

Norms for Development: Compatibility or Conflict?

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1. Introduction.

In the post-1945 era, the question of “development” became an increasingly central one on the agenda of international politics and economics. Demands for rapid industrialization and reforms to the international political economy inspired the emergence of conflicting models of the economic development process, which incorporated different definitions of development, assessments of the obstacles to development, and proposals for political, legal, social, and economic change that would advance the goal of development. This contestation continues today in the form of two influential approaches to development which we broadly term “neo-liberalism” and “social development”; the former identifies the opening and spread of markets as the path to “development” understood as capital formation and property rights, and the other that identifies the expansion of a variety of social and individual capabilities through public action as the path to “development” understood as expansion of human individual and social capacities.¹ Our aim in this paper is to compare these two contemporary approaches through a consideration of the ways they are framed today by two different United Nations agencies – the United Nations Commission on International Trade Law (UNCITRAL) and the United Nations Commission on Social Development (CSocD) – and consider the current evolution of international norms for “development.”

The United Nations Commission on International Trade Law (UNCITRAL) was created in 1996, and began work in 1967, operating under the auspices of the International Trade Law division of the UN’s Office of Legal Affairs. Its mandate is to “...promote the progressive harmonization and unification of international trade law.” Its current membership of 60 states is allocated to represent geographical diversity and to represent the variety of legal traditions (common law, civil law, Islamic law, etc.) around the world. UNCITRAL’s approach to the construction and diffusion of norms for international “development” has drawn heavily on the “neo-liberal” model; it emphasizes the role of markets and free trade, the free flow of investment, and the freeing up of capital as essential to the advancement of development understood as a rise in national GDP and (therefore) material living standards. UNCITRAL’s legal products have been developed in a distinctive set of institutions and processes, closely linked to networks of international business and commercial legal practice and has played a significant impact in shaping the governance of key elements of the global economy. In recent years, however, an intersection and clash of private and public international law norms has become a key dynamic in its own right in shaping the evolving understanding(s) of “development”.

The Commission on Social Development (CSocD) was initially created as the Social Commission by ECOSOC in 1946 (Res 10 (11) 1946) and renamed in 1966. The current purpose is the follow up and implementation of the Copenhagen Declaration (World Summit for Social Development in Copenhagen 1995), in particular to advise ECOSOC (Economic and Social Council) on social policies of a general

¹ “Neo-liberal” is a highly contested term, for good reason. (see, e.g., Crouch, 2011) For our purposes, though, it is a convenient concept for capturing a vision of capitalism in which the state retreats from most regulatory and social policy functions and markets and private enterprise become the central tool of economic and social policy.

character. The Commission has 46 members who are elected by ECOSOC based on equitable geographical distribution for 4 years. CSocD is a functional commission that promotes the integrated treatment of social development issues in the UN system; currently, one of its major tasks is to review on a periodic basis issues that are related to the follow up of the Copenhagen Declaration and the Programme of Action of the World Summit for Social Development (Reaffirmed UN -ECOSOC 2016). It was decided at the 54th session that the thematic review would take place in a two-year cycle. CSocD designs functional institutional recommendations in the form of proposed resolutions to ECOSOC. We will demonstrate that its focus has recently shifted towards social inclusion in the aim to achieve the SDGs by 2030. These institutional recommendations increasingly follow recommendations by the ILO and aim at the public sector far more than it did historically. We notice a clear shift from the private sector to the public sector and a greater emphasis on participatory mechanisms and identify a dogmatic shift from a growth focused social development approach to an inclusive-institutional approach for development. This is accompanied by a shift from austerity to a proposed expansion of the public sector in its fiscal base. According to the report of the 57th session, the UNDP highlights “the importance of expanding fiscal space...”(UN – ECOSOC, 2019).

In this paper, we compare the two contrasting normative frameworks developed by these two institutions – and the ways these frameworks are changing today – to see to what degree they can be combined to create a multi-dimensional view of development. For many critical analysts, this is not possible. From this perspective, as long as market relationships dominate international and domestic flows of investment and production, attempts to remedy the resulting inequality and social deprivation will only be “after-the-fact” adjustments that will not get to the root of the problem. In this paper, we begin the investigation by identifying the major alternatives, examining how they are constructed in the context of the UN system, and attempt to frame the debate in a more analytically precise way. Our conclusion is that, while there are more potential areas of overlap and shared understanding than we had anticipated, in the end the differences between these frameworks can never be totally reconciled in theory or practice. We then consider the impact of this conclusion for the promotion of inclusive and equitable models of “development.” (The analysis proceeds in three steps; a quick review of the history of discourses of development, a closer analysis of the work of both UNCITRAL and CSocD, and then the comparative analysis and evaluation of the contrasting approaches to development.)

1.1. “Development”: A Brief History.

A concern for “development” was inscribed in the Bretton Woods system/institutions right at the start, in the creation of the International Bank for Reconstruction and Development (IBRD – conventionally known as the World Bank). (see Spero and Hart, 2010, part III) While initially focused on the reconstruction of Europe after the war, by the late 1950s the question of development had shifted to the context of the expanding group of newly independent states and the “third world.” Over the course of the next decade, the contours of the first post-1945 debates over the definition and pursuit of development took firm shape and dominated the contentious international politics of development. On the one side, developed capitalist states led by the U.S. argued that development should be understood as the integration of poorer economies into the global capitalist order of investment, trade, and production, balanced with significant state aid from the North for key infrastructural projects and social programs. Consistent with the “embedded liberal” consensus of this era (Ruggie, 1982), this strategy required the construction of effective state institutions capable of encouraging economic growth, regulating industry, and providing a basic system of social welfare. But the emphasis was on using these institutions and policies to integrate the economies of “Third World” states into the existing global

system. By the 1960s the latter group increasingly rejected this model in favor of a vision in which integration into capitalist world markets perpetuated “unequal exchange” and reproduced the problem of “underdevelopment,” leaving citizens of poorer countries without the resources to improve their lives. As an alternative, the project of import-substitution industrialization (ISI) was proposed to enable developing states to develop their own capital resources and thus compete with the West on a “fair” basis.

The eventual result of this contestation was the proposal of the G-77 for a “New International Economic Order” (NIEO), which would change the basic rules of the international economy in line with ECLA’s “dependency theory. This would require such strategies as significant new limits on the rights and power of multinational corporations, structured international regulation of resource markets and prices, and substantial increases in public development aid transferred from the North to the South. But the NIEO project fell apart in the early 1980s. Meanwhile, significant domestic and international political, economic, and ideological changes within the Global North resulted in the emergence and dominance of a new development project ultimately termed the “Washington Consensus.” (Williamson, 2004-05) This project embodied the shift to “neo-liberalism” among advanced industrial states, which emphasized a radically reduced role for states and public investment to be replaced by the opening-up of spaces for markets in domestic and international economies. In the context of development, this project proposed that “development” – still understood in terms of rising levels of overall wealth and productivity (as measured by GDP) and the creation of a modern industrial society – was best secured through the encouragement of free markets and free trade, structural adjustment programs to reduce the role of the state in society and economy, and reliance on private foreign investment as the tool for the creation and mobilization of capital in developing states. By the end of the 1980s, with the collapse of the Soviet model and the success of export-led industrialization in Asia (interpreted – not accurately – as a clear vindication of the neo-liberal agenda), the Washington Consensus became the dominant project for most if not all major international and regional institutions involved in the promotion of “development.”

But the story is not quite this clear. While the neo-liberal approach had come to dominate the practices of development policy, a deeper shift had been occurring within the community of development practitioners, experts, and activists since the 1970s. This shift had various and not always connected elements, but the central theme was a re-thinking of the nature and measurement of “development” away from aggregate measures of income, wealth, growth etc. to an emphasis on evaluating the impact of socio-economic and political change on the daily lives, choices, and constraints of (different groups of) citizens in developing countries. One of the most important elements here was the emergence of a focus on “poverty” as the touchstone of development policy (Finnemore, 1997), an emphasis increasingly adopted by neo-liberal as well as critical approaches to development. From this perspective, aggregate measures and trends – and policies – matter less than the situation of those living in poverty and the challenge of ameliorating their situation. Three other strands of discourse also contributed crucially to this re-thinking. First, concerns for the environmental impact of industrial society had by the early 1990s generated the concept of “sustainable” development as an alternative way of defining and pursuing improved living standards. Second, key economists, social scientists, and practitioners interested in development, most notably Amartya Sen, at the same time began advocating a focus on human – individual and social – capabilities as the central measure of development. Finally, even experts operating within neo-liberal contexts began recognizing the need for effective governance through transparency and inclusivity as key conditions of “development.” By the turn of the current century, this group of concerns was recognized and endorsed by the United Nations in the creation of the Millennium Development Goals of 2000.

By the early 2000s, then, an alternative discourse of development had emerged in a cohesive way in thinking and practice. This discourse, now captured in the practices of the CSOcD, is what we call “Social Development.” In this approach, development is understood to mean raising and equitably distributing the capacities of individuals, groups, and societies to improve the conditions of their lives and create and take advantage of new opportunities. Collective and individual capacities for agency and choice need to be addressed simultaneously, as development is understood as a participatory process or practice that is accomplished by social actors rather than something that is given to them from above. The building and mobilization of social capital is thus essential to any meaningful form of development, and the ability of each human being to live a life of capacity and dignity becomes the main evaluative standard. Clearly, this discourse diverges in fundamental ways from the neo-liberal approach with the result that the fields of “development” are again experiencing fundamental contestation over meanings and strategies. We think this new form of contestation raises three key questions. First, how are these different visions of development articulated in contemporary discourses? Second, is there any potential for an integration of different visions, and can a more inclusive social or human development agenda make a real difference in a world where markets, trade, and capital drive the global economy? Third, how are these different discourses and visions embodied in and how do they shape the work of (and *vice versa*) of institutions involved in the political economy of development? In the rest of the paper, we focus our discussion on the first two questions, but discuss these in the context of the work of two UN Commissions, UNCITRAL and CSoD. Our approach begins with a review of the history, understanding of development, and main projects of each organization individually, paying particular attention to their understandings of the nature and role of capital, the state, and individual capacity building. We then present a systematic comparison of these understandings in order to explore areas of compatibility and areas of conflict. We turn to an evaluation of the choices facing developing societies in light of these findings and conclude with some thoughts for future research.

1.2. A Note on Institutions.

The central focus of this study is on discourses surrounding the concept and practices of “development.” Why have we chosen to pursue our analysis in the context of institutions active in articulating these discourses and norms? We have been led to this approach by two considerations. First, we hope in the near future to expand our analysis to include the empirical study of the impact of different development discourses on the policy choices of states and ultimately on the lives of people within their societies. Since UNCITRAL and CSoD play important roles in disseminating norms and discourses of development, we think they will play an important role in our future empirical study. Second, and relatedly, the connection between institutions and norms in the context of international development politics is not random or accidental. As Karns and Mingst have noted, “(i)nternational organizations then may serve as agents of social construction, as norm entrepreneurs, trying to change social understandings.” (2004: 51) More broadly, Martha Finnemore (1996) has argued that international organizations play a key role in creating and/or framing international norms and in socializing states into acceptance of norms in their governing practices. As a result, we suggest that the real “work” in the area of the norms and understandings of development at the international level occurs in the context of the work of key institutions and their interactions with states. While this paper focuses on the discourses themselves, situating them in the context of institutions helps lay the basis for the larger project we are hoping to pursue.

2. UNCITRAL and Normative Modelling for International Development.

Over the past five decades, UNCITRAL's role in the development of norms for international "development" has been linked to the development and diffusion of the neo-liberal model. One of the key (but often missed) influences in shaping liberal and neo-liberal development discourses has been the understandings of capitalism embedded in the practices of private law – the laws of property, contract, and civil procedure – and the connected discipline of private international law. These centre on the role of markets and free trade, the free flow of investment, and the freeing up of capital as essential to the advancement of development understood as a rise in national GDP and (therefore) material living standards. This model/normative understanding has been developed in a distinctive set of institutions and processes, closely linked to networks of international business and commercial legal practice and has played a significant impact in shaping the governance of key elements of the global economy. UNCITRAL's role in the evolution of the discussions surrounding "development" is linked fundamentally to these private law understandings, as are the particular strategies – the development and diffusion of norms for the laws of contract, credit, property, and dispute resolution – it has used to advance its approach and values.

2.1. Structure and Operating Procedures.

UNCITRAL's structure and operation are somewhat unique among international organizations. The Commission itself, to which States send delegates and oversee the organization, meets once a year. The real work of the organization, though, occurs in the operation of its working groups, of which there are now six though the number can vary. The groups are organized by substantive topics within the world of commercial law and operate through the principle of consensus rather than voting. All member states are able to send delegates to each working group, but in practice the active states in these groups is a smaller proportion of UNCITRAL membership. Of particular importance is the active role played by representatives of other international institutions and especially non-governmental organizations (NGOs) in the operation of the working groups. NGOs which are registered with the UN's ECOSOC office and recognized by UNCITRAL as having "relevant expertise" in areas of commercial law are able to send formal representatives to the Working Groups, who in turn are able to actively participate in the deliberations of the groups. In principle the determination of the "consensus" of the group should only be based on the views of states, but it is often hard to make this distinction. Unlike most other UN bodies, the NGOs that have participated in UNCITRAL's work almost uniformly represent the interests of international business, specific industries, and key elements of the legal (and at times other expert business) profession. The result is an ongoing and close intersection between the work of the organization and the activity, outlook, and priorities of international business. In pursuit of this work, UNCITRAL has focused on the area of private international commercial law, which governs the practices of commercial actors in international trade. The basic idea behind UNCITRAL's work, then, seems clear. Representatives of states, with the help and advice of legal and industry experts, will develop norms and principles, formal rules, and analytical guides aimed at the development of modernized and harmonized forms of commercial law acceptable around the globe. Ultimately, the aim is to advance the UN's concerns for global development by facilitating the flow of capital, goods, and investment between states to raise levels of wealth and standards of living.

2.2. UNCITRAL: Original Purposes and Evolving Goals.

UNCITRAL's history and evolution track fundamental conflicts and transformations regarding the norms, purposes, and technologies of "development" over the past 50 years or so. For the first two decades of its existence, however, UNCITRAL accomplished little. There was much uncertainty regarding how to proceed, little initial support for its work within or without the UN system, and a general reluctance of Group of 77 countries to participate in its work. It was only in the 1980s that UNCITRAL began to undertake serious work on the law of international commerce and the discussions of development, and it was not until the 1990s that this work began to have an impact. What explains this growing importance? The key is the position of private commercial law in the emerging "Washington Consensus" which, as we discussed above, drove dominant thinking and practice about development in the 1990s and early 2000s. The overarching idea here was that the best path to development is to reduce the role of the state, open markets, end barriers to trade and the movement of capital across borders and encourage the creation of capital in the private sector. These priorities, however, came to be understood by many advocates to involve not a simple "smaller" role for the state but rather a significant program of legal reform that would provide the foundations for the successful operation of markets and mobilization of capital.² This program of legal reform – often referred to as legal "modernization" – included contract laws that allow freedom to private agents to autonomously organize business relationships ("freedom of contract"), property laws that allow clear title claims and full rights to transfer property and to use it as capital and/or collateral for loans, clear rules for insolvency and the reorganization of failing businesses, and an independent judiciary to impartially enforce commercial laws. This set of reforms, in turn, were connected to the broader agenda of the reform of trade and intellectual property law through the WTO and the liberalization of investment law through bi-lateral and regional investment treaties. It was in this context that a coalition of actors – the US and its key allies along with private law experts working with UNCITRAL in various ways – moved to empower UNCITRAL to develop a variety of legal tools that would define the international norms and principles of "modern" commercial law and provide more specific tools for developing states to use to reform legal orders to enact these norms. The goal was to establish a legal regime that would facilitate the mobilization of domestic and international capital, resulting in an increase in wealth and income would raise living standards, provide revenues for essential infrastructure, and enable states to provide basic services. In general, this was an apolitical vision – once wealth increased, a growing middle class would result in more efficient and effective governance which would further improve rates of investment and growth.

Guided by this understanding, during the two decades beginning around 1990 UNCITRAL proceeded to develop a variety of legal "products" in the areas of contract law, trade practices, commercial arbitration, secured transactions, insolvency, and electronic commerce. These products were then "sold" around the world by global north governments, institutions such as the World Bank and IMF, regional development banks, and legal experts and organizations. It was the push for quick action in a variety of fields, coupled with the challenges of traditional diplomatic processes, that led UNCITRAL innovate in its methods, moving beyond traditional conventions to the development of tools like model laws, legislative guides, and guides for private commercial legal practice. In addition to the easier process of development, though, these strategies (or "legal technologies") also fit better the aims of promoting a project of legal reform. Rather than waiting for states to ratify and implement complex

² This account simplifies the thinking in this area. Initial formulations of the "Washington Consensus" often did simply present the issue as one of shrinking the state; acknowledgement of the key role of law and "governance" only came in the later 1990s. However, for legal experts attached to this project legal reform was always understood as central to the free market/free trade project. (Williamson, 2004-05)

international agreements, these technologies allowed norms to be diffused in a plural and multi-directional manner, helping to support legal reform efforts in a variety of contexts and directions.

2.3. UNCITRAL and Development: Hernando de Soto and Private Law Theory.

A crucial influence on this work, and a key force in shaping UNCITRAL's understanding of the links between private law and development, is the work of Peruvian and World Bank economist Hernando de Soto.³ In the late 1980s, de Soto came to share the frustration of many active in development policy at the slow pace of improvement in the most impoverished countries and sectors of the development world. He also agreed with the emerging "neo-liberal" understanding that large scale development programs led by states had worsened rather than improved the situation of the impoverished. What was distinctive about his subsequent work and influence, however, was his identification of private law as the context in which to understand the obstacles to development and an alternative path forward. De Soto's argument, developed by the early 1990s and presented most cohesively in *The Mystery of Capital* (2000), is that the main obstacle to rising living standards and poverty reduction in the developing world is the inability of most persons to mobilize the capital available to them as collateral for attaining credit and/or for alienating that property. The main source of this obstacle, de Soto argued, was an outdated legal regime regarding titles to property and credit practices. Capital existed in the "informal" economy, but inefficient legal structures – which tended to work to privilege the interests and property of urban elites – prevented its mobilization by ordinary people. In this view, the key to "development" and poverty elimination is to encourage and facilitate the ability of the poor to secure claims to property and to use that property to secure credit that will in turn be invested in improvements of that (human and physical) capital. The resulting improvements in productivity would spread throughout a society, raising incomes and reducing poverty.

By the late 1990s de Soto's ideas had attracted the support of a network of development experts who were able to insert them into the deliberations of institutions such as the IMF, World Bank, European Bank for Reconstruction and Development (EBRD), Asian Development Bank (ADB), and the American Bar Association's Central and Eastern European Law Initiative (CEELI). But de Soto's general concern with the ability of the poor to secure clear title to land (and other assets) and use these to mobilize credit – central concerns of the law of secured transactions (or security interests) and insolvency law – was missing a clear set of detailed recommendations for legal reform. It was here that UNCITRAL was able to enter and shape the discussion. By the late 1990s UNCITRAL was already involved in attempt to develop a comprehensive global standard for insolvency law; its Model Law and Legislative Guides in this area would shape the international community's response to the Asian Financial Crisis of the period. (Halliday and Carruthers, 2009) On the heels of this work, though, UNCITRAL turned to the challenge of developing a global standard of the law of secured transactions. Drawing on de Soto's work, the actors behind this project argued that such a standard was necessary to guide developing states as they attempt to reform property and credit laws to unleash the productive potential of untapped capital in the hands of the poor. Here was a context in which UNCITRAL's private law expertise could intersect with the broader neo-liberal development project.

It turned out that the development of a clear global standard of secured transactions law was a significant challenge. Because security interest law is tied in with property law and varies significantly

³ This discussion focuses on only one of the areas of UNCITRAL's involvement in the area of development. It is meant to be illustrative, not a comprehensive review of the institution's work.

even in developed states, it engages some of the most important and entrenched interests in any state – particularly in the financial system – and any global standard could implicate the legal order in developed as well as developing states. Nonetheless, over the period from 2007-17 UNCITRAL developed a broad consensus on key standards and major issues for reform on the basis of which it published legislative guides and model laws intended to shape legal reform efforts in developing states. These products have been widely endorsed among regional development banks and international development institutions, particularly those segments and actors pursuing some type of neo-liberal development strategy. In this way, among others, UNCITRAL has played a significant role in developing, defining, and disseminating a key but often overlooked part of this model of “development.”

2.4. UNCITRAL: The Limits of a Private Law Development Model?

By the mid- 2000s UNCITRAL had transformed itself from an obscure and unproductive body to a significant player in defining the legal norms of the dominant development project in a neo-liberal political economy. Through its work on private law, it had added a more specific and granular understanding of poverty alleviation and capital mobilization to the standard pro-market vision. This understanding is able to incorporate emerging themes of “good” governance, anti-corruption, and a focus on persistent inequalities into what had otherwise been an approach focused on aggregate macro-economic policy. And UNCITRAL’s work has been influential in the work of international and regional institutions as well as certain national legal reform efforts. But is this extended model enough to provide a satisfactory view of development? There are empirical and theoretical reasons to be doubtful. On the empirical side, assessments of projects of secured transactions law reform and the creation of systematic property ownership registries have suggested that these reforms often have limited impact on poverty in the absence of broader reforms in the socio-economic structures of developing societies. Simply providing the poor with land titles, without changing the practices of credit creation, attacking existing sources of market power, and providing educational support often results in the recipients either selling their titles for short-term gain or simply sitting on them. (Besley and Ghatak, 2010) At the same time, the process of titling land in this way often disrupts long established patterns in the informal economy in ways that can systematically disempower certain groups – especially women – and leave the poor worse off than before.

More generally, the international discourses on development have begun to shift away from purely private law and market approaches, a shift which may limit the ongoing appeal of UNCITRAL’s strategies. Indeed, UNCITRAL has already experienced this kind of tension, although not directly in the context of development. Over the past decade, it has been the focus of contestation over the rules and practices of investor-state arbitration in the context of bilateral and regional trade and/or investment treaties. UNCITRAL’s Arbitration Rules, designed for private international commercial arbitration, have been widely used in investor-state arbitration since the 1990s; shaped by private law understandings, these Rules do not incorporate the norms of transparency, participation, human rights, and sustainability widely accepted in public international law today. (CIEL and IISD, 2007) Over the past decade, however, key civil society and environmental NGOs have gained access to UNCITRAL’s working group deliberations and have used that opening to push successfully (with the help of some key states) for the development of distinct UNCITRAL rules for investor-state arbitrations that do incorporate public law norms. (Choudhury, 2016; Cohen, 2011) These rules incorporate key public law procedural values such as transparency and participation and have generated ongoing discussion concerning the roles of more substantive values – such as labour and environmental rights – in the governance of investment. These twin processes – the growing access of NGOs to the deliberation of international development organizations and the shifting norms incorporated in the work of these organizations – can be explored

in more depth by turning to the work of CSocD and its struggle to articulate a theory and program focused on the notion of Social Development.

3. CSocD and Normative Modelling for International Development.

3.1. CSocD Original Purpose and Evolving Goals.

The remit for ECOSOC (and CSocD) is embedded in Articles 22 – 26 of the Universal Declaration of Human Rights (1948) which also prepared for the International Covenant for Economic, Social and Cultural Rights (ICESCR, 1976) CSocD's main purpose is to advise on status and tools for social development. The Commission has employed development theoretical approach which have focused on private business activity, entrepreneurship, investment and innovation as major drivers productivity; it also recognises that international capital flows, structural transformation, investment in human capital and trade are vital to development efforts (UN – ECOSOC, 2019, p. 31). This work is based on the understanding that national capacities define the extent of social provision so that relativity in capacity and context is recognised given the entitlement to minimum standards of health, education and social security (Global Citizenship Commission, 2016). The concept of dignity forms the gaging pole for the identification of minimum standards.

The work of the Copenhagen Summit is crucial in understanding CSocD's evolving purposes and goals. The Summit postulated three main areas of focus: 1) conquest of poverty, 2) full employment, and 3) social integration as objective for development. These social problems are continued to be considered to have profound underlying and structural causes. People-centred sustainable development identifies individuals, families and communities as the human focus. Next to peace, human rights, fundamental freedom and environmental protection, economic and social development are central to human development. Over time, we have increasingly seen a shift towards capacity building. Where social development is seen as central to the all, it is the responsibility of governments and civil society to enable people to achieve their capacities and opportunities. Social development is laid at the responsibility of nations, but “cross-fertilisation of ideals, cultural value and aspiration” is sought across nations (Copenhagen, 1994, 14). Within this framework, it is recognised that globalisation has created challenges and that environmental risks and communicable diseases are global in nature. The continuous aims are to create adaptive capabilities of governments, individuals, communities and institutions. The international working framework designed to achieve these aims is designed as follows: The international community assumes collective commitment with the main responsibility assigned to national governments. Governments are to integrate social, economic and cultural policies so that a coherent approach can be pursued.

Social development is to be achieved through an enabling approach, the nature of which has traditionally been neoliberal with focus on decentralisation and open management of institutions. The approach was embedded both at the international and national institutional levels. At the international level, cooperation has been conceived as essential and fits into the overall neoliberal framework of trade liberalisation, financial stabilisation, financial and development assistance. At the national levels, social development aims were linked to economic development themes and conceived achievable via the development of open and free markets with a focus on economic growth. State intervention was not recommended and only suitable in cases of market failures. Traditional social development ideas accept and assume the first and second welfare theorem with its focus on competition and free markets. The ex-post approach calls for the provision of social security in the case of detrimental living conditions. Over the course of the last two decades however, it has been recognised that inequalities,

unemployment, poverty, malnutrition food insecurity and other related social problems can occur and that these are a consequence of globalisation and neo-liberal economic policies. The Commission for Social Development has very recently shifted its advice from an ex-post correction to a more integrated ex-post and ex-ante policy approach. The ex-ante approach calls for the establishment of adequate structures that remove political, economic, legal and social barriers that cultivate inequalities. Here, the Commission for Social Development acts to advise on policy tools that establish an economic environment that facilitates equitable income generation and access to public and social services. Equitable income generation as a tool for social development is now addressed through the commitment to full employment and to structural adjustment programmes to include social development goals.⁴ In particular have we identified an intensified call for tripartite participation as tool for more inclusive society is a result of the inclusive nature of deliberations of the CSocD.

3.2. CSocD Changing Norms.

The traditional focus on liberalisation, private sector development and capital has expanded over the course of the past five years to incorporate more explicitly aspects of human capacity and social inclusion and civil society engagement. The persistent principle is that sustainable development must be people-centred and inclusive, and must integrate the social, economic and environmental aspects of development. These principles face challenges such as widening inequality, changing population dynamics, increased migration flows and climate change. The reality is reflected as one where despite reduction in poverty rates, youth unemployment rate and unemployment amongst marginalised social groups remain unacceptably high. A lack of social inclusion and vulnerability of the poor and disadvantaged social groups continues to be a problem for many countries. The conventional aim of poverty eradication has been supplemented by the focus on productive employment and decent work, and social integration. CSocD has identified social protection and wage policies as appropriate ex-ante tools for reducing poverty, inequality and exclusion, and for enhancing resilience to shock. Since the adoption of the 2030 Agenda, a labour market focused comprehensive and coordinated approach at the national level alongside a rights-based approach is at the core of people-centred development. The various draft resolutions of the previous years continue to reiterate 7 traditional themes/theories of economic development as pillars of social development:

- Accelerated economic growth creates employment opportunities, income security and improves standards of living. (structural changes theory, growth stages theory, new classical theory)
- FDI, industrialisation, structural transformation, value addition to natural resources, and employment-intensive policies can create poverty eradication and income equality. (Lewis-Fei – Ranis)
- Promotion of small-and medium sized enterprises (agriculture in particular) and entrepreneurship are important motivational factors for growth and social development. (Psychological Theory of Economic Development, McClelland)
- Promoting the process of regional economic cooperation and facilitating regional connectivity, trade will encourage the full and equitable participation in global value chains (New growth theory, Krugman)
- Productivity is key to growth and poverty reduction. (Arrow, Romer)
- Democracy, respect for all human rights and fundamental freedoms, including the right to development are vital for development. (Sachs)

⁴ Copenhagen declaration 1995

- A sound legal, fiscal and regulatory framework acts as basis for social development. (New institutional Economics, Coase, Williamson)

Alongside these traditional themes we recognise a modern focus on the human right to development, social protection floors with a general focus on labour markets. There is also a new accentuation of institutional capacity and participation of NGOs and the civil society. The CSocD reiterates the International Labour Organisation Recommendation No 202 on social protection floors and recommends inclusive labour markets. As such it promotes more equitable participation. National policies should ex-ante aim at the creation of full and productive employment and decent work. There is also a recognisable shift towards improving public and private institutions of economic and political governance and an enhancement of investment in major public infrastructure projects and in education and health to promote inclusive growth, generate full and productive employment and decent work for all and reduce poverty. An anti-austerity shift is also recommended by suggesting that fiscal policy should aim to expand the revenue base to finance investment in education, health, infrastructure and social protection systems, instead of cutting social expenditure. Progressive taxation is recommended to finance basic services, especially health, education and social protection, and increased investment in decent and sustainable work, as well as the institutions of decent work, including wage-determination mechanisms.

Much attention is paid to the role of stakeholders. “The effective participation by civil society, including non-governmental and community-based organisations, and the private sector are among the indispensable foundations for the realisation of social and people-centred sustainable development.” (UN ECOSOC, 2015, Res A, 18). The theme of institutional capacity and coordination is extended with a focus of strengthening institutional capacity, including planning, management and monitoring capacities, and coordinating policies at national and international levels to strengthen social development. A more integrative notion of economic growth can be identified where social policies are seen as elements of growth and investment. Furthermore, a more integrative consideration of the agriculture sector is witnessed, creating a lesser focus on capital only. The CSocD makes use of evidence that “growth in gross domestic product originating in agriculture is on average at least twice as effective in reducing poverty as growth in non-agricultural sectors” (UN ECOSOC, 2018).

The most explicit and tools-based shift in policy is the explicit role that is assigned to workers’ and employers’ organisations and labour market policies. The CSocD “encourages governments, the international community and other relevant actors, including workers’ and employer’s organisations,...to ensure equal opportunity, reduce inequalities...”, and “urges member states to ensure active labour market policies...and a fair share for workers of gains from increased productivity, resulting from structural transformation and trade” (ECOSOC, 2019, 5 and 11). It “invites Member States to promote the use of mechanisms of social dialogue, including collective bargaining and engagement with workers’ and employers’ organisations (ibid, 14).

3.3. Interpretation.

The recent changes to the themes demonstrate a norm change from a dominant neo—classical development model towards one with a stronger focus social inclusion and promotion of full participation. The CSocD addresses the potential challenges posed to social development by globalisation and market-driven reforms in order for all people in all countries to benefit from globalisation.

The norm change is particularly recognisable in its adoption of the Social Protection Floor Recommendation (ILO 2012) with which the international community committed to a baseline of social protection for all people. Targets 1.3. and 3.8 of the SDGs require member states to implement nationally appropriate social protection systems and measure for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable and deliver health protection. Much emphasis has been placed on Institutional capacity building and a growing participation of civil society, local people, government and business. Article 71 states that “the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations”. According to Alger (2002, p. 94) “many new NGO actors are national instead of international in character, and they are increasingly activist and issue based”. Many NGOs have consultative status with the United Nations and, similarly to their role in UNCITRAL, have increasingly played an important role in formulating resolutions that are recommended to ECOSOC. Reismann (2006, p. 46) argues that the “new pro-NGO international norm” has put pressure on states to include NGOs in national and international politics. Inter-governmental organisations often work in symbiosis with states and NGOs. NGOs with consultative status have access the CSoc as an ECOSOC commission with ECOSOC traditionally having been an NGO friendly UN body. The recent social development norm identification for CSocD is heavily influenced by the norm basis of the ILO and NGOs such as Oxfam. The pro-NGO norm has allowed the Commission for Social Development to be influenced by the normative framework of such NGOs. In particular, has the The Civil Society Forum recently played an integral part of the Commission where the Chair of the NGO Committee for Social Development reports on the outcome of the Forum.

As the social development pillar of global development, CSocD addresses collective capacity with thematic changes on an annual basis. It continues to focus on the aspects of economic growth for economic and social development. However, it is evident that the Commission is growth selective. The World Inequality Database asserts that diverging country inequalities trajectories highlight the importance of institutional changes and political choices (WID 2018). Social bads are correlated with income inequality (Wilkinson & Pickett, 2009) presenting a potential dilemma for poorer countries that often experience greater inequality and more social bads but have less access to public capital than more affluent economies. This accentuates the extra focus on social development in low-income economies. The income inequality is partly addressed by the SDG 10.1 where real income growth of the poorest 40% of households is to be greater than the income growth of the entire population. Here the focus is not on GDP growth but on income growth, functional or sectoral. SDG 10.4 calls for the adoption of fiscal, wage and social protection policies to achieve greater equality (SDG Platform, 2019). We again identify attempts to mix and balance ex-ante strategies of institutional changes and capacity building with ex-post strategies of correction via protection instruments. Although it is widely accepted that globalisation and technological change have contributed to growing global inequalities, it is also recognised that the growing inequality was not inevitable. More recently, notably, increasing attention has also been paid to financial opacity and the need for wealth documentation in registers. This shift in attention from the global to the individual raises said question of civic responsibility.

The most anti-liberal tools that is suggested in recent publication is that of collective wage-bargaining. Divergence in factor income growth has become even more widely known since Piketty’s publication in 2014 (p. 443) where he asserts that “the inequality $r > g$, combined with an inequality of returns on capital as a function of initial wealth, can lead to excessive and lasting concentration of capital...”. Tax-political tools such as a global capital tax are suggested to curb the resulting spread of income and wealth. Labour income has absorbed more national income than capital income (in France throughout the 21st Century 70% vs 30%, bearing in mind that averages hide large disparities, *ibid*). Large wage-earning disparities are witnessed amongst different nations. In developed countries, wages are 60-80%

of total household income. In emerging and developing economies wages are 30-60% of total household income (Tomei, 2019). The current findings support theoretical models that suggest a direct correlation between the declining power or a lack of existence of workers' unions and the lower labour income share (Jaumotte, Buitron, 2015; Layard, Nickell, Jackman 1991; Pissarides 1990). Following those findings, wage policy becomes an important tool for social justice with a focus on a minimum living wage.

The ILO's Global Commission for the Future of Work calls for the establishment of a universal labour guarantee (ILO, 2019). Collective capacity is expanded via the introduction of wage floors (or social protection floors). Furthermore, gender pay gaps which are the highest among low income workers in middle-and low-income countries, are targeted by this policy tool. Also, wages are found above the floor if collective wage bargaining is exercised (mostly in high-income countries such as Belgium, France (ILOstat, OECDstat). Institutional change to establish inclusive wage-determining mechanisms is recommended but it is recognised that this is difficult to achieve within the structural constraints and institutional weakness of many sectors in low-income economies. The literature demonstrates a negative impact of international financial programmes on degree of unionisation and the extent of labour (Vreeland 2002; Abourharb and Cingranelli 2007; Martin and Brady 2007; Nooruddin and Vreeland 2010; Blanton et al (2015) demonstrate in their study of 123 low- and middle-income countries over the period of 1985-2002 that international financial institutions, namely the IMF and the World Bank, significantly and negatively affect labour rights. Roychowdhury (2017) identifies a substantial rise in the share of fatal injuries as percentage of total industrial injuries in India from 1990s as a result of the liberalisation process and the dilution of safety norms in the workplace. The share of contract workers (whose wages are typically 60-78% of the regular workers' wages) is considered to have increased alongside the ease at which workers can be laid off. In response, the ILO recommends (202, 8b-d) that basic income security should allow a dignified life. The review of protection floors is to be conducted in a transparent way and ensure tripartite participation. As indicated above union density is correlated with labour income share. The election of more market-focused governments which might be linked to a decline in union density and an increase in inequality. Faumotte and Buitron (2015) demonstrate that the erosion of labour market institutions in advanced economies is positively correlated with an increase in income inequality. It has also been demonstrated that high levels of inequality are associated with high focus on status and class which affects people on the psychological level (Pickett, Wilkinson 2018). The overall decline in union density is suggested to be reversed with the recommendation of tripartite participation. The ILO identified that, "in 91 out of 133 rich and developing countries, wages have not kept pace with increased productivity and economic growth from 1995-2014" (Oxfam, 2018, p 38). According to Anner and Caraway (2010), international financial institutions have begun to engage in collaboration with the ILO to maintain labour standards.

Taken together, these developments demonstrate significant change in the understanding of development articulated and diffused by CSocD. The Civil Society Declaration to the UN's 57th CSocD session asserts that "national governments must take primary responsibility in this endeavour [of establishing dignified lives] and international bodies are needed to set standards and ensure implementation" (UN - CSocD, 2019). The Civil Society Declaration to CSocD (56th session, referred to as CSD 56) states that achieving prosperity requires "the deepest and broadest participation in economic and social life of society". The 2030 Agenda for Sustainable Development calls for the implementation of social protection systems. These protection systems, including floors, are a "mechanism for promoting social equity" (CSD 56). It is also assumed that "people cannot make meaningful contributions to societal development if they are sick, malnourished, uneducated, persecuted, without home, or without a basic degree of income security..." (CSD 56). Social protection floors were

recommended by the International Labour Organisation in 2012 and are set as a target in the SDG Report of 2017 (ILO, 2012; UN 2017). The social protection floor aims to broaden and deepen the social contract and establish long-lasting relations within a society. It is meant to replace “dependency-fostering handouts” with a framework that recognises that “well-being of the individual is dependent upon, and contributes to, the well-being of the whole” (ILO, 2012, No 202). The ILO synonymises well-being with human development as it recognises that high minimum wages and high marginal tax rates for high-income earners link positively with human development, happiness and other measures of well-being. Social security is a poverty and inequality-preventing tool and constitutes a human right (again a focus on ex-ante structures. More equitably structured companies have been recognised in generating value for workers and studies have found that employee-owned businesses yield higher income growth for their workers (Oakeshott, R., Wiener, H. 1987; Rosen, Quarry 1987). Corporate commitment to constructive engagement with independent trade unions could prove useful in reducing income poverty and inequality. The evidence appears to support the identified policy change which can be interpreted as a norm change. The most strident change is the influence that the civic society, NGOs and the ILO has had on the CSocD.

4. Evaluation: A New Development Synthesis?

Our quick discussion of the evolving discourses of “development” at UNCITRAL and CSocD demonstrate the ongoing innovation and contestation in this arena. At this stage our work is too preliminary to evaluate the impact of these trends on the policy choices and outcomes in particular states, but we are able to draw the following observations from our initial results. These point in two directions – growing challenges to the dominance of neo-liberal models, but a remaining divergence in the ways development is understood – and as a result the policies promoted by – different conceptual and theoretical approaches.

1. In both UNCITRAL and CSocD, but especially in the latter, the neo-liberal model has been effectively contested by actors offering a more multi-layered and complex understanding of development and the policy choices necessary to achieve it. The centrepiece of this challenge has been the incorporation of an active public sector and public law values into the way actors think about the processes and outcomes of development. In the context of CSocD this is embodied in the notion of Human Development. In this model, development requires much more than effective markets but includes the need for active state intervention in labour markets, the expansion of social protection policies, the promotion of human and social capital, and the incorporation of active participation and democratic responsibility into the development process itself. The Human Development model is now a central factor shaping international discourse and policy choice around the challenges of development, and this represents a significant norm shift.

2. This contestation has gone much further in the context of CSocD than in UNCITRAL, but this divergence indicates an important institutional factor shaping the politics of development discourse. In both cases, the contestation and shifting of dominant norms has been connected to different patterns of participation by NGOs in the deliberations of the institution. This has been especially marked in the CSocD context since the 1990s, during which a complex of development-oriented NGOs – organized around the Human Development agenda and supported by the ILO and linked to the MDGs and Copenhagen Conference agenda – were able to shift the balance of discourse within the institution. To an important degree, the much more limited normative change in the context of UNCITRAL can be traced to that institution’s long-standing involvement with a different social ecology of NGOs, one centered on business associations, legal and accounting professionals, and academics deeply committed

to versions of the neo-liberal model. Indeed, UNCITRAL officials initially resisted the demands for participation by Ecosoc-listed NGOs that were perceived as hostile to this agenda, though they eventually had to yield. (Cohen, 2011) In both cases, then, we see the scope and direction of normative change linked to the changing politics of participation and influence in international organizations.

3. As a result, the field of “development” policy and discourse remains divided between two major paradigms. We observe that there are areas of overlap between these models – reflecting the growing impact of the Human Development norm across the board – but that deep differences remain. We conclude by reviewing these areas of possible agreement and of conflict.

4.1. Overlapping Themes:

Both the (now amended) neo-liberal and human development frameworks share a concern for the centrality of the following norms in understanding and promoting development:

- Effective State Capacity Building: While always central to the human development approach because of its public law values and orientation, current neo-liberal approaches also see effective state capacity as central to development. The key concerns from this perspective are the provision of personal safety and security, security and enforcement for property rights and contracts, and the provision of essential public goods.

- The Empowerment of the Individual remains central to both normative models of development. Despite differences regarding how this can be promoted and what it may actually mean, the ability of each individual to develop and use her/his capacities and resources to the best of their ability remains a central goal for both approaches. Both envision a “developed” society as one in which individuals are able to construct meaningful and rewarding lives for themselves and their families.

- The mobilization and investment of Capital, long a central theme in development economics, is understood to be at the heart of the development process in both approaches. Here, though, the emphasis differs. Neo-liberal approaches emphasize the mobilization of resources by individuals in markets as the defining challenge, while human development approaches focus on the role of state and society in developing human and social capital as crucial in itself and essential to the more specific market-focused notion of capital mobilization. The result is diverging policy prescriptions regarding market competition, foreign investment, and the role of the state.

- The active participation of citizens in the development process, both through their own individual and collective endeavours and in the processes and institutions in which development policy choices are made, is now a widely shared norm. As much as possible, this participation should be extended to international as well as domestic contexts.

4.2. Divergent Priorities:

- There remains a fundamental divergence between the way “development” is understood in these two normative approaches. For neo-liberal derived models, the dominant image is one of a fully competitive open market economy in which individuals dominate the mobilization of capital and individual accumulation of wealth becomes the definition of development. Human development models, on the other hand, see the attainment of development as a much more collective effort pursued by

communities that attend to the whole range of social, cultural, and political needs of citizens. This difference is unlikely to disappear.

- The understanding of social Justice also divides these two approaches. For neo-liberalism, indeed, the term has little meaning; justice concerns the fair dealings of individuals in market transactions and legal procedural fora. The human development model's concern for the broader social patterns of equity, equality, and inclusion embody a fundamentally different approach to how we shape and evaluate societies.

- As we have emphasized, the protection and promotion of the interests of labour as a social category is crucial to both the normative and policy-based prescriptions of human development thinking. Ennobling and securing the position of those who work for a living is central to ensuring a healthy society. For neo-liberals, however, labour does not function as a category – it is simply one-way individuals may accumulate capital. The idea of a collective approach to securing decent conditions for labour has no place in this outlook.

- Finally, we return to the question of capital. While the mobilization of capital is widely understood to be central to development, the different definitions and conceptualizations of capital amount to a fundamental source of conflict between these two normative visions. These differences – individual vs. social, financial vs. human and collective – reflect deep-seated convictions that are unlikely to be resolved in the near future.

In sum, our tentative conclusions are two-fold. First, the increasing impact of human development norms in the international community has opened areas for more cooperation between development agencies, actors and projects in certain key areas – state capacity, capital mobilization, and participation. Second, however, we think the international discourse of development will remain a site of fundamental contestation in the coming years. In our future research, we hope to explore how both dynamics are at work in shaping development policy choices in specific countries.

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