



DePaul Journal for Social Justice

Volume 11
Issue 1 *Winter 2018*

Article 6

January 2018

A Treatise on International Development Law

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Recommended Citation

David H. Lempert, *A Treatise on International Development Law*, 11 DePaul J. for Soc. Just. (2018)
Available at: <https://via.library.depaul.edu/jsj/vol11/iss1/6>

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A TREATISE ON INTERNATIONAL DEVELOPMENT LAW

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Abstract: This article presents an overview of the first legal treatise on international development law, summarizing the codification of international law that the author has developed to hold donors and non-governmental organizations (NGOs) in international development to their own (international and legal and professional) standards and demonstrating how these standards can be legally enforceable. The article presents, together, 13 legal tools (codification of the essential compliance and performance elements in “international development”) recently published elsewhere, demonstrating how these codification tools relate to each other and how they can be used together in a single body of law that can be actionable both internationally and domestically. The piece places this series of codifications into the framework context of those international and domestic laws that can be used to enforce them and also notes the supporting professional infrastructure for legal enforcement and changes in international legal culture, such as codes of professional responsibility and legal challenges to education in fields related to development that may be in violation of international law (such as economics), that are necessary for effective enforcement.

Keywords: Treatise, International Law, Sustainability, Dependency, Democracy, Development, Aid, Capacity Building, International Relations, Donors, UNDP, World Bank, European Commission, NGOs, Foundations

INTRODUCTION

While some \$135 billion per year (0.29% of the global international economy in 2012) is devoted to transfers and interventions in a category called “official international development assistance”¹ (\$150 billion if unofficial private assistance is also included), no international body of law is recognized to define and regulate it other than occasional international agreements resetting its goals (like the “Millennium Development Goals”² or “Sustainable Development Goals”) or reporting agreements (like the “Paris Declaration on Aid Effectiveness”³ or the “Busan Partnership for Effective Development Cooperation.”)⁴ In fact, there is an existing body of laws that relate to international development based on enforceable documents like the U.N. Convention on the Prevention and Punishment of Genocide,⁵ the Rome Statute of the International Criminal Court,⁶ as well as some of the basic rights treaties that go back to the founding of the United Nations⁷ and the post-World War II international consensus on global security and peace, with later documents that elaborated their meanings.⁸ It is simply unrecognized because there has been no effort to codify it or to hold international actors accountable for their actions under the name of “development” but without actual accordance with international development law. After some 60 years, this article represents an effort to change that.⁹

Nearly 30 years ago as a younger man, believing that “international development” offered an opportunity for humanitarian work in furtherance of universal objectives and combining studies of several social and natural sciences with professional skills of law and business, the author of this article began assignments with various “international donors.” What came as a surprise to someone trained in law, business, and professionalism was this author’s recognition that almost none of the “development” projects that he worked on or learned about in practice actually

¹ See Organization of Economic Cooperation and Development (OECD), *Development Aid Stable in 2014 but Flows to Poorest Countries Still Falling*, (Apr. 8, 2105) (discussing net official development (ODA) from DAC members totaled USD \$125.2 billion), <http://www.oecd.org/dac/stats/development-aid-stable-in-2014-but-flows-to-poorest-countries-still-falling.htm>.

² See U.N. Millennium Declaration, U.N. GAOR, (Sept. 8, 2000) (discussing Millenium Development Goals which ranges from having extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education), <http://www.un.org/millennium/declaration/ares552e.htm>.

³ See generally Organization of Economic Cooperation and Development (OECD), *Paris Declaration on Aid Effectiveness and the Accra Agenda for Action*, (2008), <http://www.oecd.org/dac/effectiveness/34428351.pdf>.

⁴ See generally Busan Partnership for Effective Development Cooperation, *Fourth High Level Forum on Aid Effectiveness*, GLOBAL PARTNERSHIP FOR EFFECITVE DEVELOPMENT CO-OPERATION, (Nov. 29 – Dec. 1, 2011), <http://effectivecooperation.org/resources/>.

⁵ See Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), 78 U.N.T.S 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

⁶ See *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF. 183/9 (1998), <http://legal.un.org/icc/statute/rome-fra.htm>.

⁷ See generally Universal Declaration of Human Rights, U.N. GAOR, (Dec. 10, 1948), <http://www.un.org/en/universal-declaration-human-rights/>.

⁸ See generally David Lempert, *Universal Development Goals for This Millennium*, 12 CONSILIENCE J. 1 (2014), <https://consiliencejournal.org/article/universal-development-goals-for-this-millennium/>.

⁹ Elsewhere, I have described the current use of terminology in international interventions as a kind of Orwellian “newspeak”. See David Lempert, *The ‘Newspak’ Dictionary of ‘Development’: Deconstructing Development Discourse and Calling Things by their True Names*, 6 TRANSCIENCE: J. OF GLOBAL STUD. 2 (2015), <http://www.transcience-journal.org/>.

followed international or domestic law, or adhered to business principles of creating and protecting wealth, or followed established measures in the social sciences for addressing social problems at their root causes. The author found himself continually asked by superiors at major international organizations and aid agencies as well as their contractors (and once directly in these words) to “take off your hat as a lawyer and social scientist [protecting peoples] and just work as if this is a business,” to violate law and professional codes.

When first approached by consulting firms in Washington, D.C. to join them on projects, the words of advice this author received were, “The measure of a good consultant is not on any quality standards or results but only on whether more contracts follow,” and “When asked if you can take on a task in an area where you have no experience or skills, you shouldn’t answer on the basis of your fear of doing harm. You should just say, ‘Yes’, and take the work.” This was the ideology of business profit with no reference to professional, legal, or moral standards.

Perhaps little of this comes as a shock today. Indeed, if one examines the management of international donor organizations, it is clear that they do not hire lawyers or social scientists. The author’s repeated experience with such administrators is that they routinely avoid raising questions about international and domestic law, ethics, or professionalism. The amount of law breaking and violation that this author has witnessed in the name of “international development” and “helping the poor”—documented in many specific areas referenced in this article—can be described as routinely including cultural genocide and crimes against humanity that are never acknowledged, falsification of evaluations, cover-ups of theft and abuses and many forms of direct and indirect fraud and abuse.

While almost all of the literature in the field of international development considers abuses as either policy errors or problems of specific ideologies like “global capitalism” or “globalization” or of specific institutions, in ways that make such abuses seem either inevitable or just “mistakes” that better “awareness” and education can correct, few raise the question of whether the violations are in fact lawbreaking by people who have both knowledge and intent that they are violating specific and clear standards, generally with the belief that none of these standards will be enforced and that they will suffer no consequences.¹⁰

In early encounters with pressures to violate what this author recognized as clear laws and professional ethics codes to which he was sworn, this author made efforts as required by his Code of Professional Responsibility and by law to report on the violations,¹¹ to seek to extend

¹⁰ As a social scientist, I view many of the terms used in current political debates as containing unexamined assumptions that reflect ideologies. For example, there are assumptions that existing policies, which are viewed as failures, are the result of mistakes rather than systematic failures of social and cultural systems. Throughout this article, I highlight some of these terms by putting them in quotation marks. In my work, I test many of the assumptions about societies and political choices and often reverse current assumptions about causality. See David Lempert, *The Logic of Cultural Suicide and Application to Contemporary Environmental Strategies: Drawing from Models in Psychology and Biology*, 8 J. OF GLOBALIZATION STUD. 1, 120-139, (2017).

¹¹ See David Lempert, *Holding the Powers that Be Accountable to Our Ethics Code to Protect Our Integrity and the Peoples We Serve*, 24 HUM. RTS. 22 (1997), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/huri24&div=27&id=&page=>.

coverage of professional ethics codes, and to press challenges to organizations in attempts to improve enforcement of the law.¹²

More recently, this author began to codify violations in specific categories and to seek professional backing through peer review to confirm the standards. The initiative began in 2008. In *Policy Innovations*, an online journal, this author called on professional colleagues and citizens in both wealthy and developing nations (that are recipients of aid) to join in forming a new type of non-governmental organization for the express purpose of holding international donors and NGOs accountable to international laws and professional standards and to work to codify those standards so that they would be easy to use to hold organizations accountable.¹³ The author then began to slowly define the definitions of legal development as existing in international laws and documents, the professional requirements of organizations in the area, and the standards for specific categories of interventions. Although the generation of these “indicators” to codify practices by defining their basic elements in ways that can be used to monitor compliance was not presented systematically, this body of some 15 indicators, refereed by various professions as well as by legal scholars, now comprises a consistent body of work.

In fact, these amount to the equivalent of a legal treatise in the area of international development law—where none currently exists—codifying the principles, actors, and activities. While most other scholars writing in this area have largely offered prescriptions or critiques, this body of standards now presents the very legal, professional, and measurement tools for compliance and accountability in the field of international development and for extending the existing international legal consensus (that is often disregarded, forgotten, or claimed not exist) to a consensus of legally enforceable standards.

¹² In 1998, I was on a “legal reform” project in Kazakhstan that was designed by the World Bank with the money given to the country’s Ministry of Justice to “promote ownership”. While I was there, I was immediately asked for kickbacks and to use my name to approve the very loan projects that the World Bank had defined as in violation of its rules. The project was described as not recognizing “rule of law” and already in violation of “insider dealing” rules of the Bank. In fact, after I prepared a professional and legal set of loan proposals, the Government of Kazakhstan refused payment until I agreed to endorse the corruption. Instead, I successfully assisted with the modification of United States’ laws to require more insight and to avoid the obstacles from the World Bank’s claims of immunity and United States courts that refused to allow suit. The new legislation included: Public Law 109-102, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2005, Amending Section 599 B, Title XV of the International Financial Institutions Act (22 U.S.C. 262 o. et. seq.); and The Consolidated Appropriations Act of 2012, Section 7082 (a) Reforms, to ensure enforcement.

Later in 2009, I tested the right of a U.S. citizen to bring a suit against the United Nations Development Programme (UNDP) and the U.S. Ambassador to the United Nations as means to protect the rights of UNDP consultants against breach of contract, fraud and harassment by the UNDP; challenge the UNDP’s blanket use of immunity when committing wrong; and challenge the decision by United States government and official to exert no oversight over U.N. corruption. *Lempert v. Power*, 618 F. App’x 3 (D.C. Cir. 2015)(suggests that due process rights of United States citizens do not exist in contracts with international organizations, despite the exercise of state action and protections of the 5th Amendment). The result of this case has also been a change in the law that now creates a right under due process for citizens in contracts with the U.N., specifically where the breach calls attention to legal violations by the U.N. and falls under the umbrella of whistleblowing. The relevant law is: Pub. L. No. 112-74—DEC. 23, 2011 125 STAT. 1241, The Consolidated Appropriations Act of 2012 and The Consolidated Appropriations Act of 2014, Section 7048 (a) Transparency and Accountability.

¹³ See David Lempert, *Why We Need an International Development Donor Monitor*, POL’Y INNOVATIONS, (Jan. 2008), http://www.policyinnovations.org/ideas/policy_library/data/01464.

While the author's 15 indicators of legal compliance are presented elsewhere and referenced in this article, what is new in this article is how these standards (and additional infrastructure alongside it) can fit together in the form of an enforceable body of law. Alongside these, this article presents the international and domestic laws that already exist as the enforcement framework for this codification of international development law.

This article differs from a complementary piece, written in parallel, that presents the social science implications of these measures and what their use reveals about international organizations and their actual agendas in "development" that deny professionalism and international law.¹⁴ That piece also presents a shorthand litmus test for evaluating very quickly whether organizations and projects are seeking to follow international laws or are promoting hidden agendas.

This article examines, first, the existing treatises in areas of international interventions and shows how this work fills an existing gap while also suggesting why this gap has not been filled before. Second, it describes the methodology used for determining the legal and professional standards of international development that exist under international law and practice. It then offers an "Outline of This Treatise" that essentially organizes published standards and infrastructure in a way that lawyers will recognize as a legal codification with definitions, actors (parties), legal requirements, areas of interventions, professional infrastructure and the framework of legal enforcement. Because these materials are available elsewhere and almost entirely in open access journals on the Internet so that they are readily available to professionals and the public, there is no need to describe them in detail here, but they are briefly summarized in a following section. The article then presents, in detail, the legal enforcement framework for this code, under both international and domestic laws. Finally, the article discusses the paradoxes that exist today in international law with new treaties being written in ways that conflict with or seek to undermine existing laws and consensus, with advice on how the original laws can override the recent attempts at distortion.

BACKGROUND: THE LACK OF A CURRENT TREATISE DESPITE EXISTENCE OF LAW

It seems surprising that in almost every area of international activity today, ranging from business to impacts on the environment, one can find treatises codifying a body of international law, while in the area of "development," which incorporates the essential ideals of what constitutes "progress" and the future direction of humanity, there seems to be silence. Perhaps this is by design given that much of the area of "development studies" itself offers little in the way of actual direction, vision, or alternatives.¹⁵

In almost every area of human action and study that crosses international borders one can find detailed explanations of the science, technology, and social science of the interactions, as well as an associated body of law that regulates it. In the area of the environment, for example, not only

¹⁴ See David Lempert, *We Now Have the Tools and Infrastructure to Hold Donors and NGOs in International Development to Their Own Standards*, (forthcoming).

¹⁵ See David Lempert, *Popular Fiction and Development Studies: Hidden Truths and Thought Experiments in Developing Societies*, 30 J. DEVELOPING SOCIETIES, 389 (2014); David Lempert, *What is Development? What is Progress?: Contributions of Utopian Thinking*, 30 J. DEVELOPING SOCIETIES, 223 (2014).

have law schools had courses and law journals on environmental law for some five decades, but expanding areas of study like “environmental policy” now routinely include courses and units on environmental law. One can easily find published treaties on international environmental law.¹⁶ One finds similar patterns for studies of international finance and investment, migration and citizenship, and human rights.

While there have been entire programs devoted to international development studies (and now programs in “critical development studies”) that offer degrees up to the Ph.D. level for 30 years, and international development is recognized as a subset of several disciplines including economics, anthropology, and cross disciplinary fields like international studies, it is rare to find any courses in international development law or journals in the field,¹⁷ let alone a treatise or textbook.

Although one textbook appeared in 2009 with a title suggesting that it was a treatise on international development law, the actual focus and list of topics in the book helps explain what has really been happening in the field that has replaced and diverted attention from international development law. Rumu Sarkar’s *International Development Law: Rule of Law, Human Rights, and Global Finance* is really a treatise on foreign investment law.¹⁸ As “development” itself has been redefined in the past several years to promote globalization and neocolonialism rather than the principles of development that are established under international law, so too has development law come to be reinvented as international investment and finance law under a new name.¹⁹ Indeed, Sarkar’s book is really about international investment law, with “history and theory” in Part I serving as a springboard for focusing on the law of global financial systems.

The lack of a treatise is not because there is no recognition that there are laws in international development and that actors need to be held accountable to them. This author’s experience in being asked to continually violate the law in development projects by almost every major donor, does not appear to be anything unique or secret. The only thing unusual about it may be that the author has sought to document it with reference to legality and confront it rather than agree to the

¹⁶ See generally Patricia Birnie, Allen Boyle & Catherine Redgwell, *International Law and the Environment*, 8 J. ENVTL. L. 204, 206 (1996); see also PHILLIPPE SANDS & JACQUELINE PEEL, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW*, (Cambridge U. Press, 3d ed. 2003).

¹⁷ If there are courses, they appear to be ad hoc, such as one at Columbia University Law School. The only journals in the field are the Yale Human Rights, Development Law Journal, which focuses more on human rights, and two journals of Sustainable Development Law and Policy: one at McGill University in Canada and one at American University which focuses more on sustainable development policy in short pieces. The Law, Global Justice and Social Development in Britain that irregularly appears only occasionally deals with development issues. A journal in India at Gujarat, GNLU Law Development and Politics Journal, also partly deals with such topics.

¹⁸ See RUMU SARKAR, *INTERNATIONAL DEVELOPMENT LAW: RULE OF LAW, HUMAN RIGHTS, AND GLOBAL FINANCE*, xi (Oxford U. Press 2009). According to Sarkar’s capsule autobiography, Rumu Sarkar taught a course in Development Law and International Finance at Georgetown University Law Center. In addition, Sarkar published this book with a title that defines *development law* as “a new field of legal studies” that is essentially an arm of foreign investment. Her book is based on an earlier study founded on economic measures. Since 2016, Sarkar is the General Counsel of Millennium Partners: a global investment firm that she describes as an “international development consulting firm”.

¹⁹ See generally David Lempert, *A Vision for Development and a Tool for International Comparisons*, 16 J. FOR ECON. & SOC. POL’Y 1 (2014), <http://epubs.scu.edu.au/jesp/vol16/iss2/3/>; see also David Lempert, *The ‘Newspeak’ Dictionary of ‘Development’: Deconstructing Development Discourse and Calling Things by their True Names*, 6 TRANSCIENCE: J. GLOBAL STUD. 38, (2015), <http://www.transciencejournal.org/>.

abuses out of self-interest and be part of the system, and that journals have devoted space to it. A recent expose by the International Consortium of Investigative Journalists, for example, revealed how law-breaking at the World Bank is in fact institutionalized in its procedures with no oversight or enforcement.²⁰ In that study, “Evicted and Abandoned: How the World Bank Broke its Promise to Protect the Poor,” the authors note that the World Bank “has regularly failed to enforce its rules, with devastating consequences for some of the poorest and most vulnerable people on the planet ... sending a signal that borrowers have little to fear if they violate the bank’s rules From 2004 to 2013, the bank’s projects physically or economically displaced an estimated 3.4 million people, forcing them from their homes, taking their land or damaging their livelihoods.” The same report notes that even United Nations human rights officials challenged the World Bank and the international system to recognize that “the growing ability of borrowers [(i.e., country governments working with international finance)] to access other financing has spurred the bank to join a ‘race to the bottom’ and push its standards for protecting people even lower.”

Why is it that, while other policy disciplines, such as environmental policy, are clearly linked with law and codification, scholarship in international development studies across almost all disciplines has uniformly avoided codifying and applying sets of international legal and professional standards? Why is it that these disciplines have focused, instead, on endless discussions of the “philosophy of development” or on “critical development” rather than on law and measures?

One answer may be that the interests other disciplines represent are clearly defined. Environmental policy, human rights (in part, though there are conflicts and distortions in the focus at the levels of collective/cultural rights and individual rights), and migration have specific stakeholders. Moreover, there are often alignments between long-term and short-term interests or clarity of focus. By contrast, “development” interventions have multiple stakeholders with competing short-term and long-term interests that have been protected and hidden by ideologies such as “growth”, superiority of certain technologies and the power they bring, and “charity”.

If the discipline of economics now serves an ideology that is of interest to and funded by specific elites, even in violation of international law, the related areas of “development” studies that also pit the short-term interests of international banks and multi-national firms (in cheap labor, product sales including weapons sales, and extraction of cheap raw materials) against the long-term survival of relatively powerless and disrupted communities are likely co-opted by and co-dependent on the very interests that actually undermine “development” and the law. It would not, therefore, be surprising that universities largely serve to prepare students to work for the very organizations and agendas that are in violation of international law, are funded by the gains of such organizations, and hire faculty who work for them. At the same time, it would not be surprising that in a financial environment with embedded conflicts of interest that the “critics” of development limit themselves simply to philosophy, definitions, and distractions rather than direct measurement, legal codification, and confrontation. Rather than uphold law, social

²⁰ See Sasha Chavkin et. al, *Evicted and Abandoned: How the World Bank Broke its Promise to Protect the Poor*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (2015), <http://projects.huffingtonpost.com/worldbank-evicted-abandoned>.

science, and measures of human survival and progress, what they largely teach is the ability to rationalize and avoid confrontation.

THE METHODOLOGY USED TO DEVELOP THE TREATISE

The methodology for extracting the basic principles from the body of treaties is one regularly used by lawyers and judges when trying to find the precepts underlying laws and is referred to as *statutory analysis*. The methodology is relatively straightforward and simply requires taking the existing body of enforceable international laws, supplemented by other documents representing international consensus that are not yet enforceable but that elaborate specific principles (such as international “declarations” and “conventions”), and elucidating the underlying logic of definitions, parties, and actions and their identifying elements. The legal sources for these codifications include the major body of core international human rights treaties and declarations supplemented by professional interpretations.²¹

Though bodies drafting laws do not always fully define the theories and principles that they use when they reach a consensus and draft a law or a group of laws, legal scholars and judges routinely use laws to reconstruct the underlying principles.²² In fact, it is similar to what social scientists also do in deconstructing texts to find the guiding logic underlying them. The empirical data used to explore human behavior and draw conclusions comes from the written texts themselves.

By extricating the principles of international development law and choosing between what seem to be contradictory or conflicting objectives over time, which has seemed to allow for some recent declarations (like the United Nations Millennium Declaration, 2000 and various other recent agreements that seem to promote ideologies of “trade” or “growth” rather than community or individual rights) to trump earlier laws, the hierarchy of principles is relatively easy to determine. This is why the determinations made by this author in asserting the principles that are part of the international consensus (and particularly the post-World War II consensus, when

²¹ See U.N. Charter 59 Stat. 1031 (1945); Geneva Convention IV relative to Protection of Civilian Persons in Time of War, Aug. 12, 1949, <https://www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5?OpenDocument>; Universal Declaration of Human Rights, G.A. Res. 217 (III), (Dec. 10, 1948). <http://www.un.org/en/universal-declaration-human-rights/>; International Covenant on Civil and Political Rights, G.A. Res. 2200 A (XXI) (Dec. 16, 1966), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>; International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 A (XXI), (Dec. 16, 1966), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>; Convention on the Rights of the Child, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (Nov. 20, 1989) <http://www.un.org/documents/ga/res/44/a44r025.htm>; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1249 U.N.T.S. 13 (1979), <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>; United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, (Sept. 13, 2007), http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf; Declaration on the Rights of Persons Belonging to National or Ethnic Religious and Linguistic Minorities, G.A. 47/135, U.N. Doc. A/RES/47/135 (Dec. 18, 1992), <http://www.un.org/documents/ga/res/47/a47r135.htm>; United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151.26 (1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>; and Convention on the Prevention and Punishment of the Crime of Genocide (Dec. 9, 1948) 78 U.N.T.S. 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

²² See RUPERT CROSS, *STATUTORY INTERPRETATION* (Oxford U. Press 1995); F. A. R. BENNION, *UNDERSTANDING COMMON LAW LEGISLATION: DRAFTING AND INTERPRETATION* (Oxford U. Press 2009); and JABEZ GRIDLEY SUTHERLAND, *STATUTES AND STATUTORY CONSTRUCTION* (Nabu Press 2010).

long-term security and survival concerns were paramount in the minds of international actors given the experience of the horrors of World War II) have been recognized in processes of scholarly review.

Long-term objectives, consistent with human survival and the consensus goals of the international system for peace and security are prioritized over short-term goals. Thus, long-term sustainability and cultural survival are prioritized over short-term “growth”, consistent with principles of protecting assets and wealth over short-term consumption or income, in terms of a financial calculus. The basis for this analysis also relies on professional principles of administration in each sector of the codification.²³

Systems of rights also exist in priority frameworks. Individual rights must be viewed alongside cultural/community rights without one level eliminating the other. Because cultural rights, unlike individual rights (because individuals cannot survive without being part of a functioning community), are linked with long-term human sustainability and survival, the biological and social principle prioritizes cultural rights just as international law has prioritized them in the Genocide Convention.²⁴

The frameworks of principles that have been elucidated by this author in the areas of international development law have been presented in articles in the form of “scoring indicators” for measurements of compliance, but the terminology of “indicators” and “scoring” are just another way of expressing the “elements of compliance” that constitute satisfaction of definitions and of law.

THE OUTLINE OF THIS TREATISE

The outline of this codification of international development law follows the standard organization of laws and treatises in five sequential categories: Definitions, Actors (Parties) and Legal Requirements, Areas of Interventions, Professional Infrastructure, and the Framework of Legal Enforcement. This basic framework, which can be expanded with details of additional actors, interventions, and infrastructure, is outlined below with references to full elaborations that can be found in open access journals on the Internet where they are readily available to professionals and the public. Some examples of possible additions that show how the treatise can

²³ The full list of works consulted is available within the scholarly articles presenting the individual indicators that are referenced in this article. A short list of some of these sources include the following: See ISRAEL UNTERMAN & RICHARD H. DAVIS, *STRATEGIC MANAGEMENT OF NOT-FOR-PROFIT ORGANIZATIONS* (New York: CBS Educational and Professional Publishing, 1984); See ROBERT SEIDMAN, ANNE SEIDMAN & NALIN ABEYESEKERE, *LEGISLATIVE DRAFTING FOR DEMOCRATIC SOCIAL CHANGE: A MANUAL FOR DRAFTERS* (Kluwer Law International, 2000); See RAY H. GARRISON, ERIC NOREEN, & PETER C. BREWER, *MANAGERIAL ACCOUNTING* (McGraw Hill/Irwin, 10th ed. 2005); See MICHAEL EDWARDS & DAVID HULME, *THE EARTHSCAN READER ON NGO MANAGEMENT* (UK: Earthscan Publications Ltd., 2002); Paul Ehrlich & John Holdren, *Impact of population growth*. J. STOR 1212 (1971); See CLIVE R. EMMANUEL, DAVID T. OTLEY, & KENNETH A. MERCHANT, *ACCOUNTING FOR MANAGEMENT CONTROL* (Chapman & Hall, 1990); See JOHN M. BRYSON, *STRATEGIC PLANNING FOR PUBLIC AND NONPROFIT ORGANIZATIONS: A GUIDE TO STRENGTHENING AND SUSTAINING ORGANIZATIONAL ACHIEVEMENT* (San Francisco: Jossey-Bass Publishers 1988); See B.W. BARRY, *STRATEGIC PLANNING WORKBOOK FOR NONPROFIT ORGANIZATIONS* (Amherst H. Wilder Foundation 1984).

²⁴ See Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), 78 U.N.T.S 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

expand over time are shown in brackets, though the concerns they raise are already included in other analyses in the category. In the cases where there are brackets there is generally silence in international documents. Though the law can often be imputed based on other categories, many of these areas are gaps in the law. References to where one can find the details are presented within the outline.

I. Definitions of “Development” Interventions and Screening for Legality:

- ☞ Development²⁵
 - Universal Measures of Development (the “UDGs”)²⁶
- ☞ [Relief/ Charity]
- ☞ Sovereignty²⁷

II. Actors (Parties) in “International Development” Interventions and Legal Requirements for Such Actors:

- A. Actors (Intervening Parties and in Roles as Recipients)
 - ☞ Governments²⁸
 - ☞ International Non-Governmental Organizations (INGOs) and Non-Governmental Organizations (NGOs)²⁹
 - ☞ [Consulting Firms and Contractors]
 - ☞ [Business Investors]
- B. Legal Oversight Requirements
 - ☞ Evaluation³⁰
 - ☞ Approaches to Accountability³¹

III. Areas of International Development Interventions and Tests for Compliance:

- A. General Litmus Test for All Types of Interventions³²
- B. Special Categories of Interventions
 - ☞ Sustainable Development and Cultural Protection³³

²⁵ See generally David Lempert, *A Vision for Development and a Tool for International Comparisons*, 16 J. for ECON. & SOC. POL'Y, 1(2014), <http://epubs.scu.edu.au/jesp/vol16/iss2/3>.

²⁶ See generally David Lempert, *Universal Development Goals for This Millennium*, 12 CONSILIENCE J. 1, (2014), <https://consiliencejournal.org/article/universal-development-goals-for-this-millennium/>.

²⁷ See generally David Lempert, *A Dependency in Development Indicator for NGOs and International Organizations*, 9 GLOBAL JURIST, 1 (2009), <https://www.degruyter.com/downloadpdf/j/gj.2009.9.2/gj.2009.9.2.1296/gj.2009.9.2.1296.pdf>.

²⁸ David Lempert, *Distinguishing Development Agencies from Colonial Bureaus Exercising Soft Power: Reforming Imperial Economics and its Administration*, 7 J. GLOBALIZATION STUD. 87 (2016).

²⁹ See David Lempert, *A Screening Indicator for Holding International Non-Governmental Organizations (INGOs) to Standards of Professionalism and Accountability*, 7 J. SOC. RES. AND POL'Y 1 (2017).

³⁰ See David Lempert, *Why Government and NGO Projects Fail Despite ‘Evaluations: An Indicator to Measure whether Evaluation Systems Incorporate the Rules of Good Governance*, 6 J. MULTIDISCIPLINARY EVALUATION 58 (2009), http://journals.sfu.ca/jmde/index.php/jmde_1/article/view/243/247.

³¹ See Brooks Duncan, *Convergence Theory Revisited: Kafkaesque Global Bureaucracies of Our Times: With an Example of a Tool for Measuring Whether Approaches to Accountability are Real or Sham*, 13 SOC. EVOLUTION & HIST. 67 (2014), <http://www.sociostudies.org/journal/articles/242735/>.

³² See David Lempert, *We Now Have the Tools and Infrastructure to Hold Donors and NGOs in International Development to Their Own Standards*, (forthcoming).

³³ See David Lempert & Hue Nhu Nguyen, *A Sustainable Development Indicator for NGOs and International Organizations*, INT'L J. SUSTAINABLE SOCIETIES, (2008), <http://sspp.proquest.com/archives/vol7iss1/1006->

- ☞ Poverty Reduction³⁴
 - Private Sector Initiatives³⁵
 - Tourism³⁶
 - [Other Sectors: Health, Disaster Management]
- ☞ Democracy and Governance³⁷
 - Human Rights Education³⁸
 - Gender Equality³⁹
 - Decentralization⁴⁰
 - Government Administration (Functional Analysis)⁴¹
- ☞ [Education and Socialization]
- ☞ [Peace Building/Tolerance]
- C. Cross Cutting Modalities of Interventions
 - Capacity Building⁴²
 - Action Plans and Agenda Setting⁴³

IV. Professional Infrastructure to Promote Legality of International Development Interventions:

A. Professional Standards Assurance

031.lempert.html; David Lempert & Hue Nhu Nguyen, *Accounting for Threats to Sustainable Development: An Indicator for Holding NGOs and International Organizations Accountable to Creating the Context for Sustainable Development*, 17 CONSILIENCE 220 (2017), <http://consilien.cejournal.org/article/accounting-for-threats-to-sustainable-development-an-indicator-for-holding-ngos-and-international-organizations-accountable-to-creating-the-context-for-sustainable-development/>.

³⁴ See David Lempert, *A Poverty Reduction Accountability Indicator for International Organizations and NGOs*, WARWICK (2015), <https://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2015-1/lempert/lembert.pdf>.

³⁵ See David Lempert, *Indicator of Effectiveness of "Income Generation" and "Sustainable Business Initiatives" in International Development*, 2 ECONOMOLOGY J. 28-90 (2012), file:///C:/Users/LAPTOP88/Downloads/EJ_Y2V2.pdf.

³⁶ See David Lempert, *A Sustainable (Culture Protecting) Tourism Indicator for Government Supported Cultural and Environmental Heritage Tourism Initiatives*, 1 ASIAN J. OF TOURISM RESEARCH 105-47 (2017), <http://asiantourismresearch.cmu.ac.th/Vol1%20No.2/Chapter4.pdf>.

³⁷ See David Lempert, *A Democracy Building Development Project Indicator for NGOs and International Organizations*, 11 GLOBAL JURIST 1, 4 (2011), <http://www.degruyter.com/view/j/gj.2011.11.issue-2/1934-2640.1385/1934-2640.1385.xml?format=INT>.

³⁸ See David Lempert, *A Human Rights Education Project Indicator for NGOs and International Organizations*, 3 INTERAMERICAN J. EDUC. FOR DEMOCRACY 46 (2010), <http://scholarworks.iu.edu/journals/index.php/ried/article/view/617/713>.

³⁹ See David Lempert, *An Accountability Indicator for Gender Equality Projects of NGOs and International Organizations*, 2 J. HUM. RTS. COMMONWEALTH 32 (2016), <http://journals.sas.ac.uk/jhrc/article/view/2263/2190>.

⁴⁰ See David Lempert, *A Decentralization in Governance Project Screening Indicator for NGOs and International Organizations*, 7 TRANSCIENCE: J. GLOBAL STUD. 1 (2016), http://www2.huerlin.de/transcience/vol7_no1_1_35.pdf.

⁴¹ David Lempert, *Distinguishing Development Agencies from Colonial Bureaus Exercising Soft Power: Reforming Imperial Economics and its Administration*, 7 J. GLOBALIZATION STUD. 87 (2016).

⁴² See David Lempert, *A Quick Indicator of Effectiveness of "Capacity Building Projects" of NGOs and International Organizations*, 4 EUR. J. GOV'T & ECON. 155 (2015), <http://www.ejge.org/index.php/ejge/article/view/63/59>.

⁴³ See David Lempert, *Action Plans, Declarations, and Other Agenda Setting Documents in International Development: An Indicator to Assure Professionalism*, 3 MOMENTUM QUARTERLY 58 (2014), <https://www.momentum-quarterly.org/index.php/momentum/article/view/77>.

- ☞ Ethics Codes⁴⁴
- ☞ [Licensing and Unionization]
- B. Monitoring and Compliance of Education of International Development Professionals
 - ☞ How to Assure Disciplines are Compliant with International Law⁴⁵
 - ☞ Approaches to Democratic Experiential Education⁴⁶
- C. Systematizing Areas of Measurement for Legal Enforcement
 - ☞ Cultural Red Book for Measures of Cultural Viability⁴⁷
 - ☞ NGO Monitoring and Legal Action⁴⁸
- V. Legal Enforcement Framework in International Development:
 - A. International Law (this article)
 - B. Domestic Law (this article)
 - C. Application of Specific Criminal Laws to Areas of International Development Interventions

SUMMARY OF THE DEFINITIONS, ACTORS, AREAS OF INTERVENTIONS, APPLICATIONS AND INFRASTRUCTURE THAT ARE CODIFIED IN THE TREATISE OF INTERNATIONAL DEVELOPMENT LAW

The codification of international development law follows the same logic of other codifications. Below are summaries of the first four sections with descriptions.

I. Definitions of “Development” Interventions and Screening for Legality: The international consensus is, in fact, quite clear on the components of “development” and how “development” differs from “poverty reduction” (which can partly be considered a subset of “development” where it is defined as something other than just increasing productivity and consumption, to meet goals of equity within certain societies) and from relief (or charity). The international system is also quite clear that “development” is to promote sovereignty and empower individuals and not to create any forms of dependency or interdependency. These can be examined in turn.

☞ Development:⁴⁹ The international community recognizes 13 total elements of “development” in four different categories. These are the areas of individual development: physical (body) development, mental/intellectual development in culturally appropriate ways, spiritual development (appreciation of the natural world), moral development (appreciation of others), social development (appreciation of one’s community), and cultural development (appreciation of one’s cultural identity); societal level development: social equity /social progress/ equal

⁴⁴ David Lempert, *Holding the Powers that Be Accountable to Our Ethics Code to Protect Our Integrity and the Peoples We Serve*, 24 HUM. RTG. 22 (1997).

⁴⁵ See David Lempert, *Is Economics in Violation of International Law?: Remaking Economics as a Social Science*, Catalyst: A Social Justice Forum, (forthcoming 2018).

⁴⁶ DAVID LEMPert et. al., *ESCAPE FROM IVORY TOWER: STUDENT ADVENTURES IN DEMOCRATIC EDUCATION* (Jossey-Bass 1995).

⁴⁷ See David Lempert, *Why We Need a Cultural Red Book for Endangered Cultures, NOW: How Social Scientist and Lawyers/Rights Activities Need to Join Forces*, 32 INT’L J. MINORITY & GROUP RTS 511 (2010).

⁴⁸ David Lemert, *Forming a Donor monitor NGO*, GLOBAL POL’Y FORUM, Jan. 16, 2008, <https://www.globalpolicy.org/component/content/article/176/31432.html>.

⁴⁹ David Lempert, *A Vision for International Development and a Tool for Comparisons*, 16 J. ECON. & SOC. POL’Y 1 (2014).

opportunity for individuals, political equity/ equal rights for individuals, and peace/ tolerance/ demilitarization for individuals; cultural/community level development: sustainability (sovereignty) of cultures; and global development: social equity/ social progress/ equal opportunity for cultural survival and difference, political equity/ equal rights for cultures (effective federalism), and peace/ tolerance/ demilitarization for protection of cultures. These elements can easily be placed in a test of governmental and international organizational compliance. Though international “development” agencies, international “development” banks, and multi-lateral organizations — even those in the United Nations system — claim to be doing things like promoting the Millennium Development Goals, the reality is that none of them are even starting to fulfill the mission of “development” that has been established and agreed upon in the most basic international treaties. Instead of promoting the highest aspirations of humanity, international organizations are currently promoting the lowest, treating humans as animals to temporarily meet their basic animal needs without individual personality development or cultural development.

- Universal Measures of Development (the “Universal Development Goals”):⁵⁰ Given the clear international definition, it is easy to identify goals that constitute a set of “Universal Development Goals.” While the international community has created “Millennium Development Goals” and “Sustainable Development Goals,” the reality is that these do not match what are already suggested under international law as “Universal Development Goals.”

☞ [Relief/ Charity]: – There is a gap in international law regarding charity and relief and how it is defined and what is acceptable. However, much of what is missing can be imputed. It is not essential to define “relief” or “charity” and to establish specific elements for them, because anything that is an international transfer in the form of a gift to non-relatives and that does not meet the definition of “development” can be assumed to be relief or charity. The test to which it is subject is whether it violates sovereignty and cultural integrity or whether it helps restore it for a general population or a disadvantaged group. The test of “sovereignty” is one that applies both to “development” interventions and charity. Note that a number of charitable organizations now claim to be doing “development” when they do not, instead calling their work “poverty reduction”. The tests for “development” and for “sovereignty” reveal whether or not they are meeting international law, while a separate test for “poverty reduction” that incorporates these as well as other professional elements can also evaluate compliance. Legitimate development objectives for “poverty reduction” are those that bring “sustainability” as well as “equity” in ways that promote sovereignty.

☞ Sovereignty:⁵¹ There are some 14 elements that can be used to determine whether a “development” or relief transfer is protecting national, cultural and community integrity and sovereignty or whether it is buying dependency and seeking to distort internal systems as a quid pro quo for transfers to certain individuals or groups. These measures are similar to those for sustainability. The measures are easy to understand because they are analogous to that of child

⁵⁰ David Lempert, *Universal Development Goals for This Millennium*, 12 *CONSILIENCE J. SUSTAINABLE DEVELOPMENT* 1 (2014).

⁵¹ See generally David Lempert, *A Dependency in Development Indicator for NGOs and International Organizations*, 9 *GLOBAL JURIST*, 1 (2009), <https://www.degruyter.com/downloadpdf/j/gj.2009.9.2/gj.2009.9.2.1296/gj.2009.9.2.1296.pdf>.

rearing and development; whether development leads to a strong, independent and self-sustaining system or whether it builds a hierarchical and dependent relationship with the donors. Much of what is described today as “development” and “relief” actually appears to be designed to weaken sustainability, to destroy cultural differences, and to make weaker countries dependent rather than potential competitors.

II. Actors (Parties) in “International Development” Interventions and Legal Requirements for Such Actors:

A. Actors (Intervening Parties and in Roles as Recipients): Although there are some four types of actors on the side of intervention in development (who can also be the key actors in recipient countries), the only one with a role that is specific to development is that of non-governmental organizations (NGOs, and their international counterparts, international non-governmental organizations, INGOs). NGOs are chartered specifically for missions that encompass the area of “development” and given special status to operate for this mission. Thus, they can be regulated (or lose their charters) on the basis of whether they fulfill this mission. Other actors perform multiple roles and objectives that are not specific to development, and there are no specific regulations on their activities in the area of development, though there certainly could be as a way of assuring accountability. Currently, the way to hold these organizations accountable, both in their role in intervention or as recipients, is through other oversight mechanisms for those organizations, with a special focus on whether they are fulfilling the legal requirements for “development” in sections I, II-B, III, and IV of the treatise.

☞ Governments:⁵² The legitimacy of governments and their ability to participate in “development” is assumed as part of the basis of the international system. Whether or not this system changes in the future with other entities than nation-states recognized as the essential actors in the international system (cultures and aggregations of individuals based on cultural identity, for example, which might be desirable in terms of “development” or ecological niches; or multi-national corporations and militaries/paramilitaries, which might be the reality of power and decision-making, despite being in conflict with the goals of the international system and objectives of development), these are defined and assumed in the U.N. Charter.⁵³ Measures used for professionalism and legitimacy can be applied both to the agencies of government that provide international development assistance and to international organizations in the area of development (to assure that they have a legitimate and professional development mission rather than one of promoting self-interest and hegemony through colonialism/neocolonialism and imperialism) and to those domestic agencies with development functions in both donor and recipient countries (to assure that they have the mission of promoting sustainability and sovereignty for their country and individual cultures and are not violating international development laws in ways that foster internal colonialism). There are four essential elements of a test to determine whether these agencies meet the legal missions of development or are violating these laws. It is also possible to apply a simple four-element test to determine whether development agencies have appropriately distinguished development functions from other functions, such as those of disaster management (including poverty alleviation and relief). An

⁵² David Lempert, *Distinguishing Development Agencies from Colonial Bureaus Exercising Soft Power: Reforming Imperial Economics and its Administration*, 7 J. GLOBALIZATION STUD. 87 (2016).

⁵³ See U.N Charter 59 Stat.1031 (1945).

idealized system of public administration can also be used to test whether domestic government administration systems are carrying out the 13 internationally recognized aspects of development within their national public administration functions.

☞ International Non-Governmental Organizations (INGOs) and Non-Governmental Organizations (NGOs):⁵⁴ NGOs are specifically chartered for development missions and their legitimacy in asserting these missions can be measured by assessing whether they meet the requirements for receiving charters and the benefits they bring. There are some seven elements of professionalism required for NGOs (including having a clear development mission and vision, focusing on problem solving and a logic to change behaviors) and another seven elements on the spectrum of legitimacy of missions and approaches to meet international objectives.

☞ [Consulting Firms and Contractors]: Governments now typically use consulting firms and contractors in the field of “development” in order to bypass accountability and transparency requirements that are often required for government but not imposed on the “private” sector, as well as to impose pressures for violation of professional obligations and ethics that could also be more visible if activities were in the public sector.⁵⁵ Ultimately, some tests of whether these organizations are accountable to professionals who work for them to protect ethics codes and standards and are free from pressures by governments to distort this professionalism could protect the development mission, but the law currently does not hold them accountable to anything other than serving government, the interests of profit, and not knowingly violating any laws. There may be a way to hold them accountable for acts under specific projects but not in general, because they have no obligation to any mission or to specific professional standards.

☞ [Business Investors]: Businesses and Investors are international actors but are not “development” actors. Though they may offer development aid as a form of public relations, they have no “development” mission as businesses and are subject to regulation in other codifications. They are not recognized as a legitimate actor here. However, any actions they undertake that are claimed as “development” can be held to tests of compliance with international development law.

B. Legal Oversight Requirements: There are some systemic institutional requirements in the implementation of development projects that protect organizations from violations of the law and from charges of abuses and fraud. Organizations that participate in development work, using public or private funds, can be held liable to those who provide or expect benefits from those funds (the public in the donor or recipient countries and donors to NGOs) if these systems are not in place. Among such key systems are independent monitoring and evaluation to assure projects are compliant with international law and that money is spent as claimed and appropriate response procedures for investigating and responding to complaints of individuals in ways that are compliant with rights protections under international law.

⁵⁴ See David Lempert, *A Screening Indicator for Holding International Non-Governmental Organizations (INGOs) to Standards of Professionalism and Accountability*, 7 J. SOC. RES. AND POL’Y, 1 (2017), <https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbncqcnNwb25lfGd4OmE3NTYzM TU3ZTBmYjlkOA>.

⁵⁵ See David Lempert, *Why Government and NGO Projects Fail Despite ‘Evaluations’: An Indicator to Measure whether Evaluation Systems Incorporate the Rules of Good Governance*, 6 J. MULTIDISCIPLINARY EVALUATION 58 (2009), http://journals.sfu.ca/jmde/index.php/jmde_1/article/view/243/247.

☞ **Evaluation:**⁵⁶ Evaluation systems are complex and professionalism requires three dimensions: existence of a professional monitoring and control system (with seven specific elements measured by 11 factors), transparency and accountability to assure it serves a watchdog role (six elements), and insulation from political pressures (eight elements). The overall test of whether development organizations even have the ability to practice what they preach is whether they apply the basic core of professionalism, oversight, accountability, transparency and efficiency in the use of funds. Systems currently appear to be designed to insulate bureaucrats, increase bureaucratic discretion, cover up errors, hide information and serve as an advertisement for additional funds, rather than to assure good governance and results.

☞ **Approaches to Accountability:**⁵⁷ Most governmental organizations in development use ombudsperson systems, anti-fraud units, and reviews in order to respond to complaints and to present oversight processes that essentially replace direct public review or legal challenges in the courts. If these internal procedures are really valid forms of oversight and “due process” review for those who are affected by them (particularly members of the public in recipient countries but also citizens in donor countries), they also need to meet procedural standards that are recognized under international law and theories of public administration. One quick test of these procedures includes eight elements.

III. Areas of International Development Interventions and Tests for Compliance: International development interventions can be screened for legal compliance using a general quick litmus test — a test of compliance by type of intervention in some three general intervention categories (with the possibility of two others for intense scrutiny) — as well as by a number of sub-sector categories that also allow close scrutiny (four developed by the author) and by screening of the modalities used across sectors (two of those most commonly used are presented here).

A. **General Litmus Test for All Types of Interventions:**⁵⁸ Some of the key requirements for professionalism and legality in international development interventions can be highlighted and used as a quick screening test to determine whether a project is a legitimate expenditure of funds or a corrupted misuse of donor funds for other ends. An inductive test of project logic and practice can be reduced to seven key elements: existence of project objectives linked to sustainability and cultural survivability; a problem statement with root causes; risks that are outside of the control of the project rather than the root causes of behaviors that the project needs to change; link of inputs to root causes; recognition of public beneficiaries rather than “stakeholders;” an appropriate logical framework linking inputs to changes; and justification of the intervention as something the recipients cannot do on their own and need to re-establish a balance that has been disrupted.

⁵⁶ *Id.*

⁵⁷ See Brooks Duncan, *Convergence Theory Revisited: Kafkaesque Global Bureaucracies of Our Times: With an Example of a Tool for Measuring Whether Approaches to Accountability are Real or Sham*, 13 SOC. EVOLUTION & HIST. 67 (2014), <http://www.sociostudies.org/journal/articles/242735/>.

⁵⁸ See David Lempert, *We Now Have the Tools and Infrastructure to Hold Donors and NGOs in International Development to Their Own Standards*, (forthcoming).

B. Special Categories of Interventions: The number of categories for development interventions appears as if it might be potentially infinite given the various approaches and labels used by international donors and NGOs. Yet, the international consensus definition for “development” recognizes only 13 different intervention categories. To try to reconcile them and to see if development interventions can be screened for legal compliance in a set number of categories, Table 1 looks to “fit” some of the current approaches to development into categories that are used for current interventions and identifies five general categories that cover the 13 types of internationally defined development interventions, with some of the 13 including more than one category.

These general categories that appear in the table can be summarized as follows:

- Sustainable development and Cultural protection: 3 of the 13 interventions
- Poverty reduction: 2 of the 13 interventions
- Democracy and Governance: 3 of the 13 interventions
- Education and Socialization: 4 of the 13 interventions
- Peace and Tolerance: 2 of the 13 interventions

Table 1. Categories of Development Inputs that Match the Definition of “International Development” Established by the International Community**1. Individual Development Goals:**

| | <i>Overall Objectives</i> | <i>Intervention Category</i> |
|----|--|--|
| 1. | Physical (body) development: | <u>Poverty Reduction</u> |
| 2. | Mental development: | <u>[Education and Socialization]</u> |
| 3. | Spiritual (appreciation of natural world) development: | <u>[Education and Socialization]</u> |
| 4. | Moral (appreciation of others as individuals) development: | <u>[Education and Socialization]</u> |
| 5. | Social (appreciation of community) development: | <u>Democracy and Governance;</u> <u>[Education and Socialization]</u> |
| 6. | Cultural (appreciation of one’s identity) development: | <u>Sustainable Development and Cultural Protection</u> |

2. Societal Level Development Goals

| | <i>Overall Objectives</i> | <i>Intervention Category</i> |
|----|---|------------------------------------|
| 7. | Social equity/ Social progress/ Equal opportunity for individuals | <u>Poverty Reduction</u> |
| 8. | Political equity/ Equal rights for individuals: | <u>Democracy and Governance</u> |
| 9. | Peace/ Tolerance/ De-militarization for individuals: | <u>[Peace Building/ Tolerance]</u> |

3. Cultural/ Community Level Goals

| | <i>Overall Objectives</i> | <i>Intervention Category</i> |
|-----|--|--|
| 10. | Sustainability/ (sovereignty) of cultures: | <u>Sustainable Development and Cultural Protection</u> |

4. Global Development Goals

| | <i>Overall Objectives</i> | <i>Intervention Category</i> |
|-----|---|--|
| 11. | Social equity/ Social progress/ Equal opportunity of cultures: | <u>Sustainable Development and Cultural Protection</u> |
| 12. | Political equity/ Equal rights for cultures: | <u>Democracy and Governance</u> |
| 13. | Peace/ Tolerance/ De-militarization for protection of cultures: | <u>[Peace Building/ Tolerance]</u> |

Two of the education categories — social development and cultural development — have overlaps because governance and cultural sustainability also have strong educational components.

The elements of these categories and of some recognized subcategories of interventions are described below.

☞ Sustainable Development and Cultural Protection:⁵⁹ There are a mix of nine legal and professional elements that are internationally recognized as the basis of sustainable development and cultural protection. The standards come from the Rio Declaration⁶⁰ and the professional definitions come from ecology, anthropology, law or sustainability and survival of cultures and ecosystems. They also incorporate business principles that any business would use to measure value: increase or maintenance of assets on a per capita basis rather than on sales or profits, as those figures do not measure wealth. In recognition that the context in which governments set policy are also influenced by the international context, there are also a set of measures of the threats to sustainable development created by outside countries. There are eight elements to consider in measuring these risks.

☞ Poverty Reduction:⁶¹ There are 12 elements to effective poverty reduction, meaning poverty reduction that meets the goals of sustainable long-term reduction (rather than just short-term productivity increases that treat systems) and that can also promote long-term equity. Appropriate poverty reduction addresses key aspects of individual and social development through the achievement of long-term, sustainable absolute poverty reduction (to assure “physical development”) and reducing economic inequality. A test for compliance with these elements distinguishes between “aid” under the name of “poverty reduction” that is not intended to create sustainability, long-term poverty reduction, or equity at all but is designed to treat symptoms, absorb cultures, and create neocolonial dependency in a global system where the poor are forced to compete against each other everywhere (most current international interventions) and aid that focuses on root causes of imbalance and inequity with a focus on cultural protection and institutional change.

Most current “development” projects are limited to a focus on poverty reduction (and, generally, only to absolute poverty reduction rather than equality). There are multiple approaches in several categories. A common approach is to work through the private sector, which introduces several

⁵⁹ See David Lempert & Hue Nhu Nguyen, *A Sustainable Development Indicator for NGOs and International Organizations*, INT’L J. SUSTAINABLE SOCIETIES, (2008), http://sspp.proquest.com/archive_s/vol7iss1/1006-031.lempert.html; David Lempert & Hue Nhu Nguyen, *Accounting for Threats to Sustainable Development: An Indicator for Holding NGOs and International Organizations Accountable to Creating the Context for Sustainable Development*, 17 CONSILIENCE (2017), <http://consiliencejournal.org/article/accounting-for-threats-to-sustainable-development-an-indicator-for-holding-ngos-and-international-organizations-accountable-to-creating-the-context-for-sustainable-development/>.

⁶⁰ See United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151.26 (1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

⁶¹ See David Lempert, *A Poverty Reduction Accountability Indicator for International Organizations and NGOs*, WARWICK (2015), <https://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2015-1/lempert/lempert.pdf>.

competing agendas that can undermine development, as well as to work in particular sectors such as health. It is possible but not necessary to list additional specialized elements for accountability of these interventions as noted below.

- Private Sector Initiatives:⁶² There are many current development interventions that are focused on “income generation,” “productivity,” and “market-based” strategies that are claimed to reduce poverty. A more specialized list of elements than that for poverty reduction can distinguish both whether these projects meet the legal goals of poverty reduction and whether they are professionally competent market interventions that do not distort markets or government functions. Inputs ranging from small business training and support and small credit projects to trade promotion, privatization, and value chain analysis can be subject to professional standards in two categories: whether they represent an appropriate government function that offers public safeguards in the context of sustainable development (14 elements) and whether they meet professional standards of business for an intervention that addresses a market imperfection and correctly addresses the services and institutions that need to be repaired as well as whether it effectively promotes sustainable, competitive businesses and industries (12 elements). Given the complex professional requirements for understanding business operations, markets, and their appropriateness in each setting, the number of elements here is nearly double that of other interventions. Applying these elements to current projects unmask those organizations that simply throw money at an ideology — that of the “market” — as well as those that are acting as modern forms of predatory colonial businesses by stealing resources, breaking local economies, and putting people to work producing for foreign interests, rather than actually correcting market failures and promoting sustainable local economies.

- Sustainable Tourism:⁶³ Interventions in particular economic sectors can also be evaluated with individual indicators that are tailored to the sector. Tourism is one of the fastest growing economic sectors in many developing countries and it is also one that, ironically, is the most at risk, with development often destroying heritage, culture, and environment. An eight-element test can easily help to distinguish between colonial, unsustainable approaches to tourism and those that are truly integrated with international goals of cultural and environmental sustainability.

- [Other Sectors: Health, Disaster Management]: Just as specialized lists of compliance elements can be developed for interventions in the private sector, so too can such lists be generated in specific areas of human activities and needs. Most of these elements, however, are not specific legal requirements in the area of international development but are professional responsibilities in specific fields such as health or disaster management. Because the list is open-ended and all of these interventions still must meet the legal development tests for poverty reduction, they are not essential parts of a codification but are possible additions as this area of law develops.

⁶² See David Lempert, *A Quick Indicator of Effectiveness of “Income Generation” and “Sustainable Business Initiatives” in International Development*, 2 *ECONOMOLOGY J.* 1, 28 (2012).

⁶³ See David Lempert, *A Sustainable (Culture Protecting) Tourism Indicator for Government Supported Cultural and Environmental Heritage Tourism Initiatives*, 1 *ASIAN J. OF TOURISM RESEARCH*, 105-47 (2017), <http://asiantourismresearch.cmu.ac.th/Vol1%20No.2/Chapter4.pdf>.

Note that projects in some of these sectors are really “governance” projects or “capacity building” interventions that can be held accountable to the standards for interventions in those categories below.

Development projects often fail to follow professional standards because they throw money at symptoms and seek to save money in administration by relying on aid administrators rather than professionals in specific fields or because they rely on the wrong professionals for the needs of specific cultures at particular types of development.

☞ Democracy and Governance:⁶⁴ International conventions identify some 16 different elements of development concerns in the area of governance, including rights protections to be integrated in systems of appropriate governance, and these can also be formalized as part of a codification of international development law. Because much of the goal of international development interventions, by definition, is to work with governments on improving government functions that are weak (often as a legacy of colonialism and dependency) to build sovereignty and independence of local institutions in implementing all of the 13 categories of development, promoting what the international community defines as “democracy” and “governance” is both a means and ends of development. The key concept in this area of intervention is to achieve changes in power relations in ways that protect the free choice of communities and individuals, not whether systems all move to one type. Organizations geared towards empowerment understand and promote the standard; however, most major international organizations currently continue to undermine democratic goals to extend their own influence.

Though it is not necessary to use more specific and detailed tests of governance interventions, it is possible to expand codification to apply these elements and combine them with professional requirements to the many specific categories of interventions that appear in this area, including additional international treaties that establish a consensus on “rights”. Among interventions in the area of democracy and governance are several that focus on “rights”, particularly general approaches to rights (human rights education) and specific, cherry-picked rights from rights treaties (like women’s rights/ gender equality), though almost never on the key rights in development that are protected in international criminal law: cultural rights under the Genocide Convention. Among general governance interventions, a popular area is “decentralization” that does not formally mention the elements of development for community and cultural sustainability, despite the fact that these are at the basis of the legal standard for development interventions. For each of these categories, the elements of democracy and governance interventions can be specifically applied as part of codification, with additions of specific professional concerns. Because there are also increasingly interventions designed for “public administration reform” that do not actually specify the fundamental functions of public administration units, there is also an opportunity to expand the codification of international development law through more specific lists of elements of professionalism and legality for the role and function of executive agencies and the appropriate role of legislatures in overseeing them.

⁶⁴ See David Lempert, *A Democracy Building Development Project Indicator for NGOs and International Organizations*, 11 GLOBAL JURIST 1, 4 (2011), <http://www.degruyter.com/view/j/gj.2011.11.issue-2/1934-2640.1385/1934-2640.1385.xml?format=INT>.

- Human Rights Education:⁶⁵ Combining international development law in the area of governance and democracy, backed by the fundamental principles embedded in human rights conventions, and combining goals for education, generates a long list of 17 elements that can be used to measure complicated projects in the area of human rights education. This is an example of how to screen for compliance for a combined type of input (in this case, education) and an outcome (rights promotion). Inputs — whether they be education or social marketing campaigns or other behavior change approaches — certainly are measured by professionals in the business sector, and these measurements can be applied in the public sector in combination with public missions to test compliance and performance. Application of these elements unmasks those organizations that simply repeat slogans but hide other agendas on the pretext that outcomes cannot be measured.

- Gender Equality:⁶⁶ There are ten elements for measuring gender equality and mainstreaming. These elements are derived from the basic international rights treaties and integrated with goals for development interventions, and can be applied to specific gender interventions or others with gender components to distinguish between approaches that are designed to either promote one gender at the expense of the other (including projects that only symbolically promote women's rights while actually undermining them) or that seek to transform cultures for a specific international agenda and projects that actually seek to build sustainable, peaceful societies in which both genders balance their roles and benefit from greater opportunities. Applications of these elements to projects reveals that most current approaches to gender outside of industrial societies are actually undermining those societies and their long-term prospects for gender equality by failing to apply principles of gender mainstreaming.

- Decentralization:⁶⁷ The idea of “self-determination” is well established under international law and a list of 13 elements can readily determine whether a decentralization intervention matches these goals and those of development. When current decentralization approaches are tested on these elements, it appears that this area of interventions is largely used for top-down administration and for manipulating governmental agendas by international organizations while also weakening the ability of local constituencies to assert regulatory control and assure accountability of international private and public organizations and foreign governments rather than for promoting democratic oversight and cultural sustainability within ecosystems.

- Government Administration (Functional Analysis):⁶⁸ It is also possible to develop a list of elements for government administrative improvement interventions to fit the goals of development as a specialized focus in this sector. The principles of government efficiency require that executive units measure public assets in their various forms and separately look for

⁶⁵ See David Lempert, *A Human Rights Education Project Indicator for NGOs and International Organizations*, 3 INTERAMERICAN J. EDUC. FOR DEMOCRACY 46 (2010), <http://scholarworks.iu.edu/journals/index.php/ried/article/view/617/713>.

⁶⁶ See David Lempert, *An Accountability Indicator for Gender Equality Projects of NGOs and International Organizations*, 2 J. HUM. RTS. COMMONWEALTH 32 (2016), <http://journals.sas.ac.uk/jhrc/article/view/2263/2190>.

⁶⁷ See David Lempert, *A Decentralization in Governance Project Screening Indicator for NGOs and International Organizations*, 7 TRANSCIENCE: J. GLOBAL STUD. 1 (2016), http://www2.huerlin.de/transcience/vol7_no1_1_35.pdf.

⁶⁸ David Lempert, *Distinguishing Development Agencies from Colonial Bureaus Exercising Soft Power: Reforming Imperial Economics and its Administration*, 7 J. GLOBALIZATION STUD. 87 (2016).

alternatives to either maximize the use of those assets so that they generate additional wealth or, alternatively, protect those assets so that the per cultural and per capita asset base of communities either remain constant or grow. The role of the legislature is to choose from these alternatives in ways that promote long-term stability and that are under the check of the public, which theoretically should have direct control over the assets and the hiring of government officials for the various tasks of promoting and protecting them. This asset protection (including culture and people as part of this wealth base), control and oversight is the essence of public administration and governance and fits in the framework of international development law at various levels (individual, community, national and global). Far too many international development projects, however, appear to be designed to create permanent legislatures and staffs as if the legislatures are no different from ministries, and too many are designed to establish executive functions as autonomous of oversight and subject to little or no controls, with no focus on functions, missions, accountability or assets.

☞ [Peace Building/Tolerance]: Given an underlying ideological belief that the current global regime of “trade” — which actually undermines local sovereignty and sustainability and homogenizes cultures — generates peace rather than causes conflict, most peace-building projects today are implemented to deal with the violent symptoms of conflict in hope of suppressing them. At this stage, they are no longer “development” projects but actually problems in international relations and civil strife that fall outside this category of interventions. Few peace building and tolerance projects today focus on the underlying roots of conflict and violence that result from unsustainable populations and consumption as well as lack of effective protections of cultural and natural sovereignty in the global system.⁶⁹ Actual peace building projects that are “development” projects would need to be initiated as corollaries to all other development interventions well before there is open conflict. However, because they are not, the idea of creating an indicator to measure the elements of such projects is moot.

☞ [Education and Socialization]: Because six of the 13 categories of international development are those of education at the level of individual development, there may be no need for a separate list of the appropriate elements of education and socialization projects. One can simply use these six categories. A more specialized list of education elements that would include professional expertise on education is included in the components of the indicator for human rights education,⁷⁰ including democratic and experiential education methods and procedures in administration of schooling. Generally, international education projects today do not fulfill more than one or two of the six elements of education for development, because they are geared at eliminating cultures and assimilating groups into state and global systems as industrial workers, fulfilling top-down directives. Most education projects build schools in the form of warehouses and impose state curricula that replace local knowledge with allegiance to the state and with education for obedience and production rather than progress, sustainability, and individual needs.

⁶⁹ See David Lempert, & Hue Nhu Nguyen, *The Global Prisoners' Dilemma of Unsustainability: Why Sustainable Development Cannot Be Achieved Without Resource Security and Eliminating the Legacies of Colonialism*, 7 SUSTAINABILITY: SCIENCE, PRACTICE & POL'Y. 16 (2011), <http://tandfonline.com/doi/abs/10.1080/15487733.2011.11908062>.

⁷⁰ See David Lempert, *A Human Rights Education Project Indicator for NGOs and International Organizations*, 3 INTERAMERICAN J. EDUC. FOR DEMOCRACY 46 (2010), <http://scholarworks.iu.edu/journals/index.php/ried/article/view/617/713>.

The goal is homogeneity and elimination of traditional gender roles and family. It is not very different from the feeding, vaccination, and training of farm animals for productive benefit of the state.

C. Cross Cutting Modalities of Interventions: In addition to assuring compliance with international development law on the level of overall objectives (definitions of development), actors, and categories of interventions, it is also possible to assure compliance by establishing legal elements of modalities of interventions. While most of the oversight accountability depends on the categories of transfer and the actors and their appropriateness, interventions are increasingly conducted through training and planning relationships with leaders and other parties in recipient countries. Often, these approaches can be used as ways to hide illegal agendas and manipulate recipients, purchasing compliance or distorting policies and cultures while claiming to be respecting sovereignty. Two key categories of influence are capacity building and agenda setting (often through “action plans”). Appropriate modalities must also satisfy a list of specific legal and professional elements.

- Capacity Building:⁷¹ The 20 elements of capacity building come out of administrative and educational theory, applied here in the context of development. Though there are a large number of elements here, applying them is effective in distinguishing between the development of effective management and training systems and the development of an educated, skilled public and prolonging incapacity as a way to ensure dependency. Capacity building is the major tool of donors today and it is largely used in the form of hidden bribes and “soft power” to purchase compliant relationships with government bureaucrats or to undermine government functions by building dependent civil society organizations to serve the interests of donor countries.

- Action Plans and Agenda Setting:⁷² Compliance of internationally funded “action plans” and “declarations” in coordination with recipient country governments needs to be measured in two categories: compliance with international development objectives (five elements) and administrative feasibility and professionalism (seven elements). International development organizations now routinely fund implantation-agenda setting activities and their outputs: “action plans”, international declarations, “master plans”, “country plans”, “country strategies”, “legal frameworks” and other documents that are claimed to reflect legitimate local development aspirations, even though the funding, expertise, and, often, the entire process of research and writing are conducted with foreign money and foreign experts. Applying the elements of this test distinguishes agenda setting by donors as a means of promoting their own agendas, public relations, and fundraising strategies from local strategies with accountability to beneficiaries and direct responsiveness to their interests. Most projects that use this tool actually seek to undermine local goals while others are well motivated (such as environmental sustainability plans) but have no professionalism and turn out to be little more than fundraising tools and public relations for “commitments” that, in fact, require no commitment at all.

⁷¹ See David Lempert, *A Quick Indicator of Effectiveness of “Capacity Building Projects” of NGOs and International Organizations*, 4 EUR. J. GOV'T & ECON. 155 (2015), <http://www.ejge.org/index.php/ejge/article/view/63/59>.

⁷² See David Lempert, *Action Plans, Declarations, and Other Agenda Setting Documents in International Development: An Indicator to Assure Professionalism*, 3 MOMENTUM QUARTERLY 58 (2014), <https://www.momentum-quarterly.org/index.php/momentum/article/view/77>.

IV. Professional Infrastructure to Promote Legality of International Development Interventions:

For professions that touch on public health and safety, such as medical care, air safety, and construction, government regulation extends to licensing and supervision of professionals, monitoring of training to assure competency and ethics, and generation of standards for monitoring and quality testing of the field or industry and its impact. Because the field of international development incorporates the full scale of public health and safety concerns as well as overall sustainability and survival, one would expect codification to contain all of these measures. Although “development” professionals are generally from a few specific fields, there are currently no industry-wide efforts at licensing and professionalism. The author, however, has begun to develop some of the infrastructure for standards in this field, as presented below. Over time, this area of the code can be further detailed.

A. Professional Standards Assurance: Today, international development workers come from a variety of educational backgrounds ranging across the social sciences (economics, political science, anthropology, sociology, psychology) and affiliated professional schools (public administration, law, business administration, international development) to related applied fields (public health, environmental policy, etc.) Very few of these are licensed (e.g., law) and those that are usually have licenses only to protect the public in industrialized countries. Few of these have professional codes, let alone enforcement of them, and fewer apply these to international work where those affected are foreign individuals and their cultures.

☞ Ethics Codes:⁷³ The author has taken three existing professional codes in the United States and has extended them for application in international development work to assure transparency, application of international and local law, and protection of foreign individuals and their cultures as prerequisites of development work for lawyers (to view the public in developing countries as the “clients” and not the development bureaucracy or its bureaucrats or the bureaucracy or bureaucrats in the recipient country), public administration professionals, and social scientists (anthropologists). It should be possible to extend other codes in related fields, as well as to establish both internal and external enforcement (lawsuits based on violation of professional codes and standards). Note that economists currently have no code at all.

☞ [Licensing and Unionization]: Almost 20 years after having published professional ethics codes for use by development professionals, there has been little progress in their use. With no outside monitoring, major donors have been able to politicize hiring and firing of development practitioners. Nor have there been attempts by professionals to unionize or to force hiring of certain professionals and respect for codes. With more people in part time work and self-employment struggling just to survive, even those professions where there were clear standards — such as audits and accounting — have been easily corrupted in such huge contract areas as military spending that no one pays any attention to violations of standards in aid. Nevertheless, the way to uphold professionalism in this field is to establish licensing of professionals. While there is no need for specific professional degrees in development given the variety of fields, there is a need for a special certification of

⁷³ See David Lempert, *Holding the Powers that Be Accountable to Our Ethics Code to Protect Our Integrity and the Peoples We Serve*, 24 HUM RTS. 22, (1997), <http://heinonline.org/HOL/LandingPage?handle=hein.journals/huri24&div=27&id=&page=>.

professionals who are applying their skills to other cultures to assure that they do not simply apply a single model everywhere (which is too often the case, and something promoted by inappropriate standardization by current aid organizations, focusing on the forms of services and institutions rather than on their functions and goals) and that there is consistency with international legal requirements as well as local cultural realities. The presentation of laws in various specialty areas in Chapter III of this codification, points the way to such standardization.

B. Monitoring and Compliance of Education of International Development Professionals: Given that many, if not most, international development interventions today do not follow the required elements of law or professionalism, the way to improving legality and performance is not only through licensing and monitoring of professionals but also assurance that professional education is appropriate and that it, too, is held to both legal standards of compliance as well as standards of professional efficacy. If international development interventions are failing to meet standards, this suggests that the current educational approaches may also be failing.

☞ How to Assure Disciplines are Compliant with International Law: In the same way that it is possible to apply the elements of international development law to interventions to see that they are compliant, it is also possible to use these standards and to ask whether the educational fields that train those who work in the field are compliant with international law. This author has conducted a legal test on the field of economics and related subfields like economic anthropology. Most development projects today, for example, seem to focus on economic productivity solutions while ignoring sustainability, asset protections, or culture. Indeed, the international definition of “development” shows very little direct concern with productivity and much more with equity, psychology, and culture. Applying a legal test strongly suggests that the current discipline of economics has been corrupted by self-interests of particular groups who have corrupted the discipline to promote an ideology in favor of those interests instead of neutral social science. The discipline of economics appears to be in violation of the international Genocide Convention and the Rome Statutes on laws of humanity because it encourages cultural destruction, resource instability, unsustainability and loss of wealth (in violation of its own principles) in favor of short-term income generation that depletes this wealth. The discipline, and others, seems to require restructuring under legal supervision to assure compliance given that “market mechanisms” to assure quality cannot achieve this.

☞ Approaches to Democratic Experiential Education:⁷⁴ While the international community’s definition of categories of international development is clear, there appears to be little effort to teach these skills and to integrate them into educational approaches. It is now nearly 20 years since this author tested what may have been the first practicum in sustainable development planning (at the national level) as well as designed the basis for field social science curricula that incorporated development elements of democracy and governance in a participatory way. Although educational approaches need not be codified, some elements of field training that are essential for professionalism may be codified as part of professional licensing requirements (similar to professionally supervised and certified clinical education for doctors).

⁷⁴ DAVID LEMPERT et. al., *ESCAPE FROM THE IVORY TOWER: STUDENT ADVENTURES IN DEMOCRATIC EXPERIMENTAL EDUCATION* (Jossey-Bass 1995).

C. Systematizing Areas of Measurement for Legal Enforcement: What makes enforcement routinized (and what makes prosecutions and civil law suits affordable) in most professional fields is the existence of professional standards and measures of “health”. Medical malpractice or failures in engineering are enforceable because there is an established professional standard and a baseline of patient health or product performance in a category. Current standards in “development” for the health of national or cultural systems are not based on measures of long-term sustainability or asset protection or cultural viability, even though this is what international development law requires. Instead, the standards are those of abuse, of squandering of assets on sales and on benefits through short-term productivity gains that are unsustainable and measured in terms of income (“gross domestic product”, not per capita wealth, which is the appropriate economic and business measure), with the professional standards on inputs related to these short-term gains, even when they hide long-term losses and system disruptions. Among the measures missing are those of cultural health and viability, country sustainability, as well as benchmarks for appropriate performance in the intervention categories that fall under the list of legitimate development inputs. International development law can codify the collection of these baseline measures in categories like those below.

☞ Cultural Red Book for Measures of Cultural Viability:⁷⁵ The author has been among those outlining a global initiative for monitoring the health and viability of the planet’s current remaining human cultures (measured at 6,000) while outlining standards for potentially new human cultures (for example, in non-earth, space environments). A “Red Book of Endangered Cultures”, following on the International Union for the Conservation of Nature (IUCN) Red Book for Endangered Species, generates a measure of current cultural health and endangerment to serve as a baseline for measuring impacts of development inputs on cultural viability. Such measures also establish professional consensus on definitions of cultures and of the elements that constitute cultural health.

☞ NGO Monitoring and Legal Action:⁷⁶ The initiative of this treatise on international development law calls not only for legal oversight and enforcement by public prosecutors and, where possible, private lawyers, but also for monitoring and advocacy for new legal enforcement opportunities by non-governmental organizations serving as monitors. While such NGOs can now form without any codification of their role, it is possible that some of their functions could be publicly funded or linked to public benefits and these could be codified. The role of NGOs in this sector is not only to continue to promote codification of international development law for holding organizations accountable, but also to monitor organizations, exposing those that violate the laws and establishing the professional standards and benchmarks that implementing organizations ought to follow in each professional category. Some environmental NGOs now combine the role of monitoring, legislative advocacy, and public interest lawsuits to protect the environment. While many of the U.N. declarations that extend upon development law in attempts to further define its meaning can be said to fulfill the legal role of working to establish new law, few of these recent declarations have had any real force of law and the role of NGOs in promoting them seems largely to be symbolic and a co-dependency on the “treaty business”

⁷⁵. See David Lempert, *Why We Need a Cultural Red Book for Endangered Cultures, NOW: How Social Scientist and Lawyers/Rights Activities Need to Join Forces*, 32 INT’L J. MINORITY & GROUP RTS 511 (2010).

⁷⁶ David Lemert, *Forming a Donor monitor NGO*, GLOBAL POL’Y FORUM, Jan. 16, 2008, <https://www.globalpolicy.org/component/content/article/176/31432.html>.

rather than enforcement. While other organizations have taken on test cases of certain public accountability procedures, such as those of the World Bank, little of this is actually enforcement or creation of new law. The missing role of NGOs, filled in part by organizations like the Government Accountability Project generating new oversight laws in the United States, is advocating for new forms of public legal enforcement for accountability in development such as “private attorneys general” actions and more common fund recovery/class action suits as well as waivers of governmental and international organizational immunities.

THE LEGAL ENFORCEMENT FRAMEWORK FOR INTERNATIONAL DEVELOPMENT INTERVENTIONS,
INTERNATIONAL AND DOMESTIC

Under the international system, there are international laws that are enforceable as criminal laws by the International Criminal Court and/or by governments exercising concurrent jurisdiction in enforcements against their citizens, and there are domestic laws that can act in parallel and beyond international laws to enforce the same objectives. Although the reality of international law, like domestic law, is that enforcement is largely politicized (dependent on power relations rather than on principles) and weak, both the formal law and procedures at least theoretically offer opportunities for enforcement if citizens take on the initiative.

A. International Law: Even though international laws seem to be hardly binding or enforced and with interpretations of key laws (including that for genocide and cultural protection) at their weakest, international laws and mechanisms theoretically offer justification for enforcement of the elements of international development law that could hold high officials today of most major governments and international institutions, including the major development banks and multi-lateral organizations like the United Nations and its agencies, subject to criminal prosecution for interventions in development that in fact promote hidden agendas that undermine cultural viability (in criminal violation of the Genocide Convention) and that act to impoverish certain groups in ways that undermine their resources, stability, and livelihoods while knowingly benefitting other groups in ways that are “crimes against humanity”.

The essential basis of international criminal law is the Rome Statute of the International Criminal Court (ICC), adopted in 1998 and entered into force in 2002, with some two thirds of all countries (123 states) as signatories at the time of this writing.⁷⁷

The Rome Statute establishes four international crimes, two of which are at the basis of international development law: the crime of genocide⁷⁸ and crimes against humanity. The two other areas, war crimes and crimes of aggression, relate to acts that are outside the scope of “development”, though it is not unforeseeable that certain interventions described as development (like “governance” reforms of police or military forces in a recipient country) could include acts falling under those areas.

⁷⁷ See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), <http://legal.un.org/icc/statute/romefra.htm>.

⁷⁸ See Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), 78 U.N.T.S 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

Although current precedents in prosecutions under the Genocide Convention have limited its application to killings of members of identifiable protected groups rather than to forced assimilation or destruction of traditional cultural forms that would erode sustainability and survival of such groups, the law itself does not have these limitations and such limitations were not intended when the law was written.⁷⁹ The wording of the law is such as to criminalize acts leading to even partial destruction of a group, as follows:

Article II. In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part ...

Article III. The following acts shall be punishable:

(c) Direct and public incitement to commit genocide.

(e) Complicity in genocide.

Article IV. [Punishment includes] public officials or private individuals⁸⁰.

Any violations of cultural sovereignty and sustainability would potentially be criminally enforceable under this law. Indeed, this was the very reason why the U.S. government took so long in signing on to the Genocide Convention. Many Senators in the United States recognized that full enforcement of the Genocide Convention could hold government officials in the United States criminally accountable for domestic discrimination and forced assimilation of indigenous peoples and other minorities in the United States. It was only the weak enforcement that opened the path to accession.⁸¹

This was, indeed, the intent of the Genocide Convention as drafted. Raphael Lemkin, who coined the word “genocide” and authored the law, hoped that it would be used to criminalize much more than murder and that it would protect the integrity of cultures in all of its dimensions. He wrote,

"Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed

⁷⁹See David Lempert, *Why We Need a Cultural Red Book for Endangered Cultures, NOW: How Social Scientist and Lawyers/Rights Activities Need to Join Forces*, 32 INT'L J. MINORITY & GROUP RTS, 511 (2010).

⁸⁰ See Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), 78 U.N.T.S 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

⁸¹ The author of this article worked in 1978 at the office of U.S. Senator William Proxmire (Democrat, Wisconsin) in seeking Senate ratification of the treaty in the United States approximately 30 years after it was written. The author also wrote approximately 20 of the Senator's daily speeches on the Senate floor in promotion of the treaty as well as an article that was inserted into the Congressional Record on this issue. The United States is now a party to the Convention.

against individuals, not in their individual capacity, but as members of the national group."⁸²

The idea of “development” as designed to change the environment, production, consumption and social relations of a group through outside interventions would certainly fit this definition of criminal violations.

As for the Rome Statute’s definition of “crimes against humanity,” the statute defines such crimes as acts that “are positively odious offences in that they constitute a serious attack on human dignity or grave humiliation or degradation of one or more human beings. They are not isolated or sporadic events but are ... part of widespread or systematic practices.”⁸³

The Rome Statute does not clearly define what these harms might be other than that they be systematic and serious. But the Rome Statute does seem to be directed against the activities of a group promoting a specific ideology that leads to specific harms and an approach to “development” that is really designed to promote dependency and to take the wealth of a country or sell its goods in ways that undermine its long-term sustainability and per capita wealth could certainly qualify. “Development” approaches that intentionally avoid the actual internationally defined requirements of international development are certainly “widespread” and “systematic” in their practice rather than “isolated or sporadic.” If hidden agendas of development under the banner of development actually promote destruction of global heritage, destabilization of the global economy in ways that create conditions for war, and any other consequences that would create severe conditions for a specific group (farmers or laborers could certainly constitute “one or more human beings”), it would seem that this law could apply.

Although they are not yet part of international criminal enforcement, there are obligations for domestic enforcement of other international conventions that could also be used to enforce international development law. For example, the U.N. Declaration against Corruption and Bribery in International Commercial Transactions⁸⁴ creates obligations on member states to prosecute certain corrupt acts in international relations. Under this Declaration, it would be easy to consider many of the misuses of funds in “capacity building” projects, for example, as efforts to buy influence with officials in developing countries, which is an act specifically criminalized under the Declaration.⁸⁵

Bribery, under most country laws, is very well-defined and follows the definition of offering something of value to influence a public official or someone with a legal responsibility. But most countries only use bribery laws as means of protecting (or creating the illusion of protecting) good governance in their own countries rather than for protecting the sovereignty and

⁸² See RAPHAEL LEMKIN, *AXIS RULE IN OCCUPIED EUROPE: LAWS OF OCCUPATION, ANALYSIS OF GOVERNMENT PROPOSALS FOR REDRESS* 79 (Carnegie Endowment for International Peace 1944).

⁸³ See Rome Statute of the International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), <http://legal.un.org/icc/statute/romefra.htm>.

⁸⁴ U.N. Declaration against Corruption and Bribery in Int’l Commercial Transactions, U.N. Doc. A/RES/51/191 (1996), <http://www.un.org/documents/ga/res/51/a51r191.htm>.

⁸⁵ See David Lempert, *A Quick Indicator of Effectiveness of “Capacity Building Projects” of NGOs and International Organizations*, 4 EUR. J. GOV’T & ECON. 155 (2015), <http://www.ejge.org/index.php/ejge/article/view/63/59>.

governance of other countries. Acts like the U.S. Foreign Corrupt Practices Act that seeks to prevent corporations from bribing foreign governments, seem to be designed to protect large companies in the United States from unfair competition with each other, rather than to protect the citizens of other countries. Thus, even if there were domestic laws preventing influence of foreign governments and officials, there is no incentive to enforce a law that protects foreign country citizens and governance against attempts to corrupt it for gains of those in the country buying the influence.

B. Domestic Law: Although there may be several legal alternatives under domestic laws for holding governmental and private organizations accountable to international development laws in their activities in international development, the key approach to enforcement would seem to be on the basis of fraud. Where public and private moneys are directed to “international development” but are promoting other agendas either knowingly or with reason to know (professional training), the diversion of those funds constitutes fraud under criminal and/or civil law. Moreover, the grouping of individuals and organizations involved in such abuses of funds could fit the law of criminal conspiracy or racketeering.

Under U.S. law, where government funds are misused, both the government and individuals (acting on “behalf” of government or “*qui tam*”) can bring claims against the organizations (e.g., development consulting firms or international NGOs) under the False Claims Act (31 U.S.C. §§ 3729–3733).⁸⁶ Individuals bringing claims are entitled to some portion of the recovery (up to about 25%), giving the public an incentive under this law. The weakness of this law is that it generally only applies when the recipients of government funds are covering up ineffectiveness of their spending or are spending for another purpose. Where the government itself is the cause of the violations and is directing or pressuring an implementing organization to violate international development law, the government generally immunizes itself from being considered a party to the fraud and the implementers say they were following government orders rather than diverting funds to another use. This does not mean that the government can absolve itself where there are criminal violations in the spending (such as genocide or crimes against humanity), but it generally means that the government cannot be held liable for fraud even if it is using public funds in violation of international legal requirements for development spending.

The easier case may be where private citizen money is donated to INGOs for international development work and where the implementing agency claims that it is doing “development” work. The problem in proving fraud, though, is that most INGOs today that are doing international work either have no clear mission or presentation of their work at all (meaning that their real problem is not serving the real mission of an INGO) or they have a clear mission that may be a legal one. In the case where the mission may be in violation of international development law (such as religious proselytizing or promoting an ideology overseas) or where there is no clear mission and the actions — even with government money — are in violation, the appropriate legal enforcement here would be for citizens to seek to have the organization’s charter rescinded through whatever legal mechanisms are available for citizens to do that (in some cases it may be possible to use a “*mandamus*” to compel attorney generals to act.

⁸⁶ The False Claims Act (The “Lincoln” Law), 31 U.S.C. § 3729–3733) (2009).

What might make such fraud enforceable against government officials, and what certainly would establish criminal liability among the whole chain of government donors (and individual government employees) to implementing organizations and their employees for actions that are already criminalized under international law, such as genocide and crimes against humanity, are the racketeering acts. In the United States, the Racketeer Influenced and Corrupt Organizations Act (RICO) provides both for criminal enforcement as well as civil causes of action (potentially giving standing to foreign citizens) for acts that can be attributed to a chain of linked actors in what constitutes a “criminal organization” (Organized Crime Control Act of 1970 (Pub.L. 91–452, 84 Stat. 922, enacted October 15, 1970; Chapter 96 of Title 18 of the United States Code, 18 U.S.C. § 1961–1968, section 901 (a)).⁸⁷

Although RICO has never been used to criminalize government activities in the area of international development, genocide, crimes against humanity, and possibly even foreign bribery and fraud could constitute a criminal enterprise that would trigger enforcement. In the United States, RICO currently uses a list of 27 federal crimes and eight state crimes that does not specifically reference international crimes, though federal crimes could incorporate them. The crimes include murder, kidnapping, extortion, robbery, bribery, fraud as well as “racketeering” (fraudulently offering a service “to solve a problem for a problem that does not actually exist, that will not be put into effect, or that would not otherwise exist”; language that could certainly fit many international development interventions today).

The provisions under U.S. law that allow for private suits on the basis of racketeering could potentially allow intended beneficiaries in foreign countries and U.S. citizens to undertake actions for suffering damage in “business or property” once they show the existence of an “enterprise” (i.e., development intervention schemes that do not meet the requirements of international law).

C. Application of Specific Criminal Laws to Areas of International Development Interventions: Generally, the areas of international development intervention, the modalities used, and the organizational accountability requirements offer opportunities for enforcement under international law. Table 2 lists the two international criminal laws and the two areas of domestic law for holding international development actors liable and tests them against several of the areas of the code. For most substantive areas, agendas that put cultures and countries at risk or that put resources and people who depend on them at risk create liability under international law. For administrative modalities and for most substantive areas, lack of attention to the requirements of international law for development interventions raises the question of liability for fraud and for corruption, particularly attempts to manipulate foreign agendas and individuals and to buy favoritism.

Table 2: Elements of International Development Law and Legal Enforceability:

| Elements of International Development | International Enforcement | | Domestic Enforcement (Examples) | |
|---------------------------------------|---------------------------|-----------------------|---------------------------------|-------------------|
| | <i>Genocide Law</i> | <i>Crimes Against</i> | <i>False Claims</i> | <i>Corruption</i> |

⁸⁷ The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961–1968 (enacted by section 901(a) of the Organized Crime Control Act of 1970), Pub. L. 91–452, 84 Stat. 922 (1970).

| Law | | Humanity | Act | (implementation of UN Declaration); RICO Statutes |
|---|-------------|-----------------|-------------|--|
| <i>Areas of International Development Interventions</i> | | | | |
| Sustainability | Potentially | Potentially | Potentially | - |
| Poverty Alleviation | Potentially | Potentially | Potentially | Potentially |
| Democracy and Governance | Potentially | Potentially | Potentially | Potentially |
| Education and Socialization | Potentially | Potentially | Potentially | Potentially |
| Peace Building and Tolerance | Potentially | Potentially | Potentially | Potentially |
| <i>Modalities of Intervention</i> | | | | |
| Capacity Building | - | - | Potentially | Potentially |
| Agenda Setting/ Action Planning | - | - | Potentially | Potentially |
| <i>Responsibilities of Actors</i> | | | | |
| Evaluation | - | - | Potentially | Potentially |
| Accountability | - | - | Potentially | Potentially |

DISCUSSION: THE PARADOX OF INTERNATIONAL LAW AND OVERCOMING IT

Though the elements of international development law are clear and journals across several professions now recognize them (as shown by the fact that many of the works in this article have been peer reviewed and published), the codification of these laws has been long in coming, and the international community has yet to enforce a single one of these laws. The fact that many of the violators are government officials and international organizations does not free them from liability given firm principles in international law for holding governments and government officials accountable, under the Nuremberg principles dating back nearly 70 years. The problem seems to be a paradox in international law: There appear to be no incentives for holding governments and officials accountable for their use of influence on smaller countries and cultures, despite violations of international law.

The principles of accountability of governments and officials for violations of international law, known as the Nuremberg Principles, is firmly embedded in the international legal system and objectives of the United Nations and dates back to 1950 when these principles were used for war crimes.⁸⁸ Under the first of the seven principles, “Any person who commits a crime under international law is responsible therefore and liable to punishment.” Under Principle III, “The

⁸⁸ See International Committee of the Red Cross, *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal, 1950* (2015), <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/390?OpenDocument>.

fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law.” Moreover, any implementing organization contracting with government officials could not claim government immunity or indemnification since Principle IV makes it clear that “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.”

The fact that no clear penalty exists for violations of development law and that this set of laws has yet to serve as the basis of prosecution does not prevent it from doing so under Principle II.

In the area of international development, neither governmental organizations nor implementing agencies can be empowered to support interventions that violate legitimate development missions, because such acts are, by definition, outside of their legal scope.

Part of the confusion today in the area of international development is that international organizations continue to pass declarations that are, in fact, in violation of existing international laws (such as those on genocide and crimes against humanity) and that undermine earlier declarations and conventions that were specifically designed to elaborate and implement earlier agreements. For example, the Rio Declaration of 1992⁸⁹ on sustainable development and the United Nations Declaration on the Rights of Indigenous Peoples⁹⁰ give specific meaning to the Genocide Convention⁹¹ by defining sustainability and community rights. Nevertheless, other agreements, like those for the Millennium Development Goals,⁹² create universal agreement on a set of “development” goals that are inconsistent with existing law and with established definitions and categories of development from core laws and treaties.⁹³

The recent declarations do not invalidate or override the earlier laws, but they create a parallel set of documents representing a competing ideology with an alternative agenda that also undermines enforcement of international law in this area. Although laws can change over time to reflect current needs, the idea of law in the international system is that it is “universal” and part of an international consensus, with new laws building and refining what has come earlier rather than attempting to replace it.

What seems to be happening in recent international development documents is that the neocolonial approaches to “development” that were part of the colonial “civilizing missions” of

⁸⁹ See United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151.26 (1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.

⁹⁰ United Nations Declaration on the Rights of Indigenous Peoples, U.N. Doc. A/RES/61/295, (Sept. 13, 2007), http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf.

⁹¹ See Convention on the Prevention and Punishment of the Crime of Genocide, (Dec. 9, 1948), 78 U.N.T.S 278, <https://treaties.un.org/doc/publication/unts/volume%2078/volume-78-i-1021-english.pdf>.

⁹² See U.N. Millennium Declaration, U.N. GAOR, (Sept. 8, 2000) (discussing Millennium Development Goals which range from having extreme poverty rates to halting the spread of HIV/AIDS and providing universal primary education), <http://www.un.org/millennium/declaration/ares552e.htm>.

⁹³ David Lempert, *Universal Development Goals for This Millennium*, 12 CONSILIENCE J. SUSTAINABLE DEVELOPMENT 1 (2014).

major European powers and that were among the causes of World War II that the early post-World War II consensus of the United Nations tried to restrain, have now reasserted themselves.⁹⁴ This change in laws seems to reflect both the current distribution of international power, with the new laws presenting themselves as a form of “legal realism” (reflecting the power of corporate interests in using foreign cultures as sources of resources and markets) to promote short-term global interests of those with power rather than the long-term stability and peace goals that are at the heart of the international system.

For law to be enforceable, it must be more than just an invocation of aspirations. Those who have the incentive for enforcement and who are directly impacted by violations (here, the cultures and individuals in the recipient countries) must have the power of enforcement.

In the area of international development law, the long-term incentives of the powerful countries that engage in development interventions and the government officials in the recipient countries are those of stability, sustainability, cultural protection and survival, which together form the basis of global security, peace and human survival. The problem is that the short-term incentives are for economic and political gain. If short-term thinking and short-term interests dominate the thinking, there is no incentive for enforcement by the powerful.

The international system was established by government officials representing colonial nation-states for the benefit of those states. Though there have been prosecutions under international law for genocide and crimes against humanity, these have been by the victors and powerful against the weak, not by a collective of the weak against the powerful to hold them accountable in a system of equitable enforcement envisioned by the idea of rule of law.

States do not prosecute themselves and bureaucracies do not hold themselves accountable. In the case of development law, the major violators are the powerful states, their government officials, and the government officials they are seeking to influence. Because international law serves to protect states rather than people and is not enforceable by people but by states — primarily by the powerful states — it is little wonder that this area of international law is unenforced, subject to obfuscation in order to cover up violations, and, by all appearances, currently unenforceable.

The only real likelihood of enforcement would come when governments connect their long-term survival with the long-term survival and sustainability of other systems and that largely requires threats to the governments and powerful individuals behind those governments in powerful states; meaning something again on the magnitude of World War II.



OTHER APPLICATIONS OF THE TREATISE

On the assumption that international development laws have the potential for enforcement, their principles may also be on other international actions that have an impact on development even though they are not presented in the sphere of “development” interventions. With globalization, for example, international trade is largely defined as a correlative of, if not a replacement for, aid. That would make trade agreements a likely subject for coverage under international development law where they interfere with the objectives of development.

⁹⁴ *Id.*

The “development” impacts of international trade agreements could make them de facto illegal under international development laws, despite the narrower “separate” set of international financial and trade laws. Even economist Joseph Stiglitz, former vice president of the World Bank, has now been speaking out on how trade agreements are specifically designed by small groups of corporate representatives working with government officials to undermine public protections and, by linkage, international law.⁹⁵ Where they undermine good governance, sustainability, environmental and asset protection and cultural viability, they are essentially in violation of international development law.

As this article is being written, several countries including the United States, are still considering (or considering presenting again) the latest international trade agreement, the Trans-Pacific Partnership. As Stiglitz describes it, “These agreements go well beyond trade, governing investment and intellectual property as well, imposing fundamental changes to countries’ legal, judicial, and regulatory frameworks, without input or accountability through democratic institutions The “investor protection” provisions are designed “to impede health, environmental, safety, and, yes, even financial regulations”.⁹⁶

Recent challenges to laws in developing countries by corporations seeking to sell tobacco or junk foods and demanding a freeze in any laws that would restrict the demand by protecting health and promoting locally sustainable and beneficial consumption choices are certainly in violation of the international development obligations for promoting physical and mental development as well as cultural development. Such trade laws that enable such challenges would be in violation of international development law.



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Acknowledgments: Thanks to Professor Paul Kingston, head of the Critical Development Studies Department at the University of Toronto, for challenging the author to create a positive and critical definition of *development* that the field could use to define its goals and shape its curricula.

⁹⁵ See Joseph Stiglitz, *The Secret Corporate Takeover of Trade Agreements*, PROJECT SYNDICATE, May 14, 2015, <http://www.commondreams.org/views/2015/05/14/secret-corporate-takeover-trade-agreements>.

⁹⁶ *Id.*