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The Draft International Covenant on the Right to Development: Where Are We with the Realisation of the Right to Development?

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Abstract

On 18 July 2023, the UN Intergovernmental Working Group on the Right to Development, mandated, among other tasks, to oversee the drafting process of a treaty on the right to development by the Human Rights Council, adopted the final Draft International Covenant on the Right to Development. On the occasion of the 40th anniversary of the adoption of the UN Declaration on the Right to Development, the present contribution takes stock of the realisation of the right to development, by exploring the added value of the Draft Covenant in terms of its normative contents particularly compared with its soft law predecessor. It will be submitted that, although in some respects it does not fully reflect the degree of progressiveness one might expect from a framework developed in a contemporary context and continues to rely on the abstract and aspirational articulation of norms found in the UN Declaration on the Right to Development, the Draft International Covenant undoubtedly constitutes a major step forward in the realisation of the right in question, as it articulates the right in legally binding terms applicable to individuals and all peoples, and further specifies both general and specific obligations incumbent upon States Parties.

Keywords: *Right to development, Draft International Covenant on the Right to Development, United Nations, Sustainable Development, Human Rights*

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1. Introduction

Following decades of international debate, the United Nations is now closer than ever to adopting a legally binding instrument on the right to development. Indeed, on 18 July 2023, the Intergovernmental Working Group on the Right to Development, mandated, among other tasks, to oversee the drafting process of a treaty on the right to development by the Human Rights Council, adopted the final Draft International Covenant on the Right to Development (DICRTD) (Doc. A/HRC/54/50, 18 July 2023), together with an extensive article by article commentary (Doc. A/HRC/54/50/Add.1, 4 September 2023). The process for the elaboration of this draft legally binding instrument, initiated by virtue of the Human Rights Council's Resolution 42/23 of 27 September 2019 (Doc. A/HRC/42/L.36, 27 September 2019), is based on the concern that the adoption of the UN Declaration on the Right to Development (DRTD) (UNGA Res. 41/128, 4 December 1986) has not managed to inspire a great deal of concrete implementation efforts and the right in question has not yet been effectively operationalised (DICRTD, preamble, paragraph 26) (Kanade 2020, 13-15; De Feyter 2022).

The Draft International Covenant is firmly rooted in existing international legal instruments, including human rights treaties (commentary to the DICRTD, introduction, paragraph 13). Therefore, its content draws significantly from the Universal Declaration of Human Rights, the nine 'core human rights treaties'¹, and as a matter of course the UN Declaration on the Right to Development (commentary to the DICRTD, introduction, paragraph 13). In so doing, the Draft International Covenant not only follows the same logical path as other human rights treaties that evolved from earlier declarations on the same themes adopted by the UN General Assembly²,

¹ International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), and International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and Convention on the Rights Persons with Disabilities (CRPD).

² See, for instance, the CERD; the CEDAW; the CAT; the CRC; and the CPED. These instruments were preceded, respectively, by the Declaration on the Elimination of All Forms of Racial Discrimination (UN General Assembly Res. 1904 (XVIII), 20 November 1963); the Declaration on the Elimination of Discrimination against Women (UN General Assembly Res. 2263 (XXII), 7 November 1967); the Declaration on the Protection of All Persons from Being Subjected to Torture (UN General Assembly Res. 3452 (XXX), 9 December 1975); the Declaration of the Rights of the Child (UN General Assembly Res. 1386 (XIV), 20 November 1959); and the Declaration on the Protection of All Persons from Enforced Disappearance

but also strengthens the crucial nexus between development and human rights and incorporates general and specific obligations on States Parties, thus making it no mere political manifesto (Kanade 2020, 23). At the same time, the specific nature of the right to development as an independent right as well as its evolutive trajectory has led to the adoption of a Draft Covenant characterised by certain unique features, which does not compartmentalise it into strict models of treaty styles.

In light of the above, on the occasion of the 40th anniversary of the adoption of the UN Declaration on the Right to Development, the present contribution intends to take stock of the realisation of the right to development, by discussing whether the Draft International Covenant on the Right to Development effectively introduces concrete and implementable norms particularly compared with its soft law predecessor. To this purpose, the first section will provide an overview of the evolution of the right to development in international law. The second paragraph will then discuss the normative contents of the right at hand as conceived in the UN Declaration on the Right to Development, focusing on its nature, its substance and the international obligations it entails. This will provide a basis of comparison for the subsequent analysis – in the third section – of the normative changes introduced by the Draft International Covenant on the Right to Development which add value to the relevant existing frameworks and norms. Finally, some final observations on the merits of the Draft International Covenant in terms of its normative contents will be developed.

2. The Evolution of the Right to Development in International Law

The right to development has emerged as one of the most debated and significant concepts in international law (Ibhawoh 2011; Fukuda-Parr 2012, 845; Rajagopal 2013, 895). The origins of the right in question can be traced to the post-Second World War era, particularly to the establishment of the United Nations³ and the adoption of the Universal Declaration of Human Rights in 1948. While this latter legal instrument does not explicitly mention a

(UN General Assembly Res. 47/133, 18 December 1992).

³ The concept of development found its expression in Article 55 of the Charter of the United Nations in a wider context of international economic and social cooperation among States. Article 55 recognises the importance of promoting ‘conditions of economic progress and development’ and ‘solutions of international economic, social, health, and related problems’ and all Members of the United Nations pledged themselves through Article 56 ‘to take joint and separate action’ in cooperation with the United Nations ‘for the achievement of the purposes set forth in Article 55’.

‘right to development,’ Articles 19 to 28 comprise already the most important components of what could be called a human right to development. These include freedom of expression and freedom of organisation, the right to participate in public affairs, the right to work and fair labour standards, the right to a decent standard of living, education and cultural life, and the right to such a social and international order wherein all human rights and fundamental freedoms can be fully realised. Owing to the ideological divisions of the Cold War between East and West (Mansell and Scott 1994, 173), further elaboration of the Universal Declaration of Human Rights was significantly delayed. It was not until 1966 that two major universal human rights treaties were finally adopted: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Both covenants constitute fundamental pillars underpinning the right to development. The former, in particular, enshrines rights such as the right to work (Article 6) and just and favourable conditions of employment (Article 7), the right to an adequate standard of living (Article 11), including access to food and water, the right to health (Article 12), the right to education (Article 13), and the right to participate in cultural life (Article 15). Likewise, the civil and political freedoms guaranteed under the International Covenant on Civil and Political Rights – especially those relating to participation and equality – are essential to the realisation of the right to development, as development cannot flourish in the absence of individual freedoms and meaningful participation in society.

The legal evolution of the right to development is closely linked to the decolonization process of the 1960s and 1970s. Newly independent States highlighted the structural economic inequalities inherited from colonial rule and argued that the political independence obtained from the decolonization process did not translate into economic independence (Uvin 2007, 597; Stokke 2009, 7-10). The right to development, for the most part, emerged as a response to this claim (Salomon 2010, 126; Bunn 2012, 53). It is therefore unsurprising that the first binding instrument that specifically provided for the right to development was the African Charter of Human and Peoples’ Rights⁴, which even today is the only treaty that recognises this right.

The most significant recognition of the right to development at the international level came when the Human Rights Commission established a

⁴ See Article 22 of the African Charter on Human and Peoples’ Rights: ‘[a]ll peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development’.

Working Group mandated with drafting the UN Declaration on the Right to Development, which was eventually adopted in 1986 with the overwhelming support of States and recognised the right to development as ‘an inalienable human right’ (DRTD, Article 1).

Following the end of the Cold War in 1989, the international environment became more conducive to the consolidation of the right to development. In 1993, the United States – which had voted against the adoption of the UN Declaration on the Right to Development – accepted the inclusion of the right to development in the final Declaration of the World Conference on Human Rights in Vienna. Earlier, in 1992, the Rio Declaration on Environment and Development (Declaration of the United Nations Conference on Environment and Development, 14 June 1992; UN Doc. A/CONF.151/26) had already called for the realisation of the right to development in a manner that equitably addresses the developmental and environmental needs of present and future generations, a position later reaffirmed in the Vienna Declaration and Programme of Action (Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, Doc. A/CONF.157/23, 12 July 1993), which – in its paragraph 10 – recognised the right to development as a universal and inalienable right and an integral part of fundamental human rights. The right to development was further reaffirmed in the outcome documents of the World Summit for Social Development (Copenhagen, 1995) (Report of the World Summit for Social Development, Copenhagen, 6–12 March 1995; UN Doc. A/CONF.166/9, paragraph 6) and the World Conference on Women (Beijing, 1995) (Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995; UN Doc. A/CONF.177/20, paragraphs 16, 27 and 36).

The right to development also features prominently within the broader UN architecture. For instance, the mandate of the Office of the High Commissioner for Human Rights (Doc. A/RES/48/141, 20 December 1993, paragraphs 3(c) and 4(c)), established in 1993, includes the promotion and protection of the realisation of the right to development. In addition, several UN bodies deal specifically with this right. In 1998, the Commission on Human Rights created an Intergovernmental Working Group on the Right to Development to monitor and assess progress in its implementation (Res. 1998/72, 22 April 1998) at the national and international levels. Similarly, in 2016, the Human Rights Council established the mandate of the Special Rapporteur on the Right to Development (Res. 33/14 of 29 September 2016), who contributes to the realisation of this right by developing practical guidance for its implementation and for its integration into development policies and programmes at local, national, regional and international levels. Three years later, the Human Rights Council also established the

Expert Mechanism on the Right to Development (Res. 42/23 of 27 September 2019) as a subsidiary body tasked with providing thematic expertise and identifying best practices for States on the implementation of the right to development. Over time, however, the right to development became a subject of controversy, largely due to the absence of consensus among States regarding its substantive content and persistent objections from developed countries to the recognition of the right itself (Li, Uribe, Danish 2022, 10-15)⁵.

In the past two decades, developing States have actively advocated for the codification of the right to development, either through the adoption of a new dedicated convention⁶ or, at a minimum, the establishment of an international legally binding instrument⁷. In this regard, scientific interest has recently revived thanks to the work of the UN Working Group on the Right to Development which, acting under a Human Rights' Council mandate⁸, felt the necessity to draft a comprehensive and integral international convention to promote and secure the realisation of the right to development. This effort ultimately resulted in the adoption of the final Draft International Covenant on the Right to Development, which was submitted on 18 July 2023 to the Human Rights Council. At the same time, the Working Group recommended to the Human Rights Council that it transmit the Draft International Covenant on the Right to Development, together with the commentaries, to the UN General Assembly. It also recommended that the Assembly, as the appropriate forum, convene an intergovernmental conference, under the auspices of the United Nations, with the mandate to consider the Draft International Covenant and conclude the text of an international legally binding instrument on the right to development as soon as possible.

⁵ Key divisions between developed and developing countries on the right to development include: whether this right implies enforceable obligations for increased Official Development Assistance (ODA); the importance of reforming the international economic system to create an enabling environment for development; the balance between national responsibilities and duties of international cooperation; the relationship and prioritization between civil and political rights and economic, social and cultural rights; whether the 2030 Agenda complements or replaces the right to development; and broader North-South political divergences reflected in voting patterns and interpretations of the right to development.

⁶ See for example UN Doc. A/RES/62/161, para. 10(d), adopted on 13 March 2008 by 136 votes to 54, with no abstentions.

⁷ See UN Doc. A/RES/63/178, 18 December 2008, para. 8, this time adopted by as many as 182 in favour, 4 against (Marshall Islands, Palau, Ukraine and United States) with 2 abstentions (Canada and Israel).

⁸ See Human Rights Council Resolution 39/9, The Right to Development, Doc. A/HRC/39/L.12, 25 September 2018; Human Rights Council Resolution 42/23, The Right to Development, Doc. A/HRC/42/L.36, 20 September 2019.

3. The Normative Contents of the UN Declaration on the Right to Development

As anticipated in the previous section, the adoption of the UN Declaration on the Right to Development with the support of an overwhelming majority of States and its subsequent developments undoubtedly represents a major step in the consolidation of the right in question as a self-standing human right⁹, as it is now widely accepted (Alston 1988; Barsh 1991, 325; Karimova 2016, 8; Teshome 2022, 4). However, there remains a lack of clarity on the normative content of the right to development and the State obligations it entails (Carli 2023, 103), an issue which can pose a significant threat to its operationalization. The present section therefore aims at clarifying the relevant normative elements of the UN Declaration on the Right to Development as well as highlighting its gaps and limitations with a view to providing a point of comparison for the subsequent analysis of the elements of novelty introduced by the Draft International Covenant. To this purpose, attention will focus on the nature of the right to development, its substance and the international obligations it entails.

3.1. The Nature of the Right to Development

Article 1 of the UN Declaration on the Right to Development sets out the main features of the right in question and the underlying premises on which it is based. The provision squarely defines the right to development as ‘an inalienable human right’ and formulates an entitlement for ‘every human person and all peoples (...) 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’.

According to some scholars, while this definition places a strong emphasis on equality and participatory rights and recognises that compliance with and protection of both civil and political rights and economic, social and cultural human rights are essential for development, the substantive content of the right to development remains rather abstract and does not necessarily translate easily into concrete implementation obligations (Arts and Tamo 2016, 232). This is perhaps exacerbated by the penultimate provision of the UN Declaration which stipulates that ‘[a]ll the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and

⁹ See many Resolutions adopted by the UN General Assembly. Among the most recent see UN General Assembly, Resolution 74/152, 16 January 2020, A/RES/74/152; Resolution 73/166, 17 December 2018, A/RES/73/166; Resolution 72/167, 18 January 2018, A/RES/72/167; Resolution 64/172, 18 December 2009, A/RES/64/172.

each of them should be considered in the context of the whole'. In this sense, the right to development may appear to function less as a self-contained entitlement and more as a legal framework through which the content and implementation of other human rights may be interpreted and articulated. A different view is held by the Expert Mechanism on the Right to Development, according to which the main characteristics of this right can be clearly inferred from the wording of Article 1 of the UN Declaration on the Right to Development¹⁰.

First, the text of the said provision encompasses within it the right to development as both an individual and collective right of peoples (Sengupta 2001, 2528; Aguire 2008, p. 69; Villaroman 2010, 300). During the drafting of the UN Declaration, the identification of the subjects of this right emerged as one of the most contentious issues, largely due to differing perspectives between Global North States, which believed that human rights, including the right to development, are all individual rights, on the one hand, and that of the Global South States, which argued that the right in question is a collective right in nature, on the other (Lindroos 1999, 30). The resulting compromise was the recognition of the right to development as belonging simultaneously to individuals and collectivities, affirming it as a right accorded to 'every human person and all peoples'.

While the term 'human person' is self-evident, the UN Declaration is not clear on the definition of 'peoples'. This issue has been addressed by the Expert Mechanism on the Right to Development, according to which there can be no one-size-fits-all definition of 'peoples' in the context of the right to development, given the diversity of situations in which the associated rights are claimed or violated¹¹. It is therefore more useful to identify the key characteristics that may qualify a group as a 'people', as relevant guidance exists in this regard. Some indications can be inferred, for instance, from the practice and the case-law of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights (Boshoff 2021). In the case *Sudan Human Rights Organisation, Centre on Housing Rights*

¹⁰ See for example the thematic studies Operationalizing the right to development in achieving the Sustainable Development Goals, Doc. A/HRC/48/63, 6 July 2021, para. 29, and Operationalizing the right to development in international development cooperation, Doc. A/HRC/60/94, 9 July 2025, para. 15. Similarly, see also the Statement by Mr. Mihir Kanade, Chair of the Expert Mechanism on the Right to Development at the Biennial panel discussion on the right to development held at the 51st session of the Human Rights Council, 15 September 2022, according to whom the claim that the right to development is vague is a false normative myth.

¹¹ Individual and collective dimensions of the right to development. Thematic study by the Expert Mechanism on the Right to Development, Doc. A/HRC/57/40, 12 July 2024, paras. 42-43.

*and Evictions v. Sudan*¹², which addressed alleged human rights violations – including the right to development – committed by the Republic of Sudan against the indigenous Black African tribes of the Darfur region, the African Commission held that a ‘people’ may be understood as a group of individuals sharing certain characteristics, such as language, religion, culture, the territory they inhabit within a State, a common history, and ethno-anthropological factors (paragraph 220). It further noted that in States with racially diverse populations, race – like ethnic identity – may serve as a defining criterion for identifying groups as ‘peoples’ (*ibidem*). Similarly, in the so-called *Endorois* case¹³, which dealt with the displacement of the indigenous community of Endorois from their ancestral lands and the alleged violations of, *inter alia*, the right to development of this people as enshrined in the African Charter, the African Commission gave an indication of the collective characteristics groups should possess to be regarded as ‘peoples’, i.e. a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy or suffer collectively from the deprivation of such rights (paragraph 151). The African Court, for its part, elaborated a more simplistic definition in the so-called *Ogiek* case¹⁴. Accordingly, the term ‘peoples’ envisaged under the Charter comprises ‘all populations as a constitutive element of a State’, including ‘the ethnic groups or communities identified as forming part of the said population within a constituted State’ (paragraphs 197-199 and 208). While these cases cannot be directly employed to interpret the UN Declaration on the Right to Development, they nonetheless provide interpretative guidance for understanding the term on a case-by-case basis. Overall, based on these definitions, the term ‘peoples’ identifies a group of individuals sharing certain common traits, such as territory, language and culture, who find themselves living within the jurisdiction of a State.

A second significant feature of the right to development is that, by defining it as an ‘inalienable human right’ which permits human persons and people to ‘participate in, contribute to, and enjoy civil, cultural, economic, political and social development’, the right in question applies to both the process and the outcome of development, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their

¹² 279/03-296/05, Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v. Sudan, decision of 27 May 2009.

¹³ 276/03, Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya, decision of 25 November 2009.

¹⁴ 006/2012, African Commission on Human and Peoples’ Rights v. Republic of Kenya, judgment of 26 May 2017.

participation in the process and proceeds of development (Sengupta 2000, 563-564). Such an interpretation has been confirmed by the African Commission on Human and Peoples' Rights in the above-mentioned *Endorois* case. In a significant passage of its decision on the merits, the African Commission affirmed that:

[t]he right to development] is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the [right to development]. Fulfilling only one of the two prongs will not satisfy the [right to development]. The African Commission notes the Complainants' arguments that recognising the [right to development] requires fulfilling five main criteria: it must be equitable, non-discriminatory, participatory, accountable, and transparent, with equity and choice as important, over-arching themes in [right to development] (paragraph 277).

Such an approach endows the right to development with particularly strong legal force, insofar as a breach of either of its two elements is sufficient to establish a violation of the right. Moreover, six criteria – equity, participation, non-discrimination, accountability, transparency, and freedom of choice – are identified as essential components of the right to development, such that the failure to meet even one of them would amount to a violation. However, the above paragraph does not address the purpose of development itself, nor does it specify the threshold that must be attained for the right to development to be considered fulfilled.

Finally, the right to development as set out in Article 1 of the UN Declaration recognises human rights both as a means and an end of development (Sengupta 2008, 92). Accordingly, the objective of development should, on the one hand, be the progressive realisation of the full spectrum of human rights, encompassing civil and political rights as well as economic, social, and cultural rights. Comprehensive and inclusive development constitutes a crucial prerequisite for the effective protection of human rights, given that the enjoyment of most rights depends on the availability of adequate resources. On the other hand, development processes themselves must be conducted in compliance with human rights standards. In this sense, human rights possess both substantive and instrumental value in the pursuit of development.

3.2. The Substance of the Right to Development

From a substantial point of view, the right to development encompasses three constitutive elements: participation, equality of development opportunity and self-determination.

As regards participation, several Articles of the UN Declaration on the Right to Development – namely Articles 2(3), 1(1), and 8(2) – recognise that ‘active, free and meaningful participation’ is a crucial part of the right. Nevertheless, it remains unclear whether the participation requirement entails a form of collective decision-making power for the affected individuals, or whether mere consultation suffices, a question left unanswered by the Declaration. Arguably, participation cannot be considered ‘meaningful’ unless it carries the potential to influence decision-making outcomes about all development-related policies, processes and projects (Lindroos 1999, 46-47), as recently noted also by the Special Rapporteur on the Right to Development¹⁵.

Another key substantive component of the right to development is the guarantee of an equitable share in the benefits of development. Article 8 of the UN Declaration provides that this includes ‘equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income’. In this sense, the fair allocation of development benefits is reflected in equal access to public services – such as health care, education, and social security – as well as in the opportunity to secure a livelihood through decent work. Moreover, according to the said provision, this objective cannot be realised without the inclusion of vulnerable and marginalised groups in both the processes and outcomes of development, alongside the eradication of social injustices. Accordingly, States are required to address economic and social inequalities that exclude certain groups from participating in development and prevent the equal enjoyment of rights.

Finally, the third element of the right to development is represented by self-determination. According to Article 1(2) of the UN Declaration:

[t]he human right to development also implies the full realisation of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Much has been written on the right to self-determination (Cassese 1995; Klabbers 2006; Weatherall 2026). For the purposes of the present analysis, it suffices to highlight that, as the said provision indicates, the right to development and the right to self-determination are intricately interdependent, the latter encompassing the exercise of peoples’ inalienable right to full sovereignty over all their natural wealth and resources. The right to self-determination empowers States and their citizens, as collectives, to

¹⁵ Financing for inclusive, sustainable and participatory development. Report of the Special Rapporteur on the Right to Development, Doc. A/80/206, 18 July 2025, paras. 40-41.

oversee and utilise their natural resources. Originating in the decolonization movement, it was aimed at enabling newly sovereign States to manage their economies and resources without external influence. It reflects the dual focus of the right to development, on both individual autonomy and communal welfare.

3.3. The International Obligations the Right to Development Entails

One of the defining features of the right to development, as articulated in the UN Declaration, concerns the scope and nature of the international obligations it entails. In contrast to most international human rights norms, that focus on States as duty-bearers, the duty to realise the right to development is shared among all relevant stakeholders, including also individuals and the international community.

As regards individuals, Article 2(2) of the UN Declaration specifies that all human beings have a responsibility for development, individually and collectively, and they should therefore promote and protect an appropriate political, social and economic order for development. While it is even questionable whether this is feasible at all and the role of individual human beings as duty bearers is not developed further, the UN Declaration identifies States as the principal duty-bearers of the right to development, as their obligations are conceived as complementary to the efforts of individuals (Beetham 2006, 36).

Rather than directly realising the right themselves, according to Article 3(1), States are required to establish an enabling environment in which the right can be effectively realised by individuals. Indeed, as set out in Article 2(3), they have the right and the duty to formulate appropriate national development policies that aim 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 the benefits resulting therefrom. Nevertheless, the UN Declaration is quite vague and abstract in its formulation of State obligations, which do not necessarily give rise to clearly defined implementation obligations (Arts and Tamo 2016, 232).

In addition to their obligations at the domestic level, States also have duties as members of the international community. To this purpose, Article 3(3) stipulates that they have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. In addition, according to Article 4(1), States have a duty to take steps, individually and collectively, to formulate international development policies with a view to

facilitating the full realisation of the right to development. Moreover, the UN Declaration gives heightened attention to the duty to cooperate, highlighting the importance of effective international cooperation in complementing the development endeavours of developing countries. In this regard, Article 4 (2) recognises that sustained action is required to promote more rapid development of developing countries and that as a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Albeit crucial, the duty to formulate appropriate international development policies and to provide effective international cooperation are among the most controversial element of the UN Declaration (Piron 2002, 11). The level of controversy is perhaps understandable, given the fact that ‘developed’ countries would need to invest significantly in order to reach the required level of effort, on the one side, and the provision in question neither clarifies what effective cooperation entails nor enumerates the specific and concrete steps States are required to take to fulfil this obligation, on the other side. This lack of clarity surrounding the duty of international cooperation has been acknowledged – and to some extent reaffirmed – by the Expert Mechanism on the Right to Development in its above-mentioned Thematic study “Operationalizing the right to development in international development cooperation”. Indeed, the study clarifies the duty only indirectly, by identifying the normative features and core principles that should shape development cooperation, without, however, defining concrete obligations – such as minimum levels of aid, binding financial commitments or enforceable standards – or clearly allocating responsibilities among States.

4. The Draft International Covenant on the Right to Development

The Draft International Covenant on the Right to Development is grounded in the principles and provisions articulated in the UN Declaration on the Right to Development and it reiterates the same core characteristics and conceptual foundations of the right to development. For example, the right in question is defined in the Draft International Covenant in a similar fashion as the UN Declaration, as its Article 4(1) reads as follows:

[e]very individual and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to and enjoy civil, cultural, economic, environmental, political and social development that is indivisible from and

interdependent and interrelated with all other human rights and fundamental freedoms.

The wording of the Draft International Convention conceptually and linguistically mirrors Article 1(1) of the UN Declaration on the Right to Development with only minor modifications ‘to adapt to the requirements of a legally binding instrument and to ensure that there is no room for any ambiguity in its construction’ (commentary to the DICRTD, p. 38, paragraph 2). The above provision confirms also the human and people-centred approach to the right in question, as – according to Article 3(a) – ‘individual and peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development’. Finally, also the Draft International Covenant on the Right to Development considers States as the principal duty bearers of the right to development (DICRTD, preamble, paragraph 23, and Article 13(2)).

Despite these similarities, and although it remains a distinct framework – especially in terms of its legal authority (Schrijver 2020) – the Draft International Covenant introduces important changes and additions compared to the UN Declaration, thereby highlighting the significant opportunity inherent in elaborating a legally binding instrument to clarify the nature and scope of the right to development (Kanade 2020, 19). In particular, there are four main normative changes that the Draft International Covenant has introduced which add value to the existing frameworks and norms on the right to development: the centrality of the principle of sustainable development, detailed norms on States obligations and additional obligations of international organisations, detailed norms on the duty to cooperate; and the establishment of an implementation mechanism. Given their relevance with regard to the implementation of the right to development, they will be analysed in the following sections.

4.1. The Centrality of the Principle of Sustainable Development

One of the most widely cited definitions – which emerged at the global level only in 1987 by the Brundtland Commission Report, one year after the adoption of the UN Declaration on the Right to Development – describes sustainable development as development that ‘meets the needs of the present without compromising the ability of future generations to meet their own needs’ (World Commission on Environment and Development, *Our Common Future*, 1987, paragraph 27). As such, the UN Declaration unsurprisingly does not mention such notion. The Draft International Covenant, for its part, adopts sustainable development as one of the guiding principles of the right to development. In this regard, the preamble (paragraph 18) and Article 3(g)

underscore the symbiotic relationship between the right to development and sustainable development – an interplay that had been famously recognised as long back as in 1992 by the Rio Declaration (Report of the United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3–14 June 1992, A/CONF.151/26 Vol. I, annex 1) – stating respectively that ‘development cannot be sustainable if its realization undermines the right to development’ and ‘the right to development cannot be realized if development is unsustainable’.

The full scope of this inextricable link is developed fully in Article 24 of the Draft International Covenant, which incorporates specific obligations on States Parties. Indeed, Article 24(a) recognises the obligation on States to ensure that laws, policies and practices related to development at the national and international levels are aimed at and contribute to the realisation of sustainable development, while paragraph (b) requires States Parties to ensure that their decisions and actions do not compromise the ability of present and future generations to realise their right to development. Finally, the last paragraph runs in the other direction of ensuring that ‘the formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable development shall be made fully consistent with the provisions of the present Covenant and other obligations under international law for realizing sustainable development’.

The inclusion of a specific provision on sustainable development, which would be the first legal codification of this principle in a human rights treaty, undoubtedly represents one of the most relevant normative additions introduced by the Draft International Covenant. However, at the same time, it does not seem to move beyond this brief reference to the notion in question. Quite surprisingly, the Draft International Covenant does not adequately address the environmental aspects of development by putting forward concrete obligations. The pursuit of ‘development’ has been a significant driver of environmental degradation and climate change. As the International Court of Justice observed in the *Gabčíkovo-Nagymaros* case almost 30 years ago, there is a ‘need to reconcile economic development with the protection of the environment’¹⁶. At the same time, climate change and environmental degradation hinder the realisation of the right to development, a point acknowledged in the Draft International Covenant’s preamble (paragraph 13). Environmental considerations should therefore not only guide development processes but also serve as criteria for evaluating their outcomes. Nevertheless, the Draft International Covenant falls short

¹⁶ *Gabčíkovo-Nagymaros Project* (Hungary v. Slovakia), judgment of 25 September 1997, Merits, ICJ Reports 1997, para. 140.

of fully addressing these concerns, as it neither adequately recognises their significance nor imposes concrete obligations on States to remedy environmental harm.

4.2. Detailed Norms on States Obligations and the Additional Obligations of International Organisations

The Draft International Covenant on the Right to Development includes detailed and concrete State obligations compared with the UN Declaration. In this regard, the first relevant aspect that emerges is the adoption of the common contemporary three-pronged typology of obligations on States Parties to respect, protect and fulfil the right to development¹⁷, as set out in Article 8. This provision also obliges States to undertake these obligations ‘(...) without discrimination of any kind on the basis of race, colour, sex, gender, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, age or other status’, which represents one of the additions the Draft International Covenant made to its soft law predecessor.

The subsequent provisions of the Draft International Covenant explain more specifically what obligations to respect, protect and fulfil entail in relation to the right in question, including both immediate and progressive obligations.

According to Article 10(a), the obligation to respect is essentially negative and prohibits States (or other subjects of international law) to act in such a manner as to directly and negatively affect or impair the right to development. As explained in the commentary (commentary to the DICRTD,

¹⁷ The typology of respect, protect and fulfil to describe the levels of States’ human rights obligations has become firmly embedded in international law. Various monitoring bodies constituted under the core human rights treaties have time and again reinforced these three types of human rights obligations. Most explicit and detailed has been the Committee on Economic, Social and Cultural Rights (CESCR), which has provided an elaborate explanation of this typology. In its General Comment No. 12 on the right to adequate food, Doc. E/C.12/1999/5, 12 May 1999, the CESCR noted that: “[t]he right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide. The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access. The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food. The obligation to fulfil (facilitate) means the State must pro-actively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly” (para. 15).

p. 59, paragraph 1), the obligation entailed in this paragraph applies both within and outside their territories, although these words are not explicitly incorporated in the text, as long as a State is capable of having adverse impacts on them through its direct and reasonably foreseeable activities. In so doing, the Draft International Covenant seems to adopt a functional model to extraterritorial application of human rights, similar to that elaborated by other human rights monitoring bodies¹⁸. The duty to respect further obliges States not to aid, assist or compel, with full knowledge of the circumstances, other States and international organisations to infringe the right to development, under Article 10(c).

The duty to protect, as stipulated under Article 11 of the Draft Covenant, is mainly positive and requires States to take and enforce all necessary, appropriate and reasonable measures in order to prevent the enjoyment and exercise of the right to development by third parties, i.e. private actors and other States. Such obligation arises under three conditions. The first condition, set out at paragraph (a), is when the third-party conduct occurs, partially or fully, on the territory of the State Party. Under paragraph (b), the second condition where the obligation to protect arises is when the natural or legal person responsible for the conduct that interferes with the right to development has the nationality of the State concerned. The final condition, provided for in paragraph (c), is when the State Party has the requisite legal duty under either domestic or international law to supervise, regulate or otherwise exercise oversight – by, *inter alia*, requiring human rights due diligence – of the conduct of the legal person engaging in business activities, including those of a transnational character. According to the commentary (commentary to the DICRTD, p. 62, paragraph 1), these conditions also have extraterritorial application. A State has therefore a duty to protect where the conducts of third parties under the above three situations impair the enjoyment of the right to development not only within its territory but also outside its territory

¹⁸ In this sense, see Human Rights Committee: General Comment No. 36 on the right to life, Doc. CCPR/C/GC/36, 3 September 2019; views concerning communication No. 3042/2017 submitted by A.S., D.I., O.I. and G.D. v. Italy, Doc. CCPR/C/130/D/3042/2017, 28 April 2021; Committee on the Rights of the Child, Communications no 79/2019 and no 109/2019, Doc CRC/C/85/D/79/2019, 2 November 2020. See also African Commission on Human and Peoples' Rights, General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), 12 December 2015; Inter-American Court of Human Rights, The Environment and Human Rights, Advisory Opinion, OC-23/17, 15 November 2017. A notable exception is represented by the European Court of Human Rights, which recently rejected such a model: see *S.S. and Others v. Italy* (App. N. 21660/18), judgment of 12 June 2025.

Finally, the third piece in the tripartite typology, namely the obligation to fulfil set out in Article 12, has also a positive nature and requires States to take more proactive steps in order to progressively enhance the right to development. This embodies both obligations of conduct and result. States also have a right, which is exercised against other States on behalf of their own people, and a duty to formulate and implement appropriate national development laws and programs in accordance with the norms of the Convention.

Overall, the Draft International Covenant sets out State obligations in a more detailed and concrete manner than the UN Declaration on the Right to Development. As noted earlier, a key shortcoming of the UN Declaration lies in the abstract and vague formulation of State obligations, which makes them difficult to translate into concrete, implementable, and enforceable measures. The provisions of the Draft International Covenant discussed above, at least to some extent, remedy this deficiency.

In addition, and differently from the UN Declaration on the Right to Development, the Draft International Covenant affirms also existing obligations of international organisations. In particular, the latter instrument encompasses a provision – Article 9 – on their general obligation to ‘refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organisation to breach any obligation that the State or the latter organisation may have with regard to the right to development’.

Article 9 incorporates collectively the provisions of Articles 14 to 16 of Draft Articles on the responsibility of international organisations dealing with the responsibility of an international organisation in connection with the act of a State or another international organisation. According to the wording of Article 9, international organisations have a narrower duty – of a purely negative nature – than that of States, since they must refrain only from aiding, assisting, controlling or coercing a State or another international organisation to breach an obligation stemming from the right to development, while no obligation to respect, protect or fulfil the right is incumbent upon them. In this regard, the provision seems unduly isolated from the broader framework of the Draft International Covenant and inadequate to capture other situations in which international organisations may, in fact, qualify as full duty-bearers of the right to development.

4.3. Detailed Norms on the Duty to Cooperate

A significant element of novelty introduced by the Draft International Covenant on the Right to Development concerns the duty to cooperate.

Indeed, differently from its soft law predecessor, the legal instrument in question encompasses norms which give rise to concrete and implementable inter-state obligations.

As stated in the commentary (commentary to the DICRTD, p. 68, paragraph 1), the duty to cooperate applies to all facets of the right to development and runs through the entire Draft International Covenant like a golden thread binding together all its provisions. Because the realisation of the right to development requires an enabling environment at both the national and international levels, the duty in question is indispensable to the obligations to respect, protect and fulfil. Considering its pervasive and omnipresent nature, a separate and detailed provision – Article 13 – is therefore included in the Draft International Covenant.

After articulating the underlying objectives the duty to cooperate seeks to achieve¹⁹, Article 13(2) gives effect to the duty to cooperate in the specific context of the realisation of the right to development by stating that States need to take deliberate, concrete and targeted steps not only individually but also jointly with other States, including through cooperation within international organisations, to ensure the enjoyment of the right in question as well as to eliminate obstacles to its full realisation. The Draft, however, does not explicitly mention the need to address the global political economic power imbalance and inequalities, which it is originally designed to mitigate, as one of the objectives of the duty to cooperate.

The most relevant part of the norms on the duty to cooperate is probably represented by Article 13(4) of the Draft International Covenant, which goes into specifics by enumerating – in a non-exhaustive list grounded in the 2030 Agenda – the actions States need to take ‘to create a social and international order conducive to the realization of the right to development’. One of these steps is that States need to strive to promote a multilateral trading system ‘(...) universal, rules-based, open, non-discriminatory, equitable, transparent and inclusive’ and ‘implement the principle of special and differential treatment for developing countries, in particular least developed countries’. In so doing, the provision seems to recognise the structural problem in the global economic and trading system that privileges powerful States and undermines the interests of the least developed countries.

The Draft International Covenant again emphasises the need to promote the participation of developing countries in decision-making in the

¹⁹ According to Article 13(1) these are: solving the economic, social, cultural and environmental challenges the world is grappling with, by promoting better living conditions, encouraging cultural and educational cooperation and advancing the protection and realisation of human rights.

international economic and financial institutions. Indeed, according to Article 13(4)(d), States need to take steps collectively to ensure ‘enhanced representation and voice for developing countries, in decision-making in all international economic and financial institutions, in order to deliver more effective, credible, accountable and legitimate institutions’. Given the vagueness of the language used in the Draft International Covenant and the resistance against such initiative, however, it is unlikely that it would lead to a significant change in redressing the power imbalance in these institutions. Moreover, a meaningful realisation of these norms requires structural changes within international financial institutions and other relevant actors in the international economy.

Overall, the duty to cooperate envisioned under the Draft International Covenant calls on States to work towards a more equitable international economic and financial system, with particular emphasis on promoting the equitable participation of developing and least developed countries. Nevertheless, it would be overly optimistic to assume that these provisions would fully achieve – or even meaningfully contribute to – the restructuring of the global political economy. The Draft International Covenant could have adopted a more transformative approach to addressing the structural deficiencies of the global system, despite the likelihood of resistance, particularly from Western States. Similar to the UN Declaration on the Right to Development, the Covenant does not impose explicit obligations on States regarding resource transfer or redistribution. As a result, while the Draft International Covenant appears more progressive and detailed than its soft law predecessor, it does not go far enough in pushing normative boundaries. Accordingly, the extent to which the duty to cooperate can effect change in the global political and economic order will depend on how these provisions are developed through jurisprudence and accepted by States.

Moreover, although the Draft International Covenant’s provisions on the duty to cooperate are relatively more concrete and detailed, they rely on subjective and abstract terminology – such as ‘equitable,’ ‘open,’ and ‘special treatment’ – that may hinder effective implementation. Several of these norms resemble policy guidelines rather than binding legal obligations, a tendency that may be explained by their heavy reliance on the Sustainable Development Goals. The Draft International Covenant provides limited objective criteria by which compliance with these norms can be assessed.

Nonetheless, these provisions represent a significant advancement compared to the UN Declaration on the Right to Development. Their adoption is likely to be contentious, as the duty to cooperate remains a divisive issue, reflecting a persistent ideological divide between the Global North and South.

4.4. The Establishment of an Implementation Mechanism

As said in the previous sections of the present contribution, the Draft International Covenant clarifies with a high degree of precision what the obligations incumbent upon States Parties and international organisations for the realisation of the right to development are. Most importantly, under its Articles 26 and 28, the Draft International Covenant provides for a *sui generis* mechanism to facilitate, coordinate and assist the implementation and promotion of compliance with the provisions of the Draft itself, by establishing two treaty bodies, namely the Conference of the States Parties and a subsidiary implementation mechanism comprising experts.

The *sui generis* structure of the treaty bodies established under the Draft International Covenant departs from the traditional compliance, monitoring and enforcement mechanisms found in existing core human rights treaties. This depends on different factors, such as the need to avoid duplication with the Intergovernmental Working Group on the Right to Development and the Expert Mechanism as well as with many human rights treaty bodies, the necessity of ‘adding-value’ to promotion of human rights in general by addressing elements which existing mechanisms do not necessarily focus on, the development of an approach based on a non-adversarial, non-punitive, facilitative, co-ordination and assistive model rather than an adversarial complaints-based model, as well as the adoption of the best features from human rights and other international treaties, especially those that are strongly based on cooperation (commentary to the DICRTD, pp. 92-93, paragraph 1). Nevertheless, their establishment would align the Draft Covenant more closely with the broader human rights treaty system. These bodies would also facilitate the development of policy guidance for States and other stakeholders on operationalising the right to development, in a manner comparable to the role played by committees under existing core human rights treaties (Kanade 2020, 18).

As regards the mandate of the Conference of States Parties, according to Article 26(2), its principal role is to keep under regular review the effective implementation of the Draft International Covenant and any related legal instruments that the Conference of States Parties may in the future adopt, and make, within its mandate, the decisions necessary to promote the effective implementation of the Covenant. To this purpose, the Conference of States Parties is in charge, *inter alia*, of periodically examining voluntary State reports on the implementation of their obligations as is traditionally the case, but also importantly, the obstacles that they face in realising the right to development, adopting regular reports on the status of implementation of the Draft Covenant as well as making recommendations on any matters relevant

to the implementation of the Covenant. The Conference of State Parties is also mandated to ‘(...) establish an implementation mechanism to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the (...) Convention’ (Article 28(1)). Unlike the Conference of States Parties, this subsidiary body is conceived of as a mechanism comprising independent experts, which acts as the source of independent expertise necessary for effective implementation of the Draft Covenant.

The mandate of the implementation mechanism is laid down in Article 28(7). It shall make suggestions and general recommendations based on the examination of reports and information referred to it by the Conference of States Parties, relating both to the interpretation of the provisions of the Covenant and to their implementation (commentary to the DICRTD, p. 99, paragraph 6). The implementation mechanism is also in charge of reviewing requests by rights holders to comment on situations in which their right to development has been adversely affected by the failure of States to comply with their duty to cooperate, as reaffirmed and recognised under the Covenant (Article 28(7)(c)). The mandate envisaged here does not resemble a conventional complaints or communications procedure through which right-holders challenge their States for individual failures to realise obligations related to the right to development at the domestic level, as is typical of traditional treaty bodies. Nor does it establish a mechanism in which an implementation mechanism assesses the admissibility of communications and issues findings on violations through an adversarial or quasi-judicial process, as is characteristic of such committees. Accordingly, the mandate to ‘review requests’ should not be understood as a mandate to consider ‘communications’ submitted to a committee. The review of requests contemplated Article 28(7)(c) is confined to situations involving violations arising from States’ failure to comply with their duty to cooperate. This focus can be seen as a significant added value when compared with existing mechanisms under the core human rights treaties, which do not address this dimension (commentary to the DICRTD, p. 99, paragraph 6). Furthermore, the use of the term ‘States,’ rather than ‘States Parties,’ is intentional, as it allows the implementation mechanism to examine situations in which violations of rights under the Draft Covenant result from the failure of one or more non-Party States – acting alone or jointly with States Parties – to fulfil the general duty to cooperate under international law (commentary to the DICRTD, p. 99, paragraph 6). Nonetheless, in practice, it is hard to imagine how right holders – persons and people – will be able to discern how their right is affected by the failure of States to cooperate.

5. Concluding Remarks

The Draft International Covenant undoubtedly represents a significant advancement in the realisation of the right to development, as – differently from the UN Declaration on the Right to Development – it is framed in the language of legally binding rights for human persons and all peoples and elaborated into general and specific obligations on the part of States Parties. While the Draft Covenant draws extensively on the UN Declaration and preserves its fundamental principles and conceptual foundations, it also introduces several innovations and additions able to transform policy and rhetoric into international legal rules aiming at ensuring the full, equal, and meaningful enjoyment of the right to development by every human person and all peoples. The present chapter has identified four key areas in which such positive developments are particularly evident: the shift from a purely human-centred approach to one grounded in sustainable development; the elaboration of general and specific obligations of States Parties to respect, protect, and fulfil the right to development as well as the prevision of general obligations of international organisations to refrain from conduct that aids, assists, directs, controls, or coerces a State or other international organisation to breach any obligation that the latter may have on the right to development; the inclusion of detailed norms concerning the duty to cooperate, giving rise to concrete and implementable inter-state obligations; and the establishment of a continuing mechanism through the Conference of States Parties, which will design and establish its own implementation mechanism to facilitate, coordinate, and assist in a non-adversarial and non-punitive manner, as to the implementation and promotion of compliance with the provisions of the Convention.

Overall, the norms set out in the Draft International Covenant are more specific, actionable, and capable of implementation, thereby contributing to strengthen the realisation of the right to development. Nevertheless, this does not suggest that the Draft Covenant is a perfect legal instrument.

In certain areas, it falls short of the level of progressiveness that might be expected of a framework developed in the contemporary context. For example, it comes as a surprise that, given the growing climate problems the world is facing and the urgent need to manage them, the Draft International Covenant does not adequately address the environmental aspects of development and does not set forth more concrete and detailed norms in this regard. Similarly, the Draft International Covenant could have been more revolutionary in addressing structural problems in the global economic and financial system despite the potential resistance, particularly from Western States. Finally, it is not fully clear why international organisations are subject

to a more limited, purely negative obligation than States, as their duty is confined to refraining from aiding, assisting, directing, or coercing a State or another international organisation in breaching an obligation arising from the right to development, and they are not bound by any obligation to respect, protect, or fulfil that right.

Furthermore, at least to some extent, the Draft International Covenant continues to rely on abstract formulations and norms that resemble policy guidelines rather than enforceable obligations. In this regard, the duty to cooperate envisaged under Article 13 requires States to work towards making the international economic and financial system equitable by particularly emphasising the need to promote equitable participation of developing and least developed countries in this system. However, given the frailty of the language used and the political resistance against such initiative, it is unlikely that it would lead to a significant change in redressing the global economic power imbalance.

It is important to note that the future trajectory of the Draft International Covenant remains uncertain: while it could advance more rapidly, it may also undergo a lengthy negotiation process.

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