

## Chapter 2

### The Normative Framework of the Right to Development

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#### Learning Objectives:

- To understand the normative framework of the UN Declaration on the Right to Development, 1986
- To understand the core elements of the Right to Development
- To analyze the relevance of the Right to Development in the context of the contemporary world order

#### Introduction:

The United Nations was founded in 1945 on the normative principles of global ethical interdependence necessitating cooperation, solidarity and fraternity between the world’s nations and peoples to create a better world for all. The founding members pledged in Article 56 of the UN Charter to take “joint and separate action in co-operation” with each other and the UN to achieve the purposes mentioned in Article 55, which include human rights, “higher standards of living [...] and conditions of economic and social progress and development,” and “solutions of international economic, social, health and related problems”.<sup>1</sup> In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (hereinafter referred to as “UDHR”).<sup>2</sup> The Preamble to this Declaration announces the UN’s determination to “promote social progress and better standards of life in larger freedom”.<sup>3</sup> Article 28 of the UDHR states, “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”.<sup>4</sup> The articulation of a “right to development” grew out of this UN commitment to economic and social human rights for all.

Unfortunately, despite these lofty aspirations, the global community in the post-WWII period was fundamentally divided over how to build a “just” economic order. The politics of the “Cold War”, pitting the capitalist economic model against the socialist/communist approach, resulted in a failure of imagination and an inability to develop workable policies to ameliorate the suffering of the world’s poorest people. An overall unwillingness to compromise on all sides resulted in a

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<sup>1</sup> Philip Alston and Ryan Goodman, *International Human Rights* (Oxford: Oxford University Press, 2013). p. 1525.

<sup>2</sup> A/RES/3/217 A

<sup>3</sup> Ibid, Preamble.

<sup>4</sup> A/RES/3/217 A. See also *ibid*, p. 46.

perpetuation of some of the structural problems in the global economy stemming from colonialism. These issues were not addressed and inequality and global poverty continued apace.<sup>5</sup>

However, decolonization proceeded with rapidity in the 1960s and 1970s and the newly emergent independent states sought to revitalize the UN normative framework of economic and social rights. The RtD emerged during this time as a promising vehicle for the exploited peoples to raise these claims for justice for the damages caused by the great powers on their developing countries. Many developing countries argued that hundreds of years of exploitation by the colonial powers had depleted their natural wealth and created conditions of extreme poverty among their citizens. One of the first experts to refer to a right to development was Senegalese jurist Kéba Mbaye, the former president of the UN Commission on Human Rights. He defined the RtD as “the recognized prerogative of every individual and every people to enjoy in just measure the goods and services produced thanks to the effort of solidarity of the members of the community”.<sup>6</sup>

The former colonial powers were, of course, hesitant to recognize any legal obligation for reparations or accept responsibility for the negative economic results of the colonial period. However, decolonization resulted in a new group of developing nations becoming the numerical majority within the UN system and, in particular, the General Assembly. These countries used this voting power to push economic development goals to the top of the international agenda. Disillusioned with the Bretton Woods institutions – the International Monetary Fund and the World Bank – and the General Agreement on Tariffs and Trade, these developing countries sought to goad the UN in a new direction. The UN General Assembly endorsed this new approach in both the 1974 Declaration on the Establishment of a New International Economic Order (NIEO)<sup>7</sup>, and the subsequent Charter of Rights and Duties of States<sup>8</sup>. In addition, the UN Conference on Trade and Development (UNCTAD) was established as an organ of the General Assembly to address development issues and the specific concerns of the less developed countries.

Throughout the 1970s, developing states demanded that colonialism and neocolonialism represented violations of human rights law and thus the former colonial powers had legal obligations to cooperate and assist with development. Development aid and international cooperation was thus not merely charity but a legal duty to correct for this history of exploitation. It is within this contentious political context that the RtD emerged. The UN Commission on Human Rights in a resolution approved in February 1977 first recognized the right to development as a human right.<sup>9</sup>

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<sup>5</sup> William F. Felice, “Right to Development” in David P. Forsythe (ed), *Encyclopedia of Human Rights* (Oxford: Oxford University Press, 2009), pp. 21–31.

<sup>6</sup> MBaye, Kéba, “Chairman’s Opening Remarks”, in International Commission of Jurists (eds), *Development, Human Rights, and the Rule of Law* (Oxford: Pergamon), pp. 5-8, at p. 7.

<sup>7</sup> A/RES/S-6/3201

<sup>8</sup> A/RES/29/3281

<sup>9</sup> William F. Felice, “Right to Development”.

## The Declaration on the Right to Development

The most important document in international law affirming and elaborating the RtD is the UN Declaration on the Right to Development (DRTD), adopted by the General Assembly in 1986.<sup>10</sup> The DRTD defines development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”<sup>11</sup>. In Article 1(1), the DRTD states that “The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”.<sup>12</sup> In Article 2(1), the DRTD makes it clear that “the human person is the central subject of development and should be the active participant and beneficiary of the right to development”. The Declaration charges States with the legal duty and obligation to create “national and international conditions favourable to the realization of the right to development”<sup>13</sup>, to “co-operate with each other in ensuring development and eliminating obstacles to development”<sup>14</sup>, and to “take steps, individually and collectively, to formulating international development policies with a view to facilitating the full realization of the right to development”<sup>15</sup>.

The DRTD calls for international cooperation under law for the creation of an environment favourable to the realization of all human rights. As with the “right to self-determination”, there is an internal and an external dimension to the DRTD. The external dimension refers to the obligation of States and the international community to enact policies to address the massive inequities in the global economy. The internal dimension calls on individual States to develop domestic policies to realize the human rights of its citizens. “Appropriate” development policies, as outlined in DRTD Article 2(3) are those “that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom”.<sup>16</sup> In essence, the realization of economic and social human rights, including the right to an adequate standard of living and rights to food, health, education, and housing, depends upon both the cooperation and fraternity between states and domestic policies that prioritize this agenda.<sup>17</sup>

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<sup>10</sup> A/RES/41/128

<sup>11</sup> Ibid, Preamble, paragraph 2.

<sup>12</sup> Ibid, Article 1(1).

<sup>13</sup> Ibid, Article 3(1).

<sup>14</sup> Ibid. Article 3(3).

<sup>15</sup> Ibid. Article 4(1).

<sup>16</sup> Ibid, Article 2(3).

<sup>17</sup> Margot E. Salomon, “Legal Cosmopolitanism and the Normative Contribution of the Right to Development”, in Stephen P. Marks (ed), *Implementing the Right to Development: The Role of International Law* (Boston: Harvard School of Public Health, 2008), pp. 17-26, at pp. 18–19.

The most important part of the DRTD, the element at its core, is the affirmation of the need for international cooperation to overcome the legacy of colonialism, which left many developing countries at a distinct disadvantage in our modern, interdependent global economy. This lack of a “level playing field” between nations has made it difficult for many developing countries to advance economically. In addition, the rules, procedures and arrangements governing economic globalization in the late 20<sup>th</sup> and early 21<sup>st</sup> century have too often served to perpetuate, rather than overcome, the vast economic divisions between countries, prolonging poverty and inequality between and within States, with negative consequences on poor, marginalized and vulnerable sections of society in developing as well as developed countries. The DRTD focuses on the need for international cooperation to nurture development. Article 4(2) states: “Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development”.<sup>18</sup> The document calls on states to “promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States”.<sup>19</sup>

### **The Normative Core of the Right to Development**

There are at least five key normative components to the RtD, which cumulatively represent the integration of human rights principles into economic planning.

These elements are:

- 1) The right to equal opportunity for all, including the poor
- 2) Development as a process to realize all human rights
- 3) Legal accountability
- 4) The link between human development and civil and political rights
- 5) The critical nature of solidarity rights and the duty to cooperate

### **The Right to Equal Opportunity**

In its Preamble, the DRTD recognizes that “equality of opportunity for development is a prerogative both of nations and of individuals who make up nations”. Scholars and activists from developing countries argue that the key to understanding the RtD is to take seriously the importance of equal opportunity. “Social injustice” is a term used to describe unfair and inequitable structures and policies of the political, legal, economic, and social institutions within a nation and/or the international system. When these structures favour some individuals, groups, peoples and nations over others, a situation of social injustice and/or global injustice exists and equal opportunity remains a myth. This negative outcome is often linked to global economic structures and policies of States and international organizations. In addition, the term “structural violence” has been used to refer to the denial of subsistence rights to the most vulnerable sectors as a result of the workings of economic and social institutions. Too often there is a relationship

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<sup>18</sup> A/RES/41/128, Article 4(2).

<sup>19</sup> Ibid, Article 3(3).

between the lack of equal opportunity and the structures of the international economic system. Unfortunately, these structures (i.e., the rules and institutions governing world trade, finance, and investment) did not adequately account for the conditions of social injustice created by centuries of colonialism and neocolonialism, and, as a result, structural violence continues to negatively impact the poor and vulnerable around the world.<sup>20</sup>

The DRTD highlights the right to equal access to the benefits of development. Article 8(1) calls on states to ensure “*equality of opportunity* for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income” (emphasis added).<sup>21</sup> And Article 2(3) proclaims, “States have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals [...] and in the fair distribution of the benefits resulting therefrom”.<sup>22</sup> In essence, this is a call to give everyone an equal chance to participate fully in an economic system that can be unjust if protective measures are not taken.

The RtD thus calls on States and international organizations to act to create equality of opportunity, to ameliorate the human suffering caused by hundreds of years of colonialism, and to carve out an area of protection from the often pernicious and mal-distributive effects of the current vigorous global economic system. These state and global actors have a duty to create what Henry Shue has called “the morality of the depths [...] the line beneath which no one is to be allowed to sink”.<sup>23</sup> For all people to have an opportunity to live a life of dignity demands nothing less.

The RtD is thus neither a call for charity nor simply a moral plea to “help one’s fellow men and women”. It is rather a call for equal opportunity; a call to give everyone an equal chance to participate fully in an economic system that can be unjust and exploitative if protective measures are not taken. This right declares that States and international organizations have a duty to strive to uphold a minimal economic floor, that is, to meet certain basic subsistence requirements, so that every person is given an equal chance to participate freely and fully in the global economic system.<sup>24</sup> The UN Development Programme (UNDP) articulated this as follows: “This equity is, however, in *opportunities* – not necessarily in final achievements. Each individual is entitled to a just opportunity to make the best use of his or her potential capabilities. So is each generation. How they actually use these opportunities, and the results they achieve, are a matter of their own choice. But they must have such a choice – now and in the future”.<sup>25</sup>

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<sup>20</sup> William F. Felice, *The Global New Deal: Economic and Social Rights in World Politics*, 2<sup>nd</sup> edition (Lanham, Maryland: Rowman & Littlefield Publishers, 2010), pp. 51–52.

<sup>21</sup> A/RES/41/128, Article 8(1).

<sup>22</sup> *Ibid.*, Article 2(3).

<sup>23</sup> Henry Shue, *Basic Rights: Subsistence, Affluence and US Foreign Policy* (Princeton: Princeton University Press, 1980), p. 18

<sup>24</sup> William F. Felice, *Taking Suffering Seriously: The Importance of Collective Human Rights* (Albany, New York: State University of New York Press, 1996), p. 71.

<sup>25</sup> UNDP, *Human Development Report 1994* (New York: Oxford University Press, 1994), p. 13.

## Development as a Process to Realize All Human Rights

Arjun Sengupta, the UN independent expert on the right to development from 1999 to 2004, argued that it is possible to see the RtD as a process of development linked to the set of recognized human rights and fundamental freedoms. “The right to that process is different from the right to the outcomes of that process. But it is expected that the process would lead with a high probability to the realization of all these outcome rights. The right to that process of development is thus a metaright to all these human rights”.<sup>26</sup> In other words, a commitment to the RtD implies a commitment to development as a process toward a comprehensive program that takes into account the realization of all human rights—economic, social, cultural, civil and political. (This idea is stated clearly in DRTD Article 1(1) quoted above.)

Mohammed Bedjaoui puts forward a comparable perspective arguing: “The right to development is a fundamental right, the precondition of liberty, progress, justice and creativity. It is the alpha and omega of human rights, the first and last human right, the beginning and the end, the means and the goal of human rights, in short it is the *core right* from which all the others stem [...]”.<sup>27</sup> In a similar vein, Georges Abi-Saab describes the RtD as a “necessary precondition for the satisfaction of the social and economic rights of the individuals [...] without a tolerable degree of development, the society will not be materially in a position to grant and guarantee these rights to its members, i.e., of providing the positive services and securing the minimum economic standards which are required by these rights”.<sup>28</sup>

The RtD thus departs from the narrow economic conceptions of development, which often concentrates exclusively on GNP growth, and instead focuses on the human person as the active participant and beneficiary of development. The debate and discussion on the RtD has contributed significantly to the UN effort to articulate the concept of “human development.” For example, these links between human development and human rights were clearly articulated in the UNDP’s *Human Development Report 2000*. “If human development focuses on the enhancement of the capabilities and freedoms that the members of a community enjoy, human rights represent the claims that individuals have on the conduct of individual and collective agents and on the design of social arrangements to facilitate or secure these capabilities and freedoms”.<sup>29</sup>

Amartya Sen cogently argues that an important way of considering “real” equality of opportunities is through equality of capabilities. The focus is not on outcomes, but on the ability to function and the freedom to achieve. He argues that a person’s capability to achieve functions that he or she has reason to value provides us with a general approach to assess equality and

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<sup>26</sup> Arjun Sengupta, “On the Theory and Practice of the Right to Development”, *Human Rights Quarterly*, vol. 24, no. 4 (2002), pp. 837–889, at p. 875.

<sup>27</sup> Mohammed Bedjaoui, “The Right to Development” in Mohammed Bedjaoui (ed), *International Law: Achievements and Prospects* (Paris: UNESCO, 1991).

<sup>28</sup> Georges Abi-Saab, “The Legal Formulation of a Right to Development” in *The Right to Development at the International Level* (The Hague, The Netherlands: Hague Academy of International Law, 1980).

<sup>29</sup> UNDP, *Human Development Report 2000* (New York: Oxford University Press, 2000), p. 20.

inequality. Functions include being well nourished, avoiding escapable morbidity and premature mortality, having self-respect, and being able to take part in the life of the community.<sup>30</sup>

The assertion of the RtD has encouraged the UN and other organizations to embark on a rights-based methodology to development based on Sen’s capabilities approach. The UNDP, for example, has played a leadership role in the development of indexes and measurements of basic economic and social human rights. The UNDP’s human development approach draws on three perspectives of poverty: income, basic needs, and capabilities. This approach goes beyond standard economic models and instead focuses on equity and distributive justice. Human development is based on a fair distribution of benefits and true equality of opportunity.

### **Legal Accountability**

Mohammed Bedjaoui powerfully explains that the human right to development claim goes something like this: “Before giving me charity or offering me your aid, give me my due. Perhaps I shall then have no need of your aid. Perhaps charity is no more than the screen behind which you expropriate what is due to me. Such charity does not deserve to be so called; it is my own property you are handing back to me in this way and, what is more, not all of it”.<sup>31</sup>

A central motivation of the RtD is to take Bedjaoui’s critique seriously and move the idea of development assistance and cooperation out of the realm of charity and into one of legal obligation with universal applicability and inviolability. States then have a legal duty to respect and promote the RtD. For example, DRTD Article 3(3) asserts that “States have the duty to cooperate with each other in ensuring development and eliminating obstacles to development”.<sup>32</sup>

In addition, Articles 4(1) and 4(2) of the DRTD clarify the legal duties of states to cooperate with each other to realize the RtD. These obligations are expressed both as a duty of States toward their own peoples and as a right of States in relation to outside actors.<sup>33</sup> States exercise this right in relation to outside actors on behalf of, or as agents of, their citizens. The DRTD thus implies that States have a legal obligation to demand that powerful outside economic actors respect the RtD including human rights-based development policies in their countries. The “duty holders” include the State and international financial institutions, multinational corporations, trade organizations, and others. All of these powerful economic actors have a legal duty to uphold the RtD, and states can assert this right against these actors.<sup>34</sup>

The sources of international law are found in Article 38 of the Statute of the International Court of Justice, which includes treaties, customary law and general principles of international law. At this point, the RtD is not found in treaty law (with the exception of Article 22 of the African

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<sup>30</sup> Amartya Sen, *Inequality Reexamined* (Cambridge: Harvard University Press, 1992), pp. 4–5, 39.

<sup>31</sup> Mohammed Bedjaoui, “The Right to Development”, pp. 1191–1192.

<sup>32</sup> A/RES/41/128, Article 3(3).

<sup>33</sup> Anne Orford, “Globalization and the Right to Development”, in Philip Alston (ed), *Peoples’ Rights* (Oxford: Oxford University Press, 2001), pp. 127-184.

<sup>34</sup> William F. Felice, “Right to Development” in David P. Forsythe (ed), *Encyclopedia of Human Rights* (Oxford: Oxford University Press, 2009), pp. 21-31, at p. 25.

Charter on Human and Peoples” Rights, 1981). Several scholars have argued that RtD has achieved the status of customary international law and is, therefore, binding on all States.<sup>35</sup> In a study conducted for the erstwhile UN Commission on Human Rights, Shadrack Gutto has opined that the DRTD could be treated as binding on States if the UNGA Resolution is considered, not as enshrining any new right, but as an authoritative interpretation of the UN Charter by member States, more specifically Article 55(a) thereof which employs the term “development”.<sup>36</sup> However, customary practice on RtD is inconsistent, which has led some scholars to question the assessment that RtD has already become customary international law.<sup>37</sup>

Nevertheless, at the very least, the right can be seen as an “emerging” norm and principle of international law with corresponding legal duties and obligations. For example, the Secretary-General of the UN has established that there are a large number of principles of law, including the RtD, that can be found in multiple covenants, declarations, and recommendations.<sup>38</sup> Most importantly, the 2030 Agenda for Sustainable Development, emphatically reaffirms the RtD.<sup>39</sup> Some legal scholars refer to this as a strong “soft law” case for the RtD as an emerging principle of international law. The multiple and vigorous international instruments referring to the RtD – resolutions, declarations, charters of rights and duties, and final acts from international organizations and conferences – present a strong soft law case for this emerging right, in the progressive development of international law. The impact of soft law on State behaviour can be noteworthy. Soft law creates an environment of hope that States will follow-through on their word and gradually act to meet the requirements of these “soft” instruments.<sup>40</sup>

A human right can be defined as a claim on others to a certain type of treatment fundamentally linked to the alleviation of suffering.<sup>41</sup> Human rights law states that individuals have a right not to be tortured and also have a right not to be denied equal opportunity and basic subsistence as a consequence of either the history of colonialism or current trade and finance policies.<sup>42</sup> The divergence of opinion on the legal status of the DRTD does not affect its status as a human right. As Sengupta writes: “The have-nots of the international economy would have a right to share equally in the decision making privileges as well as in the distribution of the benefits, just as the

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<sup>35</sup> For a discussion, see Bhupinder Chimni, “Development and Migration”, in Alexander Aleinikoff and Vincent Chetail (eds), *Migration and International Legal Norms* (The Hague: T.M.C. Asser Press, 2003), pp. 255–70, at p. 260; See also: Mohammed Bedjaoui, “The Right to Development” in Henry Steiner, Philip Alston and Ryan Goodman (eds), *International Human Rights in Context* (Oxford: Oxford University Press, 2008), at pp. 1447–8.

<sup>36</sup> *The Legal Nature of the Right to Development and Enhancement of Its Binding Nature*. E/CN.4/Sub.2/2004/16, paras. 39–40.

<sup>37</sup> Peter Uvin, “From the Right to Development to the Rights-Based Approach: How “Human Rights” Entered Development”, *Development in Practice*, vol. 17. no. 4–5 (2007), pp. 597–606.

<sup>38</sup> UN Secretary General, “The Emergence of the Right to Development”, in *Realizing the Right to Development* (New York and Geneva: OHCHR, 2013), pp 7-15, at p. 10.

<sup>39</sup> A/RES/70/1, paragraphs 10, 11, 12.

<sup>40</sup> William F. Felice, *Taking Suffering Seriously*.

<sup>41</sup> William F. Felice, *The Ethics of Interdependence: Global Human Rights and Duties* (Lanham, Maryland: Rowman and Littlefield Publishers, 2016).

<sup>42</sup> William F. Felice, “Right to Development”.

rich developed countries”.<sup>43</sup> Thus, the strength of the RtD is that it has the potential to create a degree of legal accountability in economic planning.

### **The Link Between Human Development and Civil and Political Rights.**

Cold war politics led to a global conflict over human rights priorities with the West focused on civil and political rights while the socialist States privileged economic and social claims. This led to the drafting of two separate human rights treaties, “The International Covenant on Civil and Political Rights” (ICCPR) and “The International Covenant on Economic, Social and Cultural Rights” (ICESCR). This division is currently demonstrated by the US ratifying the ICCPR, but refusing to ratify the ICESCR, and China ratifying the ICESCR, but refusing to ratify the ICCPR.

The RtD attempts to bridge this divide and links civil and political rights to human development. For example, the DRTD makes it clear that states have a legal duty to open up space for democratic participation. DRTD Article 6(3) proclaims that States must “take steps to eliminate obstacles to development resulting from the failure to observe civil and political rights, as well as economic, social and cultural rights”.<sup>44</sup> The DRTD thus draws a direct link between civil and political rights and economic, social and cultural rights, explicitly upholding and re-affirming the indivisibility and interdependence of all human rights.

Democratic participation is seen as critical to human development. Only with their adaptation and acceptance by local communities will international economic and social rights be realized. And, it is the State that can open up the political space so that democratic participation becomes a reality, thereby creating the environment for the fulfillment of the RtD. Neither the UN nor the countries of the Northern Hemisphere can impose the RtD (or any other human right) on other countries. Only the active democratic participation of the people can bring about the protection, realization and fulfillment of the RtD.<sup>45</sup>

The RtD has thus been characterized as a participatory right based on free, active and meaningful participation in and enjoyment of the benefits of development. These ideas were developed more fully by the UN in a “Global Consultation” conference on the right to development. The Global Consultation report linked democracy and participation to economic and social development. The report notes that “no one model of development is universally applicable to all cultures and peoples.” What constitutes “development is largely subjective, and in this respect development strategies must be determined by the people themselves and adapted to their particular conditions and needs.” Active democratic citizen participation is thus “the primary mechanism for identifying appropriate goals and criteria” for development.<sup>46</sup>

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<sup>43</sup> Arjun Sengupta, “On the Theory and Practice of the Right to Development”.

<sup>44</sup> A/RES/41/128, Article 6(3).

<sup>45</sup> William F. Felice, *The Global New Deal*.

<sup>46</sup> Russel Lawrence Barsh, “The Right to Development as a Human Right”, *Human Rights Quarterly*, vol. 13. no. 3 (1991), pp. 322–338, at p. 328.

Political liberties including freedom of expression and association, access to information, and public dialogue and interaction, are central components of development. Flávia Piovesan writes, “Civil and political rights are cornerstones of empowerment, strengthening democracy and improving accountability. Democracy enriches reasoned engagement through maximizing the availability of information and the feasibility of interactive discussions”<sup>47</sup>. And Amartya Sen documents that, “no famine has ever taken place in the history of the world in a functioning democracy”<sup>48</sup>. Active and meaningful participatory rights can lead to special attention to the most vulnerable among us.

### **The Critical Nature of Solidarity Rights and the Duty to Cooperate.**

Karel Vasak, former Director of UNESCO’s Division of Human Rights and Peace, was one of the first to popularize the idea of a new category of human rights claims titled “solidarity rights.” Vasak’s list of solidary rights included “the right to development, the right to peace, the right to environment, and the right to the ownership of the common heritage of mankind.” The alleviation of human suffering in each of these areas depends upon solidarity, fraternity and cooperation between nations and peoples. Human rights claims are social constructions that evolve and change to respond to new sources of human suffering. The category of solidarity rights recognizes the new human rights claims that have emerged in this era of complex interdependence.<sup>49</sup>

The natural law tradition assumed that fundamental moral rights were universal, changeless and eternal. While there may be enduring moral rights, there is also an evolution of human rights claims corresponding to the lived social conditions of peoples around the world. Human rights can thus only be understood by relating them to the historical context in which they emerged.<sup>50</sup>

This norm of solidarity and fraternity is seen most clearly in the central focus of a “duty to cooperate” in the right to development. For example, as noted above, the DRTD Article 3(3) proclaims:

States have *the duty to co-operate* with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States,

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<sup>47</sup> Flávia Piovesan, “Active, Free and Meaningful Participation in Development”, in *Realizing the Right to Development* (New York and Geneva: United Nations Publication HR/PUB/12/4, 2013), pp 103-107, at p. 105.

<sup>48</sup> Amartya Sen, *The Idea of Justice*. (London, Penguin Press, 2009), p. 243.

<sup>49</sup> Karel Vasak, “For the Third Generation of Human Rights: The Rights of Solidarity”, *International Institute of Human Rights*, July, 1979.

<sup>50</sup> Carl Wellman, “Solidarity, the Individual and Human Rights”, *Human Rights Quarterly*, vol. 22. no. 3 (2000), pp. 639–657.

as well as to encourage the observance and realization of human rights (emphasis added).<sup>51</sup>

And DRTD Article 4(2) states:

Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries, *effective international co-operation is essential* in providing these countries with appropriate means and facilities to foster their comprehensive development (emphasis added).<sup>52</sup>

Bedjaoui considers “that international solidarity means taking into account the interdependence of nations”.<sup>53</sup> He then identifies three stages to “the foundation of the right to development based on international solidarity”:

- (i) interdependence, the result of the global nature of the world economy;
- (ii) the universal duty of every State to develop the world economy, which makes development an international problem *par excellence*;
- (iii) preservation of the human species as the basis of the RtD.

Global social and economic forces create human rights obligations between peoples due to the structural injustices these processes often produce. There is thus an extraterritoriality dimension to the struggle against poverty and the RtD. Obligations of international solidarity and the duty to co-operate emerge between States and peoples as a result of the workings of the global economic system. Establishing clear State responsibility can be tricky and challenging. Yet, the international environmental law principle of “common but differentiated responsibility” gives us a road map to address State duties to co-operate that are implicit in the RtD. States that have benefited from colonialism and from the existing systems of trade and finance and thus have a larger share of the world’s wealth and resources, have a duty to co-operate to realize the RtD for all.<sup>54</sup>

Virginia Dandan, the UN Independent Expert on Human Rights and International Solidarity, concludes:

Global challenges require multilateral global responses. Efforts undertaken in isolation no longer work in [view of] the enormity and expanse of the problems involved. These challenges also require a change of mindset in the way decisions are made, and how actions are taken, to recover and rediscover the time-honoured common values of humanity such as solidarity...Solidarity should, and must be a positive force in the lives of people and of nations, and must therefore be protected from exploitation and corruption...We must strive for a socially resilient, more equal and more inclusive world

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<sup>51</sup> A/RES/41/128, Article 3(3).

<sup>52</sup> *Ibid*, Article 4(2).

<sup>53</sup> Mohammed Bedjaoui, “The Right to Development”.

<sup>54</sup> Shyami Puvimanasinghe, “International Solidarity in an Interdependent World”, in *Realizing the Right to Development* (New York and Geneva: United Nations Publication HR/PUB/12/4, 2013), pp 179-194.

community, and the vehicle that will bring us towards that goal is international solidarity.<sup>55</sup>

The solidarity element is thus central to the realization of the RtD as both an individual and a collective right. As with all human rights, it is the individual human person who is the beneficiary of the RtD. However, the RtD is also a collective right, belonging to “all peoples”.<sup>56</sup> States have the primary responsibility to respect, protect and fulfill this individual and collective right, which requires actions for equitable development both locally and globally working in fraternity with other states and peoples. In addition, the RtD is the one human right that brings together all three of the UN’s pillars – peace, security and disarmament; development; and human rights.<sup>57</sup>

## Conclusion

Yet, global solidarity is missing. Developing countries continue to push for the RtD and developed States continue to resist the emergence of RtD as a principle of international law. For example, as part of my class on international organization, I take students to Geneva, Switzerland, to meet and interact with leaders of different international organizations, nongovernmental organizations, and missions to the UN. In 1998 and again in 2007, the human rights officer of the Permanent Mission of Pakistan to the UN told us that the right to development was the most important human right. He pledged that his government would argue for the right to development to be included as part of the International Bill of Human Rights (which includes the UDHR, CCPR, & CESC). He argued that development rights were critical for all other human rights to be actualized. Or, in the oft-quoted words of Leopold Senghor, the former president of Senegal: “[H]uman rights begin with breakfast”. At our subsequent meetings at the Permanent Mission of the U.S. to the UN, U.S. human rights officers consistently declared that the right to development was “rhetoric”, impossible to implement, and politically pursued by the less developed countries to pressure the developed world to provide more aid.<sup>58</sup>

Despite this dichotomy, there is no reason to think that this division cannot be bridged. There is nothing inherent to a global market economic system that precludes the ideas that flow from the RtD and its normative framework of constituent principles. There is nothing preordained by the structure of the international State system that eliminates the possibility for global solidarity to emerge in support of this right. In fact, the policy proposals formulated to actualize the Sustainable Development Goals are a reflection of paths through which the global community can act to create and protect true equality of opportunity for all and actualize the RtD for all individuals and peoples.

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<sup>55</sup> Virginia Dandan. “2011: Testing to the Limit the Capacity for International Solidarity”, 20 November 2011, Available at: [www.un.org/esa/socdev/documents/intldays/solidarity/Dandan-Message.pdf](http://www.un.org/esa/socdev/documents/intldays/solidarity/Dandan-Message.pdf) (Accessed 9 August 2016).

<sup>56</sup> A/RES/41/128, Article 1(1).

<sup>57</sup> See *ibid*, Article 7.

<sup>58</sup> William F. Felice, *The Global New Deal*, pp. 73–74.