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SUSTAINABLE DEVELOPMENT AND INTERNATIONAL LAW: FRAGMENTATION, DISCONNECTS, AND THE CHALLENGE OF INTERNATIONAL POLICY COHERENCE IN MEETING THE SDGS

This panel was convened at 3:30 p.m., Thursday, June 25, 2020, by its moderator Robert McCorquodale, who introduced the panelists: Laurence Boisson de Chazournes of the University of Geneva; Sandra Fredman of the University of Oxford Faculty of Law; and Victor Mosoti of the World Bank Group.

Sustainable Development and International Law

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By Robert McCorquodale and Siobhan McInerney-Lankford***

Public international law norms are relevant to a wide range of the sustainable development goals. Yet there is a frequent failure to connect the two spheres and there is very limited literature on the interaction between public international law, and the policy and political frameworks that underpin development.

This disconnect between public international law and development frameworks could be viewed as an example of the fragmentation of international law and as exemplifying the challenge of international policy coherence, not least as states frequently engage in development activities without a systematic assessment of which international law applies, even in sectors where international law clearly governs the issue, such as human rights and humanitarian law. Similarly, the Sustainable Development Goals (SDGs) are often viewed in isolation and in a normative and legal vacuum and yet they will be implemented and pursued in the operational contexts that are governed by international law. The SDGs are typically discussed in terms of goals, targets, and indicators, without any overt engagement with international law.

These issues gave rise to a fascinating panel who considered the linkages between the SDGs and international law. The panel explored how these linkages arise in various contexts and also considered how they might operate in practice. The panel consisted of:

- Laurence Boisson de Chazournes, Professor of international law at the University of Geneva School of Law, who spoke about the SDGs and the Right to Water;
- Sandra Fredman, Professor of the Laws of the British Commonwealth and the United States at the University of Oxford, who spoke about Gender Equality and the SDGs; and
- Victor Bundi Mosoti, Chief Counsel of the International and Environmental Law Unit within the Legal Vice Presidency of the World Bank, who spoke about international law in the development work of the World Bank.

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Unfortunately, Rajat Khosla of the World Health Organisation was, at the last minute, unable to attend.

Professor Boisson de Chazournes has provided an excellent summary of her talk, which is below. The other panelists were unable to do so, therefore we will summarize them here.

Professor Fredman considered that, while, the concept of discrimination is widespread in international law, its meaning is still contested. She argued that the meaning of the right to substantive equality should be viewed as including four, mutually supportive dimensions in relation to outgroups: (1) redressing disadvantage; (2) addressing stigma, stereotyping, prejudice, and violence; (3) facilitating voice and participation; and (4) accommodating difference and achieving structural change. These need to be achieved simultaneously, so far as possible.

She looked at this four-dimensional understanding of substantive equality, and how the SDGs present a huge opportunity for advancing gender equality. SDG 5 on gender equality, states expressly that the world promises to achieve gender equality and the empowerment of all women and girls by 2030. In a particularly important breakthrough, SDG 5 promises to recognize and value unpaid care and domestic work. This is a crucial step toward addressing both the second dimension, redressing stereotyping, and the first dimension redressing disadvantage. SDG 5 also addresses the need for structural change. It promises to recognize and value unpaid care and domestic work through the provision of public services and infrastructure, social protection policies, and the promotion of shared responsibility within the household. It also addresses the third dimension with its commitment to increase participation of women in decision-making bodies. The promise of SDG 5 is further augmented by other aspects of the SDGs, including SDG 8, which promises decent work and equal pay for work of equal value, therefore rewarding paid as well as unpaid work, and SDG 6 on clean water and sanitation, which should reduce the drudgery of many women's domestic work.

Yet, she noted that when we look at the measurement framework, we see a very different picture, draining the ideals of some of their energy. For example, the progress toward the promise to recognize and value unpaid care work is measured only by collecting data on the time spent by men and women on unpaid work. This leaves out of account all the other elements of this target, namely, to achieve gender equality "through the provision of public services and infrastructure, social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate." So, the quest for substantive gender equality in the SDGs, while opening up many possibilities, still remains elusive.

Dr. Mosoti provided insights as to the relevance of international law to the development activities of the World Bank. He used the World Bank's Environmental and Social Framework to highlight the symbiotic relationship between the Bank's work as an international organization and the evolving international legal order.

He noted the breadth of the interaction of development and international law in the work of the World Bank. For example, he outlined the role of the International Finance Corporation (the private sector arm of the World Bank Group) in the development of the Equator Principles, which are essential in project finance. They constitute a risk management framework, adopted by financial institutions, for determining, assessing, and managing environmental and social risk, and they require human rights and environmental considerations as part of development funding. Another example was the importance of respecting cultural sites, such as UN Educational, Scientific and Cultural Organization World Heritage sites, in development financing decisions.

There were valuable questions from those who participated, and the panelists provided an interesting and engaging discussion.

At the conclusion it was clear that we had learned from this panel that a more systematic and coherent approach could be adopted in development policy and practice. This is not limited to

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the SDGs. Indeed, it is not clear how the SDGs can be and are being embedded in the international law framework, especially in the area of human rights, and overcome the different focus of the SDGs on aggregate outcomes and human rights on the individual or groups. These issues were even more evident during the COVID-19 pandemic and the responses to it. It seemed that a new approach should promote the respect of international law in development activities, mitigate human rights risks explicitly, and ensure a more cohesive and less fragmented approach to international law in development.

The Sustainable Development Goals (SDGs) and the Rule of Law: A Propos SDG 6 on Access to Water and Sanitation

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*By Laurence Boisson de Chazournes**

I. Introduction

The rule of law and the Sustainable Development Goals (SDGs) are mutually supportive. Respect for the rule of law is indeed crucial for development issues. The 2030 Agenda for Sustainable Development itself acknowledges, through SDG 16, that access to justice and the rule of law foster sustainable development.[1] The latter ensures that all individuals are treated alike, that they are entitled to the respect of human rights and that the rule of law informs the satisfaction of social, economic, and cultural needs as well as the development of public policies and the governance of competent institutions.

When speaking of the rule of law from an international law perspective, I have a broad understanding of it. It is substantive, it is procedural, it is also process oriented. This means that we should go beyond the traditional binary approach based on the distinction between binding law and non-binding law when promoting the rule of law. The addressees of the rule of law at the international level are varied and diverse. They include states but also a wide array of non-state actors. With these features in mind, we need to grasp the rule of law through its various shades (they are not only gray . . .). These multiple shades can have a nurturing effect on each other in promoting respect for the rule of law. The SDGs offer an interesting prism for analyzing the interplay of these various legal shades of the rule of law. Indeed, these shades are reflected in the fabric of the SDGs as well as in their implementation.

The 2030 Agenda for Sustainable Development in many ways reflects and reinforces existing international law.[2] Moreover, some of the individual SDGs align closely with individual human rights. It is also important to recall that the 2030 Agenda was adopted by all UN member states[3] and applies universally. Its implementation rests on acceptance rather than enforcement.

* Professor of international law and international organization at the University of Geneva. This contribution is part of a research project conducted at the University of Geneva and entitled "Corporations' Responsibilities in Water Management and Protection: The Path Towards Action." I would like to thank my colleagues Mara Tignino and Haoua Savadogo for their comments on earlier drafts of this contribution.

[1] SDG 16 is available at: https://sdgs.un.org/goals/goal16; Irene Khan, *How Can the Rule of Law Advance Sustainable Development in a Troubled and Turbulent World?*, 13 McGill J. Sustainable Dev. L. 211 (2017).

[2] Markus Kaltenborn & Heike Kuhn, *SDGs: Acceptance, Not Enforcement*, D+C (Apr. 6, 2017), *at* https://www.dandc.eu/en/article/2030-agenda-largely-reflects-and-reinforces-existing-international-law.

[3] GA Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development (Sept. 25, 2015). The Resolution was unanimously adopted by the UN General Assembly through raucous cheers and a standing ovation by representatives of the 193 UN member states. For further details, see United Nations Population Fund, *Historic New Global*

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