The Human Right to Development as a New Foundation for International Economic Law

Diane A. Desierto*

This Article, drawing from the 2022 Gillian White Lecture on International Economic Law at the University of Manchester, argues that the emerging human right to development—as articulated in the 1986 Declaration on the Right to Development and the April 2022 Draft Convention on the Right to Development—introduces a new normative foundation for international economic law, especially in its definition of the right to development as the right of "every human person and peoples . . . by virtue of which they are entitled to participate in, contribute to, and enjoy civil, cultural, economic, political and social development that is indivisible from and interrelated with all other human rights and fundamental freedoms," and where they "have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom." This Article contends that the human right to development stands to shift our framing of international economic law, precisely because the human right to development directly involves both the development decision-making process and the actual lived development outcomes for human persons and all peoples. The April 2022 Draft Convention elaborates specific international obligations, including duties to cooperate, specific and remedial measures for marginalized and vulnerable persons and peoples, indigenous peoples' rights, sustainable development, among others, that focus on implementing the right to development within the global, regional, and national economic systems of decision-making. Finally, the human right to development could ultimately constitute a relevant rule under Article 31(3)(c) of the Vienna Convention on the Law of Treaties for informing the interpretation of "development" as widely used throughout international economic treaties.

I. INTRODUCTION: DEVELOPMENT AND THE IMAGINARIES WITHIN INTERNATIONAL ECONOMIC LAW

In her famous 1976 *Virginia Journal of International Law* article, Professor White commented on the UN General Assembly's approval of the Charter of Economic Rights and Duties of States and other recent developments as potentially constitutive of a possible "new international economic order," despite the sharpening divide between developed states and developing states.[1] She cautioned against heavy reliance on such non-binding instruments at the United Nations, pointing out that:

> . . . The 'crusade' approach to the problem of economic world order suffers from precisely the same defect as was trenchantly criticized by Henry Bernstein . . . He observes that the value judgment embodied in the movement for development is one which commands universal support: the desirability of overcoming malnutrition, poverty and disease which are the most immediate and widespread aspects of human suffering. He then draws attention to the wide political ramifications attached to the issues of development in the Third World and castigates 'the naïve plea that the brutal data of human deprivation on such a scale should somehow be 'above' politics . . . this attitude . . . displays both a willful disregard of the nature of entrenched inequality and a denial of the materials from which politics might be created. The crusading zeal which uses voting power to obtain paper manifestos and attempts to portray these as tangible achievements is also a simplistic and impotent attempt at progress. The hungry and sick, the illiterate and the oppressed, will not be deceived – nor, one hopes, will the educated, well-rewarded managers and decision-makers . . . The challenge to the abilities and imaginations of educated and responsible people (opinion formers and voters) in the developed countries calls for responses of a more honest and more sophisticated nature. The demands of the developing countries may be presented too clamorously and contain inconsistencies, impracticalities, and inequities. The need, however, is for a modulation from these rather shrill slogans and counterslogans to a detailed, thorough, and open dialogue . . . These Declarations, Programmes, and the Charter [of Economic Rights and Duties of States] reveal only a tiny part of the opportunity for progress . . . None of these developments is likely to

1. Gillian M. White, *A New International Economic Order?*, 16 VA. J. INT'L L. 323, 324, 327 (1976).

> produce immediate results. That there must be improvements in some of the present international commercial arrangements, both inter-State and between private companies, is manifest; but it is also self-evident that any improvements which can move humanity even a small step towards equality and equity will be difficult to attain . . . What remains to be done includes a demanding task for international lawyers: the task of transforming policy and rhetoric into international legal rules which can effectively govern a new international economic order.[2]

Professor White's principled pragmatism about what international economic law can do in helping to achieve development based on equality and equity, while at the same time seeking effective governance of the international economic system, always resonated strongly for me from the earliest years of my own scholarship and would be formative for much of my own work in international economic law and international human rights law.[3] Professor White sought a modulation away from the sloganeering binaries often presented in simplistic "us v. them" hard narratives between postcolonial states in the developing world and former empires of the developed world, and which only tended to obscure the more tedious and granular challenges of building development cooperation[4] necessary for a very diverse and hardly monolithic Global South, amid the more consolidated interests of the Global North dominant in multilateral trade, foreign investment, and international financial institutions.[5] Professor White disdained virtue-signaling manifestos that did nothing to solve real world problems and felt human outcomes. Most importantly, as an international lawyer conscious of both the limits and potentials of our professional responsibilities and the authoritative weight of experts in international tribunals,[6] Professor White sought a balance in how to transform policy and rhetoric into effective governance of the global economic system through international legal rules. (Much of this, was of course, deeply and unabashedly positivist, as Professor White

---

2. *Id.* at 344-45.

3. Diane A. Desierto, *Coming Full Circle on Human Rights in the Global Economy: International Economic Law Tools to Realize the Right to Development*, 18 LOY. U. CHI. INT'L L. REV. 1, 18-19 (2022).

4. *See* James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South: An Essay in Conversation with Daniel Bonilla*, 16 YALE HUM. RTS. & DEV. L. J. 1, 48 (2013).

5. *See* Boutros Boutros-Ghali, *Global Development Cooperation*, 7 EMORY INT'L L. REV. 1, 2-3 (1993).

6. *See* GILLIAN M. WHITE, THE USE OF EXPERTS BY INTERNATIONAL TRIBUNALS 2 (1965).

was.) But it struck the idealistic realist in me, nonetheless, that Professor White's call for "balance" was a most unusual space for the invisible college of international lawyers who often had to take hard positions as counsels, legal advisors, judges, diplomats, and international law scholars.

Professor White's work painstakingly scrutinizes international economic law sources vis-à-vis a much wider range of international political instruments and is concerned with how such sources helped States do the hard work of achieving development results on the ground rather than engaging in the triumphalist narratives of development crusaders usually detached from the real indignities of living an existence where there was no path to equal and equitable development.[7] Indeed, as she herself would stress later on as Emerita Professor, ". . . there neither should nor need be any policy contradiction between upholding an open, non-discriminatory and equitable international trading system, and acting for the protection of the environment and the promotion of sustainable development."[8] This kind of visionary push for some kind of balanced integration between international economic law and interdisciplinary demands of development was no different from the enterprise that a younger Dr. Gillian White, then Lecturer in Law at the University of Manchester, wrote about when she scrutinized the operational functions and record of results from the International Labour Organization's Commission of Inquiry in 1961 and Commission of Inquiry in 1962.[9]

Professor White's principled pragmatism about international economic law and her more emphatic demand for balanced imaginaries of development within international economic law is the starting point for this Article. This Article situates Professor White's demand for balanced imaginaries of development within increasingly interrelated discourses of international economic law and international human rights law. Professor White's work made scant mention of international human rights law, precisely because during her time there was barely a sense of international

---

7. *See* Gillian M. White, *The Foreign Compensation Act 1969 and a Nineteenth-Century Precursor*, 35 MOD. L. REV. 569, 594-95 (1972). *See also* Gillian M. White, *Treaty Interpretation: The Vienna Convention 'Code' as Applied by the World Trade Organization Judiciary*, 20 AUSTL. Y.B. INT'L L. 319, 320 (1999).

8. Gillian M. White, *The 'Greening' of International Trade Law: Realistic Aim or Lost Cause?*, 16 U. TAS. L. REV. 266, 288 (1997).

9. Gillian M. White, *The Ploughing of Two Furrows: The International Labour Organization (I.L.O.) Commissions of Inquiry of 1961 and 1962*, 2 AUSTL. Y. B. INT'L L. 47, 47, 50 (1966) (discussing the 1961 investigation into Ghana's complaint against Portugal regarding forced labor and the 1962 investigation into Portugal's complaint against Liberia also involving forced labor).

human rights law as a cohesive, let alone binding, set of international treaties, customs, and norms applicable to all. We needed the last few decades for a more durable edifice of international human rights law to be built on sources of international law and subsidiary sources in international jurisprudence and publicists' teachings. It is in this last step that in the last fifteen years, it has become possible not just to "accommodate" human rights law in international economic law, but to fully operationalize international human rights law in all aspects of international economic decision-making by States, international organizations, as well as the private sector, individuals, and groups.

II. DEVELOPMENT AS A VARIABLE NORM WITHIN INTERNATIONAL ECONOMIC LAW

While the word "development" figures prominently in many of the key treaties in international economic law,[10] there has often been little elaboration or definition of this concept. The famous first paragraph of the Preamble to the Agreement Establishing the World Trade Organization (WTO) states that the parties to this Agreement recognize that:

> . . . their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services *while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.*[11]

Article XVIII of the General Agreements on Tariffs and Trade (GATT),[12] together with the 1979 Decision on Safeguard Action for Development

10. *See* Isabella D. Bunn, *The Right to Development: Implications for International Economic Law*, 15 AM. U. INT'L L. REV. 1425, 1434-35, 1437 (2000); *Learning from Doha: Can 'Development' be Operationalized in International Economic Law?*, 104 AM. SOC'Y OF INT'L L. PROC. 421, 421-34 (2009).

11. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, https://www.wto.org/english/docs_e/legal_e/04-wto.pdf [hereinafter Marrakesh Agreement] (emphasis added).

12. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 art. 18, https://www.wto.org/english/docs_e/legal_e/gatt47.pdf [hereinafter GATT].

Purposes,[13] the 1979 Declaration on Trade Measures Taken for Balance of Payments Purposes,[14] and the Understanding on the Balance of Payments Provisions of GATT 1994,[15] collectively authorize developing countries to protect their markets from imports in case of balance of payments difficulties or to promote and establish or maintain particular industries. The Enabling Clause–the Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries–[16] provided legal justification for the Generalized System of Preferences[17] (GSP), as well as the Global System of Trade Preferences (GSTP).[18] The WTO does not provide any legal criteria for which Members are "developed" or "developing," and instead relies on Members' own self-description. Other WTO Members can challenge any Member's use of provisions on special and differential treatment, longer transition periods, or receipt of technical assistance that are allocated to developing countries. There remains no single set of criteria in world trade law or centralized interpretation by the WTO Appellate Body and WTO dispute settlement panels that legally define the terms "development," "sustainable development," or "economic development,"[19] even if there are a range of usages for these terms across the negotiations pillar of the

13. *Decision of 28 November 1979*, ¶ 1, L/4897 (Nov. 28, 1979), https://www.wto.org/english/docs_e/legal_e/tokyo_safe_e.pdf.

14. *Declaration on Trade Measures Taken for Balance of Payments Purposes*, ¶¶ 2-5, L/4904 (Nov. 28, 1979), https://www.wto.org/english/docs_e/legal_e/tokyo_bop_e.pdf.

15. *Understanding on the Balance of Payments Provisions of the General Agreement on Tariffs and Trade 1994*, ¶¶ 1-4, (Feb. 2, 1988), GATT B.I.S.D. (26th Supp.), at 205 (1994), https://www.wto.org/english/docs_e/legal_e/09-bops.pdf.

16. *Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries*, ¶ 3, L/4903 (Nov. 28, 1979), GATT B.I.S.D. (1st Supp.) at 191 (1979), https://www.wto.org/english/docs_e/legal_e/enabling_e.pdf.

17. *See, e.g.*, OFF. U.S. TRADE REP., U.S. GENERALIZED SYSTEM OF PREFERENCES GUIDEBOOK (Nov. 2020), https://ustr.gov/sites/default/files/gsp/GSPGuidebook_0.pdf (discussing the United States' program of non-reciprocal preferential treatment to products originating in beneficiary developing countries).

18. *See Global System of Trade Preferences*, U.N. CONF. ON TRADE & DEV., https://unctad.org/topic/trade-agreements/global-system-of-trade-preferences (describing the GSTP as a system in which developing countries exchange trade concessions among themselves).

19. *See* David Luff, *An Overview of International Law of Sustainable Development and a Confrontation Between WTO Rules and Sustainable Development*, 29 BELG. REV. INT'L L. 90, 91-92 (1996). *See also* Marie-Claire Cordonier Segger & Markus W. Gehring, *The WTO and Precaution: Sustainable Development Implications of the WTO Asbestos Dispute*, 15 J. ENV'T L. 289, 290 (2003); Zobaida Khan, *Trade-Sustainable Development Relationship: The Role of WTO Adjudication in Interpreting and Operationalizing Sustainable Development*, 14 MCGILL J. OF SUST. DEV. L. 37, 37-38 (2018).

WTO.[20] While the 2001 Doha Ministerial Declaration set forth bold objectives on how to characterize, define, apply, and implement development, economic development, and sustainable development across a range of sectors, including agriculture, services, market access guarantees, TRIPS, trade and investment, government procurement, trade and environment, and technology transfers,[21] the ultimate failure of the Doha Development Round made any concrete or binding legal definition of these terms altogether elusive. The sheer variability across the multiple usages of the terms "development," "economic development," and "sustainable development" makes it quite impossible to precisely, empirically, and verifiably track the actual felt developmental impacts of the negotiations pillar, the trade policy review mechanism, and the WTO dispute settlement processes *on the actual populations for whom the original balance was set in the WTO Agreement.* This is a clear illustration of why Professor Gillian White had every reason to be apprehensive about "the task of transforming policy and rhetoric into international legal rules which can effectively govern a new international economic order."

Foreign investment law faces similar quandaries on how to treat development as a legal criterion. The famous cases on whether a transaction or subject-matter constituted a covered investment within the purview of investment treaties—especially in applying the *Salini* criteria[22] that also sought to elevate the investment's contribution to a host State's "development" as somehow a criterion for jurisdiction *res materiae*–all ultimately showed that this concept was an empty one for many investment arbitral tribunals.[23] It became all too easy to simply look at the investment as an economic contribution to the host State without making any detailed examination of the actual impacts of a foreign direct or indirect investment on the lives of populations within host States. While more recent investment treaties have begun to include sustainable

---

20. *Sustainable Development*, WTO, https://www.wto.org/english/tratop_e/envir_e/sust_dev_e.htm.

21. World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, ¶¶ 13-17 (2002), https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm [hereinafter Doha Declaration].

22. Salini Costruttori S.P.A v. Kingdom of Morocco, ICSID Case No. ARB/00/4, Decision on Jurisdiction, ¶ 52 (July 23, 2001), 42 INT'L LEGAL MATERIALS (2003) (establishing the definition of "investment" under Article 25 of the ICSID Convention and ruling that an alleged investment should contain four elements: (1) a contribution of a certain (2) risk and (3) duration that (4) contributes to a State's economy).

23. Diane Desierto, *Development as an International Right: Investment in the New Trade-Based IIAs*, 3 TRADE L. & DEV. 296, 315 (2011).

development provisions,[24] there is also no settled legal criteria to evaluate sustainable development itself or its impacts on populations within host States. There is, of course, a wealth of scholarship on how to conceptualize, write, formulate, integrate, or interpret sustainable development in international investment treaties.[25] In the absence of a cohesive definition throughout thousands of bilateral, regional, and plurilateral investment treaties, let alone present or future investment arbitral tribunal interpretations of the concept of sustainable development, "sustainable development" ends up being a ready tent that can fit any and all camels but is so porous that it actually does not provide any meaningful shelter.

The same conceptual vacuity as to the meaning of "development" or "sustainable development" attends many of the foundational legal treaties and agreements that created international financial institutions.[26] Article I of the International Bank for Reconstruction and Development (World Bank) Articles of Agreement provides that the purposes of the Bank are:

> (i) To assist in the *reconstruction and development of territories of members* by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and *the*

24. *See, e.g.*, Manjiao Chi, *Sustainable Development Provisions in Investment Treaties*, *United Nations Economic and Social Commission for Asia and the Pacific*, U.N. ECON. & SOC. COMM'N ASIA & PACIF., iii (2018), https://www.unescap.org/sites/default/files/Sustainable%20Development%20Provisions%20in%20Investment%20Treaties.pdf. https://www.unescap.org/sites/default/files/Sustainable%20Development%20Provisions%20in%20Investment%20Treaties.pdf ("Though sustainable development traditionally and originally stands for a bidimensional paradigm of balancing economic growth and environmental protection, it has been materially expanded in recent years. Today, it is widely agreed that sustainable development has gained a third pillar, i.e. social development. The inclusion of a social dimension not only enriches the contents of sustainable development, but more importantly, it also helps transform sustainable development from a bi-dimensional paradigm to a multi-dimensional paradigm that tries to strike a proper balance among economic growth, environmental protection and social development.").

25. Andrew Newcombe, *Sustainable Development and Investment Treaty Law*, 8 J. WORLD INV. & TRADE 357, 370 (June 2007); Haniehalsadat Aboutorabifard, *Integrating Sustainable Development in International Investment Law*, 57 OSGOODE HALL L. J. 519, 519 (2020); Howard Mann, *Reconceptualizing International Investment Law: Its Role in Sustainable Development*, 17 LEWIS & CLARK L. REV. 521, 523 (2013); Lukas Vanhonnaeker, Book Review, *Integrating Sustainable Development in International Investment Law: Normative Incompatibility, System Integration and Governance Implications*, 14 MCGILL J. SUSTAINABLE DEV. L. 141, 146 (2019); Tarcisio Gazzini, *Bilateral Investment Treaties and Sustainable Development*, 15 J. WORLD INV. & TRADE 929, 930 (2014).

26. Chin Leng Lim, *Do International Financial Institutions Repress Development?*, 102 AM. SOC'Y INT'L L. PROCEEDINGS, 231-244 (2008).

> *encouragement of the development of productive facilities and resources in less developed countries.*
>
> (ii) To promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions, finance for productive purposes out of its own capital, funds raised by it and its other resources.
>
> (iii) To promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging *international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labor in their territories*.
>
> (iv) To arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
>
> (v) To conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate postwar years, to *assist in bringing about a smooth transition from a wartime to a peacetime economy.*[27]

The phrases "development of productive facilities and resources"[28] and "assisting in raising productivity, the standard of living and conditions of labor"[29] are themselves broadly ambiguous and make no reference to binding legal standards or criteria as to what constitutes productivity, the standard of living, or conditions of labor.[30] This is just one example of the ubiquity of the references to development, without clear legal criteria for evaluating how such development is realized. Over time, many other

27. *International Bank for Reconstruction and Development Articles of Agreement*, WORLD BANK, art. I, (June 27, 2012), https://thedocs.worldbank.org/en/doc/722361541184234501-0330022018/original/IBRDArticlesOfAgreementEnglish.pdf (emphases added).

28. *Id.* at art. I(i).

29. *Id.* at art. I(iii).

30. *See* Supachai Panitchpakdi, *Building Coherence: Development, Financial Systems, and Institutions*, 30 HARV. INT'L L. REV. 22, 23 (2008).

international financial institutions have created their own environmental and social frameworks as a matter of individual operational policies,[31] rather than as an architectural understanding of a shared concept of development or any sense that they are legally bound to conduct operations with a view to development as a legal bar. Agenda 2030 on Sustainable Development[32] has, to a certain extent, lent clarity to operational targets, but this is not a binding legal treaty and is mainly a political document that could be freely rejected or not complied with, without States incurring any actual legal consequences for their delays, inaction, or outright failure to meet any of the 17 SDGs and 169 targets.

While the diversity and pluralism of standard-setting on development or sustainable development might well be taken as expected artifacts of diffuse law-making in the international system, the thickness and thinness of the concepts of development or sustainable development bring to the forefront Professor White's early concerns about the effectiveness of international legal rules to govern a so-called new international economic order. Effectiveness presupposes the achievement of purpose, the accomplishment of a goal, the generation of the desired result from a series of endeavors or transactions. How do we, the individuals, groups, and populations that are the ultimate constituencies of the global economic system, determine the effectiveness of international economic law's rules when the incremental and variegated discourses on development might mean that we often talk past one another? Is it any surprise, given the lack of shared moorings and accepted understandings of development–in the process of how to get there, what it means to actually be in that state, and within and across States that fail to generate shared expectations of what the common good is supposed to be as represented by development–that in the present time the deepening discontents towards globalization,[33] the supposed unfairness of the global economic system in rewarding elites at the expense of disempowered majorities,[34] or the alleged irrelevance of multilateral economic institutions to daily lives,[35] have started to move many voters,

31. *See, e.g.*, *Equator Principles 4*, EQUATOR PRINCIPLES ASS'N. (July 2020), https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf.

32. G.A. Res. 70/1, ¶¶ 54-59, 2030 Agenda for Sustainable Development (Oct. 21, 2015), https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

33. JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS 3-4 (2002); JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS REVISITED: ANTI-GLOBALIZATION IN THE ERA OF TRUMP 1-2 (2017).

34. JOHN LINARELLI ET AL., THE MISERY OF INTERNATIONAL LAW: CONFRONTATIONS WITH INJUSTICE IN THE GLOBAL ECONOMY 1 (2018).

35. ERIK VOETEN, IDEOLOGY AND INTERNATIONAL INSTITUTIONS 2-3 (2021).

governments, and States towards open or complete rejection of international legal rules,[36] the disavowal of a global economic system that fosters inequalities with impunity,[37] or at its worst, the instantiation of the polarizing divide between so-called "'patriots" versus "globalists"?[38]

III. THE HUMAN RIGHT TO DEVELOPMENT AS A NEW FOUNDATION FOR INTERNATIONAL ECONOMIC LAW

A binding legal treaty that defines the human right to development will not address all of the above ills. However, such a treaty is a crucial step toward building a shared foundation for all in the ongoing contestations, heated or otherwise, within and across international economic law discourses. On the one hand, the human right to development could provide valuable normative understandings as to the proliferation and preponderant usages of development in many international economic law treaties and agreements. Article 4 of the April 2022 Revised Draft Convention on the Right to Development builds on the 1986 Declaration on the Right to Development:

> Article 4 Right to development
>
> 1. Every human person 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, political and social development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms.
>
> 2. Every human person and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.[39]

---

36. *Rejection of International Law on the Rise, Iran's Foreign Minister Says*, REUTERS (Aug. 26, 2019), https://www.reuters.com/article/us-mideast-iran-china/rejection-of-international-law-on-the-rise-irans-foreign-minister-says-idUSKCN1VG15O; Robert D. Williams, *International Law with Chinese Characteristics: Beijing and the 'Rules-Based' Global Order*, BROOKINGS 2 (Oct. 2020), https://www.brookings.edu/wp-content/uploads/2020/10/FP_20201012_international_law_china_williams.pdf.

37. BRANKO MILANOVIC, GLOBAL INEQUALITY: A NEW APPROACH FOR THE AGE OF GLOBALIZATION 2 (2016).

38. Gideon Rachman, *Patriots vs. Globalists Replaces the Left-Right Divide*, FIN. TIMES (Apr. 18, 2022), https://www.ft.com/content/c2a1f0eb-cb31-4f7c-a445-f06ff0974942.

39. Human Rights Council, *Revised Draft Convention on the Right to Development*, art. 4, U.N. Doc. A/HRC/WG/2/23/2 (Apr. 6, 2022), https://www.ohchr.org/sites/default/files/2022-04/A_HRC_WG_2_23_2_AEV.pdf.

As a human right pertaining to every human person and all peoples, the right to development ensures our entitlement to participate in, contribute to, and enjoy civil, cultural, economic, political, and social development. That participation, contribution, and enjoyment of such development is wholly indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms. That crucial nexus between development and human rights, both in the process in which development decisions are made and in the actual outcome (e.g. the fair distribution of benefits resulting from development) of development, is what makes this particular treaty no mere political manifesto.

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, the April 2022 Revised Draft Convention on the Right to Development is literally an example of what Professor White saw as the task of international lawyers: transforming policy and rhetoric into international legal rules that can effectively govern a new international economic order. This forthcoming tenth major human rights treaty is not a hermetic solution for that particular challenge that Professor White laid out decades ago. But it is an important and crucial step in the right direction of engaging all of us to participate in development decision-making, contribute to multidimensional development, and enjoy the fair distribution of benefits from such development. Binding legal obligations on States at least affords *all of us* the legal possibility of seeking domestic, regional, or international reporting, transparency, explanation, and diverse forms of accountability from authoritative decision-makers in the development decision-making process, and for *all of us* to discuss normative expectations as to development outcomes as experienced by our communities, groups, and populations as a whole. And these are efforts that converge, in 2022, with so many incremental and incipient efforts taking place throughout various fields of international economic law[40] to widen public participation and consultation, provide transparency and reporting, as well as enable public scrutiny of the economic decisions taken by States as well as international economic organizations and institutions. Whether it is the rush to find the just transition in energy transactions and climate change targets, devising sustainable investment and financing practices, or applying public health, environmental, labor, or security exceptions to world trade law obligations, we are all already

40. *See* DIANE A. DESIERTO, PUBLIC POLICY IN INTERNATIONAL ECONOMIC LAW: THE ICESCR IN TRADE, FINANCE, AND INVESTMENT 181-82 (2015).

wrestling with how to legally characterize, enable, but also constrain, in terms of legal responsibilities, how States reach and implement development decisions, as well as plan, redress, mitigate, externalize, or remediate the outcomes and consequences of these crucial development decisions. The time for a new foundation in international economic law is already here.

There are key innovations in the April 2022 Revised Draft Convention on the Right to Development that hearken closer to Professor White's challenge to international lawyers to transform policy and rhetoric into international legal rules that can effectively govern a new international economic order.

First, the Preamble extensively traces the genealogy of treaties and local, national, regional, and international institutional practices that led to the decision at the United Nations to codify the right to development in a legally binding instrument.[41] Second, its object and purpose is to promote and ensure the full, equal, and meaningful enjoyment of the right to development by every human person and all peoples everywhere.[42] Third, there are general principles that outline guidance on how to achieve the object and purpose and Implement the provisions of Convention, such as development centered on the human person and peoples; universal principles common to all human rights; human rights-based development; contribution of development to the enjoyment of all human rights; principles of international law concerning friendly relations and cooperation among States; self-determined development; sustainable development; the right to regulate; national and international solidarity; South-South cooperation as a complement to North-South cooperation; universal duties to respect human rights; and the right and responsibility of individuals, peoples, groups, and organs of society to promote and protect human rights.[43]

The April 2022 Revised Draft Convention on the Right to Development has other notable provisions that bring us closer to rising to Professor White's challenge to international lawyers to transform policy and rhetoric into international legal rules that can effectively govern a new international economic order:

---

41. Human Rights Council, *Revised Draft Convention on the Right to Development*, Preamble, U.N. Doc. A/HRC/WG/2/23/2 (Apr. 6, 2022), https://www.ohchr.org/sites/default/files/2022-04/A_HRC_WG_2_23_2_AEV.pdf.

42. *Id.* at art. 1.

43. *See id.* at art. 3.

- The landmark Definition of the Right to Development in Article 4, as previously discussed, which will impact both the development decision-making process as well as the evaluation of development outcomes from the lens of international human rights law as well as international economic law;[44]
- Provisions on the interrelatedness of the right to development with all other human rights;[45]
- General obligations of States Parties to respect, protect, and fulfill the right to development for all without discrimination; to cooperate with each other in ensuring development and eliminating obstacles to development; to formulate, adopt, and implement appropriate national development laws; among many others;[46]
- General obligations of international organizations, as recognized by States Parties, to refrain from conduct that aids, assists, directs, controls, or coerces a State or other international organization to breach any obligation that the latter may have on the right to development;[47]
- Specific obligations to respect, protect, and fulfill the right to development;[48]
- The Duty to Cooperate, which is an extensive formulation of existing cooperative duties aligned with the sustainable development goals, but also examining practices of cooperation in the international economic system while aligning the same with understandings of the duty to cooperate in international human rights law;[49]
- Specific and remedial measures for certain persons, groups, and peoples who are marginalized or vulnerable due to prohibited grounds of discrimination;[50]

44. *Id.* at art. 4.
45. *Id.* at art. 6.
46. *Id.* at art. 8.
47. *Id.* at art. 9.
48. *Id.* at art. 10-12.
49. *Id.* at art. 13.
50. *Id.* at art. 15.

- Equality between men and women;[51]
- A dedicated binding legal provision for Indigenous Peoples, transcending those indicated in the UN Declaration on the Rights of Indigenous Peoples;[52]
- A specific provision requiring prevention and suppression by States of corruption;[53]
- A specific provision on international peace and security;[54]
- Methods of reporting, impact assessments, statistics, and data collection;[55]
- A specific provision on sustainable development, which would be the first legal codification of this principle in a human rights treaty;[56] and
- 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.[57]

The April 2022 Revised Draft Convention on the Right to Development is not a perfect document.[58] However, no such international human rights treaty could be said to be a perfect legal instrument. This critical step to legally codifying the right to development stands, though, to provide a significant new foundation for international economic law in three ways.

First, a legally binding right to development will provide greater impetus for States to *examine and review their international economic agreements for consistency* with international human rights law guarantees, something that the UN treaty bodies (Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, the Committee on Elimination of All Forms of Discrimination

51. *Id.* at art. 16.
52. *Id.* at art. 17.
53. *Id.* at art. 18.
54. *Id.* at art. 22.
55. *Id.* at art. 20-21.
56. *Id.* at art. 23.
57. *Id.* at art. 25-27.
58. *Id.*

Against Women, among others) are already asking of States in the reportorial processes of individual human rights treaties. This will assist not just in standardizing the content of review, but also in enabling the States to better explore areas in, and outcomes of, development decision-making that insufficiently engage their populations' participation, contribution, and enjoyment.

Second, the human right to development can also *normatively inform the content of ongoing treaty negotiations within international economic law*, by openly elevating States' human rights obligations as intrinsic to the development decision-making process and development outcome. Wider participation in treaty negotiations, fully acknowledging that human rights obligations stand in parallel with all commercial or economic objectives of States in concluding such economic agreements, would remove much of the critiques against the non-transparency of these forms of international law-making, and reinforce civic participation in ensuring the domestic and international rule of law.

Finally, by containing elements that address both the development decision-making process as well as the development outcome itself, the human right to development can help defuse divisions, polarizations, and mistrust in State-driven decision-making in the international economic system. When individuals as well as populations have rights to participate, contribute, and enjoy the benefits of both the development decision-making process as well as the outcomes of such development decision-making, the human person and peoples are indeed not just recipients or beneficiaries of development decision-making but central subjects and active participants. Development would indeed, as indicated in the Preamble, be understood "not simply in terms of economic growth, but also as a means to widen peoples' choices to achieve a more satisfactory intellectual, emotional, moral, and spiritual existence rooted in the cultural identity and cultural diversity of peoples."[59] The human right to development, in this sense, would draw us all closer to finding what Professor White herself sought in her own work: that balance of imaginaries for the global economic system where there is no policy contradiction between achieving a well-functioning, non-discriminatory, open, and equitable system of trade, investment, finance, and other commercial relations, while protecting the environment, our communities, and promoting sustainable development.

59. *Id.* at Preamble.

IV. CONCLUSION

For the cynics and skeptics who have seen so much inequality, injustice, and misery throughout the world, it may indeed seem all too aspirational to think of a human right to development as a new foundation for international economic law. In these times of growing maturation of international human rights law and its relationship with international economic law, the global community should take Professor White's ideas into consideration to fully realize the possibilities of a more equitable and equal international economic law. Professor White truly envisioned what our system of international economic law could be, especially the kind of cooperation and responsibility necessary between and among developed countries and postcolonial developing countries. Experiencing her own professional and personal trajectory as a woman professor of law in the developed world, especially in the rigorous confines of British academia and in the aftermath of British imperialism and its consequences, she pursued a search for the elusive balanced imaginaries for transforming rhetoric and policy into international legal rules that could effectively govern a new international economic order. With her ideas manifested in the April 2022 Revised Draft Convention on the Right to Development, legal minds inspired by her work today are optimistic for what the human right to development could someday yield as a new foundation for international economic law. Incrementally, glacially, insufficiently, stodgily, but also doggedly, precisely because of the expanding invisible college of international lawyers in both the developed and developing worlds, the parallel disciplines of international economic law and international human rights law are already moving towards the same kind of quiet convergence. There is every reason to hope.