

<AT>SDG 10: Reduce Inequality within and among Countries

<AU>Philippe Cullet

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<AB>Abstract

Sustainable Development Goal (SDG) 10, Reduced Inequalities, addresses one of the fundamental building blocks for the realization of all SDGs in a very unequal world. It emphasizes both inter-state and intra-state inequality and, in so doing, goes much beyond what the 2000 Millennium Development Goals offered. SDG 10 is a central goal because inequality conditions the realization of many other SDGs, some of which also directly address inequality. In the context of international law, SDG 10 reflects in part existing equity measures, such as preferential and differential treatment. It may be seen as strengthening the equity context in economic law but does not go beyond what sustainable development law already provides. Its main contribution is to link different types of inequalities and provide a framework for linking sustainable development law, economic law, and human rights.

<K>Keywords

SDG 10, inequality, differential treatment, equity, North-South, poverty

<H1>1 Introduction

Inequality is one of the most crucial constraints impeding the realization of human rights, environmental protection, and, more broadly, sustainable development. Regrettably, the world is marred by tremendous inequalities between countries and within countries. Worse, inequality has been rising over the past few decades and threatens to unravel sustainable development overall,¹ which is illustrated, for instance, by the fact that during a time of unprecedented expansion of the

¹ United Nations, *The Sustainable Development Goals Report*, 2019, 2.

world economy, the share of least developed countries in world output has essentially stagnated since the 1970s.²

The idea that equality equates with equity is a structuring element at national and international levels. Two main conceptions of equity can be opposed in this regard. The first regards formal equality as the only measure against which equity is to be measured. In this way, the formal legal equality of states is the basis that is used to identify whether measures are fair. In terms of legal obligations, the consequence of formal equality is that each state takes on the same commitments as all other states that are parties to a given treaty. At the individual level, formal equality translates into universal rights and obligations of every person. Human rights are, for instance, universal insofar as they apply similarly for anyone recognized as a holder of rights.

Formal equality tends to lead to outcomes that may be optimal in aggregate terms, but such an observation may overlook the situation of the disadvantaged members of the community. At the international level, states have never been equal in economic, political, or military power. At the individual level, a universal framework does not provide the basis for considering systemic inequalities. In this context, the second concept of equity – that is, substantive equality – seeks to address some of the shortcomings of formal equality. It posits that what matters is not equality of rights or opportunities but, rather, equality of outcomes, which calls for treating like cases alike, while recognizing that dissimilarities between subjects of the law that warrant special attention or special treatment. At the international level, this special treatment has been called preferential or differential treatment. It has been applied mostly to recognize the different situation of developing and developed countries. At the national level, special treatment for specific groups of people have taken different names in different countries, such as affirmative action in the United States or reservation in India.

Inequalities have been acknowledged in international law for decades. Relevant examples, which will be further discussed below, include the following. First, in the context of international economic law, preferential treatment measures were adopted in recognition of the fact that developing countries could not compete as equal partners with developed countries. This idea has progressively faded, and, in the World Trade Organization (WTO), differentiation is seen as an exception to the rule of formal legal equality. Second, in international environmental law, differential treatment has been a structuring element of environmental regimes for decades. Third, differentiation has found its way into some other areas of international law. In intellectual property law, limited differential measures can be found in the 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In agricultural law, some of the specific concerns addressed, such as the recognition of farmers' rights, reflect priorities of the global South.

There are also deviations from formal equality that do not seek to foster substantive equality but, rather, reinforce existing inequalities. This is the case in the UN Security Council, where differentiation favours the more powerful states.³ In the context of financing for development, the World Bank offers an example of an exception to the rule of one state, one vote since the voting share of each member state is linked to the amount of capital stock they hold. In international investment law, the long-standing rule that private entities are hierarchically inferior to states has

² Deepak Nayyar, "Can Catch up Reduce Inequality?", in Peter A.G. van Bergeijk & Rolph van der Hoeven (eds.), *Sustainable Development Goals and Income Inequality* (EE, 2017), 169, 177.

³ 1945 Charter of the United Nations, art. 27(3).

been sidelined in treaties, allowing investors to sue host states. This policy is directly linked with issues of inequality in the context of the Sustainable Development Goals (SDGs) because it is relatively small countries of the global South that have been at the receiving end of these provisions.

In this broader context, the very existence of a SDG specifically concerned with inequality is a major step forward given that the 2000 Millennium Development Goals (MDGs) had remained largely silent on inequality. In fact, this was seen as one of the MDG's shortcomings that needed to be addressed.⁴ The underlying context of increasing inequality in the wake of the economic crisis of the late 2000s is also relevant to understanding SDG 10, Reduced Inequalities, and it may well explain why SDG 10 focuses both on inequality between states and within states. The former is an obvious entry point for an international instrument. It is thus surprising that SDG 10 struggles to even confirm the frameworks that address inequality and that are already in place in international law. Instead, SDG 10 has more to say about inequality within countries than among states, which is apt to the extent that this aligns with the concerns of international human rights law. At the same time, the content of SDG 10 addresses issues that are largely seen as falling under the purview of sovereign states' internal policies, which limits its potential reach.

<AT>2 The Content of SDG 10 in the Context of the Other SDGs

<H2>2.1 Inequality in the SDG 10 Targets

SDG 10 addresses three different types of inequality, including horizontal inequalities or inequalities between social, ethnic, linguistic, or other population groups; vertical inequalities or inequalities of wealth, income, or social outcome; and inequalities between countries.⁵ Some of the targets of SDG 10 focus on vertical inequality within countries, with a particular focus on economic aspects, including income, tax, and social protection. The first target focuses on ensuring that income growth of the bottom 40 percent of the population should be higher than the national average.⁶ This approach is equivalent to seeking a reduction in income inequality, as measured by the share of the bottom 40 percent of the population in national income.⁷ It has been criticized as being insufficient because it fails to address overall income inequality and is framed in such a way that the target can be realized while income inequality increases overall and because it fails to address the fact that inequality increases are created mostly at the top end of the income scale.⁸

⁴ See, e.g., Sakiko Fukuda-Parr, "Reducing Inequality: The Missing MDG: A Content Review of PRSPs and Bilateral Donor Policy Statements" (2010) 41(1) *IDS Bulletin* 26, 34.

⁵ Gillian MacNaughton, "Vertical Inequalities: Are the SDGs and Human Rights Up to the Challenges?" (2017) 21(8) *International Journal of Human Rights* 1050.

⁶ Target 10.1.

⁷ Edward Anderson, "Equality as a Global Goal" (2016) 30(2) *Ethics and International Affairs* 189, 193.

⁸ *Id.*, 193; Rolf van der Hoeven, "Can the SDGs Stem Rising Income Inequality in the World?", in van Bergeijk & van der Hoeven, n. 2, 208.

The next two targets address horizontal inequalities in a manner that is partly reminiscent of non-discrimination clauses in human rights. This approach goes beyond what the MDGs did, but neither of the two targets include clear measurable benchmarks against which their attainment is to be measured.⁹ Target 10.3, which promises to “[e]nsure equal opportunity and reduce inequalities of outcome”, goes further than the long-standing understanding of equity by the World Bank, emphasizing the need for individuals to have equal opportunities and to “be spared from extreme deprivation in outcomes”.¹⁰ However, it neither addresses the fact that everyone is not in the same position to make use of existing opportunities nor refers to the role of the private sector in fostering and addressing inequality.

Other targets emphasize global and South-North dimensions – that is, inequalities between countries. Target 10.5 starts with a call for the regulation of global financial markets, a central issue affecting all countries but one that needs to be tackled mostly by the members of the Organisation for Economic Cooperation and Development. Target 10.6 again emphasizes economic and financial issues and focuses on the need to strengthen the position of developing countries in institutions where the one-state, one-vote rule does not apply, such as international financial institutions. This situation has been a contentious issue for decades, but it constitutes only one of the many inequalities that need to be addressed in the broader field of sustainable development. Target 10.7 focuses on migration, a central issue in North-South relations but one that reflects primarily the concerns of the North in terms of stemming the flow of migration rather than broader concerns about people moving across borders. While refugees are technically migrants,¹¹ the absence of a reference to refugees is noteworthy because they are covered by a distinct international legal regime.¹² Furthermore, the lack of reference to displacement due to climate change points to a lack of synergy amongst the SDGs. While climate change is addressed in SDG 13, Climate Action, neither it nor SDG 10 address one of the main challenges the world is going to face in the coming decades.

The last three targets of SDG 10 also focus on inequality between countries. Target 10.a highlights the principle of special and differential treatment but emphasizes it only in the context of the WTO. Target 10.b focuses on encouraging official development assistance and foreign direct investment to the most vulnerable and marginalized countries. Target 10.c, which focuses on the high cost of migrant remittances, only highlights the symptoms of a much broader issue. Indeed, the question is not whether remittances reduce inequality, which they hopefully do. Rather, the issue is that remittances are so important today because they are comparatively much higher than official development assistance and foreign direct investment combined. Thus, the real issue is that the significance of remittances reflects states’ abdication of their responsibilities to take the lead on tackling inequality.

Overall, the targets included in SDG 10 are weak, give insufficient weight to reducing income inequality,¹³ and reflect a limited understanding of equity by focusing on economic and financial

⁹ MacNaughton, n. 5, 1059.

¹⁰ World Bank, *World Development Report 2006: Equity and Development* (World Bank, 2005), 2 (emphasis added).

¹¹ International Organization for Migration (IOM), *Migration and the 2030 Agenda* (IOM, 2018), 13.

¹² 1951 Convention Relating to the Status of Refugees.

¹³ Van der Hoeven, n. 4, 210.

aspects. This approach is surprising given that equity has structured, in particular, international environmental law for decades. In addition, SDG 10 has nothing to contribute to inter-generational equity, a crucial dimension of equity for a policy framework that seeks to drive the world's development policy for fifteen years, and this is despite the fact that the first policy report on sustainable development emphasized, in particular, its inter-generational dimensions.¹⁴

SDG 10 breaks some new ground insofar as it recognizes the need to tackle inequality domestically and takes a step forward in calling for a reduction in inequalities of outcome.¹⁵ This development could be the starting point for considering inequality as a common concern of humankind, which would then be addressed through cooperative action at the international level. At first sight, this goal looks very improbable, but two factors indicate that change may be forthcoming. First, inequality has reached such levels that governments around the globe are finding it increasingly difficult not to address it, at least in limited ways.¹⁶ Second, the potential long-lasting economic consequences of the COVID-19 pandemic could provide the basis for rethinking existing economic policies. However, real change will only be possible if policy-makers recognize the crucial role of private sector actors in tackling inequality given their dominant economic position. There is, however, no reference to private sector actors in SDG 10.

Limitations notwithstanding, SDG 10 has a crucial role to play in the broader framework of SDGs since it provides a link between the human and environmental dimensions of sustainable development and a basis for making the link between unequal development and environmental harm. This provision is crucial in a context where the SDGs do not give the kind of importance to the environment that would have been expected in the context of the shift from "development" goals in the MDGs to "sustainable development" goals. There are several goals that can be seen as adding up to an "environment cluster", but there is no overarching environmental goal.¹⁷ More fundamentally, the problem is that one would have expected the SDGs to be based on ecological sustainability, but they have remained welded to the development discourse.¹⁸ SDG 10 thus calls into question not just the way in which inequalities are to be addressed but also the very process of development centred on economic growth. SDG 10, then, offers a reminder that addressing inequalities among states and within states is crucial to ensuring that "development" does not threaten "sustainability".

<H2>2.2 SDG 10 in the Context of Other SDGs

¹⁴ World Commission on Environment and Development (WCED), *Our Common Future* (OUP, 1987).

¹⁵ Malte Luebker, "Poverty, Employment and Inequality in the SDGs: Heterodox Discourse, Orthodox Policies?", in van Bergeijk & van der Hoeven, n. 2, 141, 150.

¹⁶ United Nations, *World Social Report 2020: Inequality in a Rapidly Changing World*, UN Doc. ST/ESA/372, <date?>.

¹⁷ Werner Scholtz & Michelle Barnard, "The Environment and the Sustainable Development Goals: 'We Are on a Road to Nowhere'", in Duncan French & Louis J. Kotzé (eds.), *Sustainable Development Goals: Law, Theory and Implementation* (EE, 2018), 222, 231.

¹⁸ Sam Adelman, "The Sustainable Development Goals, Anthropocentrism and Neoliberalism", in French & Kotzé, n. 17, 20, 39.

Inequality acts as a decisive constraint on the realization of most other SDGs, as confirmed by the UN High-Level Political Forum on Sustainable Development (HLPFSD) when it recognized that “[i]nequality between and within countries remains a major obstacle to the achievement of the Goals and inaction in this area risks derailing progress on the 2030 Agenda. Effective policies to reduce inequalities require partnerships and political will”.¹⁹ Yet the SDGs are not organized in a hierarchical fashion, and no priority can be ascribed to SDG 10 over any other goal.²⁰ The most immediately relevant SDG to SDG 10 is SDG 5, Gender Equality, which is the only other goal centred on issues of equity. The main difference between these two SDGs is that SDG 5 focuses specifically on gender equality and does not directly address the issue from an international perspective.

SDG 10 is also directly related to goals focusing on economic issues, such as SDG 1, No Poverty. Inequality and poverty are inseparable in that they contribute to each other.²¹ Linking the two also helps to emphasize the non-economic dimensions of poverty that are not particularly prominent in SDG 1. SDG 8, Decent Work and Economic Growth, has direct links with inequality within and among countries. It (indirectly) suggests that least developed countries need to grow faster than the rest of the world. SDG 12, Responsible Consumption and Production, recognizes in target 12.1 that the capabilities of developing and developed countries are different with regard to the implementation of policy goals on sustainable consumption and production patterns. It also focuses in target 12.a on the need to strengthen the scientific and technological capacity of developing countries. Attaining these aims would require technological innovation and technology transfer, but the latter is only addressed in generic terms in target 17.7, under SDG 17, Partnerships for the Goals, and crucially fails to include any reference to intellectual property rights. This is not to say that the negotiators did not understand the relevance of intellectual property rights in the SDG context, as is confirmed by a lone reference to access to medicines in target 3.b, under SDG 3, Good Health and Well-Being.

There is also a strong link between inequality and the more social SDGs. SDG 2, Zero Hunger, is framed both around universality of access to sufficient and nutritious food and the need to focus on the needs of the poor and vulnerable. It also emphasizes the need to focus on agriculture to enhance farmers’ livelihoods in a context of urban migration linked in part to rural neglect. SDG 3 includes, for instance, a focus on neglected tropical diseases and water-borne diseases. Similarly, SDG 6, Clean Water and Sanitation, focuses on people without access to sufficient water and sanitation, the majority of whom are found in developing countries. In other words, issues like access to food, health, and water are looked at largely in terms of the inbuilt inequalities that need to be addressed, both within and among countries. Another similarity among these goals is that they are all related to human rights. Yet none of the relevant SDGs refer to human rights or use human rights language.

Inequality is also present in the more environment-focused goals (SDG 13; SDG 14, Life below Water; and SDG 15, Life on Land). In each case, inequality aspects among countries are highlighted, though in much more limited ways than would be expected. In the case of climate

¹⁹ *Summary by the President of the Economic and Social Council of the High-level Political Forum on Sustainable Development*, UN Doc. E/HLPF/2019/8, 2019, para. 8(e).

²⁰ Cf. Rakhyun E. Kim, “The Nexus between International Law and the Sustainable Development Goals” (2016) 25(1) *Review of European, Comparative & International Environmental Law* 15.

²¹ Felix Naschold, *Why Inequality Matters for Poverty* (Overseas Development Institute, 2002), 1.

change, the central role of differential treatment is not mentioned, there is a striking lack of reference to developing countries when it comes to resilience (target 13.1), and there is a limited focus on the finance-related mitigation needs of developing countries (target 13.a). There is also nothing on the intra-state inequalities faced by people in terms of climate change adaptation, such as displacement. SDG 14 considers the special situation of certain categories of states, such as small island developing states (target 14.7) and emphasizes the unfavourable situation of small-scale artisanal fishers (target 14.b). SDG 15 includes some elements that have an inbuilt equity dimension, such as access and benefit sharing (target 15.6), and includes measures directly or indirectly targeting developing countries (targets 15 a–c). Overall, these environment-related goals recognize some of the relevant equity dimensions that arise, but they are less progressive than existing treaties in their treatment of inequality.

Various other SDGs include inequality-related targets. For example, SDG 7, Affordable and Clean Energy; SDG 9, Industry, Innovation, and Infrastructure; and SDG 11, Sustainable Cities and Communities refer to the special needs of developing countries or least developed countries. Thus, overall, inequality is present throughout the SDGs in a direct or indirect manner, which is unsurprising as equity has been a major concern since the notion of sustainable development gained widespread currency in the 1980s.²² At the same time, from a legal perspective, the SDGs generally lag behind existing legal frameworks. International law, especially in human rights law and international environmental law, has reflected equity concerns in much more evolved ways than what is found in the SDGs.

<H1>3. Positioning SDG 10 in International Law

<H2>3.1 The Fiction of Equality

Inequality has been addressed in different ways in international law. The starting point is that the international legal framework is built around a fiction of equality structured around the principle of sovereign legal equality. This formal legal equality between sovereign states has been traditionally equated with equity.²³ It translates in practice into international norms that are reciprocal – in other words, norms in which each country takes on the same commitments.²⁴ Reciprocity started to be challenged after decolonization, which exposed the stark inequalities between states.²⁵ As a result, new states demanded preferential treatment in international economic law as a necessary step to

²² WCED, n. 14.

²³ Georges Abi-Saab, “Whither the International Community?” (1998) 9 *European Journal of International Law* 248.

²⁴ Bruno Simma, “From Bilateralism to Community Interest in International Law” (1994) 250 *Recueil des Cours de l’Académie de Droit International* 217, 322.

²⁵ See, e.g., Michael Byers, *Custom, Power, and the Power of Rules: International Relations and Customary International Law* (CUP, 1999), 88.

overcome the disadvantages to which colonization had exposed them.²⁶ Until then, equity had been applied mostly at the level of the interpretation of reciprocal norms in the context of adjudication of disputes arising from the application of such norms.²⁷ Preferential treatment was supposed to break this model through the recognition that states are *de facto* not equal in various dimensions. Conceptually, this approach seeks to achieve substantive equality.

<H2>3.2 Addressing Inequality between States in International Environmental Law and Beyond

Since the 1980s, measures to foster substantive equality have focused on the introduction of differential treatment in international environmental law.²⁸ The new terminology reflects a different starting point from preferential treatment, which was grounded in large part in demands from developing countries for change. Differential treatment is based at least in part on shared values linked to the recognition that cooperative action is necessary to address common challenges – in particular, on global environmental issues. Conceptually, this has been relatively successful to the extent that environmental treaties over the past thirty years have included some form of differentiation. Yet strong forms of differentiation have come under severe pressure, as witnessed in the case of the climate change regime.²⁹ In addition, some issues that are crucial to tackle inequalities effectively have never been adequately addressed. The transfer of technology is a case in point. It has remained a partly unfulfilled agenda, something that target 17.7 indirectly acknowledges.

In international environmental law, national interests are overlaid with at least some level of recognition of the need to cooperate to address common and global challenges. As a result, different types of differential measures emerged progressively and have become a structuring element of modern treaties. To a large extent, the legitimacy of international environmental law is directly linked to differential treatment. International environmental law has been most successful in developing a framework for considering the different situation of the global South enshrined in the principle of common but differentiated responsibilities.³⁰ This development is reflected in commitments that are, on the whole, more balanced than those in trade or investment treaties, even if, in international environmental law, these commitments are not backed up by effective enforcement mechanisms. International environmental law, therefore, is weak in terms of enforcement options but strong in that it reflects a broader array of concerns and interests.

The development of preferential and subsequently differential treatment in international environmental shows that international law can adapt to changing circumstances. The 1987

²⁶ Wil Verwey, “The Principle of Preferential Treatment for Developing Countries” (1983) 23 *Indian Journal of International Law* 343.

²⁷ Anastasios Gourgourinis, “Delineating the Normativity of Equity in International Law” (2009) 11(3) *International Community Law Review* 327.

²⁸ Philippe Cullet, *Differential Treatment in International Environmental Law* (Ashgate, 2003).

²⁹ Lavanya Rajamani, “Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics” (2016) 65(2) *International and Comparative Law Quarterly* 493.

³⁰ 1992 Rio Declaration on Environment and Development, Principle 7.

Montreal Protocol on Substances That Deplete the Ozone Layer illustrates this point. At the outset, developing countries were unwilling to contribute substantially to addressing an environmental crisis caused overwhelmingly by developed countries. The progressive realization that the ozone layer could only be effectively protected through universal cooperation led to the adoption of a regime that managed to effectively reflect the needs and capabilities of developing countries without compromising on the ultimate objective of addressing the environmental problems caused by ozone-depleting substances.³¹ This accommodation was achieved through a combination of differential techniques, including delayed implementation, financial aid, and technology transfer.

The climate change regime has been much less successful than the ozone regime, illustrated by the fact that the measures taken since the early 1990s have been insufficient to tackle global warming. Yet what has been achieved has only been possible because of an initial recognition that inequality was at the root of the climate issue. The structuring of the different legal instruments adopted in the climate change regime around the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC) testifies to the importance of inequality in the climate change regime.³² Attempts to sideline CBDR-RC in the run-up to the adoption of the 2015 Paris Agreement on Climate Change also confirm that it remains controversial. A compromise qualifying CBDR-RC by adding “in light of different national circumstances” opened the way for the adoption of nationally determined contributions (NDCs).³³ This development has been seen as a positive sign that the world is moving beyond “a bipolar, rigid and static type of differentiation”.³⁴ At the same time, NDCs do not just signal a retreat from internationally negotiated differentiation but also a move towards commitments determined by each individual state. This action has unsurprisingly led to a lack of collective ambition confirmed by the UN General Assembly noting “with concern that the nationally determined contributions presented thus far by the parties to the Paris Agreement are not sufficient”.³⁵ In this context, SDG 10 fails to address this diminishing collective ambition to address inequality.³⁶

Another example in the broader field of sustainable development is the regime covering plant genetic resources, which finds its origins in agriculture and environmental law. The main treaty addressing seeds – the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) – was born out of the need to address the inbuilt inequality in the regime at

³¹ See, e.g., David W. Fahey, “The Montreal Protocol Protection of Ozone and Climate” (2013) 14 *Theoretical Inquiries in Law* 21.

³² Cf. Harald Winkler & Lavanya Rajamani, “CBDR&RC in a Regime Applicable to All” (2014) 14(1) *Climate Policy* 102.

³³ Conference of the Parties, *Lima Call for Climate Action*, Decision 1/CP.20, UN Doc. FCCC/CP/2014/10/Add.1, 14 December 2014, para. 3.

³⁴ Sandrine Maljean-Dubois, “The Paris Agreement: A New Step in the Gradual Evolution of Differential Treatment in the Climate Regime?” (2016) 25(2) *Review of European, Comparative and International Environmental Law* 151, 154.

³⁵ Protection of Global Climate for Present and Future Generations of Humankind, UNGA Resolution 75/217, UN Doc A/RES/75/217, 29 December 2020, para. 6.

³⁶ While the 2015 Paris Agreement on Climate Change (Paris Agreement) was adopted after the Sustainable Development Goals (SDGs), the changed understanding of common but differentiated responsibilities and respective capabilities was adopted in 2014. See Conference of the Parties, n. 33.

the time. That regime lacked recognition of farmers' rights in a context where breeders working in the formal sector benefited from a specific form of rights protection – namely, plant breeders' rights.³⁷ A non-binding and relatively vague recognition of farmers' rights in 1989 provided the basis for further developing this regime.³⁸ Developing countries argued for this even more strongly once it became clear that the global strengthening of intellectual property rights was planned in the context of the Uruguay Round of trade negotiations (1986–93), which would lead to a significant extension of life patenting that had the potential to collide with the interests of millions of farm-based livelihoods in the global South.

The ITPGRFA is the result of different equity-based compromises. First, it condones the sovereign rights of individual states over plant genetic resources, something that had become unavoidable following the assertion of sovereign rights over biodiversity in the 1992 Convention on Biological Diversity. Second, it enshrines farmers' rights in treaty form.³⁹ Third, it promotes "facilitated" access to plant genetic resources while allowing intellectual property rights on plant genetic resources that have been changed after access.⁴⁰ These different compromises are linked to the development of life patenting in the context of the growth of the biotechnology industry. Overall, the treaty is strongly influenced by inequality between countries, but the final text is not particularly progressive, as exemplified in the case of the recognition of farmers' rights, where there is essentially no protection of the rights at the international level and substantive protection is left to the discretion of member states.⁴¹

Overall, in international environmental law, inequality has been addressed mostly through the lens of the dichotomy between developed and developing countries. It has, however, not made much progress either towards identifying more specific groups based on criteria directly linked to the subject matter of the treaty or towards the individualization of differentiation. Limited progress has been made to the extent that the climate change regime recognizes, for instance, vulnerability as an additional element that is to be considered.⁴² Target 10.b also makes reference to "least developed countries, African countries, small island developing States and landlocked developing countries", some of the special categories that are sometimes also recognized in international treaties.⁴³ Yet the main grouping remains the simple division of the world in two broad categories, which is insufficient, in particular, to take into account the variety of situations within the vast group of "developing" countries. In a context where the world only includes roughly two hundred countries, it would not be difficult to provide individualized differentiation, and this could easily be

³⁷ See, e.g., Graham Dutfield, *Food, Biological Diversity and Intellectual Property: The Role of the International Union for the Protection of New Varieties of Plants* (Quaker UN Office, 2011).

³⁸ Food and Agriculture Organization (FAO), *Farmers' Rights, Report of the Conference of FAO*, Resolution 5/89, Doc. C 1989/REP, 1989.

³⁹ 2001 International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), art. 9.

⁴⁰ *Id.*, art. 12.3.d.

⁴¹ *Id.*, art. 9.2; Philippe Cullet, *Intellectual Property Protection and Sustainable Development* (Butterworths, 2005), 237.

⁴² 1992 UN Framework Convention on Climate Change, arts. 3.2, 4.4.

⁴³ See, e.g., 1992 Convention on Biological Diversity, art. 20(6); 1994 Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, art. 3(c).

done in a structured manner, as in the case of member states' contributions to UN expenses that are apportioned by the UN General Assembly.⁴⁴

The limitations of existing international environmental law notwithstanding, it goes much further than SDG 10. At best, SDG 10 reflects the general duty of solidarity among countries, a well-established principle of cooperation that can serve as the basis for various measures to fight inequality.⁴⁵ Solidarity is, however, only the foundation on which specific measures can be taken, such as differential treatment, financial aid, and technology transfer.⁴⁶ Seen from this perspective, SDG 10 confirms what is at the root of more progressive developments in law but does not build on them. In fact, it reflects the more conservative economic, trade, and investment law rather than the more open-minded and forward-looking environmental law.

<H2>3.3 Addressing Inequality within Countries

Regarding inequality within countries, it is human rights law that provides significant normative guidance for the implementation of SDG 10.⁴⁷ The focus of human rights law on individuals has provided the basis for giving importance to the fight against discrimination, which is something that SDG 10 also does in some respect, including the specific focus on gender equality taken up, for instance, through the 1979 Convention on the Elimination of All Forms of Discrimination against Women. In human rights law, the focus has been on non-discrimination provisions that mostly address inequalities at the individual level. At the same time, collective claims have been considered to an extent in general international law, particularly with the limited recognition of Indigenous peoples' rights.⁴⁸ At the regional level, there has been more progress in the recognition of collective rights – for instance, in the 1982 African Charter on Human and Peoples' Rights. The African Court on Human and Peoples' Rights also has applied the provision on the prohibition of non-discrimination between individuals to a group.⁴⁹ Human rights law can thus act as an excellent starting point for addressing inequalities at the individual and collective levels.

⁴⁴ *Scale of Assessments for the Apportionment of the Expenses of the United Nations*, UNGA Resolution 73/271, UN Doc A/RES/73/271, 22 December 2018.

⁴⁵ See, e.g., Ronald St. J. McDonald, "The Principle of Solidarity in Public International Law", in Christian Dominicé et al. (eds.), *Etudes de droit international en l'honneur de Pierre Lalive* (Helbing, 1993), 275.

⁴⁶ See, e.g., UN Human Rights Council, *Draft Convention on the Right to Development*, UN Doc. A/HRC/WG.2/21/2, 2020, art. 15.2.

⁴⁷ Ignacio Saiz & Kate Donald, "Tackling Inequality through the Sustainable Development Goals: Human Rights in Practice" (2017) 21(8) *International Journal of Human Rights* 1029.

⁴⁸ 2007 Declaration on the Rights of Indigenous Peoples.

⁴⁹ African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application no. 006/2012, 26 May 2017, para. 146.

Human rights law provides another link to address inequality through the progressive development of debates around business and human rights.⁵⁰ These debates are imposing progressively – if slowly – the idea that conversations around human rights cannot exclude private sector actors that have increasingly significant impacts on the realization of human rights either through acts of commission or omission.⁵¹ The realization that inequality also plays out in this context is not new and has been addressed in some respect in environmental law instruments through the development of civil liability regimes.⁵² These regimes seek to reflect the growing contribution of private sector companies to environmental pollution and the disadvantaged position of individuals affected by their activities. Yet this approach has not proven to be an effective template as several of the adopted regimes have not come into force many years after their adoption.⁵³ In this respect, the ongoing drafting of a treaty on human rights obligations of business is a welcome step as it emphasizes much more directly the inequality between private sector actors and individuals and groups in society.⁵⁴

<H2>3.4 Other Relevant Developments

Different areas of international law have made different contributions to addressing inequality. In international trade law, special and differential treatment is now an exception to the principle of reciprocity, even if the WTO has maintained forms of special and differential treatment that were already enshrined in pre-existing trade treaties.⁵⁵ The idea that there was too much differentiation, rather than too little, in trade law is belied in the case of technology transfer. Developing countries accepted the TRIPS Agreement as part of the WTO package deal on the premise that stronger levels of intellectual property protection would lead to the desired technology transfer that had not happened until then.⁵⁶ The repeated extensions granted to least developed countries for complying with their TRIPS obligations seem to confirm that stronger intellectual property rights protection is not the only factor explaining the lack of sufficient technology transfer. At the same time, developing countries are still being prodded today into acquiring, rather than developing, new

⁵⁰ UN Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, UN Doc A/HRC/17/31, 2011.

⁵¹ Denis G. Arnold, “Corporations and Human Rights Obligations” (2016) 1 *Business and Human Rights Journal* 255.

⁵² See, e.g., 1997 Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage.

⁵³ See, e.g., 1999 Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and Their Disposal.

⁵⁴ *Second Revised Draft: Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises*, 6 August 2020.

⁵⁵ See, e.g., Constantine Michalopoulos, *Role of Special and Differential Treatment for Developing Countries in GATT and the World Trade Organization* (World Bank, 2000).

⁵⁶ See, e.g., Andreas Rahmatian, “Neo-Colonial Aspects of Global Intellectual Property Protection” (2009) 12(1) *Journal of World Intellectual Property* 40.

technologies to help them “cross the technological frontier”.⁵⁷ This would be an interesting proposition if all the relevant elements were aligned. However, many countries will either not be able to attract investors if they do not provide the level of intellectual property protection that is expected of them or may not be able to pay for the technology.

Inequality is also at the centre of the policies of international financial institutions. In the case of the World Bank, the basic dichotomy is between donor and borrowing countries. The World Bank has a wide-ranging regulatory framework structured around environmental and social policies, which applies to borrowers and not to donor countries.⁵⁸ These policies largely reflect international legal standards. However, while they are not international law, they dramatically influence the development of national laws and policies in borrowing countries. The result is a significant similarity, not to say uniformity, between legal frameworks in countries of the global South. At some level, this situation simply reflects the compliance with international standards to which sovereign states have willingly subscribed. At another level, it also reflects the often limited scope that countries of the global South – in particular, smaller ones – have to adopt distinct legal frameworks.⁵⁹

Finally, inequality is also addressed in areas of regulation not covered by treaties, which is particularly true in the context of natural resources where there are vast gaps in the coverage that international law offers. The regulation of mining through treaties is one such example. These gaps have been filled progressively through private sector-led initiatives that tend to use the framework of mixed governance, in part to forestall the development of treaty law. Frameworks like the Extractive Industries Transparency Initiative where states are involved have the legitimacy that state participation brings but are firmly controlled by the private sector.⁶⁰ Similarly, the Kimberley Process, which ensures no “blood diamonds” find their way to international markets, has been repeatedly referred to positively in UN General Assembly resolutions.⁶¹ In addition, the WTO has framed a specific exception for the Kimberley Process to free trade rules.⁶² These mixed governance frameworks focus on transparency measures, and, in that sense, they contribute to addressing equity concerns. At the same time, they are framed outside of the traditional international law framework and, to that extent, do not contribute to strengthening the democratic accountability of international law.

⁵⁷ Commission on Science and Technology for Development, *The Impact of Rapid Technological Change on Sustainable Development*, UN Doc. E/CN.16/2019/2, 2019, para. 34.

⁵⁸ World Bank, *Environmental and Social Framework*, 2017.

⁵⁹ See, e.g., Philippe Cullet, “Environment and Development – The Missing Link”, in Julio Faundez & Celine Tan (eds.), *International Economic Law, Globalization and Developing Countries* (EE, 2010), 354, 368.

⁶⁰ Extractive Industries Transparency Initiative (EITI), *The Extractive Industries Transparency Initiative Standard* (EITI, 2019).

⁶¹ See, e.g., *The Role of Diamonds in Fuelling Conflict*, UNGA Resolution 75/261, UN Doc. A/RES/75/261, 5 March 2021.

⁶² See, e.g., Joost Pauwelyn, “WTO Compassion or Superiority Complex: What to Make of the WTO Waiver for Conflict Diamonds” (2002–3) 24 *Michigan Journal of International Law* 1177.

<H2>3.5 Inequality in International Law and Beyond

As identified above, inequality has been addressed in different ways and to a different extent in different branches of international law. There is, however, no consistent framing that applies to all areas of international law that is in keeping with its sectoral and non-hierarchical structure. Some of the measures that exist are directed more particularly at equity among states, which is what environmental treaties do. Some target mostly individuals and groups, which is the case with human rights treaties. It is also the case with human rights law, which straddles most effectively the national and international law divide. There is, however, no single framework that considers inequality per se in all its forms either at the national or international level, and this fact may be a strength to the extent that inequality is considered from various angles in various contexts. At the same time, it may also be a weakness, as identified in the context of trade and investment law, whose equity frameworks are much weaker than in some other branches of international law. In this context, SDG 10 offers a framework that reflects to some extent existing international law but, save in the case of trade law, is overall less progressive than existing international law.

<H1>4. Positioning SDG 10 in the International Institutional Context Relevant for Its Implementation

<H2>4.1 Equality and International Institutions

In the UN system, the fiction of legal equality rules throughout most UN bodies and specialized agencies. This is not to say that there have been no developments beyond the principle of sovereign legal equality. In several cases, the special situation of developing countries and least developed countries is recognized, including through the setting up of institutions specifically devoted to addressing their needs, as in the case of the UN Conference on Trade and Development. Further, inequality has been an important dimension in the development of various institutions that have a direct bearing on the implementation of SDG 10. These institutions have been established in environmental, human rights, and economic law. In addition, mixed governance institutions are increasingly important actors that have a strong bearing on equality at the international level. As in the case of international law, SDG 10 contributes to institutional debates to the extent that it reflects some of the debates around inequality in international institutions. At the same time, it does not really go beyond confirming matters that are already well covered and does not engage with new challenges, such as those related to mixed governance.

<H2>4.2 Inequality and Institutional Context in International Environmental Law

Debates over North-South inequality have been central in sustainable development institutions, as illustrated, for instance, in the case of the Global Environment Facility (GEF).⁶³ The GEF was established specifically to address North-South inequality through the provision of environment-specific financial aid.⁶⁴ Further, a specific attempt was made to ensure that the decision-making structure for disbursing funds would not replicate that of the World Bank. The attempt to better reflect donor and recipient countries in decision-making is thus noteworthy.⁶⁵ At the same time, the GEF has failed to address other types of inequalities. Thus, while the GEF has focused on addressing global environmental problems, something that falls squarely within the mandate of the UN Environment Programme (UNEP), it is neither physically located in Nairobi nor institutionally located within UNEP. In a context where UNEP is the only major UN body located in the global South, this situation reflects a lack of willingness to trust UNEP to take an effective lead on environmental issues.⁶⁶ The same goes, to a lesser extent, for UN Development Programme (UNDP), which also finds itself as a junior partner to the World Bank in the GEF, something that reflects the broader inequality between the World Bank and UN bodies, despite the fact that the World Bank is itself a UN specialized agency.⁶⁷

UNEP's weaker position is also confirmed by the way in which it was never given the lead on political discussions related to sustainable development, which became particularly visible in the context of the setting up of the Commission on Sustainable Development (CSD). The CSD was meant to take a lead on the development of sustainable development law and policy following the Rio summit in 1992.⁶⁸ In setting it up separately from UNEP, a message was given that sustainable development was something broader and politically more important than the environment. At the same time, in setting up a separate body located in New York rather than Nairobi, it did nothing to limit the marginalization from which UNEP was already suffering. The structural weakness of UNEP was addressed through measures taken at the 2010 UN Conference on Sustainable Development, such as by upgrading its Governing Council to universal membership.⁶⁹ At the same time, the HLPFSD, which was created to replace the CSD, remains separate from UNEP, both institutionally and geographically.⁷⁰

<H2>4.3 Inequality and Institutional Context in Human Rights Law

⁶³ See generally Laurence Boisson de Chazournes, "The Global Environment Facility (GEF): A Unique and Crucial Institution" (2005) 14(3) *Review of European, Community and International Environmental Law* 193.

⁶⁴ 1994 Instrument for the Establishment of the Restructured Global Environment Facility (as updated).

⁶⁵ *Id.*, s. 25(c).

⁶⁶ See, e.g., Joyeeta Gupta, "The Global Environment Facility in its North-South Context" (1995) 4(1) *Environmental Politics* 19, 29.

⁶⁷ 1947 Agreement between the UN and the International Bank for Reconstruction and Development.

⁶⁸ *Institutional Arrangements to Follow up the United Nations Conference on Environment and Development*, UNGA Resolution 47/191, UN Doc. A/RES/47/191, 22 December 1992.

⁶⁹ *The Future We Want*, UNGA Resolution 66/288, UN Doc. A/RES/66/288, 2012, para. 88.

⁷⁰ *Id.*, para. 88.

Human rights institutions have also made a major contribution to the way in which SDG 10 is being implemented. They complement the framework on addressing inequality among states with two main contributions. The 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) offers a starting point with its recognition that states must take measures “through international assistance and co-operation” to realize their rights.⁷¹ This mandate gives a new meaning to the traditional understanding of human rights that has been limited to a vertical relationship between individuals and one state. Extraterritorial duties of states have been given increasing importance in recent years.⁷² The importance of such diagonal human rights obligations stems in part from the fact that not all states are similarly placed to contribute to the realization of human rights. This notion reflects in a limited way the idea of solidarity rights structured around the idea that there are human rights that transcend a single state – the right to the environment at the centre of sustainable development law is a prime candidate.⁷³

Human rights institutions also provide a different context to understand inequality by integrating individuals within international law regimes, something that remains an exception. This is crucial because it offers the only real link in international law between inter-state and intra-state inequalities. The universality on which international human rights are premised is doubly relevant. It offers a mirror image to reciprocity of obligations, which traditionally has governed inter-state relations and continues to do so in, for example, international trade law.⁷⁴ At the same time, developing countries have some leeway in the implementation of economic rights for non-nationals.⁷⁵ This situation confirms that universality is a principle and an ideal but that existing inequalities necessarily structure the way in which rights can be realized.

4.4 Inequality and Institutional Context in International Economic Law

Inequality has also been a central element in institutions overseeing international economic law. In the context of trade relations, the setting up of the WTO in the mid-1990s marked the formalization of a new understanding of equity in economic law. Where the 1994 General Agreement on Tariffs and Trade (GATT) had been at the centre of development of preferential treatment for the global South from the 1950s onwards, the WTO now became the torchbearer of a return to orthodoxy wherein the principle of sovereign legal equality was to regain its central mandate in framing international trade law. From the point of view of SDG 10, it is striking that this attempt to move the clocks back has only been partially successful. For instance, in the context of the TRIPS Agreement,

⁷¹ 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 2.1.

⁷² See, e.g., Takele Soboka Bulto, *The Extraterritorial Application of the Human Right to Water in Africa* (CUP, 2014).

⁷³ See, e.g., Krzysztof Drzewicki, “The Rights of Solidarity: The Third Revolution of Human Rights” (1984) 53(3–4) *Nordisk Tidsskrift for International Ret* 26.

⁷⁴ Daniel Barstow Magraw, “Legal Treatment of Developing Countries: Differential, Contextual and Absolute Norms” (1990) 1 *Colorado Journal of International Environmental Law and Policy* 69.

⁷⁵ ICESCR, n. 71, arts. 2.1, 2.3.

some minor concessions were made for least developed countries,⁷⁶ which included, in particular, a longer delay for implementing norms that eventually were to be roughly the same for all countries. In the meantime, the irony of forcing these countries that only have a minuscule weight in international trade and very limited capacity to benefit from a strong regime of intellectual property rights has become increasingly apparent.⁷⁷ It has translated into a series of further extensions up to the point where this is now likely to be a permanent exception in all but name.⁷⁸

The institutional context for international trade law also underlines some of the ways in which the lack of hierarchy between different branches of law and institutions at the international level does not reflect reality well. This situation is illustrated by the WTO's dispute settlement body and the way in which trade and environment disputes have ineluctably been brought to the WTO in the absence of any similar pull on the environmental side. As a result, a pattern has emerged in which environmental treaties addressing an issue arising in the trade dispute under consideration have been essentially sidelined. On several occasions, this has been because the United States was a party to the trade dispute and had not ratified the relevant environmental agreement, as in the case of the "genetically modified organism" dispute with the European Union.⁷⁹ More generally, environmental treaties remain largely extraneous to the process of adjudication of trade disputes. As a result, it is essentially the equity framework applicable in the WTO that is applied, thus participating in a displacement of issues that have often been given more consideration in environmental treaties, as in the case of North-South equity.⁸⁰

International investment law provides a different case study of an area of law that affects states and individuals directly but often acts from behind legal and institutional walls that make it appear innocuous. Over the past few decades, investment law has become particularly controversial from an equity point of view because of the way it often transcends the in-principle strict distinction between states and private sector actors at the international level.⁸¹ In particular, the possibility offered in most treaties for private investors to sue states directly as equal partners raises fundamental questions about equality and equity. The principle of international law remains that there is a lack of hierarchy between sovereign states and a clear hierarchy between states and private actors that are subjected to the jurisdiction of the states in which they operate. The new reality thus goes against one of the most basic structuring elements of international law. It is

⁷⁶ See, e.g., Andrew Michaels, "International Technology Transfer and Trips Article 66.2: Can Global Administrative Law Help Least-Developed Countries Get What They Bargained For" (2009) 41(1) *Georgetown Journal of International Law* 223.

⁷⁷ See, e.g., Omolo Joseph Agutu, "Least Developed Countries and the TRIPS Agreement: Arguments for a Shift to Voluntary Compliance" (2012) 20(3) *African Journal of International and Comparative Law* 423.

⁷⁸ See, e.g., Council for TRIPS Agreement, *Extension of the Transition Period Under TRIPS Article 66.1 for Least Developed Country Members*, Doc. IP/C/W/668, 1 October 2020.

⁷⁹ WTO, *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WTO Doc. WT/DS291/R, 292/R, 293/R, Panel Report, 21 November 2006.

⁸⁰ See, e.g., Amrita Narlikar, "Fairness in International Trade Negotiations: Developing Countries in the GATT and WTO" (2006) 29(8) *World Economy* 1005.

⁸¹ Mariel Dimsey, "Arbitration and Natural Resource Protection", in Shawkat Alam, Jahid Hossain Bhuiyan & Jona Razzaque (eds.), *International Natural Resources Law, Investment and Sustainability* (Routledge, 2017), 132.

particularly problematic because it tends to pit economically and politically weaker states with large corporations. In addition, it displaces adjudication to forums that are outside of the state where the investment has taken place and where individuals may be affected by the investment. Further, arbitral tribunals generally fail to integrate human rights norms, even though limited progress may be seen, for instance, in the context of the International Centre for Settlement of Investment Disputes where the legitimacy of raising human rights claims has been upheld.⁸²

4.5 Inequality and Mixed Governance Institutions

Inequality in the context of state-based institutions has been accentuated in recent years with the growth of mixed governance institutions. This situation is linked to the fact that the limited extent to which South-North differentiation has been built into state-based institutions tends to fade away where private sector actors lead institutional development.⁸³ The growth of mixed governance institutions over the past three decades is linked to the exponential rise of the influence of the private sector following the end of the Cold War and the tendency of state actors to withdraw from the provision of social goods. This development has left institutional gaps that have been filled by institutional structures where private sector actors are brought in to strengthen state-based institutions or where they lead the development of new structures.⁸⁴

One example is that of the UN Compact, which brings together the United Nations and private sector actors, allowing the former to put some pressure on the latter to act as socially and environmentally conscious international actors and giving the latter access to the legitimacy that comes with being associated with the United Nations. The UN Compact, however, has not been devoid of criticism because many corporations do not seem to manage to meet what are generally understood as light reporting requirements.⁸⁵ A second example is the World Water Council (WWC). Formally, it is an association under French law whose membership includes a variety of public and private actors.⁸⁶ In a context where there is no effective institutional home for water in the UN system,⁸⁷ the WWC has carved out a leading space in framing international water policy-making. The most prominent event it organizes is the usually triennial World Water Forum (WWF), which has become the rallying point for international water policy-makers.⁸⁸ While the WWF does not have the

⁸² ICSID, *Aguas Bilbao Bizkaia v Argentina*, ICSID Case no. ARB/07/26, Award, 8 December 2016.

⁸³ See, e.g., Jennifer Clapp, "The Privatization of Global Environmental Governance: ISO 14000 and the Developing World" (1998) 4(3) *Global Governance* 295.

⁸⁴ See, e.g., Robert Falkner, "Private Environmental Governance and International Relations: Exploring the Links" (2003) 3(2) *Global Environmental Politics* 72.

⁸⁵ Andreas Rasche, "The United Nations Global Compact and the Sustainable Development Goals", in Oliver Laasch et al. (eds.), *Research Handbook of Responsible Management* (EE, 2020), 228.

⁸⁶ The current list of members can be found at World Water Council, "List of Members", www.worldwatercouncil.org/sites/default/files/Members/List_of_Members.pdf.

⁸⁷ UN Water is in essence a placeholder signalling to the outside world where water-related work takes place, within and beyond the UN system.

⁸⁸ World Water Forum, www.worldwatercouncil.org/en/world-water-forum.

legitimacy that a UN-sponsored international water conference would have, it is organized in such a way that it is projected as being the only relevant international forum on water policy. This projection is visible, for instance, in a “ministerial declaration” adopted at the end of WWF sessions, which reflects the fact that each session includes a segment with state representatives.⁸⁹

From an inequality perspective, mixed governance institutions like the WWC are awkward. In particular, they have no mandate to consider the special situation of the global South, which is particularly problematic in the case of water, which is not just a natural resource but also a human right and one of the basic building blocks of life on Earth. The problem is reflected in the promotion of the commodification of water, the privatization of water, and the lack of enthusiasm in recognizing the human right to water.⁹⁰ This is all the more significant since the United Nations is today unlikely to take a lead on the development of international water policy since it directly and indirectly contributes to processes organized under the auspices of the WWC.⁹¹

<H1>5 Conclusions

SDG 10 is undoubtedly pivotal because the realization of the other SDGs is conditioned by the extent to which inequality is addressed. This is true between states as the central role of differential treatment, particularly international environmental law, attests, and it is also true within countries as the importance of anti-discrimination provisions in human rights law attests. Inequality has played a central role in the development of environmental and human rights law. There have been, and there remain, many challenges in both areas of law. Concerning environmental law, the principle of common but differentiated responsibility has faced some level of opposition from the outset from developed countries. Since the principle has been understood as favouring developing countries, its restatement has also become a way for the South to assert itself on the international scene. Such assertions have been successful insofar as the principle has been repeatedly confirmed, including in the 2010s.⁹² At the same time, the mechanisms through which differentiation is implemented have tended to weaken over time, as confirmed in the Paris Agreement, wherein North-South differentiation has given way to individual differentiation.⁹³ In human rights law, non-discrimination remains a strong basis for measures within countries, which needs to be pushed

⁸⁹ World Water Forum, *Ministerial Declaration Seeking Decisive Action on Water*, 20 March 2018, 8.worldwaterforum.org/en/news/ministerial-declaration-seeking-decisive-action-water.

⁹⁰ Sharmila L. Murthy, “The Human Right(s) to Water and Sanitation: History, Meaning, and the Controversy Over-Privatization” (2013) 31(1) *Berkeley Journal of International Law* 98, 105.

⁹¹ The members of the World Water Council (WWC) include intergovernmental organizations, such as the FAO, the UN Educational, Scientific and Cultural Organization, UN Habitat, and the World Bank.

⁹² *Transforming Our World: The 2030 Agenda for Sustainable Development*, Doc. A/Res/70/1, 25 September 2015, para. 12.

⁹³ Paris Agreement, n 36.

further towards the recognition of a right to economic and social equity to address more specifically vertical inequalities.⁹⁴

SDG 10 does not challenge these areas of law to do more as it is more conservative than what has already been achieved. It fails in particular to offer a stronger basis for North-South differentiation in a world that remains extremely unequal. Put differently, it addresses inequality from the sidelines and fails to focus on some of the core issues that are arising, as illustrated by the very limited context within which target 10.a understands the relevance of differentiation in international law. International law has in fact already forged ahead of SDG 10, especially in the field of environmental law, which has developed differentiation to a significant extent. In other contexts, inequality has been given increasing visibility, as in the case of international human rights law where special rapporteurs on human rights and extreme poverty have been repeatedly appointed since 1998. Yet, here too, the vision is limited to addressing the same extreme poverty that defines the focus of SDG 1. Further, the vision for the mandate is in fact limited to a link with SDG 1 and makes no reference to SDG 10.⁹⁵ On the other hand, SDG 10 may be seen as challenging institutions like the WTO that frames its activities loosely around the sustainable development paradigm but mostly in terms of its own understanding of sustainability and equity, which remains much more conservative than environmental or human rights law.

Overall, SDG 10 essentially reflects the existing informal and formal power structure at the international level. This fact is unsurprising since the SDGs emerged out of a process of widespread consultation, hence reflecting a common minimum denominator. At the same time, it remains insufficient, and addressing inequalities in earnest must be a priority for policy-makers. International law cannot solve the problem of inequality by itself, but it can be a component of a broader solution, which will need to start with revisiting some of the building blocks of the neoliberal economy built around an unstated prohibition to tax more heavily capital and the super-rich together with the need to rebuild the state, which remains the only organ of society that can effectively tackle inequalities. In other words, we need to move ahead from “leave no one behind”, which refers to an increasingly discredited development model. The current framework centred on the belief that benefits of growth will eventually trickle down has not been effectively realized and is out of step with the amount of inequality that needs to be countered at present. This point is confirmed by the fact that the gap in human development between least developed countries and countries with high human development has remained essentially similar for decades.⁹⁶

This situation is even truer about the inequality between people, which has increased tremendously over the past three decades. Drastic changes are necessary to ensure that inequalities are effectively tackled. SDG 10 contributes to linking the conversations happening largely in parallel at the inter-state and intra-state level. Effectively addressing inequality at both levels will require taking much stronger steps. These steps cannot wait until 2030 in a context where the COVID-19

⁹⁴ Cf., UN Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston*, UN Doc. A/HRC/29/31, 2015, para. 54.

⁹⁵ UN Human Rights Council, *Extreme Poverty and Human Rights*, UN Doc. A/HRC/RES/44/13, 16 July 2020.

⁹⁶ UN Development Programme (UNDP), *Human Development Report 2014* (UNDP, 2014), 167; UNDP, *Human Development Report 2020* (UNDP, 2020), 350.

pandemic has set the clocks back in terms of poverty inequality for the 2020s.⁹⁷ Inequality needs to be addressed immediately much more vigorously than has been the case until now.

⁹⁷ World Bank, *Poverty and Shared Prosperity 2020: Reversals of Fortune* (World Bank, 2020).