**Part IV De Feyter Thursday AM**

The text of Part IV – the institutional part of the convention - remains close to the initial version of the draft Convention. Some participants have suggested replacing the whole of the current proposal by a treaty monitoring body that follows the model of existing human rights treaties. Such a body would review reports that States are treaty bound to provide, might be empowered to deal with inter-State complaints and perhaps at a later stage with individual complaints.

As the Chairperson-Rapporteur of the Working Group has clarified on numerous occasions, the normative part of the Convention is to a very large extent based on existing international law, including international human rights law. The proposal on the institutional part of the text, however, is to some extent novel, and inspired by some of the specific features of the right to development. It may therefore be useful to revisit the rationale of the current proposal.

The OHCHR questionnaire sent out at the very beginning of the drafting process queried States and other stakeholders on the preferred format of the legally binding instrument: should it take the form of a standard treaty or of a framework agreement? Few participants expressed a strong preference, and it was suggested that the decision on the format could be taken during the drafting process.

The current draft convention has a hybrid format. The normative part of the draft is specific and contains a detailed typology of State obligations inspired by standard human rights treaties as interpreted by the treaty monitoring bodies. The proposed institutions however resemble the institutional set-up found in existing framework conventions. Perhaps the best-known example of a framework agreement is the Framework Convention on Climate Change which preceded the Paris Agreement. Framework conventions are legally binding instruments that tend to be adopted when there is agreement that an issue is of importance (e.g., ‘of common concern to humanity’ – the proposed preamble of the draft Convention suggests that the right to development is of common concern to humanity) and needs to be addressed, but that further normative clarification is required, or political disagreement remains on how best to address the issue. From an institutional perspective, typically a conference of the parties is created as a forum to continue dialogue with a view to achieving consensus together with a compliance committee that focuses on assisting State Parties in achieving best practices. Part IV of the draft convention follows that model.

A conference of the parties is not unique in international human rights law. The most recent ‘modern’ core human rights treaty, the Convention on the Rights of Persons with Disabilities already includes a conference of the parties. Notably, in the most recent draft of the Business and Human Rights Treaty a conference of the parties is provided for as well. A conference of the parties could serve as the global forum for discussions on development and human rights. Given that the realization of the right to development requires the cooperation of a wide variety of stakeholders, the conference would ideally be broadly accessible: to State parties (who alone would have voting rights), but also to States that are not a party to the Convention, so that they remain involved in the dialogue of the right to development. In addition, the Conference of the parties should be easily accessible to non-State actors, given their significant impact on the realization of the right to development, - non-State actors being broadly defined as including intergovernmental organisations, civil society the epistemic community – not unlike the Intergovernmental Working Group today.

Apart from acting as a forum for debate, the conference of the parties could examine implementation by States (the draft suggests that States could provide reports on a voluntary basis) and engage in law-making on issues pertaining to the right to development on which consensus is gradually achieved. Such additional ‘laws’, actually instruments, could take the form of protocols (as envisaged in Article 26) or soft law guidelines.

It is proposed that the conference of the parties is complemented by a compliance committee – that is called ‘Implementation Mechanism’ in the draft Convention (Article 27).

The Conference of the Parties is tasked with establishing at its first session the implementation mechanism including deciding on the number of members (the initial Commentary suggested five members as in the current Expert Mechanism on the Right to Development), the procedural rules and the details of the mandate. Some of the basic features of the future mechanism are nevertheless included in the draft Convention.

The proposed Implementation Mechanism is composed – as is the usual practice in human rights treaties - of individual experts. The composition of the mechanism is dealt with in subparagraph 2 of Article 27, which was revised as compared to the initial version of the draft convention regarding the need to ensure proper balance within the mechanism, considering suggestions made. The text now reads that consideration should be given to**,** inter alia, gender balance and equitable, geographic representation as well as to an appropriate representation of different legal systems.

Crucially the draft Convention provides that the objective of the Implementation Mechanism is “to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention”. In short, the purpose of the Implementation Mechanism is to assist states in removing obstacles to the realization of the right to development, at the request of the Conference of the Parties (for instance after having reviewed a voluntary report by a State party).

The same approach is taken in Article 27, paragraph 3c which triggered a few comments during the round of consultations. The proposed article 27 (3) does not provide for a complaints procedure. It enables the Implementation Mechanism to address situations where lack of cooperation by States involving a State party to the Convention adversely affects the right to development. Equally in this context, the Implementation Mechanism would seek to “facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention”. This language excludes any process of naming and shaming. The Implementation Mechanism’s review would result in observations and suggestions on facilitating the discharge of the duty to cooperate by States in a manner that helps realize the right to development better.

Article 27, para 3c focuses entirely on the duty to cooperate, and thus provides added value as compared to the existing human rights treaty bodies that focus on unilateral single State obligations. Domestic legal proceedings also face obstacles in dealing with inter-State cooperation given foreign State immunities. The focus in the draft Convention on the implementation of the duty will cooperate seeks to fill this gap, i.e., to add value to the existing human rights treaties competencies, rather than to duplicate.

The proposal in Article 27, para 3c is to start from the lived experience of individual and peoples as holders of the right to development. After all, the substantive test for any new global human rights instrument is whether it assists the rights holders in achieving better protection against threats to their human dignity. In practice, on the ground, the human dignity of rights holders is often affected not only by the domestic State, but also by third States (and non-State external actors). In such a situation, inter-State cooperation as provided for in the Convention will be required to achieve the best possible protection for the rights holders. More still needs to be done perhaps to operationalize this low-angle (from the bottom up) view of the duty to cooperate, and it is in this context that the Implementation Mechanism could play an important role in promoting best practices as to information-sharing, mediation, good faith negotiations and the like. This is also why at this stage it is more appropriate to establish a compliance committee that aims at encouraging best practices, and in situations of non-compliance focusses on recommending improvement, rather than a quasi-judicial mechanism focusing on violations.

It would be up to the Conference of the parties to decide at a later stage whether, in addition to the compliance committee, a complaints procedure on violations of the right to development should be established, through the adoption of an optional protocol.

Thank you.