



Universidad  
Carlos III de Madrid

Instituto de Estudios Internacionales y Europeos  
Francisco de Vitoria

**SDG 17. PUBLIC-PRIVATE PARTNERSHIPS  
AND SUSTAINIBLE DEVELOPMENT GOALS:  
PROPOSAL FOR THE IMPLEMENTATION OF  
THE 2030 AGENDA**

Directores:

**PALOMA DURÁN Y LALAGUNA  
CARLOS R. FERNÁNDEZ LIESA  
SAGRARIO MORÁN BLANCO  
CASTOR M. DÍAZ BARRADO**

Coordinación:

**DIANA M. VERDIALES LÓPEZ**

**COLECCIÓN ELECTRÓNICA**

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# PUBLIC-PRIVATE PARTNERSHIPS AND SUSTAINABLE DEVELOPMENT GOALS: PROPOSALS FOR THE IMPLEMENTATION OF THE 2030 AGENDA

Editors:

PALOMA DURÁN Y LALAGUNA

*Sustainable Development Goals Fund*

CARLOS RAMÓN FERNÁNDEZ LIESA

*Carlos III University*

CÁSTOR MIGUEL DÍAZ BARRADO

*Rey Juan Carlos University*

MARÍA SAGRARIO MORÁN BLANCO

*Rey Juan Carlos University*

Coordinator:

DIANA MARCELA VERDIALES LÓPEZ

*Rey Juan Carlos University*



Chair on Development  
and Poverty Eradication

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Carlos III de Madrid  
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## *AUTHOR LIST*

**1) Cristina HERMIDA DEL LLANO**, Permanent Professor for Philosophy of Law at the Universidad Rey Juan Carlos (2004). Jean Monnet Chair. Expert in integration and fundamental rights in the European Union (2013). She has been Professor Jean Monnet and Leader of the European Module Integration and Fundamental Rights in the European Union (2013-2016). Alexander von Humboldt Foundation Fellow. Corresponding Academic of the Royal Academy of Jurisprudence and Legislation of Madrid since 2006. Member of the UNESCO Chair on Culture of Peace and Human Rights (2017-2020). President of the Asociación de Hispanismo Filosófico since 2017. Chief Editor of the Revista de Pensamiento Filosófico Español e Iberoamericano. Member of the United Nations Chair on Sustainable Development Goals (2016-2019).

**2) María Ángeles CANO LINARES** is a Public International Law and International Relations Professor at the Rey Juan Carlos University in Madrid. She has a Law degree at Complutense University of Madrid and PhD at the Rey Juan Carlos University. At present she is Deputy Director of the Latin American Studies Center and head of Latin American Master in International Relations. Author of several books, books chapters and academic articles (La Acción exterior del Sistema de la Integración Centroamericana (2012); Migraciones Internacionales en el espacio Iberoamericano del Siglo XXI, Los procesos de integración ante la crisis financiera internacional; La actividad del Consejo de Seguridad de Naciones Unidas en caso de amenaza a la paz; Orígenes y fundamentos prácticos de mantenimiento de la paz en Naciones Unidas. Las posiciones durante el periodo de la guerra fría; grupos vulnerables y desfavorecidos: protección contra la explotación laboral).

**3) Elena Carolina DIAZ GALAN** is a Professor of Public International Law and International Relations at the University Rey Juan Carlos in Madrid. She is also a member of the University Chair research group into development and the eradication of poverty (SDG-FUND and URJC), as well as a researcher at the “Francisco de Vitoria” Institute of International and European Studies of the Carlos III University in Madrid. She has also had several stays at foreign Universities and Institutes, such as the Université Paris Ouest-Nanterre La Défense (Paris X) and the Instituto Superior de Ciências Sociais e Políticas in Lisbon. Her main publications include: Conformación jurídica de las Organizaciones Internacionales, Madrid, 2018; Paz y Objetivos de Desarrollo Sostenible: la contribución del objetivo 16, Madrid, 2018; Las Organizaciones internacionales como sujetos del derecho internacional: algunas reflexiones sobre los orígenes, Revista de Estudios Políticos y Estratégicos, 2018 y La Comunidad de Estados Latinoamericanos y Caribeños (CELAC): Un enfoque desde la perspectiva de la integración (con Harold Bertot Triana), CUPEA, 2017. Her areas of research include: International Organizations, Human Rights and cooperation and integration processes in Europe and Latin America.

**4) Diana Marcela VERDIALES LÓPEZ**. Responsible for Research and Development Cooperation Projects, in the Center of Ibero-American Studies of the Rey Juan Carlos University. PhD in Human Rights, Peace and Sustainable Development at the University of Valencia, Spain. Master degree in International Economic Relations and Cooperation between European Union-Latin America at the

University of Guadalajara, Mexico. Her main publications include: Book: The Human Rights and Social policy approach of Mexico. Analysis of the political transition period (1994-2006), 2018; Chapter of book "The Importance of the human rights approach in the objectives of sustainable development", in the book Sustainable Development Goals and Human Rights: Peace, Justice and Solid Institutions/Human Rights and Companies; Chapter of book "Mexican migration. From its origins to the emergence of child migration ", in the book International Migrations in the Ibero-American space in the 21st century. She has done research at the University of Guadalajara, Mexico in the Center of Research -Social Observatory in 2013. Her areas of research include: Social policy, human rights, gender approach, poverty, migration and sustainable development.

**5) Cristina DEL PRADO HIGUERA.** Visiting Professor Rey Juan Carlos University. Doctor in Contemporary History from the Complutense University. Master in University Management from the University of Alcalá. Currently Professor of Contemporary History in the Faculty of Legal and Social Sciences of the Rey Juan Carlos University, where she teaches different courses in the levels of degree and master. Director of the Vicerrectorado of University Extension of the Rey Juan Carlos University. Director of the Institutional Chair of Arbitration, Rey Juan Carlos University-CIMA. Author of several research papers and scientific articles on international politics and mediation, among which the following stand out: Islamist Terrorism. The case of Al Gama'a al Islamiyya; Campesino and ethnic minorities in Colombia: a reading from the recognition theories of Nancy Fraser and Axel Honneth; The Mesa de la Habana: a model of the peace process.

**6) Sagrario MORÁN BLANCO** is Tenured Lecturer of Public International Law and International Relations at the University Rey Juan Carlos of Madrid. Academic Secretary of the Center for Iberoamerican Studies (CEIB) of the URJC. He has done research at the University of Georgetown, Washington, in the Department of Basque Studies at the University of Reno, Nevada, USA; at the Institute of Political Sciences, Paris; at the University of Havana; and at the University of San Martín in Buenos Aires (Argentina), among others. Among her main lines of research are: 1) Development Cooperation, Human Rights, Ibero-America. 2) Security, Defense, Terrorism, International Cooperation, Resolution of Armed Conflicts, War and Information and Organized Crime. And 3) Environmental Security and Energy. She has participated in Electoral Observation Missions organized by the EU, OSCE and UN in Kosovo, Bosnia and Herzegovina, Sierra Leone, Venezuela, among others.

**7) Jorge URBANEJA CILLÁN.** Phd in Law by the University of Extremadura. Author of the monograph titled: "La ordenación internacional y europea de las entidades de crédito. La Unión Bancaria". In addition, author of various doctrinal articles and book chapters on: the international management and supervision of the financial system, the institutional system of the European Union, the integration processes in the Latin-American sphere and international protection from the human rights. Realization of research stays in several universities, national and international (Queen Mary-University of London, London School of Economics and Political Science) as well as in international organizations (European Commission-European Union). Participation in various research projects in national and European public calls. Currently, he is a principal investigator of the research project of the University

of Alicante entitled "The formation of the policy of the European Union on investment promotion and protection: legal analysis from the perspective of the interests of Spain".

**8) Juan Manuel RODRÍGUEZ BARRIGON.** Ph. D. in Law. Lecturer in Public International Law in the University of Extremadura. Old member of the Consultative Council of the Autonomous Community of Extremadura. He has been a lecturer in doctor's degree and postgraduate courses in Universities such as Portugal, Bolivia and Brazil. He has also participated and guided different conferences and expert seminars in several Spanish and foreign universities. The research lines he has participated in includes subjects such as European citizenship, international migrations, international conflicts, international protection of human rights, international criminal courts, financial supervision in the European Union or international regulation of water resources.

**9) Benoît LOPEZ** holds a master's degree in private law and a master's degree in public law from the University of Lyon, as well as a doctorate in law. He prepared and defended his thesis in a laboratory of the CNRS and the University of Lyon on the relationship between international economic law and non-market values. He has also been a teaching and research associate at the University of Normandy (Rouen) and a lecturer at the University of Paris Saclay (UVSQ). He was also, for several years, a lawyer in a law firm.

**10) Dayana MORALES MINA.** French and Ecuadorian law student of 24 years old. Holder of the following diplomas: bilingual bachelor from University Paris Nanterre (France) –Spanish and South America law and French law; Master degree in International Law from University Paris Nanterre (France); Master degree of digital law and intellectual property from Versailles University (France). Secretary in 2016-2017 of the association La Ligue des Droits de l'Homme – University Paris Nanterre sector. Currently attending at Institute of Judicial Studies of Paris Sud Université (France) in order to apply at the exam access of Ecole Nationale de la Magistrature – Magistrate State School.

**11) Andrés BAUTISTA-HERNÁNDEZ, PhD.** Is graduated in Law and Master in Criminal Law by the Universidad de Málaga, Spain. He has worked as Lecturer of Public International Law at the Universidad de Málaga and has collaborated with the Office of Legal Affairs of the UNESCO during its 38th General Conference. His main lines of research include International Disaster Law, International Biolaw, International Organisations and International Criminal Law. He has participated in several international congresses and has a wide range of publications on these topics. Currently, he is Lecturer at the Department of Public International Law and International Relations at the Universidad de Malaga. He is also member of the Centre de Droit International de Nanterre (CEDIN).



## FOREWORD

Chair on Development and Poverty Eradication, SDG Fund &URJC

As we have mentioned in previous editions, the Academic Chair on Development and Poverty Eradication (SDG Chair) is a joint initiative between the United Nations Sustainable Development Goals Fund (SDGF) and the Rey Juan Carlos University. Its objective is to promote the engagement of Universities around the world in order to achieve the 2030 Agenda for Sustainable Development through training, advocacy and research activities.

The research of academics about how to achieve the 2030 Agenda are certainly a useful tool to promote international debate and to raise awareness among national governments, international organizations, academia, civil society and the private sector whose joint actions are needed to not let anyone behind. Poverty eradication is the basic and primary objective of the international community to achieve the three dimensions of sustainable development: social, environmental and economic.

Research activities, carried out by academics, enrich the work of development actors, both public and private, and support the understanding of the Sustainable Development and the 2030 Agenda. The main task of the Academic Chair on Development and Poverty Eradication is not only to provide theoretical support but also to illustrate practical examples that may contribute to the achievement of Sustainable Development Goals, adopted on 25 September 2015 by the United Nations General Assembly resolution 70/1, “Transforming our world: the 2030 Agenda for Sustainable Development”. World leaders adopted this Agenda which is a “plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognize that eradicating poverty in all its forms and dimensions, including extreme poverty is the greatest global challenge and an indispensable requirement for sustainable development”.

This book focuses on SDG 17 and is the result of the papers presented at the International Expert Seminar, held on October 19 and 20, 2018 in Paris, France. In this seminar entitled "*Public-Private Partnerships and Sustainable Development Goals: Proposals for the Implementation of the 2030 Agenda*" several topics have been tackled, which are described throughout in this document, with the objective of approaching the SDG 17 from different perspectives.

The analysis and recommendations of this publication do not necessarily reflect the official views of the SDG Fund Secretariat, the United Nations or its Member States.



THE IMPORTANCE OF NON-GOVERNMENTAL  
ORGANIZATIONS OF ACHIEVING THE SUSTAINABLE  
DEVELOPMENT GOALS: THE FIGHT AGAINST RACIAL  
DISCRIMINATION OF ROMA IN EUROPE

CRISTINA HERMIDA DEL LLANO

*Professor of Philosophy of Law at the  
Rey Juan Carlos University*

SUMMARY: 1. INTRODUCTION. 2. THE ROLE OF NGOS IN THE FIGHT AGAINST  
DISCRIMINATION OF ROMA. 3. CONCLUSION.

**ABSTRACT:**

Here we examine the decisive role that non-governmental organizations play in fulfilling the sustainable development goals, and more specifically, in the sphere of the fight against racial discrimination of Roma in Europe. I will try to show how non-governmental organizations, thanks to the close relationship that they have with Roma communities, constitute key actors in the fight against discrimination of these groups. In fact, by being able to work as partners with other public and private entities, non-governmental organizations become strategic organizations in the development of programmes with Roma communities, above all at the local level, cognizant of the importance local actions have for achieving the sustainable development goals.

**KEYWORDS:**

Sustainable Development Goals, Non-Governmental Organizations, Human Rights, Racial Discrimination, Roma, Europe.

\* \* \*

**1. INTRODUCTION**

The 17 global goals of the 2030 Agenda for Sustainable Development were promulgated on January 1st, 2016. By 2030, we will see which of these goals of this ambitious international agenda will have been achieved, which center on the eradication of poverty, the reduction of inequalities, and sustainable development as parts of an indivisible whole, for which human rights form an essential pillar. The steps for the universal application of the 17 goals (SDG) must necessarily be adopted “locally”, that is, each country, region, or city must incorporate the agenda goals to its own reality and

its own development.<sup>1</sup> Citizens play a decisive role in defining the development that each country, region, or city seeks to follow, without forgetting the indispensable participation of those persons who are more disadvantaged but should not be left behind.

This is the case for the Roma population, which is not only the largest ethnic minority in Europe -between 10 and 12 million people-,<sup>2</sup> but also constitutes one of its most vulnerable groups, victimized by poverty, social exclusion, and discrimination as an ethnic minority.<sup>3</sup> Unfortunately, despite the programs used to date to combat racial discrimination of Roma in Europe, the data show that the measures adopted have not been effective and European society today calls ever more fervently for efforts of prevention, mechanisms of raising social awareness, and the care Roma victims receive who have suffered discrimination, in many cases on multiple fronts.

In view of this desolate panorama, here I will try to show how NGOs,<sup>4</sup> thanks to the close relationship that they have with Roma communities, constitute “key actors in the fight against discrimination of these groups”, being able to work as partners with other public and private entities, by converting them into “strategic organizations in the development of programmes with Roma communities, above all at the local level”, cognizant of the importance local actions have for fulfilling the SDGs.

The United Nations High Commissioner for Human Rights (UNHCHR) has insisted for decades on the importance of NGOs as guarantors of human rights throughout the

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<sup>1</sup> In the words of the former Secretary General of the United Nations, Ban Ki Moon: “The implementation is proof of the new agenda”.

<sup>2</sup> Of these, around 6.2 million reside in the European Union (EU), the majority in central and eastern member states. See COM (2011) 173 final, of April 5 2011, «A European framework of national strategies for the inclusion of the Roma until 2020». See also the special report n°14 of the European Court of Auditors of 2016: «<<Initiatives and financial aid of the EU for the integration of Roma: despite significant advances in the last decade, nonetheless additional efforts are required in the field>>», which was presented in concert with Article 287, section 4, second paragraph of the Treaty on the Functioning of the European Union. According to this report, about four fifths of the estimated Roma population of the EU live in 8 member states: Romania, Bulgaria, Spain, Hungary, Slovakia, France, Czech Republic, and Greece.

<sup>3</sup> In member States with the highest concentrations of Roma (Bulgaria, Slovakia, Romania and Hungary), the Roma represent between 15 to 20% of students enrolled in school and of those recently entering the work force. *Ibidem*.

<sup>4</sup> According to the NET-KARD Project “Practical Guide for NGOs to prevent discrimination against the Roma Community”, edited by Berill Baranyai (ACIDI, I.P.), Maria Helena Torres (ACIDI, I.P.), Maria José Vicente (EAPN Portugal), Paula Cruz (EAPN Portugal), Vasco Malta (ACIDI, I.P.), in July 2014, with financial support by the Programme for Fundamental Rights and Citizenship of the European *JUST/2012/FRAC/AG/2848*: “The term “non-governmental organizations” generally refer to any organization that does not belong nor is related to any government institution. NGOs are social groups with a social and political role within the community and society; they have a formal legal structure; they are related and tied to society or community through acts of solidarity; are not for profit; and enjoy a considerable degree of autonomy. In this sector, a small number of entities is economically independent, while the majority depends on public aid” (p. 34).

To understand the role of NGOs in this area, please see <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>. As highlighted here, the NGOs, “in a very direct sense, tools that are available for use by persons and groups around the world. They are administered and coordinated—like many organizations—by individuals, but a large part of their effectiveness derives as well from other community members that volunteer their support for the cause. This fact confers a great importance for persons who wish to contribute to the improvement of human rights in the world”.



world. It is worth reminding ourselves here that the UN Declaration concerning the defenders of human rights began to be elaborated in 1984 and was approved by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, highlighting in article 1 that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.<sup>5</sup> The collective efforts of numerous NGOs on human rights and the delegations from some States contributed to the final result of a declaration that is a coherent, useful, and pragmatic text, which is directed not only at States and the defenders of human rights but at everyone because “everyone”, without exception, has a role to fulfill as defenders of these rights as stakeholders in a global movement which we cannot escape from. A few years before, in 1993, 841 NGOs attended the World Conference of human rights, known as the Vienna Conference, all of which declared a willingness to work on a mission in defense of human rights.<sup>6</sup>

Here we will concern ourselves with the decisive role that NGOs play in fulfilling the goals of the SDG and, more specifically, to combat racial discrimination of the Roma in Europe.<sup>7</sup> To support this thesis, it is enormously relevant to return to the “Practical guide for NGOs to prevent discrimination against the Roma Community”<sup>8</sup> of 2014, which resulted from the project NET-KARD,<sup>9</sup> part of the Programme for Fundamental Rights

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<sup>5</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom. A/RES/53/144 8 March 1999. Resolution A/RES/53/144 of the General Assembly by which the Declaration concerning the defenders of human rights was approved.

<sup>6</sup> Although it might come as a surprise, this number is only a small fraction of all NGOs dedicated to human rights in the world. The majority of “human rights organizations” tend to be dedicated to the protection of civil and political rights. Organizations of this kind best known, at least internationally, are Amnesty International, Human Rights Watch, The International Federation for human rights, Human Rights First and Interrights. <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>

<sup>7</sup> In Spain, for example, the following NGOs, among others, play a notable role: SOS Racismo or the Fundación Secretariado Gitano. Specifically, the Fundación Secretariado Gitano (FSG) writes annual reports. These reports have a central mission to expose the day-to-day existence of ethnic discrimination with respect to the Roma community using confirmed data, selected from practical experience from the more than 70 centers of the FSG throughout Spain.

<sup>8</sup> [https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf). This guide was edited by Berill Baranyai (ACIDI, I.P.), María Helena Torres (ACIDI, I.P.), María José Vicente (EAPN Portugal), Paula Cruz (EAPN Portugal), Vasco Malta (ACIDI, I.P.). This Guide addresses NGOs and Roma associations with the aim to provide resources for the representatives of these organizations with the goal to prevent discrimination against Roma communities and provide practical tools to promote the creation of networks among other interested parties. The content of the Guide is the result of a constellation of discussion groups and interviews carried out by partners of the Project in Portugal, Spain, Romania, and Italy. The participants are NGOs and representatives of associations/communities of Roma who provided their testimony and experience acquired in the fight against discrimination of Roma communities and tackling their principal difficulties. Moreover, they proposed solutions and recommendations concerning how to improve this work. In addition, the knowledge of the partners of Net-Kard have regarding these topics to generate a help manual for the NGOs and Roma associations, thereby not only having a merely informative character, but also acting as a working tool for planning actions in the field, above all strategic actions to combat discrimination against Roma communities.

<sup>9</sup> The project had the following goal: “Cooperation and networking between the key actors for preventing the discrimination of Roma communities, improving the support for victims through the promotion of cooperation and networking between the principal actors involved in the defense of the right to equality

and Citizenship of the European Union involving the following partners: The Fundación Secretariado Gitano (principal partner, Spain); the European Anti-Poverty Network (EAPN Portugal); the High Commission for Immigration and Intercultural Dialogue (ACIDI, IP) (Portugal); Centrul de Resourse Juridice (CRJ) (Romania); Fundatia Secretariatul Romilor (Romania); Ufficio Nazionale Antidiscriminazioni Razziali (Italy); and the Istituto Internazionale Scienze mediche Antropologiche e Sociali (Italy).

As this Guide details, when one asks what the fundamental tasks for NGOs are in this context, certainly the priority is to raise awareness in the majority of society, including amongst the key professionals.<sup>10</sup> We should keep in mind that the NGOs take on a key role in actions to raise social awareness at both the national as well as local levels, and, in collaboration with other public and private organizations, through the dissemination of information about the fight against ethnic discrimination, the promotion of equal treatment and different awareness campaigns, including respect for diversity and the promotion of intercultural dialogue.

From a methodological and practical perspective, one of the key figures is that of the Roma mediator/facilitator, as this figure is responsible for conveying information to Roma communities, not only about their rights and privileges but also about the procedures that need to be followed in reporting incidences of discrimination. Indeed, the Roma mediators/facilitators play an important role in the schools of some European nations.<sup>11</sup> I concur with the Council of Europe in pointing out that raising social awareness in this regard goes hand in hand with education,<sup>12</sup> to the point that this support, or possibilities of support, is where one can find the foundation for the success of the NGO community in improving the human rights situation.<sup>13</sup>

## **2. THE ROLE OF NGOS IN THE FIGHT AGAINST DISCRIMINATION OF ROMA**

In conjunction with this important role in raising social awareness, the NGOs also fulfill equally important roles:

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and improve and transfer the methodological experience to different countries that are part of the project.” See *ibidem*.

<sup>10</sup> This means that these actions should not only be directed at Roma citizens, but also at non-Roma, including here all citizens and not just key professionals. See *ibidem*.

<sup>11</sup> One should offer specific training to teachers to prevent and combat any prejudice these professionals may have concerning the Roma population.

<sup>12</sup> Activism in favor of Human Rights and the role of Non-Governmental Organizations, Council of Europe, Compass: Education Manual for Young People on Human Rights <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos> Indeed, many NGOs on human rights include, at least as part of their activities, some type of information directed towards the public, or educational work. Conscious of the fact that the essence of their support is to be found in the public, the NGOs often try to achieve a better understanding of human rights with the aim of generating more respect, and, in turn, increase the probability of being able to call on support in case the rights are violated.

<sup>13</sup> See *ibidem*.

1) The NGOs play a principal role in monitoring social policies to the extent that they are often intimately involved in their formulation. In some countries this role has been formalized through structures such as “National Strategies for the Integration of the Roma Community” as well as other national and local structures. This participation is important, as they perform lobbying (social action groups) and thus influence decision-making. It is interesting to note that the Council of Europe<sup>14</sup> recognizes that if there is a common fundamental thread underlying the different forms of activism by NGOs, it may lie in trying to “demonstrate” who the perpetrators of injustice are, as it is very often the governments that try to evade the contractual obligations under international treaties and other rules of law.<sup>15</sup>

Among other relevant activities of the NGOs in fulfilling this function, we cite the following: 1) letter campaigns designed to pressure civil servants; 2) protest marches and demonstrations, with media coverage, with the aim of gaining the support of the public and shedding light on specific topics;<sup>16</sup> 3) concerted actions through communication, electronic mail, blogs, social networks and Internet;<sup>17</sup> 4) Shadow reports presented to the United Nations organizations that monitor human rights to give the perspective of the NGOs concerning the true human rights situation in a specific country. A good example of this last activity is the platform Futuro en Común,<sup>18</sup> which has recently developed an analysis and plan of action to achieve the SDG, in parallel and distinct from the plan developed by the Government of Spain,<sup>19</sup> in which is highlighted the fact that Spain is

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<sup>14</sup> See *ibidem*.

<sup>15</sup> Two of the best-known examples of organizations that produce and present monitoring reports are Amnesty International and the International Committee of the Red Cross. As is well known, these two organizations exude authority not only among the general public, but also at the UN level, since their reports are taken into account as part of the official monitoring process of governments that have accepted the terms of the international treaties. <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>

<sup>16</sup> In addition to demonstrations of support or outrage from the public, NGOs can also participate in meetings or private meetings with civil servants. Sometimes, the simple threat of publicly airing issues getting something out of public view may be enough to change a policy or a practice. <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>

<sup>17</sup> NGOs can cooperate with the media to counteract the negative stereotypes of Roma communities that have a disastrous effect on the image of the community and constitute a violation of the principle of equality. The growth of anti-Roma sentiment on the Internet and on social networks is increasingly worrying and fighting against these stereotypes is very complicated.

<sup>18</sup> Common Future is a meeting ground between organizations, movements, networks and social platforms that is active both in Spain and in other countries of the world, with the aim to end poverty and inequalities, and respect the environmental limits of the planet. See [futuroencomun.net/](http://futuroencomun.net/)

For the goals of sustainable development, see also the INFORME DE ESPAÑA PARA EL EXAMEN NACIONAL VOLUNTARIO 2018: [https://sustainabledevelopment.un.org/content/documents/20113Spain\\_VNR\\_Report\\_Spain\\_29\\_de\\_junio\\_2018.pdf](https://sustainabledevelopment.un.org/content/documents/20113Spain_VNR_Report_Spain_29_de_junio_2018.pdf)

<sup>19</sup> Take into account that Spain presented to the UN on July 18, 2018 a voluntary report on the status of the SDGs in the country: <https://sustainabledevelopment.un.org/index.php?page=view&type=30022&nr=893&menu=3170>

This should be set in context to the Report of the Government of Spain for the 2018 voluntary national review of the SDGs of June 29, 2018. It states: "Regarding civil society and knowledge, the first steps in relation to the Agenda were taken by the organizations most linked to international cooperation for development; from here there emerged platforms for dialogue and joint work with all sectors, such as the joint Oxfam Intermón-Unicef Spanish-WWF Committee and the Future in Common platform. All of the

the European Union country with the third-highest rate of students not completing school (18,3% en 2017), with a specially high incidence among foreign students, students of ethnic Roma background and students from low-income households.<sup>20</sup>

2) Educational actions are decisive when it comes to acquiring knowledge about equality, human rights, and discrimination as they contribute to the development of professional knowledge and improve the personal skills of the subjects. This training should be directed to the Roma community as it needs to understand better the law (rights and duties) not just concerning discrimination, but also with respect to institutional norms and work procedures, in addition to familiarizing themselves with the implications of intercultural dialogue. This training should also be tailored to other groups, such as the NGOs,<sup>21</sup> those who work in communication media and public services, that is, teachers and school administrators, prison wardens, police, judges, lawyers, and human resources, etc. The participation of Roma interlocutors in this process plays a vital role as they are members of the community and serve as points of reference for both Roma and non-Roma.

Educational actions are complemented by technical assistance, as “the NGOs can offer technical assistance and training to the key actors in the fight against discrimination: primarily the technical staff and heads of administrations and social organizations, legal professionals, lawyers, police and reporters, as well as Roma associations. We should not

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social action networks and platforms and the unions soon adopted the 2030 Agenda as a frame of reference and began a very dynamic process of interlocution and contributions, publications and public events of all kinds, and a position paper began to be developed, as well as a great event was planned in which Spanish civil society could express its feelings.

In an outstanding exercise of common effort, the most important action of this process, took place on April 9 at the Congress of Deputies, organized by thirteen networks and platforms, three national unions, twenty-five civil society organizations and four institutes university development and study centers. Prominent among them is the Third Sector Platform, which integrates the Volunteer Platform of Spain, the European Network for Combating Poverty and Social Exclusion in Spain, the Social Action NGO Platform, the Spanish Committee of People Representatives with Disability, the Coordinator of Non-Governmental Development Organizations, the Childhood Platform, the Spanish Red Cross, Caritas and the National Organization of the Blind of Spain.

To this we should add the contributions made by civil society organizations. In the report on the Common Future's “*A transforming agenda 2030 for the people and the planet*”, a series of proposals were launched to address the four major challenges that, in their view, Spain faces. One of them is precisely “Do not leave anyone behind”, addressing the problems of poverty, social exclusion and discrimination. The organization Common Future believes that other key public policies to leave no one behind are quality education, universal health care and an actual right to decent housing.

<sup>20</sup> They add that some residents in the country still do not have access to health services, or have to pay for part of these services. And the right to housing “is not guaranteed”. See <<La España de 2030 según las ONG>>, published in the newspaper El País on 11.07.2018. [https://elpais.com/elpais/2018/07/11/planeta\\_futuro/1531308710\\_807870.html](https://elpais.com/elpais/2018/07/11/planeta_futuro/1531308710_807870.html)

<sup>21</sup> According to the practical Guide for NGOs to prevent discrimination against the Roma Community of 2014, resulting from the project NET-KARD: “Regarding NGOs, training should focus on the following aspects: Roma culture and history in the national and European context; the politics of integration at the national and European level; funding and fundraising policies; creation of networks; human rights; strategic planning; strategic monitoring; strategic litigation; defending rights. Participatory and interactive training methodologies related to practical situations (including personal experiences) should be used, and when possible, be combined with field visits. Lastly, it should be stressed that training by itself is not sufficient to achieve change, and is but a support mechanism to put the policies and missions of the NGO into practice”. [https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf).

underestimate the legal counsel offered by NGOs to Roma who are victims of discrimination to the point of aiding them in courts of law to defend their right to equal treatment.” The general goal of these actions is to show the Roma population and other citizens the importance of reporting all cases of discrimination.<sup>22</sup> In fact, successful litigation can contribute to encouraging other victims to report discrimination, by showing that it is possible to achieve justice, and, above all, not to feel that they are alone in this fight.

Emblematic in this sense is the decision of the European Court of Human Rights in the “*Muñoz Díaz versus Spain*”, of December 9th, 2009.<sup>23</sup> The plaintiff, María Luisa, was a Spanish woman, of Roma ethnicity, widowed with six children, whom the national authorities had denied a widow’s pension because she had not contracted marriage according to the legal form valid in Spain in the year 1971 (according to the Roman Catholic rite), but instead according to the traditions of the Roma community. It was argued not only that a marriage according to Roma rites had no civil effects as would a canonical marriage have, which was true, but that, in addition, it was also not equivalent to a civil union, at least by analogy, which was somewhat more doubtful,<sup>24</sup> as evidenced by the final decision,<sup>25</sup> given that the European Court of Human Rights found that a right recognized in Article 14 in conjunction with Article 1 of Protocol nº 1 had been violated, it being understood that receiving a pension lies indeed within the future assets that enter into property rights according to its own jurisprudence (par. 44). More recent is the decision of the Spanish Supreme Court 58/2018 of January 25th, 2018, in which the NGO support to the plaintiff -Luz- was decisive, even though in this case she did not achieve the same success as María Luisa, at least not up to now.<sup>26</sup>

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<sup>22</sup> See *ibidem*. Thus, for example, drawing attention to the phenomenon of discrimination that is often associated with hate crimes will serve to set the justice system in motion and will sensitize all relevant actors (policy makers, the police, the media, lawyers, etc.) to take it seriously and combat this problem.

<sup>23</sup> In this particular case, the plaintiff used the counsel and legal help of the *Fundación Secretariado Gitano*, which proved decisive for showing that the prohibition of racial discrimination had been violated (art. 14 CEDH) in conjunction with the right to the respect for property rights of the First Additional Protocol. The Spanish government had acted erroneously and the courts, first the Superior Court of Madrid and later the Constitutional Court, had not acted to redress the failings. The Spanish State had to reimburse María Luisa 70.000 € to resolve its obligations as determined by the ECHR.

<sup>24</sup> Specifically, the decision of the Constitutional Court 69/2007, of April 16th, had dismissed the complaint of the plaintiff, refusing to consider the truly particular circumstances of the case in regard to the ethnic aspects, which, on the other hand, certainly had played a role.

<sup>25</sup> In fact, the Court addressed, among other arguments, the ethnic argument in the case, emphasizing, first of all, the belief held by the plaintiff that her marriage was valid was demonstrable also by her belonging to the Roma community, “which has its own value system within Spanish society”. The Court returns to the idea of a new “international consensus” within the Council of Europe “to recognize the particular needs of minorities and the obligation to protect their security, identity, and way of life, not only to protect the interests of members of said minorities, but to preserve the cultural diversity that benefits all of a society in its totality.” It seems clear that it is not a question of applying laws in a manner more favorable to the Roma, which would, moreover, be highly questionable, but, rather, that they should not be treated worse than other persons in comparable situations.

<sup>26</sup> This case also involves a Roma woman (Doña Luz) who married a person named Nicanor according to Roma rites in 1974. Luz asked the Instituto Nacional de la Seguridad Social (INSS) for a widow's pension when Nicanor died in 2014. The INSS denied her application, deeming her marriage to be invalid for not being recorded in the Civil Registry. Luz appealed this decision to the Supreme Court of Andalusia, alleging discrimination for ethnic reasons and citing the ECHR ruling on *María Luisa Díaz Muñoz vs. Spain*. The

These two exemplary cases show how NGOs can act as intermediaries to transfer complaints to the bureaus of equality or the police and give aid and comfort to victims. Keep in mind that the majority of Roma are not accustomed to making reports to governmental agencies or the Courts. The Roma NGOs in some way are transformed into organizations of trust, so that Roma feel more comfortable and ready to speak about the situations of discrimination that they suffer, in light of the fact that there is much permissiveness, lack of action, and impunity with respect to racism and discrimination of the Roma community.

If NGOs are of great relevance, it is because, in addition to engaging in measures that promote the recognition of discriminatory practices, they also play a decisive role in holding the government accountable for its implementation of the Directive on racial equality (EU Directive 2000/43/ CE)<sup>27</sup> by remaining vigilant. In accordance with article 7(2) of this Directive, NGOs with a legitimate interest are legally authorized to act in the name of or in support of Roma victims in proceedings.

3) NGOs are an important source of data and knowledge about racial discrimination of Roma, and, for this reason, it is important that they interchange information and technical resources with other organizations, above all with State agencies that have the capacity to incorporate the knowledge base of the NGOs in the system. For this purpose, the annual reports that they publish for the public authorities charged with fighting discrimination are an invaluable resource for legal professionals, communication media, the police,<sup>28</sup> etc. These documents can be used as proof of discrimination and contain specific and useful information for lobbying and support groups. A good example of this can be found in the Fundación Secretariado Gitano,<sup>29</sup> which publishes annual reports with the aim of informing the Spanish government and society in general of the daily discrimination faced by the Roma community by presenting cases testifying to the violation of the fundamental right to equality. This publication is also a means to give voice to the victims of discrimination that need to be defended and supported with the goal to seek solutions to the problems of discrimination that they suffer, thereby contributing to the creation of a more just society.

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Court agreed and obliged the INSS to pay said pension. But the INSS disagreed and appealed to the Supreme Court of Spain. This court upheld the appeal of the INSS, deeming the arguments given by the INSS to deny the widow's pension to be valid. Although there were similarities to the case of María Luisa Muñoz Díaz, the contracting parties in this case were held not to have acted in good faith. Doña Luz and her husband did not have any official documentary evidence to the effect that they were “married”, unlike the official documents presented in the case of María Luisa. Due to this lack of documentary evidence, the Supreme Court decided to follow previous constitutional Jurisprudence, since it did not consider it contrary to the ECHR ruling.

<sup>27</sup> According to this Directive, a new independent organization should be created to promote equal treatment and non-discrimination.

<sup>28</sup> According to the practical Guide for NGOs to prevent discrimination against the Roma Community of 2014, resulting from the project NET-KARD: “NGOs can help security forces to improve the communication channels with Roma citizens, taking into account that the police play a fundamental role in guaranteeing the right to equality”.  
[https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf).

<sup>29</sup> Annual report on Discrimination and the Roma Community (Spain)  
[http://www.gitanos.org/centro\\_documentacion/publicaciones/fichas/100777.html](http://www.gitanos.org/centro_documentacion/publicaciones/fichas/100777.html).

4) It is essential that NGOs actively collaborate with Roma associations to eradicate racial discrimination, taking into account that the latter provide one of the best means of promoting the social participation of Roma communities, because “1) The associations are often ahead of others in addressing the problems of the Roma people; and 2) they have the capacity to make Roma communities aware of their own needs and ability to resolve problems and promote their own development”.<sup>30</sup>

5) One should encourage the participation of Roma communities and give them a voice. As specified in the practical Guide for NGOs to prevent discrimination of the Roma Community of 2014, a result of the Project NET-KARD: “Working “with” and not “for” is essential for an effective social intervention, because the Roma need to be active participants in their own process of social inclusion. The participation of these citizens in defining the measures and social actions, and their posterior application, is a right, ensures that their “voice” is heard, and that “their true interests are protected”.<sup>31</sup>

6) The NGOs are key actors in breaking down barriers that Roma communities are still facing regarding access to general services, such as education, health, etc. For this reason, it is important for NGOs to become aware of the need to work jointly and in collaboration with these services during the realization of a project or activity. One example of this type of cooperation is that of the Roma mediator (a post that exists in various member states of the European Union), given that this person is tasked with improving the access of Roma communities to a series of public services, and given this person’s role as an intercultural mediator who creates a direct link between Roma communities and the majority of society. Having said that, one should not lose sight of the fact that the mediators are considered to be a temporary solution, as the final goal is for Roma communities gain direct access to services without the need of the mediator’s intervention.<sup>32</sup> In summary, the aim is to avoid a paternalistic situation that will wind up strangling the capacity for autonomy and personal initiative.

7) The NGOs should attach great importance to the creation of networks in which different interest groups participate (political officials, professionals, and the communities and associations of Roma) to obtain a better understanding of the needs of these communities, achieve a better and more efficient use of resources, and find adequate solutions to promote the respect for difference and diversity.

The cooperation between Roma NGOs and the public administration in the intervention with victims of racial discrimination, for example, in the case of Spain is carried out through the creation of a Network of Assistance Centers for Victims of discrimination<sup>33</sup> through the equality organization called Council for the promotion of

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<sup>30</sup> See the practical Guide for NGOs to prevent discrimination against the Roma Community of 2014, resulting from the project NET-KARD. [https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf)

<sup>31</sup> See *ibidem*.

<sup>32</sup> See *ibidem*.

<sup>33</sup> In June 2010, the Network of Assistance Centers for Victims of Discrimination based on Racial or Ethnic Origin was created in Spain. This network is made up of different non-governmental organizations, including Roma NGOs, all of which work to achieve equal treatment for vulnerable groups of the

equal treatment and non-discrimination of persons for reasons of racial or ethnic origin.<sup>34</sup> One of the most important tasks of the Council is to provide independent assistance in the filing of complaints on behalf of victims of direct or indirect discrimination for reasons of racial or ethnic origin.

Working within a network thus becomes an effective strategy when it comes to multidimensional phenomena such as discrimination and is also an important intervention tool to promote the participation of the different interest groups, sharing of responsibilities and resources, and defining clearer solutions to a problem shared by all partners.

8) The cooperation of the NGOs with the communication media plays a key role in projecting an accurate image of Roma communities, eliminating stereotypes and myths that are still prevalent in society, and increasing respect for diversity and intercultural dialogue. One should try to convey a more positive image of Roma communities, by generally highlighting their traditions, practices, activities, etc., giving the Roma communities to express and share the richness of their culture with the rest of society. The Roma NGOs serve as a good intermediary between journalists and the community, as the journalists already tend to go to the NGOs when they report on problems that affect the Roma people.<sup>35</sup>

A good example of activism through a Roma NGO, which fulfills all the functions we have highlighted, is certainly the European Roma Rights-ERRC-,<sup>36</sup> which works to ensure that questions related to human rights faced by Roma communities are taken into account in the political agenda of Europe and other locations. The ERRC carries out a meticulous investigation, yielding detailed information about the state of human rights of Roma, specifically concerning acts of violence that they face, concerning the forms of discrimination against them, and concerning the negation of access to economic and social rights.<sup>37</sup> Moreover, the ERRC tries to contribute to improving the state of human rights of Roma communities through campaigns to raise awareness, the development of policies, and through strategic legal processes. Their intensive campaigns have revealed the violence and hate against this collective, the segregation in school, the forced

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population. The network is made up of the Cepaim Foundation, Fundación Secretariado Gitano, Accem, Spanish Red Cross, Red Acoge, CEAR, Movement against Intolerance, and Movement for Peace. The Network of Assistance Centers for Victims of Discrimination on Grounds of Racial or Ethnic Origin was configured to allow its members to develop a common action protocol, based on a service manual. <http://cepaim.org/que-hacemos-convivencia-social/igualdad-de-oportunidades/servicio-de-asistencia-a-victimas-de-discriminacion-racial-o-etnica/>

<sup>34</sup> <https://asistenciavictimasdiscriminacion.org/consejo-para-la-promocion-de-la-igualdad-de-trato-y-no-discriminacion-de-las-personas-por-origen-racial-o-etnico/>

<sup>35</sup> See the practical Guide for NGOs to prevent discrimination against the Roma Community of 2014, resulting from the project NET-KARD. [https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf)

<sup>36</sup> <http://www.errc.org>

<sup>37</sup> “The investigations of the ERRC in Bulgaria, Hungary, the Czech Republic, Slovakia, and Romania during the early part of 2010, together with the Police, the NGOs, and experts, found that Roma represent 50-80% of the victims of human trafficking in Bulgaria, 40-80% in Hungary, 70% in Slovakia, and up to 70% in some parts of the Czech Republic”. See Rights of Roma, a Fact Sheet, EHRR. <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>



evictions, and the coerced sterilizations of their members. Through their intensive educational work on human rights, the ERRC has set its principal goal to help Roma activists in the fight for equality.<sup>38</sup>

### 3. CONCLUSION

By way of conclusion, it should be reaffirmed that the NGOs should investigate the root causes of the reality for Roma communities (current barriers with proposals to eliminate the same) and research better practices applicable to all of Europe. In relationship to the serious obstacles that they face, these could be summarized as follows: 1) The stereotyped image held by the majority society and the media have of Roma communities; 2) the lack of political priority given to Roma communities; 3) the lack of economic sustainability;<sup>39</sup> 4) The paternalistic attitude some NGOs adopt;<sup>40</sup> 5) the failure in applying national and European legislation against discrimination; 6) the ignorance of the procedures for reporting cases of discrimination.<sup>41</sup> But alongside these obstacles are

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<sup>38</sup> This is achieved through internships, scholarships, seminars, and publication of educational texts, such as, for example, *Knowing your rights and fighting for them: a guide for Roma activists..* <https://www.coe.int/es/web/compass/human-rights-activism-and-the-role-of-ngos>

<sup>39</sup> Unfortunately, in June 2018 Roma NGOs were charged with embezzlement and misappropriation of hundreds of millions of Euros of public funds. The Fundación Secretariado Gitano, the Unión Romani, Federación Andaluza de Asociaciones de Mujeres Gitanas-Fakali Amuradi, Fagex (Federación de Asociaciones Gitanas de Extremadura) and the Federación Nacional de Asociaciones de Mujeres Gitanas-Kamira collect 90% of the public funding allocated for development of the Roma community. According to the report *Function and Organization of the so-called Roma NGOs*, the Office of Management of Public Funds and the Socio-Economic Situation of the Roma, from the Observatory of the Citizens against Corruption -in which other organizations participate such as the Observatory of Subsidies of Andalusia, the Platform for Democracy and Transparency, Andalusia for Public Education, and the Citizens' Forum for Democratic Participation in Sevilla-, "the NGOs that are active in the Roma population not only do not meet the legal prerequisites to receive subsidies, but the offices of the various administrations charged with distributing these scandalously fail to comply with the requirements imposed by Law to grant such aid and subsidies." Since the period 1989-2000 the Fundación Secretariado Gitano has managed "around 200 million Euros of European funds" destined solely for employment plans, programs of school workshops, offices, the program Acceder and the Formación e Inserción Profesional (FIP) plan... Nevertheless, the EU estimates that 90% of Roma youth neither work nor study. On the other hand, they charge the NGO that authored the report, namely the Fundación Secretariado Gitano, owns vast holdings of real estate in Spain and in other countries even though it is a non-profit organization. The principal culprits named in the report by the Observatory of the Citizens against Corruption are Pedro Puente, a priest and president of the Institute for Roma Culture, and Diego Fernández, its director; Isidro Rodríguez, director of the Fundación Secretariado Gitano; Juan de Dios Ramírez Heredia, president of the Unión Romani; Beatriz Carrillo de los Reyes, president of the Fakali-Amuradi, and Antonio Vázquez, president of Fagex.

<sup>40</sup> According to the Guide, "In some countries (Portugal, for example), non-governmental organizations sometimes take a protective position towards Roma communities, thus provoking a paternalistic attitude that limits the participation of these communities." See the practical Guide for NGOs to prevent discrimination against the Roma Community of 2014, resulting from the project NET-KARD. [https://www.gitanos.org/upload/72/18/Guia\\_NetKard\\_ONG\\_y\\_com.\\_gitana.pdf](https://www.gitanos.org/upload/72/18/Guia_NetKard_ONG_y_com._gitana.pdf)

<sup>41</sup> The NGOs and governmental authorities are in a position to provide more information about legislation and procedures to combat discrimination of Roma communities. Moreover, in accordance with article 13(2) of the Directive on racial equality, the agencies governing equality measures should offer independent aid to the victims of discrimination when discrimination proceedings begin. The webpage Equinet (European Network of Organizations of Equality) lists all organizations at the European level where the victim can report a case of racial discrimination": <http://www.equineteurope.org>

other barriers related to global questions, such as the long history of exclusion faced by Roma communities as well as the strategies and political measures directed at these communities.<sup>42</sup> Within the last decades, the projects and actions of NGOs in this area have been carried out in a haphazard manner without a view to encompassing a more integrated and wider-ranging strategy.

In any event, we should place our trust in NGOs as key actors in civil society in the fight against discrimination of the Roma communities in Europe in order to advance the 17 global sustainable development goals without forgetting the existing challenges.<sup>43</sup> It is true that a long road remains before the Agenda 2030 is achieved, but, as the Vicente Ferrer Foundation has pointed out, the organizations of the Third Sector should not only be present but also be active participants in the decision-making about our joint future.<sup>44</sup>

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<sup>42</sup> The efforts realized by member States of the EU to define and put into practice national strategies for the inclusion of Roma communities are very recent and of little quantifiable impact.

<sup>43</sup> The Vicente Ferrer Foundation lists the following nine challenges that NGOs should take on in 2018 to achieve the SDGs: 1) participate at all levels in the definition of the goals and markers for the government strategies to achieve the SDGs; 2) to reinforce the role of the citizens as protagonists for development, accompanying and supporting the most vulnerable, and for transferring their proposals and demands for their own plans and those of the public authorities; 3) collaborate in defining the baseline information that will enter into the volunteers' report of the SDGs that will be presented at the UN High Level Political Forum this year; 4) monitor and demand compliance with the commitments and obligations of the public authorities with the SDGs, especially those that the reports indicate are more far from being achieved; 5) maintain a productive network in line with SDG 17, for example between NGOs from different sectors, entrepreneurs, the media, public authorities ... seeking "unlikely alliances"; 6) denounce situations of exclusion before the public authorities, leaving aside the discourse of needs and guaranteeing human rights; 7) make the development cooperation policy relevant again; 8) communicate, raise awareness and educate about the SDGs; 9) enhance the role of citizens and organizations in their implementation and follow-up. See 2018: The NGOs facing the Challenge of the SDG. <http://fundacionvicenteferrerodsmadrid.org/2018-las-ong-frente-al-reto-de-los-ods/>

<sup>44</sup> See *ibidem*.

## INVESTMENT PROMOTION REGIMES FOR LEAST DEVELOPED COUNTRIES

MARÍA ÁNGELES CANO LINARES

*Public International Law and International Relations Professor at the Rey Juan Carlos University*

SUMMARY: 1. INTRODUCTION. 2. LEAST DEVELOPED COUNTRIES. 2.1. Brief Approach to Least Developed Countries 2.2. Least Developed Countries and progress of Sustainable Development Goals. 3. INTERNATIONAL INVESTMENT REGIMES AND RECENT DEVELOPMENTS 4. FOREIGN DIRECT INVESTMENT AND INVESTMENT REGIMES IN LDCS 4.1. Foreign Direct Investment in LDCs 4.2. Investment Regimes in LDCs . 5. STRENGTHENING INVESTMENT PROMOTION REGIMES FOR FOREIGN DIRECT INVESTMENT IN THE LEAST DEVELOPED COUNTRIES. 6. CONCLUSIONS.

### **ABSTRACT:**

In Least Developed Countries finances are central to investment in the Sustainable Development Goals. However, they can't meet all Sustainable Development Goal-implied resource demands. So, the role of private sector investment will be essential to the achievement of sustainable development but much existing infrastructure and many existing practices are unsustainable. Istanbul Programme of Action stated that foreign direct investment was an important source of capital formation, know-how, employment generation and trade opportunities for LDCs and called for accelerating FDI inflows into these countries. The LDCs have made strong efforts to attract increased FDI flows but the total share of Foreign Direct Investment to LDCs in global FDI remains is still very low. There is an urgent need to adopt, expand and implement investment promotion regimes, as appropriate, for least developed countries. At the same time, the need for systematic reform of the global international investment agreements regime has become evident. In 2017, United Nations Conference on Trade and Development launched a Reform Package for the International Investment Regime that offers a comprehensive package for reforming the international investment regime. So, international investments agreements are now immersed in a process of reform aimed at including parameters of sustainable development that should help to reduce current inequalities.

### **KEYWORDS:**

SDG 17.5, Least Developed Countries, Foreign Direct Investment, Investment Promotion Regimes.

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## 1. INTRODUCTION

While primary responsibility for achieving the ambitious Goals and targets of the 2030 Agenda rests with individual countries, international support and partnerships are critical, especially for the poorest countries.

Goal 17 seeks to strengthen global partnerships to support and achieve the ambitious targets of the 2030 Agenda, bringing together national governments, the international community, civil society, the private sector and other actors.

Goal 17 targets are divided in five groups: finance, technology, capacity-building, trade and systemic issues.<sup>1</sup>

Finance group includes five targets, each of which has its own indicators<sup>2</sup>.

The first four are strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection (SDG 17.1). Second, developed countries to implement fully their official development assistance commitments, including the commitment by many developed countries to achieve the target of 0.7 per cent of ODA/GNI (Official Development Assistance/Gross National Income)<sup>3</sup>; third, mobilize additional financial resources for developing countries from multiple sources and, forth, assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress.

Finally, the fifth target is to adopt and implement investment promotion regimes for least developed countries, being its single indicator the number of countries that adopt and implement investment promotion regimes for least developed countries.

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<sup>1</sup> According to SDG Platform, despite advances in certain areas, more needs to be done to accelerate progress.

<sup>2</sup> The global indicator framework was developed by the Inter-Agency and Expert Group on SDG Indicators (IAEG-SDGs) and agreed to, as a practical starting point at the 47th session of the UN Statistical Commission held in March 2016. .. The report of the Commission, which included the global indicator framework, was then taken note of by ECOSOC at its 70th session in June 2016.

<sup>3</sup> The OCDE Development Assistance Committee (DAC) has measured resource flows to developing countries since 1961. Special attention has been given to the official and concessional part of this flow, defined as “official development assistance” (ODA). The DAC first defined ODA in 1969, and tightened the definition in 1972. ODA is the key measure used in practically all aid targets and assessments of aid performance. The DAC defines ODA as “those flows to countries and territories on the DAC List of ODA Recipients and to multilateral institutions which are provided by official agencies, including state and local governments, or by their executive agencies each transaction of which is administered with the promotion of the economic development and welfare of developing countries as its main objective; and is concessional in character and conveys a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent).” The best known target in international aid proposes to raise official development assistance (ODA) to 0.7% of donors' national income. In 1970, The 0.7% ODA/GNI target was first agreed and has been repeatedly re-endorsed at the highest level at international aid and development conferences: in 2005, the 15 countries that were members of the European Union by 2004 agreed to reach the target by 2015 the 0.7% target served as a reference for 2005 political commitments to increase ODA from the EU, the G8 Gleneagles Summit and the UN World Summit <http://www.oecd.org/development/developmentassistancecommitteeedac.htm> (last visited, 05/09/18).

Two main concepts and a basic presumption are the basis and essential elements of this objective: foreign direct investment promoted through investment promotion regimes and least developed countries.

The basic presumption is that foreign direct investment (FDI) plays an important role in the world economy and has the potential to contribute towards accelerating the process of economic growth and sustainable development in the least developed countries (LDCs).

Nevertheless, when global economic growth accelerated in the first decade of the millennium, the LDCs remained marginal in the world economy owing to their structural weaknesses and the form of their integration into the global economy.<sup>4</sup>

But, although their marginal contribution to global production and global trade, when, in 2008, the global economy fell into the deepest recession since 1929, the LDCs as a group also experienced a sharp economic slowdown. The fallout of the global economic crisis was transmitted to LDCs mainly through the collapse of international trade, falling FDI inflows, and in some cases also declining remittances.

However, given that different LDCs are integrated into the global economy in dissimilar ways, the impacts of the crisis have varied considerably among them according to their structural characteristics.<sup>5</sup>

Thus, the global financial and economic crisis highlighted the urgent need to move beyond business as usual and, through concerted international action, foster more stable and inclusive global development. The crisis has been a sober reminder that economic and social imbalances and inequalities, both within and between countries, if left to correct themselves, are likely to produce damaging and destructive outcomes, particularly for vulnerable countries and communities.

So, investment is essential to the achievement of sustainable development but much existing infrastructure and many existing practices are unsustainable.

On the other hand, the Sustainable Development Goals will have very significant resource implications across the developed and developing world.

Global investment needs will be between \$5 trillion to \$7 trillion per year. Estimates for investment needs in developing countries alone range from \$3.3 trillion to \$4.5 trillion per year, mainly for basic infrastructure (roads, rail and ports; power stations; water and

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<sup>4</sup> The number of people living in absolute poverty in these countries has continued to rise, even during the boom years of 2002–2007, and progress towards achievement of the Millennium Development Goals has remained very slow. United Nations Conference on Trade and Development (UNCTAD), *The Least Developed Countries Report, 2010 Towards a New International Development Architecture for LDCs*, [https://unctad.org/en/Docs/ldc2010\\_en.pdf](https://unctad.org/en/Docs/ldc2010_en.pdf) (last visited 05/09/18)

<sup>5</sup> The slowdown in 2009 was particularly sharp in the oil- and mineral-exporting LDCs, in a few (but not all) LDC exporters of manufactures and in some tourism-dependent island LDCs. The Least Developed Countries Report, 2010 Towards a New International Development Architecture for LDCs, [https://unctad.org/en/Docs/ldc2010\\_en.pdf](https://unctad.org/en/Docs/ldc2010_en.pdf) (last visited 07/09/18). *Vid.* C. Fernández Liesa, A. Cano Linares, *Los procesos de integración ante la crisis financiera internacional*. Ed. Civitas, Madrid, 2012.

sanitation), food security (agriculture and rural development), climate change mitigation and adaptation, health, and education.

At current levels of investment in Sustainable Development Goal-relevant sectors, developing countries alone face an annual gap of \$2.5 trillion.<sup>6</sup>

In developing countries, especially in LDCs and other vulnerable economies, public finances are central to investment in the Sustainable Development Goals. However, they cannot meet all Sustainable Development Goal-implied resource demands. The role of private sector investment will be indispensable.

## **2. LEAST DEVELOPED COUNTRIES AND SDGS**

In the late 1960s, the United Nations began paying special attention to the Least Developed Countries, recognizing those countries as the most vulnerable of the international community.

The International Development Strategy for the second UN Development Decade for the 1970s incorporated special measures in favor of the LDCs. In order to generate international attention and action to reverse the continuing deterioration of the socio-economic condition of these most vulnerable countries, the First United Nations Conference on the LDCs was held in Paris in 1981. It adopted a comprehensive Substantial New Programme of Action for the 1980s for the LDCs.

### **2.1 Brief Approach to Least Developed Countries**

Since 1971, the United Nations has recognized least developed countries (LDCs) as a category of States that are deemed highly disadvantaged in their development process, for structural, historical and also geographical reasons.

LDCs face more than other countries the risk of deeper poverty and remaining in a situation of underdevelopment. More than 75 per cent of the LDCs' population still lives in poverty. These countries are the world's poorest, with per capita GDP under \$1,086, and with low levels of capital, human assets, exports and technological development.

These countries are also characterized by their vulnerability to external economic shocks, natural and man-made disasters and communicable diseases. As such, the LDCs are in need of the highest degree of attention from the international community.

Currently, 47 countries are designated by the United Nations as "Least Developed Countries".<sup>7</sup> LDCs comprise around 880 million people, 12 per cent of the world

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<sup>6</sup>United Nations Conference on Trade and Development, *World Investment Report 2014 Investing in the SDGs: An Action Plan*.

<sup>7</sup> Most of them are African and Asian countries, with the exception of Haiti, Solomon Islands., Tuvalu (In a June 2015 resolution, ECOSOC recalled the CDP's 2012 recommendation to graduate Tuvalu from LDCstatus, and deferred to 2018 the Council's consideration of this potential graduation case.) and Vanuatu

population, which face severe structural impediments to growth. However, the LDCs account for less than 2 per cent of world GDP and around 1 per cent of world trade.<sup>8</sup>

The list of LDCs is reviewed every three years by the United Nations Economic and Social Council, in the light of recommendations by the Committee for Development Policy. Three criteria are used to determine LDC status: Per capita income (gross national income per capita), human assets (indicators of nutrition, health, school enrolment and literacy) and economic vulnerability (indicators of natural and trade-related shocks, physical and economic exposure to shocks, and smallness and remoteness).

By periodically identifying LDCs and highlighting their structural problems, the United Nations gives a strong signal to the international community to the need of special concessions in support of LDCs.

Concessions associated with LDC status include benefits in the areas of development financing, notably grants and loans from donors and financial institutions, multilateral trading system<sup>9</sup>, technical assistance, notably, toward trade mainstreaming (Enhanced Integrated Framework)<sup>10</sup>.

Five countries have so far graduated from LDC status: Botswana in 1994, Cape Verde in 2007, Maldives in 2011, Samoa in January 2014, and Equatorial Guinea in June 2017.<sup>11</sup>

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(In a resolution adopted in December 2015, the General Assembly endorsed the CDP recommendation of 2012 to graduate Vanuatu. In doing so, the Assembly took into consideration the setback that Vanuatu had suffered as a result of Tropical Cyclone Pam in March 2015. The General Assembly decided, on an exceptional basis, to delay the country's graduation to December 2020). The rest are Afghanistan, Angola (The Committee's 2015 recommendation to graduate Angola was endorsed by the General Assembly in February 2016 through a resolution that set February 2021 as the country's graduation date. This decision was an exceptional measure to take into account the high vulnerability of the commodity-dependent Angolan economy to price fluctuations), Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Congo, Democratic Republic of the Congo, Djibouti, Gambia, Guinea, Guinea Bissau, Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Tanzania, Togo, Uganda, Yemen and Zambia.

<sup>8</sup> <https://unctad.org/en/Pages/ALDC/Least%20Developed%20Countries/LDCs.aspx> (last visited 20/08/2018)

<sup>9</sup> One of the principles of World Trade Organization's system is, together with non discrimination in the trading system, and that it should be freer, predictable and more competitive, that the multilateral trading system has to be more beneficial for less developed countries, giving them more time to adjust, greater flexibility, and special privileges. The World Trade Organization (WTO) recognizes as least-developed countries (LDCs) those countries which have been designated as such by the United Nations. There are currently 47 least-developed countries on the UN list, 36 of which to date have become WTO members.

<sup>10</sup> UNCTAD provides multilateral technical cooperation through the Enhanced Integrated Framework (EIF), a multi-donor programme, that assists the least developed countries (LDCs) in their efforts to build productive capacities and play a more active role in the global trading system. The EIF is supported by six core partner agencies, namely UNCTAD, ITC, UNDP, the IMF, the World Bank and the WTO. The main objectives of the EIF are to: mainstream trade into national development strategies, establish national structures to coordinate the delivery of trade-related technical assistance, build capacity to trade, which also includes addressing critical supply-side constraints. Technical assistance through the Enhanced Integrated Framework can take various forms, such as: the elaboration of Diagnostic Trade Integration Studies, the drafting of trade policies for mainstreaming trade into development plans and the preparation of medium-term plans.

<sup>11</sup> The graduation of Equatorial Guinea was the fifth country to graduate but the first ever to do so based on the "income-only" criterion. United Nations Conference on Trade and Development,

Once a recommendation to graduate a country has been endorsed by United Nations Economic and Social Council and the General Assembly, the graduating country benefits from a grace period, normally three years, before graduation effectively takes place.

This period, during which the country remains an LDC, is designed to enable the graduating State and its development and trading partners to agree on a “smooth transition” strategy, so that the planned loss of LDC status does not disrupt the country’s socioeconomic progress. A smooth transition measure generally implies extending to the graduated country, for a number of years after graduation, a concession to which the country had been entitled by virtue of its LDC status.

United Nations Conference on Trade and Development (UNCTAD) extends to all graduating countries a range of services aimed at supporting their progress toward graduation from LDC status. These include preparing vulnerability profiles of countries with the challenges of graduation, supporting them in their preparation for a smooth transition to post-LDC life.

As stated above, the UN System’s efforts to reverse LDCs’ increasing marginalization in the global economy and put them on a path to sustained, accelerated, pro-poor growth and development dated back to the 1980s.

Since the first Conference held in Paris in 1981, three other United Nations Conferences on the LDCs have taken place in 1990<sup>12</sup>, 2001<sup>13</sup> and 2011 to continue focus on the need for special measures for these countries.

According to The Least Developed Countries, 2000 Report, elaborated in order to facilitate discussions at the Third United Nations Conference on the Least Developed Countries, two key features of the development financing patterns of LDCs emerge. First, the central accumulation and budgetary processes of the LDCs are dominated by external rather than domestically generated resources. Second, almost all the external finance for most LDCs comes from official sources. The development prospects of most LDCs thus still depend critically on aid relationships and associated external debt dynamics.<sup>14</sup>

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*The Least Developed Countries Report 2017 Transformational Energy Access*  
<https://unctad.org/en/pages/PublicationWebflyer.aspx?publicationid> (last visited 20/08/18)

<sup>12</sup> The Second United Nations Conference on the Least Developed Countries (LDC-II) was held in 1990, also in Paris, adopting the Paris Declaration and the Programme of Action for the LDCs for the 1990s.

<sup>13</sup> The Third United Nations Conference on the Least Developed Countries (LDC-III) was held in 2001 in Brussels, hosted by the European Union, and it adopted the Brussels Declaration and the Brussels Programme of Action for the LDCs for the Decade 2001 – 2010. The Least Developed Countries, 2000 Report faced financing development in the 48 LDCs, and particularly with the scope for resource mobilization and the role of official development assistance (ODA), debt relief and private capital flows. In order to facilitate discussions at UNLDC III, the *Report* discussed the scale of the development finance challenge in LDCs, the scope for meeting this challenge through domestic resource mobilization, and the constraints which are limiting the LDCs’ access to international capital markets and attractiveness for FDI.

<sup>13</sup> The Report examines how these have been working in the 1990s and whether the current rethinking of international development cooperation is likely to rectify the deficiencies of the past. United Nations Conference on Trade and Development, *The Least Developed Countries 2000 Report, Aid, Private Capital Flows and External Debt: The Challenge of Financing Development in the LDCs*, <https://unctad.org/en/pages/PublicationArchive.aspx?publicationid> (last visited 20/08/2018).

<sup>14</sup> *Ibid.* The United Nations Office of the High Representative for Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) was established by General



Despite three successive Programmes of Action and notwithstanding the positive developments recorded by LDCs in the recent past, most of these countries are far from meeting the internationally agreed goals and still face massive development challenges. Progress in economic growth has made little dent on poverty and social disparities in LDCs. Hunger and malnutrition are widespread with dire consequences for the large vulnerable populations.

With a view to exactly tackle that emergency and to reinvigorate the pledge in support of LDCs' development and transformation, the Fourth United Nations Conference on the Least Developed Countries took place in 2011. The Programme of Action for the Least Developed Countries for the Decade 2011-2020 - the so-called Istanbul Programme of Action (IPoA) was adopted, with some recommendations for LDCs that included some related to Foreign Direct Investment. It stated that foreign direct investment (FDI) was an important source of capital formation, know-how, employment generation and trade opportunities for LDCs and called for accelerating FDI inflows into these countries.<sup>15</sup>

Foreign Direct Investment (FDI) constitutes a dominant part of private capital flows to the least developed countries. It plays a complementary and catalytic role in building and strengthening productive capacity in these countries. The LDCs have made strong efforts to attract increased FDI flows and enhance their benefits for their economies, which were complimented by actions by their development partners. These actions appear to have had a positive impact as indicated by a significant rise in the FDI flows to LDCs in recent years.

Yet, the total share of Foreign Direct Investment to LDCs in global FDI remains only around 1.7 per cent, underscoring that much more needs to be done. Stronger and more focused policies, strategies and mechanisms by LDCs, home countries of FDI, international organizations and other stakeholders can substantially increase FDI flows to LDCs in the coming years.

The General Assembly in its resolution 67/220, recalling the decision contained in the Istanbul Programme of Action (IPOA) to adopt, expand and implement investment promotion regimes, as appropriate, for least developed countries, requested the Secretary-General to submit to the General Assembly, for its consideration at its sixty-ninth session, a report focusing on national policies and regulatory frameworks for stimulating foreign direct investment in least developed countries and outlining the options and modalities of investment promotion regimes for least developed countries.

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Assembly Resolution 56/227 as a follow-up mechanism to the Third Conference to ensure effective follow-up, implementation, monitoring and review of the implementation of the Brussels Programme of Action for the LDCs for the Decade 2001 – 2010, adopted at that conference.

<sup>15</sup> UNCTAD, *Foreign Direct Investment in LDCs: Lessons Learned from the Decade 2001–2010 and the Way Forward* (UNCTAD/DIAE/IA/2011/1).

## **2.2 Least Developed Countries and Progress of Sustainable Development Goals**

According to the Sustainable Development Goals Report 2018<sup>16</sup>, there are some significant differences in the case of the LDC in relation to some objectives.

So, for example, in relation to Goal 3, ensure healthy lives and promote well-being for all at all ages, and, in particular with regard to specifically in relation to health systems and funding, available data from 2005 to 2016 indicate that close to 45 per cent of all countries but 90 per cent of least developed countries (LDCs) have less than one physician per 1,000 people, and over 60 per cent have fewer than three nurses or midwives per 1,000 people.

Another example is Goal 4, ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, where critical efforts are needed to improve the quality of education. Disparities in education along the lines of gender, urban-rural location and other dimensions still run deep, and more investments in education infrastructure are required particularly in LDCs. Those countries face the biggest challenges in providing schools with basic infrastructure. In 2016, only 34 per cent of primary schools in LDCs had electricity and less than 40 per cent were equipped with basic handwashing facilities. In sub-Saharan Africa, only 37 per cent of primary schools, 52 per cent of lower secondary schools and 55 per cent of upper secondary schools have access to electricity

Something similar happens in the case of Goal 6, which is ensuring availability and sustainable management of water and sanitation for all. Based on estimates from 84 countries in 2015, 39 per cent of the global population used safely managed sanitation services that are basic facilities that safely dispose of human waste. An additional 29 per cent of the global population used a basic sanitation service, an improved facility that is not shared. That year, 2.3 billion people lacked even a basic level of service, and 892 million people continued to practice open defecation. But only 27 per cent of the population in least developed countries had basic handwashing facilities.

In the case of Goal 8, promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, in 2016, globally real GDP per capita grew at 1.3 per cent, less than the average of 1.7 per cent growth rate recorded in 2010-2016 while for LDCs the rate fell sharply from 5.7 per cent in 2005-2009 to 2.3 per cent in 2010-2016. While, in Goal 10, reduce inequality within and among countries, even if efforts have been made in reducing income inequality for some countries, increasing zero-tariff access for exports from LDCs and developing countries, and providing additional assistance to LDCs, these improvements will need to accelerate in order to reduce growing disparities within and among countries.<sup>17</sup>

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<sup>16</sup> <https://unstats.un.org/sdgs/files/report/2018/thesustainabledevelopmentgoalsreport2018.pdf> (Last visited 10/09/2018).

<sup>17</sup> In 2016, over 64.4 per cent of products exported by LDCs to the world and 64.1 per cent of those from SIDS faced zero-tariffs, an increase of 20 per cent since 2010. For developing countries, duty-free market access existed for about 50 per cent of all products exported in 2016.

Positive facts are, for example, related to Goal 7 and 3. In the case of Goal 7, ensure access to affordable, reliable, sustainable and modern energy for all, in the least developed countries, the proportion of the people with access to electricity more than doubled between 2000 and 2016. As for access to modern contraceptive methods (Goal 3), globally, among women of reproductive age who are married or in a union, the proportion whose demand for family planning is satisfied by using modern contraceptive methods increased from 74.9 per cent in 2000 to 77.4 per cent in 2018 but progress has been more significant in LDCs, where this proportion increased from 39.4 per cent in 2000 to 58.5 per cent in 2018.

Finally, in relation with Goal 17, 2018 SDG Report points out that despite some advances in certain areas, more needs to be done to accelerate progress. All stakeholders will have to intensify and focus their efforts on the areas where progress has been slow.

Regarding Trade, the stagnation in global trade since 2011 has been followed and accompanied by a break in the expansion of developing regions' and LDC's world market shares. The developing regions' share of world merchandise exports declined for two consecutive years: from 45.4 per cent in 2014 to 44.2 per cent in 2016, a sharp contrast to an average annual 1.2 percentage point increase between 2001 and 2012. But for LDCs, the share of world merchandise exports decreased from 1.1 per cent to 0.9 per cent between 2013 and 2016, compared to the rise from 0.6 per cent to 1.1 per cent between 2000 and 2013.

As to Finance, although taxation is an important instrument in financing domestic development activities, the regions most in need of resources still face challenges collecting taxes. The rate of taxation<sup>18</sup> in the LDCs declined from the peak of 11.1 per cent in 2012 to 8.8 per cent in 2016.

Debt service as a proportion of exports of goods and services has been on the rise for five consecutive years in LDCs: from a low of 3.5 per cent in 2011 to 8.6 per cent in 2016. The recent upward trend followed a decade-long decline in debt service from its height of 13.4% in 2001. The ability to sustainably service debts out of export earnings is crucial for countries most in need of resources for development.<sup>19</sup>

### **3. INTERNATIONAL INVESTMENT REGIMES AND RECENT DEVELOPMENTS**

International investment law evolved out of the customary international law rights of aliens and in particular their economic rights linked to property.

Modern international investment treaties arose during the 20th century decolonization period, when newly independent countries were eager to eliminate the political and economic influence of their former colonizers and assert the power of their

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<sup>18</sup> Ratio of tax revenue to GDP.

<sup>19</sup> The Sustainable Development Goals Report 2018.

own laws, leading to anxiety among foreign investors, often nationals of former colonial parent states.

From the 1950s, when the first bilateral investment agreement was concluded, to the 1970's only a small number of bilateral investment agreements entered into force.

But, at that time, due to the absence of a multilateral framework, bilateral investment treaties began to be seen by developing countries as a way to signal that they were a safe destination for investment and overcame their initial reluctance to them.

This explains that the number of bilateral investment treaties grew up from about 500 in 1980 to 2,957 in 2016. This was attributed to the competition between developing countries for foreign direct investment which, in turn, is driven by the belief that these investments promote economic growth.

As stated in the previous epigraph, the central importance of investment to the development process has long been recognized. From the theoretical point of view, this is done by helping recipient countries narrow the gap between domestic savings and the size of capital they need for investment. Foreign direct investment also opens the door to the latest technology and enables developing countries to plug their economies into global export networks.

But, after the explosive expansion of these treaties in the 1990s, there has been a reduction in the number of new ones while the number of cases settled through arbitration has increased dramatically from 50 cases in 2000 to 608 cases in 2014. The finding that traditional treaties put host nations at risk without forcing investors to contribute to development requirements began to emerge.

So, in the last ten years, the need for systematic reform of the global international investment agreements regime has become increasingly evident and traditional investment treaty making has reached a turning point. The year 2017 concluded with the lowest number of new international investment agreements since 1983, signaling a period of reflection on, and review of, international investment policies.

It can hardly be argued that despite its benefits bilateral investment treaties have been a source of political controversy in recent years. This is clear from the alarming increase in the number of disputes between investors and governments with a large number of claims made by investor litigants against countries that have bilateral investment treaties that put host states under serious fiscal strain.

The treaties create an unequal distribution of rights and obligations between developed countries, which are the source of most foreign direct investment, and developing countries, which are mainly recipients. They lead to the increased risk of litigation and have a negative impact on the net benefit of investment to recipient countries. Moreover, the benefit of these treaties in attracting foreign direct investments is not seen to compensate for the litigation initiated against these countries.

This is why there has been a growing view that the traditional model for bilateral investment treaties needed a review. This should focus on developing a new generation

foreign investment policy framework able to, along with promoting foreign investment, also enable recipient countries to regulate foreign direct investment in line with their public policies.<sup>20</sup>

The need was so clear that in 2015, UNCTAD launched a Road Map for International Investment Agreements (IIA) Reform and in 2017 a Reform Package for the International Investment Regime that offers a comprehensive package for reforming the international investment regime.<sup>21</sup> It factors in latest developments in investment treaty practice and recent debates on the reform of the IIA regime and is the result of a collective effort.

In terms of substance, IIA reform had to address five main challenges: safeguarding the right to regulate in the public interest while providing protection; reforming investment dispute settlement to address the legitimacy crisis of the current system; promoting and facilitating investment; ensuring responsible investment to maximize the positive impact of foreign investment and minimize its potential negative effects; and enhancing the systemic consistency of the IIA regime so as to overcome the gaps, overlaps and inconsistencies of the current system and establish coherence in investment relationships.

In terms of timing, in a first phase of reform, countries had to build consensus on the need for reform, identified reform areas and approaches, reviewed their international investment agreements, developed new model treaties and started to negotiate new, more modern treaties. Phase 2 of reform involves modernizing the existing stock of old-generation treaties. In its third phase, international investment reform will need to focus on improving coherence, consistency and interaction between different levels and types of policymaking. Vertical coherence is needed between the national and international dimensions of investment policymaking.

Since the Road Map for International Investment Agreements Reform was launched, sustainable development-oriented IIA regime reform has entered the mainstream of international investment policymaking and has already made significant progress.<sup>22</sup>

In 2017, for the first time, the number of effective treaty terminations outpaced the number of new international investment agreements' conclusions. In contrast, negotiations for certain megaregional agreements maintained momentum, especially in Africa and Asia. In addition, a number of country groups are developing non-binding

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<sup>20</sup> Frank J. Garcia Lindita Ciko Apurv Gaurav Kirrin Hough, "Reforming the International Investment Regime: Lessons from International Trade Law", *Journal of International Economic Law*, Volume 18, Issue 4, 1 December 2015, Pages 861–892.

<sup>21</sup> UNCTAD's Reform Package for the International Investment Regime, December, 2017. The Reform Package combines the policy options from UNCTAD's (2015) and UNCTAD's 10 Options for Phase 2 of IIA Reform (2017) into one single document. It also builds on UNCTAD's Investment Policy Framework for Sustainable Development (originally launched in 2012 and updated in 2015), as well as two decades of UNCTAD's policy analysis on national and international investment policymaking. [http://investmentpolicyhub.unctad.org/Upload/UNCTADs%20Reform%20Package\\_web\\_09-03-2018.pdf](http://investmentpolicyhub.unctad.org/Upload/UNCTADs%20Reform%20Package_web_09-03-2018.pdf); UNCTAD, *The Least Developed Countries Report 2010, Towards a New International Development Architecture for LDCs*; Konrad von Moltke, *An International Investment Regime? Issues of Sustainability*, International Institute for Sustainable Development, Canada, 2000

<sup>22</sup> Consolidating phase 1 of IIA reform, most new treaties follow UNCTAD's Road Map for IIA Reform, *World Investment Report 2016*.

guiding principles for investment policymaking. International Investment Agreements reform is well under way across all regions.<sup>23</sup>

According to World Investment Report 2017, it is time to move to Phase 2 of the reform process, modernizing the stock of over 2,500 old-generation treaties (concluded before 2010)<sup>24</sup> still in force.

UNCTAD presents and analyses the pros and cons of 10 policy options for phase 2 of IIA reform: (1) jointly interpreting treaty provisions; (2) amending treaty provisions; (3) replacing “outdated” treaties; (4) consolidating the IIA network; (5) managing relationships between coexisting treaties; (6) referencing global standards; (7) engaging multilaterally; (8) abandoning unratified old treaties; (9) terminating existing old treaties; and (10) withdrawing from multilateral treaties. Countries can adapt and adopt these options to pursue the reforms set out in the Road Map in line with their policy priorities.<sup>25</sup>

But successfully reforming IIA rule making is not an easy task. Design criteria can help in this challenge. The UNCTAD Reform Package offers six Guidelines for IIA reform: (i) harness IIAs for sustainable development; (ii) focus on critical reform areas; (iii) act at all levels; (iv) sequence properly for concrete solutions; (v) ensure an inclusive and transparent reform process; and (vi) strengthen the multilateral supportive structure.

Comprehensive reform requires synchronizing reform actions at the national, bilateral, regional and multilateral policymaking levels. In each case, the reform process includes: (i) taking stock and identifying the problems; (ii) developing a strategic approach and an action plan for reform; and (iii) implementing actions and achieving the outcomes.

Determining which policy options are right for a country in a particular situation requires a careful and facts-based cost-benefit analysis, while also addressing a number of options to modernize stock of first generation treaties.<sup>26</sup>

So, policymaking is also becoming more divergent, reflecting the variety of ways in which societies and governments respond to the effects of globalization. This fact, together with more government interventions, has also reduced predictability of investment policies for investors. Although many countries continue to liberalize and promote foreign investment, the share of such measures among all newly adopted investment policy measures has been declining lately. Moreover, several countries are taking a more critical stance towards foreign takeovers if the targeted companies are

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<sup>23</sup> UNCTAD, “Recent Developments in the International Investment Regime”, *International Investment Agreements, IIA Issues Note*, Issue 1, may 2018. In 2016, countries concluded 37 new IIAs: 30 bilateral investment treaties (BITs) and 7 treaties with investment provisions (TIPs). This brought the size of the IIA universe to 3,324 agreements (2,957 BITs and 367 TIPs) by year-end. Chapter III of the World Investment Report 2017 contains a detailed analysis and further data on IIAs.

<sup>24</sup> Old treaties “bite”: as of end-2016, virtually all known investor-State dispute settlement cases were based on those treaties. And old treaties perpetuate inconsistencies: their continued existence creates overlaps and fragmentation in treaty relationships and poses interaction challenges. World Investment Report 2017.

<sup>25</sup> UNCTAD, “Phase 2 Of IIA Reform: Modernizing the Existing Stock of Old-Generation Treaties” *International Investment Agreements IIA Issues Note*, Issue 2, June 2017.

<sup>26</sup> UNCTAD’s *Reform Package for the International Investment Regime*, December, 2017. [http://investmentpolicyhub.unctad.org/Upload/UNCTADs%20Reform%20Package\\_web\\_09-03-2018.pdf](http://investmentpolicyhub.unctad.org/Upload/UNCTADs%20Reform%20Package_web_09-03-2018.pdf)

strategically important for the host country or if they affect national security. In addition, companies are exposed to political pressure on where to invest and to retention measures, discouraging them from investing abroad.

As, countries are engaging in modernizing the existing stock of old-generation treaties, with a stronger emphasis on sustainable development considerations but also in the withdrawal from the regime by some countries, these developments may represent temporary turbulence in a rapidly changing world as governments adjust their overall approaches to foreign investment.<sup>27</sup> Megaregional agreements are becoming difficult to negotiate and implement.

The impact of these developments may be limited, as numerous countries have recently explicitly confirmed their support for a multilateral, rules-based trading system and announced that they are negotiating new investment treaties. Yet, current developments might also be the prelude to more profound policy changes with longer-term implications for global investment governance. A rules-based investment regime that is credible has broad international support and aims at sustainability and inclusiveness can help reduce uncertainty and improve the stability of investment relations.<sup>28</sup>

#### **4. FOREIGN DIRECT INVESTMENT AND INVESTMENT REGIMES IN LDCS**

Since 2001, both LDC governments and their development partners have indeed pursued proactive Foreign Direct Investment (FDI) promotion policies. Although there was an abrupt interruption of the secular trend in 2009, FDI flows to LDCs grew at an annual rate of 15 per cent during 2001-2010 as a whole to reach an estimated \$24 billion by 2010, compared with \$7.1 billion in 2001, and their share in global FDI flows rose from 0.9 per cent to over 2 per cent.

FDI remains the largest external source of finance for developing economies. It makes up 39 per cent of total incoming finance in developing economies as a group, but less than a quarter in the LDCs, with a declining trend since 2012.

##### **4.1 Foreign Direct Investment in LDCs**

On 20 May 2001, the Third United Nations Conference on the Least Developed Countries held in Brussels adopted the Programme of Action for the LDCs for the Decade 2001-2010 providing a framework to accelerate economic growth and achieve sustainable development in LDCs.

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<sup>27</sup> Chapter III “Recent Policy Developments and Key Issues”, *World Investment Report 2017*.UNCTAD, “Recent Developments in the International Investment Regime”, *International Investment Agreements, IIA Issues Note*, Issue 1, may 2018.

<sup>28</sup> Chapter III “Recent Policy Developments and Key Issues”, *World Investment Report 2017*.

Yet, despite the fact that some of them enjoyed the world highest and most sustained growth rates and they have development potential in general, more than half of their population still lives in absolute poverty. Their economic hardships are being compounded by the recent economic and financial crisis, increasing food and energy insecurity and climate variability.

Foreign direct investment has played an important role in LDCs in the last decade, as it was a major contributor to the group's capital formation. FDI contributed towards promoting proper growth and sustainable development, and reducing social and income disparities. However, the concentration of FDI in enclaves of export-oriented primary production with limited employment, technological and productivity linkages remains the main challenge in most LDCs.<sup>29</sup>

The share of LDCs in FDI flows to developing economies as a whole has been relatively stable since 2010, and reached 4.6 per cent in 2015. So it was considered imperative for LDCs to pursue strategic policies to tap into the development potential of global FDI as a complementary source of development finance as part of their national development strategies, for the implementation both of the Istanbul Programme of Action and of the Sustainable Development Goals.<sup>30</sup>

As FDI is more important, relative to domestic investment, in the LDCs than in developing countries as a group because it may serve as an important complement to domestic investment and capacity building for the growth and development of the LDCs. LDCs should remove barriers to investment, securing contract enforcement and promoting respect for property rights and promote public-private partnership and establish a one-window facility for registration and oversight of new and existing FDI and other external financial flows.

#### **4.2 Investment Regimes in LDCs**

In those years, many LDCs have entered into bilateral investment treaties that generally provide for national treatment, most-favored-nation treatment and fair and equitable treatment of investors, nationalization only under specific conditions, and unrestricted transfers of capital and earnings.

The number of such treaties has risen steadily since the mid-1990s until recently, as it has already been stated.

As of June 2013, all but six of the LDCs had signed one or more Bilateral Investment Treaties (BITs), with Bangladesh (29 BITs), Mozambique (24), Senegal (24), Ethiopia (29), Sudan (27), and Yemen (37) having the largest number of such treaties.

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<sup>29</sup> UNCTAD, *Foreign Direct Investment in LDCs: Lessons Learned from the Decade 2001–2010 and the Way Forward* (UNCTAD/DIAE/IA/2011/1).

<sup>30</sup> The path to graduation and beyond: Making the most of the process”, *The Least Developed Countries Report 2016*.



Most of the LDCs have also made provisions, typically through BITs, for the resolution of disputes with foreign investors.

A majority (37) of them are members of the International Centre for Settlement of Investment Disputes. Several are open to dispute settlement under the United Nations Commission on International Trade Law, and several have adhered to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Some are members of other international dispute settlement mechanisms, such as the Organization for the Harmonization of African Business Law.<sup>31</sup>

Furthermore, most LDCs are party to one or more regional economic agreement with FDI provisions.

In the African region, such agreements include the Common Market for Eastern and Southern Africa, the Southern Africa Development Community, the Economic Community of West Africa, and the West Africa Economic and Monetary Union.

In Asia and the Pacific, regional agreements include the ASEAN Comprehensive Investment Agreement and the ASEAN–China Investment Agreement. A similar path has been taken in The South Asian Association for Regional Cooperation.

And Haiti is a member of the Caribbean Community, which brings together 15 states in the Caribbean into a single market and economy.

At the inter-regional level, 40 LDCs are members of the Partnership Agreement between the members of the African, Caribbean, and Pacific (ACP) States on the one side and the European Union on the other.

At the multilateral level, many of the LDCs are parties to the General Agreement on Trade in Services (GATS), which is relevant for FDI in services, and the agreements on Trade-related Investment Measures and Trade-related Aspects of Intellectual Property Rights. However, their GATS commitments are often minimal, presumably due to a desire to maintain adequate policy space in the services sector.

A majority of the LDCs are also members of the World Bank's Multilateral Investment Guarantee Agency.

Finally, African, Caribbean and Pacific Group of States (ACP) are developing Guiding Principles for Investment Policymaking for ACP States to use in the development of national and international investment policies that are balanced, predictable and sustainable development-friendly.

Those Guiding Principles for Investment Policymaking are based on a Joint ACP-UNCTAD Proposal, the draft 10 nonbinding investment principles cover areas such as policy coherence, balanced rights and obligations, right to regulate, openness to investment, investment protection and regional and international cooperation.

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<sup>31</sup> Benin, for example

The Principles also recognize the different levels of economic development of ACP States and emphasize the special needs and concerns of developing countries and least developed countries.<sup>32</sup>

A final set of challenges relate to capacity. Successful reform requires strong internal structures for preparing and carrying out actions, with solid processes and decision making and implementation capacities (e.g. sustained internal coordination among State organs, awareness raising and capacity-building).

This is particularly difficult for developing countries and LDCs, which face challenges in terms of bargaining power, negotiating and implementing capacities, and greater vulnerability to reform risks. In practice, these challenges make it very difficult for LDCs and smaller developing countries to be effective in altering their existing IIA networks and addressing the drawbacks of existing first-generation IIAs.

For such countries it is particularly important to benefit from opportunities to build the capacity of IIA negotiators, to ensure that knowledge of IIA issues is preserved in institutional memory and does not disappear due to turnover of officials, as well as to ensure some continuity in the staff engaged in IIA reform in order to maintain a coherent and cohesive IIA reform approach over time.

Ultimately, the higher the degree of coordination at various levels of policymaking (national, bilateral and regional, as well as multilateral), the higher the chances of creating a less fragmented and more balanced, stable and predictable IIA regime that effectively pursues sustainable development objectives.

## **5. STRENGTHENING INVESTMENT PROMOTION REGIMES FOR FOREIGN DIRECT INVESTMENT IN THE LEAST DEVELOPED COUNTRIES**

Strengthening the regimes and measures for promoting FDI in the LDCs and assisting these countries in attracting FDI and maximizing benefits from it, remains a difficult challenge.

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<sup>32</sup> World Investment Report 2017 Chapter III Recent Policy Developments and Key Issues.

Meeting this challenge requires the determined and coordinated efforts of a large number of stakeholders.

The creation of a new international development architecture for the LDCs was launched by UNCTAD in 2010<sup>33</sup>. It aimed at reversing their marginalization in the global economy and helping them in their catch-up efforts; supporting a pattern of accelerated economic growth and diversification which would improve the general welfare and well-being of all their people; and helping these countries graduate from LDC status.

According to UNCTAD Report, these objectives could be achieved if there were a paradigm shift that supports new, more inclusive development paths in LDCs. This requires the State to play a more developmental role in creating favorable conditions for job creation, capital accumulation, technological progress and structural transformation.

The new international development architecture for the LDCs should facilitate the new development paths and is defined as a new architecture of formal and informal institutions, rules and norms, including incentives, standards and processes, which would shape international economic relations in a way that is conducive to sustained and inclusive development.

It would be constituted through reforms of the global economic regimes which directly affect development and poverty reduction in LDCs; and the design of a new generation of special international support mechanisms for the LDCs aimed at addressing their specific structural constraints and vulnerabilities. Increasing South-South international flows of trade, FDI, official finance and knowledge also implies that South-South cooperation, both within regions and between LDCs and large, fast-growing developing countries, could also play an important role in this new international development architecture for LDCs.<sup>34</sup>

Some clear considerations were established.

LDCs continue to finance their external resource gap through a mixture of official development financing, including ODA, and private resource flows such as foreign direct investment and remittances and they remain at the margin of global value chains.

Foreign investments in natural resource extraction represent only a small percentage of the number of projects in LDCs but account for a large share of amounts invested, reinforcing the commodity dependence of some LDCs. Foreign investments in telecommunication, banking, agriculture, tourism, food and beverages, commerce and other services abound throughout LDCs but are frequently underestimated, in part as a result of their more limited scale. Their impact, however, has frequently been more

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<sup>33</sup> UNCTAD, *The Least Developed Countries Report, 2010 Towards a New International Development Architecture for LDCs*.

<sup>34</sup> UNCTAD, *The Least Developed Countries Report, 2010 Towards a New International Development Architecture for LDCs*. Karl P. Sauvant, Padma Mallampally, "Strengthening Investment Promotion Regimes for Foreign Direct Investment in the Least Developed Countries", *Occasional Policy Papers Series on the Least Developed Countries*, no.1, 2015. The United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS)

important than that of larger investments in natural resource extraction in terms of job creation, linkages or transfers of skills.

Poor or limited physical infrastructure is one of the most fundamental constraints facing LDCs not just to attract diversified types of FDI, but more generally to develop productive capacities, reduce poverty and reap the benefits of economic globalization.

Also, the nature of foreign-led projects appears to be a key factor determining the extent to which linkages can develop. There are clearly certain types of investments that are more amenable to building linkages than others. Yet, even in those cases, experience indicates that conscious policy efforts are usually necessary for linkages to take root. This usually starts at the level of FDI promotion in order to foster an optimal match between the type of investments targeted and the structure of the national economy.<sup>35</sup>

Other assessments were: the impact on job creation has been weaker than expected; transfers of skills and know-how occur on a relatively limited scale; FDI by small transnational corporations and entrepreneurs was significant but often neglected; South-South FDI continues to rise. But regional disparities remain a concern. Most LDCs suffer from large disparities between the area surrounding the capital city and a small number of other urban centers and rural areas, where the majority of the population still resides. Aside from natural resource seeking investments, most foreign investments perpetuate this pattern of regional disparities, even though they are not the root cause.<sup>36</sup>

## **6. CONCLUSION**

In conclusion, the Plan of Action for Investment in LDCs focuses on five areas of recommendations to deal with the key barriers to growth of private sector investment, including foreign direct investment in LDCs. The Actions are mostly not new. They build on existing efforts to improve the investment climate in LDCs and on existing support provided by the international development community. However, the Action Plan recognizes that a significant boost of private investment in LDCs, of the type required to meet the development goals set out in the previous Programme of Action, requires a concerted effort that holistically addresses all the main shortcomings of the regulatory, institutional, business, financial and physical infrastructure in LDCs through a focused set of measures, with clear responsibilities for both LDC Governments themselves and the international donor community, and with an explicit role for private sector investors.

The five areas are strengthen public-private infrastructure development efforts; boost aid for productive capacity; enable firms of all sizes to capture LDC opportunities; foster

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<sup>35</sup> UNCTAD's Business Linkages programme connects large companies with domestic suppliers in developing countries. It has proven to be a very useful tool for enhancing Enterprise development in the LDCs.

<sup>36</sup> UNCTAD, *Foreign Direct Investment in LDCs: Lessons Learned from the Decade 2001–2010 and the Way Forward*. 2011

local business and ease access to finance and start the next wave of regulatory and institutional reforms.

Related to the last one, LDCs have implemented major reforms to their regulatory framework for investment over the past decades. The early wave of reforms under structural adjustment programs put a strong emphasis on liberalizing the economy, privatizing commercially oriented State-owned enterprises, opening up the economy to FDI and improving the standards of treatment and protection of foreign investors.

More recently, because of the weak investment by nationals and foreigners remains in most LDCs, many countries have initiated efforts to reduce the administrative barriers to investment in the hope of promoting entrepreneurship and business development. But although significant reforms have been carried out in most LDCs, much remains to be done

Still, most of LDCs are placed in the bottom of the general “Ease of Doing Business” ranking while Afghanistan is the last of the 183 countries included. Nevertheless, disparities between LDCs are strong, with Rwanda placed in number 43 of the ranking, Bhutan in the 75th, and Zambia in the 85th.<sup>37</sup>

So it seems that an open regime to FDI and a sound regulatory framework are necessary but not sufficient conditions to attract foreign investors and generate business development and those legal reforms are ineffective unless genuinely implemented by strong institutions.<sup>38</sup>

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<sup>37</sup> World Bank, <http://www.doingbusiness.org/en/rankings> (last visited 10/10/2018). Karl P. Sauvart, Padma Mallampally, “Strengthening Investment Promotion Regimes for Foreign Direct Investment in the Least Developed Countries”, Occasional Policy Papers Series on the Least Developed Countries, no.1, 2015.

<sup>38</sup> World Bank Group, *Global Investment Competitiveness Report 2017/2018* “Foreign Investor Perspectives and Policy Implications”.



## ALLIANCES WITH INTERNATIONAL ORGANIZATIONS: HOW THE OSCE HAS CONTRIBUTED TO THE SDGs

ELENA C. DÍAZ GALÁN

*Lecturer in International Law and International Relations at the  
Rey Juan Carlos Universidad*

SUMMARY: 1. INTRODUCTION. 2. CONTRIBUTION OF THE OSCE TO ENVIRONMENTAL PROTECTION. 3. CONTRIBUTION OF THE OSCE TO THE AREA OF HUMAN RIGHTS. 4. CONCLUSIONS. REFERENCES

### ABSTRACT:

Goal 17 of the 2030 Agenda recognizes the importance of public-private Alliances in achieving the SDGs. The actions of States should be complemented by the work of other organizations and entities such as transnational companies, associations of individuals or NGOs. International organizations also play a fundamental role. In addition to the role of universal organizations such as specialized UN bodies, regional organizations such as the European Union or the OSCE have contributed significantly to the SDGs. The security organization has made a supreme effort to meet the targets specified in the 2030 agenda, by giving effect to international agreements and by developing actions oriented primarily towards environmental protection and human rights protection. The contribution of the OSCE to both the “environmental dimension” and the “human dimension” of the SDGs is beyond question.

### KEY WORDS:

Alliances, public-private cooperation, security, environment and Human Rights.

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## 1. INTRODUCTION

Public-private alliances are essential to achieving the SDGs. Indeed, one of the goals of the United Nations 2030 agenda refers specifically to this question. As the UN maintains, “the SDGs can only be realized with a strong commitment to global partnership and cooperation”<sup>1</sup>. Thus, SDG 17 is expressed as “Partnerships for the goals” and includes among its targets to “enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilize and share

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<sup>1</sup>United Nations website: <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-17-partnerships-for-the-goals.html>.

knowledge, expertise, technology and financial resources, to support the achievement of the sustainable development goals in all countries, in particular developing countries and ,especially to “encourage and promote *effective public, public-private and civil society partnerships*, building on the experience and resourcing strategies of partnerships”<sup>2</sup>. A careful reading of the targets included under Goal 17 will reveal the importance of joint action of all actors of society, and not only of the States in achieving the SDGs. Above all, the role played by international organizations must be highlighted.

For some time now, the United Nations has been committed to multilateral cooperation from diverse sectors to reach global targets. A good example of this was the action undertaken by the EU to comply with the MDGs<sup>3</sup>. The same trend was followed when designing and putting into operation the SDGs and it is also reflected in the intention expressed by the European Union<sup>4</sup>. The achievement of Goals such as “no poverty” (Goal 1), “affordable and clean energy” (Goal 7) or “sustainable cities and communities” (Goal 11), depends heavily on the creation of alliances with public and private partners. However, these alliances come in all shapes and sizes. On the one hand, action by the States alone is not enough to meet the 2030 Agenda; other subjects and actors in international relations must also intervene by offering financial, social or technological support in implementing the SDGs. Thus, in accordance with Goal 17, international organizations, private companies and groups of individuals (NGOs, trade unions) must adopt measures oriented towards protecting the environment and respecting and upholding Human Rights. On the other hand, in addition to the cooperation developed within a general framework in which an IO or a transnational company supports the work of States, another important type of cooperation involves, as it were, “consolidated alliances”, under the auspices of a broader collaboration, such as regional associations led by Organizations or international bodies. One example of an alliance of this type is the Bi-regional Strategic Alliance between the EU and CELAC (the Community of Latin American and Caribbean States), which has proposed measures for achieving the SDGs, and developed cooperation in a number of areas including education and even migration policy<sup>5</sup>.

However, alliances differ not only in type (public, private or hybrid), but also in the contributions that the “collaborators” make in each case to the achievement of the SDGs.

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<sup>2</sup>Italics added. United Nations website: <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-17-partnerships-for-the-goals.html#targets>.

<sup>3</sup>See, among others, European Commission, *The EU’s Contribution to the Millennium Development Goals, Key results from European Commission programmes*, Luxembourg, 2015 y European Commission, *Fisheries & International Cooperation and Development European development cooperation State of play 2015 aquaculture*, Brussels, 2015.

<sup>4</sup>“The European Union is fully committed to the ambitious, transformative and universal 2030 Agenda for Sustainable Development, which will enable us to address together poverty eradication and sustainable development in its economic, social and environmental dimensions. This is, quite simply, an opportunity we cannot miss” MINICA, N., in European Commission, *The EU’s Contribution to the Millennium Development Goals, Key results from European Commission programmes*, Luxembourg, 2015, p. 3.

<sup>5</sup>See: European Commission, *Partners in development European Union–Latin America/Caribbean Development cooperation guide*, 2015. See also the cooperation developed on another level between the OSCE and FRA: European Union Agency for fundamental rights website: <http://fra.europa.eu/en/cooperation/osce-un-international-organisations#OSCE>.



The contribution of each organization will depend on its objectives and characteristics. Because all the SDGs are interrelated, the ability to achieve certain goals will depend on the nature and attributes of the companies, international organizations and citizen organizations involved in the alliance. For example, REPSOL has focused on achieving goals relating on fighting climate change, guaranteeing access to natural resources and improving infrastructures<sup>6</sup>, while other companies like H&M or Enagas have promoted programmes oriented towards respecting human rights and sustainability. As the latter company states, “via lines of action in spheres such as human capital management, climate change and energy efficiency, among others, Enagas contributes significantly to the goals outlined in the scope of the SDG”<sup>7</sup>. Participation in achieving the SDGs is also a business strategy that can generate added value for the companies involved<sup>8</sup>. For this reason, the SDGs are fundamental both from the perspective of the welfare of the international community as a whole, and from the point of view of the companies and organizations that contribute towards them.

The importance of Alliances in achieving the SDGs is beyond doubt. However, a detailed analysis of all possible Alliances would be a highly difficult task given the variety of possible Alliances and the sheer number of organizations involved. For this reason, we have chosen to focus on the work developed by international organizations and, in particular, on collaborations involving the Organization for Security and Co-Operation in Europe: the OSCE. This choice is based primarily on the important contribution of this organization to numerous goals of the 2030 Agenda. Working within the cooperation framework established in Goal 17, the OSCE has actively contributed to the achievement of Goals 6, 7, 11, 12, 13 y 16<sup>9</sup>. Although these goals include a very broad range of targets, we have decided to highlight two areas in which the OSCE has been particularly active, given the organization’s central focus on security: on the one hand, we will analyse the contribution of the OSCE to environmental protection; on the other, we will discuss the role it has played in promoting and protecting human rights.

Both the definition of the OSCE as an international organization that has adopted “an approach to security that encompasses politico-military, economic and environmental, and human aspects”<sup>10</sup> and the participation of a large number of Member States encompassing three continents-Europe, Asia and America (North America)- make it an ideal target for studying the contribution of international organizations to the SDGs, particularly to those related to Goal 17. Moreover, both the countless documents, publications, reports and actions in the areas of security, human rights and environmental

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<sup>6</sup> Repsol Website: <https://www.repsol.com/en/sustainability/our-sustainability-model/our-contribution-to-the-sdgs/index.cshtml>.

<sup>7</sup> Enogas Website: <http://www.enagas.es/WEBCORP-static/InformeAnual2016/es/nuestra-cultura-hacer-las-cosas-bien/nuestra-contribucion-los-ods-plan-de-gestion-sostenible.html>. See also the case of H&M: <https://www.cecodes.org.co/site/hmdesarrollosocialysostenible/>, and a general work on the contribution of Spanish companies to SDGs: CASTIÑEIRA, A., L., ARROYO y CURTÓ, F., ESADE, La Contribución de las empresas españolas a los objetivos de desarrollo sostenible, Resumen ejecutivo, mayo 2018.

<sup>8</sup> <http://sirse.info/los-ods-aportan-oportunidades-de-desarrollo-sostenible-a-las-empresas-espanolas/>.

<sup>9</sup> BUTTANRI, E., Sustainable development and security – the global agenda and its reflections in the OSCE in <https://www.osce.org/magazine/306696>.

<sup>10</sup> OSCE Website: <https://www.osce.org/whatistheosce>.

protection and the general instruments based on the organization's fundamental principles give a clear idea of the important role that the OSCE has played in achieving the SDGs<sup>11</sup>.

## 2. CONTRIBUTION OF THE OSCE TO ENVIRONMENTAL PROTECTION.

Environmental protection is one of the main lines of action of the OSCE, and the environment and sustainable resources rank high among the goals of the organization. This is reflected in the contribution of the OSCE to environmental aspects of various 2030 agenda goals. In reality, security and environmental protection are closely linked. The organization itself stresses this link clearly: “the environment and our security are linked. Environmental degradation can cause conflicts. But at the same time, environmental co-operation can contribute to conflict prevention and confidence-building”<sup>12</sup>. Thus, although the organization is primarily security-oriented, at least in its origins, it must carry out sustainable actions in order to achieve security. It is worth recalling that the OSCE, in conjunction with four other organizations, forms part of the “Environment and Security (ENVSEC) Initiative”, launched in 2003 to develop cooperation within the area of environment and security<sup>13</sup>. However, given both the broad scope of the term “environment”, and the large amount of work carried out in this area by the OSCE, it is necessary to limit our focus to the specific aspects in which this organization makes contributions towards the SDGs.

Firstly, in line with both Goal 6 and the stated aims of the organization, the OSCE endeavours to “ensure availability and sustainable management of water and sanitation for all”. The OSCE has many achievements to its name including “the signing of the Dniester Treaty between Moldova and Ukraine, the establishment of the Chu-Talas River Basin Commission that brings together Kazakhstan and Kyrgyzstan, the facilitation of negotiations for a bilateral agreement between Azerbaijan and Georgia on the Kura River Basin and the promotion of water co-operation between Tajikistan and Afghanistan”<sup>14</sup>. The “collaborators” and, in this case, international organizations such as the OSCE help to resolve the problems of both developing countries and countries in conflict when the actions of States alone are insufficient. In this regard, the OSCE provides numerous resources that come from a great number of developed countries and acts as an impartial mediator in agreements that undoubtedly contribute towards the SDGs<sup>15</sup>. For example,

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<sup>11</sup>OSCE Website: <https://www.osce.org/resources/csce-osce-key-documents>.

<sup>12</sup>OSCE Website: <https://www.osce.org/secretariat/environmental>.

<sup>13</sup>OSCE Website: <https://www.osce.org/secretariat/ENVSEC>. See also: BUTTANRI, E., Environment and Security Initiative - ENVSEC - at a glance, 2016 in <https://www.osce.org/secretariat/280421>.

<sup>14</sup>BUTTANRI, E., Sustainable development and security – the global agenda and its reflections in the OSCE en <https://www.osce.org/magazine/306696>.

<sup>15</sup>BUTTANRI, E., Statement by the Organization for Security and Co-operation in Europe (OSCE) in UNECE Regional Forum on Sustainable Development: [https://www.unece.org/fileadmin/DAM/RCM\\_Website/OSCE\\_Statement-2\\_March.pdf](https://www.unece.org/fileadmin/DAM/RCM_Website/OSCE_Statement-2_March.pdf).

water is a vital resource; both guaranteeing access to this resource and managing it correctly would avoid conflicts between states, many of which are members of the OSCE. For this reason, the organization prioritizes the implementation of measures that ensure an equitable distribution of this essential natural resource<sup>16</sup>.

The OSCE's work towards ensuring a sustainable and equitable distribution of water is complemented by its contribution to Goal 7 on energy access, Goal 11 on "making cities and human settlements inclusive, safe, resilient and sustainable"; and goal 12 on "ensuring sustainable consumption and production patterns". These three goals are clearly connected. All three cases show the organization's concern with preventing natural disasters via international cooperation and collaboration and the production and exchange of sustainable, risk-free resources<sup>17</sup>. Nevertheless, as we would like to highlight the OSCE's specific contribution to each of these areas, we will now focus on its work relating to energy and production on the one hand, and to sustainable settlements on the other.

With regard to Goal 7, the OSCE prioritizes the sharing of information among all the agents involved in energy access to ensure that everyone is fully informed and promote responsible consumption of energy resources, with a view to preventing natural disasters<sup>18</sup>. One of the most important contributions of the OSCE is the "Handbook on Protecting Electricity Networks from Natural Disasters". The following conclusions can be drawn from an analysis of this handbook. On the one hand, it is a guide to theory and practice that shows States how to use energy in ways that are least damaging to the environment. In addition to providing a definition of energy-related terms and examining some specific cases, the OSCE designs a series of measures which could help States to adapt their energy policies to natural demands<sup>19</sup>. On the other hand, "the Handbook on Protecting Electricity Networks from Natural Disasters" is a clear demonstration of the importance of SDG 17 for achieving these objectives. The handbook is an initiative that brings together not only the member states of the OSCE but also third-party States and different public and private actors. The OSCE is fully aware of the importance of energy companies in the fight against natural disasters. This important sector can help not only by avoiding catastrophes but also by adopting measures oriented towards reducing harmful effects on the environment. Finally, however, the energy guidelines provided by the OSCE are merely recommendations; they are not legally binding. Nevertheless, they

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<sup>16</sup>OSCE Website: <https://www.osce.org/water>.

<sup>17</sup>With regard to the importance that the OSCE gives to avoiding natural disasters via international cooperation, see for example: OSCE Website: <https://www.osce.org/secretariat/disaster-risk-reduction-and-security>; OSCE ministerial council, Decision No. 6/14 on the Enhancing Disaster Risk Reduction, 2014; y United Nations Office for Disaster Risk Reduction (UNISDR), Sendai Framework for Disaster Risk Reduction 2015-2030, 2015.

<sup>18</sup>BUTTANRI, E., Sustainable development and security – the global agenda and its reflections in the OSCE en <https://www.osce.org/magazine/306696>.

<sup>19</sup>YIGITGÜDEN YURDAKUL, H., in OSCE, Protecting Electricity Networks from Natural Hazards, Vienna, 2016, p.5.

constitute the first ever step, on an international scale at least, towards the introduction of mechanisms that can lead to a sustainable use of energy<sup>20</sup>.

The treatment given to energy and the way in which it is exchanged among the different actors is the main determinant in reducing the harmful effects of natural disasters. The same can be said of the consumption and exchange of certain especially dangerous goods, such as chemical products. In line with SDG 12, the OSCE, together with its “collaborators” implements many actions that aim to promote a controlled exchange of these goods. Given the risks associated with waste generation, bad energy management and the use of chemical products, international actors must intervene to keep such practices in check and thus reduce their harmful effects. In this respect, the measures set out in “the Handbook on Protecting Electricity Networks from Natural Disasters”, which focuses specifically on energy, are complemented with recognized provisions inside legally-binding instruments originating from International organizations involved in the management of waste and chemical products such as “the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal” or “the Montreal Protocol on Substances that Deplete the Ozone Layer”<sup>21</sup>.

In line with SDG 11, the OSCE also gives central importance to the fight against natural disasters. However, while with Goal 12 and, above all Goal 7, the OSCE encourages public and private collaboration, in this case it promotes a somewhat narrower cooperation that is largely limited to States. As Environmental Affairs Advisor Elsa Buttanri states, “the OSCE helps its participating States to increase their disaster resilience, raising communities’ awareness of risks and building their capacity to reduce them, including in partnership with neighboring municipalities across borders”<sup>22</sup>. This statement reveals that governments are primarily responsible for adopting measures to prevent natural disasters and that actions can be taken in collaboration with other States under the impetus of the OSCE. However, it is important to stress that many regions of the planet are inhabited by “human groups” with their own specific needs and characteristics<sup>23</sup>. In practice, then, it is clear that the participation of these groups would be necessary in order to complete the work performed by the OSCE and the States and thus help minimize the effects of different types of natural disasters.

The OSCE is making real efforts to adopt measures to combat actions and behaviours which could lead to natural disasters. The OSCE conducts a broad range of activities related to disaster prevention, as is shown by the constant reference to this area in its

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<sup>20</sup>For a complete reading of the specific questions covered in the handbook see: OSCE, *Protecting Electricity Networks from Natural Hazards*, Vienna, 2016.

<sup>21</sup>For the treatment of chemical products see the document adopted by the UN: “Strategic Approach to International Chemicals Management”. OSCE Website: <https://www.osce.org/secretariat/hazardous-waste-management>.

<sup>22</sup>BUTTANRI, E., *Sustainable development and security – the global agenda and its reflections in the OSCE* en <https://www.osce.org/magazine/306696>.

<sup>23</sup>An example of this are indigenous peoples: OLIVA MARTÍNEZ, J. D., y SÁNCHEZ LIZAMA, A., *Derechos de los pueblos indígenas: marcos de protección en la Agenda 2030 y en los Principios Rectores sobre Empresas y Derechos Humanos, en Empresas y derechos humanos*, directed by Carlos R. Fernández Liesa y María Eugenia López-Jacoiste Díaz, Madrid, 2018, pp. 237-248.

general instruments and by the adoption of specific instruments, which sometimes lead to agreements and treaties involving other international organizations. The OSCE's contribution to this area is mentioned not only in "Decision n°. 6/14 on Enhancing Disaster Risk Reduction" but in what can be considered the OSCE's "founding treaty", the Helsinki Act.

The OSCE is also contributing notably towards Goal 13 of the 2030 Agenda. While this goal is linked to the areas analysed above, it also has a broader character. Goal 13 is defined as the need to "take urgent action to combat climate change and its impacts". The OSCE has made numerous contributions in the fight against climate change. We will discuss three of them: the creation of the project "Climate Change and Security in Eastern Europe, Central Asia and the Southern Caucasus"; the "Implementation Plan for the Strategic Framework for Adaptation to Climate Change in the Dniester River Basin"; the brochure on "Climate Change and Security-Cross regional summary"<sup>24</sup>. These documents reveal two aspects that are of interest to our analysis. On the one hand, they show the important role of SDG 17 in achieving all the other goals in the 2030 Agenda. Indeed, the majority of the studies and projects that we have mentioned come out of a joint collaboration between the OSCE and other international organizations such as the United Nations Economic Commission for Europe (UNECE), the UN Environment, the United Nations Development Programme (UNDP) and the Regional Environmental Centre for Central and Eastern Europe (REC). On the other hand, these documents reveal the special attention devoted to specific regions of our planet. Most of the reports written by the OSCE and its "collaborators" focus on the adoption of measures designed to mitigate climate changes in specific parts of the world or particular natural environments. For example, there are various studies on the actions in Eastern Europe, the Southern Caucasus or Central Asia and also in European river basins, such as the Dniester.

To sum up, the OSCE, alongside other international organizations, plays a key role in environmental protection, thanks largely to the link that the organization has established between environment and security. From the OSCE's own perspective, its role in environmental protection enhances many goals and targets of the 2030 Agenda. The OSCE is aiming at sustainable consumption and resource management, as a means of reducing the effects of climate change and creating inclusive cities. Achieving these targets would also help to achieve other SDGs such as to "ensure healthy lives and promote well-being for all at all ages" (Goal 3) and to "end poverty in all its forms everywhere" (Goal 1), a primary goal that is at the very core of the 2030 Agenda.

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<sup>24</sup>OSCE Website: <https://www.osce.org/projects/climate-change-and-security>; OSCE, Implementation Plan for the Strategic Framework for Adaptation to Climate Change in the Dniester River Basin, 2017; OSCE, Strategic Framework for Adaptation to Climate Change in the Dniester River Basin, 2015 y OSCE, Climate Change and Security - Cross regional, 2017.

### 3. CONTRIBUTION OF THE OSCE TO THE AREA OF HUMAN RIGHTS

The OSCE's primary focus on security makes human rights a fundamental pillar of the organisation, a platform from which it can make essential contributions towards achieving the SDGs. The environmental contributions of the organisation largely stem from the link that the organization has established between sustainable consumption and resource management and the OSCE's desire to end conflicts and thus achieve international security. In short, "as a regional security organization under Chapter VIII of the UN Charter, the OSCE's major contribution to the implementation of this Agenda is its support for conflict prevention, conflict resolution and post-conflict rehabilitation"<sup>25</sup>. However, the desire to end international conflicts and achieve global security is a slogan which drives all of the organization's activities, including all its contributions to SDGs. Accordingly, our study will focus on the OSCE's work in the area of human rights, without forgetting that, as occurs with its environmental Goals, the organization makes constant references to security and establishes a three-way link between security, human rights and the environment.

Given the nature of Agenda 2030, a partial product of the moment in which world leaders and the UN promoted this project, the OSCE makes a great contribution to SDGs from different environment angles. Moreover, the organization's primary focus on security and cooperation mean that human rights is not necessarily its priority concern. The OSCE's Office for Democratic Institutions and Human Rights is widely regarded as the least developed of the three mechanisms that exist in Europe for protecting human rights. While the European Union and the Council of Europe have tribunals that guarantee fundamental rights, the OSCE has no legal instrument and no international organ with these characteristics. Indeed, in the area of human rights, the OSCE only has Observers and Special Rapporteurs who report possible human rights violations in certain areas of their activities. In any case, the main contribution of the OSCE in human rights relates to SDG 16, which urges the international community to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels". The way this goal is expressed once more reveals the interrelationship between all the SDGs. Thus, the OSCE's contribution to human rights is by no mean insignificant, at least in terms of its scope, as its work on the environment and international security will often include a human rights perspective.

Within the framework of SDG 16, the biggest achievement of the OSCE has been to give support "to the implementation of the *Aarhus Convention* on Access to Information,

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<sup>25</sup>BUTTANRI, E., Statement by the Organization for Security and Co-operation in Europe (OSCE) in UNECE Regional Forum on Sustainable Development: [https://www.unece.org/fileadmin/DAM/RCM\\_Website/OSCE\\_Statement-2\\_March.pdf](https://www.unece.org/fileadmin/DAM/RCM_Website/OSCE_Statement-2_March.pdf). The following statement expresses a similar idea: "the OSCE is the world's largest regional security organization and, among other activities, focuses on critical energy infrastructure, including electricity transmission, which is an emerging and important security-related topic". OSCE, Protecting Electricity Networks from Natural Hazards, Vienna, 2016, p.7.

Public Participation in Decision-making and Access to Justice in Environmental Matters”<sup>26</sup>. “The Aarhus Convention” is an international instrument which was adopted by the United Nations Economic Commission for Europe (UNECE) in 1998, but did not come into force until 2001. As the title of the treaty indicates, its main lines of action relate to access to information and to justice and to participation in decision-making processes. However, a closer analysis of the Convention, reveals that it is an instrument oriented above all to environmental issues. In other words, the agreement aims to guarantee “the right of everyone to receive environmental information that is held by public authorities (...), the right to participate in environmental decision-making (...), the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general”<sup>27</sup>.

All the references to justice and to information in the Convention adopt an environmental perspective; it is therefore an instrument that guarantees human rights from an environmental viewpoint. This is reflected throughout the Convention and it is even expressed in the preamble. First of all, in the preamble to the Convention, the States allude to the declarations, resolutions and legal instruments that other international organizations have adopted in the area of the environment, with the purpose of drawing on these international principles and mechanisms when guaranteeing citizens access to justice and information. Examples of these principles and mechanisms include “principle 1 of the Stockholm Declaration on the Human Environment”; “principle 10 of the Rio Declaration on Environment and Development”; the “General Assembly resolutions 37/7 of 28 October 1982 on the World Charter for Nature and 45/94 of 14 December 1990 on the need to ensure a healthy environment for the well-being of individuals”; and “the European Charter on Environment and Health”<sup>28</sup>. Secondly, the states frequently recall both the need to protect the environment and the link between achieving this goal and respecting and upholding human rights. As the agreement demonstrates, the states believe that an “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself”<sup>29</sup>.

In any case, with “the Aarhus Convention”, the international community, including international organizations such as the OSCE, has moved one step closer to meeting SDG 16. Thanks to both the “environmental dimension” of this legal instrument, which is perfectly suited to the terms and the spirit of the SDGs, and the importance it gives to human rights, the OSCE’s work in applying the 1998 convention is the best example of the contribution of this organization to the 2030 agenda targets, which aim to guarantee fundamental rights. For example, the Convention recognizes that “every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations” and that “to be able to assert this right

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<sup>26</sup>Italics added, BUTTANRI, E., Sustainable development and security – the global agenda and its reflections in the OSCE in <https://www.osce.org/magazine/306696>.

<sup>27</sup>European Commission of Environment Website: <http://ec.europa.eu/environment/aarhus/index.htm>.

<sup>28</sup>UNECE Text: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

<sup>29</sup>Italics added. UNECE Text: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, and acknowledging in this regard that citizens may need assistance in order to exercise their rights”<sup>30</sup>. The role of the Convention in guaranteeing fundamental rights is therefore beyond question. However, it is up to the States and other actors in society to adopt specific measures to give effect to the principles embodied in it<sup>31</sup>.

If the “Aarhus Convention” is to be applied correctly, the principles that it contains must be supported by the initiative of states and other international agents. It is not enough simply to pass specific regulations on environmental aspects of human rights; there must also be close collaboration between diverse sectors of society. The importance of creating alliances in order to meet the SDGs and thereby ensure the application of Goal 17 is expressed in “The Aarhus Convention”. The Convention refers explicitly to the participation of international organizations, inviting them, to adhere to the agreement. Moreover, the convention recognizes “the importance of the respective roles that individual citizens, non-governmental organizations and the private sector can play in environmental protection”. Thus, the role of private actors, alongside public ones, is essential for meeting the SDGs. There are two sides to the role of private actors: the contribution of NGOs to the access to information and justice; and the recognition of the rights of this type of organization. Among the many allusions to this question in the Convention, the States declare that “effective judicial mechanisms should be accessible to the public, including organizations, so that its legitimate interests are protected, and the law is enforced”<sup>32</sup>.

More specifically, international organizations play a fundamental role in meeting the SDGs. In the area of human rights and environmental protection “the Aarhus Convention” recognizes that its provisions cannot be implemented without taking into account both the principles and the general framework of the international organizations that deal with these questions. Article 7.3 of the convention expresses this idea with regard to the general provisions by stating that “each Party shall promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment”. As we said, the Convention attaches increased importance to international organizations in the achievement of Goal 16 by regarding them as possible parties to this legal instrument. Indeed, the important question is not only that “the Aarhus Convention” comes out of the work of an international organization but also that its provisions recommend that these bodies ratify the Convention. Thus, article 17 maintains that “this Convention shall be open for signature (...) by *regional economic integration organizations* constituted by sovereign States members of the Economic Commission for Europe to which their

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<sup>30</sup>UNECE Text: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.

<sup>31</sup>See article 3 of the Convention.

<sup>32</sup>UNECE Text: <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.



member States have transferred competence over matters governed by this Convention, including the competence to enter into treaties in respect of these matters”<sup>33</sup>.

In practice, international organizations make a clear contribution to the SDGs. In the case of the OSCE, its contribution to Goal 16 has involved promoting the application of provisions of “the Aarhus Convention”, above all through the creation of Centres which aim to guarantee everyone access to information and justice and the right to participate in decision-making processes. As Buttanri notes “since 2002, the OSCE has facilitated the establishment and functioning of Aarhus Centres – there are now 60 in 14 OSCE participating States. The network of Aarhus Centres offers an opportunity to raise awareness of SDGs and ensure local ownership in their implementation”<sup>34</sup>. The creation of these Centres is a demonstration of the collaboration that is needed to reach the targets of the 2030 Agenda. These Centres have been essentially defined as “a platform for co-operation, participation and partnerships”<sup>35</sup>. To give effect to the 1998 Convention, the OSCE has set up many “Aarhus Centres”, especially in the states of Eastern Europe such as, Albania, Armenia, Belarus o Serbia. These centres communicate with each other, so there is a link not only between the OSCE and its different member states but also between the States themselves<sup>36</sup>.

In conclusion, international alliances for achieving SDGs, based on the principles established in SDG 17, are essential for guaranteeing human rights protection, ending poverty and protecting the environment. The OSCE is part of a coalition of entities which contribute to the 2030 Agenda Goals. Its contribution to the different targets promoted by the UN has been amply demonstrated. While the OSCE strives to protect fundamental rights via access to justice and information, its work towards achieving the 2030 agenda is mainly in the area of environmental protection. The OSCE’s work on human rights places special emphasis on environmental protection. In any case, when it comes to promoting means of meeting the SDGs, the OSCE’s motto is to link both the environment and human rights with security, the element underpinning all of the organization’s targets.

#### **4. CONCLUSIONS**

This analysis of the contribution of the OSCE towards the achievement of the SDGs, within the framework of SDG 17, has revealed that, while the international organization’s main sphere of action is related to security, it also makes important contributions to questions relating to the environment and to human rights. The following conclusions can be made in this regard.

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<sup>33</sup>Italics added.

<sup>34</sup>BUTTANRI, E., Sustainable development and security – the global agenda and its reflections in the OSCE in <https://www.osce.org/magazine/306696>.

<sup>35</sup><https://aarhus.osce.org/>.

<sup>36</sup>For more information on the work of these Centres in each State see, for example: <https://aarhus.osce.org/>.

Firstly, alliances are necessary to meet the SDGs. This is reflected both in the 2030 Agenda itself, and in numerous international instruments and declarations. On the one hand, UN Goal 17 sets out the necessary collaboration between states, international organizations, NGOs, transnational corporations and groups of individuals. On the other hand, this study shows the importance that both general and specific conventions attach to coordinated action involving all global actors and above all, the important role that international organizations play in achieving the SDGs.

Secondly, within these alliances, international organizations play a more essential role than the other actors in achieving the SDGs. Although the role of companies and NGOs is relevant, both the legal capacity of these governmental organizations and their institutional development gives them a prominent position in the framework of collaboration towards meeting the SDGs. In this respect, the contributions of universal organizations are complemented by the contributions of regional organizations, especially European and American ones. The work carried out by the OSCE is a prime example of this.

Finally, the contributions which international organizations make to the SDGs will depend on the nature and the aims of each organization. The contribution to each specific goal of the 2030 varies according to the goals and principles of the international organization in question. The OSCE's desire to avoid international conflicts and maintain security means that it will make its greatest contributions in goals relating to these questions. The OSCE has often demonstrated that there are links between environmental protection and security and between security and human rights.

The International Community is clearly aware of the imperative need to meet the Goals of the 2030 Agenda. Although many of the targets included in these objectives follow on directly from what was formerly established with the Millennium Goals, the results so far have been different. This is partly due to the broad collaboration that has taken place in the work carried out to meet the SDGs. The action of the states alone is insufficient and other actors must play a part in this long process which seems to be nearing its end. International organizations, including of course the OSCE, are fundamental to meeting the SDGs.

## SPANISH COMMITMENT TO OFFICIAL DEVELOPMENT AID WITH GENDER PERSPECTIVE

*“If development is not engendered, it is endangered. And if poverty reduction strategies fail to empower women, they will fail to empower society”*

UNDP Human Development Report, 1997.

DIANA M. VERDIALES LÓPEZ

*Head of Research and Development Cooperation, CEIB  
Rey Juan Carlos University*

**SUMMARY:** 1. INTRODUCTION. 2. HISTORICAL EVOLUTION OF SPANISH INTERNATIONAL AID FOR DEVELOPMENT: PROGRESS AND SETBACKS. 2.1 Background of the Spanish international cooperation. 2.2 Consolidation of the Spanish international cooperation. 2.3 Growing and modernization of Spanish cooperation. 3. SPAIN AND THE SUSTAINABLE DEVELOPMENT GOALS (SDG). 3. 1. Spain's role in the sustainable development Agenda 3. 2. Spanish cooperation with a gender approach. 4. CONCLUSIONS.

**ABSTRACT:**

The Spanish International Aid for Development has been very active since its beginning in the mid-eighties. However, the effects of economic measures caused by the economic crisis of 2008 have led to a reduction by 70% of the Spanish participation in this international cooperation. With the launching of the Agenda 2030, Spain resumes its commitment to development cooperation, especially on gender equality. However, the actions developed so far do not correspond with the official commitment and, therefore, it is expected that the Spain's agreements towards the achievement of SDG becomes a national priority to make possible the goals achievement.

**KEYWORDS:**

Spanish International Aid for Development, Sustainable Development Goals, Spain Official Development Aid, Gender Approach, Gender Perspective.

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## **1. INTRODUCTION**

The OECD Development Assistance Committee defines official development assistance (ODA) as the government aid that promotes and supports the economic development and well-being of developing countries<sup>1</sup>. Traditionally, aid came from countries' contributions, but in recent years, private donations (by companies, associations or foundations) have increased considerably. This has led to the reformulation of ODA standards, especially after the establishment of the Sustainable Development Goals (SDG). The SDGs incorporate into their new development strategies, in addition to the traditional donor countries, the recipient countries so that they contribute to the achievement of development objectives, as well as to various sectors of civil society evolution.

In the case of Spain, as we can see in the following lines, it has actively participated in the international cooperation strategies since the 1980s. Progressively improving its system of internal management of development cooperation, as well as its program evaluation and assessment system. This has made it possible to broaden the geographical areas with which it traditionally collaborated, as well as the sectors of action, highlighting, in recent years, the defense and promotion of gender equality.

## **2. HISTORICAL EVOLUTION OF SPANISH INTERNATIONAL AID FOR DEVELOPMENT: PROGRESS AND SETBACKS**

Spanish International Cooperation for Development has traditionally been very supportive to the needs of third countries. Since the early 1980s, Spanish cooperation for development was taking its course towards the path of solidarity and support for the most disadvantaged. We must remember that until the year 1981 Spain was considered as a recipient country of aid. In 1983, Spain requested to leave the list of recipient countries of Official Development Assistance (ODA) of the Development Aid Committee (DAC) of the Organization for Economic Cooperation and Development (OECD). And from that year on it starts its first actions in the international cooperation, creating in 1985 the Secretary of State for International Cooperation and for Ibero-America (SECIPI) as the first political body specializing in development cooperation in the country, responsible for the management, plan, control and evaluation of Spanish policy of development cooperation.

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<sup>1</sup> Boni, Alejandra (2010), "El sistema español de cooperación internacional al desarrollo", in *La Cooperación Internacional para el Desarrollo*, Chapter III. Cuadernos de Cooperación para el Desarrollo Núm. 1. Centro de Cooperación al Desarrollo, Editorial Universitat Politècnica de València. p. 9.

## **2.1 Background of the Spanish international cooperation.**

During the 1980s and early 1990s, the main institutions and programs of development cooperation were established, both nationally and regionally, due to the important role that local and regional administrations began to carry out in Spanish decentralized cooperation.

With its incorporation into the European Union in 1986, Spain began to strengthen its social and economic institutions by making it increasingly independent of foreign aid, and thus leaving more resources available for international cooperation. Therefore, we can consider this period as the consolidation stage of International Development Cooperation in Spain.

At the end of 1988, the Spanish Agency for International Development Cooperation (AECID) was established and attached to the SECIPI, with the aim of promoting the Spanish international cooperation policy. That same year the Office of Planning and Evaluation (OPE) of the Government of Spain was created to support the strategies of international cooperation.

## **2.2 Consolidation of the Spanish international cooperation**

Later, we can observe how Spanish International Aid for Development is consolidated with the incorporation of Spain in the Development Assistance Committee (CAD) in 1991 and the internal creation, in 1995 in Extremadura, of the Advisory Council for International Cooperation for Development, as the body responsible for regulating aid to the third world in the cooperation for development area.

Although, during the eighties, several demonstrations were held by civil society to demand greater participation in the field of International Cooperation, through the active participation of Non-Governmental Organizations for Development (NGDO), it was not until 1994 when there were larger and more numerous social demonstrations to demand an improvement in the quality of cooperation, as well as an increase in ODA to reach 0.7%. These social demands resulted in the signing of the "Pact for solidarity", which showed the parliamentary commitment to increase ODA to about 0.7%, as well as the creation of the Council for Development Cooperation (1995) with the objective to facilitate the dialogue between public administration, NGDOs and social agents<sup>2</sup>.

On the other hand, and after evaluating the results obtained in the first peer review of the DAC in 1994, it was determined that the planning of the Spanish cooperation oriented to results was insufficient, that there was no comprehensive monitoring system and that the culture and practice of the evaluation was very weak. Therefore, the government of Spain initiated a series of actions aimed at improving the quality, rigor, transparency and effectiveness of Spanish cooperation and thereby respond to the observations obtained in that evaluation. Proof of this was the construction of an

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<sup>2</sup> Gómez, María (2010), "El sistema español de cooperación internacional al desarrollo", in *La Cooperación Internacional para el Desarrollo*, Chapter III. Cuadernos de Cooperación para el Desarrollo Núm. 1. Centro de Cooperación al Desarrollo, Editorial Universitat Politècnica de València.

evaluation system by strengthening the human resources of the Office of Planning and Evaluation (OPE); the establishment of a specific budget for the financing of evaluations; reinforcing participation in international events on evaluation, such as multilateral networks and forums in the field of CAD and the European Union; and above all the development of a Methodology for the Evaluation of Spanish Cooperation in 1998, as well as the preparation of an evaluation plan during that same year, issuing four evaluations<sup>3</sup>.

Following this line, in 1998, the International Cooperation for Development Act was created under Royal Decree 23/1998, whose basic purpose, as indicated in article 1 of that Law, is: to promote “development processes that address the defense and protection of Human rights and fundamental freedoms, the needs of economic and social well-being, sustainability and regeneration of the environment, in countries with high levels of poverty and those in transition to full Consolidation of its democratic institutions and its insertion into international economic”<sup>4</sup>. This law emphasizes “the policy of international cooperation for development specifically responds to the mandate contained in the preamble of the Spanish Constitution to contribute to the strengthening of peaceful relations and effective cooperation among all the peoples of the Earth”<sup>5</sup>. In addition, describes the modalities under which development cooperation programs can be financed, classifying them in bilateral and multilateral. Using as its main instruments of development cooperation: technical cooperation, economic and financial cooperation, humanitarian aid (food and emergency) and education for development and social awareness.

Likewise, the Spanish law of international cooperation for development clearly states all organizations and institutions of the official and governmental structure entitled to lead the cooperation for development: the Ministry of Affairs and Cooperation, the State Secretariat for International Cooperation, the Spanish Agency for International Development Cooperation, the Council for Development Cooperation, the Inter-Territorial Commission for Development Cooperation, the Inter-Ministerial Commission for International Cooperation, the Foreign Policy Council and Inter-Ministerial Commission for Foreign Humanitarian Aid Plans Coordination.

The planning of the Spanish cooperation policy for development, prior to the enactment of the law, was carried out through the elaboration of annual international cooperation plans (PACI). Once the International Development Cooperation Act has been approved, the planning will be organized through the elaboration of the master plan (of a quadrennial character, setting the general guidelines for Action) and the annual plan (which sets the objectives, resources and priorities to be developed annually).

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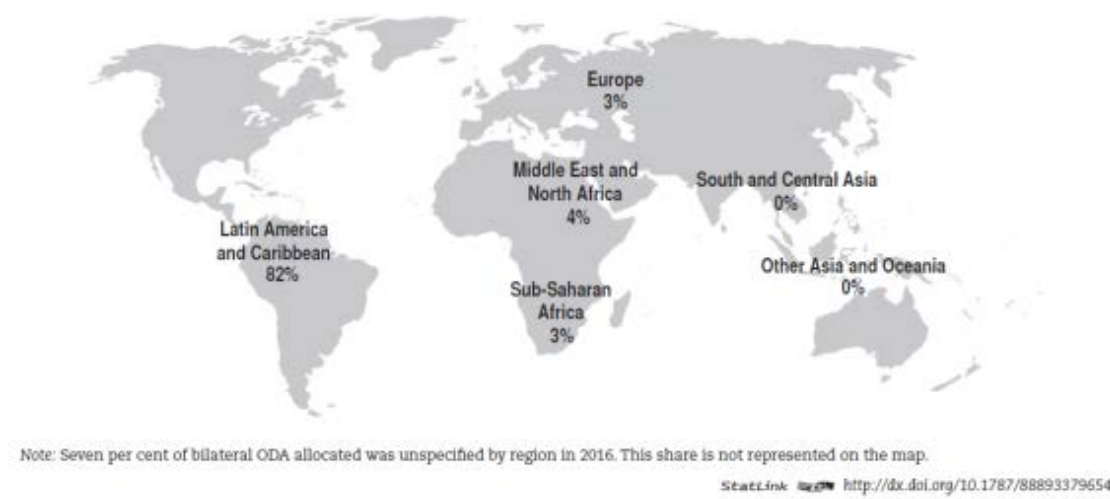
<sup>3</sup> Arguilés, José Manuel (2014), “25 años de evaluación de la política española de cooperación internacional para el desarrollo” *Revista de Evaluación de Programas y Políticas Públicas*, UNED, Facultad de Ciencias Económicas y Empresariales, Núm. 3. p. 25.

<sup>4</sup> BOE (1998), “Ley de Cooperación Internacional para el desarrollo”, Núm. 162, pág. 22757.

<sup>5</sup> Real Decreto 23/1998, “Ley de Cooperación Internacional para el Desarrollo”, pág. 22756, BOE Núm. 162.

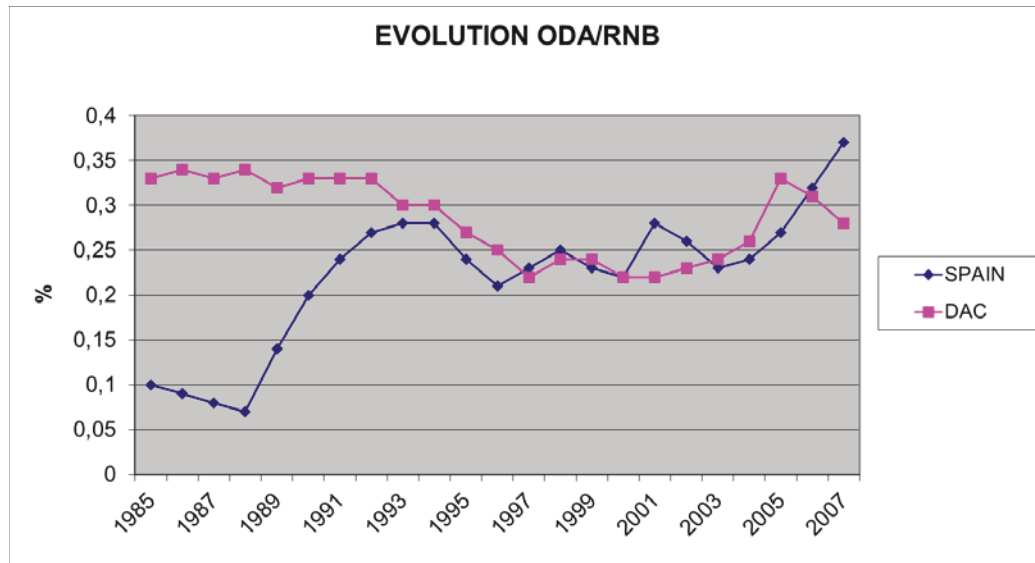
As far as the lines of action are concerned, the Spanish Cooperation Policy is divided into two priority areas: geographical and sectoral. With regards to geographical area, we can point out that traditionally, Spanish development cooperation has been dedicated to the Ibero-American countries, the Arab countries of North Africa and those of the Middle East. However, this cooperation has been extended to sub-Saharan Africa and some Asian countries, as a result of some international commitments acquired by Spain, as of the recommendations made by the CAD.

### **GEOGRAPHICAL DISTRIBUTION OF SPANISH ODA, 2016**



Referring to Aid sectors, the preferred focus in Spanish development cooperation have been: the coverage of basic necessities, the investment in the human being, the social participation, the infrastructure and the promotion of the social fabric, Environment Protect, good governance and conflict prevention and finally building peace. Other sectors, such as science, technology and innovation, migration and development, gender in development, as well as culture and development, have also been incorporated.

In this sense, is important to mention that in the late 1990s the Spanish international cooperation got strengthens as a result of the implementation of the above-mentioned law 23/1998 and various instruments for planning and managing development cooperation. However, at the beginning of the new century it shows a slight reversal as a result of an economic stagnation and the break of international political consensus following the International Crisis of the Year 2000 (similar to Registered between 1995 and 1998). Given the circumstances the lack of cultural and practical involvement was natural. Also, the necessity and importance of implementing an evaluation system oriented to strength NGOs through a lessons-learning approach was recognized.



Source: Fundacion para la Educación y el desarrollo de los pueblos, Seminario de tendencias de la cooperación, sesión 3, 2009.

The graph above shows the evolution of Spanish official development aid since its inception in 1985 and after its incorporation to the Development Aid Commission in 1998. Therefore, we can conclude that it is from the incorporation of Spain in the CAD when it begins to approach the percentages destined by the rest of the member countries, maintaining a similar trajectory in the years 2005-2006 and slightly higher in 2007.

### 2.3 Growing and modernization of Spanish cooperation

At the beginning of the 21st century, the Spanish government made a great effort to expand and modernize the plans and instruments in the field of international development cooperation. Therefore, national guidelines were created under sectoral strategies governed by the first master Plan for development cooperation in 2001.

This expansion and modernization of instruments and plans in the field of the International Development Cooperation along with the sustained economic growth of the country made possible an increasing and continuous participation of Spain during the first decade of the 21 century. As a result of this Spain played at this time an important international role in the arena of Multilateral Cooperation.

Some of the actions carried out by the Spanish Government to promote its international cooperation to development policy were the amendment made in 2004 within the basic organizational structure of the Ministry of Foreign Affairs and Cooperation. As a result of this change the Evaluation and Planning Office was eliminated and replaced by the Sub-directorate General of Planning and Evaluation of Development Policies. However, a year later, in 2005 and given its importance in planning and evaluation, this sub-directorate was elevated to General Directorate of Planning and Evaluation of development policies (DGPOLDE).



However, the creation of this obsolete institutional framework made more difficult the management of actions in the field of the international development cooperation and, in consequence, a modernization phase was initiated in the second decade of the 21st century, throughout staff professionalization and the creation of practices and procedures under international criteria, which result in a significant improvement of the Spanish cooperation for development.

Spain needs to work towards the effectiveness of development aid, initiated in the first decade of the twentieth century, not only influenced this country, but responded to a global concern. Since, despite the international recommendations of the DAC, to maintain the ODA percentage at 0.7%, this had been reduced to reach a minimum of 0.14% in 2014<sup>6</sup>. Hence the need to work on the effectiveness of development aid, incorporating mechanisms of evaluation and commitment on the part of the international community, under the guidelines indicated in the Millennium Declaration (2000) and the Paris Declaration (2005).

In this way, Spanish International Aid for Development was developing in several respects, moving from focusing on situations (poverty, inequality, etc.) to focus on people (women, children, indigenous, migrants, etc.); Going from considering as achievements the mere fulfillment of the objectives and the disbursement of the budget to generating empowerment at the level of the beneficiary; To facilitators, coaches or enabling instead of teachers, supervisors and controllers; To foster a learning method based on the didactic and the instructive in order to boost an experimental learning method<sup>7</sup>.

However, during the first decade of the 21st century, the Spanish Development Cooperation suffered a serious setback. Since, despite the progress made in the modernization and professionalization of its cooperation system, the budget allocated to international cooperation, decreased considerably during the period 2011-2015, reaching a reduction of 70%<sup>8</sup>, as can be seen in the following graph.

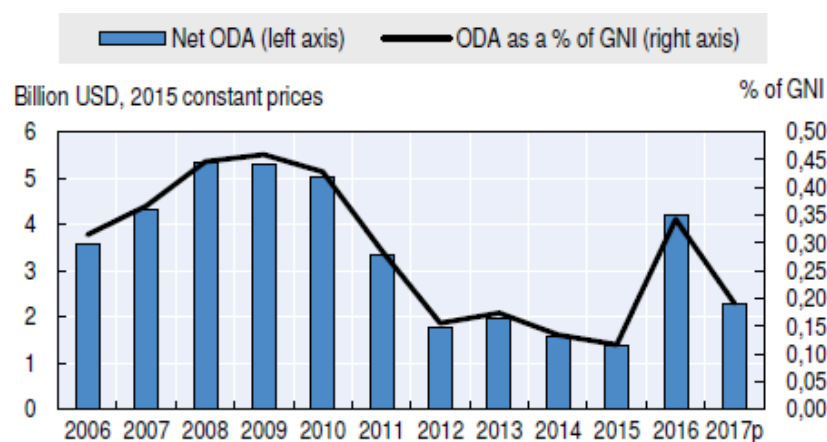
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<sup>6</sup> See in OXFAM Intermon and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 6.

<sup>7</sup> Boni Aristizábal, Alejandra (2010), "El sistema de la cooperación internacional al desarrollo. Evolución histórica y retos actuales", in *La Cooperación Internacional para el Desarrollo*, Chapter III. Cuadernos de Cooperación para el Desarrollo Núm. 1. Centro de Cooperación al Desarrollo, Editorial Universitat Politècnica de València.

<sup>8</sup> In the case of funds for humanitarian aid, the budget was reduced to 82% between 2009 and 2014, from 319 million euros to 57. See in Intermon OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, pp. 7:33.

**NET ODA: TRENDS IN VOLUME AND AS A SHARE OF GNI, 2006-2017, SPAIN**



P: preliminary data.

StatLink <http://dx.doi.org/10.1787/888933796471>

Although the most abrupt fall was between 2011 and 2015, as we have already indicated, it is necessary to point out that the decline in Spanish ODA started with the international economic recession in 2008. Despite the fact that it was an international economic crisis, we can point out that Spain was one of the countries that most decreased its budget to ODA, while countries such as Portugal or Ireland, also severely affected by the crisis had a reduction in ODA lower than that of Spain. On the other hand, and in spite of the crisis, countries like the United Kingdom increased their contribution, reaching 0.7%.

**COUNTRIES WHERE ODA AS A PERCENTAGE OF GNI HAS DECLINED SIGNIFICANTLY**

	From	Level in 2017
Australia	0.34% in 2011	0.23%
Austria	0.50% in 2007	0.30%
Canada	0.34% in 2010	0.26%
Denmark	0.91% in 2010	0.72%
Ireland	0.59% in 2008	0.30%
Netherlands	0.82% in 2009	0.60%
New Zealand	0.30% in 2008	0.23%
Portugal	0.31% in 2011	0.18%
Spain	0.46% in 2009	0.19%

StatLink <http://dx.doi.org/10.1787/888933798485>

### **3. SPAIN AND THE SUSTAINABLE DEVELOPMENT GOALS (SDGs)**

Following the completion of the Millennium Development Goals implementation period, MDG (2000-2015), the international community noted with concern that the results obtained in terms of development, in the least developed countries, showed great *chiaroscuros*, with great disparities between the developed and developing countries. Thus the international community could positively see how extreme poverty had halved and continued downward trend; more than two and a half million people have now access to safe water; and there had been significant improvements in infant mortality and an increase equally considerable of children attending primary schools. However, they also noted with concern how aspects such as maternal and reproductive health continued to be an important problem, gender inequality and everything related to environmental issues.

Since these results obtained after the implementation of the MDGs did not come close, in most areas to the stipulated goals, it was unanimously decided to continue working on the construction of a broader work agenda that included the new problems that they affect the current international society.

In order to highlight possible actions that would contribute to improving the financing of development programmes, the Third Development Finance conference in Addis Ababa was held in July 2015. The conference led to the launch of a new international development Agenda.

The new Sustainable Development Agenda<sup>9</sup> was created with the aim of continuing to move towards the construction of a more equitable, inclusive and egalitarian world. The New agenda (called Agenda 2030), is constituted of 17 objectives of sustainable development (SDG) and 169 goals associated to those achievable objectives in 2030, covering the social, economic and environmental dimensions, in all the countries, both developed as developing.

Given that the approval of the 2030 Agenda coincides with the end of the mandate of the Secretary General of the United Nations, Ban Ki-moon, we can conclude that this has been the legacy that the Secretary General wanted to leave to the world. Validating and resuming the efforts made after the completion of the MDGs and promoting the approval of the new SDGs, which undoubtedly mark a milestone in the history of the

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<sup>9</sup> It should be noted that the basis for the construction of the new Agenda 2030 for sustainable development, in addition to the Charter of the United Nations and the Universal Declaration of Human Rights, were the international human rights treaties, the Millennium Declaration, the final Document of the World Summit 2005, the Declaration on the Right to development, the Rio Declaration on Environment and Development, the World Summit on Sustainable Development, the World Summit on Development Social, the Program of Action of the International Conference on Population and Development, the Beijing Platform for Action and the United Nations Conference on Sustainable Development. AGNU, Asamblea General de Naciones Unidas. (2015). Resolución aprobada por la Asamblea General el 25 de septiembre de 2015: Transformar nuestro mundo: la Agenda 2030 para el desarrollo. A/RES/70/1, Septuagésimo período de sesiones. Nueva York, Estados Unidos. p. 4-5.

development of humanity due to its more complete and global vision on the problems related to sustainable human development.

In this regard, we can point out that the new development Agenda is presented with three main purposes<sup>10</sup>: *that of meeting the objectives not achieved by the MDGs* (such as strengthening education and health, as well as reducing the inequalities); *Include sustainable development strategies*, addressing the environmental, sustainability and governance issues; Finally, there is a need to *improve the provision of global public goods*, ensuring financial, food and political stability.

At the end of 2008 beginning of 2009, as we have already mentioned, Spain was immersed in an economic crisis that led it to take budgetary adjustment measures severely affecting its welfare state. It made very difficult the fulfillment of the last phase of implementation of the MDGs. In this sense, Spain began its reinstatement in the Agenda 2030 with red numerals. Since it was one of the OECD countries with the highest inequality rate, the number of people in poverty and vulnerability<sup>11</sup> has increased considerably, owing to the reduction in health benefits, education and the high number of unemployment.

### **3.1 Spain's role in the Sustainable Development Agenda**

Due to its national economic performance, Spain has been playing a gradual and little active role in the implementation of sustainable development goals. Economic adjustment measures have severely weakened the social service system<sup>12</sup>, leaving more than 750.000 migrants out of the free health care system<sup>13</sup> and increasing 290% the number of households with children with no adult working between 2007 and 2013<sup>14</sup>; it helped to keep more than 20% of its population in poverty (27.9% in 2016)<sup>15</sup>.

Despite the active participation of Spain in international fora, its contribution to international development cooperation continues to be deficient. Since, in the year 2016,

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<sup>10</sup> OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 11.

<sup>11</sup> The number of people in a state of poverty and vulnerability amounted to 29.2% in 2014, equivalent to 13.4 million people (2.3 million more than in 2008 and 6 percentage points more than the European average). OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 13.

<sup>12</sup> The budget for this item reached 25.9% of GDP in 2012, lower than the European average, which was 30.4% for the same year. OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 15.

<sup>13</sup> Affecting, according to official data, 35.8% of the population under 18 years. OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 3.

<sup>14</sup> OXFAM Intermón and UNICEF Comité Español (2015), "España frente a los retos de la Agenda de Desarrollo Sostenible", Madrid, España, p. 14.

<sup>15</sup> OXFAM Intermón and UNICEF Comité Español (2017), "Agenda 2030. Una oportunidad para las personas y el planeta", Madrid, España, p. 8.

a year after its adherence to Agenda 2030, Spain allocated a 0.12% ODA of its gross national income (GNI)<sup>16</sup>, far from 0.4% of the goal that was proposed to reach 2019.

In order to make progress in this direction and to comply with the implementation of the sustainable development Agenda 2030, Spain created in 2017, the figure of Ambassador in Special Mission for the agenda 2030<sup>17</sup>, by means of Council of Ministers. During the same year, two non-law propositions (NLP) were approved for the implementation of the Agenda in Spain. In the middle of that same year, a high Level Group (GAN) was created as the Working Group to articulate all ministries with the aim of coordinating the Spanish position with SDG. A study paper was also created for the definition of the Spanish strategy to reach SDG, under the coordination of the Senate Cooperation Commission and the Cooperation Committee of the Congress of Deputies. Until 2017, 6 Autonomous Communities and 8 municipalities had taken steps to initiate the process of inclusion of their policies in line with SDG. In July 2018, Spain participated in the high-level political forum 2018, volunteering for the National Review (VNR) of the country's progress on SDG. For this review, GAN articulated a Plan of action for the implementation of SDG Spain during 2018-2020, agreed with the main social actors in the country<sup>18</sup>. In this sense, it is planned to work on the agreed in the Plan of Action 2018-2020, to be able to be presented again to the VNR in the 2020, 2025 and 2030. Finally, on June 19, 2018, the figure of the High Commissioner for the agency 2030 was created, as the one in charge of coordinating the actions of all the national actors interested in the achievement of the SDG.

It is necessary to specify that, to date, and after three years of the implementation of the Agenda 2030, Spain has not achieved the expected results in the first phase of implementation. The average of SDG shares carried out by the Spanish government is 30. Being 12 the least has (SDG 7) and 49 the most (SDG 16). Of the 17 SDG, Spain manages to give a slight fulfillment in some goals of 8 of them<sup>19</sup>. So the highest percentage of SDG coverage is 10% in the case of SDG 16, and the lowest percentage of coverage is 2% in the case of SDG 7<sup>20</sup>. The allocation of responsibilities for SDG compliance is distributed among all the ministries that make up the national government. For each SDG, at least 7

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<sup>16</sup> OXFAM Intermón and UNICEF Comité Español (2017), "Agenda 2030. Una oportunidad para las personas y el planeta", Madrid, España, p. 11.

<sup>17</sup> GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review", Government of Spain, Madrid, p. 15.

<sup>18</sup> For the implementation of this Plan of action, a meeting was held in the Congress of Deputies, in which thirteen social networks and platforms were present, three national unions, twenty-five civil society organizations and four institutes University development and study centers. GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 19.

<sup>19</sup> The average of actions carried out by the Spanish Government for the compliance of SDG is 30. Being 12 The least has (SDG 7) and 49 The most (SDG 16). Of the 17 SDG Spain presents a favorable trend in some goals of 8 of these (2, 3, 4, 10, 12, 14, and 15). OXFAM Intermón and UNICEF Comité Español (2017), "Agenda 2030. Una oportunidad para las personas y el planeta", Madrid, España, pp.12-15.

<sup>20</sup> The percentages of coverage by SDG by Spain are as follows: SDG 1, 6%; SDG 2, 3%; SDG 3, 5%; SDG 4, 5%; SDG 5, 9%; SDG 6, 5%; SDG 7, 2%; SDG 8, 7%; SDG 9, 6%; SDG 10, 4%; SDG 11, 6%; SDG 12, 7%; SDG 13, 4%; SDG 14, 7%; SDG 15, 7%; SDG 16, 10% and SDG 17, 8%. GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 96.

ministries have been allocated, reaching 11 in the case of SDG 12 and 16, 13 for SDG 5 and 8 and up to 14 for SDG 1.

Although it is still early to take stock of the results towards meeting Agenda 2030, we can say that so far short-term goals are not having the expected results. And that can lead to a delay in the mid-and long-term fulfillment of them.

For this reason, several civil society organizations continue to demand greater participation by the Spanish Government in order to fulfil the objectives and goals set out in the Agenda 2030. Organizations such as OXFAM and UNICEF point out that, in order for Spain to play an important role in the contribution of the universality of agenda 2030, it is necessary to advance in at least the following five areas of public action<sup>21</sup>:

1. To ensure the possibilities of progressive collection of the tax system.
2. Commit to initiatives to promote international fiscal cooperation.
3. Involve all private agents to encourage more inclusive growth.
4. Support developing countries in science, technology, innovation and development to actively contribute to international I+D+I investment efforts.
5. Actively participate in addressing the so-called systemic problems.

In this sense, the Plan of action for the implementation of the Agenda 2030 in Spain describes the concrete actions that are intended to be developed to move towards the fulfillment of SDG.

These actions are framed in a series of accelerator policies<sup>22</sup> or priority areas that have been identified by the Spanish Government; to coordinate transversally the actions oriented towards the achievement of SDG. These are the following:

### Spain's priority areas of action for SDG

Priority area/accelerator policies	SDG	Proposal
1. Preventing and combating poverty, inequality and social exclusion.	1, 2, 3, 4, 5, 10 y 11	<ul style="list-style-type: none"><li>• Combating poverty and inequality, especially severe poverty and child poverty.</li><li>• Investing in people, focusing on inclusive</li></ul>

<sup>21</sup> OXFAM Intermón and UNICEF Comité Español (2015), “España frente a los retos de la Agenda de Desarrollo Sostenible”, Madrid, España, p. 37.

<sup>22</sup> Accelerator Policies means "programmes or policies capable of fostering coherent and sustained sustainable development, as well as accelerating the process of implementing SDG with greater impact and speed." GOVERNMENT OF SPAIN (2018), “Spain’s Report for the 2018 Voluntary National Review”. Government of Spain, Madrid, p. 106.

		<p>education and promoting adequate employment.</p> <ul style="list-style-type: none"> <li>• Improving social protection, through adequate housing, health services, assistance for dependent persons, sufficient social services and maintaining a social benefits system able to situations of need.</li> <li>• Others.</li> </ul>
2. Equality of opportunities: strategic plan.	1, 4, 5, 8, 16 y 17.	<ul style="list-style-type: none"> <li>• Elaboration of the next strategic Plan for Equal Opportunities (hair) taking into consideration the objectives and goals set out in Objective 5 of Agenda 2030.</li> </ul>
3. Spain's urban Agenda.	5, 6, 7, 8, 9, 10, 11, 12 y 13.	<ul style="list-style-type: none"> <li>• Conserve and protect the land through rational use.</li> <li>• Prevent and reduce the impact of climate change.</li> <li>• Manage resources sustainably and promote the circular economy.</li> <li>• Promote proximity and sustainable mobility.</li> <li>• Foster social cohesion and seek equity.</li> <li>• Ensure access to housing</li> <li>• Other.</li> </ul>
4. d	5, 7, 8, 12, 13, 14 y 15.	<ul style="list-style-type: none"> <li>• Progress in the implementation of a development and growth model that optimizes the utilization of resources, materials and products available.</li> <li>• Preserving and enhancing natural capital by selecting renewable resources and systems or better results.</li> <li>• To promote the efficiency of the systems.</li> <li>• Generate new capacities and new jobs.</li> <li>• Avoid damaging the environment and preserving biodiversity and ecosystems.</li> </ul>
5. The climate change and energy transition act.	5, 7 y 13.	<ul style="list-style-type: none"> <li>• Ensure the neutrality of greenhouse gas emissions and an efficient and renewable energy system in Spain for 2050.</li> <li>• Anticipate the knowledge of possible effects of climate change in Spain and facilitate resilience and adaptation in front of them.</li> <li>• Ensure social and territorial cohesion in a context of energy security.</li> </ul>
6. Scientific and technical research for the SDGs.	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 y 17.	<ul style="list-style-type: none"> <li>• Generation of knowledge in all areas.</li> <li>• Application of instruments to the scientific-technical and innovation priorities included in each one of the challenges.</li> <li>• Coordinated with state-wide sectoral policies and strategies over the next few years.</li> <li>• Universal Contribution of R + D + I to the</li> </ul>

		achievement of SDG.
7. The social economy: 2017-2020 strategy.	5, 8, 9, 10 y 17.	<ul style="list-style-type: none"> <li>• Support to the employment and entrepreneurship of the social economy.</li> <li>• Impulse to the consolidation of companies of the Social economy.</li> <li>• Impulse of the Digital economy in the entities of Social economy.</li> <li>• Development of the Social economy within the framework of the International Agenda (Ibero-America, Europe and Mediterranean).</li> <li>• Promotion of gender equality and social inclusion in the social economy.</li> </ul>
8. Open Government Plan	5, 16 y 17.	<ul style="list-style-type: none"> <li>• Set up a new framework of public governance and a renewed state architecture.</li> <li>• Transparency, participation and accountability as the basic axis of all political action.</li> <li>• Commitment to maintain the values promoted by the Open Government partnership of which Spain participates.</li> </ul>
9. Regaining a Spanish cooperation at the service of the SDGs.	1, 5, 10 y 17.	<ul style="list-style-type: none"> <li>• Promote the achievement of SDG and contribute to the eradication of poverty.</li> <li>• Build the resilience of people and communities.</li> <li>• Promote inclusive economic growth.</li> <li>• Conservation of the planet and fight against climate change.</li> <li>• Construction and strengthening of alliances or associations with the different actors committed to the scope of SDG.</li> </ul>

Source: own elaboration with information obtained in GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 108-117.

### 3.2 Spanish cooperation and gender approach.

The issue of gender equality has always been a priority topic for Spanish national policy. At the international level, Spain has subscribed to the commitment to equality between women and men both in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979)<sup>23</sup>, the Beijing Declaration and Platform for Action (1995)<sup>24</sup>, in the Millennium Development Goals (2000)<sup>25</sup>, among others. And

<sup>23</sup> See in: [http://www.csd.gob.es/csd/estaticos/myd/convencion\\_protocolo.pdf](http://www.csd.gob.es/csd/estaticos/myd/convencion_protocolo.pdf) and <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

<sup>24</sup> See in [http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/bpa\\_s\\_final\\_web.pdf](http://beijing20.unwomen.org/~media/headquarters/attachments/sections/csw/bpa_s_final_web.pdf) and <https://www.mscls.gob.es/ssi/igualdadOportunidades/internacional/unioneuropea/Beijing1995.pdf>

<sup>25</sup> See in <http://www.un.org/spanish/milenio/ares552.pdf>.



at European level, as subscribed in the Charter of Fundamental Rights<sup>26</sup>, as in the Treaty of Operation contained in the Treaty of the EU<sup>27</sup>, in the Treaty of Rome (1957)<sup>28</sup> and specifically in the Council of Europe Convention on the Prevention and control of violence Against women and domestic Violence of 2011 (Istanbul Convention)<sup>29</sup>. It is also part of the strategic commitment to equality between women and men 2016-2020 in line with the European Pact for Gender Equality 2011-2020<sup>30</sup>.

As far as national policy is concerned, we can see that in article 1 of the Spanish Constitution<sup>31</sup> it recognizes equality as one of the higher values of the legal system; Article 9.2, which mentions the conditions for promoting freedom and equality among individuals; and article 14 where discrimination on grounds of sex is prohibited.

In the field of international development cooperation, the gender approach is present in the Director Plan 2005-2008<sup>32</sup> and in the law 23/1998 of international cooperation for development<sup>33</sup>. From these two documents the strategy of "Gender in development" is derived, which constitutes as a fundamental instrument to promote the effective equality between men and women and especially to put in practice not only the guidelines exposed in the Plan Director 2005-2008 and in law 23/1998, but also in the content of law 3/2007 for the effective equality of women and men<sup>34</sup>. These guidelines are reflected in the first pilot experiences carried out under the technical offices of Spanish cooperation jointly with women-led organizations in countries such as Guatemala, Nicaragua, Republic Dominican Republic, among others, including in them the mainstreaming of the gender approach.

In this sense, for the Spanish Development Cooperation equality between men and women is the basis for the generation of development. That is why post-graduate gender programs were launched to promote women's rights both in the third sector, as well as in the government staff of the dependencies attached to international cooperation and for the general public. That is why, the development strategies that are carried out with partner countries should take into account the differences and inequalities between men and women. This necessarily requires the participation of men, since in this way they work on the structural causes of gender inequality, addressing issues such as roles in the family or the traditional perception of women in society.

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<sup>26</sup> See in [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>27</sup> See in <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>

<sup>28</sup> It establishes in its article 119 the principle of equality in wage remuneration between men and women performing the same work, prohibiting wage discrimination on the basis of sex. AECID (2015), "Guía de la AECID sobre la Transversalización del Enfoque de Género", Madrid, España, p. 25. See in <https://eur-lex.europa.eu/legal-content/FR/TXT/PDF/?uri=CELEX:11957E/TXT&from=EN>

<sup>29</sup> See in <https://rm.coe.int/168008482e>

<sup>30</sup> See in [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XG0525\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011XG0525(01)&from=EN)

<sup>31</sup> See in <https://www.boe.es/legislacion/documentos/ConstitucionINGLES.pdf>

<sup>32</sup> See in [http://www.aecid.es/Centro-Documentacion/Documentos/Planificaci%C3%B3n/Plan\\_Director0508\\_Esp.pdf](http://www.aecid.es/Centro-Documentacion/Documentos/Planificaci%C3%B3n/Plan_Director0508_Esp.pdf)

<sup>33</sup> More information see <http://www.aecid.es/Centro-Documentacion/Documentos/Normativa/International%20Development%20Cooperation%20Law.pdf>

<sup>34</sup> See in <https://www.boe.es/buscar/pdf/2007/BOE-A-2007-6115-consolidado.pdf>

We can also point out that two strategic plans for equal opportunities have been developed (2008-2011 and 2014-2016), as an instrument, a competence of the State, to eliminate any type of discrimination on the basis of sex that may exist and above all To achieve equal opportunities between women and men.

For all of the above, Spain has become an international benchmark in terms of gender equality<sup>35</sup>. However, the effects of the economic crisis of 2008 have managed to stop the progress made by Spain both in its social policies and in its gender approach strategies of its International Cooperation. Since, according to the latest report on social policies in the country, the problems arising from budgetary adjustments in domestic policies have managed to increase inequality, affecting more women in this country. In this sense, according to the latest unemployment record, in 2017 women represented 58% of the unemployment rate<sup>36</sup>. Equally, the figures of the salary difference continue being high, having like average a salary difference of 5.941 € (equivalent to a 19.3% in 2013)<sup>37</sup>. In terms of dedication to home care, the difference also remains considerable, as women spend more than twice as much time on family and domestic care as men. Being a serious problem for his personal and professional development, because despite his high academic training (60.12% with university studies in 2016) Most of these, 75%, has part-time jobs<sup>38</sup>.

One of the most serious problems that has worsened gender inequality in Spain is violence. In this sense, the budgetary reduction, product of the economic crisis of 2008, have also damaged the objective progress in the prevention of cases of mistreatment and violence against women and children.

As we have already mentioned, the problems of gender inequality in Spain have been a priority issue, but specifically those related to gender violence. In this sense, the country was an international pioneer in the approval of a Law against Gender Violence. The Organic Law 1/2004 on Integral Protection measures against Gender Violence was created with the purpose of working in an integral and multidisciplinary way in the measures of awareness, prevention and detection of gender violence. It is necessary to specify that in the months prior to the approval of said Law, in 2003, a program had been put in place to account for deaths due to gender violence. Initially, only women murdered by gender-based violence were included, and it was not until 2013 that they began to include minors who had been killed as victims of gender-based violence. Since that date, more than 935<sup>39</sup> cases of women murdered by gender-based violence have been recorded.

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<sup>35</sup> This is pointed out by the World Bank's report in 2016 entitled "Women, Business and the law", placing Spain as one of the countries with the best normative framework to guarantee the full equal legal opportunity. GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 48.

<sup>36</sup> GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 47.

<sup>37</sup> Ibid.

<sup>38</sup> Ibidem.

<sup>39</sup> GOVERNMENT OF SPAIN (2018), "Spain's Report for the 2018 Voluntary National Review". Government of Spain, Madrid, p. 48.

One of the most important forms of prevention has been the denunciation. In 2017, more than 13,500<sup>40</sup> complaints were recorded daily for gender-based violence, of which, in 2016, 28.28%<sup>41</sup> of victims who had filed a previous complaint ended up dying. Which means that this social problem continues to be one of the greatest challenges for the country. The achievement of Spain's proposed goal for SDG to reduce to 10% in 2020, the deadly victims of gender-based violence with prior denunciation, is looming far away.

In recent months, we have welcomed the news about the recovery of the Ministry of Equality and its integration into the vice presidency of Government, as a priority issue for the national government. In this regard, the new Government intends to work on the new Strategic Equal Opportunity pact to include the goals and objectives set out in Agenda 2030, specifically as described in Objective 5, at the same time as working on the second National Strategy for the Eradication of Violence against Women (2018-2022), under such international demands.

Despite this, some recommendations made by third-sector organizations, such as Intermon Oxfam and UNICEF Spanish Committee, point to the need to continue working on strategies that promote gender equality, such as the following<sup>42</sup>:

- To reduce the wage gap between women and men (15% in 2020 and its complete elimination for 2030), it is considered necessary to implement specific policies and measures through the monitoring and penalization of undertakings carrying out practices Discriminatory, in breach of current legislation.
- To promote gender equality and women's rights, it is considered necessary to strengthen capacities, financial, institutional and technical both at national and regional level.
- To broaden and improve the quality of assistance measures for victims of gender-based violence, it is necessary to expand and improve the disparity of the autonomous services of comprehensive care for victims of gender-based violence.
- To improve the roles of women and men in the domestic and care tasks, it is necessary to develop a set of measures among which are to extend the measures of reconciliation of the family life and the work and work in the conception of the ideas s working with the family, removing stereotypes and prejudices about family roles.

We are convinced that in order to move towards the achievement of SDG with a gender approach, it is necessary the commitment not only of the government but of the rest of the social actors, such as civil society, academia, business and NGO. Since the

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<sup>40</sup> Ibid.

<sup>41</sup> OXFAM Intermón and UNICEF Comité Español (2017), “Agenda 2030. Una oportunidad para las personas y el planeta”, Madrid, España, p.9.

<sup>42</sup> OXFAM Intermón and UNICEF Comité Español (2015), “España frente a los retos de la Agenda de Desarrollo Sostenible”, Madrid, España, p. 41.

commitment to make possible the goals contained in 2030 Agenda, both nationally and internationally, requires the efforts of all sectors that form a country to achieve it and a coherence of national and international policies that integrate in a balanced way the social, economic and environmental dimensions from a gender perspective.

#### **4. CONCLUSIONS.**

The idea of the legacy of the former UN Secretary-General, Ban Ki-Moon of continuing to work for more equitable and sustainable development in all countries of the world, under the implementation of Agenda 2030, calls all States, both Developed as developing. This is a milestone in the history of development, as it presents itself as a global project aimed at avoiding disparities between countries. In this sense, all Member States are obliged to incorporate SDG into their national agendas, improving and/or reinforcing the well-being of their population.

One of the most important improvements that SDG contains, in relation to the previous MDGs, in addition to the inclusion of actions in both the social, economic and environmental dimensions of both developed and developing countries; It is undoubtedly the incorporation of monitoring and reporting mechanisms that oblige Member States to work transversally in their internal policies to introduce and/or improve their evaluation indicators. This allows for a partial monitoring and control of the results of each SDG, elaborating the corresponding improvements until their complete fulfillment.

In the case of Spain, the legislative work carried out in recent years is a key element in the implementation of the necessary strategies for the compliance of SDG. The allocation of responsibilities within the structure of the Government to work in this regard, both in the High-level groups (GAN), the different ministries, as well as the different units of the General administration of the State (AGE), suppose a step Important in the management and coordination of the actions required by Agenda 2030. Likewise, the creation of the High Commissioner for the 2030 Agenda demonstrates the commitment of the Spanish government to work on internal policies to give optimum compliance to the SDGs.

In addition, the incorporation of a methodology for evaluating results periodically is recognized, under the model of indicators proposed by the United Nations MAPS (Mainstreaming, Accelerating Policy Support).

We can also positively assess the political will to work in coordination both at different levels of government and with the rest of the public and private sectors that form the country. Which, through the dialogue sessions proposed by the Government, have brought their proposals, concerns, contributions and demands to improve both the conditions of the Spanish society and the vulnerable groups of third countries. Fundamentally, the work of the ONG's is valued, since, being a very professional sector, it has taken the leadership in the execution and follow-up of the SDG in the country. The

recommendations and proposals made by the third sector, the business sector, academia and civil society organizations, were key to the submission of the VNR. That is why, we believe that the political and dialogue that the Spanish Government is having, constitutes one of the great strengths of both at national and international level.

However, the challenge facing Spain towards the fulfillment of the SDGs is great, since to make it possible to reach the 17 objectives and the 169 goals of the Development Agenda, it is required, in addition to the political will, to continue working and improving programs and actions that promote gender equality in the country, as well as the provision of physical, economic and technical resources to carry them out. We believe that the promotion of gender equality is the key to achieve a comprehensive sustainable development. So that compliance is seen as viable, provided that the political, economic and social commitment of the entire Spanish society as a whole is maintained.



# PROJECT OF ENTREPRENEURSHIP OF THE GUAMBIANO INDIGENOUS COMMUNITY: PUBLIC-PRIVATE ALLIANCES IN THE REPUBLIC OF COLOMBIA

CRISTINA DEL PRADO HIGUERA

*Professor of Contemporary History at the  
Rey Juan Carlos University*

SUMMARY: 1. INTRODUCTION. 2. THE MISAK PEOPLE: WATER VILLAGE. 2.1 Origin and way of life of the Guambiano people. 3. ASSOCIATIVE EXPERIENCE IN COLOMBIAN INDIGENOUS COMMUNITIES. 4. AGROINDUSTRIAL PROJECT LA SUIZA: AN EXAMPLE OF ENTREPRENEURSHIP AND PARTNERSHIP TO ACHIEVE OBJECTIVES. 4.1 Expansion, adaptation, transformation and commercialization project for Trout with Quinoa derivatives: An impact entrepreneurship program. 4.2 Geographical location of the Project. 4.3 Target Population. 5. CONCLUSIONS

## **ABSTRACT:**

In the indigenous Reservation of Guambía, Department of Cauca in Colombia, lives the Misak people, since ancient times they have preserved their identity, customs and customs of their cosmovision, although their main activity is agriculture, for some years they have put in An entrepreneurial project is being carried out with the support of the Yanawai Foundation and the training of a public agency such as SENA to develop a productive and entrepreneurial activity in the processing of trout and quinoa meat. This activity is distinguished by being a generator of employment, innovative in its productive process and dynamic of the food supply. In addition, this project makes the community aware of the need to pay more attention to young people in order to reduce the high percentage of migration to large cities and the cultural shock that this entails. Within the production plans is always present the harmony of the Misak being based on the territory with its principles of spirituality, nature and economy.

## **KEYWORDS:**

Sustainable Development Goals, Colombia, indigenous community, entrepreneurship.

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## **1. INTRODUCTION**

The Republic of Colombia is the third country in the world with greater social inequality after Haiti and Angola and the second in Latin America, the gaps that are faced are fundamentally structural: "low productivity and poor infrastructure, segregation and lags in the quality of education and health services, persistent gender gaps and territorial

inequalities with respect to minorities and a disproportionate impact of climate change on the poorest links in society. According to the Human Development Report 2017, Colombia has an HDI of 0.727 that places it 95th on a global scale as a country of High Human Development, this level of inequality is what prevents it from real growth <sup>1</sup>.

According to some OCDE reports, Colombia is considered a country with a high average income, so the aid it receives from international cooperation is not very relevant in quantitative terms, 0.16% of GDP and only 0.8% of the value of interventions. It is channeled via the public budget. Although these data are not remarkable from the economic point of view, because of the political conditions that the country is going through after more than fifty years of armed conflicts, the support of international organizations is constant and fundamental in its development.

For Spain has always been a priority country in terms of cooperation according to the high level of their relations, based on deep historical, cultural and friendship ties between governments, the first Basic Cooperation Agreement was signed on June 27, 1978<sup>2</sup> today Our relations are framed within the Colombia-Spain Country Partnership Framework 2015-2019<sup>3</sup>, in which the needs of the Colombian people regarding cooperation have been taken into account, taking into account the guidelines of the National Development Plan 2014-2018<sup>4</sup>. All for a new Country, approved by the Congress on May 6, 2015, with the objective of building "a Colombia in peace, equitable and educated, its three central pillars of action are: guaranteeing rights and strengthening institutions from a Participatory territorial approach, promote trust between citizens and the State, achieve an equitable country without extreme poverty, promoting integral human development and where each of the socioeconomic development objectives are articulated in the construction of a society with opportunities for all. An economic development that favors equity must be inclusive, taking advantage of talent and sharing the benefits of growth to the population. Colombia is a country made up of citizens with the capacity to live together in peace, respecting human rights, population diversity, norms and institutions. The Plan also proposes six strategies that are outlined to achieve the objectives and goals embodied in several pillars: strategic competitiveness and infrastructure; Social Mobility; transformation of the field; security, justice and democracy for the construction of peace; good government and green growth"<sup>5</sup>. The priorities included in the 2015-2018<sup>6</sup> International Cooperation Roadmap of the Presidential Cooperation Agency were also incorporated.

In recent years the Colombian economy has experienced a significant boom thanks to the climate of legal security, fiscal incentives, good macroeconomic management and a significant inflow of foreign capital that has led to high growth rates, with low inflation

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<sup>1</sup> General program. Human Development Report 2017. Human Development for all. UNDP, p.23.

<sup>2</sup> General program Human Development Report 2017. Human Development for all. UNDP, p.23.

<sup>3</sup> Minutes of the IX Meeting of the Mixed Hispanic-Colombian Cooperation Commission 2015-2019.

<sup>4</sup> National Development Plan 2014-2018. All for New Country.

<sup>5</sup> Ibidem,p.45.

<sup>6</sup> Roadmap for International Cooperation 2015-2018. [www.Apccolombia.gov.com](http://www.Apccolombia.gov.com)



and little debt. public, proof of this are the support that the international community and especially our country are giving to the Colombian economy. According to data from the Bank of the Republic of Colombia in 2017, Spain has been the largest foreign investor in the country with 2,615.6 million USD<sup>7</sup>, which has placed it ahead of the United States, Mexico, Panama and England.

Although international investments are helping to transform and modernize many sectors, we can't forget that 28% of its population still has a very low purchasing power living in poverty<sup>8</sup>. Marginalization and inequality also permanently affect the indigenous population and other ethnic groups, despite the fact that the 1991 Constitution in its seventh article states that the "Colombian State recognizes and protects the ethnic and cultural diversity of the Colombian Nation"<sup>9</sup>, it is not coincidentally, four of the five departments with the highest poverty rates are also departments with indigenous or Afro-descendant populations, among them: Chocó (68% of poverty, where 100% of the population is composed of Afro-Colombians and indigenous people); Cauca (62.1% of poverty with 44% of indigenous and Afro-Colombian); Córdoba (60.2% of poverty and almost 25% of Afro-Colombian and indigenous population); La Guajira (58.4% of poverty, with 44% of indigenous people and 14% of Afro-Colombians) and Magdalena (52.3% of poverty)<sup>10</sup>. Therefore, international support and private public alliances are fundamental for these communities that have suffered the consequences of the long armed conflict, among which are: displacement, enforced disappearance, suspension of daily activities and migrations, assuming for them a drastic change in its way of generating income and in its socioeconomic development. Some of these groups, especially indigenous groups, have had to bet on different activities to achieve their sustainability such as handicrafts, ecotourism, agricultural companies ... depending on their geographical location, their traditions, their culture and their history they are developing different tasks of entrepreneurship.

Some of these new production models would not have been possible without the 2030 Agenda and the Sustainable Development Goals. An opportunity for Latin America and the Caribbean<sup>11</sup> through it the General Assembly of the United Nations established a transformative vision towards the economic, social and environmental sustainability of the 193 Member States that subscribed it, being a historic opportunity for Latin America and a leaf a road map for some of the Colombian institutions that address priority issues of the utmost concern such as reducing inequality, inclusive economic growth with decent work for all, sustainable cities and climate change ...

Of the seventeen Sustainable Development Goals (SDGs) associated with this Agenda, we have addressed objective 17 in this work. Partnerships to achieve objectives,

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<sup>7</sup> [www.icex.es](http://www.icex.es)

<sup>8</sup> [www.aecid.es](http://www.aecid.es). Diplomatic Information Office. Country Colombia, May 2017.

<sup>9</sup> Political Constitution of Colombia 1991.

<sup>10</sup> Draft. Safeguard Misak Cultural Heritage through the creation of a school of its own formation. Yanawuai Foundation

<sup>11</sup> [www.un.org](http://www.un.org) Agenda 2030. Sustainable Development Goals.

it states that "in order for a sustainable development agenda to be effective, partnerships between governments, the private sector and civil society. These inclusive alliances are built on the basis of principles and values, a shared vision and common objectives that give priority to people and the planet, and are necessary at the global, regional, national and local levels. "Among its goals is to empower the population and promote public-private partnerships. Partnerships between governments, the private sector and civil society. These inclusive alliances are built on the basis of principles and values, a shared vision and common objectives that give priority to people and the planet, and are necessary at the global, regional, national and local levels"<sup>12</sup> .Among its goals is to empower the population and promote public-private partnerships.

The project referenced in this article is largely the result of public-private partnerships between the Guambiana community, the National Apprenticeship Service (SENA), the Yanawai Foundation and local governments, each of them has fulfilled a mission for development of the same. This initiative has also helped to empower young men and women through training, raising awareness in the community to give them greater attention in order to reduce the high percentage of migration to large cities and the risk that this entails of poverty and poverty. generation of social problems such as: drugs, entry into armed groups and sudden cultural changes that entails, among them, the loss.

## **2. THE MISAK PEOPLE: WATER VILLAGE**

In Colombia, indigenous communities represent 2.9% of the population around 1,378,884 people, distributed in more than 80 ethnic groups residing mostly in rural areas, another very important group is the Afro-Colombian population with 10.5% of the population around 5,029,500 people<sup>13</sup>, their lands have been key in the war economy since most of the time they have represented a great strategic value from the military and economic point of view since they are usually very rich in natural resources . The passage of the war has increased the poverty levels of some of them and their leaders have been on several occasions victims of selective threats and homicides.

The Observatory of the Presidential Program on Human Rights and International Humanitarian Law has indicated that the situation of some of these communities in terms of human rights has been closely related to their location. "The most affected populations were in the municipalities of Toribío, Jambaló and Caldonó, mainly. Similarly, it also shows that between 2003 and 2008, 1,817 indigenous people from the nine municipalities that make up the region inhabited by the ethnic group were displaced, a figure equivalent to 18% of the total population displaced in the same municipalities 9,933 people, as a consequence of forced displacement, a forced adaptation to a new environment was generated, with the consequent loss of one's own culture, with the uprooting from the

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<sup>12</sup> [www.un.org](http://www.un.org) Agenda 2030. Sustainable Development Goals.

<sup>13</sup> [www.cepal.org](http://www.cepal.org).

territory and nature, a major problem for younger generations, as children and adolescents grow up in a non-traditional context"<sup>14</sup>.

Since the 1970s, indigenous communities have tried to organize themselves to defend their rights. During these years, associations such as the Certified Regional Council or the organization of Indigenous Authorities of Colombia representing the communities of the Departments of Cauca, Antioquia, Arauca, Boyacá have emerged. , Casanare, Cundinamarca, Guajira, Meta ... the Misak people have a delegation in the National Indigenous Organization of Colombia. Your participation in the their traditions.

Their participation in the development of the Colombian Nation has been very significant, since they have obtained representation in different political spaces, for example in the year 2000 an indigenous leader of the Misak people achieved by popular vote to be governor of Cauca.

"One of the towns that has tried to overcome this situation of marginality is the Misak people. It is located mostly in the Department of Cauca, where 91.3% of the population lives (19,244 people) followed by the Department of Valle del Cauca with 3.5% (728 people), and by Huila with 3.3% (698 people). These three departments concentrate 98% of the population, the Misak represent 1.5% of the indigenous population of Colombia. The Misak population living in urban areas corresponds to 8.7% (1,840 people), a figure well below the national average of the urban indigenous population, which is 21.43% (298,499 people). The 2005 DANE Census reported 21,085 self-recognized people as belonging to the Guambiano people, of which 50.4% are men and 49.6% are women"<sup>15</sup>.

## **2.1 Origin and way of life of the Guambiano people**

The origin of this community is controversial depending on the sources we consult, some historians consider that they arrived in Colombia and more specifically to this region from Ecuador and Peru as a servile population brought by the Spaniards, this theory is based on the records of the chronicler Antonio de Herrera<sup>16</sup>, according to this source "was Sebastián de Belalcázar who arrived in the region, accompanied by" service Indians", the Colombian Ministry of Culture does not accept this hypothesis because their language, that of the yanaconas, speak Quechua, which does not share a family linguistics with the Misak mother tongue. Another hypothesis states that before the arrival of the Spaniards, in the Valley of Popayán lived different indigenous peoples who formed a political unit in the Guambiano Coconuco Confederation that shared territory, culture and language, with the common goal of defending themselves from other peoples that threatened its territory, the promoter of this alliance was known as the cacique Pubén. The Misak strongly resisted the Spanish conquest, which began around 1535 under the command of Belalcázar. By the end of the sixteenth century they had been conquered and

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<sup>14</sup> Second Life Plan of survival and growth Misak. Guambia 2008.

<sup>15</sup> National Administrative Department of Statistics, DANE.

<sup>16</sup> Misak (Guambianos), the people of water, knowledge and dreams. Culture Ministry. Republic of Colombia.

incorporated into the colonial socioeconomic structure, which drastically transformed their culture, and democratically decimated their communities. In 1700, with the delivery of property rights to the cacique Juan Tama, the guards of Guambía, Quisgó, Pitayó, Quichaya, Jambaló, Caldono and Pueblo Nuevo were created. Although a period of territorial recovery began, it occurred simultaneously with the colonist invasion, forming a complex process: Tradition tells how many years ago all the land south of the Piendamó River, up to the Molino River, was the shelter of Guambía ... At the beginning of the 19th century, the Indians, some gentlemen Fajardo, of Popayán, obtained permission from the natives to put a stone mill in El Chimán, where they came from all parts of the province to grind the grain . Thus began one of the longest fights with the landowners that the Guambiano people had "<sup>17</sup>.

In their traditions, the Misak affirm that the culture "integrates the territory and within it the lands, the airs, the waters, the minerals, the variability of living organisms of any origin, and all the elements that are an expression of traditional knowledge accumulated throughout the existence of our people in all areas of our lives"<sup>18</sup>, although their mother tongue is the Wampimisamerawam spoken by more than half of its inhabitants 64% classified as belonging to the Chibcha linguistic family, is considered as a cultural identity nexus nevertheless later studies have suggested that it is an isolated language, of uncertain classification. Spanish is also used by the majority of the population.

Looking for its origins from a mythological point of view can be defined as the water people, affirming that "sometimes the water was not born in the lagoons to run towards the sea but it filtered into the earth, it stirred it, loosen it and produce landslides, which left great wounds in the mountains, from which the humans emerged, roots of the natives, born of the water dragged and come in the remains of vegetation ". The landslides were births or "births of water of the Pishau" of the guambianos, "wise giants that ate salt from here, from our own salty, and were not baptized. They occupied all our territory, they built ... before the Spaniards arrived ". The Guambiano territory is organized having as axes the flows of water and also the vision of a sexuater territory. There is a feminine part of the territory to the left of the Piendamó river and a masculine part to its right, its lands have a symbolic and social value depending on the type of activities that are carried out in it, hunting, fishing, gathering...

From the Misak culture, the earth and everything that composes it, is the mother, so that they identify themselves as those in charge of guaranteeing the balance and harmony between nature and the human being, and from their condition of first settlers, they acquired the commitment to defend it, protect it, maintain it, and return it to the whole of humanity, considering itself an environmental authority. In such a way that the territory

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<sup>17</sup> Pachón (2000). "The wampi or the people of guambía". In: ICCH. Human Geography of Colombia. Volume IV. Volume II. Bogotá Viewed at: <http://www.lablaa.org/blaavirtual/geografia/geohum2/wampi1.htm> in December 2009

<sup>18</sup> Misak (Guambianos), the people of water, knowledge and dreams. Culture Ministry. Republic of Colombia. Cecoin Ethnic Observatory. [http://observatorioetnicocecoin.org.co/cecoin/files/Caracterización%20del%20Pueblo%20Misak%20\(Guambiano\)](http://observatorioetnicocecoin.org.co/cecoin/files/Caracterización%20del%20Pueblo%20Misak%20(Guambiano))

classifies it in some occasions of a symbolic form in places: prohibited, enchanted and communal, thus are respected of the hand of the man spaces like forests, mountains, or the Lagoon of Nupiso, among others

The system of cooperation is between families, it is a collective work, the ownership of the land in the shelters is community and collective. The land is the space in which its inalienability, imprescriptibility and indefeasibility are reinforced, and the Cabildo is the authority that adjudicates land for exploitation. The usufruct of the land is not of a hereditary nature, and it is preferred to give family continuity to the possession of it, although in recent years other forms of land tenure have been introduced, such as private property and rent. Their crops are very varied, among the main permanent crops are: potatoes, onions, garlic, ulluco, among others and the transitory or traditional crops that are organically produced are the arracacha, the cabbage and the majua, this type of agriculture does not generate large income because it is located in small plots and does not have distribution channels with large cities.

The Misak community is governed by the Major Law, "it is an inherited Law that has not been created by men but by the deities, it is the Law that is engraved in the rites of the communities and that seeks the preservation of the earth and the fertility of the community, the problem has come because according to some members of the community, the Colombian State has not facilitated the processes for the Major Law to be recognized, thereby violating its way of perceiving the world and of existing or acting in him"<sup>19</sup>. The Greater Right is for them a millenarian Right, a historical right, born of the earth and the community. They proclaim it the Major Right because the laws of the State are subsequent to the laws of origin, the Misak argue that: "the laws of the liberators are for us a minor Right, they never equal to the one of the indigenous that we have since before, our Greater Right. The laws of the State have been an instrument of domination and dispossession of the legitimate native peoples who own these lands"<sup>20</sup>.

In the thinking of the elderly, the family is the origin of society, the kitchen is the symbol of unity and community, here is born for them the authority and the principle of autonomy. The authority arises in the family "papa y mama", it is prolonged in the community, "taita y mamas" and it is ratified in a general assembly through the appointment of the cabildos. The Tatamera are the ancestral authority, who guide the different community processes to achieve the dreams of an entire people. Although Western ways of life are entering their traditions, their costumes remain for them a true sign of identity, a permanent symbol of resistance and representation before the Western world and other indigenous peoples, reflected in their detailed and careful conformation in the clothing of men and women.

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<sup>19</sup> Flórez-Vargas, C., The concept of Greater Right: an approximation from the Andean cosmology, [dixi.doi.org/10.16925/di.v18i24.1523](https://doi.org/10.16925/di.v18i24.1523).

<sup>20</sup> Guambiano Manifesto, June 1980.

All the essential elements that identify Misak as spirituality, values, language, dresses and their conception of social and cultural life, allows to recreate and transform culture by vitalizing identity in interrelation with other cultures.

### **3. ASSOCIATIVE EXPERIENCE IN COLOMBIAN INDIGENOUS COMMUNITIES**

In Colombian indigenous communities, the theme of the association or grouping for the promotion of productive activities has been present since pre-Hispanic times. The first advances reported refer to the family union or alliance of individuals to manage forms of production and coexistence in populations of the Caribbean region and the Colombian Andean region<sup>21</sup>. Initially, the associative forms were generated for the implementation of works such as: planting and harvesting of crops, lifting and adaptation of community housing, opening trails or roads for displacement. A key feature was the ease of interacting and integrating to achieve common objectives<sup>22</sup>.

Although many of these populations have been affected by violence, changes in territory, displacements typical of the armed conflict, associative relations have always been very inherent in these groups for their socio-economic development and generally with a social sense, depending on each locality, region or community<sup>23</sup>. "In the legal field of the country, associative companies or rural microenterprises are defined as: entities with economic activity developed in the primary, secondary and / or tertiary sectors, individually or collectively, aimed at achieving greater productive capacity and an added value of sustainability at local or regional"<sup>24</sup> level of this initial definition follows one of the substantial characteristics of companies associative, sustainability.

The indigenous communities have built and continue to build a life option from the material and the spiritual, but the universalization of knowledge, the discourse of instrumental reason, technological progress have obscured the richness of the inner and outer world. Unlike this, the indigenous world is strengthened inward. They do not know so much about the scientific challenge, but what they know they put at the service of the community's profit. The persecutions, the massacres, the ignorance of their legitimate rights, the displacement, have made around them a fence from which they have emerged strengthened.

In this sense, the communities, through an authority such as the Cabildo, have forged a number of strategies so that the population does not migrate to the city, does not continue to weaken the culture and above all not to be deprived of the territory. There are

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<sup>21</sup> Pitre-Redondo, R., Cardona-Arbeláez, D., & Hernández-Palma, H. (2017). Projection of indigenous entrepreneurship as a mechanism of competitiveness in the Colombian post-conflict. *Rev.investig.desarro.innov*, 7 (2), 231-240. doi: 10.19053 / 20278306.v7.n2.2017.6068.

<sup>22</sup> *Ibidem.*, p.232.

<sup>23</sup> *Ibidem.*, p.233.

<sup>24</sup> Ramírez, V., & Chávez, J. (2010). Innovación y competitividad en las mipymes. El caso del sector artesanal para impulsar el turismo rural. *Turismo y Desarrollo Local*, 3 (7), pp.3-11.

several models of associative companies: those that promote family consumption; for the provision of community services; community microenterprises; mutual associations; ecotourism; cooperatives; altogether a typology of very varied companies depending on each indigenous community. What we have been able to confirm is that the entrepreneurship index among the communities is very high and they also have the support of public development programs. It is very important that the community and its members get involved and not abandon the projects, any type of productive activity that you want to stimulate, you must associate the cultural, social, economic and traditional aspects, in order to guarantee long-term sustainability, since The indigenous entrepreneur is characterized by preserving their ancestral rituals and activities.

It has been found that it is very necessary to create centers and schools for the transmission of knowledge among older indigenous people with young people and children, generating a space that encourages productive activities without ignoring history, the main heritage of this population. The Misak people have constituted the Ala Kusrei Ya Misak Official and Community Special Ethnic University, which has implemented knowledge and methodologies that respond to the experience and ancestral life, putting into practice the implementation of on-site and distance academic programs for the consolidation of a educational process integrated to the cultural fortification of the Misak people, with the objective of promoting the recovery and reconstruction of the ancestral values of its millenary science and the compilation and dissemination of its history.

A form of work very representative of this people is the minga, which is carried out to perform certain community works and around which the community emerges, revitalizes and reproduces. "The mingas continue being a practice very generalized between the guámbianos, although with smaller frequency and dimension of what was done previously. Its economic function is very debatable and its realization is more related to the acquisition and consolidation of a community prestige, with the reinforcement of family and rural ties, and above all with the strengthening of a community and ethnic feeling"<sup>25</sup>.

#### **4. AGROINDUSTRIAL PROJECT LA SUIZA: AN EXAMPLE OF ENTREPRENEURSHIP AND PARTNERSHIP TO ACHIEVE OBJECTIVES**

Young Rural Entrepreneurs MISAK (Agroindustriales la Suiza) is a productive unit that develops agroindustrial activities, especially in the processing and transformation of trout and quinoa meat, located in the Sierra Morena village, Indigenous Reservoir of Guambía in the Municipality of Silvia Cauca. It is a company that associates small producers made up of indigenous families who dedicate their efforts towards the consolidation of the truquiculture as an opportunity to improve their living conditions, besides working in the diversification and innovation in the productive process. Since

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<sup>25</sup> Ibidem,p., 56.

2015, they have formally commercialized some products such as smoked trout and trout meatballs with quinoa, which has allowed them to gain experience and knowledge in the market, supplying the municipalities of Silvia, Piendamó, Popayán since three years ago and some municipalities of Valle del Cauca.

Its work is currently recognized as a generator of employment, innovative in its production process and boosting the food supply. The main activity is part of the transformation of rainbow trout and the commercialization of its products, with the aim of strengthening the fish and agro-industry sectors in the Municipality of Silvia. It is the first company of transformation and commercialization of the smoked trout being the results of its work a true success, since the region counts on the optimal conditions for the development of the productive processes, promoting also the development of the community.

The Yanawai Foundation was established with the aim of channeling resources at the national and international level for the execution of community benefit projects, in everything related to agricultural production, poultry, fish farming, aquaculture, meat, dairy ... from this Foundation is promoted the search for aid for the defense, dissemination and promotion of cultural and musical knowledge, spaces for reflection and pedagogy, ancestral arts, music, textiles, peace and coexistence in the community.

Among its aims is to disseminate the commitments of the Misak people for what is an inherent policy of the Foundation: to develop, promote and disseminate the mechanisms and tools of organic clean food production among the members of the community and beyond to contribute to the food sovereignty, care, defense and conservation of the environment and the elements that make it up; promote the integral development of the community in ecological, environmental and social aspects, in a framework of respect in its cultural manifestations; disseminate projects and proposals to the administrative entities of the Municipal, National and International Departmental, strengthening the historical, collective and ancestral memory of the communities, seeking spaces of diffusion in the media that serve to spread the knowledge, propose economic projects of development and market from the own economy; generate meeting spaces for youth groups for artistic purposes, to develop skills in oratory, poetry; traditional knowledge; music; the regional and national indigenous dances; the painting; the indigenismo; the development of musical instruments that develop the artistic and cultural values of the young people of the community.

he ancestral authorities of the Misak people and the Yanawai Foundation have always stood in struggle for the claim of their rights and the perpetuation of their culture, expressed through the different areas under the slogan "recover the land to recover everything" which has led the authorities and young people to organize mingas of thought and develop activities of the Misak culture with the objective that the Guambiano people are strengthened more and more.

For the development of this innovative project very specific training was needed in some areas of knowledge, it was here that the public-private alliances that are so necessary



were generated, according to objective 17 of the SDGs, for which they received the advice of the National Service of Learning (SENA), a public agency attached to the Ministry of Labor of Colombia, whose objective is to offer free training to all Colombians so that they benefit from technical, technological and complementary programs that enhance the economic, technological and social development of the country. It was created on June 21, 1957 and since then has been supporting the learning of workers in different regions of the country, through comprehensive professional training, each year more than 500 programs are offered. Throughout its more than fifty years, SENA has stood out as one of the most important centers of technical education in Latin America, being all its courses free. Among its objectives are to provide technical training to workers and employees of industry, commerce and the agricultural sector, becoming one of the most important centers of instruction for Colombians with limited resources, to strengthen the processes of comprehensive professional training contribute to community development at the urban and rural levels, for their connection or promotion in productive activities of social and economic interest; and encourage participation in technological, occupational and social research and development activities<sup>26</sup>.

Its mission was a reference for the project that is being addressed, since the State is responsible for investing in the social and technical development of Colombian workers, offering and executing comprehensive professional training, for the incorporation and development of people in productive activities that contribute to the social, economic and technological development of the country. The Misak received the advice of SENA in the formulation of the Business Plan for the production of trout and its derivatives.

#### **4.1 Expansion, adaptation, transformation and commercialization project for Trout with Quinoa derivatives: An impact entrepreneurship program<sup>27</sup>**

Although the economy of the Guambiano people lies in the agricultural sector, this indigenous community has started an innovative project of small-scale fish farming activities, becoming a reference region within the agricultural sector. The development of this fish farming activity has replaced illicit crops, such as the coca leaf and poppy, with an increase in the number of fish stations in the Resguardo de Guambía, around 200 identified in the census carried out in In the first half of 2013, they were mainly dedicated to the fattening of trout, a product that is marketed locally in the cities of Cali, Armenia, Popayán and Bogotá, where they have a large number of clients.

This large amount of raw material is used to be transformed by fish producers throughout the area, for this reason was seen the opportunity for the Yanawai Foundation, taking advantage of the resources of the region and innovating in the production process, to strengthen and improve the product towards a more technified development.

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<sup>26</sup> [www.sena.edu.com](http://www.sena.edu.com)

<sup>27</sup> The section is carried out with direct information on the Project: "Expansion and adaptation of the transformation and commercialization plant of trout derivatives with quinoa in the Sierra Morena village of the Guamban reservation, Municipality of Silvia Cauca". Made by the Yanawai Foundation

For the community it is essential to increase and improve the production levels of trout meat with the aim of offering new items that the local, regional and national market demands such as hamburgers, meatballs, sausages and trout nuggets, products with a high nutritional value. Therefore, the formulation, management and execution of projects designed to reinforce the fish chain and improve the nutritional levels of the population in general, through the offer of appropriate alternatives for use, management, industrialization, storage and supply of derived products, arises as an alternative of rainbow trout meat and quinoa.

Trout and quinoa meat processing activities are currently also being developed from raw materials supplied by a large number of small producers of fish stations in the region, for which the Foundation has a small processing plant equipped with minimum equipment for obtaining high quality handcrafted products. The current production is 1.5 tons per month and is aimed at inter-administrative contracts 434 and school meal program agreement (PAE) of 2014, which exists between the Cabildo de Guambía, the Colombian Family Welfare Institute ICBF and the Secretariat of Education of the Cauca where Silvia City Hall is the entity responsible for the resources of the agreement, through them the product will be marketed in schools, schools, early childhood programs and nurseries of the Municipality of Silvia and much in the logistics agency of the military forces. In this way, it is contributing to the strengthening of said project.

The Yanawai Foundation has five years of experience in the processing and transformation of trout meat and quinoa, characterized by being one of the most recognized organizations at local and regional level for their work in favor of the community and entrepreneurship; always thinking about training young people so that they are able to organize their plots into productive, more technical and self-sustainable units, in such a way that they generate employment and strengthen food autonomy and good living. It is also innovative in its production process by allowing production in the processing and processing plant, a highly protein and nutritious food at low cost, where the raw material to be used is trout meat and quinoa.

The Misak in a formative alliance with the SENA, have demonstrated with this project, the community and especially the youth, that they can undertake a more sustainable development and improve the quality of life in their environment. Currently they seek international support to technify their processes and supply domestic demand, in addition to initiating the export process of trout, quinoa and its derivatives.

#### **4.2 Geographical location of the Project**

This project cannot be understood without knowing its geographical location, since the space conditions the development of it, it is located in the Cauca area, a territory that has an extension of 30,492km<sup>2</sup> equivalent to 27% of the national territory, occupying the Twelfth place among the constituent departments of Colombia. On the other hand, the municipality of Silvia founded in 1825, is located east of the Department of Cauca, bounded on the north by the municipalities of Caldono and Jambaló, on the west by the

municipalities of Páez and Inzá, on the south by municipalities of Totoró, Piendamó and Caldono ...

This region is bathed by the Piendamó River and its tributaries such as the streams of El Cacique, Manchay, El Molino, among others, to finally flow into the Cauca River, the main waterway of Colombia, Guambía is the richest water resources reserve with 13,500 ha of Páramo which corresponds to 33% of the area of jurisdiction of the territory.

The urban area is located between the Piendamó River and the Manchay creek at 2,600 meters above sea level and at a distance of 59 kilometers from the city of Popayán, capital of the Department of Cauca. The municipal territory has an area of 813 square kilometers. It is the third municipality in Colombia with the largest indigenous population, the indigenous reservation of Guambía is located northeast of the municipality of Silvia, on the western slope of the central mountain range. The current limits are: to the north, with the Páez de Pitayo and Mosoco Indigenous Reserves; to the east, with the Indigenous Reservoir Páez de Yaquivá and the corregimiento of Gabriel López, municipality of Totoró; to the south, with the municipal seat of Silvia; to the west, with the Páez de Quichayá Indigenous Reservoir and the Guambiano Indigenous Reservoir of Quizgó.

The territory is the most sensitive element of the Misak life, in it all the cultural, environmental, economic, and spiritual processes of its culture are articulated, a space where knowledge is practiced, history is woven, cultural values are developed, It coexists with nature in interaction with other beings, always seeking harmony and balance of biodiversity. "The earth is our mother, from her we were born, with her we live and she receives our remains when we die. Our territory is large and is determined by toponyms<sup>28</sup>. "At present, 60% of the soil is deteriorating due to the inadequate exploitation practices of the natural forest of this entire area, which is affecting and generating a series of natural threats such as avalanches and landslides, increasing the risks given the large number of settlements humans located on the slopes and margins of rivers and streams.

The Misak people before being conquered had developed a whole technology in the different agro-cultural activities, main basis of the food sovereignty and the own economy, but with the passage of time the western technology was arriving and it was totally displaced to the ancestral wisdom, it was imposing the technology based on agro-toxic and monocultures, from that moment it begins to explode, to mistreat, to squeeze and to contaminate the earth and the waters, with the result of the impoverishment of the soils, the lack of food and the biodiversity in the rural areas and as a result of these the problem of malnutrition of the general population appears.

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<sup>28</sup> Pueblo Misak (2005) "Mandate of Life and permanence Misak Misak". Ancestral authorities of the Nam Misak people. Cabildo of Guambia. Piendamó, Cauca. Viewed at: <http://biodiversidadla.org/layout/set/print/layout/set/print/content/download/31459/147539/version/1/file/MANDATO+DE+VIDA+MISAK.doc> on May 17 of 2010

To counteract this problem, the initiative for the sustainable production of trout and quinoa has been launched, as a response to the recovery of land, the generation of employment and food security.

### **4.3 Target Population**

This initiative goes beyond a simple economic project, its function is also to raise awareness, develop, promote and disseminate the mechanisms and tools of organic clean food production among the members of the community and beyond to contribute to food sovereignty with production own.

His interest lies in drawing and making life plans as an alternative to train the youth of Guambiana so that they can become active members of the community, as useful beings who successfully undertake their life projects; beginning to build a true culture on the conservation, protection and adequate use of the natural resources that the earth offers us; enhancing the own and universal knowledge to apply it in the solution of new or unforeseen situations and training them to perform efficiently in personal, intellectual, social, civic and work life.

Within production plans is always present the harmony of being Misak, based on the territory with its principles of spirituality, nature, self-economy, food autonomy and worldview, supported by identity, transcendence, oral knowledge and tradition-uses and customs lived in the family, at work, coexistence, self-medicine and finally autonomy. One way to measure the impact of the trout and quinoa production project is to analyze the following tables, in which the beneficiary population of the project is described.

### Beneficiary population directly and indirectly

Stage	Description	Number of families benefited
Production of raw material Rainbow trout meat	At this moment there are 200 fish stations at the municipality level.  80 tons of fresh produce packed and vacuum sealed at a quarterly production scale	200 families for a total of 1,000 people
Production of raw material Quinoa	At this moment there is a production of 1.5 tons per month.	50 families for a total of 250 people
Plants and natural spices as y especias naturales	At this moment there are farms and crops of vegetables and spices a production of 6 tons per month	10 families for a total of 500 people
Processing and transformation	1.5 tons of sausages	15 jobs Direct and indirect
Marketing and marketing	Local Market	10,000 students from different educational institutions and early childhood.  800 parents and community in general

**Number of ponds of the productive units and the monthly and annual production of Trout in the Guambos Reserve**

ITEM	DETAIL	PONDS	PRODUCTION TONS DAILY	PRODUCTION TONS MONTHLY	PRODUCTION TONS ANNUAL
1	RESGUARDO DE GUAMBIA	140	1,34	60,2	722,4
2	OTROS RESGUARDOS	60	0,5	20	240
TOTAL		200	2	80,2	960

**5. CONCLUSIONS**

One of the objectives of this project is rural development, a strategy designed to improve the economic and social life of indigenous communities, for this the commitment of public administrations is essential and incentivize these entrepreneurship programs, helping them to strengthen commercialization, improve production with new processing plants and encourage new skills such as the ability to solve problems, analyze, plan, evaluate and make decisions. As stated in objective 17 of the Sustainable Development Goals "a successful sustainable development program requires partnerships between governments, the private sector and civil society", which is why the Yanawai Foundation has been working on this path for a few years to get together efforts and build a harmonious space between the Misak people and nature, seeking a more just, sustainable and healthy society.

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THE CONTRIBUTION OF PETROLEUM COMPANIES TO  
ENVIRONMENTAL PROTECTION IN A FRAMEWORK OF  
COMPLIANCE WITH THE 2030 AGENDA: A NECESSARY  
ALLIANCE\*

MARÍA SAGRARIO MORÁN BLANCO

*Lecturer of Public International Law and International Relations at the  
Rey Juan Carlos University*

**SUMMARY:** 1. INTRODUCTION. 1.1. The importance of Petroleum as an energy source in International Society; first measures and legal instruments oriented towards international environmental protection 1.2. The New Century and new legal and political instruments: company involvement in environmental protection. 1.3. The *2030 Agenda* and environmental protection. 2. ENVIRONMENTAL IMPACTS GENERATED BY PETROLEUM COMPANIES 3. ACTIONS AND MEASURES TAKEN BY PETROLEUM COMPANIES TO PROTECT THE ENVIRONMENT AND TO COMPLY WITH SDGs. 3.1. Conflicts between Petroleum Companies and private and public Agents and their effects on environmental protection; 3.2. Sustainable Companies and Corporate Social Responsibility 3.3. Marketing measures of Petroleum Companies: projecting a “green” image. 4. SOME CONCLUSIONS

**ABSTRACT:**

This chapter analyses the contribution of petroleum companies to meeting the *Sustainable Development Goals set out in the 2030 Agenda* and pays special attention to the goals related to environmental protection. It begins by analysing the role of petroleum companies as key international actors in the field of International Relations, and the environmental impact and costs generated in the different phases of the Petroleum industry. The chapter then goes on to analyse the measures and policies that have been introduced by petroleum companies in recent years in order to protect the environment and comply with the SDGs.

**KEYWORDS:**

Petroleum Companies, environmental impact, costs, environmental protection, sustainable development goals, climate change.

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## 1. INTRODUCTION

New actors burst onto the international scene in the early 20<sup>th</sup> Century. The States, undisputed protagonists in international relations at that time, begin to share their protagonism with new actors such as International Organizations and the actors described as “Transnational Forces” by French sociologist Marcel Merle in his well-known work on the “Sociology of international relations singles out”, Merle two main groups of Transnational Forces: the NGOs and multinational companies<sup>1</sup>. Indeed, by the mid-twentieth century, there are a large number of multinational companies on the international scene. These companies, who are also called.

Transnational Corporations are starting to become key players on the international scene, with a capacity to influence international relations that on occasions surpasses that of the States themselves. As Esther Barbé states “transnational corporations are a first order phenonemon in the international economic system that emerged from the Second World War; for this reason, we need to analyse not only their effects on the economic system but also the role they have played in the system as a whole”<sup>2</sup>.

While there are many definitions of “Transnational Corporations”, they all say essentially the same thing, albeit in different words. In this sense, *the Commission on Transnational Corporations of the Economic and Social Council of the United Nations* regards as transnational corporations those companies that “include companies in two or more countries, regardless of their legal denomination or the sphere of their business activities, that employ a decision-making system which enables a coherent policy line and a common strategy, thanks to the existence of one or more centres of decision making; the companies must have an ownership structure or some other type of hierarchical link that enables one or more of the companies to exercise influence over the others and share knowledge, resources and responsibilities”<sup>3</sup>. One aspect worth highlighting about transnational corporations is that the primary objective of these actors is to make money by maximizing profits. The petroleum companies stand out as a key player among the different transnational companies. Indeed, with the advent of the Second Industrial Revolution at the beginning of the twentieth century petroleum<sup>4</sup> joined coal<sup>5</sup> as an energy source, leading to the creation of the first Petroleum companies. In 1870, J. D. Rockefeller

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<sup>1</sup> MERLE, M., *Sociología de las Relaciones Internacionales*. Alianza Editorial, Madrid, 1991.

<sup>2</sup> BARBÉ E. “Relaciones Internacionales”. Tercera Edición, *Tecnos*, Madrid, 2007, p. 229.

<sup>3</sup> Commission on Transnational Corporations of the Economic and Social Commission of the United Nations: work related to the definition of transnational corporations. Doc. E/C.10/1083/14, in BARBÉ E., *Op. Cit.*, p. 229

<sup>4</sup> With regard to petroleum, although “there is evidence that it had been known and used since ancient times, its use was first commercialized in the 1860s with the discovery of the famous oil field in Titusville, Pennsylvania, USA by the *Séneca Oil Company*. YERGIN, D., *The Prize*. Simon and Schuster, New York 1992, pp. 17-18. In TROCONIS HEREDIA, J. E.: *El Petróleo ¿Arma de la Revolución?*, Rayuela, Taller de Ediciones, Caracas, 2008, pp.17-23.

<sup>5</sup> As early as 1936 Walther Schmidt stated that “energy is the backbone of the economy”. This provides a clear indication that the lack of energy was already a primary strategic concern, SCHMIDT, W.: *Geografía Económica*. Editorial Labor, Barcelona, 1936, p. 17; in ARANZADI, C.: *Energía y Geoestrategia*. Cuadernos de Estrategia, nº 166, Instituto Español de Estudios Estratégicos, Ministerio de Defensa, Madrid, 2014, p. 46.

founded the *Standard Oil of Ohio*. Later on, the discoveries of the rich oil fields of Texas lead to the creation of *Gulf Oil* and the *Texas Oil Company*. Meanwhile, in Europe, *Royal Dutch-Shell* was created in 1907; it has now become one of the four biggest petroleum companies together with *British Petroleum* (later *BP*), *ExxonMobil* y *Total*. *British Petroleum* appeared 5 years later. All these companies formed the international oil cartel which enjoyed undisputed hegemony between 1928 and 1960.

However, since the authorization to exploit the natural resources of the producer countries is granted by the public authorities, companies must negotiate with States. This is so because in most cases the state is the declared owner of the subsoil. In the 1970s, petroleum had replaced coal as the main energy source and the key strategic element for consumers and producers and, by extension, international diplomacy. As a result a new energy map was drawn, which reflected the high dependence of western economies on petrol imports.

Currently, fossil fuels (petroleum, natural gas and coal) are the main energy sources, accounting for around 80% of the commercial primary energy produced across the world,<sup>6</sup>; followed by nuclear energy and, in last place, renewable energies (hydraulic, eolic, solar and tidal etc)<sup>7</sup>. Petroleum continues to be the most important of the three fossil fuels mentioned above, accounting for approximately 30 % of world energy consumption, although it has been losing market share for 16 years now.<sup>8</sup>

Leaving the exact details of the energy mix aside, what really matters is that companies of this type can play a key role in achieving the SDGs, and, by extension, the *2030 Agenda*. It is worthwhile to analyse the creation of public-private alliances, as this is one of the main objectives expressed in Resolution 70/1 of the UN General Assembly. It may be helpful to describe the contribution of transnational corporations in achieving the SDGs, as we have done with petroleum companies, because some of the Goals stated in Resolution 70/1 are closely connected with the activities conducted by companies of this type.

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<sup>6</sup> Fossil fuels are limited and petroleum production is close to its climax. SORIA LASCORZ, E.: Comisión de la Energía y su relación con la Seguridad y Defensa, published in CESEDEN. *Modificaciones Regulatorias en el régimen especial. El Futuro de las Energías Renovables*. Documento de Trabajo 02/2014, IEEEE, Ministry of Defence.

<sup>7</sup> In Spain, for example, petroleum accounts for nearly half of the primary energy that we consume and gas natural for almost a quarter. Without these two sources of primary energy, the Spanish economy would have serious difficulties.

<sup>8</sup> MORÁN BLANCO, S., *Seguridad Energética y Medio Ambiente. Dos caras de una misma moneda. Especial referencia a la Unión Europea*, Thomson Reuters Aranzadi, Madrid, 2015, pp. 85.

### **1.1. The importance of petroleum as an energy source in international society: the first measures and instruments oriented towards international environmental protection <sup>9</sup>**

The use of petroleum as an energy source has had and continues to have a negative effect on the environment, owing to the disproportionate emission of greenhouse gases (hereafter GHG). This way of thinking has been making its way onto the international agenda ever since petrol became a widespread energy source in the 1970s. From this moment onwards there has been a constant increase in the emission of pollutant gases<sup>10</sup> from the burning of fossil fuels (coal, petroleum, natural gas) which helps to increase the greenhouse effect, thereby contributing to climate change. Human activity, above all the use of fossil fuels and deforestation<sup>11</sup> has increased the concentration of CO<sub>2</sub> in the atmosphere.

As we know, the first legal instruments for protecting the environment appeared at the beginning of the 20th century and now constitute what is regarded as “the prehistory of International Environmental Law”<sup>12</sup>. However, International Environmental law did not take off in earnest until the end of the 1960s, according to Professor Alexander Kiss. From that moment on, this young branch of international law has been forming a set of specific regulations related to environmental protection<sup>13</sup>. The first relevant event in the field of environmental protection took place in 1972, when the United Nations promoted an international conference in Stockholm. On the institutional plane, this conference also set up the *United Nations Environment Programme (UNEP)*, which aims primarily to develop international cooperation programmes in the field of environmental protection.

However, social and political awareness of the nature and extent of climate change did not truly manifest itself until the end of the Cold War in 1989. From that point on, the increasing energy demand stemming from the great economic development in some countries triggered the great deterioration of the planet that set in after the Stockholm conference. In response to this situation and to the increased social awareness of the problem, a second United Nations Environment and Development Conference took place in Rio de Janeiro in 1992. The point of departure for this conference, also known as the

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<sup>9</sup> Both this section and section 1.2 contain information taken from MORÁN BLANCO, S., (2015) op. cit., pp. 214-226.

<sup>10</sup> Greenhouse Gas GHG: “those gaseous constituents of the atmosphere, both natural and anthropogenic, which absorb and emit radiation at specific wavelengths within the spectrum of thermal infrared radiation emitted by the Earth's surface, by the atmosphere itself, and by clouds. This property causes the greenhouse effect. Water vapour (H<sub>2</sub>O), carbon dioxide (CO<sub>2</sub>), nitrous oxide (N<sub>2</sub>O), methane (CH<sub>4</sub>), and ozone (O<sub>3</sub>) are the primary greenhouse gases in the Earth's atmosphere. Moreover, there are a number of entirely human-made greenhouse gases in the atmosphere, such as the halocarbons and other chlorine and bromine containing substances, dealt with under the Montreal Protocol. *Montreal*. IPCC, 2007: Climate Change 2007 IPCC Synthesis Report. Contribution of Workgroups 1, 2 and 3 to the fourth assessment report of the Inter- governmental Panel on Climate Change, *Published by the Inter- governmental Panel on Climate Change*, Geneva, Switzerland, p. 82.

<sup>11</sup> AR5 (Fifth Assessment Report) del IPCC, 2014, op. cit., p. 36

<sup>12</sup> KISS, A., *Droit International de l' environnement*. Paris (Económica), 1992, p. 15, cited in JUSTE RUIZ, J., *Derecho Internacional del Medio Ambiente*, Madrid, Mc Graw Hill, 1999, p. 16-17.

<sup>13</sup> See KISS, A. y SHELTON, D., *International Environmental Law*. Transnational Publishers, United States of America, 1991.

*Earth Summit*, was the so-called Brundtland Report<sup>14</sup>, of 1987, which proclaimed the need for “sustainable development”. The report presents sustainable development as an essential condition for human development and states that poverty and industrialization are equally responsible for environmental degradation. Accordingly, it recommends the sustainable use of natural resources as a means of ensuring a path for human development that will not compromise future generations. Moreover, this report sees sustainability as the “global development condition”; it states that the State must guarantee environmental sustainability and calls for the implementation of public policies that ensure both the welfare of the population and “the rational use of natural resources”<sup>15</sup>.

The very concept of sustainable development, configured as a fundamental human right, may be considered the most important of all the conditions for progress included in the Rio Declaration. This link between human development and the theory of human rights is a major innovation; it is embodied in principle 1, which states that “human beings...are entitled to a healthy and productive life in harmony with nature”<sup>16</sup>; and the seventh principle declares that “States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.” This cooperation is based on what has been known since Rio as the “principle of common but differentiated responsibilities of States”, reflecting the fact that, throughout history, all States have played their part, albeit to different extents, in global environmental degradation<sup>17</sup>. In conclusion, the *Rio Declaration* is the key to achieving sustainable development.

However, the most transcendental landmark was the adoption of the *United Nations Framework Convention on Climate Change* (hereafter UNFCCC), in force since 1994; it marked the beginning of a new international regime, the general objective of which is stated in article 2: “The ultimate objective of this Convention (..) is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system” In other words, the aim is to promote the reduction of GHG emissions from human activities such as petroleum consumption<sup>18</sup>. Thus, the UNFCCC, which is universal in scope (covering 194 countries), is a framework agreement which establishes the obligation to cooperate on an international scale in order

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<sup>14</sup> El *The Brundtland Report* was the result of the projects carried out by the United Nations Environment and Development Commission under the supervision of Dra. Gro Harlem Brundtland from Norway. Available online in <http://desarrollosostenible.wordpress.com> (Consulted on July 16, 2018). UN World Commission on Environment and Development UN World Commission on Environment and Development (2006).

<sup>15</sup> UN World Commission on Environment and Development (2006). *Brundtland Report* <http://desarrollosostenible.wordpress.com/2006/09/27/informe-brundtland>.

<sup>16</sup> With regard to the concept of sustainable development, see: C. M., DÍAZ BARRADO, Los objetivos de desarrollo sostenible: un principio de naturaleza incierta y varias dimensiones fragmentadas, published in *Anuario Español de Derecho Internacional*, nº 32, 2016, pp. 9-48.

<sup>17</sup> See the text of the Rio Declaration on Environment and Development in <http://www10.iadb.org/intal/intalcdi/PE/2012/11109.pdf> (Consulted on 23 January 2015)

<sup>18</sup> IPCC, 2007: Op. cit., p. 9.

to stabilize atmospheric emissions of substances that contribute to the greenhouse effect and global warming, in an attempt to return to the emission levels of 1990. Since then the so-called Conference of Parties (COP) has been held annually. The first conference on Climate Change was held in Berlin in 1995 and the last one in Bonn in 2017. In the last conference, as in the previous ones, Member States, others States, companies, cities and other actors agreed to speed up compliance with the *2015 sustainable development goals*, and with the *Paris Agreement on Climate Change*<sup>19</sup>, both of which aimed to protect the environment by reducing GHG. The Paris Agreement, which was also signed in 2015, is another historical landmark as it is the first legally binding agreement in which all the countries (195) committed to play their part in reducing global greenhouse gas emissions.

However, before the Paris agreement was signed the Kyoto Protocol (hereafter KP) was adopted in 1997. This protocol, which is also regarded as a major step forward in the fight against climate change, obliged a group of countries, 37 plus the EU, to reduce GHG by 5.2% in relation to 1990 levels in the 2008-2012 period. However, this first commitment period of the treaty did not affect emerging countries such as Brazil, India or China<sup>20</sup>. The KP thus became the first international mechanism to start to combat climate change in an attempt to minimize its impacts on the planet. The agreement even introduced three so-called *compensation mechanisms*, one of which is International Emissions Trading. To sum up, the agreement establishes market mechanisms to achieve environmental goals, by allowing the countries that reduced their GHG emissions below the emissions target to sell their reduction surpluses to compensate for emissions from another source inside the country itself or in another country. Normally, emissions trading can be conducted within a company or on a national or international scale<sup>21</sup>. However, this protocol had quite limited effects because it was not ratified by the United States, the main polluting country, which is responsible for around 25% of GHG emissions<sup>22</sup>. Indeed, GHG emissions increased after the signing of the *Kyoto Protocol*, so this instrument has clearly failed to achieve its ultimate goals.

## **1.2. The New Century and New Legal and Political Instruments: Company Involvement in Environmental Protection**

The XXI century began with disheartening news on the environment, but also with declarations that showed social, political and institutional awareness of the need to change this panorama. For example, the 2004 UN report “Working together for a Safer World”,

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<sup>19</sup> See [https://unfccc.int/sites/default/files/spanish\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/spanish_paris_agreement.pdf) (Consulted 2 August 2018).

<sup>20</sup> The main greenhouse gas is carbon dioxide (CO<sub>2</sub>), which essentially stems from the burning of fossil fuels and deforestation. Indeed CO<sub>2</sub> is responsible for 60 percent of the anthropogenic greenhouse effect. See <http://archivo.greenpeace.org/Clima/Prokioto.htm>, (Consulted 11 November 2008).

<sup>21</sup> *Ibidem*, p. 70.

<sup>22</sup> En el caso de Estados Unidos, después de haber sido firmado por el presidente Bill Clinton, su sucesor, George W. Bush, decidió no ratificarlo en el 2001 al considerar que dicho Protocolo suponía una amenaza para la economía de la primera potencia mundial. En <http://www.cambio-climatico.com/protocolo-de-kyoto>. (Consulted 27/03/2015).

states that environmental degradation is one of the biggest security threats facing the planet<sup>23</sup>; and the *Millennium Summit*, held in the year 2000, stressed that the “Millennium Development Goals” (MDGs) were among the most important goals in the fight against environmental degradation. The consequences of climate change were evident and its adverse effects undermined the ability of all countries to achieve sustainable development. The main impacts of climate change include: global warming; rising sea levels, ocean acidification; a host of other impacts which jeopardize the survival of many societies and of the planet's natural support systems. In this scenario, the international community is also aware of the need to approve new instruments to combat climate change because environmental degradation is increasing day by day. While the IPCC insisted on the need to halve emissions by 2050, the *International Energy Agency* confirmed that we were approaching “the point of no return”. Since then citizen awareness of the need to protect the environment has not stopped growing, especially in Europe and in other western countries. The environmental dimension of safety is now included in the Security Strategies of almost all of the most developed states.

In this regard, the European Union (hereafter the EU) presented the boldest move to date in the fight against climate change, the 20/20/20 initiative. With this initiative, the EU has set itself the goal of reducing GHG emissions by 20 % with regard to 1990 levels. The EU has also established as goals a 20 % increase in energy efficiency and a share of 20 % for renewable energies in the energy mix. To achieve these three 20 % targets, the EU has developed a new generation of energy technologies and it is addressing important organizational and structural changes. With the aim of achieving an energy system free of CO<sub>2</sub> emissions by 2050, the EU has established the European Strategic Energy Technology Plan (SET-PLAN), a technological pillar of European energy and environment policies. There have also been agreements which aim to articulate a multilateral framework for fighting against deforestation<sup>24</sup>. There have also been agreements which aim to articulate a multilateral framework for fighting against deforestation.

To be precise, COP16 reinforced the REDD mechanism, the goal of which is to reduce GHG emissions produced by deforestation and environmental degradation. 2011 was declared *International Forests Year*, with the aim of substantially increasing the global forest surface. Trees eliminate carbon dioxide, the main GHG in the atmosphere, so the more we have the better.

By contrast deforestation- the current trend- generated even more carbon emissions and aggravates global warming. This conference adopted *the Durban Platform*, which agreed on a work plan that aims to start the process towards drawing up a new legal instrument to replace the Kyoto Protocol. The new text is planned for 2015 and is

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<sup>23</sup> UN. Doc. A/59/565, 2 of December 2004, p. 6, carta dirigida al Secretario General por el Presidente del Grupo de Alto Nivel sobre las amenazas, los desafíos y el cambio. Véase BERMEJO GARCÍA, R. y LÓPEZ JACOISTE DÍAZ, E.: “Un mundo más seguro: La responsabilidad que compartimos”. Informe del Grupo de Alto Nivel sobre las amenazas, los desafíos y el cambio, UNISCI Discussion Paper, N° 10, (January 2006), 6 pps.

<sup>24</sup> SORIA LASCORZ, E.: Op. cit., p. 54.

expected to come into force by 2020. Likewise, in June 2011, the United States announced the goals to reduce carbon emissions proposed in its new energy and climate legislation. These goals establish for 2050 an 83% reduction in carbon emissions with regard to 2005 levels, and partial reductions of 17% by 2020, 30% by 2025 and 42% by 2030<sup>25</sup>. However, the *Durban Summit*, like its predecessors, was characterized by the incapacity of the Member States to agree on an obligatory global pact that would substitute the *Kyoto Protocol*, which was due to expire in 2012. This initiated a period of uncertainty that was only partially hidden by the extension of Kyoto to 2020. Finally, in 2015, the *Paris Agreement* referred to earlier was signed.

From all the above, it is clear that the global climate architecture was governed by the State, because a traditional state system for managing change had been adopted. As Kate O' Neill, states the key actors in "environmental governance" were the States and international organizations, although there is a growing influence of "non-state actors", such as global environmental movements, the corporate sector and expert panels<sup>26</sup>. O' Neill also recognizes that the most traditional form of environmental governance is state cooperation leading to multilateral agreements and regimes. However, at the beginning of the XXI century the responsibility to protect the environment was extended to companies. In 2011, *the Guiding Principles of the United Nations on Business and Human rights were adopted*. These were based on three essential principles: "Protect, respect and remedy"<sup>27</sup>. By then the petroleum companies were facing criticism from the media, governmental organizations and NGOs on a whole range of issues including environmental violations, human rights violations, harm to local communities, and violations of work and safety regulations.

### 1.3. The 2030 Agenda and Environmental Protection

The next step on the path towards protecting the environment was the 2030 Agenda for Sustainable Development, approved in 2015, by the Resolution A/RES/70/1, which places special emphasis on environmental protection. While the achievements of previous contributions to environmental protection are important, the 2030 agenda is a decisive step forward, because it specifies the commitment of those responsible for greenhouse gas emissions. This is where the petroleum companies are called on to play a key role in environmental protection. In fact, they must assume this responsibility, as climate change and environmental degradation for which the actions of petroleum companies are partly to blame, are a threat to international safety. The *Sustainable Development Goals (hereafter SDGs)*<sup>28</sup>, which take over from *the Millennium Development Goals (MDGs)*,

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<sup>25</sup> See *Informe Delphi Futuro de las Tecnologías para la Energía*. Nodo Legal. Centro de Tecnología Repsol, December 2013, p. 24-25.

<sup>26</sup> Kenneth Abbott employs the concept of private sustainable governance, while Robert Falkner introduces the notion of private environmental governance.

<sup>27</sup> RUGGIE, J. G., "Business and Human Rights: The Evolving International Agenda", *American Journal of International Law*, Vol. 101, N° 4, October 2007, pp. 819-840.

<sup>28</sup> As we have already stated, the concept of *sustainable development* was first set out formally in the document known as the *Brundtland Report*, the result of the work of the World Environment and



set 17 goals with 169 integrated and indivisible targets covering economic, social and environmental spheres. The environmental sphere is especially well covered in the SDGs, as 5 objectives refer directly or indirectly to environmental protection. In particular Resolution 70/1 contains the decision to “protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations”<sup>29</sup>.

The five Goals which refer to the climate and environmental protection are: Goal 6 “Clean water and Sanitation; Goal 7 “Affordable and Clean Energy; Goal 11 “Sustainable cities and communities”; Goal 12 “Ensure sustainable production and consumption patterns; and Goal 13 “Climate action”.

*Goal 6 “Clean Water and Sanitation”* has six targets, three of which refer to environmental protection *Goal: 6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally; 6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes; 6.a By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies.* As we will see in the next section, the petroleum industry has increased sea, river and ocean pollution, so these “targets” cannot be reached without its collaboration. We have all heard of oil spills, most of which are accidental, that cause prolonged environmental catastrophe and cause irreparable damage to the flora and fauna of our seas and oceans.

*Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all.* This goal has three targets all of which emphasize the need to increase the use of renewable energy sources. *7.1 By 2030, ensure universal access to affordable, reliable and modern energy services; 7.2 By 2030, increase substantially the share of renewable energy in the global energy mix; 7.3 By 2030, double the global rate of improvement in energy efficiency; 7.a By 2030, enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, **energy efficiency and advanced and cleaner fossil-fuel technology**, and promote investment in energy infrastructure and clean energy technology ; 7.b By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries(..).* While this goal centres on the need to opt for renewable energies, by giving them a key role in the energy mix, goal 7 A also focuses on the need to aim for

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Development Commission set up by the UN assembly in 1983. Principle 3 of the 1992 Rio Declaration provides a good definition of this concept: "Satisfying the needs of present generations without compromising the satisfaction of the needs of future generations" Some authors such as Figarella, M note that sustainable development must aim at both eradicating poverty and creating an optimal and clean environment. Both goals must indeed be achieved if we are to reach sustainable development.

<sup>29</sup> Resolution 70/1 UN General Assembly

“energy efficiency and advanced and cleaner fossil-fuel technology” In this regard, the petroleum industry can reduce CO<sub>2</sub> emissions by investing in research. Four of the most polluting companies in history, Chevron, Exxon Mobil, BP y Shell, have been responsible for more than 10 percent of all the GHG emissions since the industrial revolution, so they have to reduce emissions and promote improvements in energy efficiency. “In fact, improving energy efficiency within a plant’s battery limit is essential, making energy auditing of facilities and/or the installation of an energy efficiency management system the main tools for identifying potential improvement actions and quantifying the progress made”<sup>30</sup>.

*Goal 11: Make cities and human settlements inclusive, safe, resilient and sustainable*, is composed of seven targets, two of which focus clearly on environmental protection. *11.6 By 2030, reduce the adverse per capita environmental impact of cities, including by paying special attention to air quality and municipal and other waste management; 11.7 By 2030, provide universal access to safe, inclusive and accessible, green and public spaces, in particular for women and children, older persons and persons with disabilities; 11.a Support positive economic, social and environmental links between urban, peri-urban and rural areas by strengthening national and regional development planning; 11.b By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans towards inclusion, resource efficiency, mitigation and adaptation to climate change, resilience to disasters, and develop (...); 11.c Support least developed countries, including through financial and technical assistance, in building sustainable and resilient buildings utilizing local materials.*

The role of cities in GHG reduction is vital, as large cities are responsible for 70% of emissions. To achieve these goals, the petroleum industry in cooperation with the car industry and other industry sectors can help to reduce GHG emissions. In this regard, traffic is one of the major causes of pollution in urban areas. Some cities, coinciding with the inauguration of the *International Forests Year*, in 2011, have opted to increase their forest surface. As noted above, trees eliminate carbon dioxide the main GHG in the atmosphere and conversely deforestation increases carbon emissions and aggravates global warming; so the more we have in our cities, the better. In many cities of the world, especially in Europe, tree planting and park creation have been a common phenomenon in the last decade. There have even been examples of cities that have filed lawsuits against the petroleum industry for the pollution that it has generated. An outstanding example of this occurred in September 2017, when the cities of San Francisco and Oakland sued the five biggest petroleum countries in the world, including Exxon, BP, y Shell, because they “had known the relationship between their activities and climate change for decades and continued to do business regardless, and, because, not content with that, they orchestrated

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<sup>30</sup> In <http://incomunicacion.com/en/five-recommendations-for-reducing-industrial-greenhouse-gas-ghg-emissions/>.

a campaign to sow doubts regarding climate science”<sup>31</sup>. This is an example of how cities can use the “legal route” to reach some targets of the SDGs.

*Goal 12. Ensure sustainable consumption and production patterns. 12.1 Implement the 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns (..) ; 12.2 By 2030, achieve the sustainable management and efficient use of natural resources; 12.4 By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, in accordance with agreed international frameworks, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment ; 12.5 By 2030, substantially reduce waste generation through prevention, reduction, recycling and reuse; **12.6 Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle;** 12.7 Promote public procurement practices that are sustainable, in accordance with national policies and priorities; 12.8 By 2030, ensure that people everywhere have the relevant information and awareness for sustainable development and lifestyles in harmony with nature; 12.a Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production; 12.b Develop and implement tools to monitor sustainable development impacts for sustainable tourism that creates jobs and promotes local culture and products 12.c Rationalize inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions (..), including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts...*

Seven of these targets focus on different measures oriented towards sustainable development and environmental protection. For the purposes of our analysis, the most relevant part of this Goal is the role assigned to transnational companies relating to the adoption of “sustainable practices”.

Finally, Goal 13 on Climate Action refers specifically to the environment and highlights the need to adopt urgent measures to combat climate change and its effects. This goal contains three targets: *13.1 Strengthen resilience and adaptive capacity to climate-related hazards and natural disasters in all countries; 13.2 Integrate climate change measures into national policies, strategies and planning; 13.3 Improve education, awareness-raising and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning. 13 a Implement the commitment undertaken by developed-country parties to the United Nations Framework Convention on Climate Change to a goal of mobilizing jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful*

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<sup>31</sup> En <https://www.xataka.com/ecologia-y-naturaleza/la-gran-batalla-legal-por-el-clima-las-grandes-petroleras-se-juegan-su-credibilidad-y-su-futuro-en-un-juicio-historico> (Consultado 22 July 2018).

*mitigation actions and transparency on implementation and fully operationalize the Green Climate Fund through its capitalization as soon as possible. 13b Promote mechanisms for raising capacity for effective climate change-related planning and management in least developed countries and small island developing States, including focusing on women, youth and local and marginalized communities.*

Although these goals were adopted by States, as Resolution 70/1 of the General Assembly of the United Nations was passed by State actors, there is no doubt that transnational companies, who have been undisputed actors on the international scene since the end of the Cold War and the spread of globalization, can and must play a key role. Companies do indeed play a key role in achieving these Goals and are required to support and enable national and international plans relating to all the targets. In fact Goal 17 insists that the 2030 Agenda cannot be met without the responsible commitment of all international actors to forming global alliances and increasing international cooperation. Thus, Goals such as ending poverty and hunger, health, education and environmental protection are only achievable through Global Alliances between all international actors. The challenges are global and can only be met via worldwide cooperation. Thus transnational companies, including petroleum companies, must be included in Alliances that promote compliance with the 2030 Agenda.

## **2. ENVIRONMENTAL IMPACTS GENERATED BY PETROLEUM COMPANIES**

Although Petroleum dates from prehistorical times, it did not become one of the main energy sources until the 20th Century, when it started to play key role in industry, the economy and finance across the world. To be more specific, throughout the last century and the current one, petroleum has been and continues to be an essential resource for transport, industry and electricity production. Moreover, a wide range of objects and materials are derived from petroleum, including, among others, plastic, perfumes and nylon<sup>32</sup>. The commercialization of petroleum as an energy source led to the creation of a powerful industry, the activities of which can be divided into three phases: 1) "*Upstream*": Exploration, extraction and production; 2) "*Midstream*": Transport, processes and storage; y 3) "*Downstream*": refining, storage, and distribution. As we noted earlier, the main public and private petroleum companies appeared in the mid twentieth century. Currently, as Christopher Helman observes, "Among the biggest oil companies, the vast majority of volume growth has come from state-controlled entities." These include

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<sup>32</sup> In addition to being an energy source, petroleum is also a key raw material. Its rich mix of hydrocarbons can be transformed to obtain very useful substances such as petrochemical products. SERNA MURILLO, J. A.; "Investigación sobre Acondicionamiento ambiental y sostenibilidad en las prospecciones petrolíferas" (Research into environmental conditioning and sustainability in oil explorations, PhD Thesis, la Universidad Politécnica de Madrid, 2008, p. 6.

*ExxonMobil, Chevron, Royal Dutch Shell, BP, ConocoPhillips, Total, Petrobras o Petróleos de Venezuela Sociedad Anónima (hereafter PDVSA)*<sup>33</sup>, among others”<sup>34</sup>.

However, the environmental impacts of the different activities linked to the petroleum industry are evident: the pollution that is generated in the three phases of the petrol industry continues once petroleum becomes a consumable energy source. As occurs with all fossil fuels, petroleum here releases GHG and other pollutants into the atmosphere<sup>35</sup>. In addition to its clear economic impact, thanks to its capacity to create wealth in some sectors, petroleum also has positive and negative impacts on society and even on politics. Authors such as Charles Woolfson and Matthias Beck are categorical in their condemnation of the petroleum industry: “[the] Oil industry is controversial because there has been persistent, widespread engagement in unscrupulous business practices that entail adverse social, environmental and ethical consequences”<sup>36</sup>. Indeed, the ten most polluting companies are all petroleum companies. The second most pollutant company is the US firm *Exxonmobil*, while French company *Total* is in thirteenth position. Furthermore, according to a study carried out by the “House Select Committee on Climate Responsibility” in Colorado, two thirds of GHG emissions are caused by 90 companies, 87 of which produce petroleum, gas or coal<sup>37</sup>. In 1990, the *US Environment Protection Agency* (EPA) ranked the petroleum industry as the seventh most polluting in the world<sup>38</sup>.

Before analysing in more depth the environmental impacts caused by petroleum companies, we should define what is meant by “impact”. As part of our study, we examined the definitions provided for *impacto*, the exact Spanish cognate of impact, in two respected Spanish dictionaries. The *Diccionario de la Real Academia Española* defines “impact” in the context of the environment as “the set of possible negative effects on the environment of a modification in the natural surroundings resulting from works or other activities”<sup>39</sup>. This definition only refers to the negative environmental effects caused by human activity. However, the *Lago Pérez* dictionary provides another definition of *impacto medioambiental* (environmental impact) which includes both positive and negative impacts: “there is an environmental impact when an action or activity leads to a

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<sup>33</sup> PDVSA is a Venezuelan public company created in 1976 during the presidency of Carlos Andrés Pérez. PDVSA was listed by the international magazine *Fortune* as the 38th biggest company in the world.

<sup>34</sup> <https://www.forbes.com.mx/las-21-empresas-petroleras-mas-grandes-del-mundo/>

<sup>35</sup> These pollutants include nitrogen oxides, sulphur dioxide, volatile organic compounds and heavy metals.

<sup>36</sup> WOOLFSON C. & BECK M., *Corporate social responsibility failures in the oil industry*, New York, Baywood Publishing, 2005.

<sup>37</sup> See HEEDE, R., in STARR, D., “Just 90 companies are to blame for most climate change, this carbon accountant”, August 25, 2016. <http://www.sciencemag.org/news/2016/08/just-90-companies-are-blame-most-climate-change-carbon-accountant-says>

<sup>38</sup> ESG UQAM ((Ecoles des sciences de la gestion), Montreal, 2011.

<sup>39</sup> See the fourth definition of “*impacto*”, linked to the environment, in el *Diccionario de la Real Academia Española* (1992).

favourable or unfavourable change in the environment or in some components of the environment”<sup>40</sup>.

However, we must focus on the negative effects that the three phases of the petroleum industry have on the environment. It is evident that the extraction and refining of this hydrocarbon damages the environment and sometimes does so irreversibly. The negative social and environmental consequences of petroleum are well-documented in research. These include GHG emissions generated both by its production and by its consumption, reduced air and water quality in the areas surrounding petroleum refineries and the “resource curse” that has affected and continues to affect countries with abundant petroleum reserves<sup>41</sup>. As we noted above, the petroleum industry consists of various processes or phases all of which causes irreparable damage to the environment and health problems linked to the pollution and deforestation that it generates. The processes include extracting crude oil, refining it (transforming crude oil into fuel, lubricants, asphalt and other products) and finally distributing it. Spills, leaks and waste can occur in all these phases; and in all of them large quantities of toxins and other pollutants are released into the environment.

Thus, to summarize, pollution is involved in all the operations linked to the exploitation and the transport of hydrocarbons and this inevitably leads to a gradual degradation of the environment. It directly affects soil, water air, fauna and flora.

1)Because *the exploration, extraction and production phase* causes certain environmental impacts, the petroleum companies must know if the laws currently in force allow them to drill, and they must evaluate the possible consequences of the drilling process<sup>42</sup>. This phase releases gases into the atmosphere. Such gas emissions from petroleum companies cause many environmental problems (greenhouse gases, water and land pollution, impacts on biodiversity) and human health problems. Furthermore, well-drilling causes a number of apparently moderate environmental impacts such as the following: “deforestation, loss of biodiversity, soil erosion, interruption of water flows, use of natural resources (flora y fauna), polluting residue caused by drill cuttings or by the use of drilling mud, noise and vibration, all of which can cause alterations in fauna behaviour, fauna displacement and permanent disruption of wildlife corridors,

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<sup>40</sup> LAGO PÉREZ, L. Metodología general para la evaluación de impacto ambiental de proyectos, 1997. Available in: <http://www.monografias.com/trabajos14/elimpacto-ambiental/elimpacto-ambiental.shtml#glo> (Consulted 20 July 2018).

<sup>41</sup> MARGAUX CASSAND: Análisis de la RSE de dos grandes compañías petroleras: contraste entre las acciones realizadas y la percepción pública, Madrid, 2014, pp. 13-14, in <https://repositorio.comillas.edu/xmlui/bitstream/handle/11531/449/TFG000423.pdf?sequence=1>. (Consulted 13 July 2018). FRYNAS J. G., “The false developmental promise of corporate social responsibility: Evidence from multinational oil companies”, *International Affairs*, 81(3), 2005, pp. 581–598.

<sup>42</sup> To extract petroleum from the oceans it is necessary to build deep-sea floating structures in order to drill the rock layers at the bottom of the ocean.

interruption of natural drainage paths and noise pollution”<sup>43</sup>. In sum, the drilling stage always puts the local community, flora and fauna at risk.

Moreover, deforestation is caused by cutting trees during infrastructure implementation, and camp and road building, which clearly leads to environmental degradation (affecting flora, fauna, quality of life and, on occasions, indigenous groups that often live in the exploitation zones). Without doubt the biggest environmental damage is generated by the deforestation and the change in land use that results from the building of the infrastructure required for the *exploitation phase*<sup>44</sup>. Internal combustion equipment must be used at different moments in the *exploitation phase*, which releases substantial amounts of gas into the atmosphere thus affecting global air quality parameters. For this very reason, some companies have placed greater emphasis on controlling emissions in the last few years. Currently, *Chevron*, *BP* y *PEMEX*, among others, quantify and register annual volumes (in tonnes per month) stemming from the different emission sources, which enables them to know the emissions from each source, installation and sector. On top of all this, the process of exploiting hydrocarbons also generates health endangering waste that can remain in the environment for many years. The most prominent waste-related health risk comes from the heavy metals such as lead, mercury or metalloids such as arsenic present in drill cuttings<sup>45</sup>.

2) *The petroleum industry also produces negative impacts on the environment in the midstream phases-transport, processes and storage.* Prominent among these is the destruction of ecosystems as a result of crude or refined oil spills in rivers, seas and oceans. Indeed hydrocarbon transport has caused worst accidents than the transport of any other material, with serious consequences for the environment. We can subscribe to the claim that “most of the oil spilt accidentally or deliberately is a result of daily cleaning operations in tanks, tankers, refineries and platforms”<sup>46</sup>. All these spills cause a great media stir and generate social alarm because of their consequences. Oil spills and waste also affect the original soil substrate of vegetable species, rendering soil unusable for years; and if the spill occurs in rivers or seas, petroleum or other waste diminishes the oxygen content and pollutes the waters with harmful solids and toxic substances of organic or inorganic origin. Petroleum is deposited on the sea bed, with lethal effects for thousands of plants and animals that are vital for the ecosystem.

To sum up, these oil spills damage marine ecosystems with one or more of the following effects: “Death and destruction of organisms via exposure to the toxic water-soluble components of petroleum; weakened defences or increased susceptibility to infections in animal species, especially in birds, through the absorption of sublethal

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<sup>43</sup> BRAVO, E., “Los impactos de la explotación petrolera en ecosistemas tropicales y la biodiversidad”, *Acción Ecológica*, Madrid, May 2007, p. 11.

<sup>44</sup> See PEMEX, “Información proporcionada por la Gerencia de Seguridad Industrial, Protección Ambiental y Calidad” PEMEX PEP, Región Sur. Villahermosa, Tabasco, México, 2007.

<sup>45</sup> BRAVO, E., Op. cit., p. 11

<sup>46</sup> M.H. BAIL, A. GUILLÉN, J.L. ABREU., *Sustainability and Oil*. Daena: International Journal of Good Conscience. 12(3), 42-64. December 2017, p. 53.

amounts of petroleum”<sup>47</sup>. Indeed, birds are the part of our fauna that is most affected by direct contact with contaminated vegetation or by poisoning through ingestion. Sometimes birds impregnated with petroleum lose part or all of their ability to insulate themselves from the water and may thus die of hypothermia. Moreover, they get poisoned by ingesting huge quantities of hydrocarbons when they use their beaks to try to clean their wings. Spills also cause irreversible damage to marine flora and fauna, eliminate food sources for higher species and introduce carcinogens into the food chain<sup>48</sup>. Some of the main sources of the air, water and soil pollution generated by the petroleum industry are oil spills, sulphuric acid emanating from petroleum and dangerous chemical products present in drilling muds and combustion products from oil well fires.

One of our greatest problems is that crude oil impacts last for decades. In 2002, one year after the *Prestige* oil spill off the Spanish coast “hydrocarbon degradation was very low, leading to coastal pollution. Ten years after the *Exxon Valdez* oil spill (in Alaska) it was shown that the fish and the mussels in the vicinity of the oil spill were still exposed to residual hydrocarbons in the environment.”<sup>49</sup>. It is worthwhile recalling that, since 1960, more than one hundred serious oil spills have occurred in seas and rivers across the world. According to a report in the journal *La Jornada Ecológica*, published by the Universidad Nacional Autónoma de México, the following cases stand out: the case involving the *Amoco Cádiz* tanker, belonging to the North American company *Amoco Transport*, subsidiary of *Standard Oil*, which caused an ecological catastrophe when a storm caused it to spill its entire load into the sea off the Brittany coast in 1978. In terms of its magnitude, the slick was a precedent of the ones caused years later by the tankers *Exxon Valdez*, in Alaska, *Erika*, in Brittany in 1999, or the *Prestige*, in Spain<sup>50</sup>. We must also cite the catastrophe which occurred in the United States in 2010, as it was one of the most serious oil spills in history. Let us recall that this oil spill in the Gulf of Mexico was caused by the explosion and subsequent fire, which destroyed an exploration platform which was conducting offshore drilling on the *Macondo Prospect* operated by the British petroleum company BP.

3) *Upstream Phase, refining sales and distribution.* The petroleum refining process is one of the phases of the petroleum industry that generates the most risks for the

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<sup>47</sup>See *Impactos ambientales del petróleo*, Greenpeace, 2012, in

[https://www.greenpeace.org/mexico/Global/mexico/report/2012/1/impactos\\_ambientales\\_petroleo.pdf](https://www.greenpeace.org/mexico/Global/mexico/report/2012/1/impactos_ambientales_petroleo.pdf)

<sup>48</sup> See *Impacto de la Explotación petrolera en ecosistemas tropicales y la biodiversidad*. March 27, 2016, published by the Fundación Regional de Asesoría en Derechos Humanos in [http://www.inredh.org/archivos/documentos\\_ambiental/impactos\\_explotacion\\_petrolera\\_esp.pdf](http://www.inredh.org/archivos/documentos_ambiental/impactos_explotacion_petrolera_esp.pdf). INE & SEMARNAT. *La Evaluación del Impacto Ambiental*. México: Secretaría de Medio Ambiente y Recursos Naturales. Adenaeur, K., 2013.

<sup>49</sup> See the Greenpeace report, “Perforar aguas profundas. La gran estupidez”, en

<http://m.greenpeace.org/mexico/Global/mexico/report/2013/LA%20gran%20estupidez.pdf>, p. 12.

<sup>50</sup> See *¿Cuál es el verdadero impacto de un derrame de petróleo?* March 29, 2016 from the BBC Mundo website: [http://www.bbc.com/mundo/internacional/2010/04/100428\\_derrame\\_petroleo\\_claves\\_lp.shtml](http://www.bbc.com/mundo/internacional/2010/04/100428_derrame_petroleo_claves_lp.shtml). Pérez, J. (2012). Oil Impacts on Marine Invertebrate Populations and Communities. *American Zoologist* 1993 33(6):510-523. Jewett S.C., Dean T.A., Woodin B.R., Hoberg M.K., Stegeman J.J. Exposure to hydrocarbons 10 years after the Exxon Valdez oil spill: Evidence from cytochrome P4501A expression and biliary FACs in nearshore demersal fishes (2002) *Marine Environmental Research*, 54 (1), pp. 21-48.



environment and human health: For this reason, it must be “carefully supervised”<sup>51</sup>. This process can cause oil spills and release waste water which pollutes both water systems and the soil. Moreover, volatile chemical substances from the refining process can enter into the atmosphere causing high levels of air pollution. For this very reason, “people living near petrol refineries or in areas where there has been an oil spill run the risk of inhaling or ingesting toxic materials and those thus exposed run the risk of developing skin complaints, digestive and respiratory problems and cancer”<sup>52</sup>.

Lastly, it is worth noting that the *sale of petroleum-based products* such as bottles, packaging and plastic bags also causes environmental damage if we do not act properly, because they are all products and materials which take years to biodegrade; if a proper process of recycling and reuse is not followed they can pollute the ecosystem, causing irreparable damage to it. In this regard, let us recall that on the *World Environment Day* on 5 June 2018 the UN *declared war on plastic* and informed us that “around 51 billion microplastic particles are now floating in the seas and oceans of this planet”<sup>53</sup>.

### **3. ACTIONS AND MEASURES TAKEN BY PEROLEUM COMPANIES TO PROTECT THE ENVIRONMENT AND MEET THE SDGs.**

Companies engaged in petroleum extraction and or/ refining are currently more aware of the environmental impacts of their activities. These petroleum companies now tend to recognize that their activities harm both the environment and the health of people living close to the area where they conduct their activities. For this reason, the petroleum industry is increasingly aware of the need to introduce environmental management systems, and it has been forced to develop a sustainable development policy. Although, as noted above, sustainable development was first mentioned in the Brundtland Report, it was not until the beginning of the 21<sup>st</sup> century that petroleum companies stepped up their efforts to enhance responsible practices and communicate their responsible practices to the public at large.

This change of attitude on the part of the petroleum companies stems from the fact that, at the beginning of the 21<sup>st</sup> century, the environment, or environmental protection, was starting to be seen as the key to sustainability and the petroleum companies were being signalled out as the main cause of global environmental degradation because of the environmental impacts of their activities. To achieve sustainable development, petroleum companies had to strike a balance between their economic development as companies, the preservation of the natural environment in the areas where they conduct their activities and operations and the social development of local communities. Currently the integrated approach to sustainable development that has been institutionalized includes these three inextricably linked elements. To be more specific, since the 1970s, the first international

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<sup>51</sup> Margaux Cassand, Op. cit, p. 17.

<sup>52</sup> *Ibidem*.

<sup>53</sup> For more information, see: <https://www.20minutos.es/noticia/3359261/0/mar-mares-plasticos-basura-contaminacion-estrellas-galaxia/#xtor=AD-15&xts=467263> (Consulted 12 June 2018).

measures relating to environmental protection have forced petroleum companies to invest time, attention and economic resources in trying to find ways of preventing or counteracting the adverse environmental effects of their activities. The negative public image of polluting companies, boycotts of their products and possible closure of plants that damage the environment had a high cost for these companies; this drove them to look for mechanisms that would enable them to know and plan ahead of the environmental effects of their production projects.

This adaptation process started to become a reality after the 1972 *Stockholm Conference* and the OECD's acceptance of the "polluter pays principle" in the same period. From then on, all industrialized countries have been building up a set of environmental regulations to control industrial activities. For their part, the petroleum companies have been adapting to these new restrictions, with varying degrees of commitment and success. For example, in the 1970s, the United States developed a procedure for evaluating environmental impact (called (Environmental Impact Assessment) which was legally enshrined in the *Ley Nacional de Política Ambiental* (National Environmental Policy Act). Subsequently, evaluations that aim primarily to reduce the impact caused by the pollution generated in a project have been "adopted in practice by many countries and /or introduced into their environmental legislation"<sup>54</sup>. Another important moment was the creation of IPIECA, an organization founded and funded by petroleum companies that specializes in environmental and social issues. The goal of IPIECA is to promote better environmental protection practices <sup>55</sup>. With this purpose in mind, IPIECA prepares documents and reports on good practices, for the petroleum and gas sector. The organization is made up of 36 companies, including 6 world leaders and 7 national petroleum companies and almost 20 associations, which in turn represent hundreds of petroleum and gas companies.

### **3.1. Conflicts between Petroleum Companies and Private and Public Agents and their effects on environmental protection.**

The first conflicts between petroleum companies and private agents such as NGOs began in the 1980s. The opposition to the activities of petroleum companies in the Ecuadorian Amazon that was led by *Acción Ecológica* is a prime example of such conflict. Between 1989 and 1994, *Acción Ecológica* led the campaign "Amazonía por la vida", which received the support of indigenous organizations who had no hesitation in denouncing *Texaco's* activities in the area. The mobilization campaigns did not succeed in preventing the petroleum company from causing serious environmental damage and reducing the quality of life of nearby communities. In the year 2000, plans to build a heavy crude pipeline (HCP) generated another conflict between ecologist movements and the petroleum company, because the works were going to have a direct impact on the *Mimbo Nambillo Protection Forest* in the western slopes of the Andes. Once again, the

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<sup>54</sup> SEMARNAT, 2012

<sup>55</sup> In <http://www.ipieca.org/es/acerca-de-ipieca/> (Consulted 20 July 2018).

campaign against the HCP failed to stop the project from going ahead. However, thanks to its great impact on public opinion, it transformed a technical problem into a general discussion in the media. What matters is that these environmental conflicts had a great impact on national and international opinion, thus generating a collective awareness of the polluting nature of the activities of petroleum companies. Campaigns like “Amazonía por la vida” demonstrated the determination of those involved to shield the Amazon region from indiscriminate, uncontrolled actions on the part of petroleum companies.

From that moment on, in response to these campaigns against the activities of petroleum companies, many countries began to introduce their own widely differing environmental laws. For example Mexico, with its rich natural resources in both inland and coastal regions, enacted several environmental protection laws and created a number of environmental organizations, including the *Comisión Nacional de Hidrocarburos* (CNH), in charge of regulating exploration and production activities and at a later date, the *Agencia de Seguridad, Energía y Ambiente* (ASEA). The two main activities of ASEA are to produce efficient and effective regulations relating to the safety of the petroleum sector and to supervise compliance with those regulations. To carry out both these activities effectively ASEA can introduce more precise regulations that do not necessarily inhibit Petroleum production, Moreover, the 2013 reform brought in a new energy model which transformed the way in which the petroleum industry is regulated in Mexico, giving the government more resources and more technical capacity for supervising the activities of the petroleum industry. With the new regulatory framework, the petroleum companies must conduct an environmental analysis in the area which they are going to operate (called *línea base ambiental*, in Spanish ), report the results of the analysis to the State and draw up plans to avoid soil, water and air pollution, along with mitigation and prevention plans. <sup>56</sup>.

### **3.2. Sustainable Companies and Corporate Social Responsibility**

At the beginning of the XX1 century, the fight against climate change became one of the priority goals on the international agenda. This development coincided with the growing awareness of the harmful effects of global warming and the need to change the global energy matrix. The evidence of environmental impact generated by the activities of Petroleum companies led firms to propose internal means of environmental management. This basically consists of internal environmental management procedures developed by industry for industry in response to the growing amount of environmental legislation and increased public interest in environmental issues. So, for a number of years now the message that petroleum exploitation must be environmentally sustainable has slowly been getting through. Petroleum companies must create sustainable firms but the question that needs to be asked is: “Can the extraction and refinement processes for hydrocarbons, especially those employed with petroleum, be made sustainable?”<sup>57</sup>

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<sup>56</sup> See <https://www.gob.mx/cms/uploads/attachment/file/214/ENE.pdf> (Consulted 22 July 2018).

<sup>57</sup> Daena: International Journal of Good Conscience. 12(3)42-64. December 2017. ISSN 1870-557X 49

Having recognized both the polluting nature of their activities and increasing social awareness of the environmental impacts of human activity, companies have been forced to develop the concepts of Sustainability and Corporate Social Responsibility (hereafter CSR). Most authors consider that Social responsibility first appeared in the 1950s, with the publication of the economist Howard Bowen's work "Social Responsibilities of a Businessman"<sup>58</sup>. There are many definitions of CSR, but the best known and most often cited is that of the European Commission: « a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis »<sup>59</sup>. So, CSR prioritizes both the social and the environmental spheres. The environmental sphere generally relates to the damage caused to other species to nature as a whole or to future generations by the action or inaction of individuals, groups, companies or countries. In this respect, the environmental responsibility of petroleum companies is evident, and this forces them to "act so that the effects of [their] action are compatible with the permanence of genuine human life"<sup>60</sup>. This obligation is known as the sustainability principle"

However, the concept of environmental responsibility should also comprise that of "reparation for environmental damage". Part of this responsibility lies with petroleum companies, as they are the main source of environmental pollution. For this reason, companies nowadays should include strategies for minimizing environmental impact in their general plans. One such strategy is the policy to implant clean<sup>61</sup> zero emission<sup>62</sup> technologies. It is clear then that since the beginning of the XXI century, the petroleum industry is aware of the need to strike a balance between energy supply and the reduction of global emission levels; and the States are also beginning to understand that it is not much use being a highly developed country with a good economic position, unless you have a set of regulations and policies oriented towards environmental conservation.

The companies in this sector are currently obliged to respect the environment and the planet. In the XXI century the petroleum industry has so far developed "a control methodology to compensate for and/or mitigate the impact generated by the petroleum industry"<sup>63</sup> and has invested thousands of millions of dollars in the research, development and application of technologies that aim to reduce the industry's carbon footprint and clean up its image which has been getting worse by the day. We highlight some of these measures below:

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<sup>58</sup> BOWEN H.R., *Social Responsibilities of the Businessman* (1° ed), New York, Harper and Row, 1953. BOUR, E., "Responsabilidad Social de la Empresa. Análisis del Concepto". *Estudios Económicos*, Vol. XXIX (N.S), n° 59, July-December 2012, pp. 1-30.

<sup>59</sup> European Commission 2011, in MARGAUX CASSAND, Análisis de la RSE de dos grandes compañías petroleras: contraste entre las acciones realizadas y la percepción pública. Facultad de Ciencias Económicas y Empresariales, 2014, p. 12.

<sup>60</sup> JONAS, H., *The Imperative of Responsibility: In Search of Ethics for the Technological Age*, University of Chicago Press, Chicago, 1995.

<sup>61</sup> In the company context, *clean technology* means technology that has no secondary effects and does not alter environmental balance or natural ecosystems.

<sup>62</sup> SOPER, Kate, *What is Nature? Culture, Politics and the Non-Human*. Blackwell, Oxford, 1995.

<sup>63</sup> SERNA MURILLO, José Antonio; "Investigación sobre Acondicionamiento ambiental y sostenibilidad en las prospecciones petrolíferas", PhD Thesis, Universidad Politécnica de Madrid, 2008.

A) Measures that aim to reduce GHG emissions. As we noted above, GHG emissions from production, refining and distribution installations constitute one of the biggest environmental impacts generated by the petroleum industry. The reduction of GHG emissions is a genuine priority for the petroleum industry, as demonstrated by the investment in research and development with a view to employing new methods to reduce direct and indirect GHG emissions. An example of such innovations is the development of techniques for capturing, transporting and storing CO<sub>2</sub>. However, the environmental policies of the petroleum companies have not so far led to a significant reduction in global emissions.

The petroleum company *Total*, a leader in petrochemical refining and in the distribution of fuels and lubricants is a case in point. *Total* committed to reducing its emissions by 15% by 2015, in comparison with 2008 levels and achieved its goal two years earlier than planned<sup>64</sup>. To achieve this goal they implemented, in 2009, the programme “Total Ecosolutions”, which provides clients with innovative solutions that offer an equivalent service to the competition, but with reduced consumption of natural resources and a lower environmental impact. Precisely because *Total* has achieved its aims with regard to reducing GHG emissions, it should set itself further emission reduction targets in the different phases of its industrial activity. Moreover, this company has belonged to the World Bank's *Global Flaring Reduction Partnership* since 2004 and it committed to halving gas burning on its platforms between 2005 and 2014. By 2013 it had already achieved this goal. Indeed, in Nigeria, which is not only one of the largest petroleum producers in the world but also a country in which gas burning was a common practice, *Total* resolved to avoid burning gases on its new platform ( which started operations in 2014) and to use the gas generated by petroleum production as an energy source.

For its part, *Petróleos Mexicanos* (hereafter PEMEX), developed a sustainable development strategy in all its lines of work from 2004 onwards. With regard to atmospheric emissions, *PEMEX* has opted for a change in technologies, and especially for the use of more efficient combustion equipment to reduce GHG generation. In this respect, it has started to use so-called high efficiency burners, which reduce emissions by 20-30 % in comparison with conventional burners. This has enabled them to minimize and control operational risks and improve energy efficiency. Moreover, *PEMEX* has built and rehabilitated high efficiency burners to replace obsolete and inadequate technology in its production installations and thus cope better with volumes of gas that cannot be processed.

Likewise, *Petrobras*, the largest petroleum producer in Brazil, involved in exploitation, production and refining, transport commercialization, production of petrochemical goods distribution etc in over 25 countries, is noted for its recent investments in environmental protection. To be more specific, it has carried out

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<sup>64</sup> Total, 2014, Fernández, J. "Análisis de la Ley de Responsabilidad Medioambiental", Ingeniería Química, 160-167, 458 April, 2008.

programmes to reduce gas combustion, conducted research and development programmes and introduced biofuels, among other things. It has also launched a CO<sub>2</sub> recovery operation which aims to reduce GHG emissions. It should also be noted that, since 2003, Petrobras has been a member of the *United Nations Global Compact*, an initiative in which the member organizations agree voluntarily to align their strategies and operations with ten universally accepted principles, which are divided into four areas: human rights; workplace regulations, environment and the fight against corruption. Petrobras is the only Latin American company on the board of United Nations Global Compact. However, its efforts to reduce GHG emissions have had a meagre impact so far. In 2012, its activities generated 20% more emissions than those of the previous year.

B) Measures oriented towards the reduction of non-biodegradable waste and towards environmental self-sustainability, that is repairing environmental damage by replacing and paying for resources that have been used up. There is no doubt that the implementation of policies that respect the environment will also have economic benefits for petroleum companies. Measures such as reforestation, fauna regeneration and tree replanting promote the sustainable consumption of raw materials in the medium and long term. One example of this in the area of waste management is the investment by petroleum companies such as PEMEX in recycling programmes for waste oils generated during the exploration and production phases, in compliance with current environmental regulations. Likewise, equipment is being adapted to increase its efficiency and thus help reduce the volume of waste oils generated during preventive maintenance. With regard to the handling of drill cuttings, it should be noted that they are being reused today as an alternative fuel source.

C) Petroleum companies also develop Biodiversity Action Plans: some companies have implemented or are implementing programmes which enable the gradual and controlled replacement of harmful techniques used in the petroleum industry with newer environmentally- friendly techniques. For example, *Total* is developing a biodiversity action plan for all its industrial facilities along with plans for new facilities in areas protected by the International Union for the Conservation of Nature<sup>65</sup>. Furthermore, in 2013, *Total* undertook not to conduct activities related to the exploration and extraction of gas or petroleum inside *UNESCO World Natural Heritage* sites. *Petrobras*, for its part, shows its concern for biodiversity via its investment in biodiversity plans and initiatives. It is collaborating with universities and research centres with a view to developing initiatives to protect biodiversity, restore forests in protected areas and protect endangered species among other things. For example, it has sponsored biodiversity projects in the Amazon and conservation plans for Amazonian aquatic vertebrates (Aquavert). It is also making investments that aim to recover and protect Patagonian habitats. However one criticism levelled at *Petrobras* by NGOs is that it should invest more in preventing catastrophes and less in programmes to recover areas that it has previously damaged.

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<sup>65</sup> Total, 2013.

On another note, we would like to highlight the contribution of petroleum companies to “the building of schools and hospitals, the concession of microcredits for the local population and support for youth employment programmes in developing countries. In the last few years, they have even formed alliances with development organizations such as the *United States Agency for International Development* (USAID) and the United Nations Development Programme”<sup>66</sup>.

In essence we can conclude that these measures have sometimes given the impression that the petroleum sector, or the hydrocarbons sector in general have been at the forefront of Corporate Social Responsibility. However, these measures are insufficient as they have not yet led to a significant drop in carbon emissions.

### **3.3. Marketing Measures. Projecting a “green” image**

Petroleum Companies have not always been convinced practitioners of CSR. Indeed on many occasions their main reason for investing in the social or environment side of their activities has been to protect or improve their public image.<sup>67</sup> In a similar vein, some companies implement measures not only to comply with environmental laws but also to release part of the pressure that society is currently exerting on them. As part of this marketing push, some companies are changing their slogans. *BP* now calls itself Beyond Petroleum instead of *British Petroleum*, and invests in biofuels, solar energy and wind energy.<sup>68</sup> *Shell* is also trying to expand into renewable energy. The *American Petroleum Institute* (API) published a list of environmental principles in order to guide its employees in their search for better practices, while the Petroleum industry in the States has been investing millions of dollars since 1990 to improve environmental performance in its facilities. For its part, *Petrobras*, the leader of the Brazilian petroleum sector has published reports claiming that its mission is to “ensure that its oil and gas industry activities are conducted in an ethical, safe and profitable manner, with social and environmental responsibility, providing products suited to the needs of its customers and contributing to the development of Brazil and the countries where it operates”<sup>69</sup>. Moreover, *Total*, the fifth largest petroleum company in the world, confidently declares in its advertising campaigns that its actions are based on three fundamental pillars: ethics, safety and social and environmental responsibility<sup>70</sup>. *Petrobras* has even created a web page called “Biomapas” (Biomaps) in which it provides information on the biodiversity of the areas in which it operates. Moreover, to broaden its knowledge of topics related to

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<sup>66</sup> CASSAND, M., Op. cit., p. 14

<sup>67</sup> Idem, p. 7 y 15.

<sup>68</sup> BEDER, S., *BP: Beyond Petroleum? In Battling Big Business: Countering greenwash, infiltration and other forms of corporate bullying*, edited by Eveline Lubbers, Green Books, Devon, UK, 2002, pp. 26-32. William M., "BP Goes Greener with 'Beyond Petroleum' Rebrand," *Planet Ark*, July 25, 2000, ([www.planetark.org/dailynewsstory.cfm?newsid=7577](http://www.planetark.org/dailynewsstory.cfm?newsid=7577))

<sup>69</sup> Petrobras misión statement, 2014.

<sup>70</sup> Fernández, J. "Análisis de la Ley de Responsabilidad Medioambiental", published in *Ingeniería Química*, 160-167, April 2008.

biodiversity, the Brazilian Petroleum Company joined the Proteus Project, which provides access to global data bases on protected areas and species.

However, the investments that Petroleum Companies have made in new technologies and cleaner practices since the beginning of the XXI century have not succeeded in improving their overall image or even in projecting a “greener” image. Moreover, the disaster in BP’s off-shore platform in the Gulf of Mexico in 2010, or Ecuador’s lawsuit against *Chevron* for polluting the Amazon have damaged their reputation. The international monetary crisis at the beginning of the 2010 decade has also harmed petroleum companies and led them to lose interest in projecting “a clean image” or indeed in actually protecting the environment. Nowadays, it is more profitable for petroleum companies to present themselves as creators of employment and economic engines. Environmental organizations recognize this and maintain that petroleum companies, which can never be ecological no longer attempt to present themselves as sustainable, preferring instead to highlight their role as job creators and drivers of the economy<sup>71</sup>.

Despite the measures adopted by some petroleum companies, the sector as a whole has received criticism from many sectors for being more worried in general about *compensating for the damage that they have caused than about preventing such damage in the first place*. Research has shown beyond all doubt that adopting prevention measures is the most effective solution for petroleum companies. Indeed, a proactive approach involving constant investment in research and development tends to have a much lower cost (around four times less ) than a reactive approach which has to make up for incidents that have occurred. In this respect, environmental organizations object that “the petroleum industry would like to have us believe that they are becoming cleaner and more careful, but this is an inherently polluting industry and cannot stop being so as long as it continues to burn products that release greenhouse gases into the atmosphere”<sup>72</sup>. For ecologist organizations, the actions carried out by petroleum companies merely project an appearance of sustainability.

#### 4. SOME CONCLUSIONS

The following conclusions can be drawn from this chapter:

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<sup>71</sup> We should also bear in mind that the petroleum industry is not in its best moment, as prices have fallen significantly since 2018, from nearly 110 dollars per barrel in June 2014 to below 50 dollars per barrel in July 2018. Factors such as the great increase in petroleum production in the United States and the clear economic slowdown in China account for this drop in price. The situation is not expected to improve in the short term.

<sup>72</sup> Declaration made by Greenpeace research director, Kert Davies, to the BBC. Source: [https://www.bbc.com/mundo/noticias/2012/03/120229\\_medioambiente\\_petroleo\\_etiqueta\\_verde\\_wbm](https://www.bbc.com/mundo/noticias/2012/03/120229_medioambiente_petroleo_etiqueta_verde_wbm) (Consulted 22 July 2018).



1. The actions of transnational companies should have environmental protection at their core. Like any human construction on the international scene<sup>73</sup>, transnational companies should not only respect the environment but also promote its protection within their sphere of influence. Respect for and protection of the Environment protection must be a fundamental goal for all the actors in international society, including the States and transnational companies, if we wish to make significant progress towards achieving the SDGs.

2. A long time elapsed between the first signs of anthropogenic climate change, caused in part by greenhouse gas emissions, which are in turn generated primarily by the current energy model based on the burning of fossil fuels, and the first actions aimed at controlling this situation. The process of fighting climate change has been slow and complicated: despite the publication of reports emphasizing the gravity of the problem, campaigns by NGOs and environmental organizations, and ever-increasing political and social awareness of the consequences of the situation, the response to the problem has been slow and insufficient. To make matters worse, when agreements have been signed, most have not been legally binding and the countries most responsible for global pollution have not honoured their commitments.

3. The petroleum sector has a key role to play in fighting one of the most serious problems facing humanity: climate change, in part caused by the exploitation, production and consumption of fossil hydrocarbons, above all petroleum. As the petroleum industry is one of the international actors that generates the highest quantity of GHG emissions in each of the phases involved in petroleum production, it should reduce its emissions thereby reducing the risks associated with their activities. Indeed, the petroleum industry understands that unless they reduce their environmental impact, society will not continue to support their activities in the areas in which they work. This explains why the petroleum companies have been investing significant amounts of money since the beginning of the XXI century in an attempt to reduce their environmental footprint. In the United States alone, more than 431 million dollars (over half of which came from companies involved in petroleum exploration and production) were invested between 2000 and 2014 in environmental protection activities ranging from carbon capture and storage to an increased use of renewable energy sources. More than half of the investment focused on implementing measures and technologies designed to improve air and water quality.

Despite this progress, petroleum companies must continue working towards reducing their environmental impact. The evidence discussed in this chapter gives us cause to demand that petroleum companies make more significant progress towards complying with the 2030 Agenda, above all in the area of environmental protection. The information that we are receiving continues to reveal deficiencies in the environmental protection measures taken by petroleum companies and obstacles towards applying such measures. The challenge for these companies is to demonstrate greater commitment and

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<sup>73</sup> MERLE, M., Sociologie des relations international. *Revue française de sociologie*, 19-2, Paris, 1978.

responsibility towards environmental protection, because, although we are moving towards the “depetrolization” of our economy, there is still a long way to go before alternative energy sources can replace petrol completely<sup>74</sup>.

Renewable energy sources currently account for just 3+ % of the global energy mix<sup>75</sup> and fossil fuels for nearly all the rest.<sup>76</sup> Today the cost of technologies for producing alternative energy or cleaner energy (wind energy, solar energy etc) is simply too high. Consequently, we cannot use renewables as our only energy source, because there is not enough suitable technology available. For this very reason, while we are moving towards a model based on sustainable development and renewable energy, petroleum companies must apply and enhance policies that promote mitigation that is measures oriented towards reducing GHG emissions and enhance carbon sinks. Ultimately, all these companies must form an Alliance, with the aim of reaching the *2030 Agenda* Goals and direct their actions fundamentally towards matters relating to environmental protection.

### GRAPHIC TRANSLATION

Datos informe: Report Data

Consumo de energía primaria 2016: Primary Energy Consumption 2016

Consumo en el mundo 2016 vs 2015: World Consumption 2016 vs 2015

Petróleo: Petroleum

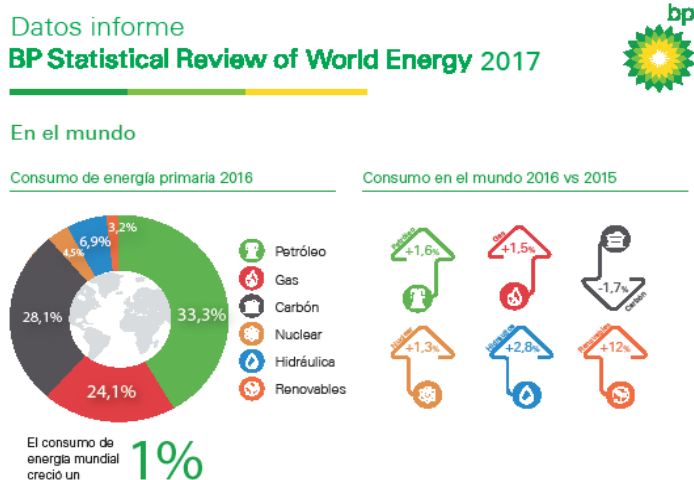
Carbón: Coal

Nuclear: Nuclear

Hidráulica: Hydraulic

Renovables: Renewables

El consumo de energía mundial creció un 1 %: World energy consumption rose by 1%



<sup>74</sup> According to BP’s prestigious *Statistical Energy Review*, the era of petroleum is far from over.

<sup>75</sup> Data from *BP Statistical Review of World Energy 2017*.

<sup>76</sup> Data from *Informe BP Statistical Review of World Energy 2017*.

## *Chapter 7*

# PUBLIC-PRIVATE PARTNERSHIPS AND ACCESS TO WATER AND SANITATION IN LATIN AMERICA (SDG 6)

JOSÉ MANUEL RODRÍGUEZ BARRIGÓN

*Professor of Public International Law and International Relations at the  
Extremadura University*

**SUMMARY:** 1. INTRODUCTION. 2. PUBLIC-PRIVATE PARTNERSHIP IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT. 3. NATIONAL CONDITIONS FOR THE ESTABLISHMENT OF PUBLIC-PRIVATE PARTNERSHIPS. 4. INTERNATIONAL NORMATIVE ASPECTS OF WATER MANAGEMENT AND SANITATION. 5. CONCLUSIONS.

**ABSTRACT:**

The Sustainable Development Goals contemplate Public-Private Partnerships as one of the means to achieve them, including access to water and sanitation contained in Goal 6. Ensuring the availability of water and sanitation for all is a function that States assume as public services. However, the need to extend it to the entire population often requires cooperation with the private sector, especially given the difficulties that exist in States with regard to financing, knowledge and the management of these resources. To reconcile these aspects with the recognition of the right to water raises important legal problems, which must be addressed in the future in order to

satisfy the commitments assumed by States with the SDGs and the interests of the private sector for the realization of investments.

**KEYWORDS:**

Sustainable Development Goals - Water and Sanitation - Public-Private Partnerships - Right to Water.

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## 1. INTRODUCTION.

The conclusion of partnerships to achieve Sustainable Development (SDG) has been identified as a particular objective in the 2030 Agenda. The 17 goal addresses the need to strengthen the means of implementation and revitalize the global partnership for sustainable development, including an important role to the constitution of “effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships”<sup>1</sup>.

Under this premise, it can be noted that the achievement of the SDG is not the exclusive task of the public authorities, but also involves the association of other actors in their achievement, including the private sector and civil society<sup>2</sup>; but in any case, the basis of an alliance between them must start from the establishment of common objectives and a vision that can be shared by all the participants in them. The achievement of the SDG will undoubtedly require, in general terms, that significant financial resources be allocated to this end, but the important of the way in which these goals contained in 2030 Agenda are established must be stressed. This is not only due to the qualitative improvement in the set of goals that are linked to sustainable development, but also to the techniques used to achieve these results<sup>3</sup>.

Nowadays, however, it can be understood that the entity acquired by the subjects covered by sustainable development requires the public sector to establish the orientation to be followed in this regard. It is essential to establish a regulatory framework that facilitates and encourages the attraction of investments to strengthen one's own development, but at the same time, the State has the responsibility of exercising its legitimate control functions, strengthening surveillance and auditing from its institutions to guarantee sustainability.

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<sup>1</sup> Goal 17, Target 17.

<sup>2</sup> The General Assembly of the UN adopts on 25 September 2015 the Resolution *Transforming our world: the 2030 Agenda for Sustainable Development* (A/RES/70/1), in which it declares “The revitalized Global Partnership will facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, civil society, the private sector, the United Nations system and other actors and mobilizing all available resources” (par. 60).

<sup>3</sup> In this regard, we must go to the comparison with the Millennium Goals, which urged States to make quantitative improvements through the traditional political instruments (contained in the “United Nations Millennium Declaration”, adopted by the General Assembly on 8 September 2000).

Perhaps one of the areas in which it is possible to appreciate the complexity that this cooperation is the water and sanitation. It is known that the 2030 Agenda has established a strict link between the access to the clean water and the sustainable development in order to “Ensure availability and sustainable management of water and sanitation for all” (Goal 6). This causes important questions that must be studied to reach a global alliance on the water and the sanitation for all that could facilitate the achievement of this targets. Latin America is an interesting stage for the observation of these achievements and the identification of some of the most important problems that faces the participation of the private sector in certain forms of alliance in this fundamental area.

In the 21st century, societies face important challenges with regards the infrastructures, essential in view of the transformation that are taking place in the human needs and the environment. It will be evident in different sectors that are related to the development, but States often do not have the capacity to assume their financing and sustainability, especially with the "urgency" of achieving certain targets.

## **2. PUBLIC-PRIVATE PARTNERSHIP IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT**

Finding the means of financing sustainable development has been a major concern of the International Community. In this context it has come, earlier even of the celebration of the Summit of the Sustainable Development 2015, to determine the different techniques through which means can make come together to achieve development, among which a relevant role is given to cooperation between the public and private sectors. In this line, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda) marks a few significant orientation on having recognized that “both public and private investment have key roles to play in infrastructure financing, including through (...) mechanisms such as public-private partnerships”<sup>4</sup>.

Certainly, it does not constitute an authentic innovation in the international arena to encourage States to adopt these techniques to achieve certain objectives that, with their own resources, cannot be achieved, either by insufficient financial means, or by not having the necessary knowledge for it. If, up to the 60s, the State appears like the main instrument promoter of the economic and social development of the peoples, the neoliberal ideas begin imposing later, impel economic models which facilitate the private sector assumes task that traditionally have been understood as public with different techniques grouped under the expression “public-private partnership”<sup>5</sup>.

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<sup>4</sup> Resolution adopted by the General Assembly on 27 July 2015 (A/RES/69/313), par. 48.

<sup>5</sup> Although remote antecedents may be evoked, in these historical moments, it is understood that the improvement of public services and the functioning of the State involves reducing the size of the State, allowing private actors to participate in the performance of some of its functions. See, SAVAS, E.S.,

Accumulated experiences cannot be subject of a general treatment as they demand an analysis case by case very wide if they want to be contemplated to an universal scale. But quite apart from ideological considerations, it seem undeniable that the objectives that the States chase are not readily assimilated to the interests of the private actors, which produce certain incompatibilities that are difficult to avoid in public-private partnership (PPP). The evaluations that are done of them are distant from being homogeneous. Therefore, it has been criticized that these PPP can compromise the quality of the public services and does not justify properly its relation with the cost; they even sometimes facilitate the speculation and the exploitation when companies that can refinance with them or transfer their shares assume the infrastructures<sup>6</sup>. Not even in the European States the evaluation is sufficiently homogeneous when these instruments have been adopted to the application of resources proceeding from the European Union, in which there are shortcomings of legal of institutional for the execution of the PPP projects<sup>7</sup>.

In these circumstances, the Goal 17 of the 2030 Agenda for Sustainable Development has caused some reticence in some in sectors to mention past practices that have not been positive. The need to establish an enabling environment for the private sector to contribute to the implementation of the Agenda was therefore raised, but certain conditions are also proposed for the development of cooperation between the public and private sectors. In particular, the Addis Ababa Action Agenda notes that these instruments of cooperation may include such important aspects as "planning, contract negotiation, management, accounting and budgeting for contingent liabilities". However, any imbalances between the parties are offset by stressing these partnerships "should share risks and reward fairly, include clear accountability mechanisms and meet social and environmental standards"<sup>8</sup>.

There is a certain caution against the repetition of less desirable situations in the past, which require such partnerships to be oriented towards sustainable development and the fulfillment of certain objectives; but they also take into account that they may compromise some services that are fundamental to societies or even to human rights in certain circumstances. In this regard, it is important to take into account the presence of the United Nations Global Compact, as a promoter of sustainable development in such important areas as human rights and business, labour standards, the environment and the fight against corruption. Despite its legitimacy and effectiveness are under discussion<sup>9</sup>, it should be recognised that is an opportunity for an improved approach to partnership with the private sector, where the Global Compact becomes more visible. However, their relationship potentialities must be improved to clarify the interrelation between

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*Privatizing the Public Sector: How to Shrink Government*, Chatham House Publishers - Chatham House series on change in American politics, 1982.

<sup>6</sup> WHITFIELD, D., *Global Auction of Public Assets: Public sector alternatives to the infrastructure market and Public Private Partnerships*, Spokesman Books, Nottingham, 2010. This author bases his criticisms on the analysis of different PPP programs in the United Kingdom, France, Ireland, Germany, USA, Canada, Russia, Australia, China, India, Brazil and South Africa.

<sup>7</sup> European Court of Auditors, *Special report 09/2018: Public Private Partnerships in the EU: Widespread shortcomings and limited benefits*, 7 February 2018.

<sup>8</sup> *Cit.*, par. 48.

<sup>9</sup> VOEGTLIN, C., PLESS, N.M., "Global Governance: CSR and the Role of the UN Global Compact", *Journal of Business Ethics*, June 2014, Volume 122, Issue 2, pp. 179-191.

companies and sustainable development; it has been stressed that it is necessary “a clearer role of the Global Compact, at the global and national levels, in effectively engaging the business sector to support the implementation of the 2030 Agenda”<sup>10</sup>.

But it must be taken into account that there is no universal concept of “public-private partnership”. We can find very different conceptions of the relations that must exist between the State and the private sector<sup>11</sup>. The establishment of various regulatory models on this matter is related to the different mechanisms that societies have chosen to relate to the social agents that build future development, including also the specific projects that are agreed upon to provide themselves with infrastructures, goods or services.

Latin America is not an exception, and is immersed in a process of readjustment of its development schemes, oriented nowadays to the fulfillment of the SDG. Nevertheless, in which new needs are being demonstrated as a result of the decrease in external public resources such as Official Development Assistance and the increase in the influx of private investment. The opportunity offered to public-private sector cooperation is of great interest, although the great diversity of mechanisms and formulas for orienting financial means towards sustainable development generates important issues that have not been defined yet, but which open up a wide range of possibilities under the term “innovative financing for development”<sup>12</sup>. The relevant is that this Latin American region must articulate changes that combine the efforts of the States with the financial systems and civil society, but that will require new partnerships between public and private actors to address social and sustainable development through joint investments<sup>13</sup>.

The interrelationship between SDGs is also evident in relation to the use of resources to achieve them. This is evident in certain events aimed at facilitating partnerships between the actors involved in development. More recently, the Doha High-Level Conference has reiterated the importance of public-private partnerships in channelling resources towards the challenges of sustainable development. However, one of its messages is to underline here: “Scaling up investment in *water* and energy infrastructure is critical”<sup>14</sup>.

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<sup>10</sup> DUMITRIU, P., “The United Nations system - Private sector partnership arrangements in the context of the 2030 Agenda for Sustainable Development”, JIU/REP/2017/8, p. 37. ([https://www.unjiu.org/sites/www.unjiu.org/files/jiu\\_rep\\_2017\\_8\\_english\\_1.pdf](https://www.unjiu.org/sites/www.unjiu.org/files/jiu_rep_2017_8_english_1.pdf)).

<sup>11</sup> There is no universally accepted definition of public-private partnerships, and each State or organisation with competence in this area can contribute its own concept. By way of example, that carried out by the World Bank: “A long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility and remuneration is linked to performance” (WORLD BANK, *Public-Private Partnerships: Reference Guide Version 3.0*. Washington, DC, World Bank, 2017).

<sup>12</sup> ECLAC, *The challenges facing Latin America and the Caribbean regarding financing for the 2030 Agenda for Sustainable Development*, 2018-04-10.

<sup>13</sup> ECLAC, *Horizons 2030: Equality at the centre of sustainable development*, Santiago de Chile, July 2016.

<sup>14</sup> High-Level Conference on Financing for Development and the Means of Implementation of the 2030 Agenda for Sustainable Development, Doha, Qatar, 18-19 November 2017. See message 6.

With this perspective in mind, some of the main components that are present in public-private partnerships in Latin America in relation to water resources will be discussed below.

### **3. NATIONAL CONDITIONS FOR THE ESTABLISHMENT OF PUBLIC-PRIVATE PARTNERSHIPS**

Achieving the SDGs, as noted above, involves the participation of a large number of actors with different characteristics, representing different objectives, purposes and interests. The analysis of Goal 6 in the Latin American region is an example of national efforts being made and the importance of strict alliance with other actors, including those of a private nature. It is clear that in this regional framework, the commitment to implementation of the SDGs has triggered a very outstanding activity based on the unequivocal attachment of States to these goals<sup>15</sup>, and the important analyses and debates taking place in different areas of regional cooperation. On this matter, it should be taken into account that there are different levels of economic and social development in Latin American States, which requires understanding that the measures are very localized in their implementation<sup>16</sup>. However, this is not an obstacle to identify some of the most relevant problems encountered by the PPP in relation to the goal of facilitating access to water and sanitation.

i) For Latin America countries, recent years have been important for the adaptation of its regulatory frameworks, advancing the consolidation of legislation in some States that have expressed reluctance to the implementation of PPPs for certain public spheres of action<sup>17</sup>. But it should be remembered that these States have in common a legal tradition in their administrative systems that starts from the conception of the public service under regulatory principles that, in order to satisfy the general interest, incline towards their state ownership, avoiding the application of the rules of the market by imposing a particular legal regime. The principles of continuity, regularity, uniformity, generality and mandatory appear in a general way in their regulations, enshrining them on occasions at the constitutional level<sup>18</sup>.

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<sup>15</sup> As an expression of this will of the Latin American States to follow the ODS, it can be pointed out that in the Special Declaration on the implementation of Agenda 2030 for Sustainable Development and the fulfillment of the Objectives of Sustainable Development (ODS), issued by CELAC at the Punta Cana Summit in 2017, it has meant the reaffirmation of "our conviction, the value that cannot be postponed and the commitment of the region to follow up and integral implementation of Agenda 2030".

<sup>16</sup> The efforts being made and the existing problems over water resources are reflected in ECLAD, *Second annual report on regional progress and challenges in relation to the 2030 Agenda for Sustainable Development in Latin America and the Caribbean* (LC/FDS.2/3/Rev.1), Santiago, 2018.

<sup>17</sup> See this evolution in BOHOSLAVSKY, J.P., *Tratados de protección de las inversiones e implicaciones para la formulación de políticas públicas (especial referencia a los servicios de agua potable y saneamiento)*, CEPAL, 2010.

<sup>18</sup> For example, the Constitutions of Argentina (Article 42), Bolivia (Article 20), Colombia (Article 365), Ecuador (Article 314).



Water supply and sanitation have traditionally been conceived as public services, the provision of which must be guaranteed by the public authorities. This categorization is present in a generalized way in the different legislations of the Latin American States, in which there are logical differences derived from hydrogeological situations, economic and social needs, as well as the organization of powers between state and sub-state levels. Apart from the remaining problems related to integrated water resources management in the region<sup>19</sup>, which are clearly linked to sustainable development, this matter is influenced by the trend towards the normative recognition of a human right to water, including its constitutional norms<sup>20</sup>. This progress is of great importance for the region, but it has an evident impact on the prioritization of public policies and their design. It can be observed that this has led to the incorporation in most national legislations of the priority of water use for the supply of populations over special uses. This has a significant influence on the development possibilities of PPP in the water sector, by conditioning a possible extension of productive activity in areas such as energy or food production.

Under these assumptions, the debates around private participation in water management have had an outstanding importance in Latin America, both in the social, political and academic spheres, especially after such important conflict experiences as the well-known "water war" that took place in Bolivia<sup>21</sup>. There is no doubt that there are ideological aspects that largely inspire the positions adopted in this regard. However, Latin American states have established normative models based on a strict partnership between the public service and state structures for its provision. However, the introduction of private participation must be understood as being related to the provision of this water supply and sanitation service, which requires high investments, advanced technical knowledge and significant organizational capacities. Under these conditions, the terms of the debate on whether public or private (or mixed) companies provide the best service must be determined essentially by technical parameters based on effectiveness and efficiency.

In the recent history of Latin America, private sector involvement in water supply and sanitation has been strongly influenced from the international arena. Since the 1990s, there has been a trend towards the privatization of public services by governments seeking a greater flow of private investment and greater management efficiency, driven by the economic crisis they were experiencing. The strategy adopted by international financial institutions did not prevent a progressive withdrawal of international investors during the first years of the 21st century, re-establishing the nationalisation of these public services

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<sup>19</sup> The 2002 Johannesburg Summit underlined the need to promote the integrated development of water resources as part of ecosystems, but also as a social and economic good to be considered as a whole.

<sup>20</sup> Constitutions of Uruguay (2004), Ecuador (2008), Bolivia (2009), Mexico (2012) and Peru (2017). The scope of this right, in the case of Uruguay, leads to the establishment that the public water supply service may only be provided by state legal persons. In the cases of Ecuador and Bolivia, they allow the provision of this service with private cooperation, but only through joint ventures.

<sup>21</sup> In 2000, the increase in water tariffs imposed by Aguas del Tunari triggered high intensity protests in Cochabamba. This Bolivian company was controlled by a U. S. company, which later became controlled by a Dutch company, which is why the actions of the Bolivian State were submitted to ICSID arbitration under a BIT between the Netherlands and Bolivia. (*Aguas del Tunari, S.A. v. Republic of Bolivia*, ICSID Case No. ARB/02/3).

or facilitating the participation of local private groups that took their place<sup>22</sup>. The international financial crisis that began in 2008 has given leading role to PPPs, encouraged by the need for public services to be properly served, for the infrastructures they lack to be built and for fiscal consolidation to take place. These aspects have led to important legislative reforms in all the States of the region in order to address these needs<sup>23</sup>.

This may have consequences on foreign investment flowing into these States in specific projects, but delimited by normative contexts that are decisively influenced by internationalized components. This is not the place to address it, but it must be remembered that the scope of contracting with foreign private actors can be understood in what has been identified as "global administrative law", which increasingly generates a wealth of principles and institutions that influence on investments, not only granting legal certainty to investors, but also guarantees on the rights of individuals and of States themselves in the protection of their fundamental interests<sup>24</sup>.

ii) Latin American reality, in the perspective of the fulfillment of the SDGs, imposes itself: public financing is insufficient to achieve these goals. For this reason, the combination of public and private resources appears today as a challenge for the region. In April 2017, the First Meeting of the Forum of Latin American and Caribbean Countries on Sustainable Development was held in Mexico City. ECLAC, the organizer of this Forum, plays an important role because it introduces an internationalized component to verify the difficulties and advances in the region, but it is important to highlight its contribution to underline the importance of PPPs in achieving the goals of 2030 Agenda<sup>25</sup>. Involving a broad range of actors in sustainable development is fundamental for ECLAC, and therefore promotes the participation not only of States, civil society and the private sector, but also development banks, United Nations agencies and the various existing regional integration mechanisms.

However, in terms of international investments, the water and sanitation sector has maintained a significant decline in recent years. PPPs focus mostly on energy and transport, which should be taken into consideration in light of the high rates of renegotiation that have occurred in the past, and which are estimated at 92% in water-related projects<sup>26</sup>. Apart from the difficulties implicit in these situations, the origin of these may be found in deficiencies in project preparation and financing, coupled to incomplete or deficient contracts or regulations. The result, under these conditions, is not

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<sup>22</sup> The causes of this situation have been analyzed by DUCCI, J., *Salida de operadores privados internacionales de agua en América Latina*, BID, 2007.

<sup>23</sup> FRIGERIO, G.; GÓMEZ KORT, M., *Asociaciones público-privadas en el sector de agua y saneamiento en América Latina*, Inter-American Development Bank, 2018.

<sup>24</sup> NAVARRO RODRÍGUEZ, P., "El nuevo Derecho Administrativo global como lex administrativa en el arbitraje internacional de inversiones", *Revista General de Derecho Administrativo*, N° 42, 2016.

<sup>25</sup> *Financing the 2030 Agenda for Sustainable Development in Latin America and the Caribbean: The challenges of resource mobilization*. Forum of the Countries of Latin America and the Caribbean on Sustainable Development, Mexico City, 26 - 28 April 2017.

<sup>26</sup> IDB, *Evaluation of Public-Private Partnerships in Infrastructure*, Office of Evaluation and Oversight (OVE), March 2017.

commensurate with the risks assumed. For this reason, the work carried out by multilateral banks it is remarkable, especially the IDB, which allocates resources particularly to generating enabling environments that lead to reforms in some sectors, institutional strengthening and the improvement of regulatory frameworks with the explicit aim of encouraging private operators to participate in the field of infrastructure.

On the other hand, in this regional context it is evident the absence of a particular treatment of the possibilities opened up by public-private cooperation within the different existing integration processes. It is certain that the results of the incorporation of the private sector into water and sanitation management are disparate among Latin American States; even national regulations may be based on different criteria, but this should not constitute an insurmountable obstacle for them to adopt certain measures in the exercise of their powers. The advisability of taking action on them must be considered in the light of the uses given to water as a natural resource, traditionally linked not only to human consumption, but also to other areas such as energy or agriculture. In these areas, the requirements of infrastructures and models of management of the uses can have a transnational scope<sup>27</sup> or impact on the scope of the competences on which these integration processes extend. Although this general perception exists, the Latin American and Caribbean Economic System (SELA), as a regional intergovernmental organization, has taken an interest in linking its actions with the SDGs, especially with regard to PPPs<sup>28</sup>.

In this context, the realization of public-private partnerships in the Latin American framework is largely conditioned by state regulations in transformation and subject, in the international sphere, to the provisions of Agreements for the reciprocal promotion and protection of investments. These give rise to particular problems that will be pointed out later, but which have been strongly rejected in some States with political positions opposed to the submission of disputes to international arbitration<sup>29</sup>.

iii) On the other hand, the complexity of PPPs in water management must be taken into account when disaggregating responsibilities between different levels (state and local). Certainly, it is a matter linked to the different models of territorial organization of the States; however, in the Latin American space these questions raise problems of particular importance in view of the fact that it is a region in which the population has been growing in a very remarkable way in the urban space. The United Nations

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<sup>27</sup> This transnational scope could also involve the participation of transboundary water resources management bodies, such as those provided for in the Guaraní Aquifer Agreement. In this regard, the Brazilian Senate has introduced *Projeto de Lei do Senado n° 495*, de 2017, which modifies the legislation of this State to introduce water markets as an instrument for promoting a more efficient allocation of water resources.

<sup>28</sup> As stated in the document “Objectives and priorities of the Work Programme of SELA and its relationship with the 2030 Agenda for Sustainable Development”, Reflection Meeting among Secretariats of Regional Intergovernmental Mechanisms, Santiago, Chile – 17 April 2018 (SELA-CEPAL/Di N° 1-18).

<sup>29</sup> These positions led the ALBA countries (Bolivia, Ecuador, Venezuela and Nicaragua) to agree at the V ALBA-TCP Summit on 2 May 2007 to withdraw from the ICSID Convention. Although compliance with the agreement was dispersed, some more States expressed criticism of this arbitration model because of the negative consequences it had for their economies and constitutional and social models.

Conference on Housing and Sustainable Urban Development (Habitat III)<sup>30</sup>, although more closely linked to SDGs 11, has a significant impact on issues related to plural participation in the implementation of 2030 Agenda. There is no doubt that access to drinking water and sanitation presents specific problems of great importance for urban populations, which is growing as the number of inhabitant's increases<sup>31</sup>.

The New Urban Agenda agreed in 2017 contains significant contributions in this regard by expressing the commitment to promote equitable and affordable access to infrastructure (point 34), to strengthen sustainable management of resources and to adopt measures aimed at their sustainability, including integrated water resources planning with the participation of all stakeholders and to conserve and use water sustainably, together with the necessary sanitation measures (points 70-73). There is also a need to promote investments in the infrastructure needed to fulfil these commitments under a prism of sustainability, hygienic sanitation and environmental care (points 119 and 120).

Here, the private sector is a fundamental actor ensuring that urban services and goods are properly cared for in a framework of sustainability, so that urban development strategies must have its participation (point 82). Its importance must be seen in the light of the requirements for financing services which have high costs for all societies, and whose individualisation by consumption gives rise to major problems of solidarity within societies. The traditional techniques of financing these costs through tariffs, taxes or transfers are also used in Latin America with unequal results, but they converge in a generalized manner in the insufficiency of financing for water supply and sanitation services, so that closing the financing gap requires countries and their municipalities to mobilize to obtain funds from a variety of sources<sup>32</sup>.

Focusing on this infra-state field, it should be noted that the techniques of participation of cities in the formation of PPPs are very varied. This will depend on not only the regulatory systems in place in each State, but also on administrative capacities, the design of contracts and financial capacities, to which must be added the variable willingness of the authorities to adopt this technique of collaboration between the public and private sectors<sup>33</sup>. For this reason, it is interesting to observe how the phenomenon of the progressive relationship of cities in international contexts, mainly through the

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<sup>30</sup> Held in Quito, Ecuador, on 20 October 2016. The UN General Assembly endorsed the New Urban Agenda through Resolution 71/256 of 23 December 2016. It is worth noting that it was the first World Conference held after the adoption of 2030 Agenda.

<sup>31</sup> ECLAC has identified water management and urban management as one of the main challenges facing Latin America (The sustainability of development in Latin America and the Caribbean: challenges and opportunities, ECLAC-UNEP. Santiago, Chile, July 2002). Already in the context of ODS, it has facilitated private collaboration with actions such as the Public-Private Dialogue for Urban Sustainability in Latin America and the Caribbean, framed in the Conference of Cities held on 4 and 6 October 2017.

<sup>32</sup> COX, A. and PETER BÖRKEY, P. "Desafíos y opciones de política pública para financiar el agua y el saneamiento urbanos", en AGUILAR BARAJAS, I.; MAHLKNECHT, J. KALEIDIN, J. KJELLÉN, M. MEJÍA-BETANCOURT, A. (eds.), *Agua y ciudades en América Latina: Retos para el desarrollo sostenible*, Inter-American Development Bank, 2018, p. 65.

<sup>33</sup> *Evaluando el entorno para las asociaciones público-privadas en América Latina y el Caribe*, Infrascopio 2014, BID. As highlighted in the document, the most extensive PPP experiences at the sub-state level take place in Brazil and Mexico, facilitated by federal systems that grant ample autonomy for the conclusion of this type of contract.

formation of regional networks, is of interest for the treatment of common problems such as water management and sanitation. However, the organizational models available in each State will essentially condition the possible solutions provided with the participation of the private sector.

#### **4. INTERNATIONAL NORMATIVE ASPECTS OF WATER MANAGEMENT AND SANITATION**

It must be borne in mind that any treatment given to the participation of companies in the water sector, being the object of an important promotion within 2030 Agenda, raises some questions that go beyond the simple economic components. On the one hand, the strict association between water and human rights and, on the other, the need to protect the legitimate profitability claims of investors are essential aspects of addressing the relationship between the private and public sectors over water resources. Although it could be understood that these are differentiable material spheres, subject to regulations of disparate origin and content, international practice obliges their interrelation because of their fundamental relevance, especially since projects are normally subject to international investment law, which is not always harmonious with the effective protection of human rights.

i) It is evident that the approach to the SDGs takes human rights as its main basis, as established in 2030 Agenda itself<sup>34</sup>. Achieving universal access to this vital resource is part of these objectives, which requires taking into consideration that Goal 6 is also a means of realizing these rights. Although even today the characterization of a human right to water is the subject of debate, based on different international instruments, the United Nations General Assembly has declared "the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights"<sup>35</sup>. This proclamation as a human right intended not to have a merely programmatic effect, but rather an attempt has been made by the Committee on Economic, Social and Cultural Rights to specify a set of obligations to be assumed by States in order to comply with it<sup>36</sup>.

In these conditions, the conciliation between the right to water, the obligation of States to adopt the necessary measures to guarantee it and the opening up to companies of the provision of this public service is a challenge with important consequences today. The difficulties are increased by the need for access to water not to be distorted in its characterization as a human right. On the contrary, in circumstances where State resources are insufficient to guarantee access to water and sanitation for all individuals,

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<sup>34</sup> As emphasized in the Resolution 70/1, "the achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities" (par. 20).

<sup>35</sup> Doc. A/RES/64/292, "The human right to water and sanitation", 28 July 2010, par. 1.

<sup>36</sup> General comment No. 15, The right to water (arts. 11 and 12 of the Covenant), Twenty-ninth session (2002) (E/C.12/2002/11).

the instrumentalization of cooperation with the private sector to fulfil obligations under international instruments can be seen as beneficial. However, in the presence of human rights, this private participation must be subject to sufficiently strict regulation to be able to impose "public service obligations" on it, especially those related to universality of service coverage, continuity of service, pricing, maintenance of quality and user participation<sup>37</sup>.

They constitute important conditioning factors that require transparent and stable internal regulatory frameworks in the States, as well as a participation in the risks with the suppliers, which makes private investments able to reconcile interests in the presence with the adequate protection of this human right. Some prevention has been carried out in this respect by UNCTAD in noting "private sector operations in infrastructure such as water and sanitation are particularly sensitive because of the basic-needs nature of these sectors"<sup>38</sup>.

Undoubtedly, a relationship between human rights and investment cannot be generalized. In addition to the sometimes imprecise scope of economic, social and cultural rights, the type of investment, the motivations behind it or the responsibilities assumed by governments are determining factors in resolving the existence of human rights violations. But it is pertinent that liberalisation measures in certain economic sectors must present a sufficient balance of rights and obligations for States and investors, so that the responsibilities of States for the protection of these rights are not undermined<sup>39</sup>. In relation to public services such as water and sanitation, the situations resulting from its privatization do not constitute a sufficient basis for the State to be exempted from the responsibility to protect and promote the rights linked to these services, which may lead to conflict due to the lack of coordination mechanisms at the international level between human rights bodies and those whose purpose is the protection of investors' rights<sup>40</sup>. In this regard, the position expressed by the Inter-American Court of Human Rights, which clearly expresses the obligation of States to protect human rights in the face of possible contraventions that may result from this in the application of international agreements of a commercial nature, can be brought forward, stating that "the Court considers that the enforcement of bilateral commercial treaties negates vindication of non-compliance with state obligations under the American Convention; on the contrary, their enforcement should always be compatible with the American Convention, which is a multilateral treaty

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<sup>37</sup> CESCR, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017 (E/C.12/GC/24).

<sup>38</sup> UNCTAD: *Investing in Sustainable Development Goals Action Plan for Private Investments in SDGs* (UNCTAD/OSG/2015/3).

<sup>39</sup> Report of the High Commissioner for Human Rights, *Human rights, trade and investment. Report of the High Commissioner for Human Rights*, 2 July 2003, E/CN.4/Sub.2/2003/9.

<sup>40</sup> KRIEBAUM, U., "Privatizing Human Rights. The Interface between International Investment Protection and Human Rights", in A. Reinisch / U. Kriebaum (Eds.), *The Law of International Relations – Liber Amicorum Hanspeter Neuhold*, 2007, 165-189.

on human rights that stands in a class of its own and that generates rights for individual human beings and does not depend entirely on reciprocity among States”<sup>41</sup>.

For this reason, the different international instruments that have been established in these fields pose some problems of fundamental relevance for understanding the difficulties to which cooperation between States and private actors in the water sector is submitted.

ii) Latin American States have not been an exception to the tendency, already in the twentieth century, to facilitate private investment in sectors traditionally linked to the public sector. To the undeniable benefits sometimes generated by PPPs, accumulated experience has shown that the limits of States' human rights obligations may collide with those underpinning investment promotion and protection agreements. The international nature of these agreements takes as a central element the protection of the investor who is not national against the state recipient of investments, having proliferated dramatically in recent decades<sup>42</sup>, is a potential source of conflicts with particular channels of resolution, usually through arbitration. It is evident that States are restricted in their regulatory and judicial capacities in order to become attractive spaces for foreign investors; they place their trust in the compliance of certain minimum standards of conduct by the State and obtain guarantees of this through the arbitration mechanism<sup>43</sup>.

Certainly, water and sanitation is not the only sector in which tensions can arise between investor protection and the regulatory powers of the State to protect the general interest or give effect to human rights. Although the possible problems have a broader scope, in Latin America there have been some important controversies about water resources arising from state intervention<sup>44</sup>. The starting point is in the usual consideration of water as a simple raw material or as a service when an investment protection agreement applies to it. Under this consideration, ICSID arbitration has maintained a position that prioritizes investor protection over measures that may be taken by States in the exercise of their sovereign functions if this results in expropriation<sup>45</sup>. However, if in a context of fragmentation of international norms in formally unconnected sectors these

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<sup>41</sup> Inter-american Court H.R., Judgment of March 29, 2006. Series C No. 146, Case of the *Sawhoyamaya Indigenous Community v. Paraguay*.

<sup>42</sup> In 2017, the number of bilateral investment treaties and treaties with investment provisions amounted to 3,322 agreements (UNCTAD, World Investment Report 2018).

<sup>43</sup> VAN AAKEN, A., “Perils of success? The case of international investment protection”, *European Business Organization Law Review*, Vol. 9, 2008.

<sup>44</sup> In addition to the above, the following can be seen: *Compañía de Aguas del Aconquija S.A. and Vivendi Universal S.A. v. Argentine Republic* (ICSID Case No. ARB/97/3); *Azurix Corp. v. The Argentine Republic* (ICSID Case No. ARB/01/12); *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales del Agua S.A. v. The Argentine Republic* (ICSID Case No. ARB/03/17); *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic* (ICSID Case No. ARB/03/19); *Aguas Cordobesas, S.A., Suez, and Sociedad General de Aguas de Barcelona, S.A. v. Argentine Republic* (ICSID Case No. ARB/03/18).

<sup>45</sup> In the case *Compañía del Desarrollo de Santa Elena S. A. v. Republic of Costa Rica* (ICSID Case No. ARB/96/1), the arbitral tribunal held that expropriations carried out by States for the purpose of environmental protection do not alter either the nature of the measure or the obligation to compensate for these measures, regardless of whether their origin is in compliance with international standards.

pronouncements seem indisputable, they give rise to problems of great significance when the real result leads to the violation of rights that States must guarantee to individuals.

In this regard, it is interesting to see the conditions under which States do not incur liability vis-à-vis investors when they adopt acts that may have an expropriatory scope, but that are justified in the protection of human rights. Such was the case of Argentina, when it has invoked in the framework of the ICSID arbitration the exemption of necessity and the obligation to comply with the human right to water<sup>46</sup>. The circumstances in which Argentina was going through a serious financial crisis were invoked to justify non-compliance with the applicable bilateral protection agreements due to the inescapable need to ensure people access to water. This was because the economic situation did not allow subsidies for water supply to the City of Buenos Aires. On this specific aspect, the arbitral Tribunals that have had to resolve the claims of the investors do not provide a conclusive conclusion on the exemption from liability based on the state of necessity invoked.

Synthetically, it can be pointed out that Argentina's invocations of the state of necessity motivated by the serious economic crisis have oscillated between the dismissal of the arguments because it considered that it had less harmful regulatory alternatives for the investor<sup>47</sup>, to appreciate the exemption from liability for attending to public order needs and essential security interests, as well as to avoid the collapse of the State<sup>48</sup>. The fact that another arbitral award has recognized the invocation of the protection of human rights and fundamental freedoms in order to substantiate the above-mentioned need can even be understood as a significant step forward<sup>49</sup>. More recently, on December 2016, within the framework of the ICSID, the relationship between the right to water and investments has been addressed with greater breadth; in particular, the implications of the recognition of this right on private subjects have been analyzed, beyond the possible exoneration of State responsibility for regulatory acts. In particular, it stresses that "While it is thus correct to state that the State's obligation is based on its obligation to enforce the human right to water of all individuals under its jurisdiction, this is not the case for the investors who pursue, it is true, the same goal, but on the basis of the Con-cession and not under an obligation derived from the human right to water"<sup>50</sup>.

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<sup>46</sup> Since the early 1990s, Argentina facilitated private sector entry into the provision of different public services, including water supply and sanitation in cities, in order to ensure supply to wider sectors of the population. Under different BITs, some services were privatized. When the financial crisis deepened, the authorities adopted measures such as the freezing of the tariffs paid by consumers, which led to disagreement with investors in the sector, who sued Argentina for violating their rights to modify water prices in the event of inflation or currency devaluation, which hindered the economic equilibrium of the investments made.

<sup>47</sup> *CMS Gas Transmission Company vs. Argentina* (ICSID Case No. ARB/01/8), *Enron Creditors Recovery Corporation y Ponderosa Assets vs. Argentina* (ICSID Case No. ARB/01/3), *Sempra Energy International vs. Argentina* (ICSID Case No. ARB/02/16).

<sup>48</sup> *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. vs. Argentine Republic* (ICSID Case No. ARB/02/1).

<sup>49</sup> *Continental Casualty Company vs. The Argentine Republic* (ICSID Case No. ARB/03/9).

<sup>50</sup> *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa vs. The Argentine Republic* (ICSID Case No. ARB/07/26).



The tendency in some arbitrations to interpret investors' rights expansively may have some dissuasive effects on States by having to face international litigation, which encourages some regulatory containment that may compromise the effectiveness of the right to water. Thus, it has been pointed out that the lack of homogeneity in arbitration solutions causes problems of regulatory cooling and moral hazard for both investors and States<sup>51</sup>. However, it cannot be ignored that prioritizing the interests of investors over state actions aimed at establishing policies aimed at guaranteeing human rights has its origins in BITs, which generally specify investor rights and obligations for States.

It is beyond the scope of this paper to try to give a complete treatment to this matter, and especially possible advances in the conciliation of interests that are present in these investments. However, it can be noted "the core problem is not identifying the rights and norms which need to be upheld and protected under international law, but rather seeking enforcement of those norms "<sup>52</sup>. The formal characterization of protective norms through soft law constitutes insufficient progress at the international level, and their evolution through conventional norms of universal scope can still be understood as improbable. For this reason, despite the still limited attempts to introduce singular protection of the regulatory powers of States as a regime of exception in BITs, there is a certain lack of normative concreteness at the international level on how to reconcile national efforts to comply with SDGs with the maintenance of an investment right isolated from the necessary protection of human rights by States. Some advances can be highlighted, such as the Guiding Principles on Business and Human Rights, which have encouraged the development of national action plans, which seek to ensure compliance with human rights when agreements applicable by companies are concluded. Although it is not a solution to all the problems that arise, at least they can be seen as guidelines for policy coherence and instruments to avoid regulations that lead to setbacks in this area.

## **5. CONCLUSIONS**

The introduction of sustainable development objectives in the international arena constitutes a transformative opportunity for States and societies, in which private actors cannot be absent. Irrespective of the promotional function that has been carried out through the ODS, the participation of the private sector in achieving these objectives is essential, not only because of the financial or knowledge contributions, but also because it constitutes one of the pillars on which the results will be built, which requires its active participation in the national and international processes that are being followed to make these objectives effective.

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<sup>51</sup> BOHOSLAVSKY, J. P., *Tratados de protección de las inversiones e implicaciones para la formulación de políticas públicas (especial referencia a los servicios de agua potable y saneamiento)*, CEPAL, 2010.

<sup>52</sup> O'NEILL, T., "Water and Freedom: The Privatization of Water and Its Implications for Democracy and Human Rights in the Developing World", *Colorado Journal of International Environmental Law and Policy*, Vol. 17, 2006, pp. 357-383.

In a sector of fundamental relevance such as water and sanitation, experiences have been developed in Latin America that yields both positive and negative results. Despite the failures in several concessions that have had a wide repercussion throughout the Region, 2030 Agenda has fostered renewed interest in these forms of cooperation that is leading to an analysis of national legislation to facilitate alliances between the public and private sectors that will allow Objective 6 to be fulfilled. However, the confluence of domestic and international normative actions continues to raise important questions about the possibilities of evolution of public-private cooperation models, as well as the influence that sustainable development can have on them.

The progressive adoption of norms in Latin American states that establish the right to water for all people is a factor that conditions the interest of investors. In an international context, investors have found in traditional BITs a mechanism of protection against state powers of intervention in a sector conceived as a public service serving the fundamental interests of populations. However, the lack of attention paid to the consideration of water as a human right and the interpretation given to them by the arbitration tribunals greatly hinders the generalization of public-private partnerships in the provision of these services in Latin America. Facilitating States to comply with their national and international obligations on the right to water and the need for private actors to participate in the management of these resources is one of the main challenges facing the Region.

Apart from ideological considerations, the efficiency and effectiveness of management should be the criterion inspiring the introduction of public-private partnerships in this area. The analysis and concertation efforts that we are currently experiencing are fundamentally aimed at building relationship frameworks that allow States to adapt their legislation, institutions and contracts to the demands imposed by the provision of these public services with an adequate sharing of risks with the investors with whom this type of alliance can be developed. In addition, the interrelationship of water resources with other important economic sectors such as energy or food production constitutes a field for the exploration of public-private cooperation in line with sustainability.

THE RENEWED COMMERCIAL AND INVESTMENT  
AGREEMENTS: THE PROGRESSIVE INCORPORATION OF  
HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT  
GOALS\*

JORGE URBANEJA CILLÁN

*Lecturer of Public International Law and International Relations at the  
Alicante University*

SUMMARY: 1. INTRODUCTION. 2. THE COMMERCIAL AND INVESTMENT AGREEMENTS AS AN INSTRUMENT FOR PUBLIC-PRIVATE COOPERATION. 3. THE INCORPORATION OF NEW PARAMETERS IN THE COMMERCIAL AND INVESTMENT AGREEMENTS. 3.1. Human Rights. 3.2. Sustainable Development. 4. FINAL THOUGHTS.

**ABSTRACT:**

The Sustainable Development Goals (SGD) recognize the need to mobilize investment flows and ensure that they contribute to the SGD, particularly for developing countries. International Investment Law is embodied in the Bilateral Investment Treaties, as standards of a conventional nature whose main objective is to attract foreign investments, offering security conditions to foreign companies that make investments in the host State. One of the essential elements of the Bilateral Investment Treaties is the establishment of dispute settlement mechanisms between investors and the host State of the investment. Thus, an arbitration procedure is established, with an international and mixed nature, that is, investment arbitration allows the investor to directly initiate an investment arbitration against the State. The International Centre for the Settlement of Investment Disputes (ICSID) has acquired special relevance. At present, a process of reform of the Bilateral Investment Treaties is taking place, with the objective of making International Investment Law compatible with other objectives of the International Community. Thus, in this process of reform of the Bilateral Investment Treaties, the obligation to respect Human Rights by investors and the need to make the system of foreign investments compatible with sustainable development are being incipiently included. Likewise, a reform of the international investment arbitration system and its substitution by a Multilateral Investment Court is being considered.

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**KEYWORDS:**

Sustainable Development Goals, investment, Bilateral Investment Treaties, investment arbitration, Human Rights.

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## 1. INTRODUCTION

The Sustainable Development Goals (SDG) have expressly foreseen that alliances between governments, the private sector and civil society are needed to achieve them. Certainly, the 17 SDGs have an undoubted interrelated nature, in such a way that the progressive development of public-private partnerships represents a fundamental element to reach the whole of the SDGs and to deal efficiently with the social, economic and environmental concerns of the current International Community. Specifically, the SDGs consider that “urgent action is needed to mobilize, redirect and unblock the trillion dollar transforming power of private resources to meet the objectives of sustainable development”<sup>1</sup>. Likewise, the International Conference on Financing for Development (*Addis Ababa Action Agenda*) calls for a reorientation of the national and international investment regime towards sustainable development<sup>2</sup>.

In this way, SDGs recognize that economic growth must be used to achieve sustainable and inclusive development. For this reason, it is necessary to mobilize investment flows and ensure that they contribute to the SDG, particularly for developing countries. In this line, the SDGs aim to promote “long-term investments, including foreign direct investment, are necessary in critical sectors, especially in developing countries”<sup>3</sup>.

Until now, the international legal regime for foreign investments has been regulated by the *Bilateral Investment Treaties*, as standards of a conventional nature whose main and only objective is to attract foreign investments, offering security conditions to foreign companies in the host State. Most of the Investment Treaties explicitly recognize as one of their main objectives the increase of private investment, as a means to boost economic development. That is, the Bilateral Investment Treaties have been conceived to establish international obligations for the State receiving the investment with the objective of increasing the protection of the foreign investor over the protections offered by domestic law. As a result, at present, there are some 4,000 bilateral agreements on the promotion

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<sup>1</sup> Resolution 70/1, General Assembly of United Nations, *Transforming our world: the 2030 Agenda for Sustainable Development*, September 25, 2015. (A/RES/70/1).

<sup>2</sup> Resolution 69/313, General Assembly of United Nations, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development (Addis Ababa Action Agenda)*, August 17, 2015.

<sup>3</sup> *Sustainable Development Goals- Goal 17: Revitalize the global partnership for sustainable development.*

and protection of foreign investments, signed by more than 180 States; among them, some 1,400 have been signed by EU member states<sup>4</sup>.

However, at present, a process of reconfiguration of the Bilateral Investment Treaties has been initiated, whose main objectives are the revision of dispute resolution systems and the inclusion of binding commitments in the area of Human Rights and Sustainable Development Goals. Although this is an incipient process, these renewed trade and investment agreements represent an adequate instrument to promote investment responses with the SGD and provide greater legal certainty to the commitments contained therein.

## **2. THE COMMERCIAL AND INVESTMENT AGREEMENTS AS AN INSTRUMENT FOR PUBLIC-PRIVATE COOPERATION**

In line with the process of economic liberalization and with the exponential increase in international capital flows, International Investment Law has undergone an outstanding development during the last quarter of the century-XX. In this way, an extensive network of Bilateral Investment Treaties has been developed between States that, until now, constitute the essential core of International Investment Law. Thus, according to data from the United Nations Conference on Trade and Development (UNCTAD), a total of 2,952 BITs have been concluded, of which 2,358 are in force<sup>5</sup>.

These instruments have contributed decisively to the evolution of international economic relations, since they consolidate a clear framework of obligations of promotion and protection that States undertake to observe under a condition of reciprocity<sup>6</sup>. Although it is not the objective of this contribution to analyse the regime of the Bilateral Investment Treaties, it is worth highlighting that, from the material point of view, these Treaties establish a set of principles, which aim to provide security for investments foreign directives and that constitute the core of International Investment Law.

Following the criterion of PASCUAL VIVES, the Bilateral Investment Treaties establish a broad set of obligations of different nature, related to the promotion and protection of investments<sup>7</sup>. In relation to the promotion of foreign investments, the Bilateral Investment Treaties establish obligations, following the criterion of the doctrine, can be classified as obligations of *behaviour*. In this way, the Investment Treaties

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<sup>4</sup> UNCTAD, *World Investment Report 2018- Investment and New Industrial Policies*, UNCTAD-United Nations, Geneva, 2018. (Available in [https://unctad.org/en/PublicationsLibrary/wir2018\\_en.pdf](https://unctad.org/en/PublicationsLibrary/wir2018_en.pdf)).

<sup>5</sup> UNCTAD, *Investment Policy Hub - International Investment Agreements (IIAs)*. (Available in <http://investmentpolicyhub.unctad.org/IIA>).

<sup>6</sup> PASCUAL VIVES, F.J., “El arbitraje de inversiones en los recientes APPRI españoles”, *Revista Electrónica de Estudios Internacionales*, num. 18, 2009, pp. 1-30. (Available in <http://www.reei.org/index.php/revista/num18>).

<sup>7</sup> PASCUAL VIVES, F.J., “Las obligaciones de promoción y protección de las inversiones extranjeras en la segunda generación de APPRI españoles”, *Revista Española de Derecho Internacional*, vol. LXI, num. 2, 2009, pp. 411-440.

establish a generic promotion mandate, which obligates the States to a whole series of actions aimed at facilitating the promotion of foreign investments. However, most of the Bilateral Investment Treaties do not specify precisely the content of these promotional obligations. Progressively, certain issues related to information and transparency about investment opportunities have been consolidated within this promotion obligation. Thus, the promotion of foreign investments is developed on the principles of state sovereignty and reciprocity and through the exercise of the obligation of protection.

The obligation of protection appears as one of the main objectives of the Bilateral Investment Treaties. That is, the establishment of a reciprocal framework of international obligations that grants sufficient protection to foreign investments constitutes one of the main objectives pursued by the States when they conclude a Bilateral Investment Treaty<sup>8</sup>. The hard core of the set of legal obligations established by the Bilateral Investment Treaties is constituted by the obligations to grant a fair and equitable treatment, to avoid the adoption of discriminatory measures and to offer full protection and security to the investments, as well as to grant national and most favoured nation treatment. In addition, the legal regime for the protection of foreign investments is supplemented by two other sets of obligations: on the one hand, the prohibition of unjustified or discriminatory expropriation without compensation and, always in accordance with the principles of national treatment and most-favoured nation treatment; on the other hand, the obligation to guarantee the free transfer of income related to investment<sup>9</sup>.

These legal commitments on the protection of foreign direct investment have required further development and concretion, through the different Bilateral Investment Treaties and, above all, through abundant and exhaustive arbitral jurisprudence, which has been resolving disputes in terms of investment protection<sup>10</sup>. For these reasons, it presents an inevitable complexity to establish a precise and defined concept of the different obligations, state and corporate, in the field of International Investment Law<sup>11</sup>. The standard of absolute treatment that invariably appears in the Bilateral Investment Treaties is that of fair and equitable treatment. This standard is usually accompanied by other mentions such as the obligation of each State to grant full protection and security to investments of nationals of the other State and the prohibition to hinder the operation, enjoyment or liquidation of these with arbitrary or discriminatory measures. This standard

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<sup>8</sup> HINOJOSA MARTÍNEZ, L.M., “Capítulo XIII. La regulación de los movimientos internacionales de capital y las inversiones extranjeras”, in HINOJOSA MARTÍNEZ, L.M. and ROLDÁN BARBERO, J. (Coords.), *Derecho Internacional Económico*, Ed. Marcial Pons, Madrid, 2010, pp. 308-ss.

<sup>9</sup> DOLZER, R. and SCHREUER, C., *Principles of International Investment Law*, Oxford University Press, 2nd Edition, 2012.

<sup>10</sup> DÍEZ-HOCHLEITNER RODRÍGUEZ, J., “Protección diplomática v. arbitraje de inversiones”, in CAFLISCH, L. *et alia* (Coords.), *El derecho internacional: normas, hechos y valores. Liber amicorum José Antonio Pastor Ridruejo*, Ed. Universidad Complutense de Madrid, Madrid, 2005, pp. 469-ss.

<sup>11</sup> KALICKI, J. and MEDEIROS, S., “Fair, Equitable and Ambiguous: What is Fair and Equitable Treatment in International Investment Law?”, *ICSID Review*, vol. 22, num. 1, 2008, pp. 24-ss.

constitutes, from the point of view of substantive protection, the central core of any investment protection treaty<sup>12</sup>.

As noted above, in addition to the obligation of fair and equitable treatment, Bilateral Investment Treaties also include the principle of national and most-favoured-nation treatment. Through the application of these clauses, investments and / or foreign investors are granted, as appropriate, either a treatment similar to that received by nationals of the receiving State, or the more favourable treatment that the latter grants to investors or investments from third States<sup>13</sup>. On the one hand, through the assumption of the most-favoured-nation clause, the host State undertakes that the treatment accorded to investors of the other State party to the Investment Treaty in question will not be less favourable than that granted by the host State to investors of a third State. On the other hand, through the application of the most favoured nation clause contained in the Investment Treaties, investors of the States Parties to the Investment Treaties may benefit from the most advantageous terms that may exist in other Investment Treaties signed by either of the two States<sup>14</sup>.

Along with the management of the foreign investment regime, the other defining element of the Bilateral Investment Treaties is the establishment of dispute settlement clauses between investors and the host State of the investment, such as international arbitration. That is, these substantive protection clauses would not provide a sufficient legal guarantee for investors if they were not accompanied by compulsory dispute resolution mechanisms for the host State, other than the internal courts of the host State and directly accessible to the investor himself<sup>15</sup>. It is an arbitration procedure of international and mixed nature, that is, that grants the investor an active *legitimation* to request investment arbitration against the receiving State as a result of the violation of the BIT, and even of a breach of contract that reaches that same nature under a clause of coverage (*umbrella clause*)<sup>16</sup>. The International Centre for the Settlement of Investment Disputes (ICSID) has acquired special relevance. The purpose of the ICSID is to offer means of conciliation and arbitration for the settlement of disputes that may arise between States Parties and nationals in respect of investments. States parties that have consented

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<sup>12</sup> PASTOR PALOMAR, A., "Protección de inversiones con conceptos indeterminados: el trato justo y equitativo en los APPRI celebrados por España", *Revista Española de Derecho Internacional*, vol. LVIII, num., 1, 2006, pp. 271-287.

<sup>13</sup> PASCUAL VIVES, F.J., "Las obligaciones de promoción y protección de las inversiones extranjeras en la segunda generación de APPRI españoles", *loc. cit.* pp. 422-ss.

<sup>14</sup> ILLESCAS, J., "Los Tratados de protección de inversiones y su utilidad para los inversiones españoles en Latinoamérica", *Actualidad Jurídica Uría & Menéndez*, num. 5, 2003, pp. 83-93. (Available in <https://www.uria.com/documentos/publicaciones/1056/documento/07Illescas.pdf?id=2016>).

<sup>15</sup> CHEN NOBLES, K., "Emerging Issues and Trends in International Arbitration", *California Western International Law Journal*, vol. 43, num. 1, 2012, pp. 77-108.

<sup>16</sup> PASCUAL VIVES, F.J., "El Arbitraje de inversión en los recientes APPRI españoles", *Revista Electrónica de Estudios Internacionales*, num. 18, 2008, pp. 1-30.

to the ICSID's jurisdiction, either through a contractual clause, an arbitral or conventional commitment or, even, through its internal legislation<sup>17</sup>.

According to the foregoing, the Investor-State dispute settlement system has two main consequences. First, the investor, whether a natural or legal person, can go directly to the dispute resolution mechanism provided for in the Investment Treaty, in order to request compliance with international obligations and to request compensation for damages and damages caused by their actions or omissions. Certainly, the possibility that individuals, legal or physical, go to international tribunals represents an outstanding development in the development of International Law and that is only comparable with direct access to certain regional courts for the protection of Human Rights. Second, the inclusion of these arbitration clauses in the Bilateral Investment Treaties means that the States accept an assignment of their sovereign powers in favour of the arbitral tribunals. This is due to the fact that the States Parties to the Investment Treaties accept that the arbitral tribunal controls the legality of the State's actions and their adequacy to the obligations contained in the conventional norms. Although, investment arbitration tribunals have recognized the right to regulate of States, precisely this aspect is one of the most controversial areas of international investment arbitration<sup>18</sup>.

However, at present, the mechanisms of dispute settlement between investor and State on the basis of international arbitrations are going through a crisis of legitimacy<sup>19</sup>. This situation, in part, is determined because the opinion perceives an inequality in the treatment granted to the parties involved in the investment arbitration; especially in those cases with a high social impact, such as those that affect public health, environment or human rights issues. Among the cases that have stood out for having a greater social impact can be highlighted, among others, *TransCanada v. USA*<sup>20</sup>, in which the environmental impact of the *Keystone XL Pipeline* was judged; *Vattenfall v. Germany*<sup>21</sup>, referred to the establishment of environmental protection standards; *Suez Vivendi v. Argentina*<sup>22</sup>, in which the conformation of the human right to water was addressed; or *Bilcon v. Canada*<sup>23</sup>, in which the plaintiff questions the environmental impact studies; or

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<sup>17</sup> DÍEZ-HOCHLEITNER RODRÍGUEZ, J., “Las inversiones a través de sociedades locales en los APPRI celebrados por España con países de Latinoamérica”, *Revista Electrónica de Estudios Internacionales*, num. 7, 2003, pp. 1-27.

<sup>18</sup> FARHADI, A., RESTREPO AMARILES, D. y VAN WAEYENBERGE, A., “El arbitraje de las inversiones en juicio ante el Tribunal de Justicia de la Unión Europea: perspectivas internacionalistas y europeístas sobre los TBIs intra-UE”, in FACH GÓMEZ, K. (Coord.), *La política de la Unión Europea en materia de derecho de las inversiones internacionales*, Ed. Bosch, 2017, pp. 45-68.

<sup>19</sup> Franck, S.D., “The Legitimacy Crisis in Investment Treaty Arbitration: Privatizing Public International Law Through Inconsistent Decisions”, *Fordham Law Review*, vol. 73, num. 4, 2005, pp. 1521-1621; DÍEZ-HOCHLEITNER RODRÍGUEZ, J., “El incierto futuro del arbitraje de inversiones: (A propósito de las negociaciones del TTIP)”, *La Ley Mercantil*, num. 19, 2015.

<sup>20</sup> *TransCanada Corporation and TransCanada PipeLines Limited v. The United States of America*, ICSID Case No. ARB/16/21.

<sup>21</sup> *Vattenfall AB and others v. Federal Republic of Germany*, ICSID Case No. ARB/12/12.

<sup>22</sup> *Suez, Sociedad General de Aguas de Barcelona, S.A. and Vivendi Universal, S.A. v. Argentine Republic*, ICSID Case No. ARB/03/19.

<sup>23</sup> *Bilcon of Delaware et al v. Government of Canada*, PCA Case No. 2009-04.



*Philip Morris v. Uruguay*<sup>24</sup>, related to the right of States to establish legislative measures in matters of public health<sup>25</sup>.

In similar terms, the questioning of the system of international arbitration in matters of investment has been related to the boom in the International Community of the concept of sustainable development. Although it is difficult to clearly define what should be understood by sustainable development, it is undoubted that this is a concept that has effects in the international legal order. The DGS can contribute to shaping sustainable development as a “constitutional” principle and to facilitate the derivation of rights and obligations of this principle, that is, SGDs represent an outstanding contribution to the concept of sustainable development. The SGDs are, therefore, one more step on the road that leads to the affirmation of sustainable development as a principle not only political but also with legal effects<sup>26</sup>. Certainly, the inclusion of SGDs in the renewed Trade and Investment Agreements may imply, on the one hand, the consolidation of sustainable development as a structural principle of the international order; on the other hand, an adaptation of the investment agreements to the new demands of the International Community.

### **3. THE INCORPORATION OF NEW PARAMETERS IN THE COMMERCIAL AND INVESTMENT AGREEMENTS**

Thus, as mentioned above, until now, the Bilateral Investment Treaties established a framework that would provide legal security with the sole purpose of attracting foreign investment. However, the current power of civil society, the growing environmental awareness or the development of abundant international provisions and initiatives in favour of the promotion of human rights, are some of the data that lead to require that international investments adopt today in day a much more plural and dynamic approach. In this way, International Investment Law must reach a balance between its original objective and other structural principles of the International Community, such as the protection of Human Rights and the achievement of sustainable development.

#### **3.1. Human Rights**

Bilateral Investment Treaties have the main objective of attracting foreign investment, establishing a legal framework for the performance of capital companies of other States. The Investment Treaties have been representing the legal frame of reference

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<sup>24</sup> *Philip Morris Brands Sàrl, Philip Morris Products S.A. and Abal Hermanos S.A. v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7.

<sup>25</sup> GALLEGO-OSUNA, F., “Consideraciones sociales y medioambientales en los nuevos mecanismos de resolución de controversias inversor-Estado propuestos por la Unión Europea”, in FACH GÓMEZ, K. (Coord.), *La política de la Unión Europea en materia de derecho de las inversiones internacionales*, Ed. Bosch, 2017, pp. 227-253.

<sup>26</sup> DÍAZ BARRADO, C.M., “Los objetivos de desarrollo sostenible: un principio de naturaleza incierta y varias dimensiones fragmentadas”, *Anuario de Derecho Internacional*, vol. 32, 2016, pp. 9-48.

in which multinational companies develop their investments, which have consolidated as the most important private economic actors.

In this way, during the last decades, International Law has had to face, with important unresolved uncertainties, the legal regime of transnational corporations and the scope of their rights and obligations. In this area, the development of international normative instruments that, with different nature and scope, are destined to regulate the possible violations of human rights caused by the activity of these companies acquires a remarkable relevance<sup>27</sup>. This is, together with its undeniable contribution to socio-economic development, the activity of transnational corporations can cause (directly or indirectly) a negative impact on the enjoyment of internationally recognized human rights<sup>28</sup>. To date, the Investment Treaties, focused exclusively on attracting foreign investments, have not worried about the possible negative impacts of business actions on Human Rights.

Since the 70s of the twentieth century, in the international community, several initiatives have taken place that aim to create a regulatory framework related to the activity of transnational corporations and their impacts on human rights<sup>29</sup>. At present, the frame of reference in this matter, at the moment, is constituted by the Guiding Principles on Companies and Human Rights, approved by the Council of Human Rights of the United Nations, in the year 2011<sup>30</sup>. Principle 9 of the Guiding Principles on Business and Human Rights, reminds States “to maintain an adequate national regulatory framework to ensure compliance with their human rights obligations when they conclude political agreements on business activities with other States or companies, for example, through treaties or investment contracts”.

Likewise, in its report to the General Assembly of the United Nations of October 2017, the *Working Group on the issue of human rights and business* highlighted that Investor-State dispute settlement mechanisms could be an adequate mechanism for reparation of human rights violations committed by transnational corporations, having to manage effective access to reparations under the Guiding Principles. The aforementioned

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<sup>27</sup> WALLACE, C.D., *The Multinational Enterprise and Legal Control. Host State Sovereignty in an Era of Economic Globalization*, Ed. Martinus Nijhoff, La Haya, 2002, pp. 11 y ss.

<sup>28</sup> PAUST, J., “Human Rights Responsibilities of Private Corporations”, *Vanderbilt Journal of Transnational Law*, vol. 35, núm. 3, 2002, pp. 801-824.

<sup>29</sup> DE SCHUTTER, O., “The Challenge of Imposing Human Rights Norms on Corporate Actors” in DE SCHUTTER, O., (Ed.), *Transnational Corporations and Human Rights*, Ed. Hart Publishing, London, 2006, pp. 1-39; MARTÍN ORTEGA, O., *Empresas multinacionales y derechos humanos en derecho internacional*, Ed. Bosch, Barcelona, 2007.

<sup>30</sup> *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (A/HRC/17/31). Vid. LÓPEZ-JACOISTE DÍAZ, E., “Los principios rectores de las Naciones Unidas sobre las empresas y los derechos”, in FERNANDEZ LIESA, C.R. and LÓPEZ-JACOISTE DÍAZ, E. (Coords.), *Empresas y Derechos Humanos*, Ed. Aranzadi, 2018, pp. 35-66; ESTEVE MOLTÓ, J.E., “Los Principios Rectores sobre las empresas transnacionales y los derechos humanos en el marco de las Naciones Unidas para “proteger, respetar y remediar” ¿hacia la responsabilidad de las corporaciones o la complacencia institucional?”, *Anuario Español de Derecho Internacional*, num. 27, 2011, pp. 317-351.

Working Group also recommended to the States that, in the new Trade and Investment Agreements, they explicitly include substantive provisions on human rights<sup>31</sup>.

In this way, it is considered that Human Rights issues should be incorporated in different phases of the new Trade and Investment Agreements. Firstly, in the negotiation, impact evaluations of the possible negative impacts on Human Rights must be carried out, paying special attention to vulnerable groups. Secondly, in the substantive regulation of the Commercial and Investment Agreements, together with the rights granted to investors that facilitate foreign investment, obligations to comply with Human Rights must be established. Lastly, the reform process should also include changes to the system for the settlement of investment disputes; allowing the application of the International Law of Human Rights and facilitating the participation of the possible harmed in the procedures of dispute resolution. In these circumstances, to date, there has been a very limited interaction between International Investment Law and the International Law of Human Rights, with few awards that have dealt with Human Rights and the obligation of compliance by the investors<sup>32</sup>.

In the case *Philip Morris v. Uruguay*, in which the investor alleged a violation of the Treaty of Reciprocal Promotion and Protection of Investments between Switzerland and Uruguay. The State of Uruguay, since 2005, carried out a campaign to combat tobacco consumption, which included measures such as: prohibition of selling different types of presentations of the same brand and the requirement of dissemination of warning images about the risk of smoking, imposing that they will occupy 80% of the box of cigarettes; in addition, the tax increase and the advertising ban. Philip Morris argued that the measures adopted by the State of Uruguay harmed their investments; violating the principle of fair and equitable treatment and those they implied an expropriator measure without compensation. The decision of the Arbitral Tribunal, which was adopted in 2016, ruled in favour of Uruguay, considering that the measures that had been adopted by the defendant were justified in the protection of the human right to health<sup>33</sup>.

Especially significant have been those cases in which the human right to water and sanitation has been raised. Thus, the cases *Suez Vivendi v. Argentina* and *Urbaser v. Argentina*. Both cases have acquired special relevance as a consequence of the fact that the Arbitral Tribunals have had to decide on the role of human rights in investment arbitration. In particular, the *Urbaser v. Argentina*, the respondent State filed a counterclaim on the basis that the plaintiff did not provide the necessary level of

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<sup>31</sup> Available in <https://www.ohchr.org/Documents/Issues/Business/Forum2018CrowdDrafting.pdf>.

<sup>32</sup> UNCTAD, *World Investment Report 2015-Reforming International Investment Governance*, UNCTAD-United Nations, Geneva, 2015, pp. 127-ss. (Available in [https://unctad.org/en/PublicationsLibrary/wir2015\\_en.pdf](https://unctad.org/en/PublicationsLibrary/wir2015_en.pdf)).

<sup>33</sup> PORTERFIELD, M.C. and BYRNES C.R., “¿El arbitraje entre inversor y Estado hará que se esfumen las restricciones sobre la comercialización de tabaco?”, *Boletín trimestral sobre el derecho y la política de inversiones desde una perspectiva del desarrollo sostenible*, num. 4, July, 2011; MCGRADY, B., “Implications of Ongoing Trade and Investment Disputes Concerning Tobacco: *Philip Morris v. Uruguay*”, in VONN, T. et. al. (Eds.), *Public Health And Plain Packaging Of Cigarettes: Legal Issues*, Ed. Edward Elgar, 2012.

concession and this generated a violation of the human right to water. It is of outstanding relevance that the Arbitral Tribunal was not a "closed system", so General International Law, such as the International Law of Human Rights (in this case, Article 5.1 of International Covenant on Economic, Social and Cultural Rights). Likewise, the Arbitral Tribunal rejected the opinion of the plaintiff as a non-state actor, not bound by human rights obligations. Finally, the Arbitral Tribunal decided to grant the reason to the plaintiff, understanding that there had been a violation of the principle of fair and equitable treatment, since the Court held that art. 5.1 of the International Covenant on Economic, Social and Cultural Rights were not applicable to the human right to water. Thus, the Award indicates that, although there is no positive duty to promote the right to water, companies have the obligation to abstain from violating Human Rights. Despite the final decision of the Arbitral Tribunal, the *Urbaser Award* is considered as it recognized a non-fragmented analysis of International Law, which includes the application of international human rights standards<sup>34</sup>.

### 3.2. Sustainable Development

There is a consensus, in the international community, that structural transformation does not occur by itself, but rather requires a proactive policy that facilitates the transition to new sectors and activities with greater productivity and more added value, and encourage at the same time sustainable and inclusive development. Under this new reality, a process of reforms of the Investment Treaties has begun, which is progressing in the different regions.

In 2015, UNCTAD prepared a *Road Map for the Reform of International Investment Agreements*<sup>35</sup>, which is marking the process of reforms of the Investment Treaties. In this way, the growing concern regarding the operation of the global regime of Bilateral Investment Treaties currently, added to the current imperative of sustainable development, has triggered a movement towards the reform of international investment regulation to adapt it better to the current regulatory challenges. Based on the actions of UNCTAD, the G-20 has approved the *Guiding Principles for the Formulation of Investment Policies* worldwide<sup>36</sup>. As it is known, the G-20 agreements lack binding legal

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<sup>34</sup> GUNTRIP, E., "Urbaser v Argentina: The Origins of a Host State Human Rights Counterclaim in ICSID Arbitration?", *Blog of the European Journal of International Law-EJIL Talk*, February 10, 2017. (Available in <https://www.ejiltalk.org/urbaser-v-argentina-the-origins-of-a-host-state-human-rights-counterclaim-in-icsid-arbitration/>).

<sup>35</sup> UNCTAD, *World Investment Report 2015-Reforming International Investment Governance*, *loc. cit.* pp. 121-ss.

<sup>36</sup> In July 2016, the G20 Ministerial Meeting held in Shanghai agreed on the G20 Guiding Principles for Global Investment Policymaking (the Guiding Principles). The Guiding Principles were subsequently endorsed by the G20 Heads of State at the September Hangzhou Summit. (Available in <https://www.g20.org/en/g20/previous-summits>).

force; however, it is especially noteworthy that, in this forum<sup>37</sup>, consensus has been reached on the need to reform the international investment regime<sup>38</sup>.

In this way, the process of reforming the Bilateral Investment Treaties is being developed on a process of reform of the already existing Agreements<sup>39</sup>, in which the following five challenges are being addressed:

- Safeguard the right to regulate for the achievement of sustainable development objectives. Bilateral Investment Treaties may limit the sovereignty of contracting parties in the formulation of national policies. Therefore, the reform of the Investment Treaties must ensure that these limits do not unduly restrict the legitimate formulation of public policies or the achievement of sustainable development objectives. For example, the reconfiguration of the fair and equitable treatment clause is proposed as an option for the reform, designed to broaden the margin of action of the States to articulate public policies in favour of sustainable development.
- Promote and facilitate investments. Most Bilateral Investment Treaties lack effective promotional provisions and only promote investment indirectly, through the protection they offer. It is considered appropriate to include instruments that facilitate investments related to the SGD. The formulation of investment policies is becoming more complex, divergent and uncertain. Considerations of sustainable development make investment policies more complicated and multifaceted, which is why investment promotion policies are particularly relevant.
- Ensure responsible investment: Some options are to add clauses to maintain the level of demand and establish provisions on the responsibilities of investors, such as clauses on compliance with domestic legislation and corporate social responsibility. Only 8% of the measures adopted between 2010 and 2014 had the specific objective of involving the private sector in the fundamental sectors of sustainable

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<sup>37</sup> The G-20 is an international cooperation forum, essentially focused on economic aspects, in which a diverse group of developed, developing and transition economies is integrated, representing more than two thirds of the outflows of Direct Foreign Investment at the international level. world (including the EU).

<sup>38</sup> In tune with the reform process, the Guiding Principles identify four fundamental blocks in the reform process: establishment, protection and treatment, promotion and facilitation, and dispute resolution.

<sup>39</sup> According to UNCTAD, it proposes ten options to carry out the process of reforms of the international legal regime of investments: 1) interpret jointly the provisions of the treaties; 2) modify the provisions of the treaties; 3) replace the "outdated" treaties; 4) consolidate the network of International Investment Agreements; 5) manage the relationships between coexisting treaties; 6) refer to global standards; 7) act multilaterally; 8) abandon old *unratified* treaties; 9) rescind existing old treaties; and 10) withdraw from multilateral treaties. Of all these options, international practice shows that States are proceeding to review the Bilateral Investment Treaties, including renewed components in the legal regime of investments.

development (infrastructure, health, education, mitigation of climate change).

- Increase the systemic coherence of the Bilateral Investment Treaty regime. Some options are to improve the coherence of the Bilateral Treaty regime, consolidate and rationalize the Treaty network, manage the interaction between Bilateral Treaties and other regimes of International Law.
- Reform the resolution of investment disputes, this being the reform that, perhaps, has acquired greater relevance. Certainly, from the point of view of sustainable development, the choice of dispute resolution mechanisms between investor and State is not neutral, since the protection of sustainable development varies depending on the characteristics of these mechanisms, the degree of sustainability of the trade and investment agreements, as well as their practical application.

In particular, the proposal for the creation of a Multilateral Investment Tribunal, an initiative that was led by the European Union and has been joined by Canada, having crystallized in the CETA, has acquired special prominence. The main arguments against the creation of a Multilateral Investment Tribunal are based on the fact that many States (as in the case of Canada) offer sufficient internal legal guarantees for investors. On the contrary, the creation of a Permanent Multilateral Court would be a possible solution to the problem of the lack of coherence and uniformity in the jurisprudence of the Arbitral Tribunals. In addition, the defenders of a Multilateral Court consider that this system would allow introducing parameters of transparency in the solution of controversies, surpassing one of the main criticisms, as it is the opacity of the arbitration proceedings<sup>40</sup>.

On the basis of the elements described, the reform of the Bilateral Investment Treaties is well advanced in all regions. Since 2012, more than 150 countries have adopted measures to formulate a new generation of Bilateral Treaties aimed at sustainable development. For example, they have reviewed their treaty networks and their model treaties in accordance with the Reform Package for the International Investment Regime of UNCTAD. Unlike the Bilateral Treaties that had been signed at the beginning of 21<sup>st</sup> Century, all treaties concluded in 2017 include at least six “elements of reform”, and some provisions that were considered innovative in the Bilateral Investment Treaties prior to 2010 now appear regularly. The highlights of the renewed investment treaties include an

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<sup>40</sup> UNCTAD, *World Investment Report 2015-Reforming International Investment Governance*, loc. cit. pp. 140-ss.

orientation towards sustainable development, the preservation of the State's regulatory space and the improvement (or omission) of the international arbitration system<sup>41</sup>.

#### **4. FINAL THOUGHTS**

As has been described, a profound process of reforms of the international legal regime of foreign direct investment has been initiated. The main purpose of these reforms is to adapt the international legal regime for investments to the requirements of the current International Community. Among this set of reforms, the compatibility of foreign investments with sustainable development and the protection of Human Rights takes on special relevance. In this way, the objective of the renewed Trade and Investment Agreements will no longer be exclusively to attract foreign investments, but rather to be compatible with sustainable development and Human Rights.

This process of reforms has begun to provide its first results; however, essential elements remain. After improving the focus of the new treaties and modernizing the existing treaties, the last step of the reform process (phase 3) is to ensure coherence with national investment policies and with other instruments of international law. The search for coherence does not necessarily imply legal uniformity - inconsistencies and divergences can be intentional - but the different policy areas and the different legal instruments should work in synergy. In particular, facilitating the compatibility of the international investment regime with the international protection of Human Rights represents a challenge that must be tackled immediately, establishing a logical and applicable system in dispute resolution systems.

Precisely, specifying the process of reconfiguring international arbitration as a means of resolving disputes represents the other essential element of the reform process. The creation of a Multilateral Investment Tribunal, an initiative promoted by the European Union, has established itself as the most relevant initiative in this area. As a consequence of the high degree of normative and technical specialization achieved by International Investment Law, this initiative seems consistent with the set of reforms. In particular, a Multilateral Investment Tribunal is considered to introduce coherence in the dispute settlement system, providing greater legal certainty and encouraging transparency.

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<sup>41</sup> CHI, M., *Integrating Sustainable Development in International Investment Law: Normative Incompatibility, System Integration and Governance Implications*, Ed. Routledge Global, 2017.





TOWARDS USING DATA AS A DEVELOPMENT LEVER  
FOR CITIES: THE CASE OF SINGAPORE AND THE SMART  
NATION INITIATIVE

BENOÎT LOPEZ

*Associate Professor in Law at  
ESPI, Paris*

SUMMARY : 1. INTRODUCTION. 2. THE SMART NATION INITIATIVE AS A RESPONSE TO THE AMBITION OF A SUSTAINABLE SMART CITIES. 2.1. The diversity of possible legal frameworks. 2.2. The opportunity of the approach developed by Singapore. 3. THE USE OF DATA AS A BASIS FOR FUTURE PUBLIC-PRIVATE PARTNERSHIPS. 3.1. Actions based on increased civil society mobilization. 3.2. Actions based on further infrastructure development. 4. LEGAL OBSTACLES TO THE USE OF DATA IN THE PURSUIT OF SUSTAINABLE DEVELOPMENT THROUGH PUBLIC-PRIVATE PARTNERSHIPS. 5. CONCLUSIONS

**ABSTRACT :**

In the perspective of Agenda 2030, and more particularly in order to mobilize public-private partnerships more frequently, the city is presented as an original object of study. The latter, in view of the data that may be collected on a targeted scale, can serve as a basis for negotiating new types of transport, sustainable development and public health contracts. Behind the concept of the intelligent sustainable city, now promoted worldwide by the UN, there is a significant legal challenge. Without representing a model that can be fully transposed, the Singapore Smart Nation Initiative has the merit of illustrating this problem. It can undoubtedly serve as a basis for reflection for cities and States wishing to use data collection as a lever in the search for sustainable development.

**KEYWORDS:**

Big Data; Telecom infrastructure; legal privacy; sustainable development.

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**1. INTRODUCTION**

In the perspective of a reflection on the achievement of the objectives of sustainable development and the 2030 agenda, it is interesting to take the analysis to the local level. More specifically, this research proposes to start from the city and the levers of action that can be mobilized at this scale of action. The conceptualization of sustainable development at the city level is not innovative and has already been the subject of many

analyses<sup>1</sup>. In addition, the will and policies of mayors of large cities generally<sup>2</sup> clash with the country's framework for sustainable development. It is thus frequent that the law empowers local councils in a limited way, sometimes only with the aim of seeing the policies adopted at the national<sup>3</sup> level applied at the city level. It may therefore seem surprising, in the context of a legal analysis, to opt for a city-centred approach, although authors have demonstrated the interest of considering a city right as a specific<sup>4</sup> object. However, in addition to the solutions and levers of action specific to this scale, the analysis of the city offers, at the legal level, the possibility of taking an interest in a singular phenomenon, that of "city states"<sup>5</sup>. However, the latter have a double advantage in the context of a reflection on the achievement of sustainable development objectives.

On the one hand, the existence of a state that is extremely concentrated allows for the speed and extreme specificity of urban policies, linked to topography, population, infrastructure and demography. From this point of view, it contrasts with the need for legal compromise, which is specific to the larger territories to be administered by a single government. On the other hand, the legal solutions and mechanisms adopted in this context of proximity can nevertheless play a role as a model and inspire the framework of urban policies abroad. Naturally, financing or political decision-making will be separate, but the implementation of regulations on air and water control, on green building, can usefully inspire the policies of the city of traditional states. Addressing the initiatives of certain "city states" such as Singapore therefore provides an opportunity to think about the search for a sustainable city in an original way. A fortiori, insofar as Singapore has an interesting technical feature, it has a particularly important telecom network and infrastructure. It therefore offers an ideal analytical framework for considering the city not only as a laboratory for studying initiatives for sustainable development, but especially in the case of a connected, or intelligent, city.

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<sup>1</sup> For a summary and an extended biography see J.M. Klopp, D.L. Petretta « The urban sustainable development goal: Indicators, complexity and the politics of measuring cities » *Cities*, Vol. 63, 2017, pp. 92–97.

<sup>2</sup> But city still have a key role, see for exemple E. J. Jepson, Jr. « The Adoption of Sustainable Development Policies and Techniques in U.S. Cities : How Wide, How Deep, and What Role for Planners? » *Journal of Planning Education and Research* vol. 23, 2004 p. 229.

<sup>3</sup> On the particular role of civil society in environmental matters and the evolution of the law see A. Pomade « Les implications de l'influence normative de la Société Civile en droit de l'environnement sur les théories des sources du droit et de la validité », *Revue interdisciplinaire d'études juridiques*, 2010/1, vol. 64, p. 87-122. It seems to us that the city also makes it easier to channel and mobilize civil society on issues that affect it on a daily basis and can therefore be a place where claims are created and then the law that governs urban policies evolves.

<sup>4</sup> See S. Belda-Miquel, P. B., Jordi, F. Alexandre "Institutionalization and Depoliticization of the Right to the City: Changing Scenarios for Radical Social Movements", *International Journal of Urban and Regional Research*, vol. 40 n°2, 2016, pp. 321339-; E. Deschamps, *Le droit public de la ségrégation urbaine (1943-1997)*, LGDJ, 1998; S. Joubert, *Droit de la ville, droit à la ville*, PhD thesis University Paris 2, 1997. E. Deschamps, *Le droit public de la ségrégation urbaine (1943-1997)*, LGDJ, 1998; S. Joubert, *Droit de la ville, droit à la ville*, PhD thesis University Paris 2, 1997.

<sup>5</sup> For a reflection and analysis of the boundaries of the city-state as a research object see N. Yoffe, « The obvious and the chimerical : city-states in archaeological perspective », in D. L. Nichols, T. H. Charlton (eds.), *The archaeology of city-states : cross-cultural approaches*, Washington D.C., Smithsonian Institution Press, 1997 pp. 255-263. As the author notes, the city state can be thought of as a flexible category that has a heuristic value.

In this perspective, the opportunity is emerging to learn lessons and possible good practices for cities around the world in using data collection to achieve sustainable development objectives. In addition, the use of data collection and processing in various forms to pursue sustainable economic development is a key advantage. The data are today, with the tendency in some countries to encourage administrations to use open data as a material that can be mobilized by companies<sup>6</sup>. Thus, in addition to public action, private activity in the sustainable construction sector, roads and health, for example, can be added to the public action. More broadly, the data also provide a relevant basis for evaluating as much as is necessary to implement future public-private partnerships.

It is therefore logical that our study will first of all refer to Singapore's framework for action through its smart nation initiative (I) and its correspondence with the concept of "smart sustainable cities". Next, we will discuss the tools developed for data collection in Singapore from a sustainable development perspective (II) when they lend themselves to an evolution towards public-private partnerships. Then we will focus on the limits and avenues for legal reflection that can be identified with the Singaporean experience (III).

## **2. THE SMART NATION INITIATIVE AS A RESPONSE TO THE AMBITION OF A SUSTAINABLE SMART CITIES**

The idea of moving beyond the reflection on smart cities to move towards smart sustainable cities will be formalised with the support of the United Nations Economic and Social Council. Thus, the latter, in conjunction with the ITU, will propose a definition, the proximity of which to the one posed by the work of the Brundtland Commission is naturally apparent. Thus, the smart smart sustainable city was conceived as: "*an innovative city that uses information and communication technologies (ICTs) and other means to improve quality of life, efficiency of urban operation and services, and competitiveness, while ensuring that it meets the needs of present and future generations with respect to economic, social, environmental as well as cultural aspects*"<sup>7</sup>. Following this delimitation effort, the concept will form the basis of an initiative launched on May 18, 2016, again by the ITU and the UN, "United for Smart Sustainable Cities". In addition to its function as an international<sup>8</sup> platform for knowledge sharing and the development

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<sup>6</sup> See R. Kitchin, *The Data Revolution: Big Data, Open Data, Data Infrastructures and Their conséquences*, Sage, 2014 pp. 113-128.

<sup>7</sup> United Nations ECE/HBP/2015/4 *Economic and Social Council The UNECE-ITU Smart Sustainable Cities Indicators* Economic Commission for Europe Committee on Housing and Land Management Seventy-sixth session Geneva, 14-15 Dec. 2015 p.3.

<sup>8</sup> The initiative is supported by 16 UN agencies, programmes, funds and secretariats and in particular: UNECE, ITU, the Secretariat of the Convention on Biological Diversity (CBD), the Food and Agriculture Organization of the United Nations (FAO), the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the United Nations Economic Commission for Africa (ECA), the United Nations Economic Commission for Latin America and the Caribbean (ECLAC), the Secretariat of the United Nations Convention to Combat Desertification (UNCCD), the United Nations Human Settlements Programme (UN-Habitat), the United Nations Environment Programme (UNEP), the United Nations Environment Programme Finance Initiative (UNEP-FI), the Secretariat of the United Nations

of best practices, the initiative was conceived as a concrete response to Goal 11 of sustainable development. As a result, the smart sustainable city now appears as a framework for the global analysis of public policies on cities that can be mobilized by lawyers.

## 2.1 The diversity of possible legal frameworks

However, the definition raised a double difficulty in the construction of a legal framework to ensure its implementation. The first is the existence of telecommunications infrastructure and the ability of public authorities to collect data reliably. Before considering the innovative use of information and communication technologies, it is necessary to have the tools to deploy them in the territory of a city, even if it is limited. However, in some cases, the installation of sensors, telecommunication cables or base stations will come up against limits due to the protection of privacy, natural spaces or expropriation laws. Reflecting on the smart sustainable city is therefore a framework for action that undoubtedly requires legal support, but must also be reconciled with other branches of local<sup>9</sup> law. The second difficulty concerns the chronology of the use of digital technology as a lever in a city's quest for sustainable development under this definition. A significant difference will come from the desire to simply extend development aid policies, or on the contrary to envisage, from the outset, action as based on the use of digital technology. If it is an obligation from the outset, "by design" will necessarily entail much greater obligations for public authorities either before or during the implementation of policies. On the other hand, the option of considering the use of information and communication technologies only as an extension of an action already in place to amplify it is more flexible. To measure this difference, it is sufficient to imagine a regulation that would require the city to collect data before implementing urban planning that integrates environmental issues. Similarly, if the modification of water services is only envisaged if it is accompanied by the installation of sensors to ensure constant data collection, it will imply a greater complexity and a spreading of the work to be carried out.

However, the increased burden of the requirement to integrate digital technology into the legal rules governing the city's public policies has led to an increase in efficiency in the pursuit of sustainable development. As such, the analysis of the smart nation initiative highlights the remarkable leverage that data collection can represent.

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Framework Convention for Climate Change (UNFCCC), the United Nations Industrial Development Organization (UNIDO), the United Nations University-Institute for the Advanced Study of Sustainability (UNU-IAS), the World Meteorological Organization (WMO) and the World Trade Organization (WTO).

<sup>9</sup> See R. Susskind *The Future of Law: Facing the Challenges of Information Technology*, Clarendon Press, 1987, 376 p.

## **2.2 The appropriateness of the approach developed by Singapore**

Above all, it should be stressed that Singapore's situation, particularly on the issue of population ageing and density, has a particular interest in developing a digital-based approach to sustainability. The latter benefits from a high level of infrastructure that allows it to consider how these two problems can be addressed by this lever. Nevertheless, although the density affects island territories particularly strongly, it also affects some highly developed cities. Similarly, the ageing of the population is a challenge for many developed countries, which also benefit from efficient digital coverage and infrastructures. Thus, the motivations and processes for which the latter has opted can, in our opinion, inspire and prove to be timely orientations for many countries in their choices of urban policy and sustainable development.

In this respect, a striking element can be found in Singapore's approach to the sociology of public action. Indeed, as soon as the Smart Nation initiative was set up, a logic of coordination and implementation of a service dedicated to this project was created under the aegis of the Prime Minister. Thus, the concentration of civil servants in a task dedicated to the top of the State makes it possible to build a policy by accompanying initiatives with a regulatory framework adopted from above. The initiative was somewhat intensified by the establishment of a dedicated office in 2017, which set up a joint teamwork initially mobilized in various ministries contributing to the smart nation initiative<sup>10</sup>. Thus, officials from the ministries of finance or transport are now called upon to work together to structure an approach to the city's digital development. Naturally, the perspective of sustainable development is strengthened insofar as digital technology is not an aspect dedicated to a single ministry as is the case in other countries, but corresponds to a transversal approach, which will mobilize different resources<sup>11</sup>. This approach has enabled Singapore to develop and streamline data collection to build its strategy by directly engaging the various relevant government agencies. Thus, the various services and their resources may have been called upon where the existence of a body of civil servants specialising in digital technology certainly has the advantage of specialisation but may lead to a lack of knowledge of the field or a lack of human resources, despite the existence of a mechanism for the secondment or secondment of civil servants, for example. In addition, the Singapore government very early on identified key sectors<sup>10</sup> that could enable data mobilization to support its ambition to become a sustainable smart city. Thus, transport, housing and the environment, business productivity, health and ageing and finally the improvement of public sector services represent the priorities set by the city. However, several actions undertaken in its various fields must be given attention because of their exemplary value but above all because of their ability to involve the private sector in the future.

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<sup>10</sup> <https://www.tech.gov.sg/Digital-Government-Transformation/Smart-Nation-and-Digital-Government>

<sup>11</sup> About this kind of issues see for example J., Commaille " De "l'État-Juriste" à "l'État-Manager". The 2008 reform of the French judicial map. Un nouveau modèle d'action publique sans droit", in Charles-henry Cuin, Patrice Duran (dir.) *Du concept à l'analyse. Mélanges en hommage à François Chazel*, Paris, Presses de la Sorbonne. 2012.

### **3. THE USE OF DATA AS A BASIS FOR FUTURE PUBLIC-PRIVATE PARTNERSHIPS**

In order to develop the leverage effect of using data to achieve the objectives set by Agenda 2030, it is necessary to distinguish between two types of partnerships. A first category can be passed through public authorities in an approach centred on civil society, including the private sector, and will essentially be based on the provision of digital tools. Naturally, the State will also be able to play a role in educating and supporting the acquisition of knowledge by its population so that an increasing number of individuals can benefit from solutions developed by the private sector. In parallel, a second category will no longer require a greater involvement of citizens but directly of public actors in infrastructure matters.

#### **3.1 Actions based on increased civil society mobilization**

Singapore's commitment to encourage the private sector to move towards a sustainable city is a long-standing one. For example, the BCA Green Mark<sup>12</sup> program was launched in 2005 for the Singapore construction sector. The idea was to opt for more environmentally friendly buildings that met a rigorous evaluation standard. The objective was to develop products that combine the reduction of energy consumption and the use of material resources to reduce the potential environmental impact. In this perspective, the Green Building Council of Singapore has set up certifications<sup>13</sup>. The use of the data is interesting because during the verification process for certification, data on the actual operation of the building must be collected for a period of 12 months. These data must be used in the revised energy modelling simulation to demonstrate compliance with the energy savings committed in relation to its reference model using the energy<sup>14</sup> modelling framework. The data collected here therefore make it possible to increase monitoring and measure as closely as possible the contribution of the policies put in place to promote the sustainable construction sector. The initiative is all the more significant as it is rare for a country the size of Singapore given the efforts involved in setting up public certification. Of course, synergies can be found once certification is created and backed by a public-private partnership or a more extensive version can be proposed if monitoring and controls are no longer based exclusively on the State's capacities.

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<sup>12</sup> [https://www.bca.gov.sg/GreenMark/green\\_mark\\_criteria.html](https://www.bca.gov.sg/GreenMark/green_mark_criteria.html)

<sup>13</sup> Singapore GBC has developed certification schemes to raise the environmental standards of building products and services, and to provide benchmarks on environmental performance of products and services. SGBC launched the Singapore Green Building Product (SGBP) certification scheme in 2010 and following its success, went on to launch the services certification scheme- the Singapore Green Building Services (SGBS) certification in 2012. See <https://www.sgbc.sg/sgbc-certifications>.

<sup>14</sup> Building and Construction Authority, *BCA Green Mark Certification - Verification Workflow*, 12 juin 2018.

Still in the field of construction, another Singaporean initiative can be noted with regard to the "smart" rather than "sustainable" dimension, although they are linked. In this case, it is the Smart Enabled Home program in the Yuhua area, which was supported by a collaboration between the Infocomm Media Development Authority and the Housing & Development Board<sup>15</sup>. The government's ambition has been to explore opportunities to improve the living conditions of residents by using domestic technologies such as energy and domestic water management systems. To achieve this, the government had gone through a home testing phase to collect data on residents' receptivity to intelligent home services. The key point is that this experiment also collected data on the impact of these services on people's behaviour. Immediately, the authorities could therefore hope to refine their knowledge on the possibility of relying on individual behaviour to improve resource conservation. In this regard, access to data through real-time energy and water use trends is useful. But it is possible to imagine partnerships associating private companies whose water and energy supply would be calibrated to the needs or even the efforts of urban dwellers in terms of consumption. The counterpart of such a service is naturally the possibility of offering, with smart houses, access to this data so that users can regulate themselves.

Naturally, health-related expenditure in the broad sense represents a significant share of the budget for most governments around the world. However, with an ageing population, Singapore has naturally designed its smart and sustainable urban policy to absorb this cost. To do this, the city has deployed several solutions, including facilitating access to medical information for patients through the HealthHub<sup>16</sup> service. This solution consists of an online mobile health information and services portal for Singapore in the form of an application. Thus, it provides access to medical records such as hospital records, drug prescription records, laboratory test results, health examination results, screening test results, vaccination records and clinical care program evaluations. The application has gradually evolved to provide Singaporeans with reliable, up-to-date information and, above all, to allow patients to grant their carers permission to access their personal medical and health records. In 2017, with a view to improving daily diabetes management and fighting overweight, the application integrated HealthHub Track. It consists of a free health management module designed with the expertise of SingHealth, the National Healthcare Group Polyclinics and the National University Polyclinics<sup>17</sup>. Naturally, with the accumulation of health data, it is possible to imagine partnerships with private health care institutions, for example, to fill possible gaps in the supply of practitioners for targeted diseases. Similarly, the opening of dispensaries or pharmacies can also respond to a logic of reconciling health needs with the development of services based on public-private partnerships. Particularly in the field of health data,

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<sup>15</sup> This action also involved the National Environment Agency, Singapore's National Water Agency and the Ministry of Health.

<sup>16</sup> <https://www.healthhub.sg/programmes>.

<sup>17</sup> <https://www.healthhub.sg/programmes/115/get-healthhub-track>.

anonymization and confidentiality are essential<sup>18</sup> legal requirements to make them a pillar of an intelligent and sustainable city.

### **3.2 Actions based on further infrastructure development**

With the help of new technologies, including the development of a set of 19 indicators, Singapore has been able to measure the effectiveness of its transport and urbanization projects in achieving sustainability. For example, Singapore's Urban Redevelopment Authority has deployed an IT system to assist its urban planners in designing plans to integrate sustainable development concerns from the outset. The system uses geospatial and real-time data for planning and development, to understand the demographics of social services and to map vehicle and pedestrian flows. The remarkable element in the perspective of pushing the digital lever with the conclusion of public-private partnerships is that these data are accessible to the public. In this case, there is a government data sharing portal, applications and other online sources.

Thanks to this data and the system deployed, other public agencies such as the Housing Development Board have, for example, deployed experiments through living labs such as Yuhua and Punggol Eco-Town<sup>20</sup>. Urban planning is then designed to improve thermal comfort, walking ability and acoustics. Environmental and building sensors are deployed to host the data in a dedicated centre.

Also with regard to the installation of sensors by public authorities to collect and then use data, Singapore's initiatives on access to water and air quality monitoring can be mentioned. First of all, the SMART Water Grid system relies on 320 sensors and data analysis tools on the island to detect pipe leaks and monitor water pressure, flow and quality in the system<sup>21</sup>. With a view to involving the private sector in water services to increase supply in some cities or obtain competitive rates, this data could enable operators to improve real-time incident management and reduce the response time and potential cost of some work performed early enough. In addition, the use of real-time sensors also allows Singapore to monitor the country's drainage system. For example, monitoring water levels in drains and canals through data collection improves monitoring during severe storms. Their collection also makes it possible to imagine sending alerts by SMS to the public, for example in the event of rising water levels or to be informed of potential flash floods.

Then, on air quality, a network of monitoring stations measures levels of particulate matter, sulphur dioxide, nitrogen dioxide, ozone and carbon monoxide. These data form the basis for calculating the pollution standards index. This index is then made publicly

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<sup>18</sup> See J. Polonetsky, O. Tene, « Privacy in the Age of Big Data: A Time for Big Decisions » *Stan L. Rev.* online 02-2012, p.63-66.

<sup>19</sup> Developed in-house, ePlanner is also used by more than 25 agencies in many initiatives in Singapore, including the Housing Development Board, the Ministry of National Development and the Ministry of the Interior.

<sup>20</sup> H. C. Kiang *50 Years Of Urban Planning In Singapore*, World scientific publishing 2017, p.124.

<sup>21</sup> <https://www.watershare.eu/projects/singapores-smart-water-grid/>



available through a web portal and mobile applications. As an extension, but this time in the field of transport, in December 2016, Beeline introduced crowdstarting, which allows users to participate in the route design process for transport services<sup>22</sup>. Users who have requested the addition of a route can easily track its progress from the Beeline application and be informed of its implementation. This is only possible if a minimum threshold of tickets is sold. So far, eight routes have been activated on Beeline and the model could perfectly be designed as part of a public-private partnership to serve the routes targeted by the municipalities.

#### **4. LEGAL OBSTACLES TO THE USE OF DATA IN THE PURSUIT OF SUSTAINABLE DEVELOPMENT THROUGH PUBLIC-PRIVATE PARTNERSHIPS**

Cybersecurity of data collected by States or local administrations has become a major challenge and responds to a strong demand from citizens. In this sense, public authorities are legally<sup>23</sup> bound, as soon as they develop data collection, to consider how to develop this practice while preserving privacy in particular.

Even before the Smart Nation initiative was launched, Singapore had already put in place strict regulations requiring each agency to protect all data in its possession against the risks of unauthorized access. Sensitive personal data, such as tax data and pension savings data, are protected by law. For the protection of personal data, organizations must comply with additional protection measures including data encryption, secure storage and transmission<sup>24</sup> requirements. Nevertheless, it is commendable that cybersecurity is a central requirement of the Singapore Smart Nation Initiative. Especially in view of the risks involved in the increased connectivity of citizens that the project underpins. The country has also made efforts to set up systems and networks that guarantee, in particular, the confidentiality of data. The government has worked with both public and private sector organizations in this regard. October 2016 was the occasion to launch Singapore<sup>25</sup>'s Cybersecurity Strategy. In addition, data shared between government agencies is made anonymous, which limits the risk to the privacy of citizens. Another aspect of its work is that Singapore's data protection is managed centrally by the Personal Data Protection Commission.

However, the increased risk of data protection violations by soliciting the private sector cannot be ignored. Of course, it should not be assumed that the potential beneficiaries of public-private partnerships are more prone to corruption, for example, that officials in economic issues are distinguished. On the other hand, the use of the

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<sup>22</sup><https://www.tech.gov.sg/Programmes-Partnerships/Programmes-Partnerships/Initiatives/Beeline>

<sup>23</sup> For a global theory see J. Kosseff « Defining Cybersecurity Law » *Iowa law Review* vol. 103, 2018, pp. 986-1030.

<sup>24</sup> See <https://www.pdpc.gov.sg/Legislation-and-Guidelines/Legislation>

<sup>25</sup> <https://www.csa.gov.sg/news/publications/singapore-cybersecurity-strategy>

private sector dilutes the State's control over the implementation of collection, lengthens the chain of command and makes surveillance or investigations difficult. This is particularly true when a service can be managed remotely on the company's premises. In addition, when a company is a subsidiary of a foreign company, it is difficult for it to be mobilized, for example, to repatriate data hosted in a cloud, following an injunction addressed to its parent company. The recent adoption of the Cloud act in the United States<sup>26</sup>, as well as the discussions around the regulation and the European Union's e-evidence Directive, underline this.

## **5. CONCLUSION**

In conclusion, the Singaporean experience shows that there is real scope for optimising data collection through public-private partnerships. This approach has the merit of linking the current aspiration of cities to move towards smart cities with the need to make progress on the various topics of the 2030 agenda. The case of Singapore also illustrates the diversity of sustainable development objectives that can be addressed through data collection and processing. However, their use presupposes resolving the legal difficulty imposed by the legal security of data, which States cannot ignore or ignore the corresponding technical costs, even in the name of the pursuit of sustainable development.

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<sup>26</sup> The Clarifying Lawful Overseas Use of Data Act or CLOUD Act (H.R. 4943) is a United States federal law enacted in 2018 by the passing of the Consolidated Appropriations Act, 2018, PL 115-141, section 105.

## WHICH ACCESS TO GREEN TECHNOLOGIES FOR DEVELOPING COUNTRIES?

“We do not inherit the land from our parents, we borrow it from our children”\*

DAYANA MORALES MINA

*Institute of Juridical Studies,  
Paris Ud University*

SUMMARY: 1. INTRODUCTION 2. A PERMANENT STATE OF CHALLENGES FOR DEVELOPING COUNTRIES 3. WHICH PATH TO GREEN TECHNOLOGIES? 3.1 International Cooperation 3.2 World Intellectual Property Organization and Its Green Market. 3.3 Nagoya Protocol Impact. 3.4 Diversity of Actors. 4. CONCLUSION

### ABSTRACT:

In order to reach the sustainable development goals developing countries must adapted their new policies to environmental concerns. Aforesaid concerns encourage a renewal of classical economic notions and impulse a global green transition. Nevertheless, developing countries are submitted to specific obstacles dues to their vulnerability to climate consequences and their lacks technical and financial means. Therefore, access and use of green technologies is the keystone for developing countries aspiring to overcome such impediments. The sustainable means for their development is illustrated on the one hand by international cooperation, United Nations initiatives and on the other by civil society initiative.

### KEYWORDS:

Green technology; WIPO GREEN; Green economy; Developing Country; Climate Change; Sustainable Development; Intellectual property; Genetic Resource; BioTrade.

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## 1. PRIOR DEFINITIONS

In order to broach the following topic, meaningful notions will be introduce and explain in this preliminary part.

First of all a **developing country** can be understood as “a country with little industrial and economic activity and where people generally have low incomes”<sup>1</sup>. Nevertheless,

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\* « Nous n'héritons pas de la terre de nos parents, nous l'empruntons à nos enfants », Antoine St-Exupéry's quote.

<sup>1</sup> Cambridge University Press definition.

there is no universal definition since the status of developing country in the light of the international scene depends on a self-determination of the aforesaid country. Currently, the World Trade Organization – WTO – provides a Generalized System of preference for members states announcing themselves as developing. Simultaneously a Group of 77<sup>2</sup> countries has been established on the 15 of June 1964 by a “Joint Declaration of the Seventy-Seven Developing Countries” issued at the end of the first session of the United Nations Conference on Trade and Development – UNCTD. Among both organizations developing countries are mostly geographically situated in South America, East Asia and Africa. Their main goal is to eliminate poverty by establishing an effective and stable economy. Still, this undertaking faces a major environmental crisis led by post industrial period and globalization.

This challenge fits in with the **sustainable development** goals established by the United Nations<sup>3</sup> and targeted for 2030. The main idea rests on the encounter of 3 pillars – economy, environment, social community- which leads to a “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>4</sup>

So, in order to prevent any prejudice in the development of the next generations and to overcome an environmental crisis, developing countries shall rest on **green technologies** to constitute a healthy economy.

A technology allows the use for practical purposes of scientific discoveries through systems and devices. The particularity of a **green technology** rests on eco-friendly products or methods – respectful of environment and harmless for natural resources. Thus, the criteria of “green” does not limit the development of new technologies since it can imply wild sectors such as energy field or even building industry.

## 2. INTRODUCTION

Among Human Rights- natural and inalienable rights for every human being - there are 3 generations of rights which are actually the reflection of social and political changes. The two first generations rely respectively on Civil and Political rights and Economic, Social and Political rights, therefore their ownership and exploitation rest on an individual conception. This aforesaid notion is the main difference with the third generation of Human Rights developed since the late last century, those rights are also known as solidarity rights and go beyond the significance of the two first. Their respect seeks humanity development regardless country or ethnic group by encompassing environment

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<sup>2</sup> <http://www.g77.org/doc/index.html>

<sup>3</sup> <https://youtu.be/0XTBYMfZyrM>

<sup>4</sup> *Our Common Future*, also known as the Brundtland report. 1987

considerations in particular. Among those supranational concerns peace and sustainable development can be outlined.

This last point is the key in order to establish an enduring and sound economy that encompasses with the protection of the general interest. Thus, actual policies shall present guiding principles that take into account the current preoccupation of our generation; environmental crisis and exhaustion natural resources. Regarding this approach, developing countries growth has to comply with those concerns and should take into account the use of green technologies. Nevertheless, since a technology, and green technology precisely, is the use of a scientific knowledge through a commercial prism it is commonly protected by Intellectual Property (IP) law. Therefore, in the facts protection of this property right introduces new restrictions for developing countries achievement.

In the light of those considerations, it is legitimate to wonder **which access to green technologies developing countries can claim**. In fact, facing a permanent state of challenges (I), they draw on international cooperation (II) the means to achieve their goals.

### **3. A PERMANENT STATE OF CHALLENGES FOR DEVELOPING COUNTRIES**

In the scope of sustainable development goals, every country, regardless its developing status, should preserve general and environmental interest. Nevertheless some of them face sustainable development not just as a goal but also as an impediment to the developing path and economic growth.

In order to understand the necessity for developing countries to access to green technologies it should be remembered that it is a mean for them to take part in the sustainable development quest. Nevertheless why sustainable development is so important?

Actually, in the background of the golden capitalistic era a massive production of carbon dioxide (CO<sub>2</sub>) has been generated which led to an important contamination of the environment. CO<sub>2</sub> growth result from as much as an intense industrial exploitation of natural resources, such as oil or water than deforestation so the needs of a demographic rise can be provided. Aforesaid gas is the main cause of the greenhouse effect which, as we know so well now, brings about global warming. This climate change provoke significant global consequences: melting ice, drought land, water heating, sea rising.

Sustainable development is real challenge especially for developing countries and the pending environmental crisis and climate change prevent anyone or any government to bury one head in the sand.

Facing those problems international community sought to stabilize the “greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous

anthropogenic interference with the climate system.”<sup>5</sup> And since 1992, international community works around this goal and humanity in its future development has to take into account environment respect and protection. Thus, along with United Nations Framework Convention on Climate Change (UNFCCC) in 1992 was also redacted by the same community the Rio Declaration on Environment and Development. Aforesaid declaration gathered climatic concerns through the scope of sustainable development where its 3 pillars are indissociable<sup>6</sup> and granted a right for development<sup>7</sup>. According this statement developing countries remain in there mere right to claim for development but they also have a duty of sustainability acts while they achieve their goal.

Thus, developing countries are meant to play the protagonist character in achieving a worldwide green economy regarding two mains point. On the one hand the potential economic and social repercussions of environmental degradation are particularly important for developing countries since they are the more vulnerable to climate change. Moreover their economic growth is particularly more dependent on the exploitation of natural resources than developed countries. For instance several developing countries face serious economic, social and environmental threats, such as energy, food and water insecurity, climate change and extreme weather risks which lead to a risk of premature death from pollution, poor water quality, armed conflicts and climate change-related diseases. All of these element endanger their development. On the other hand, since currently most developing countries are responsible for only a relatively small share of global greenhouse gas (GHG) emissions relative to Organization for Economic Cooperation and Development (OECD) countries and major emerging economies they will increase their emissions if they follow traditional economic growth path. Thereby developing countries are becoming increasingly the sources of global economic growth and emissions, which is accompanied by more intensive exploitation of natural resources and eventually will barely comply with the sustainable development challenge.

Regarding this last point, the Kyoto Protocol of the UNFCCC draw in 2007 a new kinetic between developed and developing countries during their development. Indeed, this text established 3 flexible programs in order to reduced GHG emissions, among them the Clean Development Mechanism (CDM). This program is the investment into a reduction GHG emission project in a developing country from a developed country or an enterprise of the developed country. The positive effect of the CDM among developing country was limited, since in over 1 000 projects launched in 2009 only 1.76% of them concerned Africa continent<sup>8</sup>. This territory was actually one the main challenge for this program since it's suffers of drought land, deforestation, major contamination from the spread of electronic waste.

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<sup>5</sup> Art. 2 of United Nations Framework Convention on Climate Change (1992)

<sup>6</sup> Principle 4 of Rio Declaration On Environment And Development (1992)

<sup>7</sup> Principle 3 of Rio Declaration On Environment And Development (1992)

<sup>8</sup> FIGUIERE C, BOIDIN B & DIEMER A (2014) « Les Sud et le développement durable : quelle appropriation ? », *Economie politique du développement durable*, De Boeck Supérieur, p.109-110.

Another way, and more permanent, to overcome the peculiarities of sustainable challenge for a developing country rest on an efficient access to green technology. The use of such knowledge is necessary not only for a healthy economic growth but also because it prevents and limits climate consequences. Nevertheless developing countries are shorthanded of the technical resources – lack of capital investment and brain drain. Consequently, since developing countries suffer a lack of means to achieve and to comply with sustainable development goals cooperation among developed and developing countries should allow to overcome those significant lack.

#### **4. WHICH PATH TO GREEN TECHNOLOGIES?**

Developing countries are facing a new challenge which requires an efficient access at green technologies, aforesaid access implies international cooperation as the involvement of a diversity of actors.

##### **4.1 International Cooperation**

Among international cooperation there are two main meaningful project with a general impact on the access to green technologies for developing countries ; the creation of a green intellectual property international market and the influence of Nagoya Protocol.

##### **4.2 World Intellectual Property Organization and Its Green Market**

NOTION. In 1967 a new specialized organization of United Nations (UN) is created in order to “encourage creative activity, to promote the protection of IP throughout the world”<sup>9</sup>. It is known as the World Intellectual Property Organization (WIPO). Creations through IP scope come out of the mind which gave them a prior protection. IP is composed by two areas regarding the kind of creation highlighted, thus inventions, trademarks, and industrial designs form Industrial Property meanwhile Copyright covers literary works and artistic works. The first category of IP concern directly the access to Green technology. In fact among Industrial Property inventions which are real innovations and can be used in a industrial and economic way represent protected goods by a patent. Therefore patent protection means that the invention cannot be commercially used, fabricated, distributed, or sold by others without the patent owner's consent. This exclusive right granted for an inventive creation to the patent owner set a prior frame to any technology transfer, sound environment or not. Nevertheless, developing countries growth and the respect of IP principles are not opposed and their goals can actually meats.

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<sup>9</sup> Preamble, §2 of the *Convention Establishing the World Intellectual Property Organization*. Stockholm 1967.

Thus, in November 2013, WIPO established an online marketplace for providers and seekers of eco-friendly innovations also known as WIPO GREEN<sup>10</sup>. Aforesaid technologies comply with UN definition which “protect the environment, are less polluting, use all resources in a more sustainable manner, recycle more of their wastes and products, and handle residual waste in a more acceptable manner than the technologies for which they were substitutes”<sup>11</sup>. The diffusion and transfer of this sound environment knowledge, and Industrial Property material, rest on the exchange, sale and licensing of technologies and their associated rights on a voluntary basis.

**MEMBERS.** A member of WIPO GREEN community can be both user and partner and its membership is free.

Users yearning for getting involved into WIPO GREEN are not limited by their nature since they can be as much governmental agencies as universities or even private societies. Therefore developing countries – through their governmental agencies, IP office or even private enterprises – can be implied in breakthrough projects as seekers for sustainable technology. Lately Universities and regional organization all over the world – USA, Singapore, Kenya, India, European Union - begun to provide aforesaid technology. In fact they are more than 7000 users from 170 different countries.

Simultaneously, WIPO GREEN is supported by 84 Partners that can be public or private institutions – eg. Research Institutes, NGOs. They can also provide advice, in order to facilitate relationship and exchange directly or indirectly. Those partners are usually experts in a peculiar fields which is a valuable contribution as well on a regional or national area<sup>12</sup>.

**METHODS.** There are two major guidelines in the WIPO GREEN project; transparency and partnership. On the one hand the first principle is applied on the marketplace which yearn for an open aspect through database of eco-friendly technologies. Meanwhile on the other hand the second principle is necessary in order to build a trustfully and efficient network which helps along the transfer of technologies. Moreover the meeting of both guidelines leads to majors collaboration and investments.

As said previously, the peculiar market embodied by WIPO GREEN is composed with a database and a network. The database allows the meeting between announce of supplying or requested technologies and facilitate the research by a classification of 8 main categories ; building and construction, chemicals and advanced materials, energy, farming and forestry, green products, pollution and waste, transportation, water. Nowadays, the database is divided in entries and along side sub-categories due not only to its voluminous resources – more than 3000 Technologies, services and intellectual property – but also to a membership which keep growing. WIPO GREEN is meant to

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<sup>10</sup>[https://www.youtube.com/watch?v=ERkW7FMfm18&list=PLsm\\_LOEppJazeeiBaihOcpO\\_LEyWOJEDC](https://www.youtube.com/watch?v=ERkW7FMfm18&list=PLsm_LOEppJazeeiBaihOcpO_LEyWOJEDC)

<sup>11</sup> Chapter 34 of Agenda 21 (The United Nations Program of Action from Rio), 1992.

<sup>12</sup> WIPO GREEN Charter. <https://www3.wipo.int/wipogreen/docs/en/charter.pdf>



create an efficient network and in addition to connect providers and seekers of technologies through the network it also provides matchmaking project.

Those undertaking are determined with geographic and specific criteria considering the major needs.

Thereby in April 2015 WIPO GREEN launch the first pilot matchmaking project in South East Asia – Indonesia, the Philippines, Vietnam- aiming Wastewater treatment<sup>13</sup>. After a preliminary consultation with the stakeholders on the ground technological needs are investigated, identified and described precisely. Then an announce is published of the network in order to implement a sound solution. In the case at hand it concerns amongst other information gaps, technology gaps, purchasing power gaps, as well as gaps between the IP system and other relevant legal and administrative systems. Fortified by this cooperative project in 2016 an new undertaking arise in East Africa – Ethiopia, Kenya and Tanzania - regarding over 70 water and agriculture needs. Then, in compliance with the dialogue spirit of the WIPO GREEN the matchmaking gathered 150 participants – seekers and providers of sound technologies. Currently, a new project has been launched this summer in South East – Cambodia, Indonesia and the Philippines - it aims green technical solutions about air, agriculture, energy and water. As far for now there were yet any technological transfer since the specific needs have not been identified yet and the project remains pending.

Even though, dialogue and partnership act as an incentive to technological transfer there is not any prior binding obligation between members. Since the technologies registered in WIPO GREEN, in accordance with Intellectual Property protection, remain the property of the rights holders themselves being the policy-making of the transfer conditions. Both parts collaborate with structured agreements in the manner they feel is most appropriate and effective.

Moreover, the wide diversity type of members sets a peculiar dynamic among them. Partners and financial providers are mainly organizations of developed countries and/ or their governmental agencies. In fact, the pending matchmaking project in South East has been partly sponsored by Australia Funds-In-Trust for Intellectual Property<sup>1415</sup>

Thus, the access to green technology is unpredictable since it depends on every peculiar situation and actors. Even though, an UN initiative does help to frame some sound environment knowledge transfers, developing countries remain inclined to international cooperation initiatives and good willing of the developed States. Although, access to green technology is also granted by another kind of cooperation, less global and more specific.

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<sup>13</sup> Report of the pilot Project “Facilitating the Transfer and Diffusion of Clean Technology: Opportunities in Wastewater Treatment in South East Asia”. 2016

<sup>14</sup> [https://www3.wipo.int/wipogreen/en/events/2018/news\\_0005.html](https://www3.wipo.int/wipogreen/en/events/2018/news_0005.html)

<sup>15</sup> [http://www.wipo.int/cooperation/en/funds\\_in\\_trust/australia\\_fitip/](http://www.wipo.int/cooperation/en/funds_in_trust/australia_fitip/)

### 4.3 Nagoya Protocol Impact

The Nagoya Protocol has been adopted in 2010 and applies to genetic resources that are covered by the the Convention on Biological Diversity of 1992 <sup>16</sup>(CBD), namely, the fair and equitable sharing of the benefits derived from the use of genetic resources and to the benefits arising from their utilization. The text entered into force on October 12, 2014 and until July 2018 it has received 107 ratifications. To this end, the Protocol has clarified several definitions and has introduced a set of principles and rules on the Access and Benefit Sharing (ABS) that provide greater legal certainty to interested Parties.

A genetic resource is understood by WIPO as “any material of plant, animal, microbial or other origin containing functional units of heredity.”<sup>17</sup> Nevertheless even if genetic material do not benefit directly from IP law protection its use remains inherent to sustainable knowledge transfer. Indeed, it is possible to file a patent for invention or plant varieties which are developed through genetic resources.

Through this scope, transfer of genetic resource play a key role in the access to green technologies since this material can improve the productivity and the quality of crops even in drought land. So, if a developing country facing an agricultural and hunger crisis can have access to this material or the innovation coming from it it would reinsure the sustainable development through the economic growth and a social achievement. Indeed, creation of new jobs allows to start to overcome poverty and hunger and draws the base of an healthy ecofriendly economy.

In order to achieve those goals, once again international cooperation is required in fact, since its establishment in 1996 by the United Nations Conference on Trade and Development (UNCTAD) BioTrade initiative allowed the promotion of CBD objectives<sup>18</sup> and improved focuses on “enhancing sustainable bio-resources management, product development, value adding processing and marketing” with its BioTrade Facilitation Programs (BTFP)<sup>19</sup>. The main stakeholders of the project are developing countries and they do value its role. In fact, an African association for natural products trade is a partner of BTFP and lately in September 2018 Peru had developed a workshop in order to develop a policy in accordance with Biotrade principles and Nagoya Protocol ideals.

The guaranty of an access to green technology – as sustainable knowledge transfer – is not only the concern of the International Community but also the concern of developing countries. They are no longer seekers of the benefit of the international cooperation but they also play a part in the trade sustainable resources.

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<sup>16</sup> This convention has been adopted along with the Rio declaration Climate Change convention

<sup>17</sup> <http://www.wipo.int/tk/en/genetic/>

<sup>18</sup> “Mainstreaming BioTrade in sustainable sourcing and use in sustainable development strategies, including in global biodiversity targets; Identifying barriers to trade of biodiversity-based products; Understanding and mapping policy options on certain aspects of the implementation of the Nagoya Protocol on Access and Benefit Sharing on BioTrade.”

<sup>19</sup> <https://unctad.org/en/Pages/DITC/Trade-and-Environment/BioTrade.aspx>

#### **4.4 Diversity of Actors**

*“Many small people, in many small places, do many small things, that can alter the face of the world.”<sup>20</sup>*

International community and countries are not the only one to impulse sustainable knowledge transfer. Indeed individuals themselves and no governmental organizations can take part into the transition to a green economy based on the use of green technologies in developing countries. It will be presented in this following part some examples of initiatives that contribute to guarantee an access at green technologies for developing countries

PIIPA<sup>21</sup>. Public Interest Intellectual Property Advisors, Inc. (PIIPA) is an international nonprofit organization based in Washington DC (U.S) and that provides pro bono IP legal counsel to governments, businesses, indigenous peoples, and public interest organizations in developing countries that seek to promote health, agriculture, biodiversity, science, culture, and the environment. This organization settled in its website tools in order to understand IP frame and particularly its link with sustainable development. It works in partnership with WIPO GREEN.

Along with country, international organization private actors from the civil society such as start up or citizens groups can also play a part in construction of an efficient access to green technologies.

In Nigeria has been created in 2011 WENNOVATION HUB (WH), a pioneer innovation accelerator. This entity fosters innovation among the youth population, helping at the creation of start-up, providing shared work place, developing professional network and all of that within the sustainable development scope. There is a particular focus on social impact sectors including Education, Agriculture, Healthcare and Infrastructure. This kind of initiative does promote transfer and access to green technologies since the new entrepreneurs take into account the needs of green economic transition.

In Costa Rica, a citizen initiative known as COSTARICALIMPIA was created in order to promote green development through a citizen scope. It encourage dialogue between members and political leaders in order to improve the use of green technologies such as electric energy for transport.

Those two entities are mere examples of the civil society interest for the use a green technology and the establishment of an sustainable economy. Aforesaid interests

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<sup>20</sup> Anonymous quote

<sup>21</sup> <https://sustainabledevelopment.un.org/partnership/?p=1612>

encourage new eco-friendly policies from political deciders that requires the access and the transfer of sustainable knowledge.

## **5. CONCLUSION**

In summary, through sustainable development scope developing country can and shall proceed to a green economic growth. Aforesaid growth is nevertheless conditioned by the use of green technologies. Even though its access and transfer for the benefit of developing country is encourage by international cooperation, civil society also has a part to play.

STRENGTH INSTITUTIONAL AND NORMATIVE  
FRAMEWORK TO IMPLEMENT EFFECTIVE CAPACITY  
BUILDING ACTIONS: A CRITICAL REGIONAL ANALYSIS\*

ANDRÉS BAUTISTA-HERNÁNDEZ

*Lecturer of Public International Law at the  
Malaga University*

SUMMARY: 1. INTRODUCTION. 2. SUSTAINABLE DEVELOPMENT AND DISASTER MANAGEMENT. 3. REGIONAL FRAMEWORKS ON DISASTER RESPONSE CAPACITIES AT A GLANCE: THE EU AND ASEAN STANDPOINTS. 3.1. The European Union System. 3.2. The ASEAN Cooperation Model. 4. SUPPORTING THE REGIONAL PERSPECTIVE. 4.1. Implementing rules and policies at the national level. 4.2. Coherence, coordination and synergies within institutional and normative framework. 5. CONCLUSIONS.

**ABSTRACT:**

The implementation of United Nations Sustainable Development Goals and the agenda 2030 is a challenge for international community as a whole. However, acknowledging the importance of universal set of rules, the main role in implementing such Goals falls to States. In this regard, it is of vital importance an appropriate consistency and strength of regional rules, principles and policies that would be applicable at the national level. This research analyses these characteristics by examination of disaster capacity-building regulations. We will focus on the strength and coherence of institutional and normative frameworks at regional level and how States implement them.

**KEY WORDS:**

International Disaster Law; capacity building; Sustainable Development Goals.

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\*Correo electrónico: [abautista@uma.es](mailto:abautista@uma.es). ORCID ID: 0000-0001-9101-5555. El presente trabajo se enmarca en el Proyecto de Investigación SEJ-405 «Cooperación Judicial en el ámbito Penal», financiado por la Junta de Andalucía, y dirigido por la Profesora Elena del Mar García Rico. The presentation of this work has been granted by the I Plan of Research and Transfer of the University of Malaga [La presentación de este trabajo ha sido objeto de una ayuda para asistencia a congresos del I Plan Propio de Investigación y Transferencia de la Universidad de Málaga]. All links to web pages have been consulted for the last time on September 30, 2018.

## 1. INTRODUCTION

The United Nations Sustainable Development Goals (hereinafter SDG) constitutes one of the latest efforts in the global scene to achieve high level of worldwide progress in three main areas: economic, social and environmental, and it also represents an integral challenge for international community<sup>1</sup>. The new Agenda 2030 comprising 17 SDG's were adopted by United Nations General Assembly (UNGA) Resolution 70/1, on 25 September 2015, titled "*Transforming our world: the 2030 Agenda for Sustainable Development*"<sup>2</sup>. These Sustainable Goals have superseded the Millennium Development Goals (MDG)<sup>3</sup> and sought to continue with the efforts made by the United Nations framework in a large sense, promoting "...global aspirations across a wide array of topic areas broadly associated with sustainable development"<sup>4</sup>.

Some authors consider that the origins of sustainable development's conception could be in the field of economics<sup>5</sup>. For others however, it cannot be tracked to an exact date<sup>6</sup>. In either case, there is a common sense that the sustainable development does not constitute a juridical concept<sup>7</sup>. However, it represents a complex idea that has caused great curiosity among international scholarship<sup>8</sup> and particularly in relation with Disaster Law<sup>9</sup>. In a general sense, sustainable development is considered as "the ability [of

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<sup>1</sup> FERNÁNDEZ-LIESA, C.R., "Transformaciones del Derecho internacional por los objetivos de desarrollo sostenible", *Anuario Español de Derecho Internacional*, Vol. 32, 2016, p. 53.

<sup>2</sup> UNGA Resolution 70/1, 25 September 2015, UN Doc. A/RES/70/1.

<sup>3</sup> See NANDA, V.P., "The Journey from the Millennium Development Goals to the Sustainable Development Goals", *Denver Journal of International Law and Policy*, Vol. 44, Issue 3, 2016, pp. 389-412.

<sup>4</sup> FRENCH, D., KOTZÉ, L.J., *Sustainable Development Goals. Law, Theory and Implementation*, Edward Elgar Publishing, 2018, p. 1.

<sup>5</sup> RODRIGO, A.J., *El Desafío del Desarrollo Sostenible. Los principios del Derecho internacional relativos al desarrollo sostenible*, Marcial Pons, Madrid, 2015, p. 17.

<sup>6</sup> VOIGT, C., *Sustainable Development as a Principle of International Law. Resolving Conflicts between Climate Measures and WTO Law*, Martinus Nijhoff Publishers, 2009, p. 11. See also, about the origins of the concept of sustainable development MATSUI, Y., "The Road to Sustainable Development: Evolution of the Concept of Sustainable Development in the UN", in GINTHER, K., DENTERS, E., DE WAART, P. (eds.), *Sustainable Development and Good Governance*, Martinus-Nijhoff, Dordrecht, 1995, pp. 53-69; BEYERLIN, U., "The Concept of Sustainable Development", in WOLFRUM, R. (ed.), *Enforcing Environmental Standards: Economic Mechanism as viable Means?*, Springer, Berlin, 1996, pp. 96-101; PÉREZ DE ARMIÑO, K., *Diccionario de Acción Humanitaria y Cooperación al Desarrollo*, Icaria/HEGOA, Universidad del País Vasco, Bilbao, 2000, accessible at <http://publ.hegoa.efaber.net/publications/255>;

<sup>7</sup> RODRIGO, A.J., *El Desafío... op. cit.*, p. 17.

<sup>8</sup> As evidenced by related studies on this topic. See e.g. SANDS, PH., "International Law in the Field of Sustainable Development", *British Yearbook of International Law*, Vol. 65, Issue 1, 1994, pp. 303-381; SCHWARZ, P., "Sustainable Development in International Law", *Non-State Actors and International Law*, vol. 5, Issue 1 (2005), pp. 127-152; VOIGT, C., *Sustainable... op. cit.*; RODRIGO, A.J., *El Desafío... op. cit.*; DÍAZ BARRADO, C.M., "Sustainable Development Goals: An Unpredictable and Fragmented Principle", *Anuario Español de Derecho Internacional*, Vol. 32, 2016, pp. 9-48; FERNÁNDEZ-LIESA, C.R., "Transformaciones...", *op. cit.*; FRENCH, D., KOTZÉ, L.J., *Sustainable Development Goals. Law, Theory and Implementation*, Edward Elgar Publishing, 2018.

<sup>9</sup> See a.e. CUBIE, D., «Promoting Dignity for All: Human Rights Approaches in the Post-2015 Climate Change, Disaster Risk Reduction and Sustainable Development Frameworks», *Human Rights & International Legal Discourse*, Vol. 8, Issue 1, 2014, pp. 36-51.

humanity to meet] the needs of the present without compromising the ability of future generations to meet their own needs”<sup>10</sup>.

This concept has reached deep into the environment, economy and social areas. As noted by FERNÁNDEZ LIESA<sup>11</sup>, this has shaped the tripartite view reflected in the 2012 United Nations Conference on Sustainable Development “Rio+20”<sup>12</sup>. In relation to International law, sustainable development has been understood as a multidimensional concept. In this regard, RODRIGO indicates that there are three dimensions of the concept: It has a political aim; it is a legal concept with a plurality of manifestations (it could be a legal principle or a human right); and it is a methodological framework<sup>13</sup>. Also, scholars have figured out the notion development as being a right to a particular process of development or concept “bridge”, which may help to the fulfilment of sustainable development goals<sup>14</sup>.

This broad notion of sustainable development allows for the inclusion of many other facets in the international scene to achieve these goals: the economic and social progress of societies in an environmentally friendly way. Also, it agrees (and demands) a full collaboration among all parties involved, beyond the classical scheme of subjects of international law (States, Intergovernmental Organisations and the individual). Indeed, the current notion of sustainable development gathered in SDO’s adopted in 2015 requires a crosswise participation of States and non-States actors on all its levels: multilateral, regional, national and local. Disaster preparedness (including capacity-building) is a field in which sustainable development objectives can be developed. In fact, the advances in this sector directly reflect the implementation of the SDGs, given the special nature of this set of regulations, with similar objectives to that of the Agenda 2030.

The purpose of this paper is to discuss the strengthening of institutional and normative framework in disaster preparedness implementing the United Nations Sustainable Development Goals (SDG). Acknowledging the importance of universal actions and set of rules, States have the inherent obligation to implement these Goals. In this regard, it is of vital importance that an appropriate consistency and strength of regional rules, principles and policies is applied at the national level. This paper analyses these characteristics by examining disaster capacity-building regulations. We will focus on the strength and coherence of institutional and normative frameworks at regional level and how States implement them.

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<sup>10</sup> See 1987 Report of the World Commission on Environment and Development “Our Common Future” (better known as *the Brundtland Report*), UN Doc. A/42/427, Annex, at para. 27. See about the origins of the concept from the Brundtland Report to the Agenda 2030 in RODRIGO, A.J., *El Desafío... op. cit.*, pp. 21-43.

<sup>11</sup> See FERNÁNDEZ-LIESA, C.R., “Transformaciones...”, *op. cit.*, p. 50.

<sup>12</sup> The outcome document of the Conference titled “The future we want” could be found in UNGA Resolution 66/288, 27 July 2012, UN Doc. A/RES/66/288.

<sup>13</sup> See RODRIGO, A.J., *El Desafío... op. cit.*, pp. 22-88.

<sup>14</sup> See FERNÁNDEZ-LIESA, C.R., “Transformaciones...”, *op. cit.*, p. 81. See also on the meaning of sustainable development: SCHWARZ, P., “Sustainable...”*op. cit.*” DJOGHLAF, A., “The Concept of Sustainable Development”, *Environmental Policy and Law*, vol. 36, Issue 5, 2006, pp. 211-218.

## 2. SUSTAINABLE DEVELOPMENT AND DISASTER MANAGEMENT

Disasters are a part of the tripartite idea of sustainable development. In fact, there is a close relationship between disaster management, in particular prevention policies<sup>15</sup>, and sustainable development in the less favoured areas of the planet. Natural disasters tend to strike in some of the less developed regions of the planet. Asia is one of the most affected regions with The Philippines leading the ranking in terms of number of catastrophes and relevance of their consequences<sup>16</sup>. For this reason, it is of vital importance that both the development and disaster prevention measures go hand in hand.

Furthermore, capacity-building actions “encompass all aspects of creating and sustaining capacity growth over time. It involves learning and various types of training, but also continuous efforts to develop institutions, political awareness, financial resources, technology systems and the wider enabling environment”<sup>17</sup> in order to provide adequate disaster preparedness<sup>18</sup>.

In relation with SDO's adopted by United Nations in 2015, disaster related situations are considered as a threat to “the development progress made in recent decades”<sup>19</sup>. Also, disaster management could be considered as a cross-cutting topic of the 17 SDO's, particularly in the promotion of institutional and normative framework together with the necessary alliances. This general view is reflected in the Goal 17: *Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development*. In particular, several of the objectives, targets and means of implementation are linked with disaster related aspects. For instance, resilience and reduction of vulnerability of communities against climate-related disasters (Goal 1: *End poverty in all its forms everywhere*); enhance resilience of food production in the event of a disaster (Goal 2: *End*

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<sup>15</sup> But also with reconstruction after a disaster; see Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, Part V. Recommendations, UN Doc. A/71/644, p. 21; see also UNITED NATIONS, 2009 *UNISDR Terminology on Disaster Risk Reduction*, Geneva, 2009, p. 29.

<sup>16</sup> See data collected by region in GUHA-SAPIR, D., BELOW, R., HOYOIS, PH., *EM-DAT: The CRED/OFDA International Disaster Database*, Université Catholique de Louvain, Brussels, Belgium, available at [www.emdat.be](http://www.emdat.be).

<sup>17</sup> See definition of “capacity development” in Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, Part V. Recommendations, UN Doc. A/71/644, p. 12.

<sup>18</sup> See also the notion of “preparedness”, done by the working group: “The knowledge and capacities developed by governments, response and recovery organizations, communities and individuals to effectively anticipate, respond to and recover from the impacts of likely, imminent or current disasters”; Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, Part V. Recommendations, UN Doc. A/71/644, p. 21.

<sup>19</sup> UNGA Resolution 70/1, para. 14. See also on the relationship between disasters and development the presentation made by Tiina LUIGE and Lorenza JACHIA (United Nations Economic Commission for Europe –UNECE–) on terminology, available at [http://www.preventionweb.net/files/45462\\_technicalbriefingdrterminologyune.pdf](http://www.preventionweb.net/files/45462_technicalbriefingdrterminologyune.pdf); and the document *Report - Technical Briefing on Terminology 4 September 2015*, Palais des Nations, Geneva, 2015, accessible at [http://www.preventionweb.net/files/45462\\_terminologytechnicalbriefingreport.pdf](http://www.preventionweb.net/files/45462_terminologytechnicalbriefingreport.pdf).



*hunger, achieve food security and improved nutrition and promote sustainable agriculture*); reduce economic and social consequences of disasters and health threats<sup>20</sup> (Goal 11: *Make cities and human settlements inclusive, safe, resilient and sustainable*); and strengthen resilience to climate-related disasters (Goal 13: *Take urgent action to combat climate change and its impacts*).

Likewise, the close ties between development and catastrophes are highlighted in other international instruments sponsored by the UN. For instance, related to climate change the 2015 Paris Agreement<sup>21</sup>, gathering certain principles related to the development such as the principle of common but differentiated responsibilities<sup>22</sup>. Also, specifically on disaster regulation, the *Sendai Framework for disaster risk reduction*<sup>23</sup> which is one of the main instruments adopted by the international community to promote disaster prevention and reconstruction.

Also a strong relationship between disasters and development is shown in the UN guiding principles on humanitarian assistance adopted by UNGA Resolution 46/182 dated on 1991. Its Part VII about relief, rehabilitation and development, notes that:

*“Emergency assistance must be provided in ways that will be supportive of recovery and long-term development.*

[...]

*International cooperation should be accelerated for the development of developing countries, thereby contributing to reducing the occurrence and impact of future disasters and emergencies”*<sup>24</sup>.

The Guiding Principles included in this resolution have been endowed with a certain normative character<sup>25</sup>. In fact, a good number of these principles have been subsequently

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<sup>20</sup> See TORRES CAZORLA, M.I., “A New Paradigm for the United Nations Security Council: The Relationship between Security and Health”, in TORRES CAZORLA, M.I. and SÁNCHEZ PATRÓN, J.M. (coords.), *Bioderecho Internacional: Derechos humanos, Salud pública y Medioambiente/International Biolaw: Human rights, Public Health and Environment*, Tirant lo Blanch, Valencia, 2018, pp. 117-142.

<sup>21</sup> *Paris Agreement*, done in Paris on 12 December 2015, available at UN Doc. FCCC/CP/2015/10/Add.1, Annex, pp. 23-40; *BOE* No. 28, 2 February 2017. See about this Agreement: FAJARDO DEL CASTILLO, T., «El acuerdo de París sobre el cambio climático: sus aportaciones al desarrollo progresivo del Derecho internacional y las consecuencias de la retirada de los Estados Unidos», *Revista Española de Derecho Internacional*, Vol. 70, No. 1, pp. 23-51; and SALINAS ALCEGA, S., «El acuerdo de París de diciembre de 2015: la sustitución del multilateralismo por la multipolaridad en la cooperación climática internacional», *Revista Española de Derecho Internacional*, Vol. 70, No. 1, pp. 53-76.

<sup>22</sup> About the linkage of climate change and disasters in relation with this Treaty see BAUTISTA-HERNÁNDEZ, A., “Climate Change and Disasters: the 2015 Paris Agreement legal standards applicable to disaster prevention”, in TORRES CAZORLA, M.I. and SÁNCHEZ PATRÓN, J.M. (coords.), *Bioderecho Internacional... op. cit.*, pp. 187-214.

<sup>23</sup> See *Sendai Framework for Disaster Risk Reduction 2015–2030*, adopted by UNGA Resolution 69/283, 3 June 2015, UN Doc. A/RES/69/283.

<sup>24</sup> Emphasis added. UNGA Resolution 46/182, 19 December 1991, UN Doc. A/RES/46/182, paras. 40-42.

<sup>25</sup> TORROJA MATEU, H. «Estrategia Internacional para la seguridad humana en los desastres naturales», *Araucaria. Revista Iberoamericana de Filosofía, Política y Humanidades*, Vol. 18, No. 36, 2016, pp. 241-263.

collected in different treaties, or have become some kind of practice of States or International Organisations.

The strong relationship between disaster management and sustainable development set out above demonstrates that the achievement of one's entails the achievement of the other. In this regard, disasters, climate change, development, health, etc. appears as different faces of the same prism.

### **3. REGIONAL FRAMEWORKS ON DISASTER RESPONSE CAPACITIES AT A GLANCE: THE EU AND ASEAN STANDPOINTS**

There are very few legal instruments at the global level addressing international disaster management. We can see, mainly, the 1998 Tampere Convention<sup>26</sup> and the 2000 Framework Convention on Civil Defence<sup>27</sup>. By contrast, we could find further development at regional and national spheres. That is why we will focus our research on the regional instruments establishing capacities against disasters.

There are two regions that have stood out in setting out disaster response capacities: the European Union (EU) and the Association of Southeast Asian Nations (hereinafter ASEAN)<sup>28</sup>. The following shows some considerations on these regional mechanisms and normative framework regarding disaster response capacities. These examples constitute an advanced level of commitment on the part of the States Parties in their respective systems, creating a mechanism for the establishment of permanent capacities in a supranational environment.

#### **3.1. The European Union system**

The European Union is a one-of-a-kind international organisation. It constitutes one of the most advanced examples of integration system. Disaster management is based on the solidarity clause set out in article 222.1 of the Treaty on the Functioning of the European Union<sup>29</sup>, and in accordance to the EU's competencies on support and complement of Member States' actions on civil protection<sup>30</sup>. This has led to a regulation through many Instruments<sup>31</sup>. One of the most pertinent is the Union Civil Protection

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<sup>26</sup> Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, 18 June 1998, UNITED NATIONS, *Treaty Series*, vol. 2296, No. 40906.

<sup>27</sup> Framework Convention on Civil Defence Assistance, 22 May 2000, UNITED NATIONS, *Treaty Series*, Vol. 2172, No. 38131.

<sup>28</sup> See the many areas of collaboration between the EU and the ASEAN in WAHLERS, G., *ASEAN and the European Union*, Konrad-Adenauer-Stiftung, Singapore, 2006.

<sup>29</sup> See consolidated version in *OJ C* 326, 26.10.2012.

<sup>30</sup> See Article 196 of the Treaty on the Functioning of the European Union.

<sup>31</sup> See inter alia, Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC, *OJ L* 293, 5.11.2013; Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause, *OJ L* 192, 1.7.2014; the European Union Internal Security Strategy 2015 – 2020;

Mechanism (UCPM), adopted by Decision No 1313/2013/EU of 17 December 2013<sup>32</sup>, and incorporated under the European Commission's Civil Protection and Humanitarian Aid Operations (ECHO). This Decision introduces fresh elements, such as a greater focus on prevention rather than response to disasters. In addition, in line with the requirements laid down in the SDG's (synergies and partnership)<sup>33</sup>, it is intended to be an instrument that aligns with existing ones such as the European geo-observation programme (Copernicus) or the European Program for Critical Infrastructure Protection (EPCIP), and so on<sup>34</sup>.

The main mechanism for disaster preparedness within the UCPM is the European Emergency Response Capacity (EERC), coordinated by an Emergency Response Coordination Centre (ERCC)<sup>35</sup>. It is regulated in articles 11-12 of Decision 1313/2013/EU. This system constitutes an improvement on the previous one as it establishes a centralized control centre and registry of relief capacities committed by the participating States<sup>36</sup>. These capacities may include "modules"<sup>37</sup>, other response capacities and experts<sup>38</sup>.

In a general sense, Disaster response capacities are seen as "the combination of all the strengths, attributes and resources available within an organisation, community or society to manage and reduce disaster risks and strengthen resilience"<sup>39</sup>. That may include in addition to relief modules, any other resources like economic support (for instance lending programmes, financial rescue aid, etc).

In order to acknowledge efficient and coordinated measures, the UCPM allows the inclusion of third States and regional and international organisations in activities carried out under the Mechanism<sup>40</sup>. For this purpose, ECHO participates with a large number of states or organisations in the field of civil protection. Together with the Member States,

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the EU Aid Volunteers Programme; and other mechanisms implemented within the Common Security and Defence Policy (CSDP).

<sup>32</sup> Decision No 1313/2013/EU, of the European Parliament and of the Council, of 17 December 2013, on a Union Civil Protection Mechanism, *OJL* 347, 20.12.2013.

<sup>33</sup> See SDO Goal 17.

<sup>34</sup> See Decision No 1313/2013/EU, Preamble, para. 6.

<sup>35</sup> For which a communications system is specifically created: the Common Emergency Communication and Information System (CECIS).

<sup>36</sup> See BAUTISTA-HERNÁNDEZ, A., "Recientes avances en la regulación de la Unión Europea en materia de catástrofes: el Mecanismo de Protección Civil de la Unión", in GARCÍA SAN JOSÉ, D., SÁNCHEZ PATRÓN, J.M. and TORRES CAZORLA, M.I. (Coords.), *Bioderecho, Seguridad y Medioambiente. Biolaw, Security and Environment*, Tirant lo Blanch, Valencia, 2015, pp. 173-194.

<sup>37</sup> Modules are understood as "a self-sufficient and autonomous predefined task- and needs-driven arrangement of Member States' capabilities or a mobile operational team of the Member States, representing a combination of human and material means that can be described in terms of its capacity for intervention or by the task(s) it is able to undertake"; see definition in article 4.6 of Decision 1313/2013/EU.

<sup>38</sup> Art. 11.1 Decision 1313/2013/EU.

<sup>39</sup> See definition of "capacity" in Report of the open-ended intergovernmental expert working group on indicators and terminology relating to disaster risk reduction, Part V. Recommendations, UN Doc. A/71/644, p. 12.

<sup>40</sup> Article 28, Decision 1313/2013/EU.

the EU cooperates with Algeria, Armenia, Australia, Belarus, Georgia, Moldova, Russia, Switzerland, Tunisia, Ukraine and the United States, among many others<sup>41</sup>.

UCPM has been used in many situations, for instance, to bringing assistance against forest fires in Greece or Finland, the deployment of medical capacities to help Angola, Democratic Republic of Congo and Uganda in health emergencies between 2014 and 2017 or providing international assistance to Haiti after the hurricane Matthew in 2016.

### 3.2. The ASEAN cooperation model

Another relevant example of a regional scope in disaster response capacities is the ASEAN<sup>42</sup> inter-governmental organisation. In this case, unlike in the EU, it is a cooperation organisation for the achievement of common objectives in economic, security and social areas, by means of three “thematic” communities: the ASEAN Security Community, the ASEAN Economic Community and the ASEAN Socio-Cultural Community<sup>43</sup>. Both sustainable development and disaster management are included in the actions and policies taken by this Organisation and its Member States<sup>44</sup>. Also, it constitutes a good counterpart in our analysis at the regional level, because of its intergovernmental logic of cooperation.

With respect to economic agenda, ASEAN works in food and energy security to support sustainable development of different regions<sup>45</sup>. Also, the creation of the *ASEAN Hydroinformatics and Climate Data Centre*<sup>46</sup> or the proposal of create an *ASEAN Smart Cities Network (ASCN)*<sup>47</sup> are some examples of ASEAN works based on “engagement mechanisms with multiple stakeholders including the business community and development partners”<sup>48</sup>.

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<sup>41</sup> See [http://ec.europa.eu/echo/partnerships/civil-protection-partners\\_en](http://ec.europa.eu/echo/partnerships/civil-protection-partners_en).

<sup>42</sup> The *Bangkok Declaration* (UNITED NATIONS, *Treaty Series*, Vol. 1331, p. 243) established the ASEAN on 8 August 1967. Its secretariat is based in Jakarta (Indonesia).

<sup>43</sup> See Preamble of *ASEAN Charter*, adopted 20 November 2007, entered into force 15.12.2008, accessible at <https://asean.org/asean/asean-charter/>.

<sup>44</sup> See, for instance the works of the ASEAN Ministerial Meetings on Disaster Management (<https://asean.org/asean-socio-cultural/asean-ministerial-meeting-on-disaster-management-ammdm/overview/>), or the ASEAN Ministerial Meeting on Social Welfare and Development (<https://asean.org/asean-socio-cultural/asean-ministerial-meeting-on-social-welfare-and-development-ammswd/>).

<sup>45</sup> See ASEAN, *A Resilient and Innovative ASEAN Community. ASEAN Annual Report 2017-2018*, 2018, accessible at [https://asean.org/?static\\_post=asean-annual-report-2017-2018-resilient-innovative-asean-community](https://asean.org/?static_post=asean-annual-report-2017-2018-resilient-innovative-asean-community), p. 6.

<sup>46</sup> This service promotes “the implementation of hydro-informatics and related technologies for efficient water management, water-related disaster risk reduction, and climate change adaptation”; see ASEAN, *A Resilient... op. cit.*, p. 20.

<sup>47</sup> ASEAN, *A Resilient... op. cit.*, p. 12.

<sup>48</sup> ASEAN, *A Resilient... op. cit.*, p. 7.

The main normative instrument<sup>49</sup> established by ASEAN to cooperate in disaster capacity building is the 2005 ASEAN Agreement on Disaster Management and Emergency Response<sup>50</sup>. It introduced the *ASEAN Standby Arrangements for Disaster Relief and Emergency Response*. This response mechanism is composed of “emergency response/search and rescue directory; military and civilian assets; emergency stockpiles of disaster relief items; and disaster management expertise and technologies”<sup>51</sup>. Despite the fact that these capacities are based on voluntary contributions from Member States, the creation with a permanent character as well as their management through ASEAN imply important advances in cooperation in the matter. These response capacities are managed by the ASEAN Coordinating Centre for Humanitarian Assistance on disaster management (AHA Centre)<sup>52</sup>. This Centre coordinates and collaborates in disaster monitoring, preparedness and response many disaster situations<sup>53</sup> such as Typhoon Haiyan (2014), landslides and floods in Viet Nam (2017). It also adopts agreements to create synergies between disaster management organisations (for instance the Memorandum of Intent between the AHA Centre and Pacific Disaster Center based in Hawaii<sup>54</sup>) and promotes the public-private partnership for disaster management within the ASEAN region<sup>55</sup>.

#### **4. SUPPORTING THE REGIONAL PERSPECTIVE**

For a proper implementation of the SDGs in general, as well as disaster response capacities in particular, a regional approach should be adopted. This point of view may have certain advantages. Principally, in the homogeneous implementation of norms and principles at national level, as well as in favouring greater cooperation and assistance among the parties involved. Following our example in the field of disaster response capacities, we will examine the practice in this regard.

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<sup>49</sup> See in addition other related instruments such as the ASEAN Declaration on Mutual Assistance on Natural Disasters of 26 June 1976 and the ASEAN Agreement on Transboundary Haze Pollution of 10 June 2002.

<sup>50</sup> Done in Vientiane 26 July 2005, entry into force 24.12.2009, ASEAN *Document Series* 2005, p. 157. See about this Agreement SIMM, G., “Disaster Response in Southeast Asia: The ASEAN Agreement on Disaster Response and Emergency Management”, *Asian Journal of International Law*, Vol. 6, 2016, pp. 1-27.

<sup>51</sup> See article 9.1 of ASEAN Agreement on Disaster Management and Emergency Response, 26 July 2005.

<sup>52</sup> It was established by the Agreement on the Establishment of the ASEAN Co-ordinating Centre for Humanitarian Assistance on Disaster Management, Signed in Bali the 17 November 2011, entry into force 7.4.2014, accessible at: <http://agreement.asean.org/media/download/20140814092954.pdf>.

<sup>53</sup> See <https://ahacentre.org/>.

<sup>54</sup> See <https://ahacentre.org/news/signing-of-memorandum-of-intent-between-the-aha-centre-and-pacific-disaster-center/>.

<sup>55</sup> See AHA Centre Press Release, 5 December 2017, accessible at <https://ahacentre.org/press-release/press-release-fostering-public-private-partnerships-for-one-asean-one-response/>.

#### 4.1. Implementing rules and policies at the national level

The 2030 Agenda places the focus at the national, regional and global levels to implement the SDG's<sup>56</sup>. Together with the fundamental role of universal multilateral forums (such as the high-level political forum), and recognising “that each country has primary responsibility for its own economic and social development”<sup>57</sup>, it is necessary to strengthen the scope of regional cooperation.

National strategies on capacity-building were promoted within the UN in the last decades, asserting that “national sustainable development strategies are an important mechanism for enhancing and linking national capacity”<sup>58</sup>. However, current tendencies show that regional systems are the most suitable for capacity-building, for example, in case of disaster response capacities within the EU and the ASEAN. In this sense, as noted by KHENG-LIAN and ROBINSON, “integration of national actions for sustainable development within a geographic region can be advanced through such measures as harmonization of standards, joint implementation [...], or shared capacity building projects”<sup>59</sup>.

In addition, regional forums are more appropriate than global forums, given the lack of normative value on the outcomes of the latter. Continuing with our example on disaster regime, despite the importance of discussion forums such as the UN or the Global Platform for Disaster Risk Reduction<sup>60</sup>, the greatest progress has been made at the regional level. It is only within this sphere where international cooperation in fields such as disaster preparedness is most effective. The establishment and maintenance of capacities as well as the actions of some States against others are more efficient and effective at the regional level. It is much easier and less expensive to send disaster capacities such as water bombers planes from Spain to France than from Spain to California.

The strengthening and adoption of measures at the national level with respect to international rules is necessary. At the same time, it is required to introduce elements of the different States parties in multilateral regional bodies. Also, this regional approach should allow the integration of local communities' vision. Because the latter “have a unique understanding of the factors that contribute to their ability to resist, absorb and recover from disturbances as well as a direct understanding of the risks that they face”<sup>61</sup>.

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<sup>56</sup> See UNGA Resolution 70/1, paras. 78-89.

<sup>57</sup> See UNGA Resolution 70/1, para. 41.

<sup>58</sup> National Mechanisms and International Cooperation for Capacity-Building in Developing Countries, Report by the Secretary General, UN Doc. E/CN.17/1997/2/Add.27, para. 35.

<sup>59</sup> See KHENG-LIAN, K., ROBINSON, N.A., “Strengthening Sustainable Development in Regional Inter-Governmental Governance: Lessons from the ‘ASEAN Way’”, *Singapore Journal of International & Comparative Law*, Vol. 6, 2002, p. 641.

<sup>60</sup> See <https://www.unisdr.org/we/coordinate/global-platform>.

<sup>61</sup> ALCAYNA, T., BOLLETTINO, V., DY, P., VINCK, P., “Resilience and Disaster Trends in the Philippines: Opportunities for National and Local Capacity Building”, *Public Library of Science (PLOS) Currents Disasters*, 2016 Sep 14, Edition 1, accessible at

In this way, cooperation and coordination will go hand in hand in achieving greater development.

Likewise, regional regulations allow a greater homogeneity in the normative development and the implementation of measures because there are institutionalized systems for the creation of standards or intergovernmental cooperation and mechanisms for review.

Also international organisations presume the existence of common objectives for which States have accepted their participation and in some cases ceded sovereignty. Therefore, collaboration in these objectives is presumed easier, and allows reach goals faster.

The creation of regional instruments on disaster response capacities has imposed a series of obligations on the participating States. They must upgrade domestic legislation or create new structures to comply with it. For instance, the adoption of Decision 1313/2013/EU has led to legislative reforms at the national level to adapt the participation into the new UCPM. We can see, *inter alia*, the Spanish replacement of its Law 2/1985 on Civil Protection<sup>62</sup> by the Law 17/2015 on National Civil Protection System<sup>63</sup>. Also the inclusion of specific rules on European rescue operations<sup>64</sup>.

#### **4.2. Coherence, coordination and synergies within institutional and normative framework**

Following the regional perspective that we have been advocating, regional international cooperation would allow for greater coherence, coordination and the establishment of synergies among the instruments, policies and rules adopted by the Organisation or by its member States.

As stated by FERNÁNDEZ-LIESA, sustainable development objectives “require intense cooperation from the entire international community as well as the adoption of measures by all subjects and actors”<sup>65</sup>. For that matter, in our opinion, the regional level is the most favourable to improve cooperation. The reduced number of members concerned about common interests that directly affect them, allows greater coordination and coherence in their politics, as demonstrated in the case of disasters and development<sup>66</sup>.

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<http://currents.plos.org/disasters/article/resilience-and-disaster-trends-in-the-philippines-opportunities-for-national-and-local-capacity-building/>.

<sup>62</sup> Ley 2/1985, de 21 de enero, sobre protección civil, *BOE* No 22, 25.1.1985.

<sup>63</sup> Ley 17/2015, de 9 de Julio, del Sistema Nacional de Protección Civil, *BOE* No. 164, 10.7.2015.

<sup>64</sup> See section 38 of Finland Rescue Act 379/2011, 29 April 2011, accessible at [http://www.ifrc.org/PageFiles/100077/Finland\\_2011\\_Rescue%20Act.pdf](http://www.ifrc.org/PageFiles/100077/Finland_2011_Rescue%20Act.pdf).

<sup>65</sup> FERNÁNDEZ-LIESA, C.R., “Transformaciones...”, *op. cit.*, p. 52

<sup>66</sup> Coherence between national agendas on disaster risk reduction (DRR) and SDO’s has been claimed at multilateral level; see 2017 Global Platform for Disaster Reduction, Priority 3, *Chair’s Summary: From Commitment to Action*, Cancun, 26 May 2017, accessible at: [http://www.preventionweb.net/files/53989\\_chairsummaryofthe2017globalplatfor.pdf](http://www.preventionweb.net/files/53989_chairsummaryofthe2017globalplatfor.pdf), para. 21, p. 4.

Also, thanks to international cooperation in the field of disaster management, we can move away from the north-south logic (assumed by the MDGs) and adopt an all-embracing / universal perspective (as proposed by SDG's and Agenda 2030).

The regional perspective also allows the coherence of policies to achieve development objectives. Coherence is achieved through regional forums in which measures of a mandatory nature can be adopted by its members.

In the same way, synergies and partnerships with other actors for the achievement of objectives such as companies, academic institutions, NGO's, etc. are taken into account. International support and collaborative works among all public and private actors are of vital importance "especially for the poorest countries and for countries facing special challenges due to their geographic location"<sup>67</sup>. This is clearly seen in the UCPM framework, which requires coherence and coordination with other EU instruments<sup>68</sup>.

However, foreign assistance is not the only task. Also, the implementation of national and supranational control mechanism are of crucial importance. They must allow the review and adequate examination of capacities and make good use of available resources.

## 5. CONCLUSIONS

The premise from the outset was that disaster management and sustainable development is not the same thing. However, both are deeply related. To such an extent, that development is one of the main ways that has been adopted for the prevention of catastrophes in underdeveloped regions.

In this sense, this enquiry has tried to address the issue of sustainable development, as well as the implementation of the SDGs established in 2017 through cross-cutting issues to the SDGs or related to them, such as the improvement of the institutional and regulatory framework for disaster management. For that purpose, we have made the analysis based on two models of regional development: that of the European Union and that of the ASEAN.

Our point is that *the strengthening of institutional and regulatory mechanisms at the regional level, particularly in the field of disasters, can favour the implementation of the SDG's and in particular through the use of horizontal partnerships (public-public, private-private) and vertical one (public-private).*

After the analysis, we can conclude that there are some advantages in adopting the regional model. This premise does not contradict the acknowledgment of the national

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<sup>67</sup> See UNITED NATIONS, *The Sustainable Development Goals Report 2018*, 2018, p. 30.

<sup>68</sup> See on this problem: PÉREZ BERNÁRDEZ, C., "La problemática coordinación de la ayuda humanitaria de la Unión Europea", *Revista Electrónica de Estudios Internacionales*, núm. 30, 2015.



level, taking into account that “the primary enforcers of international norms remain the States themselves”<sup>69</sup>.

This approach allows improvement on the consistent application of standards by States; to better support to States from the regional level, thanks to cooperation in the achievement of common objectives; it allows the creation of synergies and partnerships between involved actors of different types (public, private, state or non-governmental). On the contrary, it is necessary to adopt measures for the adequate inclusion of national and local positions in these regional instruments so that certain States would not be silenced.

Also, in order to revitalize the SDG’s legal regime it is important to promote the use of regional organisations’ frameworks, which are more inclined to establish legally binding norms, instead of soft law. In this way, those of integration will be able to dictate norms applicable to the Member States and in those of cooperation through other instruments such as international treaties.

The regulation of disasters reveals the true functionality of International Law as a manifestation of the common values of the international community. Such values would include, among others, respect for Human Rights, the promotion of social and economic development in the less developed regions, the protection of the environment or the application of certain humanitarian principles to emergency assistance. In our opinion, the recent advances and the configuration adopted by the set of norms related to disasters is a manifestation of their establishment as an interest in this globalized world.

As a final conclusion, following the reflection of MOHAMMAD YUNUS exposed in his lecture of the Nobel Peace Prize in 2006:

“Poverty is a threat to peace. Peace should be understood in a human way-in a broad social, political and economic way. Peace is threatened by unjust economic, social and political order, absence of democracy, environmental degradation and absence of human rights”<sup>70</sup>.

The adequate response to catastrophes allows us to join forces in the achievement of the SDG’s. On the contrary, they will become little more than ink and paper.

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<sup>69</sup> BARRAL V., “Sustainable Development in International Law: Nature and Operation of an Evolutive Legal Norm”, *European Journal of International Law*, Vol. 23, Issue 2, 2012, p. 398. Approach followed by DÍAZ BARRADO, C.M., “Sustainable...” *op. cit.*, p. 48.

<sup>70</sup> Taken from UNESCO, *70 Quotes for Peace*, UNESCO Publishing & Gallimard, 2017, p. 24.