheless adopted by overwhelming majority (120 in favour).

<sup>148</sup> Eduard Rozental, “Charter of Economic Rights and Duties of States and the New International Economic Order” (1975), p. 317.

<sup>149</sup> Charter of Economic Rights and Duties of States, Article 1.

<sup>150</sup> Only one Article was about the responsibilities of Governments for the development of their own State. See *idem*, Article 7.

<sup>151</sup> See especially *idem*, Articles 8, 9, 13, 14, 17, 18, 19, 22, and 25. See also S. Azadon Tiewul, “The United Nations Charter of Economic Rights and Duties of States” (1975), pp. 666-670, who referred to some of these articles.

<sup>152</sup> *Idem*, Article 16.

<sup>153</sup> This was Article 2. For the reasons – and justifications – why most developed States could not vote in favour of the resolution, see *e.g.*, S. K. Chatterjee, “The Charter of Economic Rights and Duties of States: An Evaluation after 15 Years” (1991), pp. 672-675; Alfred P. Rubin, “The Charter of Economic Rights and Duties of States: Remarks” (1975), p. 225; Eduard Rozental, “Charter of Economic Rights and Duties of States and the New International Economic Order” (1975), p. 319; G. W. Haight, “New International Economic Order and the Charter of Economic Rights and Duties of States” (1975), pp. 595-603; G. White, “A New International Economic Order?” (1975), pp. 330-335; and Robin C. A. White, “New International Economic Order” (1975), pp. 546-547. See also, Cerna (Rapporteur), “The Charter of Economic Rights and Duties of States,” pp. 225-246. Tiewul attempted to show why the developed States need not worry. See S. Azadon Tiewul, “The United Nations Charter of Economic Rights and Duties of States” (1975), pp. 678-681.

<sup>154</sup> Charter of Economic Rights and Duties of States, Article 2.

and the State where the investment was made, often a developing State.<sup>155</sup> Compared with the rules adopted in the Permanent Sovereignty Declaration, the Charter did not contain a rule stating that expropriation must be in the public interest, and that compensation should be paid.<sup>156</sup> It treated the contract between the investor and the State essentially as a domestic affair, which meant that expropriation disputes had to be settled by local courts applying local law.<sup>157</sup> By proclaiming this new regime against the wishes of the economically powerful States of that period, the United Nations General Assembly missed its chance to influence State practice.<sup>158</sup> The relationship between foreign investor and host State was since regulated by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (“ICSID”).<sup>159</sup>

The basic rules of this framework are almost exactly the opposite of those proclaimed in the Charter. The emphasis shifted from the domestic to the international level, as the US had proposed when the Charter on Economic Rights and Duties was being drafted,<sup>160</sup> and as proclaimed by the Assembly in its earlier Declaration on the Permanent Sovereignty over Natural Resources, and as suggested by many scholars.<sup>161</sup> Disputes between the host State and the foreign investor can be settled by international arbitration and not necessarily by the courts of the host State. International law can be chosen as the applicable law for the settlement of these disputes, and not – at least not exclusively – the domestic law of

<sup>155</sup> Since these consequences primarily dealt with expropriation, White referred to the controversy over these consequences as the “expropriation controversy.” See G. White, “A New International Economic Order?” (1975), pp. 330-331.

<sup>156</sup> Weston argues that this might not be such a big change after all, since it was as yet unclear who determined the public good. See Weston, “Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth,” pp. 439-440 and p. 474.

<sup>157</sup> This had as consequence that all references to international law were also removed. See Weston, “Charter of Economic Rights and Duties of States and the Deprivation of Foreign-Owned Wealth,” pp. 448-449; G. W. Haight, “New International Economic Order and the Charter of Economic Rights and Duties of States” (1975), pp. 598, and 599-602. For a supportive view of this new approach, see Eduardo Jimenez de Arechaga, “State Responsibility for the Nationalization of Foreign Owned Property,” (1978), pp. 189-195.

<sup>158</sup> At the same time, it must be admitted that many expropriations took place in the 1970’s, and ICSID had little influence on these expropriations. But it is doubtful whether these practices constituted the foundation of a legal regime, similar in sophistication to that of ICSID.

<sup>159</sup> The Convention on the Settlement of Investment Disputes between States and Nationals of Other States entered into force already in 1966, before the adoption of the Charter of Economic Rights and Duties of States, but it remained dormant in the beginning. In a discussion of the Charter of Economic Rights and Duties of States, a representative of Shell, the Dutch oil company, referred briefly to the ICSID framework as the way for the future. See MacLean, Swift, and Blair, “Commentaries” (1975), p. 349.

<sup>160</sup> For the US amendments, see *e.g.*, “The Charter of Economic Rights and Duties of States: Remarks” (1975), p. 225 and pp. 233-234.

<sup>161</sup> See *e.g.*, Francisco V. Garcia-Amador y Rodriguez, “Proposed New International Economic Order: A New Approach to the Law Governing Nationalization and Compensation” (1980), pp. 24-29.

the host State.<sup>162</sup> The Charter on Economic Rights and Duties thus shows that acquiring a majority of votes in the Assembly is important to introduce a new idea or policy, but it is equally important to have the economically powerful States on board.

### 3.4 The Third United Nations Development Decade

In 1980, the General Assembly once again adopted a new International Development Strategy, this time for the Third Development Decade.<sup>163</sup> In the Preamble, the Assembly acknowledged that “the goals and objectives of the International Development Strategy for the Second Development Decade remain[ed] largely unfulfilled,” and that the situation had worsened.<sup>164</sup> The new strategy, not unlike the previous strategy, “aim[ed] at the promotion of the economic and social development of the developing countries with a view to reducing significantly the current disparities between the developed and developing countries, as well as the early eradication of poverty and dependency.”<sup>165</sup>

The primary responsibility of States, including developing States, for their own development was once again emphasized. The role of the international community was to facilitate the efforts of the developing States, and to create “an environment that [was] fully supportive of the national and collective efforts of the developing countries for the realization of their development goals.”<sup>166</sup> The pledge of developed States to spend at least 0.7 per cent of their gross domestic product on official international development assistance was reiterated.<sup>167</sup>

At the end of this Decade the Assembly adopted the Declaration on International Economic Cooperation.<sup>168</sup> There was no reference to any new international economic order in this declaration.<sup>169</sup> In the Assembly’s view, although some developing countries had had relative success in developing, “for many developing countries, the 1980s have been viewed as a decade lost for

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<sup>162</sup> These rules differ per country, since the relationship between the State and the foreign investor is primarily regulated in a bilateral investment treaty, signed by the host State and the State of which the investor is a national.

<sup>163</sup> International Development Strategy for the Third United Nations Development Decade, General Assembly resolution 35/56, adopted 5 December 1980.

<sup>164</sup> *Idem*, para. 3.

<sup>165</sup> *Idem*, para. 7.

<sup>166</sup> *Idem*, para. 9.

<sup>167</sup> *Idem*, para. 24.

<sup>168</sup> Declaration on International Economic Cooperation, in particular the Revitalization of Economic Growth and Development of the Developing Countries, General Assembly resolution S-18/3, adopted 1 May 1990 (“Declaration on International Economic Cooperation”).

<sup>169</sup> R. St. John MacDonald, “Solidarity in the Practice and Discourse of Public International Law” (1996), pp. 266-269.

development.”<sup>170</sup> The most pertinent problem was that the gap between developed and developing countries had widened further, and that this process was continuing.<sup>171</sup> In addition, absolute poverty was as urgent a problem as ever. Extreme poverty and hunger had escalated.<sup>172</sup> Despite all these negative trends, the Declaration did not contain many new or specific measures.<sup>173</sup> According to Schrijver, the Declaration was a disappointment, as the acknowledgment of “collective responsibility for development was considerably watered down by a substantial, one-sided stress upon the responsibility of developing countries for their own development and the lack, yet again, of binding commitments [...] with the result that the least developed countries – despite all the rhetoric – finished up with very little.”<sup>174</sup>

### 3.5 The Fourth United Nations Development Decade

In 1990, the Assembly adopted the International Development Strategy for the Fourth United Nations Development Decade.<sup>175</sup> In this Strategy the Assembly admitted that “the goals and objectives of the International Development Strategy for the Third United Nations Development Decade were for the most part unattained,” and that in fact “the decade of the 1980s saw a widening of the gap between the rich and the poor countries.”<sup>176</sup> The Strategy was essentially the same as those that had preceded it, albeit formulated in stronger terms than before, to emphasize the increasing urgency of the situation. The Assembly stressed that “the developing countries themselves ha[d] the responsibility for the great effort needed to mobilize the potential of their people, to modernize and diversify their economies and to set themselves ambitious targets to build the foundation on which development rests.”<sup>177</sup> As “developing countries [could] prosper only in a stable and progressive world economy,” the developed States had the responsibility to ensure that the world economy became more friendly to the developing nations.<sup>178</sup>

<sup>170</sup> Declaration on International Economic Cooperation, para. 7.

<sup>171</sup> See *e.g.*, *idem*, paras. 5, 8 and 18.

<sup>172</sup> See *idem*, paras. 18 and 25.

<sup>173</sup> The obligation for the developed States to spend 0.7 percent of their gross national product on official development aid was there, as well as the more general obligations of cooperation. See *idem*, para. 27.

<sup>174</sup> See Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), pp. 262-263.

<sup>175</sup> International Development Strategy for the Fourth United Nations Development Decade, General Assembly resolution 45/199, adopted 21 December 1990 (“International Development Strategy for the Fourth United Nations Development Decade”).

<sup>176</sup> *Idem*, paras. 2 and 3.

<sup>177</sup> *Idem*, para. 15.

<sup>178</sup> *Idem*, paras. 16. More specific measures were outlined in paras. 21-107 of the Strategy.

This general Strategy for the 1990s also failed, and based on that sobering conclusion, one commentator suggested referring to this decade as the “decade of broken promises.”<sup>179</sup>

In subsequent resolutions in the same decade, one of the UN’s priorities was to combat the growing gap between rich and poor. In 1995, the Copenhagen Declaration on Social Development stated that the world was “witnessing in countries throughout the world the expansion of prosperity for some, unfortunately accompanied by an expansion of unspeakable poverty for others.”<sup>180</sup> To remedy this situation, the States participating in the Social Summit pledged their commitment to a “political, economic, ethical and spiritual vision for social development that is based on human dignity, human rights, equality, respect, peace, democracy, mutual responsibility and cooperation, and full respect for the various religious and ethical values and cultural backgrounds of people.”<sup>181</sup> The Declaration also contained a number of more specific commitments, including the commitment to accelerate “the economic, social and human resource development of Africa and the least developed countries.”<sup>182</sup>

Two years later, the General Assembly adopted UN Secretary-General Boutros-Ghali’s Agenda for Development, the companion to his Agenda for Peace.<sup>183</sup> Some developing nations had benefited from the increasing interdependence and interconnectedness of States, often referred to as the process of globalization, but others, particularly in Africa, failed to do so, and were becoming more marginalized than ever.<sup>184</sup> Thus “a primary objective of the implementation of the present Agenda should be to contribute in such a way that the benefits stemming from future growth and development [*i.e.* benefits stemming from the almost universal pursuit of increased economic openness and integration] are distributed equitably among all countries and peoples.”<sup>185</sup>

As inequalities increased and the situation in many developing States continued to deteriorate, the United Nations started to distinguish one group of States as the “least developed.” Least developed countries had already been recognized and defined as a group in the International Development Strategy for the Third United Nations Development Decade, as “the economically weakest and

<sup>179</sup> Jan Vandemoortele, “Are the MDGs Feasible?” (2003), p. 2.

<sup>180</sup> The Copenhagen Declaration on Social Development, which can be found in the Conference report: World Summit for Social Development (Copenhagen, Denmark, 6-12 March 1995), UNDoc. A/CONF.166/9, distributed on 19 April 1995 (“Copenhagen Declaration on Social Development”), para. 13. See also para 16.

<sup>181</sup> *Idem*, para. 25.

<sup>182</sup> *Idem*, Commitment 7.

<sup>183</sup> Agenda for Development, General Assembly resolution 51/240, adopted 20 June 1997 (“Agenda for Development”).

<sup>184</sup> See *idem*, paras. 5-20. See further paras. 183-202.

<sup>185</sup> *Idem*, para. 48.

poorest countries with the most formidable structural problems.”<sup>186</sup> This particular group of countries was also the subject of the Paris Declaration, adopted in 1990.<sup>187</sup> According to the declaration, the “refusal to accept the marginalization of the least developed countries [was] an ethical imperative,” and “in an increasingly interdependent world, the maintenance or deepening of the gap between the rich and poor nations contain[ed] serious seeds of tension.”<sup>188</sup> Thus the international community recognized that there was a moral obligation to give special aid to the least developed nations.<sup>189</sup> Because these obligations were now recognized, developing States actually applied to become members of the “club of the underprivileged,” and expressed disappointment when their application was refused.<sup>190</sup>

The Paris Declaration was accompanied by a detailed Programme of Action for the 1990s.<sup>191</sup> The implementation of this programme was the subject of a mid-term review, carried out in 1995, which drew the unfortunate conclusion that “the least developed countries as a group ha[d] not been able to meet many of the objectives of the Programme of Action and [that] their overall socio-economic situation ha[d] continued to deteriorate.”<sup>192</sup> Nevertheless, there was a “firm[...] belief[f] that, given political will on the part of the least developed countries, which

<sup>186</sup> International Development Strategy for the Fourth United Nations Development Decade, para. 136. The term was used earlier elsewhere. See also W.D. Verwey, “The United Nations and the Least Developed Countries: an Exploration in the Grey Zones of International Law” (1984).

<sup>187</sup> Paris Declaration of the Second United Nations Conference on the Least Developed Countries, held in Paris, on 3 and 4 September 1990, UNDoc. A/Conf.147/18 (“Paris Declaration of the Second United Nations Conference on the Least Developed Countries”). The First United Nations Conference on the Least Developed Countries took place also in Paris, between 1 and 14 September 1981. See Shahid Qadir, “UN Conference on the Least Developed Countries” (1982); and Thomas G. Weiss, “The United Nations Conference on the Least Developed Countries: The Relevance of Conference Diplomacy in Paris for International Negotiations” (1983), for two contrasting impressions (the first highly critical and the other more favourable) of that first conference.

<sup>188</sup> *Idem.*

<sup>189</sup> One of the more concrete proposals flowing from this ethical imperative was the reaffirmation of the pledge to spend at least 0.15 per cent of the gross national income on this group of least developed countries. Programme of Action for the Least Developed Countries for the 1990s, which can be found in the same report as the Paris Declaration of the Second United Nations Conference on the Least Developed Countries, para. 23. This was actually a pledge that already appeared in the outcome document of the first conference on least developed countries, but it was a pledge that most developed nations failed to implement in reality. See Thomas G. Weiss, “The United Nations Conference on the Least Developed Countries: The Relevance of Conference Diplomacy in Paris for International Negotiations” (1983), p. 650.

<sup>190</sup> The term “club of the underprivileged” was taken from Shahid Qadir, “UN Conference on the Least Developed Countries” (1982), p. 135.

<sup>191</sup> See the Programme of Action for the Least Developed Countries for the 1990s.

<sup>192</sup> Part One, para. (c), Mid-Term Global Review of Progress towards the Implementation of the Programme of Action for the Least Developed Countries for the 1990s, annexed to General Assembly resolution 50/103, adopted 20 December 1995.

have the primary responsibility for their development, and the support of the international community, the least developed countries will be able to enter the next century with better prospects for their peoples.”<sup>193</sup>

A new Declaration and Programme of Action for the Least Developed Countries was adopted in 2001, this time in Brussels. The essence of this document was comparable to the previous declarations.<sup>194</sup> In 2006, the implementation of this new Programme was reviewed by the General Assembly, which concluded that some progress had been made, but not much.<sup>195</sup> A Ministerial Conference of Least Developed Countries was therefore convened in Istanbul (2007), and the Istanbul Declaration on Least Developed Countries was adopted, appropriately entitled Time for Action. The Fourth United Nations Conference on the Least Developed Countries also took place there, in 2011.<sup>196</sup> It led to the adoption of the Istanbul Declaration on Renewed and Strengthened Global Partnership for the Development of Least Developed Countries.<sup>197</sup>

### 3.6 The Millennium Declaration

In 2000, at the start of the new millennium, the General Assembly adopted the most ambitious resolution on development in its history: the Millennium Declaration.<sup>198</sup> According to the Preamble, the Assembly saw its “central challenge” as ensuring that “globalization bec[ame] a positive force for all the world’s people.”<sup>199</sup> The basic premise of the Declaration was that globalization offered great opportunities, but that the benefits of globalization were “very unevenly shared” and its costs

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<sup>193</sup> *Idem*, para. (g). Part Two contained a detailed assessment of progress in the implementation of the Programme of Action and Part Three consisted of a list of recommendations for the future.

<sup>194</sup> Brussels Declaration and Programme of Action for the Least Developed Countries for the decade 2001-2010, published in the Report of the Third United Nations Conference on the Least Developed Countries, held in Brussels, between 14 and 20 May 2001, UNDoc. A/CONF.191/13.

<sup>195</sup> Declaration of the high-level meeting of the sixty-first session of the General Assembly on the midterm comprehensive global review of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010, annexed to General Assembly resolution 61/1, adopted 19 September 2006, especially paras. 6 and 7. See also the United Nations Conference on Trade and Development’s Least Developed Countries Report Series, which started in 1996 to report annually.

<sup>196</sup> Programme of Action for the Least Developed Countries for the Decade 2011-2020, General Assembly resolution 65/280, adopted 17 June 2011.

<sup>197</sup> Draft Istanbul Declaration on Renewed and strengthened global partnership for the development of least developed countries, distributed 12 May 2011, UNDoc. A/CONF.219/L.1.

<sup>198</sup> Millennium Declaration, General Assembly resolution 55/2, adopted 8 September 2000 (“Millennium Declaration”).

<sup>199</sup> Millennium Declaration, para. 5.

“unevenly distributed.”<sup>200</sup> The challenge was therefore to find ways to make the process of globalization “fully inclusive and equitable.”<sup>201</sup>

The Declaration listed a number of global values, most of which were directly applicable to development. Together they essentially contained the message that all States, and all individuals, had the right to benefit from globalization, and that all States acting together had the obligation to make that possible. For example, the value of freedom implied that “men and women ha[d] the right to live their lives and raise their children in dignity [and] free from hunger.” The value of equality implied that “no individual and no nation must be denied the opportunity to benefit from development.” The value of solidarity implied that “global challenges must be managed in a way that distribute[d] the costs and burdens fairly in accordance with basic principles of equity and social justice,” and that “those who suffer or who benefit least deserve help from those who benefit most.” Finally, the value of shared responsibility implied that the “responsibility for managing worldwide economic and social development [...] must be shared among the nations of the world and should be exercised multilaterally.”<sup>202</sup>

The value of global solidarity reveals the basics of global distributive justice. In one of his last speeches as Secretary-General of the United Nations, Kofi Annan spoke about the Millennium Declaration as the practical implementation of the idea of global solidarity. He said: “We are not only all responsible for each other’s security. We are also, in some measure, responsible for each other’s welfare. Global solidarity is both necessary and possible.”<sup>203</sup> He explained that:

It is necessary because without a measure of solidarity no society can be truly stable, and no one’s prosperity truly secure. That applies to national societies – as all the great industrial democracies learned in the 20th century – but it also applies to the increasingly integrated global market economy that we live in today. It is not realistic to think that some people can go on deriving great benefits from globalization while billions of their fellow human beings are left in abject poverty, or even thrown into it. We have to give our fellow citizens, not only within each nation but in the global community, at least a chance to share in our prosperity.<sup>204</sup>

Annan believed it was not “realistic” to think that the global economy could remain unregulated by principles of global social justice. According to Annan, all citizens of the world deserved to get at least a chance to obtain the goods they deserved. If that was impossible in the present international economic order, the rich countries

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<sup>200</sup> *Idem.*

<sup>201</sup> *Idem.*

<sup>202</sup> *Idem.*, para. 7.

<sup>203</sup> United Nations Secretary-General’s address at the Truman Presidential Museum and Library, Independence, Missouri (USA), 11 December 2006.

<sup>204</sup> *Idem.*



had a duty to compensate for the unequal outcomes of the global economy. Official development assistance could be seen as a way of complying with this duty to compensate, but according to Annan, even if official development assistance was forthcoming, this was not enough. All countries also had a duty to ensure market access for all States, fair trading agreements, and a non-discriminatory financial system. The world had a duty to correct the global system, not just to pay compensation to those negatively affected by it. It had an obligation to prevent unequal and undeserved results in the allocation of goods. This to ensure that all countries and all individuals<sup>205</sup> could eventually get what they deserved themselves, without having to depend on development assistance.<sup>206</sup>

The rest of the Declaration outlined more specific goals with even more specific targets. The aim was to meet these targets by 2015. These goals and targets included the following:

1. To eradicate extreme poverty and hunger, *i.e.* “to halve [...] the proportion of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger and, by the same date, to halve the proportion of people who are unable to reach or to afford safe drinking water.”<sup>207</sup>
2. To achieve universal primary education, *i.e.* “to ensure that [...] children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education.”<sup>208</sup>
3. “To promote gender equality and the empowerment of women;”<sup>209</sup>
4. To reduce child mortality, *i.e.* “to have reduced [...] under-five child mortality by two thirds, of their current rates.”<sup>210</sup>

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<sup>205</sup> The Millennium Development Goals are essentially about improving the lives of individuals, not States. To follow up this idea, Jeffrey Sachs set up the Millennium Villages Project, which aimed to achieve the goals in a number of selected villages. The local government was just one of many participants in these projects; civil society groups, NGOs, and other entities also participated.

<sup>206</sup> This dependency on aid can have negative consequences if it becomes a structural thing. One of the fundamental concerns is that States deliberately refuse to fix their problems because this keeps the aid money flowing. That is one reason why structural aid cannot be the way to repair the injustice of the global economic order.

<sup>207</sup> Millennium Declaration, para. 19.

<sup>208</sup> *Idem.*

<sup>209</sup> *Idem*, para. 20.

<sup>210</sup> *Idem*, para. 19. See also A World fit for Children, a declaration annexed to General Assembly resolution S-27/2, adopted 10 May 2002. This was a follow-up declaration not only to the Millennium Declaration, but also to the World Declaration on the Survival, Protection and Development of Children, which was adopted at the World Summit for Children on 30 September 1990. UNDoc. A/45/625. The Conference also adopted a Plan of Action for Implementing the World Declaration on the Survival, Protection and Development of Children in the 1990s. Already in the 1990 Declaration (see especially paras. 4-7), we read that children are extremely vulnerable, and are usually the first to suffer from a lack of development, and a lack of basic services.

5. To improve maternal health, *i.e.* “to have reduced maternal mortality by three quarters [...] of their current rates.”<sup>211</sup>
6. To combat HIV/AIDS, malaria and other diseases, *i.e.* “to have [...] halted, and begun to reverse, the spread of HIV/AIDS, the scourge of malaria and other major diseases that afflict humanity.”<sup>212</sup>
8. To develop a global partnership for development, *i.e.* to make a commitment to “an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system,” and to give special attention to the developing countries with special needs.<sup>213</sup>

In addition to the goal of ensuring environmental sustainability (Goal 7), these goals have since become known as the eight Millennium Development Goals (MDGs).<sup>214</sup>

The specific or measurable aspect of the MDGs is a positive thing. The goals are limited in number, they are defined in measurable figures and percentages, and they are bound by time.<sup>215</sup> Therefore it will be quite straightforward to test whether the Goals have been met in 2015. The statistics will merely have to be compared with those of 1990. However, the literature suggests that the MDGs are still not sufficiently specific, and still allow room for fundamentally different interpretations.

These different interpretations can have rather drastic consequences. For example, if the first MDG is achieved, that will be because favourable developments in some parts of Asia, especially in China and India, will compensate for a lack of progress in many other developing countries.<sup>216</sup> It would be inappropriate for the international community to celebrate the achievement of the MDGs in 2015, solely on the basis of the progress made in China and India. After all, those States have received relatively little international development aid. Such a celebration would be based on a misinterpretation of the MDGs. The MDGs must be met in *all* developing nations, not just in the majority. Moreover, if the MDGs are defined in terms of “averages,” then they do not take into account a situation in

<sup>211</sup> Millennium Declaration, para. 19

<sup>212</sup> *Idem.*

<sup>213</sup> *Idem.*, para. 13.

<sup>214</sup> Ensuring environmental sustainability is MDG7. In an effort to assist the Member States in the implementation of their pledges made in the Millennium Declaration, the UN Secretary-General distilled these Millennium Development Goals from the Millennium Declaration. See Road map towards the implementation of the United Nations Millennium Declaration, Report of the Secretary-General, UNDoc. A/56/326, distributed 6 September 2001, paras. 80-163.

<sup>215</sup> According to Alston, it was these three characteristics that made them different from all earlier commitments of the General Assembly. See Philip Alston, “Ships Passing in the Night” (2005), p. 756.

<sup>216</sup> See also Michael A. Clemens, Charles J. Kenny & Todd J. Moss, “Millennium Development Goals, Aid Targets, and the Costs of Over-Expectations” (2005), p. 58 and pp. 59-60. And see the annually published Millennium Development Goals Reports, published by the United Nations Department of Public Information, and available at <http://www.un.org/millenniumgoals/>.

which a particular minority group in a State does not make any progress, even though the State as a whole does.<sup>217</sup> In short, it makes a great deal of difference whether one measures progress at the global level, at the national level, or at the level of the individual human being.

As Vandemoortele remarked, “global targets are easily set but seldom met.”<sup>218</sup> The important question is whether the goals will be achieved by 2015.<sup>219</sup> In the Millennium Development Goals Report of 2007, UN Secretary-General, Ban Ki-Moon, rang all the available alarm bells. He referred in particular to the unwillingness of developed States to increase official development aid as was promised.<sup>220</sup> The rich States of the world had promised to spend 0.7 per cent of their gross domestic product (GDP) on official development assistance, but only five countries had complied up to that point.<sup>221</sup> The question arises whether the failure to achieve the Millennium Development Goals automatically leads to a violation of principles of global social justice. Is it only the result that counts? Clear targets may be the best incentive to act, but they may be achieved by measures that are not based on thinking in terms of global social justice.<sup>222</sup> There may be external causes for failing to reach the targets, such as natural disasters or two global financial crises. In the 2010 report, Ban-Ki Moon noted that “some [of the] hard-won gains [were] being eroded by the climate, food and economic crises.”<sup>223</sup> On the other hand, whether or not actual results are achieved can be an indication of the sincerity of the promises and statements made about global social justice.

Another problem with the MDGs was the rather vague allocation of responsibilities. Only the principle of shared responsibility addressed this matter. It stated that “the nations of the world” are jointly responsible. Does that mean that the world as a whole is responsible for achieving the MDGs? As Easterly rightly

<sup>217</sup> Jan Vandemoortele, “Are the MDGs Feasible?” (2003), pp. 10-13.

<sup>218</sup> *Idem*, p. 1.

<sup>219</sup> In 2003, little progress was made in achieving the goals, even on the global level. See *idem*, pp. 16-18.

<sup>220</sup> Foreword to The Millennium Development Goals Report 2007, available at <http://www.un.org/millenniumgoals>.

<sup>221</sup> The idea that a small percentage (initially it was 1 per cent) of the gross national product of rich countries should be reserved for official development assistance can first be found in UN General Assembly Resolution of 15 December 1960, UNDoc. A/RES/1524(XV). The obligation can be found in UN General Assembly Resolution of 24 October 1970, UNDoc. A/RES/2626(XXV). The obligation was reiterated in the 2002 Monterrey Consensus (para. 42), and in the 2005 World Summit Outcome, para. 23. The five countries that did keep their promise were: Denmark (0.84%), Luxembourg (0.81%), Netherlands (0.80%), Norway (0.92%), and Sweden (0.79%). See: <http://www.unmillenniumproject.org>.

<sup>222</sup> Then again, focusing on “good intent” or “sincere effort” has limited practical value because it provides no incentives to use resources efficiently or to direct them specifically towards achieving the desired results unless the yardstick for effort is very specifically defined.

<sup>223</sup> Foreword to The Millennium Development Goals Report 2010, available at <http://www.un.org/millenniumgoals>.

pointed out, “if all of us are collectively responsible for a big world goal, then no single agency or politician is held accountable if the goal is not met.”<sup>224</sup> On the other hand, the United Nations cannot continue the classical tradition of allocating primary responsibility to developing States themselves, and hold them accountable for a failure to achieve the MDGs for their own citizens.

The Millennium Declaration was not the only declaration on social progress and development adopted in the 2000s. In 2002, a Conference on Financing for Development was held in Monterrey (Mexico). The Monterrey Consensus on Financing for Development was adopted at the end of this.<sup>225</sup> The goal of the conference was ambitious. It was to “eradicate poverty, achieve sustained economic growth and promote sustainable development [through the advancement] of a fully inclusive and equitable global economic system.”<sup>226</sup> The Consensus emphasized once again that “each country ha[d] primary responsibility for its own economic and social development, and [that] the role of national policies and development strategies [could not] be overemphasized.”<sup>227</sup> At the same time, the Consensus acknowledged that “national development efforts need[ed] to be supported by an enabling international economic environment.”<sup>228</sup> In particular, there was a need to attract and facilitate foreign direct investment in *all* the developing nations,<sup>229</sup> to work towards the continued liberalization of trade and towards a “universal, rule-based, non-discriminatory and equitable multilateral trading system,”<sup>230</sup> and to increase official development assistance from the developed States to the developing States to reach the target of 0.7 per cent of the developed States’ gross national product.<sup>231</sup> This last aim was specific, as opposed to much of the “empty rhetoric” and “all sorts of lofty ideals” also included in the Consensus, and this became the pledge for which the Monterrey Consensus is best known.<sup>232</sup> The 0.7 per cent figure was not new. It had been included in the Assembly’s resolution on

<sup>224</sup> William Easterly, “The Utopian Nightmare” (2005), p. 61.

<sup>225</sup> Monterrey Consensus of the International Conference on Financing for Development, published in the Report of the International Conference on Financing for Development, held in Monterrey (Mexico), between 18 and 22 March 2002, UNDoc A/CONF.198/11. For a summary of the Consensus, see Abdel Hamid Bouab, “Financing for Development, the Monterrey Consensus” (2004), pp. 359-368.

<sup>226</sup> *Idem*, para. 1. See further paras. 10-19 of the Consensus.

<sup>227</sup> *Idem*, para. 6.

<sup>228</sup> *Idem*. See also Inaamul Haque & Ruxandra Burdescu, “Monterrey Consensus on Financing for Development” (2004), pp. 241-242.

<sup>229</sup> *Idem*, paras. 20-25. As Haque and Burdescu pointed out, foreign direct investment is focused on a limited group of developing nations, with a relatively stable and reliable economy: China, Brazil, India and Malaysia. See Inaamul Haque & Ruxandra Burdescu, “Monterrey Consensus on Financing for Development” (2004), pp. 245-246.

<sup>230</sup> *Idem*, paras. 26-38. See also paras. 52-67.

<sup>231</sup> *Idem*, paras. 39-46.

<sup>232</sup> See also Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 281. The quotes are from Surya P. Subedi, “International Conference on Financing for Development” (2002), p. 53.

the international development strategy of the 1970s.<sup>233</sup> Although it did have some impact, the target failed to motivate all States to increase their official development assistance. This was particularly problematical for a group of least developed States which relied heavily on this formal aid.<sup>234</sup> Sachs suggested that if people in developed countries knew how little aid was transferred by their Governments and thus in their name, to developing nations, they would ask for it to be increased.<sup>235</sup> If people do not believe their own Government is generous enough, they can compensate by giving money themselves, for example, through organizations like Oxfam. However, as Sachs showed, even if such private donations are included in the official development assistance statistics, the United States of America – Sachs' article was exclusively about that State – would still not reach the 0.7 figure.<sup>236</sup>

As the global percentage of official development assistance actually given never reached 0.7 per cent, this figure has been referred to as “the most famous international statistical target ever set and never met.”<sup>237</sup> One author called for “a new paradigm for [official development assistance] that will transform it from an uncertain, inadequate, shrinking, and unfocused charity of nations into an adequate, predictable, long-term, focused, and binding obligation of the world community, embedded in international law and aimed at poverty reduction.”<sup>238</sup> The Monterrey Consensus, being a non-binding declaration, has not brought about such a paradigm shift.<sup>239</sup>

The true follow-up to the Millennium Declaration was the World Summit Outcome Document adopted in 2005.<sup>240</sup> This Document reaffirmed the pledges made in the Millennium Declaration, and developed concrete measures to realize

<sup>233</sup> Jeffrey D. Sachs, “The Development Challenge” (2005), p. 86.

<sup>234</sup> See also Inaamul Haque & Ruxandra Burdescu, “Monterrey Consensus on Financing for Development” (2004), pp. 264-265.

<sup>235</sup> Jeffrey D. Sachs, “The Development Challenge” (2005), pp. 79-80.

<sup>236</sup> *Idem*, p. 80. The article is about the situation in 2005, but according to statistics published on the OECD's website, the situation has not improved since then (see: <http://stats.oecd.org>). The US has become less and less generous, with 0.23 percent of gross national income used for development assistance in 2005, and only 0.16 per cent in 2007.

<sup>237</sup> Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 105.

<sup>238</sup> Inaamul Haque & Ruxandra Burdescu, “Monterrey Consensus on Financing for Development” (2004), p. 270.

<sup>239</sup> In 2008, the goals and commitments expressed in the Monterrey Consensus were reaffirmed in the Doha Declaration on Financing for Development, outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus, annexed to General Assembly resolution 63/239, adopted 24 December 2008. The Doha Declaration also assessed the implementation of the Monterrey Consensus. In general, the progress in the implementation of the Consensus was mixed. See Doha Declaration, paras. 3 (general assessment), 23 (on foreign direct investment), 31-32 (reform of trading system) and 42-43 (official development assistance).

<sup>240</sup> World Summit Outcome, General Assembly resolution 60/1, adopted 16 September 2005.

the Millennium Development Goals. The values of the Millennium Declaration were reaffirmed in the Document.<sup>241</sup> All States "strongly reiterate[d] [their] determination to ensure the timely and full realization of the development goals and 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."<sup>242</sup> With regard to building a global partnership for development, the States "reaffirm[ed] that each country must take primary responsibility for its own development and that the role of national policies and development strategies cannot be overemphasized in the achievement of sustainable development" and that "national efforts should be complemented by supportive global programmes, measures and policies aimed at expanding the development opportunities of developing countries."<sup>243</sup> This division of labour and responsibility is based on a recognition, first, that the economic world order harms developing States, and secondly, that developing States have a responsibility themselves to combat local corruption and improve local forms of governance.<sup>244</sup> The Millennium Declaration did not emphasize the primary responsibility of developing States for their own development as strongly as most previous declarations. Thus the 2005 Document was a return to the more traditional approach to development.

### 3.7 Conclusion

The General Assembly's declarations and programmes for action were a response to the needs of developing States. The developing nations never formulated their demands as simple requests for help, and the Assembly's programmes were not "charity programmes." Rather, the developing States demanded that their entitlement to development assistance be acknowledged, and that they should not have to continuously beg for development assistance. They were entitled to international assistance because the present international economic order was unfair and inequitable, and they were the victims of that unfairness and inequity. Therefore there was an obligation for all States to help rectify the consequences of the old order and eventually replace it with a new international economic order that was fair and equitable. As long as this goal was not achieved, the developing States were entitled to compensation for the harm done to them by this unfair system.

At the same time, few of the declarations went so far as to conclude that a system of global distributive justice should be established. An exception is the Millennium Declaration, but the global social justice approach of that declaration

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<sup>241</sup> *Idem*, para. 4.

<sup>242</sup> *Idem*, para. 17.

<sup>243</sup> *Idem*, para. 22.

<sup>244</sup> Jorg Kustermans, Jacobus Delwaide & Gustaaf Geeraerts, "Global governance en veiligheid" (2007).

was replaced by more traditional ways of thinking only five years later, with the adoption of the World Summit Outcome Document.

It is clear that the General Assembly has continuously stressed the responsibility of States for their own development. The international duties of assistance were secondary to that primary responsibility. Some General Assembly declarations, especially those about the New International Economic Order, aimed to revise the rules of the international economic order. However, these suggestions have not been translated into binding international law. A more modest proposal, *viz.* that the developed States acknowledge the obligation to spend a small part of their gross domestic product on official development assistance, has been more successful in the sense that it was adopted by the General Assembly, although very few States comply with this obligation.

The role of the General Assembly in facilitating and monitoring foreign direct investment has become rather limited now that a system has been set up elsewhere.<sup>245</sup> This means that the declarations of the General Assembly do not give a complete picture of the norms and principles of the international economic order. Many of the fundamental rules, not just those about foreign direct investment, have been made elsewhere. It is true that the United Nations Conference on Trade and Development has played a role with its efforts to integrate developing countries into the global economy,<sup>246</sup> but the World Trade Organization sets out and monitors the main principles of the trading system. The World Bank provides loans, credits and grants to developing countries and also determines the conditions for such loans, credits and grants. The International Monetary Fund ensures financial stability, and the rules on foreign direct investment are set by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States and by a dense network of bilateral investment treaties. The monitoring of that system is partly carried out by the International Centre for Settlement of Investment Disputes. Many of these institutions have some (in)formal links with the United Nations system, but the General Assembly has relatively little influence over them.

## 4 EMERGENCY ASSISTANCE

### 4.1 Introduction

The Assembly has adopted declarations proclaiming principles and frameworks for action in response to immediate threats. These are not primarily based on principles of fairness or global social justice, but rather, on the moral imperative to act

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<sup>245</sup> See also Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 101.

<sup>246</sup> See Ian Taylor & Karen Smith, *United Nations Conference on Trade and Development (UNCTAD)*.

whenever fellow human beings are in immediate danger, especially when the costs of acting are not too high.

#### 4.2 Natural disasters and other humanitarian emergencies

Whenever an earthquake, a cyclone, or some other natural disaster, hits a particular region, United Nations vehicles appear on television, and UN staff can be seen handing out emergency food supplies. The effect of such emergency relief action is clear. People who would otherwise not have any food or blankets do receive them. The immediate impact of the General Assembly declarations on social progress and development discussed earlier is much less clear.<sup>247</sup>

In 1989, the Assembly adopted the International Framework of Action for the International Decade for Natural Disaster Reduction.<sup>248</sup> The main objective of that Framework was “to reduce through concerted international action, especially in developing countries, the loss of life, property damage and social and economic disruption caused by natural disasters such as earthquakes, windstorms, tsunamis, floods, landslides, volcanic eruptions, wildfires, grasshopper and locust infestations, drought and desertification and other calamities of natural origin.”<sup>249</sup> All States were called upon, *inter alia*, “to improve the early international availability of appropriate emergency supplies through the storage or earmarking of such supplies in disaster-prone areas.”<sup>250</sup> It was also suggested that the UN Secretary-General establish a special trust fund, and “that voluntary contributions [to that trust fund] from Governments, international organizations and other sources, including the private sector, be strongly encouraged.”<sup>251</sup> This Framework was further revised and improved with the adoption of the Yokohama Strategy and Plan of Action for a Safer World, which focused more on the prevention of natural disasters than on the response to such disasters,<sup>252</sup> and the Hyogo Declaration and Framework for Action.<sup>253</sup>

<sup>247</sup> Former Secretary-General Boutros-Ghali expressed his concern that this might lead to a focus on short-term projects. See Boutros Boutros-Ghali, “A New Departure on Development” (1995), p. 44.

<sup>248</sup> International Framework of Action for the International Decade for Natural Disaster Reduction, annexed to General Assembly resolution 44/236, adopted 22 December 1989 (“International Framework of Action for the International Decade for Natural Disaster Reduction”).

<sup>249</sup> *Idem*, para. 1.

<sup>250</sup> *Idem*, para. 3(g).

<sup>251</sup> *Idem*, para. 15.

<sup>252</sup> Yokohama Strategy and Plan of Action for a Safer World: Guidelines for Natural Disaster Prevention, Preparedness and Mitigation, adopted at the World Conference on Natural Disaster Reduction, held in Yokohama, Japan between 23 and 27 May 1994 (“Yokohama Strategy and Plan of Action”).

<sup>253</sup> Hyogo Declaration and Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters, both adopted at the World Conference on Disaster Reduction,



One year later (in 1990), the General Assembly adopted a related declaration on the Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations.<sup>254</sup> The first principle of that declaration – which reads that “humanitarian assistance is of cardinal importance for the victims of natural disasters and other emergencies” – shows that the concept of humanitarian emergency includes, but is not limited to, natural disasters. The declaration on humanitarian emergencies also proposed the establishment of a special fund financed by voluntary contributions.<sup>255</sup>

The reason for the more generous international assistance provided in response to natural disasters and other humanitarian emergencies might be that States cannot help becoming victims of such immediate disasters and emergencies, while they can be held responsible for failing development policies.

This does not mean that States are not themselves primarily responsible for responding to disasters occurring on their territory. In the Declaration on natural disasters, governments were called upon to “formulate national disaster-mitigation programmes, as well as economic, land use and insurance policies for disaster prevention, and, particularly in developing countries, to integrate them fully into their national development programmes.”<sup>256</sup> This suggests that States are primarily responsible for tackling natural disasters occurring within their own territory.<sup>257</sup> The declaration on humanitarian emergencies places an equally strong emphasis on sovereignty, this time both as a source of responsibility and as a source of rights. Regarding the former, it states that “each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory.”<sup>258</sup> Regarding the latter, it states that “humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country.”<sup>259</sup> When Japan was hit by a disastrous earthquake and tsunami in 2011, it initially did not ask the UN to coordinate the relief efforts. Therefore the UN did not play a leading role.

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held between 18 and 22 January 2005, in Kobe, Hyogo, Japan. See UNDoc. A/CONF.206/6 (“Hyogo Declaration”).

<sup>254</sup> Declaration on the Strengthening of the coordination of humanitarian emergency assistance of the United Nations, annexed to General Assembly resolution 46/182, adopted 19 December 1991.

<sup>255</sup> *Idem*, paras. 21-26.

<sup>256</sup> International Framework of Action for the International Decade for Natural Disaster Reduction, para. 3(a).

<sup>257</sup> The other declarations also stress this point. See *e.g.*, Yokohama Strategy and Plan of Action, principle 10; and the Hyogo Declaration, para. 4.

<sup>258</sup> Declaration on the Strengthening of the coordination of humanitarian emergency assistance of the United Nations, principle 4.

<sup>259</sup> *Idem*, principle 3.

### 4.3 Conclusion

States are more generous in their response to emergencies than in providing structural international development assistance, and the question arises whether this difference can be justified on moral grounds. The idea that all States must act whenever people suffer a disaster and are struggling to survive, meets with almost universal acceptance. However, governments of developed States find it much more difficult to explain to their citizens why a small part of the gross domestic product must be spent on permanent official development assistance.

Nevertheless, the general framework of rights and responsibilities relating to humanitarian aid is not all that different from the more general framework relating to development aid. States remain responsible for repairing the damage caused by a disaster occurring on their territory, and other States only have a duty to assist.

## 5 SUSTAINABLE DEVELOPMENT

### 5.1 Introduction

The UN Charter says little about the protection of the environment.<sup>260</sup> At the San Francisco Conference it was never raised as a topic for discussion.

Nevertheless, there is a link between fair and equitable development and "sustainable" development. Scholars have argued, referring to concepts such as "intergenerational justice" or "intergenerational equity," that one cannot have global social justice without environmental sustainability.<sup>261</sup> After all, future generations also deserve their share of the goods.<sup>262</sup> The protection of the environment can be seen as a way to make social progress and development possible for future generations as well. Although it is problematical, both from a conceptual and a legal point of view, to acknowledge that non-existing entities – future generations – have rights and deserve their fair share of the goods, this has

<sup>260</sup> See *e.g.*, Paolo Galizzi, "From Stockholm to New York, via Rio and Johannesburg" (2006), p. 960.

<sup>261</sup> On the cross-fertilization between such theories and the work of the UN, see also *e.g.*, Nico Schrijver, "After us, the deluge? The position of future generations of humankind in international environmental law" (2009); Lothar Gündling, "Our Responsibility to Future Generations" (1990); Edith Brown Weiss, "Our Rights and Obligations to Future Generations for the Environment" (1990); Anthony d'Amato, "Do We Owe a Duty to Future Generations to Preserve the Global Environment?" (1990); Graham Mayeda, "Where Should Johannesburg Take Us" (2004).

<sup>262</sup> See *e.g.*, Edith Brown Weiss, "Our Rights and Obligations to Future Generations for the Environment" (1990), and the various contributions in Andrew Dobson (editor), *Fairness and Futurity: Essays on Environmental Sustainability and Social Justice* (2004).

been the central idea behind sustainable development as introduced by the United Nations.<sup>263</sup>

The United Nations could have chosen a different approach to regulate the relationship between human beings and the earth. The earth could have been considered as something worthy of protection in its own right, rather than as a resource for development by both present and future generations. If the earth were regarded as something of intrinsic value, it would be much more difficult to see the protection of the environment as a way of making development possible for future generations.

Before looking at the major UN declarations on sustainable development,<sup>264</sup> it should be pointed out that the concept of sustainable development is relatively new and has not yet achieved full stature in international law.<sup>265</sup> The concept has not yet inspired the acceptance of *jus cogens*, as is acknowledged both in scholarship<sup>266</sup> and in case law.<sup>267</sup> It is even argued that sustainable development is no more than a “legitimate expectation that actors at the international and domestic levels ought to conduct their affairs to facilitate the realization of [certain] objectives.”<sup>268</sup> Sustainable development is an aspect of the UN’s work that can be qualified as work in progress, especially when it comes to the codification of the relevant norms. It is itself an emerging norm, slowly but

<sup>263</sup> As d’Amato pointed out, there are two difficulties with the argument that we owe something to future generations. First, non-existing entities cannot have rights. Second, by our actions, we significantly change the characteristics of those non-existing entities; we can even make their coming-into-being entirely impossible, for example by destroying the earth entirely. See Anthony d’Amato, “Do We Owe a Duty to Future Generations to Preserve the Global Environment?” (1990).

<sup>264</sup> For an overview of the relevant declarations, see especially Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007). See also Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006); and Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 149.

<sup>265</sup> Perhaps sustainability itself should be considered as a global value in international law. See e.g., Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), pp. 235-236.

<sup>266</sup> Some authors are more confident. See e.g., André de Hoogh, *Obligations Erga Omnes and International Crimes* (1996), p. 63. The principle of the preservation of the common heritage of mankind is a likely candidate to be considered *jus cogens*. The principle surfaced in General Assembly resolution 2749 (XXV) of 17 December 1970. For a discussion, see Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (1998), p. 363 and further. On this and related concepts, see also Antônio Augusto Cançado Trindade, “International law for humankind: towards a new *jus gentium* (I)” (2005), p. 365. See also p. 391, where Trindade relates these concepts explicitly with the “basic values of the international community as a whole.”

<sup>267</sup> In *International Court of Justice, Case concerning the Gabíkovo-Nagymaros Project (Hungary v. Slovakia)*, Hungary argued for the *jus cogens* character of the principle of sustainable development (para. 97 of the Judgment of 25 September 1997). The Court did not embrace that view. In a Separate Opinion, Vice-President Weeramantry discussed the legal status of the principle of sustainable development, and attempted to find a balance between the right to development and the protection of the environment. Although he found evidence of universal acceptance of the principle, he did not reach the conclusion that the principle acquired the status of *jus cogens*.

<sup>268</sup> Alhaji B.M. Marong, “From Rio to Johannesburg” (2003), pp. 21-22. See also pp. 56-57, and p. 76.

surely moving towards a value-based principle of international law, from which more specific rules can be derived.

## 5.2 The earth as a resource or as something of intrinsic value?

The earliest resolutions distinguish two different approaches to the topic of development and environmental protection. The earth is either seen as a resource to be used for the benefit and development of mankind, or as something of intrinsic value.

Although some earlier resolutions had already made references to the environment, it really became a new global challenge in the early 1970s.<sup>269</sup> In 1972, a United Nations Conference on the Human Environment took place in Stockholm.<sup>270</sup> It was an ideal opportunity for the UN to show that it could play a crucial role as the commander of "spaceship earth," even in times of Cold War rivalry and the increasing divide between developing and developed nations.<sup>271</sup>

The Declaration on the Human Environment was adopted at the end of that Conference.<sup>272</sup> The Conference also led to the establishment of the United Nations Environment Programme (UNEP). In the Preamble to the resolution establishing this programme, the General Assembly recognized that "environmental problems of broad international significance fall within the competence of the United Nations system," but it did not say on which part of the UN Charter this was based.<sup>273</sup>

The aim of the Declaration on the Human Environment was to come up with a "common outlook and [...] common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human

<sup>269</sup> The Declaration on Social Progress and Development (1969), Article 25, already called for "the establishment of legal and administrative measures for the protection and improvement of the human environment. See also Economic development and the conservation of nature, General Assembly resolution 1831(XVII), adopted 18 December 1962. For the prehistory of the concept, see also Nico Schrijver, *Development without Destruction: the UN and Global Resource Management* (2010), pp. 14-33.

<sup>270</sup> On the preparation of the conference, see Maurice Strong, "The Stockholm Conference" (1972).

<sup>271</sup> Richard N. Gardner, "The Role of the UN in Environmental Problems" (1972), p. 254.

<sup>272</sup> Declaration of the United Nations Conference on the Human Environment, adopted 16 June 1972, published in the Report of the United Nations Conference on the Human Environment, held in Stockholm, between 5 and 16 June 1972, UNDoc. A/CONF.48/14/Rev.1 ("Declaration on the Human Environment"). See Louis B. Sohn, "Stockholm Declaration on the Human Environment" (1973), for an extensive commentary. The Conference also adopted an Action Plan for the Human Environment, the implementation of which was qualified as unsatisfactory ten years later by UNEP. The Action Plan was also published in the Report of the Conference. This Action Plan contained 109 recommendations, most of which were addressed to Governments, and some to the United Nations Organization. The Nairobi Declaration can be found in UNEP's Report of the Governing Council on the Work of its 10<sup>th</sup> Session, 10-18 May 1982, UNDoc. A37/25, Annex II, pp. 49-51.

<sup>273</sup> Institutional and Financial Arrangements for International Environmental Cooperation, General Assembly resolution 2997 (XXVII), adopted 15 December 1972, Preamble.

environment.”<sup>274</sup> Or, as Maurice Strong, the Conference’s Secretary-General, said prior to the start of the Conference: the aim was to realize the “concept of a planet held in trust for future generations.”<sup>275</sup>

The declaration began by noticing that in recent times, “man [had become] both creature and moulder of his environment.” This meant that “through the rapid acceleration of science and technology, man ha[d] acquired the power to transform his environment in countless ways and on an unprecedented scale.”<sup>276</sup> Man’s capacity to control his environment had both good and bad consequences, depending on whether these powers were used responsibly: “man’s capability to transform his surroundings, if used wisely, [could] bring to all peoples the benefits of development and the opportunity to enhance the quality of life;” but if “wrongly or heedlessly applied, the same power [could] do incalculable harm to human beings and the human environment.”<sup>277</sup> Even in the early 1970s, there were plenty of examples of such harm inflicted on the world: “dangerous levels of pollution,” “major and undesirable disturbances to the ecological balance of the biosphere,” and “destruction and depletion of irreplaceable resources.”<sup>278</sup>

The Declaration focused on the dangers of the misuse of man’s powers. The Declaration said nothing about the intrinsic value of the human environment. Instead, the document was full of phrases like “of all things in the world, people are the most precious.”<sup>279</sup> The aim was clearly not to preserve the environment for its own sake, but to “defend and improve the human environment for present and future generations.”<sup>280</sup>

The 1972 Declaration put forward a set of twenty-six principles on which a common environmental policy should be based. The first principle stated that

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.<sup>281</sup>

It is not very clear whether this was supposed to be interpreted as acknowledging a human right to a healthy or adequate environment or something to that effect. As Sohn rightly remarked, “it would have been an important step forward if the right to an adequate environment were put in the forefront of the statement of principles,

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<sup>274</sup> Declaration on the Human Environment, Preamble.

<sup>275</sup> Maurice Strong, “The Stockholm Conference” (1972), p. 417.

<sup>276</sup> Declaration on the Human Environment, para. 1.

<sup>277</sup> *Idem*, para. 3.

<sup>278</sup> *Idem*.

<sup>279</sup> *Idem*.

<sup>280</sup> *Idem*, para. 6.

<sup>281</sup> *Idem*, principle 1.

thus removing the lingering doubts about its existence.”<sup>282</sup> However, if “this phrase [was] meant to convey the existence of the right to an adequate environment, [...] it would have been much better had the draftsmen of the Declaration stated it more clearly.”<sup>283</sup>

The Declaration was just as ambiguous about the allocation of duties and responsibilities as it was about the allocation of rights.<sup>284</sup> According to the second part of the principle, “man” has a right to an environment permitting a life of dignity and well-being, and “man” also has the accompanying responsibility to both present and future generations.<sup>285</sup> The same ambiguity can be found in the other principles. Some were addressed to “man,”<sup>286</sup> but most were not addressed to anyone.<sup>287</sup> Only a few were addressed to “States.”<sup>288</sup> Although the word “sustainable development” did not appear in the Declaration, the main theme was the relationship between the development of the present generation and that of future generations. For example, principle five stated that “the non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that benefits from such employment are shared by all mankind.”<sup>289</sup>

The most traditional and legalistic principle has also become the best known of all principles. This is principle 21:

States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>290</sup>

As Schrijver remarked, that principle “relate[d] exclusively to the transboundary effects and not (or at best in a cursory way) to the management of natural resources

<sup>282</sup> Louis B. Sohn, “Stockholm Declaration on the Human Environment” (1973), p. 455.

<sup>283</sup> *Idem*, p. 455. Perhaps the ambiguity was deliberate. After all, Sohn showed, by referring to the *travaux préparatoires*, that many States, and members of the Preparatory Committee, wanted the Declaration to expressly acknowledge a human right to a “wholesome environment,” but that not all States agreed. See p. 429 for the Preparatory Committee, and p. 452 for States.

<sup>284</sup> On the ambiguity as to the addressees of the Declaration, see *idem*, p. 435.

<sup>285</sup> See Declaration on the Human Environment, principle 1.

<sup>286</sup> Provisions addressed to “man” can be found in *idem*, principles 1 and 4.

<sup>287</sup> Provisions addressed to no one can be found in *idem*, principles 2, 3, 5, 6, 8, 9, 10, 12, 14, 15, 16, 17, 18, 19, 20, and 23. Presumably, most of these principles are addressed to States.

<sup>288</sup> Provisions addressed to States can be found in *idem*, principle 7, 11, 13, 21, 22, 24, 25 and 26.

<sup>289</sup> *Idem*, principle 5.

<sup>290</sup> *Idem*, principle 21.

at a national level.”<sup>291</sup> Principle 21 can accurately be summarized as the freedom of States to do whatever they want within their own territory, as long as they do not cause transboundary environmental harm.<sup>292</sup> Interpreted in this way, it has little to do with obligations to future generations. As Sohn remarked, “while this provision [did] not go as far as to assert that a state ha[d] unlimited sovereignty over its environment, it [came] quite close to such an assertion.”<sup>293</sup> Sohn believed that such an interpretation would not be in accordance with the remainder of the Declaration. Even though principle 21 did not say so, it followed from the Declaration as a whole that

No state [could] claim an absolute right to ruin its environment in order to obtain some transient benefits. It should think not only of the effect on other peoples but also about the future of its own people. [...] Destruction and depletion of irreplaceable resources [were] clearly condemned by the Declaration, even when there [was] no effect abroad, and a state [could not] engage in such activities behind the shield of misconceived sovereignty.<sup>294</sup>

Some of the ideas of the Stockholm Declaration also ended up in the 1974 Charter of Economic Rights and Duties of States, especially in the part entitled Common Responsibilities Towards the International Community,<sup>295</sup> in which the Assembly proclaimed that “the protection, preservation and enhancement of the environment for the present and future generations [was] the responsibility of all States,” and that “all States [should] endeavour to establish their own environment and development policies in conformity with such responsibility.”<sup>296</sup>

On 28 October 1982, the General Assembly adopted the World Charter for Nature.<sup>297</sup> This time the earth was no longer treated as a commodity. Bruckerhoff described it as “one of the first legal documents to specifically recognize the intrinsic value of nature.”<sup>298</sup> The Assembly now stated that it was “aware that mankind [was] a part of nature,” that “civilization [was] rooted in nature,” that “living in harmony with nature [gave] man the best opportunities for the development of his creativity,” and that it was convinced that “every form of life [was] unique, warranting respect regardless of its worth to man.”<sup>299</sup>

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<sup>291</sup> See Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 246. Schrijver added, however, that some other principles were so general that they indirectly addressed also national policies and their potential effect on the environment.

<sup>292</sup> See also Louis B. Sohn, “Stockholm Declaration on the Human Environment” (1973), pp. 485-486.

<sup>293</sup> *Idem*, p. 492.

<sup>294</sup> *Idem*.

<sup>295</sup> Charter of Economic Rights and Duties of States, Articles 29 and 30.

<sup>296</sup> *Idem*, Article 30.

<sup>297</sup> World Charter for Nature, annexed to General Assembly resolution 37/7, adopted 28 October 1982.

<sup>298</sup> Joshua Bruckerhoff, “Giving Nature Constitutional Protection” (2008), p. 681.

<sup>299</sup> World Charter for Nature, Preamble.

The first principle of the World Charter for Nature proclaimed that “nature shall be respected and its essential processes shall not be impaired.”<sup>300</sup> Presumably this principle was addressed to States, but this is not clear.<sup>301</sup> Furthermore, the Charter demands that “natural resources shall not be wasted.” Instead, they should be used in a sustainable way.<sup>302</sup> Again it is not clear who is being addressed.

The World Charter for Nature approach has not made all that much impact on international law and international affairs. However, it never disappeared entirely. In 2012, a United Nations Conference on Sustainable Development will be held in Brazil, and the Assembly requested the conference to look at “ways to promote a holistic approach to sustainable development in harmony with nature.”<sup>303</sup>

### 5.3 The rise of the three-pillar temple of sustainable development

The United Nations generally sees the earth as a giant natural resource to be enjoyed both by present and future generations. The concept of sustainable development was introduced on the basis of this idea. It was authoritatively defined in “Our Common Future,” a report written by the World Commission on Environment and Development, chaired by Gro Harlem Brundtland of Norway, and usually referred to simply as the Brundtland Report.<sup>304</sup>

The main theme of the report was that the global economy and global ecology were “locked together:” they were inseparable.<sup>305</sup> The protection of the environment and the development of States should not be considered as separate issues, and certainly not as opposing interests. After all, the economy is almost entirely dependent on the resources provided by the earth itself, particularly in the developing world. Overexploitation was therefore a threat to the environment and in the long term to the economy itself.<sup>306</sup> The most pressing developmental problems, such as poverty and hunger, and the most pressing environmental problems, such as

<sup>300</sup> World Charter for Nature, para. 1.

<sup>301</sup> In *idem*, para. 14, which was about the implementation of the principles, we read that “the principles set forth in the present Charter shall be reflected in the law and practice of each State, as well as at the international level,” which indicates that the principles primarily aimed to influence State behavior, especially legislation. However, in para. 24 we read that “each person has a duty to act in accordance with the provisions of the present Charter; acting individually, in association with others or through participation in the political process, each person shall strive to ensure that the objectives and requirements of the present Charter are met.” This suggests that the Charter also aimed to influence the behavior of individuals.

<sup>302</sup> See *idem*, para. 13.

<sup>303</sup> Harmony with Nature, General Assembly resolution 65/164, adopted 20 December 2010. As a first step, the Assembly organized an Interactive Dialogue on Harmony With Nature on 20 April 2011.

<sup>304</sup> “Our Common Future”: Report of the World Commission on Environment and Development, transmitted to the General Assembly by the Secretary-General on 4 August 1987, UNDoc. A/42/427.

<sup>305</sup> *Idem*, para. 15, on p. 21.

<sup>306</sup> *Idem*, paras. 11-26, on pp. 20-24.



desertification and global warming, were so closely connected that they essentially constituted different sides of the same coin. The problems were all caused by a type of development which was unsustainable, in the sense that it left “increasing numbers of people poor and vulnerable, while at the same time degrading the environment.”<sup>307</sup>

At the time the report was published, some of the negative effects of traditional development had not yet occurred, and the present generation had in a sense “borrow[ed] environmental capital from future generations with no intention or prospect of repaying.”<sup>308</sup> The negative effects of the unsustainable development would be borne by future generations. The report acknowledged that the present generation has got away with this, as future generations will never be able to reclaim what the present generation has taken away from them. Nevertheless, the report implied that the present generation should find a way of developing that did not compel it to use resources belonging to future generations.<sup>309</sup> The solution to this problem was to make development sustainable, *i.e.* “to ensure that [development] meets the needs of the present [generation] without compromising the ability of future generations to meet their own needs.”<sup>310</sup>

The report’s description of sustainable development has become the most authoritative definition that the international (legal) order has at its disposal, despite the fact that it is contained in a report, not in a General Assembly resolution, let alone a multilateral treaty.<sup>311</sup>

Most of the report was devoted to showing the potential of sustainable development. The general idea was that the rich should not use all the available natural resources for themselves, leaving nothing for future generations, and that poverty also led to an unsustainable use of natural resources, so that the economic development of the poor would be beneficial to the environment.<sup>312</sup> The report contained numerous recommendations focusing on population control,<sup>313</sup> ensuring a

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<sup>307</sup> *Idem*, para. 10, on p. 20.

<sup>308</sup> *Idem*, para. 25, on p. 24.

<sup>309</sup> *Idem*, paras. 25-26.

<sup>310</sup> *Idem*, para. 27.

<sup>311</sup> See also Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 231 and p. 373. However, some scholars believe that the Brundtland definition is so vague that it can hardly be labeled as a definition. See Hari M. Osofsky, “Defining Sustainable Development after Earth Summit 2002” (2003).

<sup>312</sup> This approach has been criticized for being inconsistent, since it sees both the rapid economic development of the West and the lack of development of the developing world as a threat to the environment. See James E. Ellis, “Problems and Policies for Planetary Survival” (1988), p. 1308.

<sup>313</sup> See also Key actions for the further implementation of the Programme of Action of the International Conference on Population and Development, annexed to General Assembly resolution S-21/2, adopted 2 July 1999, which sought to implement the Programme of Action of the International Conference on Population and Development, which can be found in the Report of the International Conference on Population and Development, held in Cairo between 5–13 September 1994.

sustainable food supply for all, halting the decreasing diversity of species (plants, animals) and ecosystems,<sup>314</sup> developing and promoting the use of sustainable energy sources, using less polluting forms of technology in global industry, controlling the growth of cities, especially in the developing world and setting up a new legal regime for the management of the “global commons,” *i.e.* the oceans, outer space, and Antarctica (the South Pole).<sup>315</sup> Finally, the report discussed the use of the environment as a weapon, as well as the effect of the nuclear arms race on the environment.<sup>316</sup>

A set of Proposed Legal Principles for Environmental Protection and Sustainable Development, adopted by the World Commission on Environment and Development Experts Group on Environmental Law was annexed to the report.<sup>317</sup> The most far-reaching principle was the principle according to which “all human beings ha[d] the fundamental right to an environment adequate for their health and well-being.”<sup>318</sup> If adopted by the international community, this principle would remove the obscurities of the Declaration on the Human Environment, and clearly recognize a human right to an enabling environment. Another important principle was the principle on intergenerational equity, according to which “States [should] conserve and use the environment and natural resources for the benefit of present and future generations.”<sup>319</sup> This formulation, although inspired by the definition of sustainable development suggested in the Brundtland Report, did not have the

<sup>314</sup> This ultimately led to the adoption of the Convention on Biological Diversity, the text of which can be found in United Nations, Treaty Series, vol. 1760, p. 79 and further.

<sup>315</sup> Various treaties have been adopted on the management of the global commons. See *e.g.*, the United Nations Convention on the Law of the Sea, in United Nations, Treaty Series, vol. 1833, p. 3 and further; the Agreement governing the Activities of States on the Moon and Other Celestial Bodies, in United Nations, Treaty Series, vol. 1363, p. 3 and further; The Antarctic Treaty, in United Nations, Treaty Series, vol. 402, p. 70 and further. See also the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction, General Assembly resolution 2749(XXV), adopted 17 December 1970.

<sup>316</sup> This was an issue on the General Assembly’s agenda from quite early on. See *e.g.*, the Draft Convention on the Prohibition of Action to Influence the Environment and Climate for Military and Other Purposes Incompatible with the Maintenance of International Security, Human Well-Being and Health, annexed to General Assembly resolution 3264(XXIX), adopted 9 December 1974; and the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, the text of which was annexed to General Assembly resolution 31/72, adopted 10 December 1976. On the latter Convention, see Erik Koppe, *The use of nuclear weapons and the protection of the environment during international armed conflict* (2008), pp. 124-139.

<sup>317</sup> Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development, adopted by the WCED Experts Group on Environmental Law, published in *Our Common Future*, pp. 339-342. This group of legal experts was chaired by Robert Munro of Canada, with Johan Lammers of the Netherlands as Rapporteur.

<sup>318</sup> *Idem*, principle 1.

<sup>319</sup> *Idem*, principle 2.

original definition's preference for the interests of the present generation.<sup>320</sup> The remainder of the suggested principles focused on the prohibition of States to cause transboundary damage to the environment.<sup>321</sup>

The Brundtland Report's definition of sustainable development was quickly embraced by the Assembly. A few months after the publication of the report, the General Assembly adopted the Environmental Perspective to the Year 2000 and Beyond, presented as a "broad framework to guide national action and international co-operation on policies and programmes aimed at achieving environmentally sound development."<sup>322</sup> The Environmental Perspective used the definition of sustainable development proposed in the Brundtland Report.<sup>323</sup> The Perspective then distinguished six main issues, and proposed ways to resolve these issues.<sup>324</sup>

The most important declaration on sustainable development was adopted in 1992. The Declaration on Environment and Development was concluded at the end of the United Nations Conference on Environment and Development, held in Rio de Janeiro.<sup>325</sup> The Rio Conference also stimulated the adoption and eventual entry into force of a number of important multilateral treaties relating to the protection of the environment,<sup>326</sup> and adopted a lengthy programme of action called Agenda 21, and a Statement of Principles on All Types of Forests.<sup>327</sup> The implementation of Agenda

<sup>320</sup> See also *idem*, principle 3, which suggested that States preserve the world's biological diversity, and respect the principle of the optimum sustainable yield in the use of living natural resources (especially fish).

<sup>321</sup> See *idem*, principles 9-20. See also Nico Schrijver, "The Evolution of Sustainable Development in International Law" (2007), p. 261.

<sup>322</sup> Environmental Perspective to the Year 2000 and Beyond, annexed to General Assembly resolution 42/186, adopted 11 December 1987. The description can be found in para. 2 of that General Assembly resolution. The resolution to which the Environmental Perspective was annexed is itself also worth looking at, since it contains a general description of the consensus at the time, *i.e.* it contains the main "perceptions generally shared by Governments of the nature of environmental problems, and their interrelations with other international problems, and of the efforts to deal with them." See General Assembly resolution 42/186, para. 3.

<sup>323</sup> *Idem*, para. 2.

<sup>324</sup> *Idem*, paras. 5-86. See also General Assembly resolution 42/186, para. 4(a)-(f).

<sup>325</sup> Rio Declaration on Environment and Development, published in the Report of the United Nations Conference on Environment and Development, held in Rio de Janeiro, between 3 and 14 June 1992, UNDoc. A/CONF.151/26/Rev.1 (Vol. 1) ("Rio Declaration on Environment and Development").

<sup>326</sup> The most important is probably the United Nations Framework Convention on Climate Change. The text of this Convention is published in United Nations, Treaty Series, vol. 1771, p. 107 and further. See also Nico Schrijver, "The Evolution of Sustainable Development in International Law" (2007), p. 263, for an overview of the Conventions adopted at that time.

<sup>327</sup> Agenda 21 and the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests were also published in the Report of the United Nations Conference on Environment and Development, UNDoc. A/CONF.151/26/Rev.1 (Vol. 1). See also the Non-legally binding instrument on all types of forests, annexed to General Assembly resolution 62/98, adopted 17 December 2007.

21 was assessed five years later and the results were disappointing. In the years following the adoption of the Declaration on Environment and Development, “the state of the global environment ha[d] continued to deteriorate.”<sup>328</sup>

The focus here is on the Declaration on Environment and Development, better known simply as the Rio Declaration. The Rio Declaration contained 27 principles on sustainable development. The first principle emphasized the human-centred approach. It stated that “human beings are at the centre of concerns for sustainable development.”<sup>329</sup> The second principle reaffirmed principle 21 of the Declaration on the Human Environment.<sup>330</sup> The third principle attempted to reconcile the right to development with the concept of sustainable development, by stating that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.”<sup>331</sup> It is unclear whether this meant that future generations also have a right to development. The fourth principle reflected the gist of the Brundtland Report, *i.e.* that development and the environment were inseparable concepts, and that the new concept of sustainable development had intended to express exactly that. Thus principle four stated that “in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”<sup>332</sup> Principles five and six were essentially about intra-generational equity, *i.e.* the equal distribution of natural resources among the States of the present generation. Principle seven introduced the principle of common but differentiated responsibilities. According to this principle, States had different degrees of responsibilities to help “conserve, protect and restore the health and integrity of the Earth’s ecosystem (...) in view of the[ir] different contributions to global environmental degradation.”<sup>333</sup>

<sup>328</sup> See para. 9 (p. 5) of the Programme for the Further Implementation of Agenda 21, adopted by the General Assembly at its nineteenth special session (23-28 June 1997), UNDoc. A/RES/S-19/2, distributed on 19 September 1997, as cited on p. 978 of Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006).

<sup>329</sup> Rio Declaration on Environment and Development, principle 1.

<sup>330</sup> *Idem*, principle 2. As Galizzi pointed out, one difference between Principle 21 of the Stockholm Declaration on the Human Environment and Principle 2 of the Rio Declaration on Environment and Development was that only the latter spoke of the sovereign right of all States to exploit their own resources pursuant to their own environmental and developmental policies. See Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006), p. 973.

<sup>331</sup> *Idem*, principle 3.

<sup>332</sup> *Idem*, principle 4. See also principle 25, which suggested that “peace, development and environmental protection are interdependent and indivisible.”

<sup>333</sup> *Idem*, principle 7, principles 8-19, and also paras. 26 and 27, further elaborated on the responsibilities of States. Principle 15 is particularly interesting, because it introduced the “precautionary approach” principle, according to which the “lack of full scientific certainty [should] not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

The next major declaration on sustainable development, after the Rio Declaration, was the Millennium Declaration. This declaration included in its list of values, the value of respect for nature. This suggests a return to the World Charter for Nature approach to environmental protection. In reality, the Assembly continued to prefer the Declaration on the Human Environment approach, in which the interests of future generations of human beings, and not the interests of nature itself, were the main concern. With regard to respect for nature, the General Assembly stated:

Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.<sup>334</sup>

Section IV of the Millennium Declaration, on “protecting our common environment,” elaborated on this value in greater detail. The Assembly pledged to “spare no effort to free all of humanity, and above all our children and grandchildren, from the threat of living on a planet irredeemably spoiled by human activities, and whose resources would no longer be sufficient for their needs.”<sup>335</sup> Thus the States resolved to “adopt in all our environmental actions a new ethic of conservation and stewardship.” The first elements of this new ethic were then set out in the declaration.<sup>336</sup> The Millennium Development Goals included the goal of ensuring environmental sustainability (MDG7).<sup>337</sup> However, the emphasis of the MDGs was on alleviating poverty in the present generation, and not on the protection of the environment for the benefit of future generations.<sup>338</sup>

The concept of sustainable development was developed in more detail in 2002 during the United Nations Conference on Sustainable Development in

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<sup>334</sup> Millennium Declaration, para. 6.

<sup>335</sup> *Idem*, para. 21.

<sup>336</sup> *Idem*, para. 23. Then followed some concrete steps, which included support for a number of treaties, including the Kyoto Protocol to the United Nations Framework Convention on Climate Change, published in United Nations, Treaty Series, vol. 2303, p. 148 and further; and the Convention on Biological Diversity, and the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa.

<sup>337</sup> The targets based on MDG7 included the reversal of the loss of environmental resources; to accomplish a significant reduction in the rate of biodiversity loss by 2010; to halve, by 2015, the proportion of people without sustainable access to drinking water; and to improve the lives of the world's slum dwellers.

<sup>338</sup> See Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006), p. 1007. Galizzi thus suggested drafting a set of Millennium Environmental Goals.

Johannesburg, South Africa.<sup>339</sup> A few months before the start of the conference, the International Law Association adopted the New Delhi Declaration of Principles of International Law relating to Sustainable Development. This Declaration clearly and succinctly presented the core legal principles of sustainable development.<sup>340</sup> It was submitted to the General Assembly and had a significant impact on the work of the conference.<sup>341</sup> In the Johannesburg Declaration on Sustainable Development, the States present at the Conference

Assume[d] a collective responsibility to advance and strengthen the interdependent and mutually reinforcing pillars of sustainable development - economic development, social development and environmental protection - at the local, national, regional and global levels.<sup>342</sup>

The introduction of these three pillars is new, although the Rio Declaration had already hinted at them.<sup>343</sup> The Brundtland Report only referred to the need to combine development and environmental protection in one concept, but did not distinguish between economic and social development.

The fact that only one of the three pillars relates to the environment suggests that the balance between development and the environment, which was established in Rio, was distorted in favour of the former. As Galizzi concluded, “the environment did not have a very good summit at Johannesburg.”<sup>344</sup> The developing States are often blamed for this failure, as they focused more on their own immediate developmental problems, rather than on potential developmental problems for future generations. Resources are scarce, and therefore increasing the share of resources for future generations automatically decreases the resources

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<sup>339</sup> Johannesburg Declaration on Sustainable Development, published in the Report of the World Summit on Sustainable Development, held in Johannesburg (South Africa), between 26 August and 4 September 2002, UNDoc. A/CONF.199/20.

<sup>340</sup> The Declaration was published, with an introduction by Nico Schrijver, in the *Netherlands International Law Review* (2002), pp. 299-305.

<sup>341</sup> See Letter dated 6 August 2002 from Bangladesh and the Netherlands to the United Nations, distributed 31 August 2002, UNDoc. A/57/329.

<sup>342</sup> *Idem*, para. 5.

<sup>343</sup> The Conference also adopted a Plan of Implementation of the World Summit on Sustainable Development, which is published in the Report of the World Summit on Sustainable Development, UNDoc. A/CONF.199/20. In para. 2 of this Plan of Implementation, the three pillars of sustainable development are described; in para. 139, these three pillars are referred to as “dimensions.” See also paras. 140(c), 145, and 157.

<sup>344</sup> Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006), p. 990. At best, one can say that the Johannesburg summit mainly served to reiterate commitments towards future generations made in earlier declarations. See also Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 282.

available for the present generation.<sup>345</sup> Intergenerational equity comes at the expense of intragenerational equity.

A World Fit for Children deserves a brief mention here. In this declaration the Assembly pledged to “protect the Earth for children,” by “safeguard[ing] our natural environment, with its diversity of life, its beauty and its resources, all of which enhance the quality of life, for present and future generations.”<sup>346</sup> This could be interpreted as indicating an adjustment in the balance between present and future generations, but the declaration has not had much impact.

In the World Summit Outcome Document of 2005, the General Assembly reaffirmed that “sustainable development [...] constitute[d] a key element of the overarching framework of United Nations activities.” It also emphasized that “economic development, social development and environmental protection” constituted the “interdependent and mutually reinforcing pillars” of the concept of sustainable development.<sup>347</sup> Thus it followed the Johannesburg approach, according to which the emphasis of sustainable development should be on the second word, rather than the first.<sup>348</sup> Despite growing concerns about the state of the environment, the Outcome Document mainly reiterated commitments adopted earlier.<sup>349</sup>

#### 5.4 Conclusion

The concept of sustainable development was a UN invention. It has become a household concept since it was authoritatively defined by the UN in the 1980s. The central idea is that when we think of development we also bear in mind the interests and needs of future generations. In a way, one has to imagine that these future generations already exist in the moral universe, and that they are entitled to a piece of the pie.<sup>350</sup> The present generation has to put some pie in the freezer, and leave it there for the future generation to defrost. This approach to man’s relationship with the environment has been generally accepted, even though some scholars have been critical of the idea that the earth is regarded as no more than a resource for both present and future generations.

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<sup>345</sup> It appears that Weiss believes that intergenerational equity actually is more important, and that intragenerational equity is a means to intergenerational equity. See Edith Brown Weiss, “Our Rights and Obligations to Future Generations for the Environment” (1990), p. 201.

<sup>346</sup> A world fit for children, annexed to General Assembly resolution S-27/2, adopted 10 May 2002, para. 4.

<sup>347</sup> 2005 World Summit Outcome, paras. 10 and 48. See also paras. 49-56.

<sup>348</sup> See also Paolo Galizzi, “From Stockholm to New York, via Rio and Johannesburg” (2006), pp. 993-1001.

<sup>349</sup> See also Nico Schrijver, “The Evolution of Sustainable Development in International Law” (2007), p. 285.

<sup>350</sup> There is one thing that the pie metaphor overlooks, and that is the fact that the earth, in contrast to the pie, can renew itself to a certain extent, *i.e.* that it is capable of continuously providing new resources.

Despite its acceptance, the status of sustainable development in international law, as well as its exact content and implications, are as yet unclear. One especially problematical aspect is that the duty to reserve some of the pie for future generations by definition results in less pie for the present generation. This is particularly difficult for developing States, which have been struggling to get their share of the pie for decades.

## 6 THE RIGHT TO DEVELOPMENT

### 6.1 Introduction

In the attempt to create a fair and equitable economic order it is necessary to identify the subjects and objects of that order.<sup>351</sup> Our world is traditionally perceived as a community of sovereign States. Therefore one would initially consider States to be both the object (recipient) and the subject (payer). This was the approach in most of the declarations. They all set out the norms and principles that guide States in their relations with each other, focusing on the relationship between developing States (recipients of aid) and developed States (payers of aid).

It could also be argued that the ultimate recipient of development is the individual human being. This is the approach adopted by many cosmopolitans.<sup>352</sup> The cross-fertilization of the United Nations system, on the one hand, and philosophy, on the other hand, has been much more successful in this approach than it has been when it comes to implementing global justice ideas in the rules and regulations of the State-based international economic order. The fact that the debate on development and social justice is increasingly formulated in terms of human rights, in which individuals formulate claims against their own State and against the international community as a whole, is evidence of the increasing influence of this human-centred approach.<sup>353</sup> The recognition of a universal human right to development and the view of poverty as a human rights violation,<sup>354</sup> as well as the emerging concept of human development to guide United Nations development

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<sup>351</sup> See on this aspect of the definition of social/distributive justice, Simon Caney, *Justice beyond Borders: A Global Political Theory* (2006), pp. 103-105.

<sup>352</sup> See e.g., Peter Singer, *One World: The Ethics of Globalization* (2002).

<sup>353</sup> Kofi Annan made it his prime task as UN Secretary-General to promote this human-centered approach to basically everything the UN does. See e.g., the Secretary-General's Report: We, the Peoples: the Role of the United Nations in the Twenty-first Century. Distributed 27 March 2000. UNDoc A/54/2000, para. 10.

<sup>354</sup> On the human right to development, one must refer to the UN Human Rights Council's Working Group on the Right to Development. See also Thomas W. Pogge, "Recognized and Violated by International Law: The Human Rights of the Global Poor" (2005).



programmes, are all further evidence of this trend.<sup>355</sup> This trend is a consequence, not so much of changing ideas in the field of development, but rather of changing ideas based on human rights and the promotion of human dignity. These ideas are examined more extensively in the chapter on the value of human dignity. Here, they are examined only to the extent that they relate immediately to development.

The main question is whether in recent times the international community has started to base its ideas in the field of social progress and development on the needs of individuals rather than on the needs of States. Thomas Pogge argued that a duty of global social justice already exists in human rights law.<sup>356</sup> He conducted the debate on development in human rights terms, which led to very interesting results.<sup>357</sup> Thomas Pogge is not alone as regards this approach.<sup>358</sup> Essentially he claimed that poor people have a human right to development and a certain standard of living, and that this human right is violated by the international community. This is because the international community has created and then sustained an international economic order that makes it impossible for many individuals to secure an adequate standard of living.<sup>359</sup>

The easiest way to stop the institutional order from violating this human right to development is to compensate the victims of this violation in some way.<sup>360</sup> This may be easier than creating a perfect international economic order, in which all participants automatically get what they deserve, but such global compensation

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<sup>355</sup> The term human development was coined by the Nobel Prize winning economist Amartya Sen and the authors of the first Human Development Reports, written for the United Nations Development Programme. For a brief overview of human development ideas, see Richard Jolly, "Human Development" (2007).

<sup>356</sup> The formulation of the problem is inspired by Thomas W. Pogge, "Recognized and Violated by International Law: The Human Rights of the Global Poor" (2005), pp. 717–745.

<sup>357</sup> Pogge's argument can be found in Thomas W. Pogge, "Recognized and Violated by International Law: The Human Rights of the Global Poor" (2005); Pogge, "The International Significance of Human Rights" (2000), pp. 45–69; Pogge, *World Poverty and Human Rights* (2002).

<sup>358</sup> See e.g., Richard Jolly, Louis Emmerij, Dharam Ghai & Frédéric Lapeyre, *UN Contributions to Development Thinking and Practice* (2004). See also Olivier de Frouville, "Article 1, paragraphe 3" (2005), pp. 361–370.

<sup>359</sup> Pogge focused on the negative duty related to the human right of development: he claimed that the current global institutional arrangements as codified in international law constituted a collective human rights violation of enormous proportions to which most of the world's affluent were making uncompensated contributions (Pogge, "Recognized and Violated by International Law" (2005), p. 721). This is different from the argument that the international community is violating the human-rights based claim of the very poor to economic assistance (that would be a neglect of a positive duty). Pogge does not reject this latter claim, but because it is a harder case to make, he leaves it aside, without prejudice (*idem*, p. 720).

<sup>360</sup> Pogge proposes a Global Resources Dividend. See Chapter 8 of Thomas W. Pogge, *World Poverty and Human Rights* (2002). On p. 196, Pogge, explains how it works: "States and their governments shall not have full libertarian property rights with respect to the natural resources in their territory, but can be required to share a small part of the value of any resources they decide to use or sell."

does not currently exist. Pogge's argument is that it should exist, according to already existing international law.

According to Article 55 of the UN Charter, "the United Nations shall promote [...] higher standards of living, full employment, and conditions of economic and social progress and development." An individual cannot base a claim on this rather general provision, but an individual can claim human rights. The international community proclaims the following right in the Universal Declaration of Human Rights:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>361</sup>

In order to demonstrate that this right can not only be claimed at a national level, but also at the international level, the Declaration stated that "[e]veryone [was] entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."<sup>362</sup> Pogge argued that these articles, taken together, establish a duty for the global community to ensure that all individuals within that community can enjoy their right to development.

Reference could be made to binding international treaties which are aimed at guaranteeing the same rights as some of the non-binding declarations, although Pogge did not refer to these. The most relevant is the International Covenant on Economic, Social and Cultural Rights.<sup>363</sup> In Article 2 of this Covenant Member States "undertake[...] to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources,<sup>364</sup> with a view to achieving progressively the full realization

<sup>361</sup> Universal Declaration of Human Rights, Part A of International Bill of Human Rights, General Assembly resolution 217(III), adopted 10 December 1948 ("Universal Declaration of Human Rights"), Article 25. See also Chapter VI of this study, especially section 2.3 thereof.

<sup>362</sup> *Idem*, Article 28.

<sup>363</sup> International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966; entry into force 3 January 1976. The United States of America is one of the very few countries that did not ratify the International Covenant on Economic, Social and Cultural Rights. See Thomas W. Pogge, "Recognized and Violated by International Law: The Human Rights of the Global Poor" (2005), p. 719, 720.

<sup>364</sup> See General Comment 3, on the nature of States parties' obligations (Art. 2, para. 1 of the Covenant). This Comment was adopted by the Committee on Economic, Social and Cultural Rights during its Fifth session in 1990. This important General Comment explains that "the phrase [in Article 2] "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance."

of the rights recognized in the present Covenant.”<sup>365</sup> One of these rights recognized in the Covenant was “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,” and “the fundamental right of everyone to be free from hunger.” To safeguard the latter right, Member States should take measures “individually and through international co-operation [...] to ensure an equitable distribution of world food supplies in relation to need.”<sup>366</sup>

The following sections examine the Assembly resolutions supporting this human-centred, entitlement-based approach to the value of social progress and development. This approach culminated in the Declaration on the Right to Development.

## **6.2 A rights-based approach prior to the Declaration on the Right to Development**

In 1969 the General Assembly adopted a Declaration on Social Progress and Development. This resolution is interesting because it is one of the first resolutions that linked social progress to human rights. What was new about the declaration was the idea that individuals had a right to enjoy the fruits of social progress. According to the Assembly, “all peoples and all human beings [...] shall have the right to live in dignity and freedom and to enjoy the fruits of social progress and should, on their part, contribute to it.”<sup>367</sup> The question arises what the difference is between human beings having a right to “enjoy the fruits of social progress,” and the more old-fashioned approach, according to which social progress is pursued by a State as part of its development policy.<sup>368</sup> In actual fact, the consequences could be far-reaching. If a human rights approach were accepted, it would have the following consequences:

All human beings in the world are entitled to enjoy the fruits of social progress, and if deprived thereof, they have legal means to demand respect for their right;

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<sup>365</sup> Member States must try, to the maximum of available resources, to guarantee these rights, individually and collectively. The International Covenant on Civil and Political Rights, adopted by the General Assembly on the 16<sup>th</sup> of December 1966, entry into force 23 March 1976, requires member States to “respect and to ensure to all individuals within its territory the rights recognized in the present Covenant” (article 2.1), and not just to take steps with a view to progressively realizing the rights.

<sup>366</sup> International Covenant on Economic, Social and Cultural Rights, Article 11.

<sup>367</sup> Declaration on Social Progress and Development, General Assembly resolution 2542(XXIV), adopted 11 December 1969 (“Declaration on Social Progress and Development”), Article 1.

<sup>368</sup> As fruits of social progress, one might think of education, health care, housing, food, and so on.

All States have a legal obligation to ensure that each and every individual within their jurisdiction enjoys the fruits of social progress.<sup>369</sup>

The human rights approach was not so dominant in the declarations adopted in the years following the 1969 Declaration on Social Progress and Development. Nevertheless, sections based on human rights can be found in a few of the general declarations.

For example, the International Development Strategy for the Second United Nations Development Decade of 1970 had a section on human development. This section focused on education, health and adequate housing for individuals.<sup>370</sup> The remainder of the document related solely to the development of developing States, and thus dealt with the individuals residing within those States only indirectly.

The Development Strategy for the Third United Nations Decade added an additional development goal: the promotion of human dignity.<sup>371</sup> As the human rights-based approach is based on a respect for human dignity, this is in line with the human-centred approach to development.

### 6.3 The Declaration on the Right to Development

The Declaration on the Right to Development was adopted by the General Assembly in 1986. The Assembly referred to development not as a policy goal, but as a legal entitlement.<sup>372</sup> None of the earlier declarations had referred explicitly to a human right, or a peoples' right, to development. The Declaration on the Right to Development did exactly that. First, the Declaration on the Right to Development described development as

A comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.<sup>373</sup>

<sup>369</sup> See Richard Jolly, Louis Emmerij & Thomas G. Weiss, *UN Ideas that Changed the World* (2009), p. 131. Their reasons were not linked to the Declaration on Social Progress and Development, but to social human rights in general.

<sup>370</sup> International Development Strategy for the Second United Nations Development Decade, paras. 65-72.

<sup>371</sup> *Idem*, para. 8. See also the Guidelines for Consumer Protection, annexed to General Assembly resolution 39/248, adopted 9 April 1985.

<sup>372</sup> See also Bertrand G. Ramcharan, *Contemporary human rights ideas* (2008), pp. 85-97.

<sup>373</sup> Declaration on the Right to Development, General Assembly resolution 41/128, adopted 4 December 1986 ("Declaration on the Right to Development"), Preamble. When the Declaration on the Right to Development was adopted, the United States of America cast the only dissenting vote in the Assembly. See UN Doc. A/41/PV.97.

Then the right to development was defined as

An inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.<sup>374</sup>

The right to development was presented as a right to participate in a process called development, and a right to have one's human rights respected while participating in that process.<sup>375</sup> The goal of that process was development, which was itself also defined in terms of the full realization of human rights. Thus there is an overall picture that "using the right to development approach, the objectives of development are set up as entitlements of rights holders, which duty bearers, the individuals, the states, and the international community are expected to fulfil, respect, protect, and promote while respecting international human rights standards."<sup>376</sup>

The beneficiary of the right to development was, first and foremost, the individual. However, it was not enough for the individual to simply wait for this development to take place. The individual also had duties, as an active participant in the process.<sup>377</sup> It was primarily the States who were responsible for making this development possible. As the Assembly said: "States ha[d] the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development."<sup>378</sup> At the international level, this meant that "States ha[d] the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development."<sup>379</sup> At the national level, it meant that "States should undertake [...] all necessary measures for the realization of the right to development and sh[ould] ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income."<sup>380</sup>

Although States, as the key members of the international community, had most of the responsibilities, the Assembly acknowledged in the Declaration that the

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<sup>374</sup> *Idem*, Article 1.

<sup>375</sup> See Arjun Sengupta, "On the theory and practice of the Right to Development" (2002), pp. 846-852, and 868-876.

<sup>376</sup> *Idem*, p. 852. Schrijver described the right to development as "nothing more and nothing less than the sum of existing human rights." See Nico Schrijver, "The Evolution of Sustainable Development in International Law" (2007), p. 271.

<sup>377</sup> Declaration on the Right to Development, Article 2.

<sup>378</sup> *Idem*, Article 3(1).

<sup>379</sup> *Idem*, Article 4(1).

<sup>380</sup> *Idem*, Article 8(1).

international community did not consist only of States. According to the Universal Declaration of Human Rights, “everyone ha[d] duties to the community in which alone the free and full development of his personality is possible.”<sup>381</sup> Inspired by that provision, the Declaration on the Right to Development stated that

All human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.<sup>382</sup>

In 2005, the UN High Commissioner for Human Rights, Louise Arbour pointed out that it made a crucial difference to the poor whether they achieved aid in the form of charity and need-based assistance, or in the form of entitlements:

The process of development must strive to realize all human rights entitlements of all rights holders. This is particularly relevant for the poor and the marginalized. For them it is necessary that the development process move away from a needs-based exercise in charity and assistance to one that creates and sustains genuine entitlements that span all aspects of their life- economic, social and cultural, as well as the civil and political.<sup>383</sup>

The difference was the entitlement to respect for human dignity and the intrinsic worth of every human being. This meant that, in global partnerships for development, development assistance was no longer based on charity, if it ever was, but rather on legitimate claims made by individuals to those with a duty to provide it. The latter category ultimately included every member of the international community, and thus also individuals themselves. The difference between a needs-based or charity-based approach to development, and that of a rights-based approach, has also been emphasized in much of the literature.<sup>384</sup>

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<sup>381</sup> Universal Declaration of Human Rights, Article 29. See also Declaration of Human Duties and Responsibilities, adopted by a High-Level Group chaired by Richard J. Goldstone, 1999.

<sup>382</sup> Declaration on the Right to Development, Article 2(2).

<sup>383</sup> Statement by Louise Arbour, UN High Commissioner for Human Rights, to the Working Group on the Right to Development, made in Palais des Nations, Room XVII, in Geneva, on the 15<sup>th</sup> of February 2005.

<sup>384</sup> See especially Jakob Kirkemann Boesen & Tomas Martin, *Applying a Rights-Based Approach* (2007), pp. 9-13. See also Fateh Azzam, “Reflections on Human Rights Approaches to Implementing the Millennium Development Goals” (2005), p. 24.

When the Declaration on the Right to Development was adopted, the United States of America cast the only negative vote.<sup>385</sup> Eight other countries abstained.<sup>386</sup> One reason for the abstentions was the blurring of the distinction between human rights, peoples' rights, and even the rights of States.<sup>387</sup> This blurring was also a major hurdle, albeit one that was overcome, for many of the States that ultimately voted in favour.<sup>388</sup> They believed that human rights belonged to individuals, and essentially served to protect individuals from the abuse of their own State's power and authority over them. At the same time, this classical approach to human rights does not prevent the consideration of human rights violations committed against an entire group of individuals.<sup>389</sup> This is not the same as giving human rights, traditionally believed to be enjoyed only by individuals, to peoples, or even to States.<sup>390</sup>

#### **6.4 A rights-based approach after the Declaration on the Right to Development**

The human-centred approach to the value of social progress and development can also be found in resolutions adopted after the Declaration on the Right to Development. In 1991, the Assembly "recogniz[ed] that the elimination of widespread poverty and the full enjoyment of economic, social and cultural rights [were] interrelated goals," and that "extreme poverty [was] a violation of human dignity and could constitute a threat to the right to life."<sup>391</sup> It then affirmed that

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<sup>385</sup> For a discussion of the US position on the right to development, see Stephen Marks, "The Human Right to Development: Between Rhetoric and Reality" (2004), pp. 137-168.

<sup>386</sup> UN Doc. A/41/PV.97, p. 64. The abstaining States were Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom.

<sup>387</sup> For an explanation of the US dissent, see UN Doc. A/C.3/41/SR.61, p. 32. For the abstentions, see The Federal Republic of Germany (A/C.3/41/SR.61, p. 29-30), Japan (p.31), the United Kingdom (p.33). For Finland, speaking also on behalf of Denmark, Iceland and Sweden, see A/41/PV.97, p. 77.

<sup>388</sup> See, e.g., Norway (A/41/PV.97, p. 57; Norway had voted against the Declaration when it was adopted by the Third Committee of the General Assembly, see A/C.3/41/SR.61, p. 11), Austria (A/C.3/41/SR.61, p. 31), Ireland (A/C.3/41/SR.61, p. 31), Canada (p. 34).

<sup>389</sup> A very helpful brochure on a human rights-based approach to development, published by the Office of the United Nations High Commissioner of Human Rights made this quite clear. It defined human rights as "universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity." Office of the United Nations High Commissioner of Human Rights, *Frequently Asked Questions on A Human Rights-Based Approach to Development Cooperation* (2006), p. 1.

<sup>390</sup> *Idem*, pp. 4-5. These debates are examined in more detail in Chapter VI, the chapter on human dignity.

<sup>391</sup> Human rights and extreme poverty, General Assembly resolution 46/121, adopted 17 December 1991, Preamble.

“extreme poverty and exclusion from society constitute[d] a violation of human dignity.”<sup>392</sup>

A few years later, the United Nations organized a World Conference on Human Rights, with the specific aim to “examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights.”<sup>393</sup> In the Vienna Declaration and Programme of Action, the international community reaffirmed that “the right to development, as established in the Declaration on the Right to Development, [was] a universal and inalienable right and an integral part of fundamental human rights,” and that it was the duty of the international community to “promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development.”<sup>394</sup> This time the United States joined the consensus.

Reference should also be made to the many commitments in the Copenhagen Declaration on Social Development focusing on the individual and referring to human dignity.<sup>395</sup> Moreover, the Agenda for Development formulated the goal of development almost exclusively in terms of human rights.<sup>396</sup> In particular, the Secretary-General stressed the importance of promoting democracy, respect for human rights and an increased role for civil society within States.<sup>397</sup> In the Millennium Declaration, the world community pledged to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected.”<sup>398</sup> The Assembly then pledged “to mak[e] the right to development a reality for everyone and to free[ing] the entire human race from want.”<sup>399</sup> Despite these general references to the right to development, the Millennium Declaration cannot be considered as a continuation of the human rights-based approach, as none of the MDGs is formulated in human rights terms.<sup>400</sup> Nevertheless, it is clear that human rights and the MDGs are at least implicitly linked.<sup>401</sup>

<sup>392</sup> *Idem*, para. 1.

<sup>393</sup> General Assembly Resolution 45/155, adopted 18 December 1990. See also Report of the World Conference on Human Rights, A/CONF.157/24.

<sup>394</sup> Vienna Declaration and Programme of Action, UNDoc A/CONF.157/24 (“Vienna Declaration and Programme of Action”), para. 10. See also paras. 25 and 72.

<sup>395</sup> Copenhagen Declaration on Social Development, commitments 2, 3, 5, 6 and 4.

<sup>396</sup> Agenda for Development, para. 44.

<sup>397</sup> See *idem*, paras. 26-32.

<sup>398</sup> Millennium Declaration, para. 11.

<sup>399</sup> *Idem*.

<sup>400</sup> Philip Alston, “Ships Passing in the Night” (2005), p. 757.

<sup>401</sup> See especially Philip Alston, “Ships Passing in the Night” (2005), and Alston, *A Human Rights Perspective on the Millennium Development Goals*, paper written in 2004, as advice for the Millennium Project Task Force on Poverty and Economic Development. See also Millennium Development Goal 8: Indicators for Monitoring Implementation (Note by the Secretariat for second meeting of High-level



To make that link more explicit, Sachs, the director of the Millennium Project, wrote in *A Practical Plan to Achieve the Millennium Goals*, that

The Millennium Development Goals (MDGs) are the world's time-bound and quantified targets for addressing extreme poverty in its many dimensions – income poverty, hunger, disease, lack of adequate shelter and exclusion – while promoting gender equality, education, and environmental sustainability. They are also basic human rights – the rights of each person on the planet to health education, shelter, and security as pledged in the Universal Declaration of Human Rights and the UN Millennium Declaration.<sup>402</sup>

Although the Declaration itself did not specifically do so, it is not difficult to translate the MDGs into human rights language.<sup>403</sup> Doing so improves their effectiveness as a trigger for State behaviour, especially as various States have already accepted a legal commitment to promote human rights, whilst the Millennium Declaration is a legally non-binding instrument.<sup>404</sup>

The approach to development from the perspective of legally binding human rights was not accepted by everyone.<sup>405</sup> Every year, the General Assembly adopts a resolution recommending the continued implementation of the right to development with a majority but with a substantial abstaining minority.<sup>406</sup>

The Human Rights Council can help States to implement the right to development. It was mandated by the UN General Assembly to enhance “the promotion and protection of all human rights, civil, political, economic, social and

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task force on implementation of the right to development), UNDoc. E/CN.4/2005/WG.18/TF/CRP.2, 8 November 2005.

<sup>402</sup> Report by the UN Millennium Project, *Investing in Development: A Practical Plan to Achieve the Millennium Development Goals* (2005), p. 1.

<sup>403</sup> On efforts to link the MDG's to the human right to development, see “Right to Development”, Report of the Working Group on the Right to Development on its seventh session (Geneva, 9-13 January 2006), UNDoc E/CN.4/2006/26.

<sup>404</sup> According to Shetty, “ensuring that the discourse on the [Millennium Development] Goals is continuously anchored within a human rights framework is the only way to ensure that the Goals are achieved in an inclusive and sustainable manner.” Salil Shetty, “Millennium Declaration and Development Goals” (2005), p. 8. In the pages immediately thereafter, the author explained how to anchor the MDG's in a human rights framework.

<sup>405</sup> Two years after the adoption of the Millennium Declaration, the US Government made a very controversial reservation to a declaration on food made during the World Food Summit: Five Years Later, held in Rome, between 10 and 13 June 2002. According to the US Government, “the attainment of the right to an adequate standard of living is a goal or aspiration to be realized progressively that does not give rise to any international obligation.” The Reservation can be found in Part One of the Report of the World Food Summit: five years later, Rome, 10-13 June 2002, p. 32.

<sup>406</sup> See *e.g.*, A/RES/60/157 (172 in favour to 2 against and 5 abstentions), A/RES/61/169 (134 in favour to 53 against), A/RES/62/161 (136 in favour to 53 against), A/RES/64/172 (133 in favour, 23 against, 30 abstentions), A/RES/65/219 (133 in favour, 24 against, 28 abstentions).

cultural rights, including the right to development.”<sup>407</sup> In an address to the Council, Secretary-General Kofi Annan suggested that the Council’s most important task was to “mak[e] the ‘right to development’ clear and specific enough to be effectively enforced and upheld.”<sup>408</sup> Following a suggestion of the High-level Task Force on Implementation of the Right to Development,<sup>409</sup> the Working Group on the Right to Development, previously established by ECOSOC but now working for the Human Rights Council, linked Millennium Development Goal 8 (for a global partnership for development) with the realization of the universal human right to development.<sup>410</sup> The Human Rights Council endorsed this view.<sup>411</sup>

In 2006, the Human Rights Council’s Sub-Commission on the Promotion and Protection of Human Rights adopted a number of draft guiding principles on extreme poverty and human rights. It defined poverty as “a human condition characterized by sustained or chronic deprivation of resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.”<sup>412</sup> It then reiterated the Assembly’s opinion referred to earlier, *viz.* that “extreme poverty and exclusion from society constitute[d] a violation of human dignity.”<sup>413</sup> It went on to explain that “persons living in extreme poverty are entitled to the full enjoyment of all human rights, including the right to participate in the adoption of decisions which concern them, and to contribute to the well-being of their families, their communities and humankind.”<sup>414</sup> This right of the extremely poor to participate in the decision-making processes that concern them, and the prohibition on stigmatizing the poor were further elaborated in the declaration, as well as the way in which all existing human rights should be applied to the extremely poor.<sup>415</sup>

<sup>407</sup> General Assembly Resolution of 3 April 2006, UN Doc. A/RES/60/251, para. 4.

<sup>408</sup> Annan, The Secretary-General’s address to the Human Rights Council, held in Geneva, Switzerland, on 19 June 2006.

<sup>409</sup> See Report of the High-Level Task Force on the Implementation of the Right to Development on its Third Session, report distributed 13 February 2007, UN Doc. A/HRC/4/WG.2/TF/2, p. 13.

<sup>410</sup> “Right to Development”, Report of the Working Group on the Right to Development on its seventh session (Geneva, 9-13 January 2006), UN Doc E/CN.4/2006/26. See also Report of the Working Group on the Right to Development on its eighth session (Geneva, 26 February – 2 March 2007), UN Doc. A/HRC/4/47, distributed 14 March 2007.

<sup>411</sup> UN Human Rights Council Resolution, The right to development (2006/4), adopted on the 30<sup>th</sup> of June 2006.

<sup>412</sup> Draft guiding principles: “extreme poverty and human rights: the rights of the poor,” on pp. 29-38 of the Report of the Sub-Commission on the Promotion and Protection of Human Rights on its Fifty-Eighth Session, UN Doc. A/HRC/Sub.1/58/36, distributed 11 September 2006.

<sup>413</sup> *Idem*, p. 31.

<sup>414</sup> *Idem*.

<sup>415</sup> See *e.g.*, Draft guiding principles on extreme poverty and human rights, Human Rights Council resolution 12/19, adopted 2 October 2009.

## 6.5 Conclusion

The idea that everyone has a human right to development is gaining popularity and support. In his arguments for the existence of this human right, Pogge referred to the Universal Declaration of Human Rights and subsequent resolutions. Reference can also be made to treaties binding on almost all States, such as the International Covenant on Economic, Social and Cultural Rights, to make a more convincing case. The many resolutions and declarations adopted by the Assembly also serve to strengthen the call for a human rights-based approach to development. With the shift in focus from the State to the individual in international law in general, a human rights approach to development may very well be the natural course to take.<sup>416</sup>

## 7 CONCLUSION

The declarations referred to in this chapter serve as an interpretation and further elaboration of Article 55 of the United Nations Charter. This is the principal article in the Charter that gives the UN a general mandate to realize the value of social progress and development.

No general definition or description of the value of social progress and development was adopted by the General Assembly. The approach was to identify particular things that were lacking, and to find ways to remedy them. Over time, these lacks changed character, and the Assembly changed its strategy accordingly. The same evolution was also influenced by new ways of thinking about social progress and development. These new ideas, which came from UN commissions, world commissions, the academic world and elsewhere, have often had an impact on the Assembly's work in "codifying" the evolution of the value of social progress and development on behalf of all the UN Member States. The inclusion of sustainability in the thinking about development is the clearest example. The human rights-based approach to development can also be referred to as an example of this sort of evolution.

The Assembly's meetings have been as inclusive as is realistically possible, with most States represented there. The fact that even the economically disadvantaged States have had a role in the discussions, had as consequence that the fundamental aspects of the present economic order have been criticized in the Assembly. This inclusiveness has also had an impact on the allocation of responsibilities for implementing these ideas of progress in the real world.

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<sup>416</sup> The Netherlands delegation at the General Assembly promoted for a while the idea of a new treaty especially on the right to development. See *e.g.*, Nico Schrijver, "The right to development: as fundamental as other human rights?" (2009), and Anna Gouwenberg, *The Legal Implementation of the Right to Development* (2009).

How has the United Nations, and especially the General Assembly, interpreted and implemented its task to promote “higher standards of living, full employment, [...] conditions of economic and social progress and development, solutions of international economic, social, health, and related problems and international cultural and educational cooperation”?

The many declarations adopted by the General Assembly on social progress and development contain various strategies and action plans which respond to various threats to the achievement of the value of social progress and development. They all stressed the primary responsibility of States for their own development, and then urged States to assist each other. This chapter has compared these action plans wherever possible, with philosophical ideas about the fair distribution of resources and responsibilities at the global level. The conclusion was that the plans did not aim to put in place a global welfare system, but that they aimed to help developing States to obtain their share of the goods themselves.

But what happens if States cannot get their share of the goods and become increasingly marginalized despite international assistance? What if they cannot even provide the most basic services for their own population? What if they are in immediate need of aid? In that case, the United Nations cannot merely stand aside and watch. Therefore it has adopted various plans specifically aimed at providing immediate aid for immediate emergencies such as natural disasters.

The Assembly also looks after the interests of the unborn. Sustainable development was very much a UN invention, and a very successful invention it has turned out to be. The UN’s definition of the concept has also been accepted by scholars. It has served as the basis for many plans seeking to take into account the developmental needs of both present and future generations of humankind.

Finally, the United Nations has played a key role in complementing State-based approaches with human rights-based approaches. This paradigm shift is examined in more general terms in the chapter on human dignity. Above, only its consequences for the interpretation of development and development strategies were examined.

In conclusion, it can be said that there is no lack of declarations and resolutions on the value of social progress and development, but the impact of these resolutions on actual State behaviour, and on the flow of ideas within the academic community, differs significantly per resolution. Some of the declarations and action plans have been ignored, but others, such as the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States, did play a major role in the evolution of ideas. These resolutions did not serve as blueprints for global economic policy, but they did greatly influence the scholarly debate on global reform. Another exception is the Millennium Declaration, which has been influential in setting and monitoring targets for development. Some other resolutions have proposed rather drastic

changes in the way we think about development. It was the Assembly that suggested using the concept of sustainable development as the basis for a new global developmental policy. It was also the Assembly that promoted a human-centred approach to development. These proposals were embraced, first by scholars, and gradually also by States.