A new Convention on the human right to development: Putting the cart before the horse?

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Abstract
In this column I discuss the background, evolution, legal status and functions of the human right to development, with special reference to the proposed draft Convention on this subject, published by the Human Rights Council in January 2020. It notes the widely diverse views on the added value of the right to development. In my view, taking the discussion on the formulation, consolidation and implementation of the right to development seriously, is important to create a balance in the international human rights discourse by showing a genuine interest in matters raised for long by developing countries. This could serve the cause of the universality, indivisibility and interdependence of the global human rights architecture. However, it is questionable whether the adoption of a new Convention on the Right to Development would serve the cause of the right to development. The right to development is already well rooted in the existing core human rights treaties and has the potential to play a key role as a cluster right, an integrative right and a bridging right. Therefore, I suggest some alternative avenues for realising and operationalising the right to development.

Keywords
Human rights, development, structural approach, United Nations, indivisibility, universality, developing countries

1. INTRODUCTION
During the late 1970s, a trend emerged in international human rights discourse advocating a ‘structural approach’ to human rights. This approach was based on the view that although individual human rights violations are certainly important and must be addressed, we should look also...
at the causes thereof. Underlying this movement were global values such as freedom, development, human dignity, empowerment and liberation from oppression, apartheid, deprivation and exclusion. Prominent voices advocating a human right to development in the structural approach included the Senegalese international judge Kéba Mbaye, the Czech-French professor and first Secretary General of the Strasbourg International Institute for Human Rights Karel Vasak, the Algerian international judge Mohammed Bedjaoui, the Egyptian professor and international judge Georges Abi-Saab, the Australian professor and UN Special Rapporteur Philip Alston, and the Indian economist and later Nobel Prize winner Amartya Sen. They all argued at an early stage for the recognition of the right to development as a human right of both individuals and peoples. Mohammed Bedjaoui, former President of the International Court of Justice, even maintained that the right to development is ‘the precondition of liberty, progress, justice and creativity’ and ‘the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights’. While this might be seen as overstating the value of the right to development, Bedjaoui’s view may represent the views held by many developing countries.

2. SUSPICIONS AND ASSUMPTIONS RELATING TO THE RIGHT TO DEVELOPMENT

The right to development has been the subject of discussion for over 40 years now, including through resolutions in the General Assembly of the UN. Unfortunately, within the politicised international human rights discourse, the right to development often proves to be a divisive issue, and appears as a dividing line between developed and developing countries. Most western countries are suspicious of the formulation of a human right to development as part of the structural approach to human rights. In their view this right may well be employed, if not abused, to formulate obligations incumbent upon them to provide development aid to countries which cannot on their own realize the right to development of their inhabitants. They also fear that far-reaching changes to the international economic order would be enforced on the basis of the right to

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1. Margot E. Salomon, Global Responsibility for Human Rights: World Poverty and the Development of International Law (Oxford University Press 2007).
2. Kéba M. M’Baye, ‘Le droit au développement comme un droit de l’homme’ (1972) 5 Revue des droits de l’homme 505.
3. George Abi-Saab, ‘The Legal Formulation of a Right to Development’ (1981), in René-Jean Dupuy (ed.), Le droit au développement au plan international, Académie de droit international de La Haye (Kluwer Academic Publishers) 159; see also his article ‘Droits de l’homme et développement’ (1995) 3 Annuaire africain de droit international (Kluwer Law International) 3.
4. See Amartya K. Sen, Development as Freedom (Oxford University Press 1999).
5. Mohammed Bedjaoui, ‘The Right to Development’, in Mohammed Bedjaoui (ed.) International Law: Achievements and Prospects (UNESCO 1991) 1182.
6. See Office of the High Commissioner for Human Rights, Realizing the Right to Development (United Nations 2013) <https://www.ohchr.org/Documents/Publications/RightDevelopmentInteractive_EN.pdf> accessed 2 April 2020; Stephen Marks, ‘The Human Right to Development: Between Rhetoric and Reality’ (2004) 17 Harvard Human Rights Journal 137.
7. For comprehensive overviews see Anja Lindroos, The Right to Development (University of Helsinki Forum Iuris Publications 1999); Bård A. Andreassen and Stephen P. Marks (eds), Development as a Human Right (Harvard University Press 2006); Isabella Bunn, The Right to Development and International Economic Law: Legal and Moral Dimensions (Hart Publishing 2012).
8. See e.g. Arne VandenBogaerde, ‘The Right to Development in International Human Rights Law: A Call for its Dissolution’ (2013) 31 Netherlands Quarterly of Human Rights 187.
development, including fairer terms of global trade, debt relief and compulsory transfer of technology. In my view this would confuse the right to development as a human right with the right to development of States in the context of international economic law and the position of developing countries therein. Taken further, the right to development could potentially underpin the legal basis for claims for financial compensation for exploitation of countries in the global South because of unlawful enrichment of past powers, for example through colonialism and slavery. Furthermore, several western countries as well as some scholars suspect developing countries of using their inability to ensure decent living standards for their citizens as an excuse for not respecting their civil and political rights, claiming top priority for first realizing the right to development. For example, Yash Ghai wrote that ‘the Right to Development is at best an empty shell, if not – and worse – a smoke screen for avoiding the real things’.9 In my view, such suspicions and assumptions among western countries and certain scholars are based on misinterpretations of the evolution and meaning of the human right to development.

3. THE EVOLUTION OF THE RIGHT TO DEVELOPMENT

Articles 19 to 28 of the Universal Declaration of Human Rights (‘UDHR’), the Magna Carta of the contemporary international community, comprise already the most important components of what could be called a human right to development.10 These include freedom of expression and freedom of organisation, the right to participate in public affairs, the right to work and fair labour standards, the right to a decent standard of living, education and cultural life, and the right to such a social and international order wherein all human rights and fundamental freedoms can be fully realized. Due to the Cold War between the East and the West, the UDHR could be further elaborated upon only with great delay. At last in 1966, two major global human rights treaties were adopted, the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’, currently with 170 State Parties)11 and the International Covenant on Civil and Political Rights (‘ICCPR’, at present with 173 State Parties).12 Both treaties are important cornerstones of the basis of a human right to development. The ICESCR, for example, formulates the right to work and fair working conditions, the right to a decent standard of living, the right to food and water, the right to access to health care, the right to education and the right to cultural identity. The freedom and participation rights of the ICCPR also form an indispensable basis of the right to development. After all, without freedom of people and equal participation in society, development cannot thrive. Or, in the words of Amartya Sen, ‘without freedom there is no development’. These words apply not only to individual human beings, but also to peoples. That is, the collective dimension of human rights.

Soon after the proclamation of the UDHR, it became clear in the developing world that individual human rights were of little value if colonial rule was to continue. In fact, it could well

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9. Ghai also observed: ‘If it achieves any significance, the right to development will divert attention from the pressing issues of human rights and freedom, obfuscate the true nature of human rights, and provide increasing resources and support for the state manipulation […] of civil society and social groups’. Yash Ghai, Whose Human Right to Development? (Commonwealth Secretariat 1989) 1, 5–6.
10. Universal Declaration of Human Rights, UN Doc A/Res/217A (III), 10 December 1948.
11. International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) (999 UNTS 3).
12. International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) (999 UNTS 171).
be argued that the UDHR in essence had served to delegitimize the roots of the colonial system, which had lost its legitimacy with lightning speed during the period 1948-1960. This change had been expressed in the formulation of the collective human right *pur sang*: the right to self-determination of peoples. The decolonisation movement culminated in the Decolonisation Declaration, adopted on the occasion of the 15th anniversary of the UN in 1960, building on the right to political self-determination. The economic pendant of this right was formulated two years later in the Declaration on Permanent Sovereignty over Natural Resources. At the initiative of developing countries both dimensions of the right to self-determination were very symbolically included as an overarching human right in the identical Articles 1 of the two human rights conventions, the ICESCR and the ICCPR, providing: ‘All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’. Moreover: ‘[...] In no case may a people be deprived of its own means of subsistence’. In a way, these are early formulations of what has since been included in the right to development. The first treaty that explicitly codified the right to development, as well as a right to a healthy environment that fosters development, was the African Charter of Human and Peoples’ Rights. Furthermore, the right to development or elements thereof are also reflected in some constitutions of developing countries.

4. THE CONSOLIDATION OF THE RIGHT TO DEVELOPMENT

On 4 December 1986, a major step was taken with the adoption of the UN Declaration on the Right to Development on the basis of a proposal from the Non-Aligned Movement, at that juncture led by the former Yugoslavia. The Declaration recognises the right to development as a right of both human beings and peoples, thus expressing its individual and collective dimensions. Article 1 of this Declaration defines the right to 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...

13. Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press 2007).
14. The Charter of the United Nations included self-determination only as a principle (see Articles 1 and 55). Early recognition of the right to self-determination occurred in the UN General Assembly: see for example GA Res. 545 (VI), 5 February 1952. See on the evolution of self-determination Antonio Cassese, *Self-determination of Peoples. A Legal Appraisal* (Cambridge University Press 1995).
15. Declaration on the Granting of Independence to Colonial Countries and Territories in Accordance with the Charter of the United Nations, GA Res. 1514 (XV), 15 December 1960.
16. UN Doc. GA Res. 1803 (XVII), 14 December 1962. For an analysis see Marc Bungenberg and Stephan Hobe (eds), *Permanent Sovereignty over Natural Resources* (Springer 2015) and Nico J. Schrijver, *Sovereignty over Natural Resources. Balancing Rights and Duties* (Cambridge University Press 1997).
17. ‘Banjul Charter’, adopted 27 June 1981, entered into force 21 October 1986, 1520 UNTS 217. The preamble states: ‘Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights’. Article 22(2) provides: ‘States shall have the duty, individually or collectively, to ensure the exercise of the right to development’. The Charter has 54 States Parties as at March 2020; <https://www.achpr.org/statepartiestotheafricancharter>.
18. See Gianna Alessandra Sanchez Moretti and Shyami Puvimanasinghe, ‘Right to Development’, in Armin von Bogdandy and Rüdiger Wolfrum (eds), *The Max Planck Encyclopedia of Comparative Constitutional Law* (Oxford University Press 2018) <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e99?rskey=8PuXqa&result=1&prd=OXCON> accessed 2 April 2020.
The right to development is also prominently present in the mandate of the position of the High Commissioner for Human Rights, established in 1993. In 1998, the Commission on Human

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19. UN General Assembly Resolution, Declaration on the Right to Development, 4 December 1986, UN Doc. A/RES/41/128, Art 1(1).
20. See also Alhagi Marong, ‘Development, Right to, International Protection’ in Rüdiger Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (3rd volume, Oxford University Press 2012) 85-89.
21. Preamble, UN Declaration on the Right to Development, n 18.
22. ‘Vienna Declaration and Programme of Action’, adopted by 171 States at the World Conference on Human Rights in Vienna on 25 June 1993, UN Doc. A/CONF. 157/23; 32 ILM 1661 (1993). Paragraph 10 provides: ‘The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights’.
23. Principle 3, Declaration of the United Nations Conference on Environment and Development (Rio Declaration), 14 June 1992; UN Doc. A/CONF.151/26 (UNCED); 31 ILM 874 (1992).
24. See Report of the World Summit for Social Development, Copenhagen, 6–12 March 1995; UN Doc. A/CONF. 166/9, para. 6.
25. See Report of the Fourth World Conference on Women, Beijing, 4–15 September 1995; UN Doc. A/CONF. 177/20, paras 16, 27 and 36. On global conferences, see M.G. Schechter, United Nations Global Conferences, (Routledge 2005).
26. See UN Doc. A/RES/48/141, 20 December 1993, paras. 3 (c) and 4(c). Furthermore, the right to development was also specifically mentioned in Resolution A/RES/60/251, para. 4, establishing the Human Rights Council in 2006. In 2016, the Human Rights Council established a Mandate for the appointment of a Special Rapporteur on the Right to Development by HRC/RES/33/14. The first mandate holder is Saad Alfarargi from Egypt. See the latest report of the Special Rapporteur on the right to development, UN doc. A/HRC/42/38, 2 July 2019.
Rights established an intergovernmental Working Group on the Right to Development to monitor and review progress made in the implementation of this right.27 However, over the years, the right to development became controversial again inter alia for the reasons mentioned above, mostly relating to a lack of consensus among States on its contents and western objections to the very existence of such a right.

During the last two decades, developing countries have fervently sought to anchor the right to development in a separate new convention28 or at least in an international legally binding standard.29 They argue that many of them have participated in what they, rightly or wrongly, perceive as western human rights projects, such as the Convention on the Elimination of All Forms of Discrimination Against Women (1979), the Convention against Torture (1984), the Convention on the Rights of the Child (1989), and the Convention on the Rights of Persons with Disabilities (2006). They consider a treaty on the right to development, to be formulated on the basis of the UN Declaration on the Right to Development of 1986, as a project of their group that western States should in turn support. However, votes on General Assembly resolutions on this subject show time and again that the global political climate is far from favourable for the adoption of a treaty. As stated earlier, this is due to the lack of agreement on what exactly the right to development entails and how it can be operationalised. Of course, it also does not help that some developing countries, including China, India, Indonesia, Pakistan, Cuba and Venezuela, often confuse the human right to development with a right of States to development. In this author’s view, the right to development as a human right belongs to the people and is not a State-held right. Instead, the right-holders are human beings and peoples, while the duty-bearers are States and the international community.

5. THE DRAFT CONVENTION ON THE RIGHT TO DEVELOPMENT OF 2020

On 20 January 2020, the UN Working Group on the Right to Development released a first draft for a Convention on the Right to Development, with an extensive article by article commentary.30 It was prepared by Dr. Mihir Kanade of the UN University for Peace, who heads a Drafting Group established by the United Nations Office of the High Commissioner for Human Rights. The 82-page report is certainly an impressive achievement and a laudable effort to seek to capture the right to development in an international legal instrument. The introduction of the report states that the draft Convention is as much as possible based on existing international legal instruments: ‘No concepts, norms, rights or obligations have been created de novo’.31 Therefore, the draft Convention builds upon the UDHR, the nine core human rights treaties, and as a matter of course the 1986 Declaration on the Right to Development. Furthermore, it is significant that the draft Convention affirms that human beings and peoples are the right-holders, while States and international

27. Established by the former Commission on Human Rights by its Resolution 1998/72 of 22 April 1998 and ECOSOC decision 1998/269 of 30 July 1998.
28. See for example UN Doc. A/RES/62/161, para. 10(d), adopted on 13 March 2008 by 136 votes to 54, with no abstentions.
29. See UN Doc. A/RES/63/178, 18 December 2008, para. 8, this time adopted by as many as 182 in favour, 4 against (Marshall Islands, Palau, Ukraine and United States) with 2 abstentions (Canada and Israel).
30. See UN Doc. A/HRC/WG.2/21/2/Add.1, 20 January 2020, which contains the Draft Convention on the Right to Development, with commentaries.
31. ibid para. 2.
organizations form the corresponding duty-bearers. In line with the contemporary human rights
doctrine, the draft Convention adopts three levels of obligations incumbent upon States (‘to respect,
protect and to fulfil human rights’) and applies this to the realisation of the right to development.

As is usual, the draft Convention starts with a preamble which in this case is extensive, with as
many as 27 paragraphs. The preamble identifies the realisation of the right to development as a
common concern of humankind, emphasises that the right to development is ‘an inalienable right
of all human persons and peoples’ and recognises that development is a comprehensive process,
thus repeating the relevant paragraphs of the 1986 Declaration. It integrates sustainability, good
governance and the rule of law dimensions, which have become prominent in global politics since
the end of the Cold War.\(^\text{32}\) The preamble also makes reference to a number of regional human
rights instruments and subsequent practices recognising and reaffirming the right to development,
including the African Charter on Human and Peoples’ Rights (1981), the Arab Charter on Human
Rights (2004), the Human Rights Declaration of the Association of Southeast Asian Nations
(2012), and the Abu Dhabi Declaration of the Organization of Islamic Cooperation (2016).

The operational part of the Convention consists of five parts with a total 36 articles. Part I
provides the object and purpose of the Convention, defines specific terms and outlines its general
principles. A specific article on the latter is a relatively novel feature for a human rights treaty. As
general principles, Article 3 sets out: human person and people-centred development; universal
principles common to all human rights such as accountability, participation, and equality; a human
rights-based approach to development; self-determined development; sustainable development;
the right of States to regulate; international solidarity; a universal duty to respect human rights (the
horizontal functioning of human rights); and the right and responsibility of individuals, groups and
organs of society (e.g. NGOs) to promote and protect human rights. Part II addresses the right to
development and its rights-holders, including a fully-fledged article on the relationship with the
right to self-determination of all peoples. Part III deals with the duties and duty-bearers and elaborates on the obligations to respect, protect and fulfil.\(^\text{33}\) Here, a notable feature is that apart
from States Parties, the draft Convention addresses these provisions also to international organi-
izations, so far done only by the Convention on the Rights of Persons with Disabilities (‘CRDP’)
with respect to regional integration organizations such as the European Union.\(^\text{34}\) Article 13 on the
duty to co-operate formulates a number of positive obligations incumbent upon States Parties,
building on Articles 55 and 56 of the UN Charter and on contemporary international law relating to
development and economic and social cooperation. Notably, it includes also the duty to co-operate
for well-managed rights-based migration policies.\(^\text{35}\) Subsequently, Article 14 formulates a number
of negative obligations, such as the obligation to refrain from all kinds of coercive measures. This
Part III, containing 15 articles and thereby the most elaborate part of the draft Convention, also
mentions specific aspects of cooperation to realise the right to development, such as special or
remedial measures, gender equality, the rights of indigenous and tribal peoples, impact assess-
ments, data collection, peace and security, sustainable development and harmonious interpretation
with other international agreements (Articles 15-23). Part IV is also noteworthy, as it provides a \textit{sui}

\(^{32}\) See for example the World Summit Outcome Document, adopted on the occasion of the 60th anniversary of the United
Nations, 24 October 2005, A/RES/60/1 of 24 October 2005.

\(^{33}\) See the Articles 10, 11 and 12, respectively, of the draft Convention.

\(^{34}\) See Articles 42 and 44 of the CRPD.

\(^{35}\) See Article 13, para 4(h) of the draft Convention.
generis mechanism for the implementation of the draft Convention. Two treaty bodies are envisaged, namely the Conference of States Parties and a subsidiary expert mechanism entitled the Implementation Mechanism. The first builds upon the existing Intergovernmental Working Group on the Right to Development and follows the model of the CRPD in having a permanent Conference of States Parties. The second builds on the newly-established Expert Mechanism in the Field of the Right to Development. The idea is not to duplicate the work of the existing treaty bodies and merely ‘to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and compliance with the provisions of the present Convention’. Lastly, Part V includes the usual final treaty provisions on signature, ratification, entry into force, and amendments. It specifies that international organizations can also join the Convention. Twenty ratifications or accessions are required for its entry into force, which is the usual relatively low number required for core UN human rights treaties with the exception of the ICESCR and ICCPR which stipulated 35 ratifications.

Consultations, if not negotiations, will take place on this text in the years to come. One can easily predict that the draft will give rise to complicated discussions with wide-ranging views. Most likely, these will not be confined to the necessary fine-tuning or reformulation of the current draft but may also extend to matters of principle. A main strategic question that ultimately needs to be addressed is whether it is wise to formulate a fully-fledged new human rights Convention on the Right to Development, now that the current draft and its extensive commentary are already so much premised on the starting point that all rights and duties or obligations in the draft Convention are derived from existing human rights treaties and declarations. The extensive report has considerable merits in the sense that it aims, in a non-adversarial way, to clarify, update, and complement the manifold dimensions of the right to development. The references to and derivations from all kinds of existing human rights instruments as well as from environmental treaties such as the Paris Agreement on Climate Change and the work of the International Law Commission on draft Articles on the Responsibility of International Organizations are certainly useful. In this sense, this exercise may well be instrumental in clarifying the meaning of the right to development as well as consolidating and hopefully strengthening its legal status within the international community. However, one may well raise the question whether the case is really made for the conviction ‘that a comprehensive and integral international convention to promote and secure the realization of the right to development [...] is now essential’. It may well be that ultimately it would make more

36. Articles 24 and 26, respectively of the draft Convention.
37. Established by the former Commission on Human Rights by its Resolution 1998/72 of 22 April 1998 and ECOSOC decision 1998/269 of 30 July 1998.
38. See Article 40 of CRPD. See also Article 27 of the Convention on Enforced Disappearances (‘CED’).
39. See Resolution A/HRC/42/l.36, adopted 27 September 2019, mandating the Expert Mechanism to provide the UN Human Rights Council with ‘thematic expertise on the right to development in searching for, identifying and sharing best practices among Member States and to promote the implementation of the right to development worldwide’, para 29.
40. This language obviously was borrowed from the recent Paris Climate Agreement. See Article 15, para 2 of the Paris Agreement, Paris, 12 December 2015, entered into force 4 November 2016; UN Doc. FCCC/CP/2015/10/Add. 1 (2016).
41. See Draft Articles on the Responsibility of International Organizations (known by the acronym DARIO), adopted by the ILC at its 63 rd session, Yearbook of the International Law Commission, 2011, vol. II, Part II, also in UN Doc. A/RES/66/100, 9 December 2011.
42. Last preambular paragraph of the draft Convention, see n. 30.
sense to capture the most salient features of this drafting project through a reformulated Declaration on the Right to Development to be adopted on the occasion of the 35th anniversary of this Declaration in December 2021 rather than in a new human rights convention. The latter may well run the risk of failing to achieve the international consensus so desirable for such a venture and to attract wide-spread ratification by all groups of States and international organizations which is essential for implementation purposes. Alternatively, one could see whether the draft could form the basis for a joint Protocol to various core human rights treaties, most notably the ICESCR, ICCPR, and the Women’s and Children’s rights conventions or at least a joint General Comment to these Conventions. Pushing for a stand-alone new human rights convention would run the risk of losing rather than building support for the cause of the right to development and thus doing it the wrong way around. Or, so to say, putting the cart before the horse.

6. FINAL OBSERVATIONS

The human right to development must be taken more seriously by all States and international organizations for three reasons. First, this right functions actually as a cluster right. The right to a decent standard of living, including the right to food, water, clothing and housing, the right to work, the right to education, the right to life, and the right to freedom of expression and organisation, are a cluster of rights that together form a ‘human right to development’. Second, the human right to development functions as an integrative right in the sense that it links the three categories of human rights, sometimes referred to as the three generations. The right to development puts civil and political rights, economic, social and cultural rights, and the rights of peoples together since more than any other human right it is composed of all three categories of human rights. Third, the right to development can be politically helpful as a bridging right because it connects the rights of individuals (citizens) with those of groups and peoples, including indigenous peoples. It is a fact of life that many human rights are mainly experienced in community, as part of a group or population, while they also have meaning for each individual. The right to development therefore aptly connects individual and collective human rights.

From this perspective, the added value of formulating and recognising the right to development lies not so much in its novel features or individual parts but rather in the sum of its parts and its integrative value, which can be instrumental in promoting and achieving development as a holistic and comprehensive process. After all, each of the human rights mentioned above already exists and has already been incorporated in some way in global and regional human rights treaties. Article 11 of the ICESCR is a striking example, which sets out the right to a decent standard of living and the right to freedom from hunger for everyone and their families, including the right to adequate food, clothing and housing, and to increasingly better living conditions. This treaty article therefore already represents a considerable substantive part of the core of the human right to development.

43. An encouraging interesting precedent for a joint general comment is the Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child on harmful practices (14 November 2014) CEDAW/C/GC/31 – CRC/C/GC/18. See also N.J. Schrijver, ‘Fifty Years International Covenants. Improving the Global Protection of Human Rights by Bridging the Two Covenants’ (2016) 41 NJCM-Bulletin. Nederlands Tijdschrift voor de Mensenrechten (no. 4) 457.

44. For a commentary on the text of Article 11, see Ben Saul, David Kinley and Jaqueline Mowbray, The International Covenant on Economic, Social and Cultural Rights. Commentary, cases and materials (Oxford University Press 2014) 861-976.
Therefore, one could even argue that this relatively lengthy treaty article could be seen as a ‘mini-treaty’ on the right to development. This raises the question whether it would be prudent to spend so much international energy on formulating a new separate global Convention on the Right to Development. Rather, efforts could better focus on embedding and integrating the right to development into existing human rights treaties as an overarching general norm based upon the recognition of its three functions outlined above. States could be asked to address the right to development in their periodic State reports submitted in treaty body procedures and to encourage the monitoring treaty committees to pay constant attention to the realisation of the right to development within the scope of their specific powers.45 The functions and powers of the Human Rights Committee (for the ICCPR), the Committee on Economic, Social and Cultural Rights (for the ICESCR), the Women’s Rights Committee (for CEDAW) and the Children’s Rights Committee (for the CRC) are already available and apt enough to serve this purpose. As stated above, this could be further promoted by a joint General Comment and in future even a joint Protocol on the right to development. Moreover, a bridge can be adequately built here between human rights and the politically important 2030 Agenda and the Sustainable Development Goals, the overarching development policy framework for 2016–2030.46 For all these reasons, it is time for the entire international community to take the right to development more seriously. A new global convention will then not be needed at all. For the human right to development already exists!

Author note

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45. Cf. Philip Alston and James Crawford (eds), The Future of UN Human Rights Treaty Monitoring (Cambridge University Press 2000).
46. See UNGA Res. 70/1, Transforming our World: The 2030 Agenda for Sustainable Development, adopted on the occasion of the 65th anniversary summit of the United Nations, 25 September 2015.