

The Global South and Global Human Rights

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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 refused to accommodate the demands of the Global South. In spite of the centrality of international responsibility to the right to development as originally conceived, 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.¹ 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.² 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.³ 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.”⁴

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,⁵ 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.

¹ See Courtis and Sepulveda (2009), Gibney Skogly (2010), King (2009), Ssenyonjo (2011), Skogly (2006).

² Paul Nelson and Ellen Dorsey. 2008. *New Rights Advocacy*. Washington, DC: Georgetown University Press.

³ Sen 1999

⁴ ETO Consortium n.d.

⁵ 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.⁶

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."⁷ 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."⁸ 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."⁹

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

⁶ Getachew 2018

⁷ Álvarez 1909, quoted in Becker Lorca 2006.

⁸ Alston and Quinn 1987

⁹ Bandaranaike 1976

wealth distribution. 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, pre-dated and formed the ideational basis for how many of these actors came to engage with human rights within the United Nations. In the 1970s, these ideas manifested in the campaign for the right to development, which had as its primary aim articulating the responsibility of developed states towards the developing world and providing a novel way of conceptualizing their associated duties. I demonstrate that international duties were not a novel demand that emerged *sui generis* in the 1970s or an attempt to 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.

In this paper, I demonstrate how states of the Global South brought this idea into the United Nations, trying 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 under-development 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.

Although human rights consolidated 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 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 have shaped international norms and law,¹⁰ resulting in a global rights framework that is overly permissive towards major causes of poverty and deprivation.

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

¹⁰ 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.¹¹ 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. 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.¹² 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.¹³

The Global North's understanding 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.¹⁴ In this conception, governments are "duty bearers," in human rights parlance, who are responsible for guaranteeing the rights of their citizens.¹⁵ I refer to the obligations of governments towards those within their borders as *domestic duties*.

¹¹ Donnelly 1986

¹² Simon 2020: 424.

¹³ Donnelly 1982, 1986.

¹⁴ Grovogui 2006

¹⁵ Donnelly 1986

Actors from the Global South did not necessarily disagree with this perspective on human rights, and some very strongly shared it.¹⁶ 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, and they viewed solutions to violations in terms of entitlement to economic assistance and duties of solidarity.¹⁷

¹⁶ Sikkink 2014; Simon 2017

¹⁷ 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.

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, which itself was largely a response to the growing view that their relations with the economically dominant U.S. was 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.¹⁸

These ideas inspired socialist political parties,¹⁹ student movements,²⁰ Catholic theologians,²¹ and economists²² 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, a progressive Catholic Theology that would in the 1960s become Liberation Theology emerged which emphasized solidarity with the poor and, among other things, drew attention to international capitalist forces which oppress and exploit the poor and marginalized.²³ These 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 global wealth accrued to the developed states.²⁴

¹⁸ Corrales and Feinberg 1999

¹⁹ 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).

²⁰ Slim 2002

²¹ Dussel 1981: 106-113, 127-239; Sanders 1970

²² Prebisch 1962

²³ Dussel 1981: 106-113, 127-239; Sanders 1970

²⁴ *Ibid.*

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.²⁵ Similarly, Trinidadian Eric Williams’ influential 1944 book *Capitalism and Slavery* argued that the poverty of the Caribbean had been directly caused by enslavement and colonization by the United Kingdom.²⁶ Williams was an anti-colonial leader and prominent member of the pan-Africanist movement, and his 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.²⁷

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. 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

²⁵ Du Bois 1915

²⁶ Williams 1944

²⁷ Getachew 2019; Nkrumah 1966; Prashad 2007; Rodney 1972.

realize those rights.²⁸ 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.²⁹

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.³⁰

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. 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,³¹ arguing from the early twentieth century that

²⁸ Andrew and Cleven 1921; Bullington 1927.

²⁹ Prebisch 1962

³⁰ Getachew 2019; Nkrumah 1963, 1966; Selassie I 1963

³¹ Samore 1958

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.³²

Ideas of international solidarity translated straightforwardly to Latin American views on economic and social rights. For example, 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.”³³

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* 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.³⁴

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.³⁵ 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

³² Álvarez 1919: 34-36

³³ Inter-American Juridicial Committee 1945: 110

³⁴ Wilder 2015

³⁵ Cornwall and Nyamu-Musembi 2009; Getachew 2019.

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.³⁶ This view was expressed by a representative of the 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.”³⁷

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.³⁸ The Universal Declaration does, however, include a right to realization of economic, social, and cultural rights “through national effort *and international co-operation*”³⁹ and “a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”⁴⁰

³⁶ Alston 1991: 220; Boilard 2019; Burke 2008; Fukuda-Parr 2012: 850.

³⁷ U.N. General Assembly 1968

³⁸ Morsink 1999

³⁹ U.N. General Assembly, *Universal Declaration of Human Rights*, 1948: Article 22. Emphasis mine.

⁴⁰ *Ibid*: Article 28

The question of international duties featured 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 tried, 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.⁴¹ 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.⁴² In the U.N. Commission on Human Rights, developing states emphasized that it would be impossible for them to realize 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.⁴³

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.⁴⁴ The concept of the right to development as a human right is typically attributed to Keba M'Baye, a respected Senegalese jurist who, throughout his career, served as president of the International Commission of Jurists, a judge at the International Court of Justice, and was the author of the first draft of the African Charter on Human and People's Rights. M'Baye introduced the concept of the right to development as a human right during a speech to the International Institute of

⁴¹ Alston and Quinn 1987: 189

⁴² Gathii 2020

⁴³ Alston and Quinn 1987; Boilard 2019

⁴⁴ Alston 1991

Human Rights in Strasbourg in 1972. In this speech, M'Baye justified the right to development as a “moral imperative” brought about by the historical and structural sources of under-development. These included 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,⁴⁵ and which, he asserted, was the modern-day manifestation of former colonial relations.⁴⁶

Because of their advantaged position within an unjust international economy, as well as their current and historical culpability for the under-development of the Global South, “rich states” bore a responsibility to realize the right to development. M'Baye made this responsibility explicit, 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 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.”⁴⁷

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.”⁴⁸ 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.⁴⁹

⁴⁵ M'Baye 1972: p515 (Author translation).

⁴⁶ *Ibid*: 515-516

⁴⁷ *Ibid*: p522 (Author translation).

⁴⁸ U.N. Commission on Human Rights, Summary Record of the 1,269th meeting, E/C.4/SR.1269, 1974: 30. Quoted in Boilard 2019: p20.

⁴⁹ U.N. Commission on Human Rights 1974b: 27

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.⁵⁰ 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.⁵¹

Attempts to create international obligations for the right to development within the U.N. began in earnest in 1977 and took the form of carrying over the demands of the NIEO into human rights debates.⁵² Within the U.N. Commission on Human Rights, representatives from the Global South asserted that the North bore historical, structural, and direct responsibility for the South's under-development and the failure to realize economic and social rights. Historical responsibility came from their use of colonization and the slave trade. Structural responsibility derived from the unjust concentration of wealth in the Global North, along with things like unfair trade patterns and burdensome debt servicing, which undermined the South's economic development. Historical and structural responsibility were linked, in that the current patterns and structures of the global economy were seen as vestiges of colonialism.⁵³ Finally, developed states were also directly responsible for violations of economic and social rights through their use of

⁵⁰ Ibhawoh 2011: 81-82; Marks 2004.

⁵¹ Economic Charter, Article 16

⁵² U.N. General Assembly 1977

⁵³ 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.⁵⁴

This responsibility created duties for wealthy states to realize economic development in poor countries.⁵⁵ 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.⁵⁶

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”⁵⁷ and to pass a resolution officially recognizing the right to development as a human right.⁵⁸ That same year, a group of Global South states proposed a General Assembly resolution asserting that “the 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

⁵⁴ U.N. Commission on Human Rights 1977: 10-11.

⁵⁵ Alston and Quinn 1987; Andreassen 2017; Boilard 2019; Cornwall and Nyamu-Musembi 2004; Dehm 2019; Ibhawoh 2011; Marks 2004; Piron 2002.

⁵⁶ United Nations 1974

⁵⁷ 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.”

⁵⁸ Ibhawoh 2011: p82

realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms.”⁵⁹

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.⁶⁰ 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.⁶¹ 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.⁶²

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 system.⁶³ 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

⁵⁹ U.N. General Assembly 1977a

⁶⁰ Toye and Toye 2004

⁶¹ Alston 1988; Cornwall and Nyamu-Musembi 2004; Marks 2004.

⁶² Alston 1988; Marks 2004; U.N. General Assembly 1986d: 56; U.N. Commission on Human Rights 1982a; Cornwall and Nyamu-Musembi 2004.

⁶³ Whyte 2019

international economic assistance.⁶⁴ Ronald Reagan, by comparison, was openly hostile and antagonistic to both the right to development and the NIEO.⁶⁵ 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.”⁶⁶

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.⁶⁷ From the first meeting, representatives clashed over whether the right to development should constitute a “legal right” or a “moral imperative”⁶⁸ and whether implementation of the right should include compensation for colonial exploitation.⁶⁹ Because of these fundamental differences, the working group operated at a near standstill for years.⁷⁰

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

⁶⁴ Alston and Quinn 1987: 187

⁶⁵ Alston 1988; Forsythe 1982, 1985: 264-5; Kirkpatrick 1983.

⁶⁶ Alston and Quinn 1987: 190

⁶⁷ Burke 2008

⁶⁸ United Nations 1982a: 4

⁶⁹ United Nations 1982a: Para. 9

⁷⁰ Alston 1988: 23

trade.⁷¹ 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*,”⁷² the “duty” to “co-operate with each other in promoting and assisting the achievement of development and in eliminating the obstacles to development,”⁷³ and the “duty” to “eliminat[e] existing disparities in the world and ensur[e] prosperity for all.”⁷⁴ 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.”⁷⁵

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.”⁷⁶

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.⁷⁷ The final draft that was adopted by the working group and passed on to the U.N. General Assembly in 1985 excluded the most challenging language with respect to international duties.⁷⁸ 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

⁷¹ U.N. Commission on Human Rights 1982b: Article 8.

⁷² U.N. Commission on Human Rights 1982c: Article 2. Emphasis mine.

⁷³ *Ibid*: Article 2.

⁷⁴ *Ibid*: Article 2(7).

⁷⁵ *Ibid*: Article 2(9).

⁷⁶ U.N. Commission on Human Rights 1982d: Article 6.

⁷⁷ Rich 1985

⁷⁸ Ibhawoh 2011: 143; Uvin 2004: 43

was removed.⁷⁹ Rather than states bearing responsibility “to ensure development ...internationally,” the final draft limited 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.”⁸⁰ However, this was essentially a restatement of existing provisions in the U.N. Charter,⁸¹ the Universal Declaration on Human Rights,⁸² and the International Covenant on Economic, Social and Cultural Rights.⁸³ 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.⁸⁴

In fact, when the General Assembly finally brought the declaration to a vote in 1986, a representative from 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 burdens, and eliminating trade barriers faced by developing states.⁸⁵ 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

⁷⁹ Uvin 2007: 598

⁸⁰ U.N. General Assembly 1986a

⁸¹ United Nations 1945: Article 55 and 56

⁸² U.N. General Assembly 1948: Article 22 and 28

⁸³ United Nations 1966: Article 2(1)

⁸⁴ Barsh 1991: 335, footnote 73

⁸⁵ U.N. General Assembly 1986b

in the draft declaration,”⁸⁶ 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.⁸⁷

Even with this compromised 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. A number of representatives of other states from the Global North explained their position on the declaration by stating that “safeguarding the integrity of the human person against oppression and abuse by State authorities should be our main concern.”⁸⁸

The Declaration for the Right to Development as it was adopted is regarded by legal scholars as a poorly constructed, vague document.⁸⁹ The “duty to cooperate,” in particular, is regarded as failing to establish legal obligations to provide assistance.⁹⁰ Given the extent of their 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.”⁹¹ 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

⁸⁶ U.N. General Assembly 1986c: 9

⁸⁷ *Ibid*: 9-12

⁸⁸ 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.

⁸⁹ Uvin 2007: 598; Piron 2002: 12; Alston 1991: 221

⁹⁰ Alston 1988: 23-24, 1991: 221; Piron 2002: 12

⁹¹ U.N. General Assembly 1986d: 60-62

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 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, included language that states "*should* cooperate...in ensuring development and eliminating obstacles to development,"⁹² 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,⁹³ including within the U.N., where it forms the basis for much of the organization's approach to issues of development and human rights.⁹⁴ 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. Under this approach, individuals hold entitlements specifically with respect to their own government. Fundamental structural and historical causes of under-development are left unaddressed, and international actors are seen as assisting domestic duty-bearers, rather than as themselves having duties.

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 criticized for lacking "identifiable

⁹² United Nations 1993: Para. 10. *Emphasis mine.*

⁹³ Cornwall and Nyamu-Musembi 2004; Ibhawoh 2011; Nelson and Dorsey 2008

⁹⁴ 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

parties bearing clear obligations.”⁹⁵ The history of economic and social rights and the right to development laid out in this paper highlights the extent to which these obligations were in fact 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 untapped potential in human rights to address some of the most urgent political problems facing the Global South today.

⁹⁵ Uvin 2007: 598; Piron 2002: 12; Alston 1991: 221

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