

1. Introduction

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The negotiation, and adoption in September 2015, of the Sustainable Development Goals (SDGs)¹ within the framework of the United Nations (UN) has been heralded as a notable step in the international community's ongoing, if uneven, commitment to global development. More than just a continuation of the Millennium Development Goals (MDGs), which ran from 2000 to 2015, the SDGs – more rhetorically known as the 'Global Goals' – seek to encapsulate and promote global aspirations across a wide array of topic areas broadly associated with sustainable development.

First proposed at the 2012 UN Conference on Sustainable Development (the 'Rio +20' Summit), the Global Goals were finally reduced through intergovernmental negotiation, following more open-ended dialogues with civil society, interest groups, business and others, to 17 Goals, though within that reflecting 169 targets and many more indicators. Unlike the MDGs, which were numerically limited to eight goals, the Global Goals ultimately adopted contain a plurality of objectives. The 2015 UN General Assembly document, *Transforming our world: the 2030 Agenda for Sustainable Development*, which adopted the Global Goals, sets out very much in the usual way of UN documents high rhetoric around international cooperation, development and the onward progression of humanity. Nevertheless, within such rhetoric, there is also a level, if not quite precision, of detail around what the international community should strive to achieve over the next 15 years. Noticeably less on how, and by what means.

¹ The terms SDGs and Global Goals are used interchangeably in the book, reflecting much of the practice surrounding the goals; though equally we must acknowledge that some UN bodies have been more scrupulous in exclusively referring to them as the SDGs. When referring to a particular goal, the book more commonly refers to them as SDG 1, or Global Goal 2. Both for reasons of neatness and, more importantly, because it is not common practice, we have avoided the shorthand of GG 3.

The Goals included range from those rather similar in overview (if differing in quite a lot of respects as regards content and detail) from those set out in the MDGs, such as SDG 1 on the eradication of poverty, SDG 2 on zero hunger and SDG 4 on education, to those much newer to the SDGs, including SDG 11 on sustainable cities and SDG 16 focusing on access to justice and the rule of law. Of particular note is the inclusion of numerous 'green' Goals, namely on climate (SDG 13), life below water (SDG 14) and life on land (SDG 15). This is in contrast to the rather more summary, vague – and indeed cursory – MDG 7 on environmental sustainability.

Also notable is the inclusion of what might be termed overtly polycentric issues, such as good health and well-being (SDG 3), gender equality (SDG 5) and decent work (SDG 8). Such Goals – like the environmental cluster – are polycentric not simply because they require a complex mix of policy actions (which might be said to be a hallmark of all the Goals), but because they cannot be achieved, whether directly or indirectly, by simple improvements in economic growth and industrialisation. Indeed, unlike the MDGs, which were purposely directed at 'supporting' the Global South, the SDGs are targeted at all States, including more developed Northern States. Perhaps this is the reason why there are multiple tensions at the heart of the Goals; progress towards some risks jeopardising, at least without the imposition of appropriate measures and integrated planning, progress on others. The promotion of sustainable industry and infrastructure (SDG 9) sits uneasily against not only the environmental Goals, but also sustainable consumption and production targets (SDG 12); or, at least, might do. To that extent, the Global Goals present a complex and problematic agenda of transformative social change.

The objective of this edited collection is to consider this complexity through one particular lens, namely the relationship between law, human rights and the Global Goals. There are, of course, many others: education, the role of civil society, the importance of research and development in technology, and the like. This book touches upon these – and other – forces where necessary, but the focus very much is on the role, influence and interlinkages between law (in all its many guises) and the Global Goals. This is not a new topic; law and development as a field of scholarship and methodology has sought to capture the complexity of such debates for decades. And within the specific topic of UN Goals, previous publications have sought to interrogate the relevance of law, and

particularly of human rights, to the achievement of the MDGs.² Most commentary has focused on international law, and to a lesser extent domestic (i.e. public law) implementation.³ Both are of essential relevance. But it is equally important not to neglect the increasing significance of other ‘typologies’; notably corporate, private, local government and transnational law, as well as soft law and mixed systems.

In unduly simplified form, the relationship between law and the Goals can be formulated in several distinct, and yet almost invariably overlapping, ways. At its most foundational, lies the question of the status of the Goals, present and future. In short, are the Goals binding in legal terms? Or might they become so over time? Much of the emphasis here is on their status in international law, though there is no reason why similar questions cannot be raised at the domestic level.⁴ A more nuanced argument, discussed in several of the chapters, is how far the Goals (and especially the targets set thereunder) correspond with, are symmetrical to, or a deviation of present obligations set out in law, most noticeably human rights standards or obligations in environmental law. There are few, if any, examples of where the Goals might be said to deviate from current law or policy in an upwards trajectory; rather the usual argument is how far (and to what extent) such Goals and targets differ negatively in content, timing, coverage or in all respects from previous standards set.

Second, is the question of the role (or absence) of law in the implementation of the Global Goals. The Goals are, by their nature, policy objectives, but within them they contain measures that can either very specifically or more obliquely be promoted (or harmful activity proscribed) by the adoption of laws and regulations. Within this, of course, is a multitude of possibilities, encompassing both public law and administration, rights-based approaches and the encouragement of contractual and other private forms of law-making. In this context, law is easily reduced to an instrumental form, merely seeing it as a question as to how it can assist in the achievement of the Goals. Putting to one side

² See, for example, J. Castellino ‘The MDGs and International Human Rights Law: A View from the Perspective of Minorities and Vulnerable Groups’ (2009) 13(1) *The International Journal of Human Rights* 10–28.

³ See, for example, ‘Part 7: International Law and the Millennium Development Goals’ in H. Ruiz Fabri, R. Wolfrum and J. Gogolin (eds) *Select Proceedings of the European Society of International Law: Volume 2, 2008* (Hart, 2008) 461–526.

⁴ See, on the normative status of the SDGs, D. French, ‘The Global Goals: Formalism Foregone, Contested Legality and “Re-Imaginings of International Law”’ (2017) *Ethiopian Yearbook of International Law* 151–178.

the alternative – the capacity of law to inhibit the Goals (which is considered below) – there are nevertheless other, pertinent issues around law and implementation. One is existential and conceptual; the very function of law in the achievement of sustainable development. That has been widely debated, perhaps too much so. There is a general consensus – at least among lawyers – that law can play a pivotal role in improving development. And when the Global Goals are placed within their proper context of sustainable development, law has been central to its progress since it was first endorsed internationally in 1987.⁵ While the debate continues as to what are essential and what are contextual factors to ensure successful legal implementation in the matter of development, there is nevertheless a general sense that law, if properly devised, can be an instrument of change.⁶

A further, positive, analysis – building on this understanding – would be to affirm the constitutive role of law in the achievement of the Goals. Law as a social construction provides one, and by no means the most effective, form of political action and social mobilisation. Nevertheless, because of the authority in which it is held, measures taken by accepted means of legality often have a definitive quality to them. Though this is a quality often surpassing their actual capacity to achieve the level of societal change desired, the fact that such change is enshrined in law has a catalysing impact, beyond its immediate effect. The promotion of gender equality and eradication of racism are perhaps good examples of such a positive role for law. It is incapable of achieving fully the objective itself, but beyond its pure instrumentalism it has a constitutive effect in changing social understandings and challenging previous assumptions. To that extent, law in this area can be both instrumental and constitutive.

Nevertheless, there are more critical questions around the implementation of the Goals through law. Law has its own culture, its own way of seeing things – beyond the aspiration of human rights, regulatory law is often narrow and constrained. Private law more so. To say that law can implement the Goals says little about the relative power, and conflicting and diverse interests of the rule- and decision-makers. Even more than that, law can be a hindrance to the achievement of development, and there is often little movement against the most entrenched political and economic interests. The Goals themselves say little about tax evasion, the

⁵ Report of the World Commission on Environment and Development: *Our Common Future* (Brundtland Report, 1987).

⁶ See, for example, S. Roach Anleu, *Law and Social Change*, 2nd edn (Sage Publishing, 2010).

regulation of multinational corporations or the prohibition of those activities truly destructive of global Earth system integrity. Law as a means of implementation of the Goals should be neither preferred nor unquestioned. Moreover, as an instrument of political choices, it must equally be acknowledged that law may be used as much as to deny progress on the Goals as to promote them.

The final caricature of law that might be posited here is specifically related to human rights. There is an invariable assumption that human rights and development goals are mutually compatible and supportive.⁷ But as several chapters in this book demonstrate, the relationship should not be subject to such reductionist analysis. True, there is significant overlap with many of the (especially social) Global Goals – just as there were with the MDGs – and yet the points of tension are numerous. As already indicated, such Goals may fall short of the standards set in human rights; in other words, the level of political ambition negotiated is a regression of that already set in human rights law. But beyond this, there are wider questions of scope (both scope of action and scope of responsibility), divergent time lines and inconsistent coverage, as well as more administrative questions of supervision, reporting and monitoring. Of particular interest is the extent to which the Goals phrase themselves in human rights terms at all, or seek to avoid, as far as possible, such language. While the UN earnestly seeks to place the SDGs and the International Bill of Rights⁸ as synergistic, the clear intention of many of the intergovernmental negotiators would seem to be to keep them apart. And this is not simply a static question at the time of negotiation and adoption. How are such Goals (and indeed the corresponding human rights) interpreted and implemented going forward, both at the international and domestic levels, in legislative, policy and importantly, *judicial* fora? There is a traction between the Goals and human rights, but it should not be readily assumed as symmetrical and analogous; the potential for tension is significant.

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⁷ See for a critique, M. Langford, A. Sumner and A. Ely Yamin (eds) *The Millennium Development Goals and Human Rights: Past, Present and Future* (Cambridge University Press, 2013).

⁸ Seen as including the Universal Declaration of Human Rights of 1948; the International Covenant on Civil and Political Rights of 1966; and the International Covenant on Economic, Social and Cultural Rights of 1966.

The book is divided into two parts. Part I explores various general themes relating to the Global Goals (for instance, their ontology, the relevance of human rights, the politics that lie behind the Goals). Part II then considers, in turn, eight of the Goals themselves (including gender equality, access to water and sanitation, the 'environmental' Goals, access to justice and the rule of law). It would, of course, have been possible to have included a chapter on each of the 17 Goals, but for two related reasons the editors felt a more selective process was both permissible and, in fact, warranted. First, while the chapters are directly linked to specific Goals, most of the chapters invariably touch on elements of many of the other Goals; one of the partial successes of the SDGs is that they do make some linkage between themselves. Not completely, and not without notable challenges, however. But intellectually, one can interpret and read the Goals corporately as well as individually. Second, as editors we chose Goals about which we felt there were important, significant and/or new to things to say from a legal perspective. For instance, the inclusion of a chapter on SDG 11 on sustainable cities was both necessary and added conspicuously to the literature.

The collection begins with a searing attack on the Goals themselves by Sam Adelman. In particular, he critiques the underlying existential assumptions on which the Goals are premised. The Goals continue the neoliberal sustainable development myth that economic growth and respecting environmental constraints are mutually compatible. As he argues, sustainable development remains a dangerous illusion, which jeopardises long-term social justice and environmental protection. Moreover, the SDGs are deeply anthropocentric and thus fail to give precedence to those measures truly necessary to prevent global Earth system harm, as captured in the move towards the Anthropocene. As he pertinently records, 'The SDGs bring to mind an Irish joke in which a lost tourist rolls down her car window and asks a local for directions to Dublin. He rubs his chin, thinks for a moment, and says "I wouldn't start from here."' In the Anthropocene, the point of departure for the goals should surely have been ecological sustainability rather than development.'

The following chapter by Louis J. Kotzé, takes forward this critique and subjects the Goals to what he refers to as three 'new-millennial analytical paradigms', namely the Anthropocene, Planetary Boundaries theory and Earth system governance theory. Each poses existential challenges for the Goals, and all reveal the current limitations of the Goals. The Goals are designed around incremental changes in international society and the global environment. But, as this chapter reveals, the enormity of the problems facing the Earth, and more particularly,

Earth system integrity, demand much more radical change. Of particular importance are the insights of Earth system governance, which pushes us towards considering normative and institutional realignment in the face of the enormity of global environmental change. The author concludes that the Goals as presently written will not only not prevent such harm, but will also exacerbate negative change. Moreover, the appearance of doing something through the Goals pushes back what is much more necessary; namely, a wider and deeper dialogue as to fundamental societal change.

This chapter is followed by a deeply analytical chapter by Lynda M. Collins on the relationship between human rights and the Global Goals. While recognising the traditional dichotomy between human rights and development, Collins suggests that the suspicion, and indeed animosity, among many human rights advocates of the Goals is (perhaps) misplaced. While of course the real test is in the process of implementation, there is no denying that the 2030 Agenda for Sustainable Development is a powerful document in the eyes of governments, business and civil society. Of course, there remain genuine questions as to how far human rights and the Goals are co-extensive, complementary or conflicting, but this neglects a broader reality. As she notes,

[I]t is possible that SDGs will supplant human rights as the focal point for global cooperation and implementation efforts. On the other hand, the SDGs explicitly endorse a human rights approach and would certainly achieve a huge step forward in the realization of human rights, particularly economic, environmental and social rights, if they are fully realized. Even a partial achievement of the SDGs would advance the goals of human rights, particularly with respect to social, environmental and economic rights, which have so far lagged behind the civil and political rights.

The following chapter by Graham Long considers the transformative effect of the Goals. As he himself notes, his chapter may be taken as a defence of the Goals. In particular, he seeks to draw out what he terms cross-cutting ‘commitments’ with the Agenda, namely that the Goals are universal, that the Goals and targets are interconnected and indivisible, and that they are premised on the understanding that ‘no-one should be left behind’. As he says,

If the SDGs indeed represent a new model of “governing through goals”, then their underpinning principles – in effect, attributes of the whole goal framework – are crucial to understanding how such governance might operate, and its prospects for success.

While recognising that implementation of the Goals will present their own challenges, his aim is to contextualise our understanding of the Goals; indeed, in his own words, to ‘usefully complicate’ them.

The final chapter in Part I considers the application of the Global Goals to one of the more intractable problems of international law, namely effective and sustainable ocean governance. Nadia Sánchez Castillo-Winckels reviews the ongoing difficulties of developing a workable and sustainable regime. She argues that the SDGs have the potential to play a key role in enhancing public access to information and participation in institutions managing these resources, notably regional fisheries management organisations and the International Seabed Authority. In particular, the SDGs emphasise the participation of civil society, something altogether missing so far in ocean governance. The Goals build upon other initiatives to ensure institutional transparency, accountability and effectiveness. As an exemplar of what might be achieved (and be achievable), the chapter raises the intriguing proposition that the Goals have merit in empowering civil society organisations to join States and industry organisations as principal actors in achieving sustainable development, in this case in an area which was previously strictly inter-governmental in nature and form, namely the governance of high seas fisheries and deep seabed minerals.

The book then moves into Part II to reflect on particular Goals. Part II begins with a chapter by Karen Morrow on gender equality. Morrow examines the development of gender as an issue within the Goals, reflecting on the perceived advantages and systemic challenges of a discrete Goal on gender equality, rather than a more pervasive and integrated approach. The chapter considers, in particular, the weakening of gender issues within SDG 5 in contrast to established human rights law; something that is of concern not just textually but, much more importantly, in relation to the message that this sends and its impact on the ground. Separating gender empowerment in the Goals from human rights law risks, in particular, divorcing (in)action from the supervisory and legal mechanisms that already exist to promote and protect gender equality. In short, as Morrow concludes,

goals-based approaches, if they continue on the present trajectory, will come to be viewed as otiose by the human rights and gender constituencies, prompting them to disengage and shift focus to other areas where their efforts are more likely to avail.

The next chapter by Owen McIntyre on SDG 6 on access to water and sanitation continues to reflect on the challenges of reconciling the Goal

with pre-existing legal frameworks. Similar to Morrow, he recognises the political importance of the Goal and how it has the potential to now determine and dominate future activity around the issue. For McIntyre, however, the relationship between Goal 6 and its concomitant legal framework has the potential to be much more positive and mutually supportive. He sees Goal 6 and present actions as a two-way relationship, whereby the former will influence the ongoing development and implementation of relevant legal measures and approaches. In particular, the SDGs place greater emphasis on transboundary water cooperation. As he notes:

While the existing rules and principles of international water will clearly have a significant role to play in achieving the Targets set out under SDG 6, it is equally apparent that SDG 6 will shine an important spotlight on the need to improve transboundary water governance in order to render it ‘fit for purpose’ in the twenty-first century.

The following chapter by Helmut Philipp Aust and Anél du Plessis moves on to focus on one of the more innovative Goals adopted, namely Goal 11 on sustainable cities. As the authors note, its inclusion is further evidence of ‘the thickening layer of international normative guidance on questions of “good urban governance”’ or, more colloquially put, the urban turn in global governance. While generally supportive of the inclusion of a goal around sustainable cities, recognising the importance such urban centres now play socially, economically and environmentally, the Goal itself is not without paradoxes and is subject to criticism. In attempting to be comprehensive, the Goal has set within itself internal conflicts and conundrums: how to ensure cities are safe, for instance, while also making them as inclusive as possible. Beyond this, the Goal is silent on some of the most challenging aspects, notably the institutional role played by cities in national and global governance. Goal 11 is thus a first step, but as the authors say, ‘one would have expected Goal 11 to be much clearer on the fact that the countries of the world may have to define, among others, realistic institutional improvements at the city scale and in national urban development plans and budgets’.

The next chapter considers the environmental cluster of Goals, namely those pertaining to the climate (SDG 13), water resources – both fresh (SDG 6) and marine (SDG 14) – as well as biodiversity (SDG 15). Werner Scholtz and Michelle Barnard reflect on the inclusion of such Goals, and how far they represent, take forward or backtrack on current environmental obligations. They find the situation rather mixed; neither altogether negative nor unduly progressive. Indeed, they see scope for

reflection of the Goals (and, in particular, certain targets) in customary environmental norms and the practice of Conferences of the Parties of certain treaties. Moreover, they argue that the inclusion of the ecosystem approach to water management in SDG 6 is to be welcomed. And yet, as they move to the conclusion, their chapter resonates concerns in earlier chapters that the environmental agenda in the Global Goals is secondary to the economic push. Thus despite evidence of normativity, it may well not be enough to prevent environmental harm at the expense of more paradigmatic growth considerations.

The penultimate chapter by Niko Soininen reflects on Global Goal 16 on the rule of law, access to justice and the imperative of having strong and accountable institutions. The inclusion of the rule of law would seem to be a legal ‘win’ as regards the Global Goals, and yet as Soininen argues, there is an inherent – if unseen – tension between the rule of law (as principally understood and applied by lawyers) and socio-economic and scientific reality. After discussing the principal understandings of the rule of law, namely formal, procedural and substantive, Soininen questions the relevance of such traditional approaches to the Goals. As he notes,

One of the main problems with all the rule of law theories is that they impose certainty on an uncertain socio-ecological world ... All these three rule of law theories require different kinds of certainty that is at odds with the uncertainty of the socio-ecological ‘real’ world ... The clash between (legal) certainty and socio-ecological uncertainty may at times be the single greatest obstacle for effectively achieving environmental goals, such as the SDGs.

Nevertheless, not all is lost. What is required is flexibility – by lawyers – in how the rule of law is understood and applied. Soininen posits two lines of inquiry to counter this, namely that the law needs to find ways to be adaptable and that courts need greater flexibility to weigh and interpret scientific evidence.

The final chapter by Nathan Cooper and Duncan French focuses on SDG 17 on international partnerships as key to the implementation of the other Goals. It includes targets in such areas as overseas development assistance, debt sustainability, technology transfer, capacity-building and international trade. And yet the Goal also reveals many of the contradictions within the primarily voluntarist nature of the international community’s approach to development: namely, grand words and moral injunction yet weak normative commitment. Moreover, the chapter notes that the Goal weakens yet further the traditional normative argument of the South as to the existence of a positive obligation in international law

on development cooperation. Indeed, even where the Goal seeks new ground in diversifying partnerships (such as to include civil society), there remains little support for the view that the Goals will provide either clarity or certainty, particularly within a domestic context. The authors conclude that the innate voluntarism within international partnerships as the driving mechanism supporting implementation of the Goals ultimately puts at risk their effective attainment. Global solidarity, either as a legal principle or political commitment, remains inchoate.

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What lessons can be taken from the collection? As always, each chapter makes its own contribution to the broader debate. But perhaps as editors we might be privileged to suggest three emerging themes, which if we may be so bold, should also prompt further work and reflection. The first is the locus of law (and the insight of the lawyer) in mediating between the politics of the Goals and their aspiration. Many of the chapters highlight challenges in the wording of the Goals: a lack of clarity, or a divergence from the law as it is presently stated. Elsewhere, there is discussion of problems of implementation and monitoring. Finally, some seek to conceptualise how the Goals might be strengthened by greater integration into the normative framework, or through judicial activism. What is largely absent is the ongoing, and circular, sterile debate about the status of the Goals. Implementation is a key focus of many of the chapters and law's contribution to that. Thus, the first key theme is proactive ontology: asserting a particularly clear role for law and the lawyer in understanding, critiquing and giving effect to the Goals; not having to apologise for invading the academic space of others, but revealing how law as a discipline is continually evolving to give it insight and tools on the most social, political and global of topics.

Second, many of the chapters place the Goals within a broader, and a more structural, context. The Goals raise wide-ranging questions of rights, responsibilities, power and alienation. They reveal systems that seemingly remain desensitised to popular claims to change. Corporate power held by too few; political, legal and bureaucratic processes that remain premised on outdated notions of rights; and cultures that marginalise the other. Few suspect the Goals will bring about transformative change, though many worry that the aspirations there are in the Goals will be stymied by the systems presently in place. This is particularly evident in terms of the language and use of human rights in the Goals, which has already been alluded to. In addition, one might point to the dichotomy of the rhetoric of civil society and the continuing fragility by

which civil society is able to exercise influence in many States and over global political processes. There are many other instances illustrated throughout the book. Thus, whatever they might promise, the Goals cannot change society. Whether society – in its many guises – changes the Goals is something all should be worried about.

Third, despite the claimed role of the lawyer in bringing analytical rigour to the Goals, this is no fiefdom. Above all, the Goals demand interdisciplinarity in implementation and interdisciplinarity in analysis, including aspects related to the politics of the Goals; the law surrounding them; necessary changes in technology; economic models and accountancy practices; and the sociological insights to prompt social change. These – and so many other – disciplines all have something to bring to the Goals. Each brings its own particular lens, but also its own particular baggage. But also with each, there is something to learn. As lawyers, we think we bring structure, clarity of language and a focus on implementation. Indeed we might. But ours is not the only toolkit available.

Nevertheless, a question: are we merely observers or are we (also) practitioners who, through our work, must seek to achieve real change where it is most critically required? How far do our insights contribute merely to the debate, and, more importantly, how far can they prompt real change? Interdisciplinarity is not an end in itself, a dialogue merely for the sake of a dialogue. True interdisciplinarity also has the potential for change and impact. This is not to dismiss the value of critique and analysis as a good in its own right, but if we accept – as most do – the underlying aims of the Goals (if not necessarily the Goals themselves), then our analysis should also seek to prompt wider debate and conversations; to reopen closed dialogues and epistemologies where necessary, and to broaden others. Academic inquiry has the freedom to say things which politics and deeply embedded exclusionary and marginalising neoliberal (corporate) narratives have often closed down. More so, where there is an apparent consensus. So it is with the Goals. There is arguably too much at stake not to question that which is taken for granted.