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THE 'POLITICIZATION' OF THE EU DEVELOPMENT POLICY

PETER HILPOLD*

The European Union (EU) and its Member States (MS) have a long tradition in development cooperation. They have largely shaped international development cooperation as we know it today. Development cooperation has always (also) been a "political" instrument, but in the last few years the "politicization" of development cooperation has gained enormous momentum. This article explains that this "politicization" means the strengthening of value orientation, particularly in the sense that development cooperation is also an instrument to reinforce the respect for human rights, basic democratic principles, the rule of law and broader societal needs such as environmental protection. This does not mean that development as such is to be attributed a secondary role or that it is instrumental with respect to the other values or goals mentioned. It is rather the case that a proper definition of development must integrate all these values and goals as otherwise it will not be effective. A holistic vision is required. It will be shown that the EU had to go a long way to come to these conclusions and that they have been achieved by intense dialogue with international institutions, in particular within the realm of the United Nations.

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*Peter Hilpold is Professor of International Law, European Law and Comparative Public Law at the University of Innsbruck, Austria. E-Mail: Peter.Hilpold[at]uibk.ac.at. This article builds on earlier contributions by this author, in particular on "EU Development Cooperation: A Stock-Taking and a Vision for the Future" (to be published in AUSTRIAN REVIEW ON INTERNATIONAL AND EUROPEAN LAW, 2017).

I. INTRODUCTION

In the conception and the further refinement of an international development policy, the European Union ["the EU"] (and before, the Maastricht Treaty: the European Economic Committee ["the EEC"] and its Member States (MS) have always been pivotal.[1] The EU and its MS are still by far the largest donors of official development assistance (ODA). The experiences made in the crafting of this policy have initiated a learning process that has influenced development policies by single governments and international organizations on a world-wide scale. These contributions have not, however, been mono-directional. It is rather the case that the pioneering actions by the EU have engendered an intense dialogue among all the actors involved. Thus, the EU, over the decades, has taken up a vast range of impulses coming from different quarters. This learning process by world-wide trial-and-error is still under way and even if the results of the endeavours made so far often appear to be mixed, it cannot be overlooked that in the meantime an enormous wealth of experience has been gained. Moreover, in the second decade of the 21th century the insights into the functioning of this policy are far more developed than they were at the start of the century, when the EU first embarked on this road over 50 years ago.

In the following parts, the main steps of this process shall be portrayed. Particular attention shall be given to: the aspect of "politicization" of the Union's activity in this area; to the meaning of this term; and, to the implications of this trend.

[1] In the following, for matters of simplicity, reference to the EU is made in part also when steps in the European integration process addressed that lie before the entry into force of the Maastricht treaty (and the parallel coming into being of the European Union) are generally addressed.

II. WHAT DOES "POLITICIZATION" MEAN?

To a certain extent, the EU development policy has always been "politicized", in the sense that it was a means towards political ends. However, at the same time a strictly technical language was used and the political ends of this policy were rarely openly acknowledged. Accidentally or intentionally, an impression was created that the "development assistance" or the "development aid", as this policy was predominantly called, was mainly a material resource issue and a challenge that could be easily solved if the quantitative input was sufficient. Over the years, this idea revealed all its fallacies and it became not only clear that the development policy was inherently political but also that an open admission of this interdependency was preferable as it made an efficient steering of this policy easier to achieve.

A caveat has to be made at this point: as has been spelled out elsewhere[2], the term "politicization" (of international relations, be they of economic or other technical nature) is used in many different connotations, with many diverging meanings. Often it is used interchangeably with "democratisation". Sometimes a disparaging meaning is attached to this term: it is associated with quarrelsome discussions, pursuits of factious interests and losing sight for the common good. Here a third meaning is implied: it introduces a material component, referring to values and goals as they have in the meantime been amply inserted in EU law and also in other international documents that in the past have been considered mere technical instruments.

This article concerns the attempt to re-adjust the coordinates of the EU development policy according to values, principles and goals of which the whole EU external action has in the meantime been imbued. It will be shown that these values have been shaped not only by the EU but they are of a truly international nature, even though the contribution of the EU in spelling them out has been of considerable relevance. It will furthermore be shown – and this aspect holds centre stage within this contribution – that this politicization appears to be a decisive step for rendering the development policy fully effective eventually. Of course, there are elements of both uncertainty and hope in this assessment: uncertainty, because this new approach has to fully stand its test, and hope, because this time the commitment by the state community seems to be strong and the consideration in most of the relevant international documents appears to be based on sound knowledge. The hope, therefore, is that "the missing link" for a concept of

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[2] *See* Peter Hilpold, *The "Politicization" of the EU Common Commercial Policy*, *in* REFLECTIONS ON THE CONSTITUTIONALISATION OF INTERNATIONAL ECONOMIC LAW – LIBER AMICORUM ERNST-ULRICH PETERSMANN 21, 34 (Marise Cremona et al. eds., 2014) [hereinafter Hilpold, *Politicization*].

development cooperation that really works has to be found or that we are at least close to it.

III. THE EARLY YEARS: CONSTITUTIONAL ASSOCIATION

The issue of development was present in the EU integration process right from the beginning; however, this phenomenon was addressed in a quite different way, mainly because the theoretical insight into the development issue was quite rudimentary.

Articles 198ss (ex-182ss, ex-131ss) of the EEC Treaty of 1957 contained provisions on the association of the Overseas Countries and Territories ["OCTs"] which constituted a prelude to what would afterwards become the EU Development Policy. These provisions allowed EEC MS that wanted to preserve a special relationship with their colonies to do so. Although these colonial territories did not become a part of the EEC, they benefitted from privileged trade and financial aid in a relationship that was asymmetrical or non-reciprocal. This form of association was of a unilateral kind in the sense that in this relationship the EEC and the OCTs were neither factually nor legally at the same level. Some even spoke of an "octroy" in this context.[3] Usually the term "constitutional association" is used in this context whereby the idea is conveyed that this form of association is something like an "element of the European Constitution".[4]

The main proponent of this "constitutional" approach was France: a country that was at that time a major colonial power.[5] As the colonies were not a part of France´s territory, the creation of a common market necessarily limited to the territories of the MS would have meant cutting off economic relations with the colonies as they existed in 1957. The MS that took advantage of these provisions were Belgium, Italy and the Netherlands. When Great Britain joined the EEC in 1973: another major colonial power came to rely on these special provisions, albeit in a moment when colonialism was already in full retreat. The provisions on the Association of the OCTs with the EU are still in force. Presently they find

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[3] *See* Athanassious Stathopoulos, *Commentaire to Article 182 TCE, in* UNION EUROPEENNE, COMMENTAIRE ARTICLE PAR ARTICLE DES TRAITES UE ET CE 1442, ¶ 1 (Philippe Léger ed., 2000).

[4] On this policy, *See* Andreas Zimmermann, *Artikel 108 AEUV*, *in* 4 EUROPÄISCHES UNIONSRECHT 244 (Hans von der Groeben, Jürgen Schwarze & Armin Hatje eds., 7th ed. 2015); *See also,* Peter Hilpold, *Kommentar zu Artikel 208 AEUV in* EUV/AEUV-KOMMENTAR (Thomas Jäger & Karl Stöger eds., 2017).

[5] For France association was also an instrument to counter attempts by colonies to achieve self-determination. *See* MARK LAGAN, THE MORAL ECONOMY OF EU ASSOCIATION WITH AFRIKA (Routledge 2016).

application on a series of mostly very small islands with a total population of about 900,000 people.[6]

While in absolute terms the amount of privileged trade done and the aid granted under the terms of this scheme could appear to be low for the few territories benefitting from this scheme, the preservation of this special relationship is essential for their economic survival. While the wording of the relevant provisions has changed little since 1957, their actual relevance and functioning have undergone enormous modifications. There can be no doubt that when the colonial possessions of some EEC MS were still extensive in the initial years, there was a considerable economic weight attached to this regime. It was even the case that for many years the actual design of this regime had been a major hindrance for Great Britain to join the EEC, as the Commonwealth preference the country desired to stick to appeared to be incompatible with the OCT regime.[7] It can, therefore, be argued that the OCTs system was, initially, pre-eminently of economic relevance even though a certain political significance was also part and parcel of this order. In the following years, this situation was slowly reversed and eventually turned upside down.

In the meantime, due to the fact that most former OCTs have become independent, the economic relevance of the OCTs regime is negligible, at least from the viewpoint of the EU. On the other hand, the political dimension of this form of cooperation has gained significance for the islands concerned because even as remote as they may appear from the perspective of the European continent, they form part of the important geo-strategical outposts and at the same time are experimental areas for the EU where the aspect of the "politicization" of the EU´s external relations can and has to be tested. Accordingly, Article 3 paragraph 3 of the Overseas Association Decision,[8] presently in force, states that "*the association shall respect the fundamental principles of liberty, democracy, human rights and*

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[6] These islands are indicated in Annex II of the TFEU. Those territories which gain independence lose their status as OCTs. For further information *see* OCT-EU Relations in Detail, EUR. COMM'N, https://ec.europa.eu/europeaid/regions/overseas-countries-and-territories-octs/oct-eu-relations-detail_en (last visited Dec. 11, 2017).

[7] To a certain extent, this old rift persists up to this day. *See* FOREIGN AFFAIRS COMMITTEE, THE ROLE AND FUTURE OF THE COMMONWEALTH, 2012-13, HC 114, at 45.

[8] Council Decision 2013/755, 2013 O.J. (L 344) 1 (EU). As is well-known, the provision on OCTs in the TFEU (Articles 198-204) constitute only a framework for the shaping of this relationship while the implementation occurs by Council decision adopted unanimously under Article 203 TFEU. They remain generally in force for a 5-years-period and they permit to evolve this cooperation regime further flexibly according to the changing priorities. As mentioned, the decision presently in force has taken a strong "political", value-oriented stance.

fundamental freedoms, the rule of law, good governance and sustainable development, all of which are common to the OCTs and the Member States to which they are linked."

Over the years, this association regime was widely side-lined by new developments (and it is now-a-days all but unknown). In fact, soon after the EEC was founded, the de-colonization movement gained enormous momentum, reaching its peak in 1960. Independence did not, however, solve the development problem; these countries had economic structures and trade relations that were mainly directed towards the EEC MS and they continued to depend on consistent resource transfers from this area.[9] However, as independent countries, they were now subject to the most-favoured-nation-rule ["MFN"], at least as far as they became General Agreement on Tariffs and Trade ["GATT"] members (and the EEC MS in any case were GATT members). Thus, a new scheme governing this relationship had to be ideated; a relationship that would render preferential trade and aid compatible with GATT membership and that would be created by treaties with (now) independent states.

IV. CLASSICAL DEVELOPMENT AID BY UNILATERAL MEASURES AND BY TREATY ASSOCIATION

A. The Call for a New International Economic Order ["NIEO"] within the United Nations Convention on Trade and Development ["UNCTAD"].

In the 1960s and 1970s development aid was granted with the EEC as the main actor on two levels: unilaterally and within the regional trading structures. In these years, development theory was subject to major re-definitions and the relevant instruments were adapted accordingly. This discussion was, on the one hand, highly politicized and on the other hand, new theoretical foundations were elaborated that portrayed the development aid to and the special privileges for the developing countries as a necessity and a right.

The developing world had vehemently pushed for fundamental changes in the relations with the industrialized countries. The growing number of independent developing countries and the institutional possibilities offered by the UN to gather and to unite their forces (in particular within the UNCTAD) had given them considerable leverage. This leverage was eventually used for the call for a NIEO that would, to a considerable extent, derogate to the cornerstones of the existing liberal economic order based on reciprocity, the MFN clause and the protection of property. While the former two principles were enshrined in the GATT order, the

[9] *See* Cécile Barbière, *Europe's Former Imperial Powers Continue to Target Aid to Ex-Colonies*, THE GUARDIAN (Apr. 22, 2017), https://www.theguardian.com/global-development/2015/apr/22/europes-former-imperial-powers-target-aid-ex-colonies.

latter traditionally dominated the law of expropriation.[10] The advocates for the NIEO achieved partial victory: for while they were not able to set aside the obligation of compensation in case of expropriation,[11] the principle of reciprocity in international trade relations was widely limited in North-South trade relations.[12]

B. Development Cooperation by Unilateral Measures – the Generalized System of Preferences (GSP)

At the UNCTAD II Conference held in New Delhi in 1968 ["UNCTAD II Conference"], an agreement was found on a new Generalized System of Trade Preferences ["GSP"] which would exempt developing countries from reciprocity obligations in their trade relations with industrialized countries. According to Resolution 21 (ii) taken at the UNCTAD II Conference,

> … *the objectives of the generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries, should be to:*
>
> a. *increase their export earnings;*
> b. *promote their industrialization; and*
> c. *accelerate their rates of economic growth."*[13]

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[10] See in this regard *infra* note 11.

[11] Attempts in this sense were made in the "Declaration on the Establishment of a New International Economic Order", UNGA Res 3201 (S-VI) (UN Doc A/9559 1 May 1974), and in the Charter of Economic Rights and Duties of States, UNGA Res 3281 (XXIX), UN Doc A/9631 (12 December 1974). In particular the latter document, the "Charter", contained a provision that should allow for expropriation with limited compensation or with no compensation at all. The "Charter" met, however, with strong resistance by important industrialized states within the UN General Assembly and could never be considered as an expression of a broader international consent.

[12] Thus, it cannot be said that the attempts to create a New International Economic Order (NIEO) were a total failure. It was rather the case that they were partly successful, partly not. All the intense discussions about the creation of such a new order eventually had a considerable impact on international economic relations. For a critical stance towards the issue of the NIEO, see Thomas W. Waelde, *A Requiem for the "New International Economic Order" – The Rise and Fall of Paradigms in International Economic Law and Post-Mortem with Timeless Significance*, *in* LIBER AMICORUM PROFESSOR IGNAZ SEIDL-HOHENVELDERN IN HONOUR OF ITS 80TH BIRTHDAY 771 (Gerhard Hafner et al., eds. 1998). With regard to the compensation issue in case of expropriation the discussion about a NIEO had the effect of creating much legal uncertainty that was overcome only by the modern tendency to conclude Bilateral Investment Treaties (BITs). On this process, see RUDOLF DOLZER, EIGENTUM, ENTEIGNUNG UND ENTSCHÄDIGUNG IM GELTENDEN VÖLKERRECHT (1985).

[13] See in this regard, *About GSP*, UNCTAD, http://unctad.org/en/Pages/DITC/GSP/About-GSP.aspx (last visited Dec. 12, 2017) [hereinafter *About GSP,* UNCTAD].

The GSP approach is based on the "infant industry" concept, which was developed in the 19th century, arguing that differences in development should be overcome by granting preferences to the lesser developed entity for a sufficient time, to catch up with the development gap.[14] Empirical evidence seemed to provide some clout to this theory[15] and it was tempting to recur to a theory that appeared to be working in the industrialized world in the modern development context. The first UNCTAD President, Raul Prebisch, launched this concept at the UNCTAD I conference in 1964 and within a few years it gained broad popularity.[16]

There remained, however, the question of the compatibility of such non-reciprocal preferences with GATT law. Within the GATT order, adaptions to the development challenge were made, in 1965, when part IV on "Trade and Development" was added. The relevant provisions contained many lofty declarations of principles but next to no real or substantial commitment. The situation changed with a waiver for a period of 10 years granted to the provisions of Article I of GATT in 1971 by the Contracting Parties in order to render the GSP compatible with GATT law; the waiver used to operate primarily on the unilateral level.[17]

After the GSP was rendered compatible with GATT law, trade blocs with a common external commercial policy, such as the EEC, and single states had to implement these rules on a national or a regional level and had to act in their bilateral relations with developing countries accordingly. The EEC adopted its own GSP scheme in 1971, right after the recourse to such preferences had become permissible. On a world-wide scale, 13 GSP national and regional schemes are presently in force.[18]

In 1979, at the end of the GATT Tokyo Round and shortly before the expiry of the 10-year waiver granted in 1971, the Contracting Parties decided to adopt the 1979 Enabling Clause, Decision of the Contracting Parties of 28 November 1979

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[14] *See* MICHAEL TREBILCOCK, ROBERT HOWSE & ANTONIA ELIASON, THE REGULATION OF INTERNATIONAL TRADE 11 (4th ed. 2012).

[15] Some countries like the United States or Germany, first lagging far behind Great Britain in industrial competitivity, after a few years of strict tariff protection, managed not only to catch up with Great Britain but also to overtake this country in competitive strength.

[16] *About GSP,* UNCTAD, *supra* note 13.

[17] *See* RICHARD SENTI & PETER HILPOLD, WTO – SYSTEM UND FUNKTIONSWEISE DER WELTHANDELSORDNUNG 189 (2d ed. 2017).

[18] Countries and Customs Unions (EU) having adopted such a scheme are: Australia, Belarus, Canada, the European Union, Iceland, Japan, Kazakhstan, New Zealand, Norway, the Russian Federation, Switzerland, Turkey and the United States of America. *See About GSP,* UNCTAD, *supra* note 13.

(26S/203) entitled Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.[19] The decision, which was also integrated into WTO law, constitutes sort of a permanent waiver to the MFN clause to allow preference-giving countries to grant preferential tariff treatment under their respective GSP schemes. As will be shown below, the EU Regulation on which the EU GSP scheme (which is presently in force) is based[20] is still primarily grounded on the Enabling Clause as far as the need to reconcile the scheme with GATT/WTO law is concerned.

The first EEC GSP scheme was a "political" instrument in the sense that it was determined to implement some aspects of the NIEO and to make concessions to the developing world in broad economic and political turmoil. Over the years, the political connotation became more pronounced from scheme to scheme as it no longer regarded only the finality of the instrument but it appeared expressly as a pre-condition for the application of essential parts of this scheme.[21] The whole development of this scheme mirrors a learning process on how to conceive an effective development policy in an ever-changing political environment where politics becomes a factor of growing importance for the refinement of this policy.

The decisive step towards a fully-fledged "*internal politicization*" of the EU GSP scheme was probably taken by the scheme introduced by Regulation 3281/94 on 19 December 1994.[22] Articles 7 and 8 this Regulation provided for "*special incentive arrangements*" according to which additional preferences should be granted to beneficiary countries which were covered by the scheme and which had accepted a series of social and environmental rights commitments. At first glance, these provisions could be seen as a further extension of the non-reciprocity rule governing the whole GSP matter. If looked at more closely, this development could also be seen as going in the opposite direction, as the EU tried to "*trade in*" some concessions for the preferences granted. These concessions, like the obligation to respect labour standards or to effectively fight drug trade, while first appearing to be "altruistic" from the EU, were "egoistic" at a closer look as their respect was very much also in the Union´s interest. In the following years, this system of "special incentives" had to be revised several times as it not only had to be adapted to changing political priorities and to a continuously broadening scope of political priorities and ambitions but it also had to be rendered WTO-

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[19] *Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries*, L/4903 (Nov. 28 1979) GATT BISD (26th Supp.) at 203 (1979).

[20] Regulation (EU) 978/2012 of Oct. 25, 2012, Applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No. 732/2008, O.J. (L 303) 1.

[21] On the development of this scheme during the first two decades of its application, see Peter Hilpold, *Das Neue Allgemeine Präferenzschema der EU*, 1 EUR. L. J. 98, 98 (1996).

[22] Council Regulation 3281/94, 1994 O.J. (L 348) 1.

compatible. In fact, originally the EU was of the opinion that granting specific preferences as a compensation (and/or incentive) for a resolute fight against drug trafficking by specific states would be permissible on the basis of the Enabling Clause; however, it was not, as the WTO DSB found that[23] non –discrimination would apply in this context and also in the relationship between different developing countries. In other words, all developing countries applying the same or equal measures should be eligible for the same preferences. It should remain possible to grant different preferences to developing countries with different needs, but the whole system has to be based on an objective criteria.[24] The political commitments that are now requested for the concession of special preferences have been enormously enlarged. In the meantime, respect for a panoply of obligations is requested. The EU GSP scheme presently in force provides for three different preference arrangements: first, a general GSP arrangement for about 66% of all EU tariff lines (granted to countries of low or lower-middle class income); second, the so-called GSP+ arrangement granting complete duty suspension for essentially the same 66% tariff lines (granted to countries especially vulnerable in terms of their economies´ diversification and import volumes), and third, the so-called "Everything But Arms" ["EBA"] arrangement that grants full duty-free and quota-free access for all products except arms and ammunition (granted to least developed countries according to the UN classification).[25]

Of special interest here is the GSP+ arrangement, as the concessions granted in this field not only depend on the development level of the beneficiary but also from its preparedness to ratify and effectively implement the 27 core international conventions on human rights.[26] This is no longer a specific "*do ut des*" context, but rather an attempt by the EU to foster respect for human rights, good governance and the principle of rule of law on a world-wide scale. Behind this attempt, there is a clear belief that development not only interacts with these legal and political values and rules, but also that their respect is an essential precondition for effective development. Since 1971, the politicization process of the GwSP programme has therefore gone to enormous lengths. The "*integral co*

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[23] Appellate Body Report*, EC — Tariff Preferences,* ¶180, WTO Doc. WT/DS 246/AB/R (Apr. 20, 2004).

[24] *Id.*; *See* Lorand Bartels, *The Appellate Body Report in European Communities –Conditions for the Granting of Tariff Preferences to Developing Countries and Its Implications for Conditionality in the European GASP Programme*, H.R. & INT'L TRADE 2005, at 463; Claudio di Turi, *Il Sistema di preferenze generalizzatedella Comunità Europeadopo la controversia con l'Indiasul regime special in tema di droga*, 86 RIVISTA DI DIRITTO INTERNAZIONALE 721 (2005).

[25] *See European Commission, Report on the Generalised Scheme of Preferences covering the period 2014-2015*, COM (2016) 29 final (Jan. 28, 2016).

[26] As to these 27 core conventions, see *The Relevant GSP+ Conventions,* http://trade.ec.europa.eu/doclib/docs/2013/december/tradoc_152024.pdf. (last visited Dec. 11, 2017).

ncept of sustainable development" on which the GSP+ is based according to Regulation 978/2012 fully considers the political element as a necessary factor for development.[27]

C. Development Assistance by Trade Association

The development of the political element in development association went along similar paths; although, in this context somewhat different legal questions arose, particularly with regard to its relationship with GATT/WTO.[28]Also, in this case, an "external" and an "internal" level of politicization in development cooperation can be distinguished.

On the "external" side, trade associations became an instrument of growing economic importance, its economic impact outmatching by far that of the GSP regime. As it is well-known, the treaty association regime developed continuously over a series of steps, thereby becoming more detailed and ambitious only to eventually reach a stage where it was put into question in its real essence.[29] The Yaoundé I Agreement[30] (lasting from 1965 to 1970) and the Yaoundé II Agreement[31] (lasting from 1970 to 1975) consisted mainly in an association of developing countries from the francophone world. In 1969, even before Great Britain's accession to the EEC, three former British colonies: Kenya, Tanzania and Uganda were associated to the EEC by the so-called "Arusha Agreement".

By the "Lomé Agreements", the first of which was concluded in 1975, development associations changed their face considerably mainly due to two facts: first, the accession of Great Britain set a new focus on the English speaking developing world; second, but not less important, now a sincere will could be noted to implement at least part of the requests voiced by the developing world within the NIEO agenda.[32] Privileged trade seemed to advance to the primary, most effective instrument of development assistance.

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[27] REGULATION (EU) 978/2012 of 25 October 2012, Applying a Scheme of Generalised Tariff Preferences and Repealing Council Regulation (EC) No 732/2008, O.J. (L 303) 1.
[28] *See also* PETER HILPOLD, DIE EU IM GATT/WTO-SYSTEM 267 (Nomos 2009).
[29] See on this process Lorand Bartels, *The Trade and Development Policy of the European Union, in* DEVELOPMENT IN EU EXTERNAL RELATIONS LAW 128 (Marise Cremona ed., 2008).
[30] Association Agreement between the European Economic Community and the African and Malagasy States associated with this Community, Jul. 20, 1963, (1964) O.J. (P 93).
[31] Association Agreement between the European Economic Community and the African and Malagasy States associated with this Community, Jul. 29, 1969, (1970) O.J. (L 282).
[32] *See* Peter Hilpold, *Reforming the United Nations: New Proposals in a long-lasting Endeavour*, 52 NETH. INT'L. L. REV., Dec. 2005, at 389.

As to the "internal" politicization of development cooperation, the element of political conditionality was step by step strengthened. While all but absent in Lomé I and II, it became continuously stronger until reaching its apex in the Lomé IV-bis agreement of 1995. This form of "politicization" was passed on to the Cotonou regime starting in 2000, when the way chosen for "external" politicization in form of the non-reciprocal Lomé Agreements had to be abandoned due to its incompatibility with the GATT/WTO law.

The main characteristics of the Lomé Agreements were the following:[33]

1. non-reciprocity in favour of the participating developing countries;
2. stabilization of the developing countries´ export earnings;
3. privileged access of agricultural products from the Lomé countries to the European Community.

As mentioned above, this approach was based on the prevailing theories on development of those times:

1. It was supposed that temporary protection would provide the necessary leeway to developing to enable them to build up their own competitive industries[34] and that the developing countries would use this opportunity accordingly.
2. Preferences should be terminated once the goals set had been achieved.
3. Market intervention in the form of price stabilization was considered to be possible and easily achievable.

Eventually, all these assumptions proved to be erroneous. The most immediate – and most clamorous – failure was that of the price stabilization attempt, carried out both by the commodity agreements and by the STABEX system[35]. The financial means earmarked by the EC for this attempt proved to be by far insufficient to alter the market forces that had led to a continuous decline of raw material prices. The hope that unilateral protection for developing countries by tariffs and quotas would create an environment that is propitious for economic growth ended up in disappointment, creating disincentives for attempts to improve efficiency rather

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[33] *See* Andreas Zimmermann, *Commentary to Article 177 TEC*, *in* 3 KOMMENTAR ZUM VERTRAG ÜBER DIE EUROPÄISCHE 1470, ¶ 5 (Hans von der Groeben & Claus-Dieter Ehlermann eds.).

[34] The term "Enabling clause" gives a good expression to this philosophy.

[35] This was a system of export earning stabilization according to which the EC tried to help developing countries from the African, Caribbean and Pacific (ACP) area to withstand fluctuations in the price of their agricultural products by paying compensation for lost export earnings.

than innovation.[36] On the other hand, preferential market access to products from developing countries was too selective and much too concentrated on primary products to enable developing countries to build up competitive advantages.

Finally, at the beginnings of the 1990s, it became clearer that this form of development assistance was not suited to make a positive impact on development.[37] The immediate impulse to completely overhaul this system did not come from this insight but was rather external; it was the increasing awareness of the fact that the whole system was incompatible with GATT/WTO law which prompted all parties involved to think about an alternative. The political element of development cooperation had reached a new dimension within the global order; as shown already in regard with unilateral preferences in the context of the GSP, the WTO DSB had made it clear that selective preferences granted on the basis of a discriminatory choice, based perhaps on previous economic or political relations, were not compatible with the GATT/WTO law. Preferences on the basis of the Enabling Clause should instead be governed by the principle of non-discrimination; if certain activities or achievements, such as the fight against drug trafficking, were taken as a pre-requisite for specific incentives, all developing countries offering the same should be eligible for the same treatment.

With regard to development associations, the situation was even more complicated. It became more and more doubtful whether agreements like the Lomé association agreements could be based on GATT law. The Enabling clause was applicable only on the GSP. The EU and the African, Caribbean and Pacific States [ACP], united in the Lomé Agreements, tried to rely on the provisions on development contained in Part IV of the GATT; but many countries, particularly the developing countries outside the ACP area, voiced strong criticism in this regard. This happened regularly in the GATT and working groups were established to examine the Lomé Convention.[38] However, as these groups take decisions by consensus, no legally binding decisions on this question could be reached. It was therefore up to the GATT dispute settlement system to decide upon this question in the "*Banana Cases*" of the 1990s.[39] The outcome of these procedures clearly revealed that these

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[36] *See* MICHAEL TREBILCOCK ET. AL., THE REGULATION OF INTERNATIONAL TRADE 11 (4th ed. 2013).

[37] *Supra* note 28.

[38] *See* Bonapas Onguglo & Taisuke Ito, *How to make EPAs WTO Compatible?,* ECDPM 13 (Jul. 2003), http://ecdpm.org/wp-content/uploads/2013/11/DP-40-Make-EPAs-WTO-Compatible-Reforming-Rules-Regional-Trade-Agreements1.pdf [hereinafter Onguglo & Ito].

[39] Although these cases fell into a period characterized by a "system change" in GATT/WTO dispute settlement switching from "positive" to "negative" consensus, whereby only under the latter regime, applicable starting from 1995, the EU could no longer block the adoption of reports stating a violation of GATT/WTO law, the in

non-reciprocal preferential agreements could not be justified under the GATT/WTO law.[40] According to this jurisprudence, Article XXIV GATT simply does not provide for special preferences for developing countries. A combined application of Article XXIV and Part IV GATT is not possible. In order to avoid an abrupt break-down of the whole preferential regime created by the Lomé Agreements, two waivers were granted for the period 1994-2000, thereby covering the last extension the Lomé system as well (Lomé-bis: 1995-2000).[41] For the time after, the Lomé system, with special and differential treatment in favour of developing countries at its heart, had to be replaced by a new system which was fully congruent with Article XXIV of GATT.

On 23 June 2000, a new framework agreement for trade association after Lomé was agreed upon in Cotonou, Benin. After a transitional period lasting until 2007, during which non-reciprocity could be continued, the new framework, which was required to be in compliance with the GATT/WTO law, was to be implemented by Economic Partnership Agreements [EPAs].[42] It can therefore be stated that in the field of development assistance, the year 2000 brought about a real change of paradigm in two aspects: first, in regard to the instruments available and second, in relation to the parties involved. As to the former aspect, reciprocity would from now on, as a matter of principle, govern their respective trade relations. The underlying assumption was that protectionism was not in the interest of the developing countries as they had no incentive to catch up in competitive strength with the industrialized world.[43] As to the coverage of the EU´s development association regime, it could no longer be restricted to the special relationship with ACP countries as discrimination between developing countries was no longer permissible. As a consequence, unilateral measures, in particular those out of the GSP scheme, began to gain new importance. The old hierarchy, according to which GSP preferences would stand at the bottom of the "preference pyramid"

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compatibility of special and differential treatment accorded by the Lomé agreements became obvious already at an earlier stage. On these "Banana cases" *see* Onguglo & Ito, *supra* note 43; *See also* Peter Hilpold, *Die EU im GATT/WTO-System*, 21 EUR. J.I.L. 494 (2009).

[40] Starting with the report in the "Bananas II case": see Panel Report, *European Communities – Import Regime for Bananas*, ¶158-159, WTO Doc. WT/DS38/R (Feb. 11, 1994).

[41] *See* World Trade Organization, European Communities – The ACP – EC Partnership Agreement: Decision of 14 November 2001, WT/MIN(01)15 (2001); World Trade Organization, European Communities – Transitional Regime for the EC Autonomous Tariff Rate Quotas on Imports of Bananas: Decision of 14 November 2001, WT/MIN(01)/16 (2001).

[42] *See* extensively Peter Hilpold, *EU Development Cooperation: A Stock-Taking and a Vision for the Future*, AUSTRIAN REV. INT'L & EUR. L. (forthcoming 2017).

[43] In substance, this insight came close to the admission that the infant industry theory was of no practical value in North-South relations.

while preferences granted within association regimes would be of a higher value, no longer holds true. Of course, fragmentation of the developing world was not fully overcome. To a certain, albeit still unclear, extent, preferences for ACP countries could be maintained as far as their object was not regulated by WTO law. Further, as the development association and the concession of GSP preferences are mutually exclusive,[44] distinctions become possible: GSP preferences need not and must not be extended to other developing countries that benefit from a preferential market access arrangement which provides the same tariff preferences as the scheme, or better, for substantially all trade. Finally, it should not be overlooked that the WTO law itself allows differentiation, at least to a certain amount, as far as least developed countries (LDCs) are concerned.

It can therefore be stated that over the years the technical structure of the EEC and the ECU development assistance has undergone significant changes and in the mid-1990s, exactly when the GATT system was being substituted by the WTO order, something close to a revolution happened: the old political considerations that had dominated EEC development assistance for decades was set aside by an approach that was far more law-oriented. Neither colonial legacies nor geo-political strategies should guide development assistance project; rather, objective needs must do so.

In this sense, development assistance was "de-politicized" and re-oriented towards a more technical as well as a more objective criteria. At the same time, however, the value orientation of this policy grew enormously. Contrary to the decline of the external political elements that happened, as explained above, in a more or less disruptive fashion, the process of "internal politicization" was a gradual one that seamlessly carried the GATT period towards the WTO era.

The Lomé III Agreement of 1986 already addressed the human rights question, even though this happened rather marginally and with little vigour.[45] Only a few years later, the situation changed radically with Lomé IV in 1990. The achievement of human rights became a central element of the whole Agreement, an autonomous goal and a constitutive element of development itself.[46] It was recognized that respect for human rights constituted a "*basic factor of real*

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[44] *See* Commission Regulation 978/2012, art. 4(1)(b), 2012 O.J. (L 303) 1.

[45] *See* Peter Hilpold, *EU Development Cooperation at a Crossroads: The Cotonou Agreement of 23 June 2000 and the Principle of Good Governance*, 7 EUR. F. AFF. REV. 53, 59 (2000). On the principle of good governance, *see also* Theo van Boven, *Is There an Emerging Right to Good Governance*?, *in* HUMAN RIGHTS FROM EXCLUSION TO INCLUSION 329 (Fons Coomans et. al. 2000).

[46] *See* Agreement Amending the Fourth ACP-EC Convention of Lomé, Art. 5, Nov. 4, 1995, 29 I.L.M. 809.

development".[47] The human rights issue was no longer a mere by-product of development but an essential part of it. The main task was now to define development and to bring it in an instrumental relation to the human rights agenda.

First, respect for human rights had to be transformed from a mere political desideratum to a hard obligation whose respect was imperative for benefitting from the collaboration with the EU. Starting in the early 90s, the European Community inserted human rights clauses in all its agreements with third countries.[48] The questions that remained were: how to ensure that respect for human rights was broad, durable and lasting and what was the specific relationship between human rights, the respect for basic democratic principles and sustainable development. Starting with the Agreement of Cotonou of 23 September 2000, it seemed that an all-encompassing approach that inter-related the respect for human rights, democratic principles and the rule of law was coming into shape.[49] The concept giving structure to this relationship appeared to be that of "*good governance*".

In Article 9 para. 3 of the Cotonou Agreement elements of a definition for this concept can be found:[50]

> "*In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption.*"

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[47] *See* Fourth ACP-EC Convention of Lomé art. 5(1), Dec. 15, 1989, 29 I.L.M. 783.

[48] The EC tried hard to avoid any impression of discrimination by inserting these clauses in all its treaties and not only in treaties with developing countries. By the Treaty of Nice, this practice was integrated into primary law as these clauses became obligatory also for agreements with third countries not constituting developing countries (ex Article 181a para 1, sub para 2, now Article 212 para 1, referring to the "principles and objectives of EU external action").

[49] *See* The ACP-EC Partnership Agreement art. 9, para. 2 sub para. 4, Jun. 23, 2000, O.J. L. 209 [hereinafter ACP-EC Partnership Agreement] : "Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement."

[50] ACP-EC Partnership Agreement art. 9, *supra* note 49, para. 3.

Although at a first glance the impression may be gained that the concept of "good governance" has become the overarching element to steer development cooperation, at a closer look it becomes clear that the Agreement of Cotonou leaves many questions open in this regard: it remains widely a *Lex Imperfecta*.[51] Further specifications were needed; international developments of the following years, particularly the international financial crisis[52], offered important insights in this regard, especially as to the threats resulting from the new instability of developing states. Consequently, the 2005 and 2010 revisions of the Cotonou Agreement dedicated attention to fragile and failing states.[53]

According to Article 2 of the Agreement, a "pivotal role" is attributed to political dialogue; further, to quote the first paragraph of Article 8: "*Parties shall regularly engage in a comprehensive, balanced and deep political dialogue leading to commitments on both sides*". Annex VII ("*Political Dialogue about Human Rights, Democratic Principles and the Rule of Law*") provides detailed advice on how to conduct this dialogue. Much care is taken to guarantee that this dialogue takes place according to internationally recognized standards and norms and with reference to jointly agreed agendas, priorities and benchmarks. It can therefore be said that the rules of this dialogue must be elaborated in a consensual setting, avoiding any form of paternalism and requiring from industrialized countries at least as much a change of thought as it is the case with developing countries. For the rest, this attempt to treat the EU countries and the ACP equally in value and to avoid any sign of tutelage is clearly visible as well.

An important point of reference in this context is Article 9 of the Agreement. As already stated, in comparison to the Lomé system, the Cotonou Agreement is far more explicit about the role of human rights, democratic principles, the rule of law and good governance for development. But most of all, in its revised version, the Cotonou Agreement now spells out in Article 9 that "*the essential and fundamental elements as defined in this Article shall apply equally to the ACP States on the one hand, and to the European Union and its Member States, on the other hand*".

All these developments took place against an international legal and political background quickly. In fact, in these years the UN was on the way of thoroughly reconceiving its development policy, a process which is still under way. This process is characterized by an intense dialogue with the European Union and by a further strengthening of the "political" element in development cooperation. A

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[51] *See* for more detail Peter Hilpold, *EU Development Cooperation: A Stock-Taking and a Vision for the Future*, AUSTRIAN REV. INT'L & EUR. L. (forthcoming 2017).
[52] *See* NEUE EUROPÄISCHE FINANZARCHITEKTUR (Peter Hilpold & Walter Steinmair eds., 2014).
[53] *See* ACP-EC Partnership Agreement, *supra* note 49, art. 11, para. 1.

growing consensus has formed that the "political" element, comprising the protection of human rights, democracy and the rule of law, constitutes the very foundation of successful development cooperation.[54] At the end, the primary responsibility for development lies, in accordance with the principle of self-determination, with the developing countries themselves.[55] Much more important than the transfer of material resources is help for the creation of an appropriate institutional setting propitious for economic growth. As set out, this institutional change must be elaborated in a framework characterized by full equality of all parties involved.

V. THE RE-POSITIONING OF THE DEVELOPMENT POLICY WITHIN EU LAW BY THE TREATY OF LISBON

As shown, development policy, while present in the EU integration law since its inception, has changed radically over the years in the sense of an increasing "politicization" whereby value orientation has gained ever growing importance. This process was, however, not a linear one and at the end, the need came up to give a structure to this system. This happened by the Treaty of Lisbon. The provisions on development cooperation are now to be found in Articles 208 to 213 of the Treaties on the Functioning of the European Union ["TFEU"], which form part of title V on "*External Action*". As to the goals of development cooperation, Article 208 mentions only the reduction of poverty and in the long run, the eradication of poverty.[56] At the same time, paragraph 1 of Article 208 also states that "*Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action*." Article 205 TFEU, containing "General Provisions on the Union´s External Action" refers to Chapter 1 of Title V of the Treaties of the European Union ["TEU"]. Consequently, the principles set out in Article 21 para. 1 of the TEU applies also to development cooperation; democracy; the rule of law; the universality and indivisibility of human rights and fundamental freedoms; respect for human dignity; the principles of equality and solidarity; and respect for the principles of the United Nations Charter and international law. A similar technical approach when regulating the objectives of its external action can be found in the field of the Common External Policy, where a distinction is made between an "*inner layer of objectives*" (the one to be found in the specific norm regulating the subject at issue which are of a more "technical"

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[54] On the importance of democracy promotion in the EU external relations *see* Paul James Cardwell, *Mapping Out Democracy Promotion in the EU´s External Relations*, 16 EUR. F. AFF. REV. 21 (2011).

[55] By the way, this thought finds expression also in the concept of the "Responsibility to Protect". *See* RESPONSIBILITY TO PROTECT (R2P), A NEW PARADIGM OF INTERNATIONAL LAW (Peter Hilpold ed., 2016).

[56] Consolidated Version of the Treaty on the Functioning of the European Union art. 108, ¶ 1 sub-para. 1, May 9 2008, 2008 O.J. (C115) 47.

nature) and an "*outer layer of objectives*" (the one to be found in Article 21 which is more of a political kind).[57] It can be argued that this politicization, in the field of development cooperation is even more accentuated in the area of the external commercial policy, as the "*inner layer of objectives*" in the field of development cooperation is much smaller than the one in Article 206 on the external economic policy. This politicization in the sense of an enhanced value orientation should not only guide the Union´s technical action in conceiving and implementing its development policy, but it should also direct the Union´s political mission when this institution participates in the drafting of the broader universal framework constituting sort of a "second entrenchment" of Union's action in development cooperation. As a leading actor in this field, any auto-limitation the Union adopts in this matter must necessarily also have repercussions on the global level. If the European Union has always been a dominant player in development cooperation, simply out of the weight of the resources invested, it has ultimately become one of the main actors in the politicization process of this policy.

VI. THE U.N. FRAMEWORK: MILLENNIUM GOALS AND SUSTAINABLE DEVELOPMENT GOALS

If the Treaty of Lisbon has totally refurbished the system of the EU development policy, this measure can be understood only against the background of new initiatives at the UN level (again strongly influenced, by the way, by the European Union). An important milestone was set by the "Millennium Goals" ["MDGs"] of 2000[58]. The material content of these goals (for example "*eradicate extreme poverty and hunger, lessen by half the number of people in extreme poverty, and the number of people who suffer from hunger by 2015*", "*achieve universal primary education; ensure by 2015 that all children will be able to complete a full course of primary schooling*") – and even more so the timeframe set for their accomplishment – was unrealistic, and utopian. Nonetheless, in the years that followed, these MDGs provided an essential inspirational source for any discussion and work on the further shaping of an international development policy. The MDGs were, at a first glance, essentially technical as they set development goals that were primarily of an economic and social nature; however, they were also "political" in the sense that their achievement would have required an enormous resource transfer from the industrialized world to the developing countries – an unrealistic idea from the very beginning that got even more out of reach in the wake of the great financial crisis

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[57] *See* Markus Krajewski, *The Reform of the Common Commercial Policy*, *in* EU LAW AFTER LISBON 294, 292-311 (Andrea Biondi, Piet Eeckhout & Stefanie Ripley eds., 2012); Hilpold, *Politicization*, *supra* note 2.

[58] G.A. Res. 55/2 (LV) (Sep. 18, 2000).

starting in 2007.[59] In these years it became clear that the primary contribution for a successful development had to come from the developing countries themselves. Ways had to be found to unearth the enormous development potential already present in the developing world and the primary instruments to achieve this goal were of a political nature. At the Rio+20 Conference on Sustainable Development of 2012 consensus was found to draw up a new agenda for the 2015-2013 period.[60] It was agreed to formulate 17 sustainable development goals that would be put forward for adoption by the head of states of states at a UN summit in New York in September 2015. It was envisaged to establish a new "Global Partnership for Poverty Eradication and Sustainable Development after 2015" as an overarching framework with universally applicable goals: shared responsibility, the involvement of civil society, the private sector and academia and the creation of an effective monitoring. This partnership had to be based on human rights, good governance, rule of law, support for democratic institutions, inclusiveness, non-discrimination and gender equality. At the launching conference of the 2030 Agenda for Sustainable Development in 2015, the UNGA had to admit that progress had been uneven, particularly in Africa, least-developed states, land-locked countries and small island developing states.[61] In literature it was admitted that "the eight MDGs failed to consider the root causes of poverty or gender inequality, many of the underlying environmental issues or the holistic nature of development."[62]

The 2030 Agenda did not abandon the MDGs. The new Agenda rather builds on the MDGs and develops them further to better reach the most vulnerable.[63]In a sense, the Sustainable Development Goals ["SDGs"] constitute a natural evolution of the MDGs and of the Millennium Declaration. In the political field, they develop further what was already contained in the Millennium Declaration, but in 2000 could not be consolidated to a goal as the time was not yet ripe for such a step. The SDGs look beyond traditional goals such as poverty eradication and improvement of health, education, food security and nutrition, and rather sets broader societal objectives that include the economy, broader social issues and the environment.[64] The new approach is based on sustainable development (SD) and

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[59] *See also,* World Bank, Global Monitoring Report 2010, The MDGs after the Crisis, http://siteresources.worldbank.org/INTGLOMONREP2010/Resources/6911301-1271698910928/GMR2010WEB.pdf.

[60] *See* Pamela S. Chasek et al. *Getting to 2030: Negotiating the Post-2015 Sustainable Development Agenda*, 25 REV. EUR. CMTY. & INT'L ENVTL. L. 5 (2016) [hereinafter Chasek et al.].

[61] *See* G.A. Res. 70/1, ¶16 (Oct. 21, 2015) [hereainafter G.A. Res.70/1].

[62] *See* Chasek et al, *supra* note 60, at 7.

[63] G.A. Res.70/1, *supra* note 61.

[64] *Id.*, ¶17.

human rights.[65] Perhaps most importantly, the Agenda 2030 includes the goal to "*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all level*". This "Goal 16" refers, in a broader sense, to the issue of "good governance" that is surely crucial for lasting development and overcoming inequalities also within given national societies.[66]

The 2030 Agenda for Sustainable Development comprehends the following 17 goals:[67]

> Goal 1. End poverty in all its forms everywhere.
> Goal 2. End hunger, achieve food security and improved nutrition and promote sustainable agriculture.
> Goal 3. Ensure healthy lives and promote well-being for all at all ages.
> Goal 4. Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
> Goal 5. Achieve gender equality and empower all women and girls.
> Goal 6. Ensure availability and sustainable management of water and sanitation for all.
> Goal 7. Ensure access to affordable, reliable, sustainable and modern energy for all.
> Goal 8. Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.
> Goal 9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation.
> Goal 10. Reduce inequality within and among countries.
> Goal 11. Make cities and human settlements inclusive, safe, resilient and sustainable.
> Goal 12. Ensure sustainable consumption and production patterns.
> Goal 13. Take urgent action to combat climate change and its impacts.
> Goal 14. Conserve and sustainably use the oceans, seas and marine resources for sustainable development.
> Goal 15. Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss.

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[65] *See, The New European Consensus on Development - 'Our world, our dignity, our future'*, EUR. COMM. (Jun 7, 2017) https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-evelopment-20170602_en.pdf. [hereinafter *The New European Consensus*].
[66] *Supra* note 45. This aspect is of particular relevance in post-conflict situations. *See* on this issue Peter Hilpold, *Jus Post Bellum and the Responsibility to Rebuild – Identifying the Contours of an Ever More Important Aspect of R2P*, 6 J. INT'L HUMAN. LEGAL STUD. 284 (2015).
[67] *Supra* note 61.

> Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.
> Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development.

It is indicative that the fight against poverty has been placed at the top of the list, both in the MDGs and in the SDGs. Many of the further goals could be seen as specifications of the first one. The SDGs (and previously the MDGs) elaborated by the UN best exemplify how interrelated the various goals are and how the fight against poverty may be key to overcome the development challenges.

Although there is no unanimous consensus in the ongoing worldwide development policy discussion on whether the SDGs constitute an exclusive, overarching set of goals, there is an emerging consensus that poverty eradication should remain the goal of any new development policy strategy. The 2030 Agenda further develops the attempt already made in the MDGs to achieve this objective by setting concrete and simple targets.[68]

In their systematic context, these goals make it clear, much more than it has been the case with the MDGs, that the fight against poverty and for development is possible only in a multidimensional, strongly "politicized" context. Development takes place in a framework highly dependent on political elements. Additionally, the elements of development of a genuine "economic" or "technical" nature often interact with political channels or are brought in a meaningful system by political instruments. An important example in kind is the subject of climate change. Agenda 2030 came at a moment when the impact of climate change on development had become clear as never before. In fact, the UN Framework Convention on Climate Change[69] and, particularly, the Paris Agreement of 2015 are

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[68] *See European Commission-DG Development, Report on the Public Consultation on the Future of EU Development Policy*, at 14 (Jun. 2005), http://ec.europa.eu/development/body/tmp_docs/consultation_report_en.pdf. *See also* Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755 (2005) and, more recently, *Fighting Hunger together with the European Union,* EUROPEAN COMMISSION (2015), https://ec.europa.eu/europeaid/fighting-hunger-together-european-union_en (last visited Sep. 20, 2017).

[69] *See* European Commission, *A Global Partnership for Poverty Eradication and Sustainable Development after 2015*, at 44 COM (2015) https://ec.europa.eu/europeaid/sites/devco/files/com-2015-44-final-5-2-2015_en.pdf; *Post-2015 Agenda for Sustainable Development – Key Positions of the German Government*, UNITED NATIONS (Feb. 2014), https://sustainabledevelopment.un.org/content/documents/8778germany.pdf (last visited

agreements negotiated within the Framework Convention that lay emphasis on the achievement of the SDGs.[70] In 2007, the EU started the Global Climate Change Alliance (GCCA) aimed at fostering effective dialogue and cooperation on climate change with Land Locked Developing Countries and small island developing States. In 2014 a new, enhanced initiative with a more generous funding, the Global Climate Change Alliance+ (GCCA) was started. According to this programme, climate change must be an integral consideration in national development plans, policies and budgets, vulnerable countries are to be helped to prepare for climate-related hazards and furthermore understanding should be increased about the specific consequences of climate change in the short, medium and long term.[71]

In Goal 13 of the SDGs climate change is directly addressed and several other goals refer to it at least indirectly. As is well known, the fight against climate change is one of the most controversial political subjects of these days. By the SDGs this political controversy has been imported, at least partly, in the development area. At the same time, this new framework offers new opportunities to conduct the relevant discussion in a more technical and structured way. Generally, it is to say that the SDGs bring environmental protection and development in an immediate relationship and in a way that has never been done before. Already this approach gives expression to a clear political commitment of enormous weight.

VII. CONCLUSION

According to its own declaration, the EU intends to fully implement the Agenda 2030 and the SDGs and has formulated s a new "European Consensus on Development".[72] The EU itself asserts that this "Consensus" has to be implemented in accordance with the "Global Strategy for the EU´s Foreign and Security Policy"[73] thereby confirming the strong political connotation of the new vision of development.

Sep. 20, 2017); *Post-2015 Sustainability Agenda*, GLOBAL POLICY FORUM, https://www.globalpolicy.org/social-and-economic-policy/the-millenium-development-goals/post-2015-development-agenda.html (last visited Sep. 20, 2017).

[70] *See* Paris Agreement, ¶ 6.4-6.7, Dec. 12, 2015, 1 U.N.T.S 54113; on this agreement *see* SABINE RAUCH, DAS PARISER KLIMASCHUTZABKOMMEN – GRUNDLAGEN UND PERSPEKTIVEN (2017).

[71] *See About the GCCA,* GLOBAL CLIMATE CHANGE ALLIANCE, http://www.gcca.eu/print/about-the-gcca/what-is-the-gcca. (last visited Sep. 20, 2017).

[72] *The New European Consensus*, *supra* note 70, at 5.

[73] *Id.,* at 4; *See A Global Strategy for the European Union's Foreign and Security Policy*, EUROPEAN UNION EXTERNAL ACTION, http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf. (Jun. 28,

The EU proudly announced that the EU and its MS "*will implement a rights-based approach to development cooperation, encompassing all human rights*" and that they "*will continue to play a key role in ensuring that no-one is left behind*".[74] To fully attend to these declarations, a wealth of resources would be needed; however, this aspect is not really addressed in the "Consensus". The migration crisis of the previous years is evidence to the fact that populations in the EU MS are not prepared to show limitless solidarity with people in third countries.[75]

It is highly probable that the SDGs are only an intermediate step in a longer process whereby the political elements will gain even more importance. The need to overcome the isolated vision of development and to relate on subjects such as environmental protection has become overdue. In the future, further factors could be considered, whereby the whole approach could become more comprehensive but also more politicized.

This is to say, first of all, of the refugee and the migration problem, there can be no doubt that this problem is closely associated with the development issue. A further issue would be that of population growth. It would be naïve to think that any of the SDGs could be tackled disregarding the size of the world population for which it has to apply. Nonetheless, in Agenda 2030: substantial pronunciations on this issue are conspicuous by their absence. Of course, addressing such issues on the global level under the heading of "*development cooperation*" would imply an additional politicization of a dimension that seems unfeasible in the foreseeable future. A substantial solution to the development problem will however necessarily require a full integration of these aspects. This might not yet be possible on the universal level, but the EU would already be well equipped for such an endeavor.[76] "*Leave no*

2016) replacing the European Security Strategy of 2003. For a critical stance towards the new "Global Strategy" *see* Annegret Bendiek, *The Global Strategy for the EU's Foreign and Security Policy*, SWP COMMENTS 2016/C 38, Aug. 2016: "This document […] largely lacks the core features of a strategy: a clearly stated objective, a defined (longer) timeframe, and a methodical approach".

[74] *See The New European Consensus*, *supra* note 70, at 7.

[75] *See* Peter Hilpold, *Unilateralism in Refugee law—Austria's Quota Approach Under Scrutiny*, 18 HUM. RTS. REV. 305 (2017) [hereinafter Hilpold, *Unilateralism*]. On the issue of reciprocity in development cooperation and beyond, see Peter Hilpold, *Understanding Solidarity within EU Law: An Analysis of the 'Islands of Solidarity' with Particular Regard to Monetary Union*, 34 Y.B. EUR. L. 257 (2015). On Solidarity in general, see SOLIDARITY: A STRUCTURAL PRINCIPLE OF INTERNATIONAL LAW (Rüdiger Wolfrum & Chie Kojima eds., 2010).

[76] *See The New European Consensus*, *supra* note 70, at 5: "With its institutional set-up and political instruments provided under the Lisbon Treaty, the EU is well equipped to respond to global challenges and opportunities where they arise."

one behind", the fundamental mantra on which the Agenda 2030 is based,[77] is a tantalizing formula, but it awakens expectations that harbor the risk of a disappointment and eventually of a backlash in all efforts to jointly foster development and the respect for human rights.[78] If there is any institution capable to work effectively in the direction of implementing this slogan, at least to some extent, this is the European Union. Resource transfer, the classical instrument of development cooperation, will remain an important element in the future as well; however, it has proven to be largely ineffectual as a one-dimensional instrument. It will be re-dimensioned as one element in a broader framework[79] that considers development cooperation as a complex interaction of a multitude of factors that can best be steered by a rule-based system founded on respect for human rights; democratic participation; and the rule of law[80].

Article 21 TEU, as seen from the result of a long normative development, offers the basis for politicization of development cooperation in this sense. The development community might not yet be aware of this potential and it might not even fully see the necessity to go to such lengths but this scenario is clearly in the offing. To make it happen, the existing international fora for dialogue has to be used[81] and probably new ones have to be built-up. Such a fundamental re-

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[77] This slogan is relatively young. It was first proposed by the High-Level Panel on the Post-2015 Agenda in 2012 only to find immediate support and to become soon after the most important characterization of the Agenda 2030. *See* Ignacio Saiz & Kate Donald, *Tackling inequality through the Sustainable Development Goals: human rights in practice*, 21 INT'L. J. HUM. RTS. 1029, at 1031 (2017).

[78] Much criticism has been voiced against the Agenda 2030, often with reference to the issues of wealth redistribution and development financing. *See, e.g.*, *Agenda 2030: Rights on track?*, CENTRE FOR ECONOMIC AND SOCIAL RIGHTS, http://www.cesr.org/agenda-2030-rights-track (last visited Sep. 2017). This criticism is surely partly justified because much more could be done. In part, however, it overlooks the natural limits of solidarity. This fact was evidenced also in the present migration crisis which posed a heavy toll on Europe. Europe responded but made clear at the same time that solidarity is limited. See Hilpold, *Unilateralism*, *supra* note 80.

[79] Goal 17 of the SDGs aims at revitalizing the Global Partnership for Sustainable Development. In this context also the aim to achieve the target of 0.7 per cent of gross national income for official development assistance (ODA/GNI) to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries is re-confirmed.

[80] On the relevance of the rule of law in present development issues *see* i.a. Noora Arajärvi, *The Rule of Law in the 2030 Agenda*, (KFG Working Paper Series No. 9 June 2017). An excellent overview on this subject is given by MICHAEL J. TREBILCOCK & MARIANA MOTA PRADO, LAW AND DEVELOPMENT 45 (2014).

[81] The European Union can boast a long experience in setting-up fora for dialogue with third countries in relation to controversial subjects. An important example in kind is the Global Climate Change Alliance (GCCA) established in 2007 with the aim to strengthen dialogue and cooperation with developing countries, in particulars LDCs and Small Island

orientation will only be possible if extensive international dialogue creates the necessary basis for this far-reaching step. There is a reason for hope that this time the EU and its MS will make a difference in international development cooperation. Of course, to many the goals set might appear utopian and might seem like the ones that must be pursued in a stronger, more effective "politicized" framework; nonetheless, experience in international law has shown time and again that utopian thinking and the belief in a great leap forward have eventually led to important changes.[82] The modern and value-based "political" approach towards development cooperation seems to offer the chance for major progress in the development agenda.

Developing States (SIDS), in order to deal with and to mitigate climate change. In 2014, the newly launched GCCA+ initiative has further strengthened the element of dialogue and cooperation. As explained above, the importance of dialogue has already been foreshadowed by the Agreement of Cotonou of 2000 (Article 2). The notion that the human rights idea is imposed by the North on the South is surely faulty as recent research has again evidenced. *See* KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY (2017).

[82] *See* Peter Hilpold, *Self-determination and Autonomy: Between Secession and Internal Self-determination*, 24 INT'L J. MINORITY & GROUP RTS. 302 (2017); ANNA FISCHER, SEZESSION IM VÖLKERRECHT – FAKTISCHES PHÄNOMEN ODER REALE UTOPIE (2017).