

**The Global South and Global Human Rights**  
International responsibility for the right to development

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**Abstract.** International human rights have traditionally been conceived of as entitlements that individuals hold in relation to their government. However, since at least the early twentieth century, many leaders, activists, jurists, and scholars in the Global South have advanced an alternative way of understanding problems of oppression, deprivation, and injustice in which realizing individual rights necessitates international obligations. This understanding came to influence the Global South’s engagement with human rights within the U.N., culminating in the campaign for the human right to development. I demonstrate that the flaws often attributed to the right to development—most importantly, that it lacks identifiable actors bearing duties to realize the right and its non-justiciability—were the product of political bargaining over the Declaration on the Right to Development, in which representatives of states in the Global North were able to hold out against the demands of the Global South. In spite of the centrality of international responsibility to the right to development, this right was codified in a way that emphasized the obligations of poor states towards their own citizens, rather than the extreme concentration of wealth in the Global North, economic rules that severely disadvantaged poor states, and the historical wrongs that were implicated in their poverty.

## Introduction

In recent years, legal scholars have begun to question the extent to which states have human rights obligations that extend beyond their borders.<sup>1</sup> This development has followed years of advocacy by civil society organizations, which, since the 1990s, have increasingly asserted that wealthy states and international financial institutions bear some responsibility for economic, social, and cultural rights in developing states.<sup>2</sup> Amartya Sen wrote in his influential book *Development as Freedom* of “imperfect obligations,” in which obligations are “addressed to anyone who can help,” including other states or the international community at large.<sup>3</sup> In 2007, the Extraterritorial Obligations Consortium was formed by a group of lawyers, civil society organizations, and academics to “advance implementation of...human rights obligations [that] States have towards people in other countries,” noting that human rights “have been locked up behind domestic bars.”<sup>4</sup>

Traditionally, human rights have been seen as governing the relationship between state governments and the individuals within their borders, with international actors becoming involved only to monitor state behavior, enforce compliance, and assist individual states in meeting their own domestic obligations. Conversely, international actors are seen as bearing obligations only under exceptional circumstances, as when a state exercises jurisdiction within another state during an occupation,<sup>5</sup> or if another state fails to fulfill its duties in ways that are massive and egregious, such as committing genocide or widespread crimes against humanity.

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<sup>1</sup> See Curtis and Sepulveda (2009); Gibney and Skogly (2010); King (2009); Ssenyonjo (2011); Skogly (2006).

<sup>2</sup> Nelson and Dorsey 2008

<sup>3</sup> Sen 1999

<sup>4</sup> ETO Consortium n.d.

<sup>5</sup> Gibney *et al* 1999; Meron 1995

Even in these latter cases, extraterritorial obligations remain quite limited and are secondary to the primary obligation of the state in which human rights violations are taking place.<sup>6</sup>

However, in spite of the newness of the attention it has received, this idea that human rights involve direct, specific obligations of states towards the people in other states has been around for quite a while, and, in fact, it has an especially long lineage within the Global South. This idea's resonance in these parts of the world is, in part, a legacy of their experiences with colonization, enslavement, economic exploitation, and military intervention. As early as 1909, Alejandro Álvarez, an early and prominent figure in Latin American international law and the author of a document used to draft the Universal Declaration of Human Rights, linked Latin America's "love of liberty" with its "implacable hatred of foreign domination."<sup>7</sup> During negotiations over the drafting of the International Covenant on Economic, Social and Cultural Rights, representatives from recently decolonized states tried to include obligations for former colonial powers to "restor[e] their rights and property" and provide reparations for the "systematic plundering of their wealth under colonialism."<sup>8</sup> In the 1970s and 1980s, the Non-Aligned Movement and Group of 77 asserted that developed states had legal duties to realize the human right to development in the Global South by correcting an unjust international economic system that "condemn[ed] millions in Asia, Africa and Latin America to a life of dire poverty and hopelessness."<sup>9</sup>

In this paper, I revisit the history of economic and social rights in international human rights law. I examine the development of a conception of these rights which oriented them towards questions of international economic inequality and opened up new avenues for

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<sup>6</sup> Getachew 2018

<sup>7</sup> Álvarez 1909, quoted in Becker Lorca 2006.

<sup>8</sup> Alston and Quinn 1987

<sup>9</sup> Bandaranaike 1976

demanding global wealth distribution and restraints on the activities of wealthy states and multinational corporations. I argue that the idea that human rights could include duties for wealthy, powerful states to realize economic and social rights of people in poorer, weaker states can be traced back to earlier ideas about foreign domination, international solidarity, and the global processes that produced poverty and deprivation in the Global South.

These foundational ideas, which appeared in different forms throughout the Global South, formed the ideational basis for how many of these actors came to engage with human rights within the United Nations. In the 1970s, these existing ideas manifested in the campaign for the right to development, which, from its origins in the legal thought of Senegalese jurist Keba M'Baye, was aimed primarily at articulating the responsibility of developed states towards the developing world. The states of the Global South presented a unified front in support of the right to development and the idea of international duties. I demonstrate that international duties were not a novel demand that emerged *sui generis* in the 1970s or an attempt by authoritarian states to draw attention away from their own human rights violations or engage in ideological confrontation with the United States. Instead, they represented a core aspect of how many actors in the Global South conceived of human rights, and a novel way of conceptualizing their associated duties.

Although there is a great deal of diversity within the Global South, these states have shared certain over-arching political goals and agendas, as well as a shared historical identity.<sup>10</sup> Most importantly, they have often recognized that their strength at the international level rests in their ability to present a united front, and this has led to an emphasis on coalitional politics through groupings like the Non-Aligned Movement and the Group of 77. In the case of the right

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<sup>10</sup> Grovogui 2011: 176

to development, the Global South shared certain underlying priorities which allowed them to present a united front on central components of the right to development, especially the existence of obligations of wealthy states towards poorer states.

To develop this argument, I use in-depth case analysis and process-tracing, utilizing original research from newspaper reporting; organizational meeting records and outcome documents; speeches; and voting records, as well as secondary literature. Through a close examination of historical debates over the right to development, from its formal introduction in 1972 by Keba M'Baye to the adoption of the Declaration on the Right to Development in 1986, I demonstrate how states of the Global South tried repeatedly and unsuccessfully to get the Global North to accept the existence of obligations of an international nature. Leaders and state representatives from the Global North disagreed with this understanding of human rights and held out against the idea that they should be held responsible for the Global South's underdevelopment and poverty, while the South made compromises to appease the Global North.

The result of this process was that the right to development was codified in a way that emphasized the obligations of poor states towards their own citizens, rather than drawing attention to extreme concentration of wealth in the Global North, economic rules that severely disadvantaged poor states, and the historical wrongs that were implicated in their poverty. In fact, many of the problems that legal scholars have identified with the Declaration on the Right to Development, especially that it includes no identifiable duty-bearers and is not justiciable, are the product of political contestation, rather than the result of any inherent flaws with the right to development itself. In fact, the creators and proponents of the right to development were quite clear that developed states were the main duty-bearers, and that they should be subject to claims, including judicial claims, from developing states.

I argue that, while human rights law did consolidate around an emphasis on government responsibility *within* domestic borders, other ways of conceiving of human rights were both possible and attempted. Their failure to take hold in international law has more to do with power politics between states than with any shortcomings that are inherent to this conception of human rights. Taken together, this provides insight towards understanding how state power and contestation shape international norms and law,<sup>11</sup> and how the particular values of some states come to be regarded as universal – meaning transcultural and transhistorical – while the values of others are marginalized, excluded, or simply forgotten.

### **Rethinking the Global South and global human rights**

In the following sections, I outline an alternative way of conceptualizing human rights, which emphasizes duties for wealthy, developed states to realize economic and social rights in poorer countries. I refer to these as international duties, and I distinguish this alternative conceptualization from what has become the dominant, domestic human rights framework. I then provide evidence showing that this global framework for understanding the causes of and solutions to oppression, deprivation, and injustice were prominent among a diverse array of actors from or concerned with the Global South, including jurists, activists, leaders, and scholars from at least the early twentieth century. Finally, I give a drafting history of the Declaration of the Right to Development, examining attempts by states in the Global South to establish international duties in international human rights law.

#### *Human rights and international duties*

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<sup>11</sup> Acharya 2004; Allan 2017; Krook and True 2012; Van Kersberger and Verbeek 2007; Wiener 2004.

The concept of duties is central to human rights. Human rights articulate those things to which individuals, by merit of their humanity, are entitled, and these things are realized through corresponding duties which are held, most importantly, by state governments.<sup>12</sup> In the decades before human rights were institutionalized in the United Nations, states in the Global North and Global South developed overlapping but distinct understandings of rights and duties as they related to problems social justice, oppression, and deprivation. These differences were, in large part, the result of the different material and historical circumstances that generated their concerns with freedom and individual rights and their views on what form abuses of power that produced suffering and oppression took. They reflect Joshua Simon’s contention that “political ideas [are] caused by the background problems that their thinkers set out to solve.”<sup>13</sup> In spite of these differences, they developed an overarching concern that forms the basis of the norm of human rights, that humans, by merit of their humanity, are entitled a life of dignity, with rights representing those things to which they are entitled.<sup>14</sup>

The Global North’s interpretation of human rights was derived from ideas regarding natural rights that had emerged in Europe during the Enlightenment, particularly as part of revolutionary movements to end rule by monarchy. This conceived of the “rights of man” as the right for an individual to be protected from their government and to hold their government accountable, while the government was seen as the main source of abuse and oppression against its own people.<sup>15</sup> In this conception, governments are “duty bearers,” in human rights parlance,

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<sup>12</sup> Donnelly 1986

<sup>13</sup> Simon 2020: 424.

<sup>14</sup> Donnelly 1982, 1986.

<sup>15</sup> Grovogui 2006

who are responsible for guaranteeing the rights of their citizens.<sup>16</sup> I refer to the obligations of governments towards those within their borders as *domestic duties*.

Actors from the Global South did not necessarily disagree with this perspective on human rights, and some very strongly shared it.<sup>17</sup> However, a substantial number of actors from across the Global South also developed ways of thinking about global justice, problems of deprivation and oppression, and both individual and collective rights that conceived of these problems as inherently global in nature. Central to this conceptualization was the idea that human rights cannot be properly understood or realized without placing them in their global context.

This global conception of human rights consisted of two features. First, international actors are an important source of violations of individual rights. These violations could be of a direct, historical, or structural nature, or some combination of the three. Second, because these problems have international causes, addressing and rectifying violations of rights requires international solutions, including actions by states to cease violations or repair the effects of damage they have caused.

The responsibility of states to resolve international violations of human rights took the form of duties which transcended their territorial borders, or *international duties*. People within states remain the rights holders, but duty bearers also include actors outside of the state. Although they developed in different forms and at different times throughout the Global South, there was a striking amount of commonality in how this diverse group of actors conceptualized human rights. In general, they conceptualized rights violations in structural and historical terms,

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<sup>16</sup> Donnelly 1986

<sup>17</sup> Sikkink 2014; Simon 2017

and they viewed solutions to violations in terms of entitlement to economic assistance and duties of solidarity.<sup>18</sup>

*The emergence of a global conception of human rights*

The idea that economic and social deprivation had international causes became prominent in Latin America in the early nineteenth century. It arose alongside and was bolstered by the rise of international socialist perspectives throughout the region. Different actors increasingly viewed their relations with the economically dominant U.S. as one of international class conflict and imperialism, in which the U.S. gained economically at the expense of the continued poverty and under-development of the rest of the Western hemisphere.<sup>19</sup>

These ideas inspired a range of very diverse actors, including socialist political parties,<sup>20</sup> student movements,<sup>21</sup> Catholic theologians,<sup>22</sup> and economists<sup>23</sup> towards ways of thinking that emphasized international capitalism and the dominance of foreign economic interests as a major cause of domestic economic and social deprivation. In the 1930s, it gave rise to a progressive Catholic Theology that would in the 1960s become Liberation Theology and eventually spread to Asia, the Middle East, Africa, and the United States.<sup>24</sup> Liberation Theology is a theological approach that emphasizes solidarity with the poor and, among other things, draws attention to international capitalist forces which oppress and exploit the poor and marginalized.<sup>25</sup> These

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<sup>18</sup> I apply the terms “rights” and “duties” anachronistically to illustrate how the ideas held by actors match up with and contributed to their engagement with more modern conception of human rights.

<sup>19</sup> Corrales and Feinberg 1999

<sup>20</sup> These included the Cuban Revolutionary Party (1933), Partido Socialista de Chile (formed in 1933), Alianza Popular Revolucionaria Americana in Peru (1930), the Judicialista in Argentina (1946), Partido de la Revolución Mexicana in Mexico (1938), and Partido Acción Revolucionaria in Guatemala (1945).

<sup>21</sup> Slim 2002

<sup>22</sup> Dussel 1981: 106-113, 127-239; Sanders 1970

<sup>23</sup> Prebisch 1962

<sup>24</sup> Ateek 1989; Cone 2000; Dussel 1981; Kim 2018; Sanders 1970.

<sup>25</sup> Dussel 1981: 106-113, 127-239; Sanders 1970

same ideas also influenced Latin American dependency theory, developed in part by Argentinian economist Raúl Prebisch in the late 1940s, which theorized that the developing world was held in a state of under-development by a global economic system in which economic benefits accrued to the developed states.<sup>26</sup>

Similar ways of thinking became prominent in pan-African thought. As early as 1915, W.E.B. Du Bois theorized that international capitalism, or “industrial imperialism,” was a manifestation of international white supremacy that exploited Black labor on a global basis and perpetuated the under-development and discriminatory treatment of non-white colonized peoples.<sup>27</sup> Another early and highly influential statement of similar ideas was advanced in Trinidadian Eric Williams’ influential 1944 book *Capitalism and Slavery*. Williams was an anti-colonial leader and prominent member of the pan-Africanist movement. In his book, Williams argued that the poverty of the Caribbean had been directly caused by enslavement and colonization by the United Kingdom.<sup>28</sup> Williams’ book was one of a number of important intellectual influences for African and Caribbean liberation movements. Many anti-colonial and post-colonial leaders and activists throughout these regions argued that a restructuring of the international economy was necessary in order to prevent developing states from being further impoverished for the enrichment of developed states, controlled by foreign interests, and bound by international racial hierarchies.<sup>29</sup>

The problems these different actors identified were inherently international in nature, and they required international solutions to address them. Those solutions often involved a combination of economic nationalism and resource transfers from more developed countries.

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<sup>26</sup> *Ibid.*

<sup>27</sup> Du Bois 1915

<sup>28</sup> Williams 1944

<sup>29</sup> Getachew 2019; Nkrumah 1966; Prashad 2007; Rodney 1972.

Throughout the first half of the twentieth century in Spanish-speaking Latin America, political parties and national leaders advocated for nationalizing foreign economic interests and limiting foreign ownership as a way of realizing economic and social rights. An example was the 1917 Mexican Constitution, which was groundbreaking both in its inclusion of extensive economic and social rights and the way that it set out economic nationalism as a means to allow the state to realize those rights.<sup>30</sup> Latin American dependency theory similarly proposed a combination of *regional* economic nationalism, in the form of increased intra-regional cooperation and restrictions on imports from outside of the region, resource transfers from the Global North as the solution to under-development.<sup>31</sup>

Efforts of other regions of the Global South reflected similar approaches. African, Pan-African, and Caribbean unity were viewed as ways of ending poverty and decreasing external dependence through a combination of regional cooperation and outside assistance. This view transcended differences of opinion among leaders as to whether this should be accomplished by forming a single federal state or inter-governmental organizations, and it was an important goal of post-independence regional organizations the Organization of African Unity and the Caribbean Community.<sup>32</sup>

International solidarity, which emphasizes fraternity among states, mutual efforts in achieving social justice, and removing sources of economic and social insecurity, became central to views throughout these regions on how to realize economic and social rights. Outside assistance was not framed as a matter of charity, but, in the same manner as human rights, of entitlement and the duty to solidarity. This view was expressed by a representative of the

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<sup>30</sup> Andrew and Cleven 1921; Bullington 1927.

<sup>31</sup> Prebisch 1962

<sup>32</sup> Getachew 2019; Nkrumah 1963, 1966; Selassie I 1963

government of Barbados at the U.N. General Assembly in 1968, who argued that “those same nations which have been the major beneficiaries of those wicked years [of colonialism] are shirking their responsibility to assist in [our] rehabilitation.”<sup>33</sup> During the 1960s and 1970s, Doudou Thiam of Senegal and Mohammed Bedjaoui of Algeria, both well-respected jurists and diplomats, were prominent voices from the newly independent Third World who argued that formerly colonized peoples were entitled to reparations for the damage done by colonialism.<sup>34</sup>

Views on the duty to solidarity, including the duty to provide assistance to poorer states, became central to how these actors thought about inter-state cooperation. Alejandro Álvarez, a prominent Chilean jurist, contributed to the development of international solidarity as a legal concept,<sup>35</sup> arguing from the early twentieth century that international law needed to develop such that the “notion of social duty, of solidarity, and of the general interest” would take priority over strict individualism in inter-state relations.<sup>36</sup> Ideas of international solidarity translated straightforwardly to Latin American views on economic and social rights. In 1945, a draft of the American Declaration on the Rights and Duties of Man was prepared by a group of legal experts with an accompanying report in which the drafting committee anticipated the role of international duties for economic and social rights. The report noted that “international cooperation must seek to overcome the disparities between states in the same way in which the individual state itself must seek to overcome the disparities between its citizens.”<sup>37</sup>

Following a similar logic but envisioning a very different political form, in the 1940s, Aimé Césaire of Martinique and Léopold Senghor of Senegal, leaders of the *négritude*

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<sup>33</sup> U.N. General Assembly 1968

<sup>34</sup> Gathii 2020

<sup>35</sup> Samore 1958

<sup>36</sup> Álvarez 1919: 34-36

<sup>37</sup> Inter-American Juridicial Committee 1945: 110

movement, insisted that France take responsibility for its imperial history by enacting a sort of international solidarity from within, transforming its empire into a massive, democratic federal state within which all citizens would be granted the same economic and social rights that France currently extended to its citizens in the metropole.<sup>38</sup>

These actors did not always use the language of human rights, especially before human rights become central to the language of global justice and individual rights in the 1940s.<sup>39</sup> However, this understanding of international causes of domestic problems was an important influence that informed their later engagement with human rights. Many of them saw these duties as complementing, not supplanting, the duties that states held towards their citizens. However, they argued that economic and social rights could not be properly understood or realized without accounting for the global and historical context. It was out of these efforts that the campaign for the human right to development emerged as one of the most important and long-lived attempts to codify international duties for economic and social rights.

### *Global human rights and the emergence of the right to development*

The understanding of human rights as inherently global, and the specific idea that responsibility for under-development created duties for wealthy, developed states towards people in poorer, weaker states, informed human rights advocacy by the Global South within the U.N. in the decades after the adoption of the Universal Declaration of Human Rights.<sup>40</sup> It became the majority view within the United Nations as decolonization introduced over 80 newly independent countries into the international system between 1960 and 1990.

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<sup>38</sup> Wilder 2015

<sup>39</sup> Cornwall and Nyamu-Musembi 2009; Getachew 2019.

<sup>40</sup> Alston 1991: 220; Boilard 2019; Burke 2008; Fukuda-Parr 2012: 850.

Notably, drafters of the Universal Declaration expressly avoided establishing duties and modes of implementation. This, alongside the fact that much of the Global South was still colonized when the drafting and adoption of the Universal Declaration took place, may explain why this issue did not arise during the drafting process.<sup>41</sup> The Universal Declaration does, however, include a right to realization of economic, social, and cultural rights “through national effort *and international* co-operation”<sup>42</sup> and “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized,”<sup>43</sup> although there is no elaboration as to how these rights should be realized.

However, this issue featured more prominently in subsequent debates. During the drafting of the International Convention on Economic, Social and Cultural Rights (ICESCR), a number of representatives from the Global South did try, unsuccessfully, to establish international duties, including references to reparations for colonialism and international measures against structural causes of under-development. The representative of Chile made a formal proposal, which was rejected by developed states, to include express duties for state parties to the convention to provide international assistance to less-developed states.<sup>44</sup> The issue of economic development was a major source of discussion at the 1968 Tehran World Conference on Human Rights, and states asserted in the Tehran Proclamation that “progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development.”<sup>45</sup> In the U.N. Commission on Human Rights, developing states emphasized that it would be impossible for them to realize

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<sup>41</sup> Morsink 1999

<sup>42</sup> U.N. General Assembly, *Universal Declaration of Human Rights*, 1948: Article 22. Emphasis mine.

<sup>43</sup> *Ibid*: Article 28

<sup>44</sup> Alston and Quinn 1987: 189

<sup>45</sup> United Nations 1968: Para. 13. Emphasis mine.

economic and social rights on their own given their current state of economic development, and that doing so necessitated external assistance from the developed world.<sup>46</sup>

The campaign for the right to development emerged out of these initiatives as an effort to realize economic and social rights by writing international duties into international law.<sup>47</sup> The concept of the right to development as a human right is typically attributed to Keba M'Baye. M'Baye was a highly respected Senegalese jurist who, during his career, served as president of the International Commission of Jurists and a judge at the International Court of Justice. He also was the author of the first draft of the African Charter on Human and People's Rights. M'Baye introduced the right to development during a speech to the International Institute of Human Rights in Strasbourg in 1972. In this speech, M'Baye justified the right to development as a "moral imperative" to respond to the unfair international economic order, within which the countries of the Global South serve as "reservoirs of raw materials and cheap labor" for the Global North.<sup>48</sup> He articulated the responsibility of the "rich states" to realize this right, a responsibility which derived from both their advantaged position within an unjust international economy, as well as their current and historical culpability for the under-development of the Global South through colonization.

In fact, M'Baye was clear that the right to development implied responsibility of developed states towards developing, or "under-developed" [*sous-developpés*] states. After outlining how colonial dynamics had created the current global economic context, he asserts a link between past and present responsibility, noting that:

"Some of these events...go back quite far in the past; but their consequences are still felt today with dramatic topicality. The harm they cause must be endorsed by those who caused

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<sup>46</sup> Alston and Quinn 1987; Boilard 2019

<sup>47</sup> Alston 1991

<sup>48</sup> M'Baye 1972: p515 (Author translation).

them; it is a basic principle of justice... [T]hese responsible peoples must not only account for these events, but repair the damage they caused.”<sup>49</sup>

M’Baye also expressly downplayed the responsibility of developing states for the right to development, stating, “Of course, there is also the responsibility of the under-developed states themselves,” but swiftly waving off this aspect of the right to development as unimportant, as “it would be pointless to dwell on [this aspect of the right to development] too much.”<sup>50</sup>

In 1974, as Senegal’s representative to the U.N. Commission on Human Rights (UNCHR), M’Baye introduced the right to development into the United Nations. Mirroring his language in the 1972 speech, M’Baye stated in the UNCHR that “[t]he responsibility for ensuring that everyone enjoyed human rights fell largely upon the rich countries,” who were “responsible for international events and their consequences.”<sup>51</sup> Meeting records from the UNCHR that year indicate that a number of states echoed this belief that “the international community, in particular economically developed countries, had a duty to extend all possible co-operation” towards realizing economic and social rights in developing countries.<sup>52</sup>

These demands, made within the context of human rights debates, were part of a broader campaign for a New International Economic Order (NIEO), which similarly asserted that the developed world had far-reaching duties to create a more just international economic order that would enable economic development.<sup>53</sup> The NIEO was aimed at restructuring international economic rules and bodies, but its content overlapped extensively with the human rights demands of the Global South, including its framing as an issue of social justice, its emphasis on

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<sup>49</sup> *Ibid*: p522 (Author translation).

<sup>50</sup> *Ibid*: p522-523 (Author translation).

<sup>51</sup> U.N. Commission on Human Rights, Summary Record of the 1,269<sup>th</sup> meeting, E/C.4/SR.1269, 1974: 30. Quoted in Boilard 2019: p20.

<sup>52</sup> U.N. Commission on Human Rights 1974b: 27

<sup>53</sup> Ibhawoh 2011: 81-82; Marks 2004.

the ways that wealthy states were responsible for the under-development of states in the Global South, and the duties of the former to realize economic development in the latter. The NIEO also establishes a direct link between colonialism and present under-development. The Charter of Economic Rights and Duties of States, one of the NIEO's foundational documents, lays out duties that wealthy states bear, which include a duty to eliminate the "social consequences" of colonialism. The charter asserts that states are "economically responsible" to countries that have been affected by colonialism, including for providing restitution and compensation.<sup>54</sup> Attempts to create international obligations for the right to development within the U.N. began in earnest in 1977 and took the form of linking the right to development to the NIEO.

Through the right to development, states explicitly framed the demands of the NIEO as a matter of human rights.<sup>55</sup> Its proponents also drew directly from the existing understanding of international human rights responsibility, according to which states of the Global North bore international duties because of their responsibility for violations of economic and social rights in the Global South. Representatives from the Global South asserted the existence of historical responsibility because of past colonization and the slave trade. They also argued that Global North was structurally responsible, as wealth was unjustly concentrated in the Global North, while the existing international economic system made it impossible for states in the Global South to develop because of unfair trade patterns and burdensome debt servicing, among other things. Historical and structural responsibility were linked, in that the current patterns and structures of the global economy were seen as vestiges of colonialism.<sup>56</sup> Finally, developed states were also directly responsible for violations of economic and social rights through their use of

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<sup>54</sup> Economic Charter, Article 16

<sup>55</sup> U.N. General Assembly 1977

<sup>56</sup> Fioretos 2020; Gathii 2020; Getachew 2019; U.N. Commission on Human Rights 1977: 10-11.

economic pressure against Global South states and by undermining their attempts to nationalize natural resources.<sup>57</sup>

This responsibility was what formed the basis of duties for wealthy states to realize economic development in poor countries and to refrain from actions that hindered their development. In fact, it is a matter of historical record that a central aspect of the campaign for the right to development was the assertion that wealthy, Western states bore duties towards providing economic assistance to the Global South.<sup>58</sup> By explicitly linking the right to development to the NIEO, they established positive human rights duties for wealthy, Western states to reform the rules and institutions of what they viewed as an unjust international system, engage in preferential trade, transfer technology and resources, and provide compensation for colonialism. It also, in the parlance of human rights, created “negative” duties to refrain from actions that would create obstacles to development, including placing economic conditions on trade or development assistance or applying any sort of economic or political pressure.<sup>59</sup>

The first explicit link between right to development and the NIEO within the U.N. Commission on Human Rights was made in 1977, with the Global South using its voting majority to commission of a study on the “international dimensions” of the right to development “taking into account the requirements of the New International Economic Order”<sup>60</sup> and to pass a resolution officially recognizing the right to development as a human right.<sup>61</sup> That same year, a group of Global South states proposed a General Assembly resolution asserting that “the

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<sup>57</sup> U.N. Commission on Human Rights 1977: 10-11.

<sup>58</sup> Alston and Quinn 1987; Andreassen 2017; Boilard 2019; Cornwall and Nyamu-Musembi 2004; Dehm 2019; Ibhawoh 2011; Marks 2004; Piron 2002.

<sup>59</sup> United Nations 1974

<sup>60</sup> The full title of the commissioned report is “The International Dimensions of the Right to Development as a Human Right in Relation with other Human Rights based on International Co-operation, Including the Right to Peace, Taking into Account the Requirements of the New International Economic Order and the Fundamental Human Needs.”

<sup>61</sup> Ibhawoh 2011: p82

existence of an “unjust international economic order...constitutes a major obstacle to the realization of social, cultural and economic rights in developing countries” and that “the realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms.”<sup>62</sup>

### *North-South contestation and the Declaration on the Right to Development*

At the start of their campaign, the Global South had been optimistic that developed states would accept what they viewed as legitimate demands for economic justice.<sup>63</sup> They did, in fact, succeed in reorienting the agenda of the U.N. towards economic, social, and cultural rights and the right to development. However, the right to development, the NIEO, and the broader framing of human rights as involving international duties were rejected by the states of the Global North.<sup>64</sup> Representatives from the Global North insisted that human rights pertained only to state authorities and their citizens and asserted that economic assistance could not be a legal obligation.<sup>65</sup>

The United States, in particular, was immediately hostile to the NIEO when it was launched in 1974, as well as to the campaign for the right to development. When Jimmy Carter became president in 1977, he was slightly more sympathetic to the demands being made by the Global South, but he still pushed back against their more challenging demands, including by attempting to reframe the issue into a minimalist “basic needs” framework which emphasized eliminating extreme poverty rather than a more radical restructuring of the international

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<sup>62</sup> U.N. General Assembly 1977a

<sup>63</sup> Toye and Toye 2004

<sup>64</sup> Alston 1988; Cornwall and Nyamu-Musembi 2004; Marks 2004.

<sup>65</sup> Alston 1988; Marks 2004; U.N. General Assembly 1986d: 56; U.N. Commission on Human Rights 1982a; Cornwall and Nyamu-Musembi 2004.

system.<sup>66</sup> Carter even signed the International Convention on Economic, Social and Cultural rights in 1979 with a reservation that the U.S. did not accept an obligation to provide international economic assistance.<sup>67</sup> Ronald Reagan, by comparison, was openly hostile and antagonistic to both the right to development and the NIEO.<sup>68</sup> Other Western states expressed the view that issues of development were more appropriately addressed in economic bodies and emphasized that economic assistance could not be “mandatory.”<sup>69</sup>

It was in this context that, in 1981, the Commission on Human Rights established the Working Group of Governmental Experts on the Right to Development, which they tasked with drafting the Declaration on the Right to Development. The working group’s fifteen members included governmental representatives from the U.S., France, the Netherlands, and the Soviet Union, and sharp divisions emerged immediately between the three Western states and the Global South and Soviet states, who opportunistically supported the Global South.<sup>70</sup> From the first meeting, representatives clashed over whether the right to development should constitute a “legal right” or a “moral imperative”<sup>71</sup> and whether implementation of the right should include compensation for colonial exploitation.<sup>72</sup> The working group operated at a near standstill for years.<sup>73</sup>

Dueling drafts of a declaration, submitted for consideration in 1982, illustrate the nature of these divisions and the extent to which the final declaration diminished the concept of international duties. One draft, from the representatives of India and Yugoslavia, put forward an

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<sup>66</sup> Whyte 2019

<sup>67</sup> Alston and Quinn 1987: 187

<sup>68</sup> Alston 1988; Forsythe 1982, 1985: 264-5; Kirkpatrick 1983.

<sup>69</sup> Alston and Quinn 1987: 190

<sup>70</sup> Burke 2008

<sup>71</sup> United Nations 1982a: 4

<sup>72</sup> United Nations 1982a: Para. 9

<sup>73</sup> Alston 1988: 23

extensive list of international duties. It included a detailed list of specific actions that are called for by the NIEO, including transferring resources and technology to developing countries, reforming the international monetary system, and granting preferential trade.<sup>74</sup> It also listed a number of duties and responsibilities of states, who have the “primary responsibility to ensure development both within each nation *and internationally*,”<sup>75</sup> the “duty” to “co-operate with each other in promoting and assisting the achievement of development and in eliminating the obstacles to development,”<sup>76</sup> and the “duty” to “eliminat[e] existing disparities in the world and ensur[e] prosperity for all.”<sup>77</sup> The draft includes specific references to a duty to repair the effects of colonialism through the “remedying of injustices which have been imposed by force and deprive nations of the means necessary for their normal development.”<sup>78</sup>

In contrast, a draft by the representative of the Netherlands defined the right to development as an individual right for which states have duties toward their citizens. It includes no duties or responsibilities of states towards realizing or assisting in the development of other states. Instead, for “nations,” the primary responsibility for development “rests with themselves, taking into account their responsibility to the human beings and to the international community and to the individuals who make up nations.”<sup>79</sup>

These wildly different visions for the right to development presented a challenge for creating a consensus document, and it took three more years to produce a unified draft declaration.<sup>80</sup> The final draft that was adopted by the working group and passed on to the U.N. General Assembly in 1985 watered down or excluded the most challenging language with

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<sup>74</sup> U.N. Commission on Human Rights 1982b: Article 8.

<sup>75</sup> U.N. Commission on Human Rights 1982c: Article 2. Emphasis mine.

<sup>76</sup> *Ibid*: Article 2.

<sup>77</sup> *Ibid*: Article 2(7).

<sup>78</sup> *Ibid*: Article 2(9).

<sup>79</sup> U.N. Commission on Human Rights 1982d: Article 6.

<sup>80</sup> Rich 1985

respect to international duties.<sup>81</sup> In particular, in attempts to placate the representatives of the U.S., the Netherlands, and France, specific language calling for developed states to transfer resources to developing states had been removed.<sup>82</sup> In contrast to the India–Yugoslavia draft, which asserted states bore responsibility “to ensure development ...internationally,” the final draft limited state responsibility to creating “national and international conditions favourable to development.” Also absent from this text are the references to a duty to eliminate disparities between states and remedy past injustices, and the long list of actions required to establish the NIEO.

The draft did contain some very limited international duties, with the most notable being the “duty to co-operate with each other in ensuring development and eliminating obstacles to development.”<sup>83</sup> However, this was essentially a restatement of existing provisions in the U.N. Charter,<sup>84</sup> the Universal Declaration on Human Rights,<sup>85</sup> and the International Covenant on Economic, Social and Cultural Rights.<sup>86</sup> When the completed draft declaration was delivered to the General Assembly in 1985, many Global South representatives registered displeasure at the extensive compromises that had been made by the representative of Yugoslavia, who had shepherded the process as the chair of the working group.<sup>87</sup>

When the General Assembly brought the declaration to a vote in 1986, Pakistan made a last-ditch effort to add back in more precise and demanding international duties, submitting an amendment stating that the right to development requires action in accordance with the NIEO and calling directly for, among other things, “increase[d] concessional assistance,” resolving debt

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<sup>81</sup> Ibhawoh 2011: 143; Uvin 2004: 43

<sup>82</sup> Uvin 2007: 598

<sup>83</sup> U.N. General Assembly 1986a

<sup>84</sup> United Nations 1945: Article 55 and 56

<sup>85</sup> U.N. General Assembly 1948: Article 22 and 28

<sup>86</sup> United Nations 1966: Article 2(1)

<sup>87</sup> Barsh 1991: 335, footnote 73

burdens, and eliminating trade barriers faced by developing states.<sup>88</sup> The representative of Yugoslavia implored Pakistan to not insist on a vote over the amendment, as she “feared that its adoption would...affect the delicate balance achieved in the draft declaration,”<sup>89</sup> as the amendment, if voted on, would have likely passed due to overwhelming support of its content from the Global South. Pakistan relented in recognition of the desirability of gaining the Global North’s support, and instead made the unusual move of proposing that the amendment be adopted as a stand-alone General Assembly resolution.<sup>90</sup>

Even with this compromised and unsatisfactory language, the Declaration on the Right to Development received only mixed support from the Global North, with eight Western European countries abstaining and the U.S. voting no. France and the Netherlands, who had been represented on the drafting committee, voted to adopt the declaration, with their representatives explaining that their vote was in recognition of the willingness of other states to compromise.<sup>91</sup> A number of representatives of other states from the Global North explained their position on the declaration, particularly the belief that the focus of human rights should be on domestic application, noting that, “safeguarding the integrity of the human person against oppression and abuse by State authorities should be our main concern.”<sup>92</sup>

The Declaration for the Right to Development as it was adopted is regarded by legal scholars as a poorly constructed, vague document.<sup>93</sup> The “duty to cooperate,” in particular, is regarded as failing to establish legal obligations to provide assistance.<sup>94</sup> Given the extent of their

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<sup>88</sup> U.N. General Assembly 1986b

<sup>89</sup> U.N. General Assembly 1986c: 9

<sup>90</sup> *Ibid*: 9-12

<sup>91</sup> *Ibid*: 29, 35

<sup>92</sup> U.N. General Assembly 1986d: 77. See also: U.N. General Assembly 1986d: 57; U.N. Commission on Human Rights 1987, Quoted in Alston 1988.

<sup>93</sup> Uvin 2007: 598; Piron 2002: 12; Alston 1991: 221

<sup>94</sup> Alston 1988: 23-24, 1991: 221; Piron 2002: 12

compromises, some states expressed frustration with unwillingness of powerful states uniformly to accept the declaration. The representative of Colombia pointedly suggested that “some countries” had withheld support in order to “avoid acceptance of any responsibility for...violations.”<sup>95</sup> However, the dye was cast, and the Declaration on the Right to Development was brought into international human rights while failing to establish new international duties for its realization.

### *Conclusion*

Following the adoption of the Declaration on the Right to Development in 1986, the right to development, and especially its most radical visions for a global redistribution wealth and rewriting of the rules of the international economy, fell out of favor. At the 1993 Vienna World Conference on Human Rights, the Global North actually accepted the right to development as a human right, but only in a form that removed any suggestion of international duties. The Vienna Declaration and Programme of Action, the conference’s outcome document, made a small but significant change from the Declaration on the Right to Development, asserting that states “*should* cooperate...in ensuring development and eliminating obstacles to development,”<sup>96</sup> a change from the Declaration on the Right to Development’s assertion that states have a *duty* to cooperate.

Beginning in the mid-1990s, the right to development was largely displaced by the human rights-based approach to development,<sup>97</sup> including within the U.N., where it forms the

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<sup>95</sup> U.N. General Assembly 1986d: 60-62

<sup>96</sup> United Nations 1993: Para. 10. *Emphasis mine.*

<sup>97</sup> Nelson and Dorsey 2008

basis for much of the organization's approach to issues of development and human rights.<sup>98</sup> This rights-based approach emphasizes the duties of states towards their citizens, while seeing the international community's role as assisting states in meeting their duties and ensuring that international development projects are conducted in ways that respect human rights. Under this approach, individuals hold entitlements specifically with respect to their own government. It does not address fundamental structural and historical causes of under-development, and it sees international actors as assisting domestic duty-bearers, rather than as themselves having duties. Meanwhile, states in the Global South continue to assert the existence of international duties, with some noting that they "[can] not accept the view that only nations had duties in ensuring the full realization of the right to development for their citizens," and that suggesting otherwise "flew in the face of" the advancements in the right to development that had been made within the United Nations.<sup>99</sup>

These developments have had real implications on the ability of the right to development to provide a useful tool bring about a meaningful realization of economic and social rights in developing states. In fact, the right to development is often dismissed as an example of bad international law, with no "identifiable parties bearing clear obligations"<sup>100</sup> no clear route for applying a judicial approach to advancing this right, and no way to apply one of human rights advocates' most potent tools: naming and shaming.<sup>101</sup> Yet, these problems are greatly mitigated within a version of the right to development that includes international duties of the kind discussed in this paper.

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<sup>98</sup> Dufvenmark 2015; Marks 2004: 153; UNESCO n.d.; UNICEF n.d.; United Nations Population Fund n.d.; World Bank n.d.; U.N. Development Programme 2003

<sup>99</sup> U.N. Information Services 2003

<sup>100</sup> Uvin 2007: 598; Piron 2002: 12; Alston 1991: 221

<sup>101</sup> Roth 2004

The history of economic and social rights and the right to development laid out in this paper highlights the extent to which a central concern of this right, to address global inequality and create obligations for wealthy states through assigning them direct responsibility, was undermined by the resistance of states that stood to be held responsible. While this may not be a surprising outcome from a political perspective, it serves as a reminder of the degree to which international law is, among other things, the product of historical struggles, rather than pure statements of universal values. It also brings to light the degree to which there is untapped potential in human rights to address some of the most urgent political problems facing the world today.

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