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# International Human Rights Law and the 2030 Agenda for Sustainable Development

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*The 2030 Agenda for Sustainable Development “is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome Document. It is informed by other instruments such as the Declaration on the Right to Development”.*

**A/RES/70/1, para. 10**

*The Agenda reaffirms “the importance of the Universal Declaration of Human Rights, as well as other international instruments relating to human rights and international law. We emphasize the responsibilities of all States, in conformity with the Charter of the United Nations, to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status”.*

**A/RES/70/1, para. 19**



Adopted on 25 September 2015, the 2030 Agenda for Sustainable Development includes 17 Sustainable Development Goals (SDGs) and 169 targets, which are intended to stimulate development and human progress. It tackles a host of issues, including poverty, environment, education, housing, energy, human rights and health, adopting the definition of sustainable development featured in the

1987 Brundtland Report, namely “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”

There are legal implications to the 2030 Agenda, as it was adopted by way of General Assembly resolution 70/1 that reaffirms commitment for implementation “in a manner that is consistent with the rights

and obligations of States under international law” (para. 18), despite the fact that the text is not legally binding. Employing human rights law as a lens, this bulletin examines how some intersections between the 2030 Agenda and international law may, nevertheless, create legal obligations for States. It also considers the way forward for a rights-based approach to development, rooted in concrete legal principles.

## 1. International Law and Sustainable Development

International law is the legal system that governs relationships between countries, and has recently extended its scope to international

organizations and individuals.<sup>1</sup> According to Article 38 of the Statute of the International Court of Justice, there are four recognized sources

of international law: international conventions; international custom; general principles of law; and judicial decisions and teachings

of the most highly qualified publicists.<sup>2</sup> International law is thus based on the mutual consent of nations, most often manifested by treaties and conventions, or by way of practice that eventually becomes custom. International conventions and custom are the two key sources of international law for the purposes of this bulletin.

States are legally bound by an international instrument through the sovereign acts of signing and ratifying the instrument. States may also be legally bound when a practice becomes custom, which happens when two requirements are met: first, there must be an established State practice that

“must be general and consistent”; and second, the “practice in question must be accompanied by a sense of legal obligation” and “accepted as law”, meaning that States carry out the practice because authorities believe it is a legal obligation.<sup>3</sup>

Several SDGs and targets mirror legal obligations that States have already assumed under treaty law and custom. To measure the achievement of SDGs, 232 indicators were developed by the Inter-Agency and Expert Group on Sustainable Development Goal Indicators;<sup>4</sup> they were then adopted by the United Nations Statistical Commission in March 2017 and



by the General Assembly in July 2017. These indicators can also be used to measure compliance with international law where intersections exist between the targets and international legal obligations.

## 2. Human Rights Law within the Global Indicator Framework

Realizing “the human rights of all” is a declared aim of the 2030 Agenda (see Preamble para. 3). This section will underline examples of intersections between the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, which form part of the International Bill of Human Rights,<sup>5</sup> on the one hand, and the 2030 Agenda on the other hand, which tackles many economic, social and political concerns.

Sustainable Development Goals 1 and 2 aim to end poverty and hunger. Article 11 of the International Covenant on Economic, Social and Cultural Rights stipulates that everyone has the right to “an adequate standard of living... including adequate food” and “to be

free from hunger.” United Nations Member States that are parties to the Covenant thus have a legal obligation to fulfill Goals 1 and 2. The corresponding indicators, in particular indicators 1.1.1, 1.2.1 and 1.2.2 that measure the prevalence of poverty, as well as indicators 2.1.1 and 2.1.2 that measure the prevalence of undernourishment and food insecurity, provide policymakers, civil society and monitoring bodies with means to verify compliance with those legal obligations.

Intersection between the SDGs and treaties demonstrate that the 2030 Agenda is not merely aspirational, but rather reinforces the legal responsibilities that States have taken on by ratifying the International Covenant on Economic, Social and Cultural Rights and the International

Covenant on Civil and Political Rights. They also underline the universality of the Goals and of their corollary obligations. Realizing the SDGs may improve compliance with international law on a larger scale, as they apply to all United Nations Member States. Paragraph 5 of resolution 70/1 states that the Agenda is “of unprecedented scope and significance. It is accepted by all countries and is applicable to all, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. These are universal goals and targets which involve the entire world, developed and developing countries alike.” This universal application of the SDGs presents a singular opportunity for the creation of new global legal obligations.

### 3. The SDGs as a Legal Stimulant

Where there is no clear correspondence between the SDGs and international law, there is still an opportunity for the Goals and targets of the 2030 Agenda to take on a legal dimension. Indeed, International law comprises hard law, i.e. binding treaties, agreements and customary laws, but also soft law, i.e. non-binding but still legally significant guidelines, policy declarations, codes of conduct or General Assembly resolutions, for example.<sup>6</sup> Soft law often precedes the codification of international norms and practices into binding law.

The two principal ways through which soft law instruments, such as General Assembly resolutions, may become binding are: (a) codification in a treaty; or (b) transformation into customary international law. Indeed, States may choose to codify the principles, declarations and policy prescriptions promulgated in General Assembly resolutions in treaties, thus transforming them from voluntary or influential instruments into legal obligations. But in certain cases, the existence of treaties is not a necessary condition or is not sufficient. For example, the United States of America has not ratified the United Nations Convention on the Law of the Sea. However, it does abide by its navigation and jurisdiction provisions because it considers them binding as customary international law, regardless of their codification in the Convention.<sup>7</sup> The United States thus follows the behaviour of a significant number of States who have ratified the Convention and such behaviour has thus become the *modus operandi* at sea.

In the case of the 2030 Agenda, which does not explicitly create new legal obligations nor intends to do so, the intersections between international law and the SDGs may stimulate greater compliance with the former. Nevertheless, the more 'plausible' route to the creation of legal obligations out of an aspirational plan such as the 2030 Agenda is the formation of customary international law. What States agree to in a General Assembly resolution may one day become customary international law if there is sufficient State practice and a sense of legal obligation with respect to the practice (accepted as law).<sup>8</sup>

If a significant number of States pursue the SDGs, they may become legally binding as custom. There is no timeline for that transformation; it does not necessarily



take long. It is simply a matter of enough States undertaking the practice with a discernible sense of obligation. In the *North Sea Continental Shelf* cases, the International Court of Justice held that:

*Although the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law on the basis of what was originally a purely conventional rule, an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked—and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.<sup>9</sup>*

States that are not convinced that the intersections between the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the 2030 Agenda are legal obligations, or States that are not parties to the two covenants may still be legally obligated to pursue the SDGs if they are already custom or become custom. In turn, the SDGs that overlap with treaty law and those that do not are equally likely to become legally binding if enough States pursue them, regardless of ratification of the related covenants.

A number of rights guaranteed in the International Covenant on Civil and Political Rights are considered customary international law, including the right to a fair trial (article 14). This means that a State that is not party to the Covenant is still bound by customary international law to guarantee its citizens a fair trial. This is also found in Goal 16 on promoting peaceful and inclusive societies for sustainable development. The obligation to provide access to justice for all and build effective, accountable and inclusive institutions

at all levels can be measured by the indicators related to target 16.3 (“promote the rule of law at the national and international levels, and ensure equal access to justice for all”). Goal 17 on strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development, which is not expressed in any international legal instrument, may also become legally binding if enough States pursue it. Target 17.5 provides that States should “adopt and implement

investment promotion regimes for least developed countries”. Implementation is measured by indicator 17.5 (“number of countries that adopt and implement investment promotion regimes for least developed countries”). If enough States abide by Goal 17 and authorities believe that they have a legal obligation to do so, related targets may become customary international law and have the same force of law as an investment treaty pursuing this very goal.

## 4. The Importance of a Legal Approach

Positioning the 2030 Agenda in a legal context has significant implications for a rights-based approach to sustainable development. Although great progress was made in pursuit of the Millennium Development Goals, there is still considerable work to be done to eradicate poverty and hunger, foster more inclusive societies and protect our planet. Highlighting which of the SDGs States have already agreed to achieve by virtue of their treaty ratifications may increase the likelihood of realization. Attaching a legal obligation to the SDGs entails that there are consequences for failing to comply with the 2030 Agenda or explicitly acting in contravention to it.

Rooting the SDGs in concrete legal principles ultimately serves their realization. The General Assembly asserts several times in resolution 70/1 that the 2030 Agenda is to be implemented in accordance with international law and for the promotion of human rights. Goal 16 itself is aimed at improving institutions and safeguarding human rights. Underscoring where legal obligations exist and where they may arise effectively serves the 2030 Agenda and augments prospects for its success.

## Endnotes

1. Bryan A. Garner, ed., *Black's Law Dictionary*, tenth edition (New York, Thomson Reuters Pvt. Ltd., 2014).
2. See James Crawford, ed., *Brownlie's Principles of Public International Law*, eighth edition (Oxford, Oxford University Press, 2012), pp. 3-19.
3. The report of the International Law Commission on its sixty-sixth session suggests using the term “accepted as law”, borrowed from the language of the Statute of the International Court of Justice, instead of the term “*opinio juris*” or other terms. It states: “Using “accepted as law” would also avoid the need to interpret the Latin expression “*opinio juris sive necessitatis*”, which remains debatable.” (A/69/10, para. 145.)
4. See <https://unstats.un.org/sdgs/indicators/indicators-list>.
5. The International Bill of Human Rights also includes the Universal Declaration of Human Rights, which is not a legally binding instrument but rather an expression of shared values that has influenced human rights law.
6. Andrew T. Guzman and Timothy L. Meyer, “International soft law”, *Journal of Legal Analysis*, vol. 2, No. 1 (Spring 2010). Available from <http://scholarship.law.berkeley.edu/facpubs/695/>.
7. Laurence R. Helfer and Ingrid B. Wuerth, “Customary international law: an instrument choice perspective”, *Michigan Journal of International Law*, vol. 37, No. 4 (2016), p. 599. Available from <http://repository.law.umich.edu/mjil/vol37/iss4/1/>.
8. A/CN.4/663.
9. *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, Judgment of 20 February 1969, *International Court of Justice Reports of Judgements, Advisory Opinions and Orders 1969*, p. 43, para. 74.

