

The MDGs
Archeology, institutional fragmentation and international law
Human rights, international environmental and sustainable (development)
law
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1 INTRODUCTION

When considering the Millennium Development Goals (MDGs) the first characteristic that struck me was the fact that the goals and targets were not new, when endorsed by world leaders in 2000.¹ Upon further consideration, especially of documents related to the implementation of the MDGs a second characteristic emerged: the integrated approach that relevant documents adopt towards development, often accompanied by the assertion that the MDGs embody basic human rights.²

The first characteristic – not new – prompted me to engage in some archeological research.³ The findings of that research led to the following question. Why have we not done better, given that the MDGs have been part of human rights law for six decades? This essay points to the fragmented nature of the international institutional framework – or international governance structure – as a factor that has contributed to our failure. This fragmented institutional setting – also not new – has led to a fragmented approach to international law.⁴ Finally, this essay considers how international law, despite its fragmented nature, might further the integrated approach evident from the MDGs. In this essay I assume that the fragmented nature of the

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¹ United Nations Millennium Declaration, UNGA Resolution 55/2, September 8, 2000.

² See e.g. United Nations, *Investing in Development, A Practical Plan to Achieve the Millennium Development Goals* (New York, 2005) (hereinafter *Investing in Development*) and United Nations, *Committing to action: achieving the Millennium Development Goals* (New York, 25 July 2008), Background note by the Secretary-General for the High-Level event on the Millennium Development Goals, to be held on 25 September, 2008 (hereinafter *Committing to action*). The documents emphasize, among other things, the link between environmental degradation and poverty in the sense that the poor stand to suffer most from environmental degradation; the link between securing access to water and sanitation and the under-participation of girls in education; and emphasize the importance of proper governance, including the rule of law, for attaining economic development.

³ I am indebted to Illeana Porras for the phrase ‘archeological research of the MDGs’. She spontaneously offered the phrase during a conversation about the topic of this essay when we met in Helsinki.

⁴ See, Martti Koskenniemi, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Report of the Study Group of the International Law Commission, reproduced in *The Erik Castrén Institute Research Reports 21/2007* (Helsinki: Erik Castrén Institute, 2007).

international institutional framework is unlikely to undergo significant change in the near future, given the limited outcome of the 2005 World Summit in this respect.⁵

International law and international governance structures of course are only two interrelated factors that determine whether the MDGs will be met. The allocation of financial resources for development by developing and developed states and their effective use,⁶ linked to proper governance structures at national level,⁷ probably are among the most important factors that will determine the fate of the MDGs. And, there is reason for concern on these accounts as well.

At various world summit meetings, donor countries have pledged to increase aid from \$80 billion in 2004 to \$130 billion in 2010 (at constant 2004 prices). The present rate of increase of aid for core development programmes (excluding debt relief) will have to more than double over the next three years if the level of aid committed for 2010 is to be met. As of 2008, only \$21 billion of the additional ODA commitments has been delivered or programmed. At the summit meeting of the Group of Eight in Gleneagles, Scotland, in 2005, its members made a commitment to double ODA to Africa by 2010. Preliminary data for 2007 show that, excluding debt relief, bilateral ODA to the region has increased by no more than 9 per cent since 2005.⁸

The high-level event, held on September 25, 2008, did not change the situation significantly, even if it resulted in promises of up to about \$ 16 billion for development.⁹

Developing states themselves also allocate insufficient financial resources towards development. The water and sanitation sector provides a relevant example. In this case the United Nations Development Program (UNDP) estimates that a state should allocated up to 1% of its gross national product (GDP) to providing water and sanitation, however, states on average allocate 0.5% of GDP to these aims.¹⁰ In addition, UNDP also estimates that aid for water and sanitation will have to double, rising by US \$ 3.6 to 4.0 annually, if the MDG-target on water and sanitation is to be met.¹¹

Sufficient financial resources, including aid, its effective use and good governance at national and international levels thus are essential elements for attaining the MDGs. In this essay I explore only one facet of these elements: good governance at the international level and more in particular the repercussions of the

⁵ 2005 World Summit Outcome, UNGA Resolution 60/1, September 16, 2005. On this point see Ellen Hey, 'The High-level Summit, International Institutional Reform and International Law', 2 *Journal of International Law and International Relations* 2005, 5.

⁶ See e.g. the Paris Declaration on Aid Effectiveness, available at http://www.oecd.org/document/18/0,3343,en_2649_3236398_35401554_1_1_1_1.00.html#book_1 (accessed August 30, 2008).

⁷ For the link between good governance and the MDGs see i.p. *Investing in Development*, 15-17 and 35-36.

⁸ Para. 71, *Committing to action*. Also see *Delivering on the Global Partnership for Achieving the Millennium Development Goals*, MDG Gap Task Force Report 2008, (New York:United Nations, 2008), 6-7 (hereinafter *MDG Gap Task Force Report* 2008).

⁹ High-Level Event, <http://www.un.org/millenniumgoals/2008highlevel/> (accessed 28 January 2009)

¹⁰ UNDP, *Human Development Report 2006: Beyond Scarcity, Power, Poverty and Global Water Crisis* (New York, 2006) (hereinafter *Human Development Report 2006*) at 9. For further information on the financial aspects of providing water and sanitation see the same report at 66-70.

¹¹ *Id.* at 9.

fragmented international institutional structure for the attainment of the MDGs. Prior to doing that, however, a bit of archeological research is called for.

2 ARCHEOLOGICAL RESEARCH

Delving into the archeological layers of international law illustrates that most, if not all, MDGs either are implicated in or can be related to human rights law. Moreover, some MDGs have found expression also in other legally binding or non-binding documents. In addition, some MDGs take away from earlier commitments endorsed by states. The water related target, which is target 3 under MDG 7, and MDG 2 on universal primary education provide pertinent examples.

Target 3, under MDG 7, expresses the commitment to halve the proportion of the population without sustainable access to safe drinking water and basic sanitation by 2015. This target clearly falls short of the right to water endorsed at the 1977 United Nations Water Conference and the goal set at that conference, i.e. to provide safe drinking water and sanitation to underserved urban and rural areas by 1990.¹² In 2002, the right to water, furthermore, was adopted by the Committee on Economic, Social and Cultural Rights (ESCR Committee) as part of the right to an adequate standard of living and the right to health, respectively articles 11 and 12 of the Covenant on Economic, Social and Cultural Rights (ESCR Covenant), adopted in 1966.¹³ ‘The right to a standard of living adequate for ... health and well-being’, moreover, is also included in article 25 of the Universal Declaration of Human Rights (Universal Declaration), adopted in 1948. Furthermore, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1989 Convention on the Rights of the Child (CRC) conceive of the right to water as part of other rights, respectively the right to enjoy adequate living conditions for rural women and the right to health.¹⁴ Agreeing to halve the number of people without access to safe drinking water and basic sanitation by 2015 evidently means that what was promised in 1977, for delivery in 1990, will not be met in 2015 and that for millions of people the right to water will not materialize. Moreover, the United Nations has expressed doubts whether the target for sanitation will be met, estimating that it may be missed by 600 million people.¹⁵ Meeting the target is proving to be most difficult for Sub-Saharan Africa, given that between 1990 and 2004 the amount of people without access to sanitation in this region has increased from 335 to 440 million.¹⁶ UNDP estimates that if the target as a whole is to be met at least US \$ 10 billion per year will be required; assuming that low-cost sustainable technologies will be used.¹⁷ Alternatively, the World Commission on Dams, in 2000, estimated that to comprehensively address the water crises, that is beyond basic needs, an extra

¹² Referred to in para. 18.37 of *Agenda 21*, adopted at the United Nations Conference on Environment and Development, Rio de Janeiro, 1992.

¹³ Committee on ESCR, General Comment 15 (2002), UN Doc. E/C.12/2002/11, 20 January 2003.

¹⁴ Art. 24(2), CPC; art. 14(2), CEDAW. .

¹⁵ United Nations, *The Millennium Development Report 2007* (New York, 2007) at 25. Also see Ellen Hey, ‘Distributive Justice and Procedural Fairness in Global Water Law’, in Jonas Ebbeson and Phoebe Okowa (eds.), *Environmental Law and Justice*, (Cambridge: Cambridge University Press, 2009 forthcoming) 351.

¹⁶ *Id.* at 25-26.

¹⁷ *Human Development Report 2006*, at 8. Also see above text at notes 10 and 11.

investment US \$100 billion annually will be required in developing countries, until 2025, in addition to the US \$ 70-80 billion currently invested annually.¹⁸

The right to non-discriminatory access to primary education provides another example. The Constitution of the United Nations Educational, Scientific and Cultural Organization (UNESCO), adopted in 1946, formulates it as an aim of the organization.¹⁹ It, moreover, is formulated as the right to free and compulsory primary education in article 13 *juncto* article 14 of the ESCR Covenant and in article 28(1)(a) of the Convention on the Rights of the Child (CRC). It is now reflected in MDG 2, albeit without the proviso that primary education should be free.

The link between these two rights, the right to water and the right to primary education, especially for girls, also is pertinent. The task of fetching water is most often carried out by women and children, especially girls. As a result children, girls in particular, do not attend school and women cannot invest in childcare or earning an income.²⁰ Hence there is also a link between the right to water and MDG 3, on empowering women, and CEDAW.

As the table available on the website of the High Commissioner for Human Rights illustrates all MDGs, and I suggest, all targets formulated under them can be related to provisions of the ESCR Covenant and other human rights instruments.

¹⁸ W. J. Cosgrove and F. R. Rijsberman for the World Water Commission, *World Water Vision, Making Water Everybody's Business* (London: World Water Council, Earthscan Publications, 2000), at 60.

¹⁹ Art. 1(2)(b), Constitution of UNESCO, available at http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html (accessed August 30, 2008)

²⁰ World Health Organization (WHO), *The Right to Water* (Geneva: WHO, 2003), a at 23-26 available at http://www.who.int/water_sanitation_health/rtwrev.pdf (accessed September 1, 2008).. WHO estimates the up to 26 percent of a households time n Africa is spend on fetching water.

<i>Millennium Development Goals and human rights standards</i>	
Millennium Development Goal	Key Related Human Rights Standards
Goal 1: Eradicate extreme poverty and hunger	Universal Declaration of Human Rights, article 25(1); ICESCR article 11
Goal 2: Achieve universal primary education	Universal Declaration of Human Rights article 25(1); ICESCR articles 13 and 14; CRC article 28(1)(a); CEDAW article 10; CERD article 5(e)(v)
Goal 3: Promote gender equality and empower women	Universal Declaration of Human Rights article 2; CEDAW; ICESCR article 3; CRC article 2
Goal 4: Reduce child mortality	Universal Declaration of Human Rights article 25; CRC articles 6, 24(2)(a); ICESCR article 12(2)(a)
Goal 5: Improve maternal health	Universal Declaration of Human Rights article 25; CEDAW articles 10(h), 11(f), 12, 14(b); ICESCR article 12; CRC article 24(2)(d); CERD article 5(e)(iv)
Goal 6: Combat HIV/AIDS, malaria and other diseases	Universal Declaration of Human Rights article 25; ICESCR article 12, CRC article 24; CEDAW article 12; CERD article 5(e)(iv)
Goal 7: Ensure environmental sustainability	Universal Declaration of Human Rights article 25(1); ICESCR articles 11(1) and 12; CEDAW article 14(2)(h); CRC article 24; CERD article 5(e)(iii)
Goal 8: Develop a global partnership for development	Charter articles 1(3), 55 and 56; Universal Declaration of Human Rights articles 22 and 28; ICESCR articles 2(1), 11(1), 15(4), 22 and 23; CRC articles 4, 24(4) and 28(3)

ICES* ICESCR (International Covenant on Economic, Social and Cultural Rights)
 ICCPR (International Covenant on Civil and Political Rights)
 CERD (International Convention on the Elimination of All Forms of Racial Discrimination)
 CEDAW (International Convention on the Elimination of All Forms of Discrimination Against Women)
 CRC (Convention on the Rights of the Child)

Source: Website of the High Commissioner for Human Rights at <http://www2.ohchr.org/english/issues/millennium-development/achievement.htm> (accessed 29 August 2008)

Linking the MDGs to human rights provisions may be less evident for the targets related to the environment, such as target 2 of MDG 7, which relates to loss of biodiversity, or target 1 of MDG 7, which relates integrating principles of sustainable development into policies and programs in order to reduce the loss of natural resources and includes issues such as deforestation, reduction of greenhouse gas emissions and the protection of the ozone layer. However, I suggest that articles 11 (right to an adequate standard of living), 12 (right to health) and 15(1)(b) (the right to enjoy the benefits of scientific progress and its applications) of the ESCR Covenant provide a basis for state duties regarding the protection of the environment. The reasoning used by the International Court of Justice (ICJ) in its judgment in *Gabčíkovo-Nagymaros* is relevant in this context. In that case the ICJ found that provisions setting out broad duties to protect the water quality of the Danube, contained in a treaty dating from 1977, could be regarded as ‘evolving provisions’, which required the parties to take into consideration newly developed environmental norms.²¹ Human rights provisions, including those on the right to an adequate standard of living and health, merit a similar approach with respect to, for example, standards to protect the environment that have been developed since the adoption of the relevant human rights instruments. The ‘living instrument’ doctrine, developed by the European Court of Human Rights, also suggests that such an approach to human rights provisions is warranted.²²

²¹ ICJ, *Gabčíkovo-Nagymaros Project* (Hungary/Slovakia) September 25, 1997, para. 112.

²² It is settled case law of the ECHR that the European Convention on Human Rights is ‘a living instrument which must be interpreted in the light of present-day conditions’. In case of environmental protection this has resulted in the ECHR interpreting article 8 (right to respect for family and private life) to include the right to a healthy environment, which offers protection against, for example, harmful chemicals and offensive smells. See Joint dissenting opinion of Judges Costa, Ress, Türmen,

MDG 8, requiring amongst other things states to cooperate in attaining the MDGs, is reflected in the provisions of the United Nations Charter,²³ the Universal Declaration²⁴ and the ESCR Covenant²⁵ as well as the CRC.²⁶ In other words, the inter-state cooperation required by MDG 8 also is not new. What might be regarded as new is the emphasis that MDG 8 places on cooperation with the private sector. However, articles 29 and 30 of the Universal Declaration, and perhaps also article 71 of the UN Charter, may be taken to indicate the appropriateness of such cooperation.

How, then, might we assess the outcome of this bit of archeological research? Some might point to the many and varied conditions contained in, for example, the provisions of the ESCR Covenant, as well as the fact that many of the relevant provisions do not formulate rights but conditioned undertakings for states. Such an analysis might point to the therefore doubtful status of the relevant provisions as rights of individuals or groups or even duties on the part of states. It might thus seek to explain non-compliance by pointing to the texts involved and the underlying political tensions. It might, moreover, point to general principles of international law, particularly those contained in the Vienna Convention on the Law of Treaties and the Rules on State Responsibility, as providing a legal framework in which violations of international can be addressed.²⁷

This essay takes a different path, one in which international human rights law, as well as other bodies of law, such international environmental law, is placed in the context of the fragmented international institutional framework. It presents the argument that when use is made of the potential that law offers: processes in which law can work in a context specific, rather than an abstract, manner compliance with human rights law, and thus the MDGs and also environmental law, may enhance.

3 A FRAGMENTED INTERNATIONAL INSTITUTIONAL FRAMEWORK

It is a well known fact that the institutional structure that the United Nations Charter established for purposes of the development of economic and social policies, including human rights and environmental policies, is a disjointed one. Within this structure the Economic and Social Council (ECOSOC) exercises coordinating powers amongst a myriad of institutions, including specialized agencies which are autonomous international organizations, even if linked to the United Nations through agreements concluded with ECOSOC on the basis of article 63 of the UN Charter. The World Bank the International Monetary Fund (IMF) and the World Trade

Zupančič and Steiner (para. 2) in *Hatton and others v. the United Kingdom* (8 July 2003 (Grand Chamber), Rep. of Judgements and Decisions 2003-VIII). For an overview of the case law of the ECHR regarding the protection of the environment see Daniel Garcia San José, *Environmental Protection and the European Convention on Human Rights* (Strasbourg: Council of Europe, 2005).

²³ Article 1 of the UN Charter, and its paragraph 3 in particular, provides a pertinent example, but other examples abound.

²⁴ See, preamble, 6th paragraph, Universal Declaration.

²⁵ E.g. article 1(1) of the ESCR Covenant.

²⁶ Preamble, last paragraph, and e.g. article 23(4), CRC.

²⁷ This approach is taken in Koskeniemi, see at 13, para. 13, where the choice was made to focus on the substantive issues that may arise as a result of the fragmentation of international law. The study group, moreover, when referring to the institutional aspects of fragmentation of international law focused on the proliferation of courts and tribunals (at 247, para. 489), not the fragmented nature of law- and policy-making as such, which it treats as a given. See at 246, para. 486 where it is stated that '[A] key point made in this study, is that normative conflict is endemic to international law.'

Organization (WTO) hold a special place in this system. The agreements that the World Bank and IMF have concluded with ECOSOC, contrary to similar agreements concluded with other specialized agencies, explicitly provide for their independence while the WTO is not a specialized agency even if it has concluded an agreement with United Nations.²⁸ In addition, other organizations such as the Organization for Economic Cooperation and Development (OECD) operate outside the UN-system and Multilateral Environmental Agreements (MEAs), through their secretariats have various ties with a host of organizations, including the United Nations.²⁹ In the words of the High-Level Panel, in its report in preparation of the 2005 World Summit:

the institutional problem we face is twofold: first, decision-making on international economic matters, particularly in the areas of finance and trade, has long left the United Nations and no amount of institutional reform will bring it back; and second, the Charter allowed the creation of specialized agencies independent of principle United Nations organs, reducing the role of the Economic and Social Council to one of coordination.³⁰

This fragmented international institutional framework is also reflected in ESCR Covenant. The covenant links into the coordinating role attributed to ECOSOC by calling on ECOSOC to make arrangements with the specialized agencies for reporting on their activities relevant to the implementation of the covenant, calls on ECOSOC to transmit relevant information for study and recommendation to the then Human Right Commission, now Council, and provides that ECOSOC may bring to the attention of other UN bodies, including the General Assembly, and specialized agencies matters which arise out of its work and which may assist such bodies in taking measures to further implementation of the covenant.³¹ What the ESCR Covenant also illustrates is a cautious attitude when it comes to institutional competences. It, for example, in the aforementioned provision on specialized agencies and other bodies taking relevant measures, provides that each institution shall do so 'within its field of competence'.³² Moreover, article 24 of the ESCR Covenant reads as follows:

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the

²⁸ On the World Bank and IMF's agreements with ECOSOC see Mac Darow, *Between Light and Shadow, The World Bank, the International Monetary Fund and Human Rights Law* (Oxford and Portland, Oregon: Hart Publishing, 2003), 124-125. For the text of relevant agreements see <http://unsystemceb.org/reference/system/agreements/> (accesses February 10, 2009). Note that the agreements that the World Bank and the IMF concluded explicitly provide that each of these organizations 'is required to function, as an independent international organization' in their articles I(2). Other agreements such as the one concluded with the WHO do not contain a similar provision. The relationship between the WTO and the United Nations is governed by the Arrangements for Effective Cooperation with other Intergovernmental Organizations – Relations Between the WTO and the United Nations, signed on November 15, 1995, available at http://www.wto.org/English/thewto_e/coher_e/wto_un_e.htm (accessed August 31, 2008).

²⁹ Ellen Hey, 'International Institutions', Daniel Bodansky, Jutta Brunnée and Ellen Hey (eds.), *Handbook of International Environmental Law* (Oxford: Oxford University Press, 2007) 749.

³⁰ *A more secure world: our shared responsibility*, Report of the High-level Panel (High-level Panel Report), UN doc. A/59/565, 2 December 2004, para. 274.

³¹ Articles 18-22, ESCR Covenant.

³² Art. 22, ESCR Covenant.

United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 24 of the covenant thus emphasizes that nothing beyond coordination is required and acceptable. The working methods adopted by the ESCR Committee fit into this approach by emphasizing coordination with other human rights bodies and drawing on the expertise of specialized agencies for its own work.³³ Little, if anything, is found on how the Committee on ESCR might cooperate with those agencies in order to ensure an integrated approach to their tasks.

In relationship to environmental protection article 25 of the ESCR Covenant is also of interest. It provides that ‘nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy fully and freely their natural wealth and resources.’ Does this provision entail that measures to protect the environment regarding, for example, the protection of biodiversity could have been adopted on the basis of the covenant, given that they protect rights in that covenant, such as the right to health? That was probably not the intention of the drafters, who most likely sought to formulate what would later become known as the principle of permanent sovereignty over natural resources.³⁴ Be this as it may, it is a fact that international measures to protect the environment have been adopted outside the framework of the ESCR Covenant, by way of MEAs in particular.

The fragmented international institutional framework can be traced to the functionalist thinking that guided the establishment of the United Nations and related institutions. In Mac Darrow’s words:

The essential premise of functionalism ... is that the role of international institutions should be the provision of services (e.g. food, health, employment) rather than fundamental unifying principles such as human rights, and moreover that responsibility for delivery of such services can be allocated in a decentralised or even ‘polycentralised’ fashion.³⁵

Within this functionalist approach to the international institutional setting, cooperation between international institutions, it was thought, did not need to extend beyond coordination and different interests could be articulated in different international forums. As a result international institutions operate in relative isolation and, as the MDGs illustrate, services were not delivered, or at least remained under-delivered.

The relative isolation in which international institutions operate harbors the risk that the policies regarding development of one institution take away from what the policies of another institution provide. For example, the fact that the WTO does not address tariffs, and also subsidies, for agricultural products, including fisheries, in developed states may entail that agricultural products from developing states, cultivated with technical cooperation projects financed by or through the FAO, face difficulties accessing world markets.³⁶ Similarly, subsidized fishing activities continue

³³ See <http://www2.ohchr.org/english/bodies/cescr/workingmethods.htm> (accessed August 31, 2008)

³⁴ Nico Schrijver, *Sovereignty over Natural Resources: Balancing Rights and Duties in an Interdependent World*, 1995 doctoral dissertation (on file with author), 53. Published under the same title with Cambridge University Press 1997 and in paperback in 2008.

³⁵ Darrow, above note 28, at 205. Also see Koskenniemi, above note 4, 10-17.

³⁶ See *MDG Gap Task Force Report* 2008, 21. Also see Kim Anderson, Will Martin and Ernesto Valenzuela, ‘The Relative Importance of Global Agricultural Subsidies and Market Access’ (March 2006). CEPR Discussion Paper No. 5569. Available at SSRN: <http://ssrn.com/abstract=912473> (accessed February 10, 2009)..

to counteract the efforts undertaken within the Convention on Biological Diversity to conserve marine biodiversity.³⁷ In addition, within the reconsideration of the WTO Dispute Settlement Understanding it has been pointed out that the WTO dispute settlement system which ultimately allows a state to impose countermeasures on a non-compliant state may disrupt the economies of developing states that impose such measures,³⁸ economies which other international institutions, such as the World Bank and IMF, are seeking to strengthen. Whether lack of opportunities for farmers in developing countries, degrading biodiversity or disrupted economies, it is the poor that suffer most and see their human rights treaded on.³⁹

What, then, does the above imply for international law? It implies that different areas of international law also operate in relative isolation. In relation to the ESCR Covenant and other human rights treaties it implies that the implementation of their provisions are not necessarily part of the equation when, for example, structural adjustment projects are designed and implemented by international financial institutions.⁴⁰ It also implies that in developing and implementing international environmental law, MEAs in particular, human rights aspects are not necessarily considered.

The above is not to say that no integration has taken place between different functional areas of international law. A relevant example is the World Bank's coordinating role in the implementation of MEAs in developing states. That role is achieved through the Global Environmental Facility (GEF) and other funds which are managed by the World Bank and through which financial resources are made available to developing states for implementing MEAs. This development, however, has entailed that the implementation of MEAs, at least to some extent, has become subject to the economic policies of the Bank and not necessarily to the considerations relevant in human rights agreements. A typical example is the notion of incremental costs, developed in the context of the World Bank. It entitles developing states to financial support for the part of a project that seeks to implement an MEA and contributes to the improvement of the global environment, i.e. not the part that contributes to the improvement of the local or national environment. This manner of proceeding implies that human rights law, e.g. the right to a healthy living environment, is not necessarily part of the equation when conceiving and implementing such projects. A more integrated approach, as advocated by the *Human Development Report 2007/2008*, entitled *Fighting Climate Change: Human Solidarity in a Divided World*, is likely to further human rights and thus the MDGs. The report provides ample evidence of inter-linkages between a variety of policy goals, for example, the link between MDG 1, on eradicating poverty and hunger, and climate change policy, part of MDG 7.

The specific institutions established for the implementation of the MDGs thus operate in a fragmented institutional and legal framework. The MDG-institutions are based on the MDG Task Force, which is an advisory body of the UN Secretary-

³⁷ See Convention on Biological Diversity, *In-depth Review of the Programme of Work on Incentive Measures*, Doc. UNEP/CBD/COP/9/12/Add.2, 28 April 2008, para. 38, available at <http://www.cbd.int/doc/meetings/cop/cop-09/official/cop-09-12-add2-en.pdf> (accessed February 10, 2009).

³⁸ Andrea Bianchi, Lorenzo Gradoni and Mélanie Samson, *Developing Countries, Countermeasures and WTO Law: Reinterpreting the DSU against the Background of International Law* (Geneva: International centre for Trade and Sustainable Development (ICTSD), 2007) available at <http://ictsd.net/i/publications/11294/> (accessed August 28, 2008).

³⁹ See *Investing in Development*.

⁴⁰ See Darow, above note 28.

General. Its members are representatives of key UN-offices, including the Office of High Commissioner for Human Rights; regional UN commissions and specialized agencies, including the World Bank and the IMF. Moreover the WTO and the OECD are also represented.⁴¹ In addition, relevant institutions have established their own MDG related programs which illustrate a concerted commitment to attaining the MDGs, and should be taken to imply more integrated approaches, including the integration of human rights into other policy areas, to development.

What, then, might be the role of international law in supporting the attainment of the MDGs and the integrated approach reflected in relevant documents?

4 INTERNATIONAL LAW AND LEGAL MECHANISMS THAT PROMOTE INTEGRATED APPROACHES

Based on a functionalist approach to the establishment of the United Nations and international institutions in general, we are now faced with a fragmented international institutional framework and fragmented international law. While the MDGs themselves do not attempt to address these issues as such, they do offer a unique opportunity for developing more integrated policy and legal approaches to the problems faced. Such opportunities are for example evident from the fact that the World Bank, if not the IMF and the WTO, participated in the 2007 dialogue with special agencies, funds and programs and other entities of the United Nations, organized within the framework of the sixth inter-committee meeting of human rights treaty bodies.⁴² Such meetings may serve to further more integrated approaches to international policy and law and thus further the implementation of the MDGs.

But how might international law contribute to support the rather integrated approach evident from the MDGs and related documents? I suggest that given that rules in most cases are in place, procedures where law can be applied in context are particularly relevant. Such procedures are available, even if their development lags behind the development of substantive law. Relevant examples are the World Bank Inspection Panel as well as inspection panels established by other development banks and the Compliance Committee of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.⁴³ Relevant is also the recent adoption of the Optional Protocol to the ESCR Covenant which, when it enters into force, will allow the submission of communications to the ESCR Committee by or on behalf of individuals or groups of individuals alleging to be victims of violations of the rights set forth in the covenant by a state party who is a party to the covenant and the protocol.⁴⁴

⁴¹ For information on the MDG Gap Task Force see <http://www.un.org/esa/policy/mdggap/> (accessed 31 August 2008)

⁴² Report of the sixth inter-committee meeting of human rights treaty bodies para. 23 etc., Annex to Report of the chairpersons of the human rights treaty bodies on their nineteenth meeting, contained in UN Doc. A/62/224, August 13, 2007.

⁴³ For information on these mechanisms see Daniel Bradlow, 'Private Complaints and International Organizations: A Comparative Study of the Independent Inspection Mechanisms in International Financial Institutions', 36 *Georgetown Journal of International Law* 2005, 403 and Svetlana Kravcenko, 'The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements', 7 *Yearbook of European Environmental Law* 2007, 1.

⁴⁴ Art. 1 and 2, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Report of the Human Rights Council, UNGA Doc A/63/453, November 28, 2008.

Such procedures typically allow for the consideration of sustainable development not in the abstract but in a contextualized manner in which the interests of individuals and groups in society play an important role. Given that there seems to be overall agreement that the emphasis should be not on the development of new rules and norms, but on their implementation, it also seems appropriate that we move from more abstract law-making process to processes that enable law to work in context. This is what international law has to offer the MDGs, even if the legal system remains a fragmented system, it need not remain fragmented in its application, at least not as fragmented as it is today. Other proposals might also be relevant. These concern further institutionalized cooperation among human rights committees, by for example, developing joint general comments, a development endorsed during the 20th meeting of chairpersons of human rights treaty bodies in June 2008.⁴⁵ A pertinent topic for a joint general comment would be the MDGs or sustainable development. Such a general comment could contribute towards developing more integrated approaches to the implementation MDGs and sustainable development more in general.

5 CONCLUSIONS

The links between the MDGs and the Universal Declaration and the ESCR Covenant is most striking: in all of six decades we have failed to live up to the provisions of those instruments, as well as many the provisions of various other instruments. This essay suggests that this development is linked to the fragmented international institutional structure, which is grounded in a politically fragmented world. In this fragmented world actors are able to use different functionally defined institutions to further their various interests in a fragmented manner.

Does this mean that relevant human rights instruments did not matter during this 60 year time span? I doubt it. I suggest that human rights instruments have mattered in the sense that they have provided those whose human rights are treaded on with a voice, including a voice in legal discourse. For example in the various inspection panels and compliance mechanisms where law can and is being contextualized, even if human rights law is not being applied directly by such bodies. Proliferation of such bodies expectedly leads to the next question, how to coordinate their activities? While that question is becoming pertinent, given that complaints concerning a single situation or project have been submitted to various such bodies,⁴⁶ I suggest that a more important point to make, at present, is that even in a fragmented international institutional and legal order, procedures have been developed that allow

⁴⁵ Report of the chairpersons of the human rights treaty bodies on their twentieth meeting, UN Doc A/63/280, 13 August 2008, para.42(s).

⁴⁶ A relevant example is the Vlora Thermal Power Plant in Albania. Complaints regarding this project have been submitted to World Bank Inspection Panel (see <http://web.worldbank.org/WBSITE/EXTERNAL/EXTINSPECTIONPANEL/0,,contentMDK:21321075~pagePK:64129751~piPK:64128378~theSitePK:380794,00.html>, accessed February 10, 2009), Independent Recourse Mechanisms of the European Bank for Reconstruction and Development (see <http://www.ebrd.com/about/integrity/irm/register.htm>, accessed February 10, 2009) and twice to the Aarhus Compliance Mechanism against Albania (see <http://www.unece.org/env/pp/compliance/Compliance%20Committee/12TableAlbania.htm>, accessed February 10, 2009) and against the European Community with regards to the European Investment Bank (see <http://www.unece.org/env/pp/compliance/Compliance%20Committee/21TableEC.htm>, accessed February 10, 2009).

for more integrated approaches to the application of different bodies of law relevant to sustainable development, and thus the MDGs, to emerge.