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## The Law-Sustainable Development Nexus in the Agenda 2030 and European Consensus for Development: Substance, Deficiencies and the Future

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### Abstract

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Both the Agenda 2030 and the EU's policy documents, directed to the implementation thereof, point to the 'inter-linkages between the Goals', 'integrated nature of the Goals', 'cross-cutting action areas' and Policy Coherence for Sustainable Development. In view of this, and the prominence of the law-development nexus problematique in development economics theory, this paper aims to explore the substance of the law-sustainable development nexus in the Agenda 2030 and the new European Consensus for Development. In theoretical terms, the study is based on the insights from the key development economics theories ('integration through law', modernisation theory, international dependence and world systems theories, neoclassicism and governance). Methodologically, the research combines 'black letter law' approach and document analysis.

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## Introduction

Building on Millennium Development Goals (MDGs) and the follow-up to the Rio+20 Conference on Sustainable Development, the Agenda 2030 represents the novel global governance approach, based on 17 consensual non-binding Sustainable Development Goals (SDGs) and multiple targets and indicators regarding their implementation (UN, 2015). In substantive terms, the Agenda is founded on the sustainable development concept, encompassing growth, environment protection and social cohesion components (UN, 2015). In implementation terms, the Agenda is distinguished by its integrated approach to sustainable development, including *inter alia* the emphasis on the inter-linkages between the Goals, cross-cutting areas of development (e.g., trade, technology and finance) and Policy Coherence for Sustainable Development (PCSD) (UN, 2015). Following its attempt at policy integration, the Agenda underlines the role of ‘peaceful, just and inclusive societies’, good governance, rule of law, and human rights in ensuring sustainable development (UN, 2015).

According to the Commission’s Communication ‘Next Steps for a Sustainable European Future. European Action for Sustainability’, ‘the EU is fully committed to be a frontrunner in implementing the 2030 Agenda and the SDGs, together with its Member States, in line with the subsidiarity principle’ (European Commission, 2016). Moreover, pursuant to the Lisbon Treaty, the EU’s fundamental values (democracy, human rights, the rule of law) acquired the status of the *guiding principles* and the *general objectives* of the Union’s external action (TEU, Art.2). This means the EU institutions’ legal obligation to streamline the promotion of fundamental values into the whole spectrum of the Union’s external action, including its development policy. Furthermore, similar to the Agenda 2030, the Communication and the new European Consensus on Development underlined the need for a more systemic integration of EU’s external policies (foreign policy, development, trade and investment etc.), aimed at implementing the Agenda 2030 and the general objectives of the EU

external action (European Commission, 2016) (Council of the EU et al, 2017). Hence, both the Agenda 2030 and the EU’s documents, directed to its implementation, are expected to shed light on the substance of the interplay between different objectives and policies at the global and the EU level, respectively.

In view of the above, this paper seeks to explore the substance of the nexus between law and sustainable development in the Agenda 2030 and the new European Consensus on Development. The focus on the law-sustainable development nexus is relevant not only due to the above mentioned attempt at policy integration globally and at the EU level, but also with respect to the dynamically evolving debate on the interplay between law and economic development under the auspices of the economics of development. The economics of development is understood here as a branch of economics that aims to answer two key questions: “Why do some countries develop earlier than others?” and “Why do some countries fail to develop while others are successful?” (Roland, 2016, p.3) The paper demonstrates the cyclical nature of the representations of the law-economic development nexus in leading post-war development economics theories over the 1950s to 1980s period, and emphasises the governance and “legal turn” in development economics since the 1990s. The recourse to theories that focus on macroeconomic factors, rather than law and institutional development (e.g., dependency and world systems), is determined by our intention to showcase the cyclicity of the role, attributed to law in development economics, before the 1990s. It is argued that the importance of mapping the substance of the law-sustainable development nexus in the Agenda 2030 and the new Consensus, and reinforcing its role in SDGs’ implementation is *inter alia* determined by the contemporary recognition of the pivotal role law and institutions play in promoting economic development.

The analysis is structured as follows. First, the paper elaborates on the notions of ‘sustainable development’ and ‘law’. The central part of the study explores the variety of approaches to the law-sustainable development nexus in the

abovementioned development economics theories, and applies respective insights to the cases of the Agenda 2030 and the new European Consensus on Development, attempting to distinguish the key drawbacks and inefficiencies of the respective inter-linkages. Finally, the study suggests several policy recommendations on improving the implementation of SDGs through reinforcing the law- sustainable development nexus therein.

## 2. Sustainable Development and the Different Faces of Law in Development Economics

This section of the article aims to discuss the concepts of “sustainable development” and “law” for the purposes of this paper, from the global and EU perspectives.

### 2.1 Sustainable Development: More Development and Less Sustainability?

#### *The Concept of Sustainable Development: Global Policy and Legal Debate*

According to Du Pisani (2007), the modern concept of development is rooted in the idea of progress, inextricable from the history of Western modernity. In particular, the idea of progress, associated with ‘modern, empirical and exact science’, dominated the era of Enlightenment and its aftermath. The Industrial Revolution of the 18<sup>th</sup> century broadened the earlier visions of progress by linking it to economic growth and material advancement. Requiring an ever-increasing consumption of raw materials, the Industrial Revolution also gave rise to the debate about the responsible use of non-renewable resources (Du Pisani, 2007, p.85). Almost a century before the adoption of the Brundtland Report, Alfred Russel Wallace (1898) included a chapter on the “plunder of Earth” in his essay ‘Our Wonderful Century’ to condemn the uncontrolled extraction of mineral resources and exploitation of forests. The consequences of over-extraction of coal and oil have been continuously discussed in the 20<sup>th</sup> century, also in conjunction with the debates regarding the effects of population growth about the limits of economic growth (Du Pisani, 2007).

Consolidated in the 1970 Report of the Club of Rome, the idea of the limits of growth, stemming from population growth, industrialisation and

uncontrolled extraction of resources, represented a key impetus to the search for an alternative to unrestricted growth (Meadows et al, 1970). Hence, in the Declaration of the 1972 UN Conference of the Human Environment, held in Stockholm, it was stipulated that ‘a point has been reached in history when we must shape our actions throughout the world with a more prudent care for their environmental consequences’ (United Nations Conference on the Human Environment, 1972). In this view, the Stockholm Conference Declaration introduced 26 ‘principles for the preservation and improvement of the human environment’ and 109 recommendations for their implementation. Pursuant to David Wirth (1995), the Declaration represents ‘a forward-looking instrument that was intended to provide a springboard for the future development of environmental law and policy’ (p.611). Such position stems *inter alia* from Stockholm Principle 22, stating that ‘States shall cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage, caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction’ (United Nations Conference on the Human Environment, 1972, p.2). Not referring to the concept of sustainable development *per se*, the Declaration, however, has been an important soft law framework in the domains of environmental preservation, conservation and the mitigation of negative environmental effects.

The 1987 Brundtland Commission’s Report ‘Our Common Future’, identified economic growth, environmental protection and social equity as the key components of sustainable development. The Report distinguished twenty-two principles of sustainable development, such as the individual’s right to adequate environment, transboundary pollution, intergenerational equity, international cooperation, prior consultation, exchange of information and environmental impact assessment (World Commission on Environment and Development, 1987). While collectively these principles were intended as components of a draft binding document on sustainable development, they were once again reflected in soft law instruments – the 1992 Rio Declaration on

Environment and Development and the Agenda 21. Based on the three-dimensional model, presented in Brundtland Commission's Report, both documents are directed to promoting the global governance for sustainable development, strengthening the role of various stakeholders (e.g., women, children, civil society groups, workers and trade unions) and improving the means of implementation (UN Conference on Sustainable Development, 1992) (UN Conference on Environment and Development, 1992a). Representing a consensual, non-binding, aspirational document of the 'governance through goals', the Agenda 2030 is also founded on the three-dimensional understanding of sustainable development. Notwithstanding the fact that this implies the equal value of economic growth, environmental protection and social inclusiveness, 'the SDG document continues to emphasise growth in its interpretation of sustainable development' (Gupta and Vegelin, 2016) (Frey and McNaughton, 2016). Furthermore, Gupta and Vegelin (2016) underline that the Agenda connects social inclusiveness aspect of economic growth solely to the labour-related targets, thus, narrowing the scope of the interplay between growth and inclusiveness. Analysing the global and EU experience of environmental policy integration, Adelle and Nilsson emphasise the 'softness' of environmental sustainability component, embedded into the Goal 8, and its resulting insufficiency for creating an effective three-dimensional model. Hence, although the Agenda 2030 is pierced by the novel three-dimensional approach to sustainable development, it puts a stronger emphasis on quantitative targets of economic growth and poverty eradication as compared to previous UN documents. Given these multi-dimensional roles of sustainable development concepts, the shifts of emphases within its scope can be viewed as capable of having both policy and legal effects at the international and domestic levels.

## 2.2 EU Concept of Sustainable Development

The notion of "sustainability" was first introduced into the EU's legal order by the Treaty of Maastricht (hereinafter referred as 'TEU(M)') with respect to growth (Council of the European

Communities, Commission of the European Communities, 1992). As noted by Maria Kenig-Witkowska, the Union was repeatedly criticised for using the formulation 'sustainable growth', with it being seen as an attempt to avoid committing itself to streamlining the comprehensive sustainable development concept into its policies. Both the Amsterdam and Nice versions of the Treaty established the idea of 'balanced and sustainable' growth as the economic objective of the EU. Thus, the Union only introduced the commitment to sustainable development into its primary law in the Treaty of Lisbon ('TEU(L)'). Pursuant to Art. 3(3) of the TEU (L), 'sustainable development of Europe, based on balanced economic growth and price stability shall constitute a key objective of the Union's internal market'. Art.3(5) TEU(L) requires the Union to promote 'sustainable development of the Earth through its international relationships', while Art.21(2) distinguishes the EU's foreign policy objective of 'fostering the sustainable economic, social and environmental development, with the primary aim of eradicating poverty'. Furthermore, the commitment to sustainable development is embedded into numerous secondary law acts, such as the Water Framework Directive. Nonetheless, as noted by Luis Aviles (2012), the CJEU tends to apply environmental law sub-principles (e.g., "polluter pays" or a precautionary principle), rather than the three-dimensional sustainable development concept.

Despite the fact that the EU's primary law started to refer to sustainable development rather late, the 2001 EU Strategy for Sustainable Development (EU SDS) already applied the three-dimensional concept of sustainable development with a particular emphasis on the integration of climate change, resource management and conservation policies (European Commission, 2001). While the 2001 EU SDS barely mentioned EU's internal growth and external action as regards poverty reduction, these targets were reinforced in the 2006 SDS Review and the 2011 Agenda for Change respectively (Council of the European Union, 2006) (European Commission, 2011). A particular emphasis on the EU's internal economic growth was made in the Europe 2020 Strategy that represented growth as a three-

dimensional concept, involving ‘smartness’, ‘greenness’ and ‘inclusiveness’ (European Commission, 2010). Thus, prior to the adoption of the Agenda 2030 and the concept’s stipulation in the Union’s primary law, the EU already consistently applied the three-dimensional model of sustainable development in its policy documents.

As it can be argued, based on the insight into the Commission’s Communication ‘Next steps for a sustainable European future’ and the respective Joint Staff Working Document, following the adoption of the Agenda 2030, the Union paid stronger attention to various financial instruments to attain sustainable development objectives, such as the Investment Plan for Europe, Capital Markets Union and External Investment Plan (European Commission, 2016). Furthermore, the analysis of the above document shows that internally the Union applies multiple tools to support environmental action, whereas externally it focuses on poverty reduction and decent employment (European Commission, 2016). In external terms, such approach tends to follow the pattern of implicit focus on growth and poverty eradication, as previously discussed with respect to the Agenda 2030. Ultimately, this showcases the increasing flexibility of the sustainable development concept across the EU’s policies, and the divergence of the priorities in internal and external contexts.

### **2.3 Different Faces of Law in Development Economics**

*Analysis of Agenda 2030 and scholarly discussions pertaining to it, distinguish domestic law, the rule of law and international law in development contexts.*

First, most commonly, development economics literature focuses on domestic law of the developing states, and the tools by which it can support economic development. For instance, according to Kennedy and Stiglitz (2013), the key legal ideas, embedded into the post-war vision of economic development, concerned public law (e.g., establishing the legal framework of industrialisation and local industry’s support, public finances and budgeting, as well as establishing functional criminal and military

justice systems) (p.25). Development was manifested in the modernisation theory that sought to capture the properties of the legal system as a whole without emphasising particular fields of law (Davis and Trebilcock, 1999). Following the meta-research by Davis and Trebilcock (1999), there have been two categories of studies on the relationship between law and development (p.23). The first one tends to follow the modernist expansive approach, emphasising cross-sectional examination of multiple factors of development related to the legal system, law-making, institutional development and public administration. The second category focuses on the relationship between development and particular fields of law (commercial law, taxation, social welfare legislation, criminal law) and the complex regulations of particular issues (e.g., the protection of property rights, enforcement of contracts).

Second, it is worth mentioning that the substance of the abovementioned effort to capture the properties of the domestic legal system is close to the idea of the rule of law. Despite its “essentially contested” nature, the concept of the rule of law is repeatedly addressed in both the Agenda 2030 and the new European Consensus on Development as a necessary prerequisite of sustainable development (UN, 2015) (Council of the EU, 2017). Neither of the above documents, however, defines the rule of law. In theory, at least three broad approaches to the concept can be distinguished, namely the formal, the substantive and the institutional perspectives. The referral to the key premises behind each of the above perspectives is important for developing an in-depth understanding of the rule of law concept, as contained in the Agenda 2030 and the new European Consensus on Development.

The core of the formal approach stems from the dichotomy between the “rule of men” and “rule of law” conditions of the government. Hence, major adherents to this approach, such as Friedrich Hayek and Joseph Raz, emphasised clear, prospective and predictable rules that effectively bind the government as the key component of the rule of law (Craig, 1997). Additionally, in his *Essays on Law and Morality*, Raz (1979) distinguished

open, stable and clear rules of law-making, independence of the judiciary and its review powers, courts' accessibility and the limited discretion of the crime-preventing authorities as the necessary components of the rule of law. The impressive formality of such conceptualisation of the rule of law is manifested by the fact that Raz *'readily admits that the rule of law could be met by regimes, whose laws are morally objectionable, provided that they comply with the formal precepts that comprise the rule of law'* (Craig, 1997, p.468). The adherents to the substantive perspective of the rule of law argue that the formalist view thereof contributes to the government's *"rule by law"*, rather than binding the state to treat individuals in an acceptable way (Tamanaha, 2003, p.92). In British legal scholarship, a comprehensive conceptualisation of the rights-based approach to the rule of law was developed by Lord Tom Bingham. According to his conceptualisation, at the basic level the rule of law requires that all persons within the state, whether public or private, *"shall be bound by and entitled to the benefit of laws, publicly made, taking effect (generally) in the future and publicly administered in courts"* (Bingham, 2011, p.13). The second level of the model embraces several normative principles, such as the clarity of laws, everybody's equality before the law, limited discretion of authorities and fair adjudicative procedures. Third, emphasising that the genuine rule of law shall go beyond the formal precepts, Lord Bingham distinguished adequate protection of human rights and a state's compliance with its international obligations as the necessary substantive elements of the rule of law (Bingham, 2011). Finally, as mentioned by Gianluigi Palombella (2010), *'the rule of law is an institutional ideal concerning law'*, hence, it requires an emphasis on institutional development and capacity-building. An insight into the definitions of the rule of law by key international organisations, such as the UN, OSCE and the Council of Europe (CoE), demonstrates their emphasis on substantive components of the rule of law. Thus, the UN documents refer *inter alia* to the *'accountability to laws, consistent with the international human rights norms and standards'*, *'participation in decision-making'*, *'strengthening compliance with international law'*,

*'fostering an enabling environment for sustainable human development'* and *'empowering women and children'* (UN, 2017) (UN Secretary General, 2012). The linkage between the rule of law, democracy and human rights is also underlined in numerous OSCE documents, such as the Helsinki Final Act, as well as the Venice Commission's Rule of Law Checklist (CoE) (Conference on Security and Cooperation in Europe, 1975) (European Commission for Democracy through Law, 2016). The substantive approach to the rule of law is also featured in the 2014 EU Rule of Law Framework, to great extent based on the consensual approach to the rule of law, coined by the Venice Commission (European Commission, 2014). Notwithstanding the above focus on the substance of the rule of law, a narrow *"institutions only"* approach thereto continues to represent a key challenge for international rule of law promotion activities due to its failure to take into account the peculiarities of broad socio-political contexts (Erbeznik, 2011).

Third, a crucial development with regard to the rule of law has been the growing attention to the international rule of law (addressed in the Agenda 2030) and the interfaces between international and domestic rule of law. Examining the application of the international rule of law concept, Simon Chesterman (2008) linked it to three crucial areas of international organisations' activities (human rights, development, and peace and security) and the internal operations of international organisations. As argued by Machiko Kanetake (2016), international law embraces three types of relationships, namely horizontal interstate relationships, the government's authority *vis-à-vis* individuals and non-state actors, as well as the authority of international institutions, on the basis of international law. Pursuant to her research, the major interfaces between the international and domestic dimensions of the rule of law involve national legislative and judicial practices' shaping of international customary law; the domestic application of international law, as well as normative, political and conceptual interconnections, such as the states' political interpretation of international law norms (Kanetake, 2016).

The above points to the importance of international law and its observance in global governance for sustainable development and beyond. Agenda 2030 repeatedly reaffirms participating states' commitment to international law, specifically underlining the consistency with the states' rights and obligations under international law and their responsibility to 'respect, protect and promote human rights and fundamental freedoms for all' (UN, 2015). Pursuant to the Venice Commission's Rule of Law Checklist (2016), a state's compliance with international human rights law (including the binding decisions of international courts) and the presence of rules on human rights obligations' implementation to domestic legislation represent the essentials of the legality component of the domestic rule of law. Furthermore, in the new European Consensus on Development, the Council refers to numerous international law standards beyond human rights, such as the Paris Agreement on Climate Change or the New Urban Agenda, to be implemented in the EU and promoted externally (Council of the European Union, 2017).

To sum up, contemporary policy documents in the domain of international development offer insights into both the legal system-wide (substantive and institutional perspectives of the rule of law) and sector-specific properties' effects on development. The analysis of major development policy frameworks and secondary sources reflects strengthened attention to the interfaces between domestic and international law, as well as domestic and international rule of law. The understanding of the substance of various faces of law in respective policy documents and broader debate is essential for mapping the law-sustainable development nexus in development economics theories and the Agenda 2030 and the new European Consensus.

### **3. Mapping the Law-Development Nexus: Development Economics Theories**

This section of the article is dedicated to exploring theoretical perspectives on the nexus between (sustainable) economic development and law in a range of most broadly applied development economics theories ("integration through law",

modernisation theory, international dependency and world systems theories, neoclassicism and governance). As mentioned previously, the key task of development economics is to explain the factors behind the development gap, defined as the difference in levels of development between the world's richest and poorest countries (Roland, 2016, p.3). Hence, development economics theories tend to explore the relationship between various domestic and international factors and development, for example macroeconomic factors, the role in global economy, institutions and climate. Given the fact that many older and contemporary development economics theories (e.g., modernisation, neoclassicism and governance) distinguished the substance of domestic laws and the properties of respective legal systems (the rule of law) as an important factor of development, the insights from the respective theories are highly relevant for exploring the law- sustainable development nexus in Agenda 2030 and the new European Consensus. Furthermore, the exploration of respective theories is relevant due to the fact that the theoretical assumptions about the interplay between law and development determined the design of development assistance programs in various parts of the world. Crucial examples thereof would be the ambitious U.S-led Law and Development Movement of the 1960s, based on the modernisation theory, and the World Bank's Structural Adjustment Programs (SAPs), lying behind the Washington Consensus (both the modernisation theory and the Washington Consensus will be considered in-detail throughout the chapter). Importantly, aiming to illustrate the cyclical nature of the views as regards the interplay between law-related factors and development, the study will also shortly refer to the predominantly macroeconomic factors-focused theories, such as the international dependency and world systems theories.

#### **3.1 Integration through Law" and "Modernisation": the Central Role of Law**

The *momentum* for the studies of the role of law in facilitating peace and economic development resulted in the post-War zeal for creating a peaceful and prosperous Europe. Pursuant to

Kennedy and Stiglitz (2013), in the early post-War period law was predominantly viewed as a means of implementing specific (usually, short-term) policy objectives, such as promotion of savings, investment and industrialisation, improvement of labour productivity and the expansion of local supply and demand. As it will be illustrated, the above goals were to a great extent consistent with the economic nationalism paradigm, offering a strictly instrumental vision of law.

Simultaneously, it is worth noting that the idea of “integration through law” lies at the heart of the post-War European Economic Community (EEC) project. The “integration through law” theory is the major theory of European integration that views law as a key means to create the constitutional identity of the EEC as both a peace- and economic-development oriented project. According to the researchers of the famous “Integration through Law” research project Mauro Capelletti, Monica Seccombe and Joseph Weiler (1986), the key dimensions of such identity, facilitated by the legal integration, include free movement of goods and persons (socio-economic dimension); common foreign and security policy (the political dimension); human rights (moral dimension) and education (cultural dimension) (Capelletti et al 1986). Reflecting on the process of European integration, early before the adoption of the Maastricht Treaty, Renaud Dehousse and Joseph Weiler (1990) emphasised the ‘double’ role of law in supranational EU: of both an “object” and “agent” (not even “means”) of integration (p.243). At the same time, following the above-mentioned landmark “Integration through Law” study, the peculiarities of the EU legal system (e.g., the national reception of *acquis communautaire*) started to shape the argument as regards the nature of the Union and thereby significantly impacted EU studies (Capelletti et al, 1986). Recently, the overlapping crises, encountered by the Union, gave a new impetus to the debate on the role of law in countering the crises and facilitating EU integration. According to Loic Azoulai (2016), the key current difficulty is to pursue integration in the context of ‘widespread mistrust in the positive force of law’ and ‘increased forms of heterogeneity, inequality and exclusion” (p.450). To overcome the challenge,

Azoulai (2016) suggests refusing from the legalistic stance on integration and understanding it primarily as ‘transfers of loyalty among Member States and their peoples as part of the common whole’ (p.456). This implies *inter alia* stronger attention to various forms of interconnectedness between states, their constituents and citizens, as well as strengthened responsibility for both individual and collective choices (Azoulai, 2016).

Notwithstanding the uncertainty of the EU’s future as an “integration through law” project, its history can be viewed as a successful realization of the law-centric grand modernisation/ development project. This was not, however, the case for the first Western attempt to “export” its substantive laws and institutions to Latin America and Southeast Asia under the auspices of the Law and Development Movement (LDM) of the 1960s (World Bank Group, 2012). The key conceptual foundation for the LDM was represented by the modernization theory (Marion Levy, Walt Rostow and David Apter). Fundamentally, the major (and highly ambitious) belief, underlying the modernization theory, is the existence of a universal transformative social development path which all societies go through (Rostow, 1959). Hence, pursuant to classical modernisation theory, the key reason behind societies’ underdevelopment deals with their conventional economic, political and socio-cultural structures that require going through an evolutionary transformative and irreversible process of modernisation that developed states already underwent (Rostow, 1959). Seeking to facilitate this process, the LDM focused on law as an instrument that can be used to reform societies, where lawyers and judges would play the role of “social engineers” (World Bank Group, 2012).

Thus, the LDM focused on promoting the traditional rule of law “menu”, involving changes to substantive laws, institutional reforms and the launch of the Western-style legal education (Carothers, 2006). It is crucial to mention that, despite the broad focus of the modernisation theory, the LDM barely aimed at promoting socio-economic or political development. Subsequently, the “homogenising” or “westernising” nature of the LDM, the lack of unifying objectives (such as



economic development) and state-centrism led to the collapse of the LDM.

Thus, the “integration through law” and “Law and Development Movement” exemplify the law-centric approaches to development. It is doubtless that the LDM experience effectively challenges the “omnipotence” of legal structures’ transplantation and “homogenising” power of law. Furthermore, whereas the “integration through law” has long been regarded as ultimate success, current “multifaceted” crises in the Union evidently challenge the power of positive law as an agent of integration, in line with anti-globalisation and economic nationalism, addressed later on.

### 3.2 International Dependency and World Systems Theories

As mentioned previously, the paper aims to demonstrate the cyclicity of the representation of law-development nexus in development economics theories before the 1990s. Emerging directly following the collapse of the LDM, both these theories expectedly focus on development factors, different from law. Thus, the central assumption of the dependency theory is that the key reason behind the development gap deals with the countries’ divergent roles in the global system of economic interdependencies (Reyes, 2001). According to the Prebisch-Singer thesis that initially gave rise to the theory, such variation is to a great extent determined by the advantage developed countries assume in terms of trade (in simplest words, defined as a ratio of export prices to import prices) as compared to developing countries (Harvey et al, 2010). A more extreme view is that dependency theory encompasses the Marxist vision of the dominant world of capitalism, reliant on a “division of labour” between the “core” rich countries, “semi-periphery” and periphery. In the contemporary world, the “core” countries refer to industrialised Western countries that benefit from political and economic power they exercise vis-à-vis the “semi-periphery” and “periphery” countries. Among the “core countries” Chase-Dunn, Kawano and Brewer (2000) mentioned, for instance, the U.S., Canada, Germany, Austria, Belgium, the UK and Japan. The notion of “semi-periphery” encompasses

industrialising developing countries that possess the characteristics of both the “core” and “periphery countries”, such as Argentina, India or Mexico. Finally, the periphery countries are the least developed ones, lacking involvement into the global trade and strong institutions, such as, for instance, Kazakhstan, Mozambique, Jamaica and Liberia. To address the development gap, stemming from the respective divergencies, one of key dependency theorists Paul Prebisch (1950) developed an “inward-looking” protectionist model of development, based on the evolution of the state’s development, investment and industrialisation policies. The dependency theory also suggested boosting internal demand by the increase of wages and social benefits (Reyes, 2001). Importantly, dependency theory is perceived in literature as having a bright anti-globalisation stance and viewing international trade agreements and multinational corporations as the structures, benefiting solely the “core” countries (Dietz, 1980). In view of the rapid evolution of the international system in the second half of the 20<sup>th</sup> century, the theory was severely criticised for juxtaposing domestic markets to the system and focusing solely on economic factors of development.

The internationalisation of trade and financial governance in the 1960s provided the foundation for the evolution of the world systems theory. One of the prominent representatives of the world-systems approach Immanuel Wallerstein (1976) addressed “world system” as a social system that has “boundaries, structures, member groups, rules of legitimation and coherence, and whose “life is made up of the conflicting forces which hold it together by tension and tear it apart as each group seeks eternally to remold to its advantage” (p.230). While the world systems theory is to great extent based on the previously mentioned “division of labour” between “core”, “semi-periphery” and “periphery” countries, its major focus goes beyond nation-states to encompass intra- and inter-regional economic ties, shaped by the abovementioned conflicting forces (Reyes, 2001). Aiming to substitute the modernisation theory, the world-systems approach tried to tackle one of key gaps therein by focusing on the international structures that

constrain development. Despite such emphasis, similar to the dependency theorists, the world-systems approach offers inward-looking “recipes” of promoting development. Derived from the distinction between the “core” and the “periphery” countries, such “recipes” include economic diversification; strong central governments, controlling extensive bureaucracies and complex state institutions; industrialisation and specialisation in information, finance and service aspects of economy (Reyes, 2001).

Thus, the dependency and world systems theories definitely challenged the previously-considered law-centric approaches to development by focusing on the international trade flows and inter-regional economic ties as factors of development. In the era of rapidly evolving globalisation and network governance, the above factors remain to be emphasised by Agenda 2030 and the new European Consensus on Development.

### **3.3 Neoclassicism, New Institutional Economy, New Political Economy and the Washington Consensus**

Following the era of non-account for law in economic development and the strive for strong government, the neoclassical paradigm, and new institutional and political economy had been re-shaping the dominant law and development discourse over the period from the 1970s to the 1990s. As argued by Chantal Thomas (2011), in law-related terms, the neoclassical vision of the law-development nexus is grounded on Weberian and Friedrich Hayek’s ideas as regards the nature of law’s impact on economic development. In terms of his development sociology theory, Max Weber viewed the peculiarities of European legal systems (rationality, the independence of a lawmaking process, clear property titles) as compared to India, Islam and China as important prerequisites of the rise of “industrial” or “bourgeois” capitalism (Thomas, 2008). Hence, the Weberian vision of capitalism-prone features of the European legal systems refers to some of the consensual dimensions of the rule of law (as distinguished by the Venice Commission), such as legality, legal certainty and authorities’ independence and impartiality. The rule of law

was also a centerpiece of the Hayek’s concept of liberty under the minimum government’s impact and maximum conditions for ‘fulfilling individual creative freedom’ (Thomas, 2011, p.974). Hence, both “liberty” and “limited government” components of the rule of law are linked to economic development, being understood as part of the environment that facilitates individuals’ creativity and proneness to association.

Conceptually linked to Hayek’s vision of liberty, the economic foundation of neoclassicism was significantly influenced by the Ronald Coase’s theorem, substantiating the link between markets’ self-regulation and economic development. Pursuant to Chantal Thomas (2011), the Coase’s works laid the foundation for New Institutional Economics (NIE) that brought together neoclassicism, on the one hand, and the earlier perspectives from institutional and political economy, respectively (pp.977-978). Thus, the key assumption behind the NIE has been that the legal and institutional environment can exert either an impeding or conducive effect on economic development. According to major NIE theorists Douglass North and Robert Thomas (1973), the key to economic development lies in ‘efficient economic organisation’ that is, in turn, shaped by efficient institutions. As defined by North (1991), such institutions shall be understood as ‘humanly devised constraints that structure political, economic and social interaction’ (p.97). In NIE terms, ‘constitutions, laws and property rights’ represent the pivotal formal institutions that allow capturing the gains from trade, avoiding negative externalities and lowering transaction costs (North, 1991). Incorporating the theory of institutions into economics, the NIE conditioned the major donors’ shifting their attention from economic assistance to political and economic institutions’ development programs. In turn, since functioning institutions require clear and stable laws as the foundation for their operation, the growing popularity of the NIE led to a surge in programs, tackling the rule of law in general, and its institutional dimension, in particular. To exemplify this statement, one can refer to the evolution of aid to Sub-Saharan Africa over the period from 1947 to modern era, as highlighted by Deborah Bräutigam and Stephen Knack (2004),

who underline a shift to institution-focused aid to the region in late 1970s.

Pursuant to Thomas Carothers (2006), the New Political Economy (NPE) represented an immediate extension of the NIE, focusing on international trade and investment policies and law (pp.3-4). Continuing the neoclassical argument as regards limiting a state's intervention to the economy, the pioneers of the NPE Anne Krueger (1974) and Jagdish Bhagwati (1982) argued against strong governmental controls over international trade and protectionism as an economic development strategy. Appointed by the World Bank as a Chief Economist in 1982, Anne Krueger played an important role in streamlining the NPE to the activities of the World Bank. Greater attention to intra-state political-economy factors subsequently led to the Bank's shift from financing investments to the launch of macroeconomic policy-based/conditional lending ("structural adjustment programs", "SAPs") (Thomas, 2011, p.991). Such shift was reflected *inter alia* in the famous 'Washington Consensus' of the early 1980s, containing ten development-oriented macroeconomic policy prescriptions. Following the neoclassical logic, the Consensus promoted limited governmental intervention to the economy by financial markets' liberalisation, leveling restrictions on FDI and the deregulation of the economy (World Bank, 1981). Despite the neoclassicism's emphasis on law and the amendments to laws which many of the SAPs required, the only explicit law-related aspect of the Consensus dealt with the property rights' protection (World Bank, 1981). Pursuant to Brian Tamanaha (2005), insignificant reflection of the neoclassical legal agenda in the Washington Consensus logically reflected the World Bank's instrumental approach to law as a means of economic development.

Concluding, the neoclassicism, the NIE and NPE approaches brought the law and development field forward, substantiating the interplay between the rule of law (liberty and limited government), developed institutions and market efficiency. Departing from the "inward-looking" protectionist model of development, suggested by the dependency and the world systems theories,

the NPE opened up the debate as regards *international* development and the optimal development-prone international structures. By this, the considered theories created the preconditions for the "legal turn" in development and its strengthening internationalisation.

### 3.4 Governance

As argued by Tom Krever (2011), the implementation of the World Bank's early SAPs can be undoubtedly regarded as a failure, given the slow tempos of growth and sharpening socioeconomic inequalities in target countries in 1980s-early 1990s (pp.299-300). Pursuant to Susan Marks (2000), the opening of developing countries' economies to the free movement of goods and capital flows from the North outside the broader reforms' realm led to the magnified asymmetries in resources distribution (p.58). Under the lack of state's role in socio-economic development, the above inequalities multiplied social issues, such as poverty and unemployment (Krever, 2011).

Facing the above challenges, as well as the need to facilitate transition in post-Soviet countries, the World Bank referred to functioning institutions and related legal infrastructure as the preconditions of economic development under remaining markets' primacy. Thus, in its study 'The Sub-Saharan Africa: From Crisis to Sustainable Growth', the World Bank (1989) recognised international donor agencies' responsibility for enduring economic crisis in Africa, and distinguished the 'crisis of governance' as the key challenge to Africa's 'sustainable and equitable growth'. The key novelties, suggested in the Report, included people-centeredness and capacity-building, and an emphasis on the 'enabling environment' for industrialisation and agricultural production (World Bank, 1989). With respect to the present study, it is essential to mention that, despite mentioning 'sustainable' growth, the Report referred to the 'unlocking of Africa's mineral wealth', rather than the means to protect environment (World Bank, 1989, p.11).

By referring to the 'enabling environment' for growth, the Report laid the foundations for the Bank's 'discursive shift' to the governance model,

stipulated in its 1992 report 'Governance and Development'. Initially, the Bank addressed governance as 'the manner in which power is exercised in the management of a country's economic and social resources for development' (World Bank, 1992). Elaborating on the substance of good governance for sustainable development, the Bank (1992) mentioned 'predictable, open, and enlightened policy-making', transparency, accountability, professional ethos of bureaucracy, strong civil society and everyone's 'behaving under the rule of law' as the essential elements thereof. While the governance perspective preserved the Bank's *laissez-faire* stance to the market, states started to play an important 'facilitating role' in development. According to Tom Krever (2011), the Bank's shift to the governance paradigm led to the "legal turn" in its activities and the instrumentalisation of the rule of law as a principle, encompassing 'collective importance of property rights, respect for legal institutions and the judiciary'. As noted by Kennedy and Stiglitz (2013), the "legal turn" and emphasis on the rule of law in the World Bank-led development cooperation led to development professionals' increased attention to the two dimensions of developing states' law: constitutional law and private law. The logic of such emphasis is explained by the above branches' pivotal role in ensuring the 'enabling environment' for economic development and FDI. Once again, as it can be illustrated by cases of the World Bank's engagement in Africa, South-East Asia and the post-Soviet space, the "legal turn" in development led to the reshaping of the Bank's programs globally (Carothers, 2006).

### 3.5 Summary. Towards the "Twilight of Liberalism"?

The above analysis demonstrates that the introduction of the governance paradigm to the World Bank's activities conditioned the consolidation of two mutually supplementing currents of understanding the role of law in economic development: law as an instrument of development and law as self-standing value. The latter approach significantly broadened the World Bank's vision of the social dimension of economic development-oriented reforms, promoting

human-centeredness, capacity-building, education and countering inequalities. At the same time, the emphasis on law brought about the trend of the de-politicisation of politics. The inclusion of the rule of law "by default" into multiple policy documents and technocratically designed action projects", without going into the substance of the concept, threatens to devalue the concept and level the expected effects of the rule of law promotion projects. Thus, it is suggested to consider both dimensions of the law-development nexus in the Agenda 2030 and the new European Consensus on Development, dedicating special attention to the logic that underpins the instrumental aspect thereof.

Second, while researching the law- sustainable development nexus in modern context, it is essential to consider the range of trends, marked by the umbrella concept of the 'crisis of international liberal order' or, as put by Constantine Michalopoulos (2017), 'the twilight of liberalism'. For the purposes of this paper, it is worth mentioning several trends that seem particularly influential with respect to international development. First, as argued by Ran Hirschl, the recent phenomenon of the 'judicialisation' of politics creates the demand for the politics' repoliticisation (expressed *inter alia* by the European populist movements). As argued by Azoulay (2016), the respective phenomenon is tightly connected to the strengthening 'mistrust in the positive force of law' and the subsequent difficulties of using law as an instrument of economic development and integration. Quite naturally, the strengthening skepticism as regards international and regional legal orders is accompanied by the revival of economic nationalism, based on the assumption that the closing of economy to external influences represents the major means of economic growth. Furthermore, the crisis of liberalism involves challenging the global governance structures, including the environmental governance and aid governance (e.g., the U.S' withdrawal from the Paris Agreement on Climate Change and the U.S' intention to decrease the volumes of its official development aid, ODA). In view of the above, the trends, comprising the crisis of the international liberal order need to be considered with respect

to the implementation of the Agenda 2030, in general, and policy integration, in particular.

#### 4. Law-Sustainable Development Nexus in the Agenda 2030

This section of the paper is dedicated to analysing the law-sustainable development nexus in Agenda 2030, based on the above conceptual and theoretical insights. As it was argued previously, the Agenda is expected to contain at least a framework vision of the respective nexus, since it does not only set the Goals, but dedicates significant attention to policy integration instruments, such as inter-linkages between the Goals, macroeconomic policies' coherence and the PCSD. This statement can be substantiated by the fact that the Agenda 2030 is not accompanied by any implementing documents that would highlight the peculiarities of policy integration under its implementation. Thus, the section looks at the respective nexus, as contained in the visionary part of the Agenda, the Goal 16, the Goal 17 and the Means of Implementation section.

Following the Partnership pillar of Agenda 2030, the interlinkages and integrated nature of the Sustainable Development Goals are of crucial importance in ensuring that the purpose of the new Agenda is realised. By emphasising the sustainable nature of the aspired economic development, the visionary part of the Agenda automatically necessitates the inextricable interlinkages between economic growth, environmental protection and social cohesion (UN, 2015). Repeatedly expressing the UN Member States' commitment to international law, the Agenda puts democracy, good governance and the rule of law on an equal footing as factors, essential for sustainable development. The instrumental nature of the understanding of the rule of law, entailed into the visionary part of the Agenda 2030, can be additionally confirmed by the fact that the Agenda mentions the above values along with an 'enabling environment at national and international levels' (UN, 2015).

In this respect, it is also important to unveil the Agenda's emphasis on the multi-layer nature of the rule of law concept that goes in line with Agenda's aim to deliver impact at both domestic

and international levels. Apart from addressing the interplay between law and sustainable development directly, the 'Peace' axis of the Agenda's 'Vision' contains an emphasis on 'peaceful, just and inclusive societies, which are free from fear and violence' (the shortened version of the formulation of Goal 16) (UN, 2015). Continuing, the 'Peace' axis claims that 'there can be no sustainable development without peace, and no peace without sustainable development'. While the Agenda views 'peace, just and inclusive societies' as the foundation for international peace in a broader sense as an enabling factor of development, the Peace axis of the Agenda additionally confirms the vision of law as a means to attain sustainable development (UN, 2015). On a case-by-case basis, the above conclusion can be strengthened by the examples of targets that refer to the implementation/promotion of particular international law acts as a means to achieve economic, environmental or social objectives (e.g., target 8.b, 13.a, 14.c) (UN, 2015). However, despite the fact that the formulation of the Goal contains a reference to sustainable development, the targets and indicators, associated with the Goal, do not point to the interlinkages between the peace/governance and sustainable development agendas or the former's instrumental value for the latter (UN, 2015). This is problematic for two reasons. First, such formulation of the targets and indicators under Goal 16 immediately limits its policy integration potential at the EU and national levels. Second, the absence of the targets and indicators, lying at the crossroads of law and sustainable development makes it hard to monitor and evaluate the impact of Goal 16 on the broader objective of sustainable development.

This critique is highly relevant for target 16.3 which calls to '[p]romote the rule of law at the national and international levels and ensure equal justice for all', formulated in a way that means 'it is practically impossible not to reach them' (UN, 2015). While the indicators 16.3.1 and 16.3.2 doubtlessly relate to the concept of justice (targeting the proportion of the victims of violence, who reported their victimisation and the proportion of un-sentenced detainees within the prison population), the rule of law target (16.3)

does not reflect any of the considered theoretical approaches to the concept. Outside the umbrella rule of law concept, some of the targets under the Goal 16 (e.g., 16.6, 16.10) reflect the components of substantive and institutional approaches to the rule of law ('develop effective, accountable and transparent institutions at all levels', 'ensure public access to information and protect fundamental freedoms'). Nevertheless, the indicators assigned to the respective targets still barely reflect the scope of either the targets or the rule of law as an umbrella concept. This statement can be exemplified by referral to target 16.10 which encompasses the broad concept of the protection of fundamental freedoms, but in fact almost solely deals with public access to information and the protection of journalists. At the same time, some of the components can be found in the targets, accompanying other Goals (e.g., Goal 10 entails numerous indicators related to equality and non-discrimination, not speaking to the indicators of Goal 16) (Fiedler et al, 2015). Furthermore, Goal 16 barely refers to the international rule of law, limiting itself to the broadening and strengthening of developing countries' participation in global governance structures (16.8). Hence, important consensual rule of law components, lacking from the Goal 16, encompass (but are not limited to) legal certainty, public accountability of the authorities, judicial independence and impartiality, as well as the relationship between international and domestic law (apart from the Paris Principles relating to the status of national human rights institutions). Thus, Goal 16 does not contain an internally coherent vision of either the substance of the rule of law model to be promoted or the interplay between the rule of law and sustainable development. As explained by Nora Arajärvi (2018), the possible reason for the incoherence of the peace, justice and rule of law agenda in Goal 16 may deal with the politicisation and contested nature of the process of indicators' formulation, including *inter alia* the competition between the UN agencies, pushing for their agendas. Furthermore, the limited nature and incoherence of the peace, justice and rule of law agenda in Goal 16 is likely to be determined by the above values' contestation by non-Western powers.

While emphasising the interlinkages between the Goals in its 'Vision' and 'Means of Implementation' sections, the Agenda barely provides this emphasis with substance. Not referring to the interlinkages between the Goals, Goal 17 contains an emphasis on policy coherence in two dimensions: 'Strengthen the means of implementation and revitalise the global partnership for sustainable development' (UN, 2015). First, target 17.13 calls for 'enhancing macroeconomic stability, including through policy coordination and policy coherence' (UN, 2015). Second, target 17.4 introduces a novel concept of policy coherence for sustainable development (PCSD) that is specifically designed to emphasise the interrelation between the growth, environmental protection and social cohesion dimension of sustainable development, and 'cross-cutting synergies' (UN, 2015). Additionally, the PCSD seeks to help the governments to reconcile the objectives of their domestic policies with the ones agreed internationally, and counter the negative externalities/spillovers of the former (Dohlman, 2018). Notwithstanding the above, neither the Agenda 2030, nor the OECD elaborations on the PCSD mention the integrated nature of the Goals or the inter-linkages between the Goals, including the law and sustainable development nexus. Similarly, the 'Means of Implementation' section of Agenda 2030 distinguishes 'domestic resources' mobilisation, private business activities and international trade as 'cross-cutting prerequisites for sustainable development', without mentioning the integrated nature of the Goals or the PCSD (referring instead to the 'system-wide coherence and coordination and coordination of sustainable development policy') (UN, 2015).

The analysis reveals that despite the Agenda's 2030 emphasis on the integrated nature of the Goals and the PCSD, the Agenda does not conceptualise the interlinkages between the Goals, including *inter alia* the law-development nexus. While different parts of the Agenda address international law and the rule of law at the national and international levels from an instrumental standpoint and as a self-standing value, the document does not offer a coherent vision of the peace, governance and rule of law

agenda, and its linkage to the three-dimensional sustainable development model. Similarly, Goal 16 does not offer any targets/indicators, lying at the crossroads of rule of law and economic development (e.g., transparency of competition and public procurement rules). Notwithstanding the above, as compared to the MDGs, the inclusion of Goal 16 in Agenda 2030 as the consensual normative framework for global governance represents a bright example of a “legal turn” in development economics. Due regard shall, however, be taken of politics’ re-politicisation, strengthening mistrust into positive law and economic nationalism as the trends, capable of negatively impacting the upholding of values, stipulated by Goal 16, rather than the implementation of its often insufficiently ambitious and vague targets.

### **5. The New European Consensus on Development: Stronger Role for the Rule of Law?**

The new European Consensus on Development represents the cornerstone of the EU’s implementation of the SDGs. The Consensus stipulates that the development policy is an inextricable part of the EU’s external action, and refers to the promotion of democracy, human rights and the rule of law as the guiding principles and objectives thereof. Emphasising the rights-based approach to development cooperation, the Consensus provides for the Union’s and Member States’ equality-oriented “no-one is left behind” policy (Council of the EU, 2017). Such provisions of the Consensus reflect the conceptualisation of values as foreign policy objectives, set in Art.21 TEU that is expected to have significant impact on the EU’s case law, especially with respect to balancing general and policy-specific objectives of the EU’s external action.

In the Consensus’ part, entitled ‘The EU’s Response to the 2030 Agenda’, the Union approaches the rule of law as an independent value that has to be promoted in terms of the EU’s political dialogue with third countries and civil society support therein (Council of the EU, 2017). This understanding is complemented by a more instrumental emphasis on the rule of law, human rights, migration, youth and gender as ‘cross-cutting elements to achieve sustainable

development and accelerate transformation’. In line with the Agenda 2030, the Peace axis of the Consensus reaffirms the Union’s and Member States’ intention to promote ‘the universal values of democracy, good governance, the rule of law and human rights for all’ as vital for sustainable development (Council of the EU, 2017). As well as the Agenda 2030, the Consensus does not define the scope of the rule of law either from the domestic or international perspective, but connects it to a range of other concepts and issues. In line with the commitment to justice for all, stipulated in Goal 16, the Consensus predominantly links the rule of law to ‘efficient, transparent, independent, open and accountable justice systems’ that serve *inter alia* to counter crime, including urban crime and violence, as well as transnational organised crime (Council of the EU, 2017).

Furthermore, the Consensus calls for strengthening the security-development nexus in the EU’s external action and using transitional justice- and rule of law-related efforts in terms of conflict resolution, peace-building and state-building. The Consensus also recognises the link between poverty and conflict, viewing the former as an important trigger of the latter, and emphasises the need for stronger coordination between the development and humanitarian policies of the Union (Council of the EU, 2017). Generally, the document points to the different aspects of coherence, including the coherence between the EU institutions and Member States, the coherence between the application of the Consensus and the Neighbourhood Policy, as well as Policy Coherence for Development. It does not, however, mention the interlinkages between the Goals, their integrated nature or the PCSD concept, thus, making it unclear whether the Union is going to apply the respective concepts in re-framing its development cooperation in accordance with Agenda 2030.

Ultimately, the EU’s commitment to the SDGs conditioned a crucial restructuring of the EU’s development policy in accordance with the axes of Agenda 2030 and the Goals. Following the so far dominant governance paradigm in development economics, reinforced by the Agenda 2030 and

Art. 21 TEU, the Consensus distinguishes the promotion of the rule of law as one of the key objectives of the Union's external action (TEU, Art.21). While formally the Consensus does not use the concepts of the inter-linkages between the axes or Goals, or the Goals' integrated nature, in practice, it refers to lots of cross-cutting policies. Similar to the Peace axis of Agenda 2030, the document undoubtedly reflects the trend to development policy's securitisation, and strengthening role of the rule of law/transitional justice as a means of conflict resolution and state-building. The immediate law-sustainable development nexus remains problematic, especially given the uncertain law-environmental protection nexus in development economics; the international aspects of the rule of law and the future of PCD in the EU's development policy context.

### Conclusions

The aim of this study was to critically analyse the law-sustainable development nexus in the Agenda 2030 and the new European Consensus on Development, utilising the insights from development economics theories. The history of post-war development economics theories showcases the cyclicity of the understanding of the role law plays in economic development, ranging from the boundless optimism of modernisation theory to ignorance in dependency and world systems terms and, once again, the "legal turn" within the governance approach. Thus, it reflects the co-existence and the interplay of two key understandings of law (rule of law) in development economics: "law as an instrument of economic development" and "law as a self-standing value in development context".

The analysis of Agenda 2030 demonstrates that, notwithstanding the document's emphasis on the Goals' integrated nature, it does not offer a coherent vision of the peace, governance and the rule of law agenda, and its linkage to the three-dimensional sustainable development model. Addressing law/the rule of law both as an instrument of economic development and self-standing value, the document emphasizes its importance with respect to ensuring peace, security and stability, rather than sustainable

development *per se*. Subsequently, an important deficiency of the Agenda is the lack of targets/indicators, lying at the crossroads of economic and political development. This deficiency is also reflected in the non-recognition of the role of law in the Agenda's novel concepts of PCSD and the coherence of macroeconomic policies. Moreover, while emphasising the signatories' commitment to international law and mentioning the promotion of compliance to multiple international law documents across the Goals, the Agenda does not suggest a coherent strategy of utilising international law/international rule of law as a means of implementation of the Agenda, in general, and with respect to promoting environmental protection and social cohesion, in particular.

In line with the so far dominant governance paradigm in development economics, reinforced by Agenda 2030 and Article 21 TEU, the new European Consensus on Development distinguishes the rule of law promotion as the key direction of the Union's external action. Addressing a range of cross-cutting areas for development (e.g., migration, youth, gender), the new Consensus also does not link law/rule of law to the challenge of sustainable development. Similar to Agenda 2030, the new Consensus predominantly links the rule of law to the peace and security Agenda, emphasising the strengthening of the Union's role in countering the situation of fragility; conflict resolution and peace building. Thus, similar to the Agenda, the new Consensus lacks substantial immediate link between law/the rule of law and sustainable development, and using law as an instrument of development. Furthermore, problematic remains the role of fundamental values and law in the envisaged reform of the EU's long-standing practice of Policy Coherence for Development. To sum up, notwithstanding the modern attempt at policy integration and cross-policy synergies at both the global and European level, the implementation of both Agenda 2030 and the new European Consensus on Development would benefit from a more coherent vision of the nexus between law and economic development.



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