The 13th session of the Expert Mechanism on the Right to Development

Item 4 of the Provisional Agenda
Implementation of the mandate and programme of work –
Consideration of thematic studies
Conference Room 6, United Nations Headquarters, New York

An interactive chapter-by-chapter discussion on the draft international covenant on the right to development

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Unofficial transcript of the oral statement by
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I am deeply grateful for the opportunity to return to the city where the drafting of this Covenant began eight years ago, and to do so on the fortieth anniversary of the Declaration on the Right to Development. I am honoured to present the work entrusted to us through extensive dialogue and repeated consultations with all States. The draft Covenant before you reflect substantial inputs from Member States, United Nations agencies, and civil society.

As Ambassador Akram emphasized, the decision to elaborate a legally binding instrument signifies that the right to development is no longer merely a policy aspiration but a legal right of individuals and peoples. This means that the recognition of this right, beyond its status under the 1986 Declaration, is not simply a policy option for States but constitutes a legally binding entitlement of individuals and peoples. Working together with States, this framework enables a more effective realization of this right in legal form, as opposed to a purely declaratory one.

This is why, from the outset of the drafting process, beginning here in New York and continuing within the Working Group in Geneva, we were mindful that we had to respond not only to the mandate given by States to elaborate a legally binding instrument, but also to provide technical expertise to align the 1986 Declaration with nearly 40 years of global, regional, international, national and local practice on how development is understood and implemented.

The thrust of this Covenant is to safeguard the human right of individuals and peoples to a multidimensional understanding of development, as will be further elaborated throughout the text.

This understanding of development draws upon what States, and the international community have already articulated in existing instruments, treaties, resolutions, and initiatives, reflecting a shared understanding of development both in the present and for the future. In bringing these global efforts together for the recognition, protection, fulfilment and implementation of this human right, I am convinced and personally deeply honoured that this already encapsulates the broadest possible range of expertise contributed by States and non-State actors on the scope of international law and on the concept of development with which all States are concerned.

Turning now to my part of the presentation, I will address three elements: first, the preamble; second, the object and purpose; and third, the general principles.

The structure of this treaty begins with a preamble in accordance with established international treaty practice. While preambles typically reflect the object and purpose of a treaty, a distinct provision on object and purpose has been deliberately included to avoid any ambiguity regarding the interpretative framework of this instrument.

What, then, is the significance of the preamble? The preamble establishes the legal, policy, and diplomatic record concerning the recognition of the right to development. It provides the contextual framework for interpretation under Article 31 of the Vienna Convention on the Law of Treaties and therefore forms part of the relevant means of interpretation. Its detailed elaboration is intentional, given that development may be understood in multiple ways. In the absence of grounding the right to development in the consensus developed by States over four decades of practice, ambiguity may arise and hinder effective implementation.

The first paragraph of the preamble refers to the Charter of the United Nations, including its purposes and principles. The second paragraph addresses specific provisions of the Charter, namely Articles 13, 55 and 56, which establish obligations already assumed by Member States to take joint and separate action, in cooperation with the Organization, to promote higher standards of living, full employment, economic and social progress, solutions to international economic, social, health and related problems, cultural and educational cooperation, and universal respect for, and observance of, human rights and fundamental freedoms without distinction.

I will not pre-empt the intervention of Professor Kanade. However, it is important, in reading the preamble in conjunction with the treaty, to consider the definition of the right to development under Article 4, paragraph 1, of this draft Covenant. That definition contains distinct elements relating to participation, contribution, and enjoyment of development by individuals and peoples, in a manner that is interrelated, indivisible and interdependent with all other human rights and fundamental freedoms. The preamble is intended to foreground that interdependence and indivisibility, not only in a chronological sense but also within the broader thematic framework of this treaty.

The third paragraph refers to the Universal Declaration of Human Rights, which reflects the fundamental aspiration to a social and international order in which rights and freedoms can be fully realized, allowing for the enjoyment of all civil, cultural, economic, political and social rights.

From the outset, this demonstrates that the right to development is not a new concept. It was already embedded in the Charter of the United Nations and in the early codification of human rights. Development was therefore already central to the vision of the States that established the Charter-based system.

The following paragraph recalls the Universal Declaration and recognizes that everyone is entitled to the realization, in accordance with their resources and institutional framework, of economic, social and cultural rights that are indispensable for dignity and the free development of the human person.

From this normative architecture, the preamble then turns to international human rights treaties. This explains the extensive references not only to all core human rights treaties, but also to other relevant international instruments with significant practice within the United Nations system, such as the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. The subsequent paragraph reaffirms the 1986 Declaration on the Right to Development as the foundational inspiration for the present text.

Building on that Declaration, the preamble recalls the trajectory of the right to development as articulated in numerous international declarations, resolutions and agendas, as further detailed in the commentaries. This includes its prioritization by States in the Millennium Declaration, as well as General Assembly resolutions mandating the Office of the High Commissioner for Human Rights to promote and protect its realization.

Even prior to the codification of a treaty, States entrusted the Office of the High Commissioner for Human Rights with a specific mandate relating to the right to development. The preamble therefore traces the evolution of relevant General Assembly resolutions guiding the work of the Office, in coordination with the Human Rights Council, emphasizing that the elaboration of this treaty is guided by the principles of universality, impartiality, objectivity, non-selectivity, dialogue and cooperation, with a view to promoting all human rights, including the right to development.

In parallel with the universal system, regional human rights instruments over the past 40 years have also recognized and affirmed the right to development. These include the African Charter on Human and Peoples' Rights; the Inter-American Democratic Charter; the American Convention on Human Rights, including the interpretation of Article 26; the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador); the Arab Charter on Human Rights; the ASEAN Human Rights Declaration; the American Declaration on the Rights of Indigenous Peoples; and the Abu Dhabi Declaration on the Right to Development.

This reflects the continuity and evolution of the right to development from its earliest recognition in the Charter of the United Nations and the Universal Declaration of Human Rights, through the mandate of the Office of the High Commissioner for Human Rights, and into regional treaty practice and jurisprudence. In this context, reference is also made to the Charter of the Organization of American States, which refers to "integral development," and to the American Convention on Human Rights, which refers to "progressive development."

Following this review of regional practice, the preamble turns to contemporary instruments of global cooperation, particularly the 2030 Agenda for Sustainable Development. The agenda affirms that sustainable development must be pursued in a balanced and integrated manner across its economic, social and environmental dimensions, to meet the needs of present and future generations in harmony with nature.

Building on this continuity of global normative development, the preamble adopts language already reflected in existing instruments, including the 1986 Declaration on the Right to Development, concerning the existence of serious obstacles to the realization of the right to development. These include poverty, hunger, inequality, climate change, health emergencies, denial of the right to self-determination, colonization and neocolonialism, forced displacement, racism, discrimination, foreign domination and occupation, aggression, threats to sovereignty, terrorism, crime, corruption, and structural deprivation affecting the subsistence of peoples, as well as violations of other human rights.

These obstacles have been recognized not only in the instruments cited above, but also in the jurisprudence of treaty bodies within the universal system and in regional courts and commissions. Many of these challenges, including climate change and displacement, have also evolved in ways not fully anticipated in 1986, particularly about their global, regional and local impacts on development.

Notwithstanding these challenges, the preamble affirms that the right to development, derived from the inherent dignity of all members of the human family, is an inalienable human right of individuals and peoples. It further affirms that equality of opportunity for development is a prerogative of both nations and the individuals who constitute them.

The final preambular paragraphs define development as a comprehensive economic, social, cultural, political and environmental process aimed at the constant improvement of the well-being of the entire population and of all individuals and peoples, including the equitable distribution of benefits arising therefrom.

This formulation reflects, inter alia, elements of the International Covenant on Economic, Social and Cultural Rights, including equitable distribution of benefits and participation. The inclusion of the term "meaningful participation" reflects the understanding that economic growth alone is insufficient to realize development; rather, development must be substantive, inclusive and effective for all individuals and peoples.

The following paragraph reinforces this understanding by clarifying that development cannot be reduced to economic growth alone. While the 1986 Declaration rightly emphasized the eradication of poverty, four decades of State practice, international cooperation and jurisprudence demonstrate that development must be understood in broader terms.

In this regard, the Covenant draws upon the capability approach of Amartya Sen and Martha Nussbaum, emphasizing the expansion of human capabilities and freedoms to enable individuals to achieve meaningful intellectual, emotional, moral and spiritual development, grounded in cultural identity and diversity. Reference is also made to the UNESCO Universal Declaration on Cultural Diversity.

The preamble further reaffirms the well-established principles of universality, indivisibility, interdependence and interrelatedness of all human rights, including the right to development. It also recognizes that the right to development is both an end and an integral means of sustainable development.

It further affirms the mutually reinforcing relationship between the right to development and peace and security, as well as the role of good governance, the rule of law and accountability at all levels.

Individuals and peoples are recognized as central subjects of development, not merely beneficiaries. This reflects the need for meaningful participation in the formulation of development policies.

The preamble also affirms that individuals and peoples are entitled to a national and international environment conducive to the realization of development and all human rights. States bear the primary responsibility to create conditions for international cooperation and engagement with civil society, consistent with existing treaty practice, including the International Covenant on Economic, Social and Cultural Rights.

In addition, the role of all organs of society, including the public and private sectors and civil society, is recognized in promoting and respecting human rights, including the right to development. In this sense, the right to development is framed as a common concern of humankind, a concept reflected in environmental treaty practice and broader international cooperation.

The final preambular paragraphs recognize that, despite extensive normative development, the right to development has not yet been fully operationalized. Accordingly, the Covenant seeks to promote and ensure its full realization through appropriate national and international action.

This leads to Article 1 on object and purpose. Having established the legal and contextual framework in the preamble, the object and purpose is explicitly stated as the promotion and full, equal and meaningful enjoyment of the right to development by all individuals and peoples, and its effective implementation at both national and international levels.

In accordance with the Vienna Convention on the Law of Treaties, the object and purpose are central to treaty interpretation and to the assessment of States' obligations, including under Article 18. It also provides clarity in determining the consequences of actions that may defeat the object and purpose of the treaty. This is particularly relevant in human rights treaty practice, where interpretative disputes

have often required judicial clarification, as in the case of the Convention on the Prevention and Punishment of the Crime of Genocide before the International Court of Justice.

Finally, Article 2 sets out standard definitions. “Legal person” refers to any entity possessing legal personality under domestic or international law, excluding natural persons, peoples, and States. “International organization” refers to an organization established by treaty or other instrument governed by international law and possessing its own international legal personality.

Article 3 sets out general principles, drawing on established practice in international environmental and economic law. These principles provide interpretative and implementation guidance, including the centrality of individuals and peoples as subjects of development; the interdependence of all human rights; human rights-based development; sustainable development; the right and duty to regulate; international solidarity; South-South and triangular cooperation; and the universal duty to respect human rights, alongside the responsibility of all actors to promote and protect them.

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