
Editorial Comment

Room for Growth: The Contribution of International Law to Development*

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Abstract

A major opportunity exists for international law to engage at the conceptual heart of development, in the phase where broad principles and rights are implemented by States and other development actors. This would involve, principally, a more advanced institutional framework to refine and integrate the broad principles, as well as methods of enforcement to protect development rights and hold the various actors accountable. In addition, international law can and should do more to focus the resources of the international community on the issue of development, which would help to fortify the world's resilience to disasters and other emergencies.

1. A quick review of the world today reveals an abundance of challenges to peace, security, health and economic prosperity. From terrorism and extremism, to armed conflict, to infectious disease, to natural disasters and climate change—the international community need not look hard for trials. The complexity of these challenges defies uniform solutions. What they have in common, however, is that underlying factors—sometimes called “conditions conducive”—contribute to their impact and resolution. While no one is immune from disease, or attack or temperature or flood, the impact that such phenomena have, and the ability of governments, international organizations and other actors to address them, are not equal in all places. As the international community has witnessed first-hand, a disease outbreak in a poor, economically-depressed country wreaks far more havoc and is far more intractable than a similar epidemic elsewhere; those seeking to

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recruit and reap terror generally find far more success, and much less resistance, in countries with weak law enforcement and dysfunctional governance institutions, than in those with well-trained police forces, consummate judiciaries and responsible, respected leaders.

2. The unifying thread most aligned with these “conditions conducive” is the level of development achieved by the nation in which the challenge arises. Development is not a new issue, nor has it escaped the attention of policy-makers and world leaders. It appears in the Charter of the United Nations¹ and it also forms, along with peace and security and human rights, one of the three main pillars of the United Nations.² This year alone a number of major international meetings on development will occur, including the third International Conference on Financing for Development, to be held in Addis Ababa in July; the summit on sustainable development, to be convened at United Nations Headquarters in September; and the twenty-first session of the Conference of Parties to the United Nations Framework Convention on Climate Change, which will take place in Paris in December. As Secretary-General Ban Ki-Moon has stated recently, “[w]e are on the threshold of the most important year of development since the founding of the United Nations”, representing “an historic opportunity and duty to act, boldly, vigorously and expeditiously, to achieve a life of dignity for all, leaving no one behind”.³

3. The concept of development is multifaceted, encompassing, at least, economics, governance, education, infrastructure, the environment, human rights, health, gender and the rule of law.⁴ As the Millennium Declaration and the Millennium Development Goals demonstrate, development is not limited to one issue or area; rather, it requires an “environment—at the national and global levels alike—which is conducive to development”.⁵ This point was reinforced in the 2005 World Summit Outcome, where world leaders pledged action on a wide array of development areas, including, among others,

- 1 See Charter of the United Nations, Article 55, paragraphs (a) and (b).
- 2 See e.g. General Assembly resolution 60/1 of 16 September 2005 at paragraph 9 (hereinafter “World Summit Outcome 2005”). The preamble to the Charter also establishes that the United Nations shall “promote social progress and better standards of life in larger freedom” and, to this end that it shall “employ international machinery for the promotion of the economic and social advancement of all peoples”.
- 3 The road to dignity by 2030: ending poverty, transforming all live and protecting the planet, Synthesis report of the Secretary-General on the post-2015 sustainable development agenda (A/69/700, para. 161) (hereinafter “The Road to Dignity by 2030”).
- 4 Amartya Sen has also reasoned that the main focus of development is expanding the freedoms that people enjoy, and removing “sources of unfreedom”, such as poverty, poor economic opportunities, systematic social deprivation and repression. See generally Amartya Sen, *Development as Freedom* (1999). In his report *In Larger Freedom: towards development, security and human rights for all*, the Secretary-General also framed development as “freedom from want”. See Report of the Secretary-General of 21 March 2005 (A/59/2005) at para. 25–73.

resource mobilization, investment, debt, trade, education, agricultural development, science and technology, gender and health.⁶ The United Nations Conference on Sustainable Development (“Rio+20”) outcome document from 2012 (“*The Future We Want*”) similarly acknowledged “the need to further mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognizing their interlinkages, so as to achieve sustainable development in all its dimensions”.⁷ In the context of the General Assembly’s deliberations on the post-2015 development agenda, an Open-Ended Working Group on Sustainable Development Goals has also recently proposed “an integrated, indivisible set of global priorities for sustainable development” that focus on the eradication of poverty, and also include goals for health, gender, energy, employment, peace and justice, infrastructure and climate change, among others.⁸

4. While the issue of development—in its many forms and manifestations—may have aptly captured the attention of world leaders, for international lawyers, there is much work to be done. To the extent that international law is at its strongest when the incentives of its subjects align—and weakest when such incentives diverge or come into direct conflict—development provides fertile ground for cooperation. In its most straightforward terms, development is a mutually beneficial concept. The objective is to raise the tides and lift all boats. International law, with its unique structure and binding language, represents the levies, docks and canal works, channelling the waters and ensuring access and fair play for all involved. When done well, development activities guided by international law would maximize the strengths of the different actors, resulting in larger lives for the individuals under their auspices.

5. At the conceptual level, the interaction between development and international law has been a story of legal principles, economics, politics and social theory. Often,

5 See General Assembly resolution 55/2 of 8 September 2000 (hereinafter the “Millennium Declaration”).

6 See generally World Summit Outcome 2005, *supra* note 2, at paras. 17–68.

7 *The Future We Want*, Outcome document of the United Nations Conference on Sustainable Development (A/RES/66/288, annex, at para. 3).

8 Report of the Open-Ended Working Group on Sustainable Development Goals of 1 August 2014 (A/68/970, at para. 18) (hereinafter “Open-Ended Working Group Report”). It should be noted that the Open-Ended Working Group followed many of the recommendations put forth by the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda, which had recommended the merging of the development, sustainable development and climate change agendas into a single, streamlined agenda, that would encompass all of these elements and focus foremost on the eradication of poverty. See generally *A New Global Partnership: Eradicate Poverty and Transform Economies through Sustainable Development*, The Report of the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda (30 May 2013) (hereinafter “Report of the High-Level Panel of Eminent Persons”).

it has been difficult to separate these concepts conclusively. Over the years, there has been a significant commitment on the part of the international community to establish primary rules to guide development. While these have generally been elaborated as objective legal principles, they also emerged at particular moments and were associated with specific intellectual and programmatic movements. For instance, in the 1960s, this took the form of the so-called “new international economic order” (NIEO), which was framed largely in terms of the relationship between developed States and those emerging from decolonization or otherwise categorized as “undeveloped” or “developing”. From the 1972 United Nations Conference on Human Development in Stockholm to the present, the interaction has focused largely on the concept of sustainable development, with international law serving as the main source of principles such as inter-generational equity, common but differentiated responsibilities and precaution, among others. In the 1980s, the discourse shifted slightly to incorporate a specific right to development, reflected in the General Assembly’s Declaration on the Right to Development.⁹ In recent years, attention has focused to a greater extent on the relationship between the rule of law—at both national and international levels—and development.¹⁰ Together these interactions have contributed to the emergence of what might be considered an evolving international development law.¹¹

6. Despite this rather extensive history, the test for international law continues to be identifying and leveraging constructive entry points on the issue. Accordingly, international development law remains a significant work-in-progress. To date, the discipline has contributed to development in two main ways. The first, evidenced above, relates to principles, general rights and primary rules. The second main contribution has been at the other end of the spectrum, to the largely technical aspects of the issue. Development necessarily involves projects, programmes and investments, which necessitate the transnational movement of capital and other resources, as well as the establishment of institutions and myriad other bodies. International trade,

9 See General Assembly resolution 41/128 of 4 December 1986 (annex) (hereinafter “Declaration on the Right to Development”).

10 See Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International Levels, General Assembly resolution 67/1 of 24 September 2012 (hereinafter “Declaration on the Rule of Law”). The Declaration provides specifically that “the rule of law and development are strongly interrelated and mutually reinforcing, that the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law ...”. *Id.* at para. 7.

11 For an overview of International Development Law, see generally, Rumu Sarkar, *International Development Law: Rule of Law, Human Rights & Global Finance* (2009). For an earlier view see generally Oscar Schachter, *The Evolving International Law of Development*, 15 *Colum. J. Transnat’l L.* 1 (1976).

financial and monetary law provide a corpus of rules to guide such actions. Importantly, they also provides mechanisms to assist in the settlement of disputes. Various development institutions, such as the World Bank, World Health Organization, United Nations Development Programme (UNDP) and United Nations Children's Fund (UNICEF), for instance, are also active in concluding detailed financial and project assistance agreements with host States to facilitate the implementation of development-related activities.

7. While work at the two ends of the spectrum—the broad principles and rights, on the one side, and the technical rules, dispute settlement mechanisms and project agreements on the other—undoubtedly persists, a major opportunity also exists for international law to engage at the conceptual heart of the matter, in the phase where the broad principles and rights are implemented by States and other development actors, and where the elaboration of coherent secondary rules and supporting jurisprudence may help to facilitate, circumscribe and otherwise guide their activities. This would involve, principally, a more advanced institutional framework to refine and integrate the broad principles, as well as methods of enforcement to protect development rights and hold the various actors accountable for their concomitant obligations.

8. In addition, international law can and should do more, as a general matter, to focus the resources of individual States and the international community as a whole on the issue of development. Through concentrating increased engagement on the issue—not only in terms of attention and political capital, but also in terms of practical and operational resources—international law may help to fortify the world's resilience to disasters and emergencies, such as armed conflicts and other threats to the peace, including terrorism and disease outbreaks, that have proven so devastating, challenging and obdurate in recent years. A renewed focus from the international legal community on development could also lead to an honest discussion on the challenges faced by the discipline on matters of international peace and security, where, despite sometimes clear answers, international law has struggled to catalyse necessary action.

A rich, uneven history

9. The relationship between development and international law has rarely been straightforward.¹² The complexity and fragmentary nature of development, as well as its

12 For background on this relationship see generally Qerim Qerimi, *Development in International Law: A Policy-oriented Inquiry* (2012); Wolfgang Friedman, *The Relevance of International Law to the Processes of Economic and Social Development*, 60 *Am. Soc'y Int'l L. Proc.* 8 (1966); A.A. Fatouros, *Comments on International Law and Development*, 60 *Am. Soc'y Int'l L. Proc.* 18 (1966); Florentino P. Feliciano, *Some International Law Aspects of International Economic Development*, 4 *Phil. Y.B. Int'l L.* 49 (1974); Ivan Head, *The Contribution of International Law to Development*, 25 *Can. Y.B. Int'l L.* 29 (1987); Balakrishnan Rajagopal, *International Law*

resistance to easy definition, has contributed to this uneven history, as has the structure of international law, which has traditionally been focused on relations between States (rather than within them) and, at least in its traditional form, on the elaboration of international agreements reflective of the positivist approach to international law.

10. The Charter of the United Nations—the essential starting point for any examination of the post-World War II international legal order—attaches an integral importance to development by requiring the Organization, in its Article 55, to “promote (a) higher standards of living, full employment, and conditions of economic and social progress and development [and] (b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation ...”. Article 56 of the Charter also obliges all Member States to “pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”. Notably, Article 60 of the Charter vests responsibility for the discharge of Article 55 in the General Assembly and, under its authority, in the Economic and Social Council (ECOSOC).

11. Despite its clear mandate and rather lofty aspirations, ECOSOC has struggled to be as influential within its sphere of influence as, for instance, the Security Council has been with respect to matters of international peace and security. The reasons for this are manifold. It suffices to say that ECOSOC’s limitations reflect, to a large extent, the difficulty of bringing international machinery to bear on issues of development. Even in light of these challenges, however, following on Article 55 of the Charter, development issues have, since the inception of the United Nations, been the subject of international deliberations in various United Nations-related fora and conferences, some of which were addressed briefly above. These have fallen into what might be considered four main categories.

12. The first are the human rights instruments adopted by the General Assembly. These include the Universal Declaration of Human Rights,¹³ the International Covenant on Civil and Political Rights,¹⁴ the International Covenant on Economic, Social and Cultural Rights¹⁵ and the Declaration on the Right to Development.¹⁶ The Declaration was adopted on 4 December 1986 after a long process of deliberation in both the General Assembly and the United Nations Commission on Human Rights on the connection between development and human rights.¹⁷ It defines the right to

and the Development Encounter: Violence and Resistance at the Margins, 93 *Am. Soc’y Int’l L. Proc.* 16 (1999).

13 General Assembly resolution 217A (III) of 10 December 1948.

14 General Assembly resolution 2200 (XXI) of 16 December 1966.

15 *Id.*

16 *Supra* at note 9.

17 See e.g. General Assembly resolution 1161 (XII) of 26 November 1957; General Assembly resolution 2542 (XXIV) of 11 December 1969; Commission on Human

development as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”¹⁸ and establishes that “States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development”,¹⁹ including through taking measures to eliminate violations of human rights,²⁰ promote, maintain and strengthen international peace and security,²¹ and ensure equal opportunity.²² Without specifying detailed international legal obligations, the Declaration on the Right to Development also recognizes that the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter.²³

13. The second main category emerged out of the NIEO, beginning with the Declaration on the Permanent Sovereignty over Natural Resources²⁴ and the Declaration²⁵ and Programme of Action²⁶ on the Establishment of a New Economic Order, and culminating in the Charter of Economic Rights and Duties of States.²⁷ As mentioned above, the NIEO was framed largely in terms of relationships between developed and developing States, and it brought into focus certain differences with respect to economic, political and ideological approaches to development. The Declaration proclaims the determination of the Members of the United Nations “to work urgently for the establishment of a New International Economic Order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of

Rights resolution 4 (XXXIII) of 21 February 1977; Commission on Human Rights resolution 36 (XXXVII) of 11 March 1981.

18 Declaration on the Right to Development, *supra* note 9, at Article 1.

19 *Id.*, Article 3, para. 1.

20 *Id.*, Article 5.

21 *Id.*, Article 7.

22 *Id.*, Article 8.

23 *Id.*, Article 3, para. 2. The Declaration on the Right to Development does not elaborate further on this point; however, the reference in Article 3 clearly suggests a connection to General Assembly resolution 2625 (XXV) of 24 October 1970, whereby the General Assembly adopted the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.

24 General Assembly resolution 1803 (XVII) of 14 December 1962.

25 General Assembly resolution 3201 (S-VI) of 1 May 1974.

26 General Assembly resolution 3202 (S-VI) of 1 May 1974.

27 General Assembly resolution 3281 (XXIX) of 12 December 1974 (hereinafter “The Charter of Economic Rights and Duties of States”).

their economic and social systems”²⁸ and the Charter sets forth fifteen principles to govern “[e]conomic as well as political and other relations among States”, including, among others, respect for sovereignty, non-aggression, non-intervention, mutual and equitable benefit, fulfilment of international obligations, respect for human rights and international cooperation”,²⁹ as well as a number of specific provisions on issues such as the use and exploitation of natural resources, operations by transitional corporations, international trade and knowledge-sharing of science and technology.

14. A third category, which drives much of the present discussion, has focused on issues of sustainable development, incorporating elements of human rights, economic and international environmental law. The United Nations Conference on the Human Environment, held in Stockholm in 1972, resulted in the Stockholm Declaration, which set forth the concept of sustainable development and contextualized it within international law.³⁰ The United Nations World Commission on Environment and Development, also known as the Brundtland Commission, was established by the General Assembly in 1983 “[t]o propose long-term environmental strategies for achieving sustainable development to the year 2000 and beyond”.³¹ Its report, titled *Our Common Future*, identified a number of key institutional and legal changes necessary for achieving sustainable development.³² Twenty years after Stockholm, in 1992, the United Nations Conference on Environment and Development (“Earth Summit”) convened to produce *Agenda 21* and the Rio Declaration.³³ The Commission on Sustainable Development was established by ECOSOC as an institutional arrangement to follow-up on *Agenda 21* and the Earth Summit.³⁴ (The United Nations Framework Convention on Climate Change, which had been negotiated under the auspices of the General Assembly, also opened for signature at the conference). The Rio Declar-

28 General Assembly resolution 3201 (S.VI) at preamble.

29 The Charter of Economic Rights and Duties of States, *supra* note 27, at Chap. I.

30 See Declaration of the United Nations Conference on the Human Environment (“Stockholm Declaration”) A/Conf.48/18/Rev.1. Principle 21 of the Stockholm Declaration provides that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”.

31 United Nation Environment Programme Governing Council decision 11/3 (1983); General Assembly resolution 38/161 of 19 December 1983, at para. 8(a).

32 See generally Note by the Secretary-General, General Assembly document A/42/427 (4 August 1987), annex, Chapter 12 (hereinafter “Our Common Future”).

33 Report of the United Nations Conference on Environment and Development, A/Conf.151/26 (Vol.I), Annex I.

34 Economic and Social Council decision E/1993/207 of 12 February 1993.

ation specifically referenced the right to development³⁵ and, in addition to reaffirming many of the Stockholm Declaration principles, established the precautionary principle³⁶ and the polluter-pays principle.³⁷ The Rio+20 outcome document from 2012, *The Future We Want*, reaffirmed the Rio Declaration³⁸ as well as the necessity of ensuring “full respect for international law and its principles” in the effort to achieve sustainable development.³⁹

15. The Millennium Declaration and its progeny represent a fourth category. The Declaration resolves to create an environment at the national and international level that is conducive to development,⁴⁰ and establishes certain “fundamental values” essential to international relations in the twenty-first century, including freedom, equality, solidarity, tolerance, respect for nature and shared responsibility.⁴¹ The eight Millennium Development Goals that crystallized out of the Declaration set forth time-bound objectives to be established by 2015—ranging from halving the proportion of people who suffer from hunger, to achieving universal primary school education to reducing the under-five mortality rate by two-thirds.⁴² Importantly, the eighth goal is to establish a global partnership for development. This objective was advanced through the Monterrey Consensus, which emerged out of the 2002 International Conference on Financing for Development,⁴³ as well as the Johannesburg Declaration on Sustainable Development⁴⁴ and the Johannesburg Plan of Implementation,⁴⁵ both of which were adopted at the World Summit on Sustainable Development in 2002. The 2005 World Summit and the 2010 Summit on the Millennium Development Goals, leading to Rio+20, offered further opportunities to progress toward the objectives set out in the Millennium Declaration.

16. The recent Declaration on the Rule of Law at the National and International Levels,⁴⁶ adopted by the General Assembly, also represents a notable example of the

35 *Id.*, Principle 3.

36 *Id.*, Principle 15.

37 *Id.*, Principle 16.

38 *The Future We Want*, *supra* note 7, at para. 15.

39 *Id.* at para. 7.

40 Millennium Declaration, *supra* note 5, at para. 12.

41 *Id.* at para. 6.

42 For information on the Millennium Development Goals, as well as the post-2015 development agenda see <http://www.un.org/millenniumgoals/> (accessed on 24 February 2015).

43 Monterrey Consensus on Financing for Development (2002) available at <http://www.un.org/en/events/pastevents/pdfs/MonterreyConsensus.pdf>.

44 World Summit on Sustainable Development, Johannesburg Declaration on Sustainable Development (A/Conf.199/20) at p. 1–5.

45 *Id.*, p. 6–72.

46 Declaration on the Rule of Law, *supra* note 10.

interaction between international law and development. The Declaration provides that “rule of law and development are strongly interrelated and mutually reinforcing” and that “the advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development ...”.⁴⁷ In his follow-up reports on strengthening and coordinating United Nations rule of law activities, the Secretary-General has emphasized that “[a]t the international level, the body of international instruments, including those concerning international trade and finance, climate change and protection of the environment and the right to development, establishes internationally agreed standards which support sustainable development”.⁴⁸

17. The activities of the international financial institutions, while not taking place directly under United Nations auspices, have also propelled the development agenda, as have myriad bilateral and regional arrangements. Regional development banks, including the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank have been particularly active in financing development projects in the areas of health and education, infrastructure, public administration, agriculture, and environmental and natural resource management, among others. With respect to bilateral interactions, the relationship between China and the African continent, in particular, has also been prolific.

18. In the context of the post-2015 development agenda, a concerted effort has been undertaken to combine these various threads into a single, coherent sustainable development agenda, which would include all of the relevant elements. Accordingly, the High-Level Panel of Eminent Persons on the Post-2015 Development Agenda has proposed a “universal agenda” driven by five transformative shifts: (1) leave no one behind; (2) put sustainable development at the core; (3) transform economies for jobs and inclusive growth; (4) build peace and effective, open and accountable institutions for all and (5) forge a new global partnership.⁴⁹ In his synthesis report, *The Road to Dignity by 2030*, the Secretary-General identified six elements essential to the transformational approach: (1) Dignity: to end poverty and fight inequalities; (2) People: to ensure healthy lives, knowledge and the inclusion of women and children; (3) Prosperity: to grow a strong, inclusive and transformative economy; (4) Planet: to protect our ecosystems for all societies and our children; (5) Justice: to promote safe and

47 Id. at para. 7.

48 Strengthening and coordinating United Nations rule of law activities, Report of the Secretary-General, 11 July 2014 (A/68/213/Add.1) at para. 60.

49 See generally Report of the High-Level Panel of Eminent Persons, *supra* note 8.

peaceful societies and strong institutions; and (6) Partnership: to catalyse global solidarity for sustainable development.⁵⁰

19. The direction of the current discourse on development suggests that the world may be moving toward a unified legal and institutional regime. Development is also increasingly being described in inclusive terms, incorporating not only States and international organizations, but also corporations,⁵¹ non-governmental organizations, philanthropies, institutions and individuals. Such inclusive development will demand adjustments to both the structure and the content of international development law.

Room for growth

20. Across the spectrum of international development law, there remains substantial opportunities for growth and improvement. On the issue of international development principles—the broad brushes that have garnered a great deal of attention—significant progress has been achieved. This is reflected in the streamlining of the various threads of the development discourse—including international environmental law, human rights and sustainable development—into a coherent approach, as well as in the elaboration of a number of influential instruments. As the post-2015 development agenda deliberations indicate, however, the precise content of these principles, and their relation to other areas of international concern, continues to command the focus of the international community.

21. Moreover, such principles, while structured in the language of international law, have frequently taken the form of declarations, outcome documents, resolutions and other non-binding instruments. The effectiveness of “hard law” versus “soft law” represents a question that could benefit from further empirical analysis; from an anecdotal viewpoint, however, the fundamental nature of such unenforceable commitments suggests, at a minimum, greater flexibility in terms of compliance. Accordingly, more can be done to incentivize and ensure that actions align with commitments.

22. Since the soft law principles have not come with their own enforcement frameworks, such incentives could be imposed from outside the legal system, such as through political, reputational or economic means. Rather than enforcing principles directly, in these scenarios, international law would serve a background function, establishing the institutional setting to allow such incentives to emerge in a clear and transparent way. This could be as simple as establishing a forum for discussion and appraisal, or it could involve new tools, such as ratings assessments and other data-driven indicators of

50 See *supra* note 3, at p. 13–20.

51 For the contribution of business and corporations to the post-2015 agenda see generally United Nations Global Compact, *Architects of a Better World, Building the Post-2015 Business Engagement Architecture* (2013) available at https://www.unglobalcompact.org/docs/about_the_gc/Architecture.pdf.

achievement. In either case, international law would help to ensure that development commitments are fulfilled by establishing institutions with mandates to assess compliance according to some predetermined and generally-accepted set of criteria.⁵² Through such steps, international development law could move from the general and the technical to the operational—helping to fulfil the transformative development agenda. Such a role probably represents the greatest growth opportunity for international development law. It lies at the substantive heart of the issue and has not been sufficiently explored.

23. On the technical side of the spectrum, international lawyers must continue to cultivate the detailed rules included in project agreements and similar documents. Such instruments are the tip of the development spear, and when done well they allow for the practical realization of the broad principles agreed at international conferences and similar deliberations. Dispute settlement has also seen a significant increase in recent years, with the World Trade Organization Dispute Settlement Body and the International Centre for the Settlement of Investment Disputes representing two institutions with increasing workloads. This represents an important contribution to international development law and it must continue.

24. Finally, a common, although not uniform, thread in the development discourse has been the recognition of the connection between development and issues of international peace and security. There appears to be consensus that development and issues of international peace and security (as well as human rights) are interlinked and mutually-reinforcing.⁵³ In the context of the post-2015 development agenda, this connection has again been emphasized. One of the targets proposed by the Open-Ended Working Group on Sustainable Development Goals is to “[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”, which will involve “[s]trengthen[ing] relevant national institutions, including through international cooperation ... to prevent violence and combat terrorism and crime”.⁵⁴ The United Nations System Task Team on the Post-2015 Development Agenda, established by the Secretary-General in 2011, has also produced a thematic report on

52 While not a perfect analogue, the depth of the human rights infrastructure could offer a useful model for establishing institutions charged with the implementation of international development law. See e.g. General Assembly resolution 60/251 of 15 March 2006 (establishing the Human Rights Council). The Human Rights Council subsequently adopted its “institution-building package” in its resolution 5/1 of 18 June 2007, which included provisions for the creation of the Universal Periodic Review Mechanism, as well as Special Procedures.

53 See e.g. World Summit Outcome 2005, *supra* note 2, at para. 9 (acknowledging that “development, peace and security and human rights are interlinked and mutually reinforcing”).

54 Open-Ended Working Group Report, *supra* note 8, Goal 16.

peace and security, in which it recommends that the post-2015 framework “should include separate goals related to peace and security and a clear, concise and measurable target on violence, which can be measured through indicators on battle-related deaths and intentional homicide”.⁵⁵

25. What appears to require further elaboration is both *how* the issues of development and peace and security are linked and, perhaps even more pressing, *when*. The sequencing is relevant because once disasters, armed conflicts and other emergencies arise, the battle is, to a large extent, already lost. By investing more time and resources into development activities, and then coordinating the legal rules and practices applicable to development with those applicable to peace and security, international development law may help to both avert emergencies and foster resilience for the moments when they inevitably arise.

26. As the foregoing demonstrates, development offers a unique growth opportunity for international law. The connectivity of the world will only increase as technology, human knowledge and productivity continue to advance. Moreover, access to the basic resources necessary to realize a healthier and more fulfilling life will continue to rise as the world becomes more aware, more efficient and more effective. In such a connected, productive and resource-rich world, governments and the individuals they serve will no doubt demand greater levels of development, broadly defined. This, in turn, places a greater demand on the structure, certainty and institutional framework offered by international law. To be an integral part of the solution, international lawyers must continue to engage constructively in the global development agenda—bringing with them the tools and insights to further bolster an evolving international development law.

55 UN System Task Team on the Post-2015 UN Development Agenda, Peace and Security, Thematic Think Piece (May 2012) at 3.