

The Right to Development: The Politics and Polemics of Power and Resistance

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ABSTRACT

The polarized debate amongst states, scholars, and practitioners over the right to development is underlined by salient paradoxes and contradictions. The rhetoric of the right to development has been deployed both as a language of resistance to oppose a hegemonic global economic system and as a language of power to assert national sovereignty and legitimize statist political and economic agendas. Apart from bedeviling the elaboration and implementation of the right to development, the insular political and ideological jockeying that has characterized the discourse raises pertinent questions about the normative objectivity of the international human rights movement.

I. INTRODUCTION

Recent academic and policy debates on the right to development have focused on two main themes. The first is the discussion over conceptualizing and framing development as a human right, which has been polarized along

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North-South lines with Western and non-Western countries taking opposing positions. Since the concept of a right to development first surfaced at the international level in the early 1970s, a fierce and largely polemical debate amongst states, scholars, and practitioners has focused on whether there exists a right to development in the normative sense.¹ The debate has served more to draw lines between the North and the South, rather than to increase understanding of the relationship between human rights and development.

The second and more current theme is the difficulty that has accompanied the implementation of the right to development. In spite of the broad acceptance of the right in the past two decades, critics continue to question its practical value for strengthening human rights generally.² The defining document on the right to development, the United Nations Declaration on the Right to Development (DRD), is considered by many to be too vague to have any real impact on domestic and international development issues. Enforcement mechanisms are weak and there has been a lack of consensus and political will on the part of principal stakeholders to pursue the enforcement of this right as vigorously as other international human rights standards. The common conclusion is that the notion of a right to development has not and probably cannot deliver its promise.

Critics contend that the right to development is devoid of meaning and is unenforceable because of its scope and the inability of states to ever realize all of its components.³ The right to development has been variously described as “catastrophic,”⁴ and politically and practically a “total failure.”⁵ Even proponents concede that half a century of debates over the implications of the right to development and how it could make a meaningful practical contribution to the quest to link human rights and development has not produced a great deal.⁶

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1. IGNAZ SEIDL-HOHENVELDERN, *INTERNATIONAL ECONOMIC LAW* 4 (1989).
 2. Brigitte I. Hamm, *A Human Rights Approach to Development*, 23 *HUM. RTS. Q.* 1005, 1009 (2001).
 3. See, e.g., Jack Donnelly, *In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development*, 15 *CAL. W. INT'L L. J.*, 473 (1985); Franz Nuscheler, *The Right to Development: Advance or Greek Gift in the Development of Human Rights?*, in *THE INTERNATIONAL DEBATE ON HUMAN RIGHTS AND THE RIGHT TO DEVELOPMENT*, INEF-Report 30: Duisburg: Institut für Entwicklung und Frieden (INEF), 59 (1998) available at http://inef.uni-due.de/cms/files/report30_1.pdf.
 4. Peter Uvin, *From the Right to Development to the Rights-Based Approach: How 'Human Rights' Entered Development*, 17 *DEV. PRAC.* 598 (2007).
 5. PETER UVIN, *HUMAN RIGHTS AND DEVELOPMENT* 42 (2004).
 6. Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 *HUM. RTS. Q.* 755, 798 (2005); Makau Mutua, *Standard Setting in Human Rights: Critique and Prognosis*, 29 *HUM. RTS. Q.* 547, 564 (2007).

Such conclusions are often based on the assumption that the value of the discourse on the right to development can only truly be measured by its “tangible” outcomes such as the creation of binding international legal instruments and the emergence of effective enforcement mechanisms. Often overlooked are the intangible outcomes of the discourse in terms of clarifying concepts, mobilizing opinions, challenging orthodoxies, and building consensus on key issues. By focusing on justiciability and enforceability, many scholars and commentators miss other important trends and outcomes of the discourse on the right to development that have shaped and continue to shape the broader international human rights movement.

This article argues that beyond the fuzziness and divisiveness that have characterized debates over the right to development, the discourse also manifests contradictions and paradoxes that raise pertinent questions about the normative objectivity of human rights talk. It examines the rhetoric of the right to development as a language of resistance deployed both to challenge perceived inequities of the global political economy and to claim development assistance and cooperation as a human rights entitlement in a globalizing world. But more than the polemics of resistance, this article argues that the discourse on the right to development also reflects a politics of power. Apart from being a useful means of challenging Western economic hegemonies, it has also become, for many in the developing world, a “trump,”⁷—to use Ronald Dworkin’s famous metaphor—in broader debates over economic empowerment and global resource distribution.

In official Southern discourses, the right to development has mainly been advanced to rationalize and justify national priorities as well as legitimize statist political and economic agendas using the language of rights. In this sense, it is articulated not so much as a claim against the developed West, but as a means of maintaining the status quo and to counter domestic and international pressures for political liberalization. While the earlier phase of the discourses on the right to development tended to reflect a polemic of resistance, more recent debates increasingly reflect an international politics of power.

The paradox of the right to development talk coming from the South is that it is at once deployed to demand radical change in the international economic order and to resist change in the national political order. When Chinese officials invoke the right to development to demand more favorable trade terms or when the Ugandan government invokes it to push for more development assistance from the West, the emphasis is often on challenging a hegemonic international economic system with a view to changing the status quo. Yet, when China invokes the right to development to deflect criti-

7. RONALD DWORIN, *A MATTER OF PRINCIPLE* 359–365 (1985).

cism of its human rights record, or to resist pressure to cap environmental emissions, the intent is clearly to maintain the domestic economic order and preserve the political status quo. South African officials can invoke the right to development in demanding radical changes in international pharmaceutical patent laws while at the same time using it to rationalize their failure to demand political reforms in Mugabe's Zimbabwe. The right to development has been used as both a sword and as a shield in the battle for high moral grounds on some of the most important human rights issues that confront our world today.

These contradictions are not limited to the discourses from the South. The longstanding opposition to the right to development by some Northern states manifests similar paradoxes. Opposition to the right has come from some states, which see the global redistributive justice framework of the right to development as incompatible with free market and capitalist structures of the global economy. Even though the right to development as espoused in the DRD clearly places enforcement obligations on both states and the international community, many Northern states have conveniently focused more on the domestic responsibilities of developing countries rather than their responsibility as key players in the global political economy. Rights based development is narrowly interpreted in a manner that is essentially state-centric.⁸ While demanding structural economic and political changes within developing nations as a means of achieving the right to development, many Northern states continue to resist corresponding changes in the mechanisms of global trade and finance that are, in fact, central to the ability of developing states to enforce these rights.

This article argues that the basic problem that has bedeviled the elaboration and implementation of the right to development goes beyond the all-encompassing nature of the right or even the language in which it is embodied.⁹ Part of the problem is the political and ideological jockeying that underscores the discourse on the right to development. This holds larger implications for international human rights. For one, the contradictions inherent in the discourse on the right to development provides a framework for examining the "uses" and "misuses" of human rights talk. Exploring this is important because of the tendency towards linearity and triumphalism in our understanding and assessments of human rights—a seeming preoccupation with understanding human rights as a progressive movement.¹⁰ To

8. Kate Manzo, *Africa in the Rise of Rights-Based Development*, 34 *GEOFORUM* 437 (2003).

9. Here, I disagree with the argument advanced by some scholars that the basic problem that has bedeviled the elaboration and implementation of the right to development arises from the nature of that right, not the instrument or the language in which it is embodied. See Mutua, *supra* note 6, at 564.

10. BONNY IBHAWOH, *IMPERIALISM AND HUMAN RIGHTS: COLONIAL DISCOURSES OF RIGHTS AND LIBERTIES IN AFRICAN HISTORY* 2 (2007).

exercise one's human rights has come to be taken as something inherently good and an objective index of social and political progress. The language of human rights has become a principal means of legitimizing political and social agendas. What is often underexplored in these narratives is the way in which rights discourses are deployed to further more complex and sometimes contradictory agendas—progressive and reactionary. Surely, these are also part of the legacies of the post-Second World War human rights movement. Human rights discourses serve to insulate and legitimize power just as much as they facilitate transformative processes.¹¹ There is a need for scholars to move away from the linear progressivism that underlines contemporary human rights scholarship, and also to challenge the ways in which human rights language is increasingly deployed for purposes of legitimizing, opposing, and negotiating power.

To be sure, the normative objectivity of the human rights movement is thrown into question when human rights are co-opted by state and non-state authority structures in pursuit of other goals. Yet, it is not enough to characterize this simply as a misuse of human rights. Identifying the proper use and misuse of human rights language is inherently subjective and may be perceived differently even among advocates. The indeterminacy of the human rights discourse also makes it difficult to draw the line between the proper use and misuse of human rights.¹² As with the right to development, legitimate differences may arise over such issues as priorities, as well as the nature and extent of the responsibilities of states and the international community. It is important that we pay as much attention to the tensions and contradictions of human rights as we have paid to the successes and triumphs. This requires examining how authoritarian structures co-opt and deploy the language of rights to legitimize power, maintain the status quo, and deflect pressures for reforms.

This article explores some of these tensions and contradictions in the discourse on the right to development. The first part reviews the divisions and polarizations that have characterized the discourse on the right to development from the early formative stages when right to development was first articulated in the context of the New International Economic Order (NIEO), to more recent diplomatic and scholarly battles over its meaning, enforceability, and legitimacy.

Others have undertaken comprehensive studies of the historical development of the right to development, the polarizing regional and ideological

11. *Id.* at 3.

12. Columbia University Human Rights Seminar—Call for Papers, Uses and Misuses of Human Rights (15 Sept. 2009), available at <http://h-net.msu.edu/cgi-bin/logbrowse.pl?trx=vx&list=H-Human-Rights&month=0907&week=b&msg=dHnxbNNLY/uT2hgH-KdvkOw>.

conflicts over its interpretation, and the challenges of its implementation.¹³ The object here is to examine how these divisions continue to shape debates over the elaboration and implementation of the right to development. The second part of the paper examines some of the paradoxes and contradictions in the debates over the right to development. It explores why this is problematic not only for the implementation of the right to development, but also more broadly for the international human rights movement.

II. LINKING DEVELOPMENT AND HUMAN RIGHTS

For many years, academic and policy debates on human rights and development developed largely parallel to each other in spite of their obvious connections. There was little reference to development in the early debates at the United Nations leading to the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, much of which focused on civil and political rights.¹⁴ Although the UDHR ultimately included provisions for economic, social, and cultural rights, these were not framed in terms of development. On the other hand, development studies that emerged as a self-defined field of academic and practical research in the 1960s were concerned mainly with how policy interventions or political action can change social orders.¹⁵ Coinciding with the era of decolonization and the emergence of new nations in many parts of the global South, the goal of development studies was primarily economic growth rather than human rights. The dominant thinking was that the agent of development was the state and that the means of development was national economic planning in the context of macro-policy instruments and the Bretton Woods international financial institutions, such as the World Bank and the International Monetary Fund. These taken-for-granted presumptions of development theories as they evolved from the 1950s onwards set them apart from the discourse on international human rights.¹⁶

This dichotomy between human rights and development fields began to change in the 1970s when the right to development was first articulated

13. Benjamin Mason Meier & Ashley M. Fox, *Development as Health: Employing the Collective Right to Development to Achieve the Goals of the Individual Right to Health*, 30 HUM. RTS. Q. 259 (2008); N. J. Udombana, *The Third World and the Right to Development: Agenda for the Next Millennium*, 22 HUM. RTS. Q. 753 (2000).

14. Universal Declaration of Human Rights, *adopted* 10 Dec. 1948, G.A. Res. 217A (III), U.N. GAOR, 3d Sess, U.N. Doc. A/RES/3/217A (1948).

15. John Harriss, *Great Promise, Hubris and Recovery: A Participant's History of Development Studies*, in *A RADICAL HISTORY OF DEVELOPMENT STUDIES: INDIVIDUALS, INSTITUTIONS AND IDEOLOGIES* 17 (Uma Kothari ed., 2005).

16. COLIN LEYS, *THE RISE AND FALL OF DEVELOPMENT THEORY* 7 (1995).

by developing countries in the context of a NIEO.¹⁷ Throughout the 1970s, the international community repeatedly examined and debated the different aspects of the right to development. In 1979, a resolution of the United Nations Commission on Human Rights expressly recognized the right to development as a human right and mandated the Secretary General to study the conditions required for the effective enjoyment of the right by all individuals and peoples.¹⁸ Subsequently, various reports examining the right to development and extensive discussions in the Commission and the General Assembly led to the formulation of a Draft Declaration on the Right to Development, which was formally adopted by the General Assembly in December 1986.¹⁹

The DRD identified the right to development firmly within the framework of the emergent international human rights order. It defined the right to development as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”²⁰ The DRD challenged states to focus more on human development in order to ensure the realization of the right to development. Although it made more explicit the links between international consensus in the realms of human rights and development, many of the DRD provisions were not entirely new. It included several elements of the two previous UN covenants—the Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic Social and Cultural Rights (ICESCR). What was most significant about the DRD was that it brought together the development-oriented rights provisions of both covenants and in some cases, expanded them.²¹

Since the adoption of the DRD in 1986, the United Nations Commission on Human Rights has played a crucial role in developing the normative content of the notion through two significant events. First, the 1993 World Human Rights Conference leading to the Vienna Declaration affirmed that the right to development as established in the DRD is a “universal and

17. Declaration on the Establishment of a New International Economic Order, *adopted* 1 May 1974, U.N. GAOR, 6th Spec. Sess., 2229th plen. mtg., U.N. Doc. A/RES/S-6/3201 (1974).

18. *Report on the Thirty Third Session of the Commission on Human Rights*, U.N. ESCO, Comm'n on Hum. Rts., 33rd Sess., Chapter I. (B) (2), U.N. Doc E/CN.4/1257 (1978).

19. Declaration on the Right to Development [*hereinafter* DRD], *adopted* 4 Dec. 1986, U.N. GAOR 41st Sess., Annex, U.N. Doc. A/RES/41/128 (1986).

20 ²⁰ *Id.* at art.1.

21. Although the Covenant on Economic and Social Rights focuses on issues of economic and social empowerment, it did not explicitly affirm development as a right or affirm economic and social empowerment within the framework of the right to development. See International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., U.N. Doc. A/6316 (1966), [*hereinafter* ICESCR].

inalienable right and an integral part of fundamental human rights."²² The second was through the appointment of an Independent Expert in 1999, as well as a United Nations Working Group on the Right to Development.²³ Besides these events, much of the intellectual initiative and advocacy for the right to development came from scholars from developing countries or, to use the term of the period, the "Third World." The discourse in this context was linked to the global political changes of the 1960s and 1970s starting with the decolonization movement, the recognition of the principle of self determination, and the right of people to freely pursue their economic, social, and cultural development. A significant contributor in this regard was the Senegalese Jurist Kéba M'Baye, who as commissioner and later president of the International Commission of Jurists, became a vocal proponent of the right to development.²⁴

M'Baye's writings essentially framed the right to development as a claim of developing countries on a process of equitable development carried out with obligations of cooperation on the international community.²⁵ "He sought to add the language of rights to 'Third World' voices articulating universal principles and prescriptions for the world economy that they believed would speed economic development in the South." With their call, M'Baye and other proponents attempted to link longstanding demands for a NIEO with the new international human rights regime. In these early discourses, the emphasis was on the obligations of the international community rather than those of states. The enabling covenants of the UDHR had opened a space for development advocates to make claims on the international community.²⁶ Significantly, it was under M'Baye's leadership in 1977 that the United Nations Commission on Human Rights formally recognized the Right to Development as a universal human right—a development that set the stage for the UN's adoption of the DRD.

The right to development as espoused in the DRD and related policy documents such as the reports of the United Nations Independent Expert and the Working Group on the Right to Development include four critical elements that are relevant to the discussion here. First, the conceptualiza-

22. Vienna Declaration and Programme of Action, *adopted 25 June 1993*, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., U.N. Doc. A/CONF.157/23 (1993).

23. Arjun Sengupta, *On the Theory and Practice of the Right to Development*, in REFLECTIONS ON THE RIGHT TO DEVELOPMENT 61 (Arjun Sengupta et al. eds., 2005).

24. Kéba M'Baye, *Le Droit du Développement comme un Droit de l'Homme*, 5 REVUE DES DROITS DE L'HOMME 503 (1972).

25. Sengupta, *supra* note 23, at 10.

26. Adam Sneyd, *Right to Development*, GLOBALIZATION AND AUTONOMY ONLINE COMPENDIUM, (23 Aug. 2008), available at http://www.globalautonomy.ca/global1/glossary_print.jsp?id=CO.0044.

tion of development as a process facilitating the realization of human rights; second, recognition of the interrelatedness and interdependencies of all aspects of human rights; third, recognition that the right to development is both an individual and collective right; and finally, recognition that the duty bearers charged with the responsibility of fulfilling the right to development are not only states but also the international community. The right to development approach, while incorporating elements of the other human rights approaches to development, is distinct in that it views "development," defined as a particular process of the improvement of well being and expansion of freedoms, as a human right. It links development and human rights by placing the human person at the center of development and asserting that the elimination of violations of human rights is a necessary part of development.²⁷

This linking of human rights and human development in policy and academic discourses has been done in two major ways.²⁸ The first is through the so-called rights-based approach to development, which affirms that human rights must be integrated into sustainable human development.²⁹ This definition of development in terms of processes and participation has lately become very influential in the global discourse on development and human rights.³⁰ A central component of this approach to development is what has been described as the "human rights approach to development assistance."³¹ It calls for the regulation of international development cooperation and official development assistance by an agreed framework of international human rights law.³² Such a framework would regulate the delivery of development

27. Sengupta, *supra* note 23, at 11.

28. Other writers have identified ways in which human rights is linked with development discourse. See, for example, Stephen P. Marks, *The Human Rights Framework for Development: Seven Approaches*, in REFLECTIONS ON THE RIGHT TO DEVELOPMENT, *supra* note 23, at 33.

29. This development agenda is defined in the preamble to the DRD 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". See DRD, *supra* note 19, pmb1.

30. For example, the United Nations Development Programme (UNDP) defines development as being "about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests [and] thus about expanding the choices people have to lead lives that they value." U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 9 (2001). See also U.N. DEV. PROGRAMME, INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE DEVELOPMENT (1999).

31. Obiora Chinedu Okafor, *The Status and Effect of the Right to Development in Contemporary International Law: Towards a South-North "Entente,"* 7 AFR. J. INT'L & COMP. L. 865, 870 (1995).

32. These arguments have been forcefully advanced by the Human Rights Council of Australia. See ANDRE FRANKOVITS & PATRICK EARLE, THE RIGHTS WAY TO DEVELOPMENT: MANUAL FOR HUMAN RIGHTS APPROACH TO DEVELOPMENT ASSISTANCE (1998).

assistance, the priorities that it should address, the obligations of both donors and recipients, and the processes for evaluating development assistance.³³

The second approach to the right to development goes beyond conceptualizing a rights based approach to development to considering development as a human right in and of itself. This flows from a holistic conception of human rights as interrelated and indivisible.³⁴ It is premised on the notion that development has social, political, economic, and cultural ramifications, and that rights in any one area cannot be realized fully unless rights in other areas are simultaneously realized. As the DRD states: "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights."³⁵

One rather unique element of the DRD and the related reports of the UN Independent Experts is the recognition that the right to development is both an individual and collective entitlement. Beyond individual entitlements, the right to development is an entitlement that also pertains to communities, nations, and regions. The processes of attaining and the parameters for measuring development are linked with groups rather than individuals, although there is an assumption that the development of a community is also an index of individual wellbeing within that community.³⁶ This marks a departure from the individual-centered orientation of other international human rights instruments. In fact, the DRD is one of only a few international or regional human rights instruments that are premised as much on the rights of peoples as on those of individuals. The reference to the right to "peoples" in the DRD has been ascribed to the philosophical and intellectual influences of the global South in the making of the Declaration.³⁷

A related provision of the DRD that sets it apart from other international human rights instruments is the recognition that responsibility for ensuring the right to development rests not only with states, but also with the international community. In this context, human rights go beyond the traditional definition of being entitlements that individuals hold against the state. They are also construed as entitlements that states hold in relation to other states

33. Marks, *The Human Rights Framework for Development*, *supra* note 28, at 27–28.

34. Sengupta, *supra* note 23, at 11.

35. The DRD states that every human person and "all peoples" are entitled to the human right to development and the right to self-determination, which includes "the exercise of their inalienable rights to full sovereignty over all their natural wealth and resources." DRD, *supra* note 19, art 6.

36. *Id.* art 1.

37. Another place where the "right of peoples" features prominently is the African Charter on Human and Peoples Rights where the right to development is expressed solely as the right of peoples. For a detailed discussion of these provisions, see Okafor, *supra* note 31.

and the international community at large. Although the DRD states that the primary responsibility for implementing the right to development falls on states, it also recognizes the importance of international cooperation and assistance in achieving that right. Articles 3 and 4 elaborate the nature of such international cooperation: "As a complement to the efforts of developing countries, effective international cooperation is essential to providing these countries with appropriate means and facilities to foster their comprehensive development."³⁸ There is an assumption that the international community has a duty to cooperate to enable developing states to fulfill their obligations.

The notion that states and "peoples" can also claim development as a human rights entitlement against other states or the international community marked a major paradigm shift in human rights orthodoxy. It represented a challenge to and in some sense a repudiation of the dominant Western liberal egalitarian orientation of the international human rights system. Some saw the DRD as pushing into the international human rights regime a distinctly non-Western communitarian rights agenda. Thus, although the adoption of the DRD in 1986 and its reaffirmation in the Vienna Declaration and Program of Action in 1993 have placed the right firmly within the international human rights corpus, the right to development remains one of the most contested and contentious facets of the international human rights regime.

III. CONTESTING THE RIGHT TO DEVELOPMENT

When the UN General Assembly adopted the DRD in 1986, the United States cast the only negative vote while eight other mostly developed Western countries abstained.³⁹ This was the culmination of longstanding conceptual disagreements among scholars, activists, and policy makers from the global North and South over the right to development.⁴⁰ These differences reflected the economic and political tensions that had been building between the developing and developed nations as the polarizing politics of the rights discourse during the Cold War extended to the debates over the DRD. This was an era when "the world was still divided between those who denied that

38. DRD, *supra* note 19, art. 4(1).

39. The abstaining countries included Denmark, Finland, Western Germany, Iceland, Israel, Japan, Sweden, and the United Kingdom. *Draft Resolution on the Right to Development*, G.A. 41st, Sess., U.N. Doc. A/C.3/41/L.4, cited in Arjun Sengupta, *On the Theory and Practice of the Right to Development* 24 HUM. RTS. Q. 837 at 840 (2002).

40. "The United States cast the single dissenting vote, even though the Declaration was, in effect, an attempt to revive the immediate post-war consensus about human rights developed by US President Roosevelt, based on four freedoms, including the freedom from want." Sengupta, *supra* note 23 at 63.

economic, social and cultural rights could be regarded as human rights, and those who believed that economic, social and cultural rights were not only fully justiciable human rights but were essential—even necessary—to realise civil and political rights.⁴¹ While the DRD was generally well received by scholars and political leaders from the South who eagerly enumerated the possible subjects and objects of this right, their counterparts from the North remain largely skeptical and even cynical about the Declaration.⁴²

In the discussions leading up to the adoption of the DRD, the debate focused mainly on whether the right to development is merely a moral and hortatory claim, or a legal or quasi-legal claim. Questions were raised about the foundational basis of the right, its legitimacy, justiciability, and coherence. The United States, joined by several other Western countries, objected to several perceived defects of the notion of a right to development relating to its failure to give due attention to economic liberties and entrepreneurship, its relation to questionable economic and social rights, and its conceptual confusion and conflicts of jurisdiction with trade and other international issues.⁴³ One US diplomat involved in these early discussions dismissed the DRD as “an attempt by such knavish Third World dictatorships as Cuba, Algeria and Libya to create a new, internationally recognized human right.”⁴⁴

Since its adoption, the status of the DRD has remained a subject of an intensely divisive debate among diplomats, scholars, and practitioners evincing a persisting North-South intellectual polarity.⁴⁵ Critical and skeptical views have been expressed in political and legal writings about the philosophical and legal foundations of the right to development.⁴⁶ It has been argued, for instance, that while the quest for *solidarity* may require moral obligations

41. *Id.* at 63.

42. Admittedly, support for the right to development has not been limited to Southern scholars and policy makers. There are several notable scholars from the North who support the right to development and have argued in its defense. For insights into the various positions, see Russell L. Barsh, *The Right to Development as a Human Right: Results of the Global Consultation*, 13 HUM. RTS. Q. 323 (1991); UPENDRA BAXI, *MAMBRINO'S HELMET: HUMAN RIGHTS FOR A CHANGING WORLD* (1994); IAN BROWNLIE, *THE HUMAN RIGHT TO DEVELOPMENT* (1989); Y. GHAI, Y. & Y. K. PAO, *WHOSE HUMAN RIGHT TO DEVELOPMENT* (1989); Jack Donnelly, *Human Rights, Democracy, and Development*, 21 HUM. RTS. Q. 608 (1999); Donnelly, *In Search of the Unicorn*, *supra* note 3, at 473.

43. Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 HARV. HUM. RTS. J. 143 (2004).

44. Joseph Shattan, *The Right to Development (in Gaza)*, AM. SPECTATOR (Mar. 2009), available at <http://spectator.org/archives/2009/03/05/the-right-to-development-in-ga>.

45. Okafor, *supra* note 37, at 877.

46. For example, Jack Donnelly has argued persuasively against the moral, political, legal, and analytical wisdom of recognizing such a human right. See Donnelly, *In Search of the Unicorn*, *supra* note 3; Jack Donnelly, *The Theology of the Right to Development: A Reply to Alston*, 15 CAL. W. INT'L L.J. 519 (1985).

to assist the developing world, *solidarity* does not establish a right to such assistance, let alone a right to development.⁴⁷ The lack of conceptual clarity in the right to development as espoused in the DRD is also problematic. On the other hand, proponents stress that whether the right to development is a human right in the narrow legalistic sense is now of little moment.⁴⁸ What is more important is that it is a useful concept in institutionalizing a normative global regime for national and international responsibility in addressing fundamental needs for a decent existence.⁴⁹

There also remains a divergence of opinion over how the DRD can be operationalized and integrated into the development process. At the United Nations sponsored "Global Consultation on the Right to Development as Human Rights" convened in Geneva in 1990, delegates were divided—pretty much along regional and hemispheric lines—over the implementation of the right to development.⁵⁰ In spite of a conscious effort by the Global Consultation forum to avoid what it described as "sterile theoretical debates," the fault lines were evident.⁵¹ Participants from the North and South differed considerably in their perception of the global political economy. Regional difference also extended to the analysis of the best means of implementing the DRD with the main point of contention being the respective responsibilities of the developing and developed world.

Most Western participants argued for a basic needs approach, involving the prioritization of the achievement of certain economic and social rights, such as the right to food, shelter, and education. This argument was premised on the view that capitalism moderated by the distribution of income within the state is central to facilitating development in the South.⁵² Western participants also advocated an international regime based on concessional aid rather than the sharing of productive resources and technology. This position reflects an underlying concern among some Western nations about the rhetoric of the right to development, which emphasizes entitlements

47. Donnelly, *In Search of the Unicorn*, *supra* note 3, at 491.

48. Jacques Chonchol, *The Declaration on Human Rights and the Right to Development: The Gap Between Proposals and Reality*, in DEVELOPMENT, HUMAN RIGHTS AND THE RULE OF LAW—REPORT OF A CONFERENCE HELD IN THE HAGUE ON 27 APR.-1 MAY 1981, Convened by the International Commission of Jurists 109 (1981).

49. Oscar Schachter, *The Evolving International Law of Development*, 15 COL. J. TRANSNAT'L L. 1 (1976). However, some scholars argue that there is no right to development. Rather, what exists is the need for such a right. See Karel de Vey Mestdagh, *The Right to Development: From Evolving Principle to "Legal" Right: In Search of its Substance*, in DEVELOPMENT, HUMAN RIGHTS AND THE RULE OF LAW, *supra* note 48, at 156.

50. Barsh, *supra* note 42, at 324.

51. *Id.* at 323.

52. Global Consultation on the Realization of the Right to Development as a Human Right, Geneva, Switz., 8–12 Jan., 1990, *The Right to Development and the Welfare Society*, U.N. Doc. HR/RD/1990/Conf.2 (1990) (prepared by Asbjørn Eide), cited in THE RIGHT TO DEVELOPMENT IN INTERNATIONAL LAW 193 (Subrata Roy Chowdhury et al. eds., 1992).

but tends to overlook the cost of providing them. In contrast, a coalition of participants from the developing world produced draft recommendations, which advocated giving priority in development policies to participation and political transformations, as opposed to basic needs. They also expressed a need for political transformation and democracy *in international relations*, rather than more aid or concessional resources.⁵³

The divisiveness that has characterized debates over the right to development can be attributed in part to the fact that unlike most other international human rights norms, the right to development has a distinctly international character—it resonates more in the interaction between states than within states. An individual centered international human rights system, it seems, remains ill equipped to address resource-related human rights issues in which the state is not simply a duty bearer with enforcement obligations, but can also be a claimant. However, the North-South polarization over the right to development evident in most analyses tells only part of the story. Underlying the positions championed by both Northern and Southern states on the right to development are salient contradictions that complicate its elaboration and implementation.

IV. THE RHETORIC OF OPPOSITION

For many advocates in the South, the discourse on the right to development has provided a fitting platform for challenging the orthodoxies and hegemonies of the global political economy. Their discourse, in essence, encapsulated a solidarity movement dating back to the NIEO seeking to change the rules of the game and thereby wrest a greater share of the world's wealth and income.⁵⁴ It represents a political desire to restructure

53. Global Consultation on the Realization of the Right to Development as a Human Right, Geneva, Switz., 8–12 Jan., 1990, *Participación Popular y Derecho al Desarrollo en el Perú*, [Popular Participation and the Realization of the Right to Development as a Human Right], U.N. Doc. HR/RD/1990/Conf.17 (1990) (prepared by Javier Iguiniz); Global Consultation on the Realization of the Right to Development as a Human Right, Geneva, Switz., 8–12 Jan., 1990, *The Impact of External Debt and Adjustment Policies on the Realization of the Right to Development as a Human Rights*, U.N. Doc. HR/RD/1990/Cof. 14 (1990) (prepared by Leonor M. Briones); Global Consultation on the Realization of the Right to Development as a Human Right, Geneva, Switz., 8–12 Jan., 1990, *Las instituciones internacionales financieras y de comercio y el derecho al desarrollo como parte de los derechos humanos*, [International Financial and Trade Institutions and the Right to Development as a Human Rights], U.N. Doc. HR/RD/1990/Cof. 35 (1990) (prepared by Dr. Franklin Canelos), cited in Barsh *supra* note 42, at 326.

54. Put forward by developing countries under the auspices of the United Nations Conference on Trade and Development (UNCTAD), the NIEO agenda was intended to promote the economic interest of these countries by improving their terms of trade, increasing development assistance, and facilitating tariff reductions. See Declaration on the Establishment of a New International Economic Order, G.A. Res S-6/3201, adopted 1 May 1974, U.N. GAOR, 6th Spec. Sess., U.N. Doc. A/RES/S-6/3201 (1974).

the international political economy and allow the developing societies of the South to participate more effectively in decision-making on international economic matters.

When ideas about restructuring the international economic order, which underscore the right to development, first emerged in the context of decolonization and the global political changes of the 1950s and 1960s, they were premised on legitimizing the principle of self-determination and the right of people to freely pursue their economic, social, and cultural development. The emphasis was on restructuring the world's economy to permit greater participation by and benefits to developing countries. By redressing the disadvantages of former colonized developing countries in the international economic system, the NIEO agenda aimed to further their economic advances by changing their economic relations with the developed countries.⁵⁵

Whether in the form of the NIEO agenda, the right to development, or the more recent emphasis on rights-based development, Southern discourses have focused on demanding radical change in the international economic order. The dominant Southern view is that the right to development requires wide-ranging changes in extant international economic regimes to ensure that they contribute to furthering the right to development in at least two ways. First, by encouraging rather than constraining conditions permitting the realization of the right to development within a country. Second, by ensuring that inter-country inequalities, in terms of access to natural and other resources, are reduced as much as possible. This in turn requires an international economic system that provides greater flexibility of macroeconomic policy to individual countries, but also ensures that there is some international control.⁵⁶

It is within this context of international economic obligations and entitlements that the discourse on the right to development and development as a human right has been deployed both as a language of resistance and a strategy of opposition. The discourse becomes more than simply a debate about individual and collective economic empowerment, but also an extension of the polemics of power and resistance played out at both intellectual and diplomatic levels and shaped by historic and contemporary conditions. In the writings of principal "Third World" proponents of the right to develop-

55. *Id.* ¶4. The Declaration and Program of Action of the New International Order adopted by the sixth general session of the U.N. General Assembly in 1974 was essentially a manifesto addressing specific concerns about trade and development assistance raised by developing countries. Among other things, it called for an increase in official development assistance from the North to the South and the establishment of mechanisms for the transfer of technology to developing countries separate from direct capital investment. *Id.*

56. Jayati Ghosh, *The Right to Development and International Economic Regimes*, in REFLECTIONS ON THE RIGHT TO DEVELOPMENT, *supra* note 23, at 17.

ment, such as Kéba M'Baye, Amartya Sen, Argun Sengupta, and Mohammed Bedjaoui the discourse assumes a tone that is profoundly critical of the global economic order and demands its fundamental reform.⁵⁷

The emphasis is on two main themes, the first of which is state sovereignty. According to Bedjaoui, "[t]he 'right to development' flows from this right to self-determination and has the *same nature*."⁵⁸ This makes it much more a "right of the State or of the people, than a right of the individual."⁵⁹ The second emphasis is on the obligations of rich countries to help poor countries.⁶⁰ The discourse seeks to establish a claim on the assistance and cooperation of the developed world of the Northern hemisphere for accelerating the pace of economic development in the South.⁶¹ There is also concern with equitable treatment in international transactions and the transfer of resources and favorable treatment to developing countries in international trade and finance. These positions implicitly reject the status quo in the international political economy and seek instead to resist its structural imbalance and inequities.

At political and diplomatic levels, this discourse of the right to development has proved a powerful rhetorical device for developing countries to assert development assistance and cooperation as an entitlement against rich Western nations.⁶² For many developing countries, the proclamation of a right to development created an opportunity to affirm an obligation on donor countries to reduce resource constraints on their development. Argun Sengupta, as UN-appointed independent expert on the Right to Development, recalled that the tenor of the debates that took place in the United Nations and other international forums during the negotiations leading to the adoption of DRD left no one in doubt that what its proponents were requesting was an economic and social order based on "equity and justice."⁶³ The goal was to ensure that the "haves-nots" of the international economy would have a right to share equally in the decision-making privileges as well as the distribution of the benefits.⁶⁴

For developing countries, the right to development provides a political device for asserting state sovereignty in economic matters while critiquing

57. See generally M'Baye, *supra* note 24; AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999); Sengupta, *supra* note 23; Mohammed Bedjaoui, *The Right to Development*, in *INTERNATIONAL LAW: ACHIEVEMENTS AND PROSPECTS* 1177, 1184 (Mohammed Bedjaoui ed., 1991).

58. Bedjaoui, *supra* note 57.

59. *Id.*

60. MICHAEL FREEMAN, *HUMAN RIGHTS: AN INTERDISCIPLINARY APPROACH* 152 (2002).

61. Saddiqur Rahman Osmani, *An Essay on the Human Rights Approach to Development*, in *REFLECTIONS ON THE RIGHT TO DEVELOPMENT*, *supra* note 23, at 111.

62. Marks, *The Human Rights Framework for Development*, *supra* note 28, at 36.

63. Sengupta, *supra* note 23, at 69.

64. *Id.*

the global economic order and amplifying Third World demands on the industrialized world for a transfer of resources in the form of foreign aid or debt forgiveness. In the Guidelines for National Periodic Reports to the African Commission, the right to development is described as a “tool in ensuring that the material wealth of countries is not exploited by aliens to little or no benefit to African countries.”⁶⁵

Both intellectual and diplomatic discourses have focused on challenging the international economic system and demanding fundamental change. The right to development has been invoked to demand structural transformation on matters of gender, class, and race. The platform for action at the 1995 Fourth World Conference on Women invoked the right to development in demanding women’s economic empowerment and greater national and international protection for them.⁶⁶ At the 2001 World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance in South Africa, extensive reference was also made to the DRD and its call for states and the international community to take resolute steps to eliminate the massive and flagrant violations of human rights of peoples and human beings affected by situations such as apartheid, racism, and other violations.⁶⁷

Nowhere have the diplomatic tussles over the right to development been more clearly played out than at the United Nations Human Rights Commission (UNHRC) where delegates of developing countries frequently invoke the DRD to demand radical reforms in the international economic order. At a meeting of the UNHRC in 2003, the Ugandan delegate demanded market access for the products and produce of developing countries on the basis of the right to development. The Argentinean delegate termed the global trading regime “unfair and unjust” while delegates from India, Sudan, Algeria, Saudi Arabia, and Venezuela argued that the responsibility of fulfilling the right to development should not be limited to states, but extended to the international community and translated into intensified cooperation to allow countries to access development.⁶⁸

At a time when South Africa was facing pressure to condemn human rights violations in Mugabe’s Zimbabwe, its delegates at the UNHCR focused

65. Guidelines for National Periodic Reports, Second Annual Activity Report of the African Commission on Human and Peoples’ Rights 1989, at 49, cited in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS: THE SYSTEM IN PRACTICE 1986–2000* 40 (Malcolm D. Evans & Rachel Murray eds., 2002).

66. *Report of the Fourth World Conference on Women*, U.N. GAOR, 16th plen. Mtg., Agenda Item 44, A/CONF.177/20/Rev. 1 (1995) available at <http://www.un.org/womenwatch/daw/beijing/pdf/Beijing%20full%20report%20E.pdf>.

67. Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), available at <http://www.un.org/WCAR/durban.pdf>; DRD, *supra* note 19, art. 5.

68. Press Release, United Nations, Countries Tell Commission On Human Rights That Greater Efforts Are Needed to Spur Development, HR/CN/1009 (26 Mar. 2003), available at <http://www.un.org/News/Press/docs/2003/hrcn1009.doc.htm>.

almost exclusively on the right to development, avoiding any discussion on the more urgent human rights situation in Zimbabwe. As one critic put it, South Africa's emphasis on development rights at that critical moment suggested that Zimbabweans were getting poorer because in some way "their rights to development" were "being violated by the world."⁶⁹ This position ignored the "reality" that Zimbabweans are getting poor because of the repression and human rights violations of the Mugabe regime.⁷⁰ The inference was that the right to development had been invoked only to deflect attention from South Africa's failure to adequately address the political situation in Zimbabwe.⁷¹

Indeed, the right to development is frequently used to rationalize or justify political agendas. Several states have sought to prioritize development rights over other rights. The strongest arguments for prioritizing development rights has come from China in ways reflecting the old "Asian values" debate.⁷² The 1991 Chinese Government White Paper on Human Rights stated this position quite clearly: "It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question."⁷³ Subsequent Chinese Government White Papers on Human Rights have devoted considerable attention to the "right to subsistence and development."⁷⁴ The right to development also comes up frequently in arguments made for prioritizing economic and social rights over civil and political rights.⁷⁵ Repudiating the conventional wisdom that the individual is at the center of collective well-being, the Chinese

69. Peter Fabricius, *Why is South Africa Not Doing More for Human Rights?*, STAR, 16 Mar. 2007.

70. *Id.*

71. *Id.*

72. For a discussion of the Asian values debate, see Xiaorong Li, "Asian Values" and the Universality of Human Rights, in *THE PHILOSOPHY OF HUMAN RIGHTS* 397 (Patrick. Hayden ed., 2001).

73. Central People's Government of the People's Republic of China, *Whitepaper on Human Rights*, ch. I (1991), available at <http://www.china.org.cn/e-white/7/7-1.htm>. See also Information Office of the State Council of the People's Republic of China, *China's Progress in Human Rights in 2004*, ch. IV (2005), available at <http://www.china.org.cn/english/MATERIAL/125624.htm#5>.

74. See, e.g., Information Office of the State Council of the People's Republic of China, *supra* note 73.

75. See Rhoda Howard, *The Full-Belly Thesis: Should Economic Rights Take Priority Over Civil and Political Rights? Evidence from Sub-Saharan Africa*, 5 HUM. RTS. Q. 467, 468 (1983). Rhoda Howard has characterized these arguments for the primacy of economic rights over political rights as the "full belly thesis," which supposes that a person's belly must be full before he can indulge in the "luxury" of worrying about his civil and political freedoms. Howard's full belly thesis has been challenged as an oversimplification of the argument for the primacy of economic and social rights over civil and political rights. *Id.*

delegation to the UNCHR in 1992 stressed that the right to development is a "collective right, primarily speaking, for the destiny of the state or nation. It is the prerequisite and basis for the development of the individual. . . . The development of the individual depends on the development of a nation or state."⁷⁶

As others have pointed out, there is a tendency in these discourses to collapse "community" into the state and the state into the (current) regime.⁷⁷ Such an equation between the community, the state, and the regime can be problematic from a right to development perspective because it obscures the domestic obligations of states and ruling regimes to local communities, such as minority groups. For minority groups within the state, fulfillment of the right to development includes not just international action but also their active, free, and meaningful participation in the domestic formulation and implementation, monitoring, and evaluation of national policies that affect them.⁷⁸

Chinese officials have also stressed that fair, equitable, and non-discriminatory multilateral trading systems, and effective participation in international decision-making is indispensable for developing countries to realize the right to development. As the Chinese delegate stated at a meeting of the UNCHR in 1992:

International cooperation should be strengthened and the obstacles to the realization to the right to development must be eliminated. To promote the realization of the right to development, it is necessary for each country to draw up their own effective economic development policies in light of their national conditions. However, it is indispensable for the international community to take effective measures to remove the existing obstacles at the international level.⁷⁹

Although the DRD and related policy documents stress the complementarity of national and international obligations in the implementation of the right to development, the emphasis is clearly on the international dimensions of the right, not the domestic obligations. While radical change is demanded of the international economic system, decisions about the national systems must remain the sole prerogative of individual states. In effect, official Chinese discourse on the right to development seems to reflect a political agenda that seeks more to strengthen the state and the regime than to empower communities or individual citizens.⁸⁰ Such a co-option of the right

76. *Chinese Delegate Speaks on Human Rights at Geneva Meeting* (Xinhua News Agency broadcast 5 Feb. 1992, BBC re-broadcast 8 Feb.1992).

77. Li, *supra* note 72, at 402.

78. MARGOT E. SALOMON WITH ARIJUN SENGUPTA, *THE RIGHT TO DEVELOPMENT: OBLIGATIONS OF STATES AND THE RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES* 18 (2003).

79. *Chinese Delegate Speaks on Human Rights at Geneva Meeting, supra* note 76.

80. *The Right to Development, INSIDE CHINA MAINLAND*, 1 July 1999, at 15.

to development by the state and other authority structures makes it more an instrument of power than a means of popular empowerment.

Asserting the right to development solely in terms of the rights of states sells the concept short. Within the context of the DRD and related documents, right holders are the collective individuals in a given state as well as groups within that collective, as in the case of minorities and indigenous people. States acting within the existing inter-state system are the entities through which the international component of the right to development is asserted. However, the role of developing states in asserting the right to development of their people internationally does not render the right an exclusively state one.⁸¹

In other contexts, the discourse on the right to development also reflects a politics of resistance. By claiming to prioritize subsistence rights and shifting the onus for the implementation of the right to development to the international community, China and other developing nations can deflect attention from domestic social and political obligations while resisting pressures for reform. For example, citing the right to development, China has repeatedly rejected proposals for a fixed target for reducing carbon emissions aimed at controlling global environmental pollution. Chinese officials have argued that developing countries of the world have "a right to development that must not be hampered by an over-zealous climate plan."⁸² Other developing countries have been more explicit in invoking the right to development to resist pressures for domestic reforms. Rejecting criticism of its human rights record by the United States in 2009, the military dictatorship in Myanmar stated that like other developing countries, it "accords high priority to the right to development" and accused the United States of ignoring the "positive developments taking place in the area of promoting the right to development of the people of Myanmar."⁸³

To be sure, any claim that economic development takes priority over respect for civil and political human rights, or that the realization of political rights is contingent upon national economic development agendas, stands contrary to the principles of the right to development as enunciated in the DRD. The DRD states clearly that "all human rights and fundamental freedoms are indivisible and interdependent."⁸⁴ It recognizes that in order to promote development, equal attention must be given to the implementation, promotion, and protection of civil, political, economic, social, and cultural

81. AMAN GUPTA, HUMAN RIGHTS OF INDIGENOUS PEOPLES 212 (vol. 1, 2005).

82. Geoffrey York, citing "Right to Development," *China reject Emissions Cap*, GLOBE & MAIL (Toronto), 5 June 2007, at A1.

83. *Myanmar rejects US Human Rights Report*, XINHUA GENERAL NEWS AGENCY, 4 Mar. 2009, available at http://news.xinhuanet.com/english/2009-03/05/content_10948221.htm.

84. DRD, *supra* note 19, art. 6.

rights. It states in unequivocal terms that "the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms."⁸⁵ It recognizes that creating the "conditions favorable to the development of peoples and individuals is the primary responsibility of their States."⁸⁶ The Working Group on the Right to Development has also stressed that states have the primary responsibility to ensure the conditions necessary for the enjoyment of the right to development as both an individual and a collective right.⁸⁷

In spite of these clear provisions of the DRD, dominant Southern discourses on the right to development seek to privilege states over local communities and individuals, promote economic rights at the expense of civil and political rights, and to demand radical change in the international economic system, while resisting domestic reforms that are equally crucial to fulfilling the right to development. However, this paradox is not limited to Southern discourses. If anything, similar contradictions are evident in Northern discourses of the right to development. Northern states and the powerful international financial institutions they control have been keen to link development in the South to liberal political and economic reforms at the domestic level. Yet, there has been a reluctance to extend these calls for reform to the workings of the international economic system within the framework of the rights of states and obligations of the international community espoused in the DRD.

V. A LANGUAGE OF POWER

Even though under international law states are considered the principal duty-bearer with respect to human rights of the people living within its jurisdiction, the right to development framework recognizes that the international community at large also has a responsibility to help realize universal human rights. The DRD states that 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."⁸⁸ The DRD also recognizes that states hold extraterritorial obligations regarding the enjoyment of the right to development. This is emphasized in Articles 3 and 4, which provide that states are required to create international conditions favorable to the realization of the right to

85. *Id.* at pmb1.

86. *Id.*

87. *Report of the Working Group on the Right to Development*, U.N. ESCOR, 3rd Sess., U.N. Doc. E/CN.4/1995/27.

88. DRD, *supra* note 19, art. 4.

development.⁸⁹ They have the duty to cooperate in order to achieve this right, and are required to *act collectively* to formulate development policies oriented to the fulfillment of this right.

These international dimensions of the right to development, which resonate deeply in Southern discourses, have received less attention in Northern intellectual and diplomatic discourses.⁹⁰ The opposition of Northern states, particularly the United States, to the right to development hinges on two main positions. First is the assumption that the global redistributive justice framework of the right to development is incompatible with the individual-centered free market and capitalist structure of the global economy.⁹¹ Second is the supposition that the very notion of framing development as a human right entitlement with binding obligations, even worse, binding extraterritorial obligations, is inherently flawed. Northern states such as the United States have traditionally opposed the right to development in any form more binding than aspirational platitudes and have resisted attempts at establishing enforceable national and international obligations based on it.⁹² This position is well captured in Jack Donnelly's arguments about the right to development and the limits of international "solidarity" obligations. While solidarity may require moral obligations to assist the developing world, Donnelly argues, solidarity does not establish a right to such assistance let alone a right to development.⁹³

Also problematic from the point of view of some Northern states is the fact that the right to development finds the right holder to be both the individual and the collective. The DRD stresses both of these individual and collective dimensions of the right to development. It states that the "human person is the central subject of development and should be the active participant and beneficiary of the right."⁹⁴ However, the DRD and subsequent interpretations of its provisions have also noted the aspects of the right to development that are collective in nature. Correspondingly, the duty bearer for these rights is seen as both the state (for individual rights) and the international community (for collective rights) through international assistance and cooperation.⁹⁵ Northern ambivalence and unease over the notion of a collective state-centered right to development is captured in the sarcasm of a United States diplomat in his reminiscences of the early debates over DRD at the United Nations:

89. *Id.* arts. 3–4.

90. Osmani, *supra* note 61 at 117.

91. Mutua, *supra* note 6 at 564.

92. Meier & Fox, *supra* note 13, at 322.

93. Donnelly, *supra* note 3, at 519.

94. DRD, *supra* note 19, art. 2.

95. Meier & Fox, *supra* note 13, at 327.

If Cuba has a right to development, but remains sadly impoverished thanks to what enlightened opinion the world over recognizes as dastardly imperialist machinations, then the international community has an obligation to step in and help Cuba . . . [This is] the logic of the Right to Development. But did we really want to go down this road—funding the world's worst dictatorships in the name of a newly concocted human right?⁹⁶

In rebuffing attempts to operationalize its legal obligations, many developed states have been particularly critical of the extraterritorial obligations under the right to development framework. To these states, right to development proponents seek to create binding legal obligations on what has traditionally been viewed as discretionary foreign aid.⁹⁷ The concern here is not so much with the goals of development, but with the normative framework in which it is articulated. The right to development may be tolerable within a traditional state-centric human rights framework, but its explicit extra-territorial dimensions remain problematic for many Northern states. This may explain the growing preference for the language of “rights-based development” rather than the “right to development” by Northern states and the multilateral development and financial institutions that they control.

Although there are clear connections between the concepts of the right to development and rights-based development, some scholars and practitioners find the latter more useful because it brings about a “root cause” approach to linking human rights and development, focusing primarily on matters of *state* policy and discrimination. The rights-based development approach is said to encourage the move from “needs to rights” from “charity to duties” and also implies “an increased focus on *accountability*.”⁹⁸ This approach clearly complements and strengthens the core principles of the right to development. The problem, however, is that the emphasis in discourses of rights-based development, if not the actual practice, is almost always on *state accountability* rather than international obligations. The key elements here relate to issues of corruption and good governance primarily at the domestic level.⁹⁹ Rarely is the language of “duties” and “accountability” that features so prominently in the discourses extended to extraterritorial obligations in the same way as state obligations.

The appeal of a language of state-centered, rights-based development rather than one that stresses international obligations is obvious—the latter hints of entitlements and binding obligations which many Northern states and multilateral aid agencies would rather avoid. This has engendered justified skepticism in some quarters. Peter Uvin has argued that in the name of

96. Shattan, *supra* note 44.

97. Meier & Fox, *supra* note 13, at 328.

98. Uvin, *supra* note 4, at 602.

99. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, *supra* note 65, at 56.

development, adjusted states in the developing world are being subject to novel methods of international surveillance and forms of conditionality.¹⁰⁰ In particular, African states and people are becoming more accountable to “external agents of top-down development.”¹⁰¹ The international apparatus of human rights accountability, even in the development arena, makes it easier to deflect critical attention and questions of state responsibility from non-state actors because that approach remains rigidly state-centric. This rights-based approach does little to empower the intended beneficiaries of development, be they people or the state.¹⁰² Northern discourses on the right to development do not espouse or even envision a fundamental reshuffling of cards of power, or redistribution of international resources worldwide.¹⁰³

The parallels between the Northern positions and Southern discourses on the right to development are striking. Southern discourses prioritize socio-economic rights or subsistence rights, shifting focus away from state obligations. Conversely, Northern discourses tend to be state centered, eliding crucial international dimensions of the right to development. Both discourses are paradoxical, polemical and highly political. By interpreting the right to development in a manner that is essentially state-centric, Northern discourses position the state as the central actor in rights-based development and hold the state accountable for development (or the lack thereof) under international law. Greater accountability is demanded of developing states even when international processes and agencies play crucial roles in weakening state capacity, undermining democracy, and diminishing state authority.¹⁰⁴

In line with the provisions of the DRD, bilateral donors such as the UK Department for International Development (DFID), Norwegian Agency for Development Cooperation (NORAD), Danish International Development Agency (DANIDA), Swedish International Development Agency (SIDA), and the Canadian International Development Agency (CIDA) have all adopted explicit mandates for human rights in development.¹⁰⁵ United Nations agencies such as the UNDP have also integrated human rights into their development mandates.¹⁰⁶ Even international financial institutions such as the World Bank and the Monetary Fund that have long resisted bringing in “extraneous” non-economic indices into their operations, now give greater consideration to human rights and good governance centered development

100. Uvin, *supra* note 4, at 56–59.

101. Manzo, *supra* note 8, at 438.

102. *Id.*

103. Uvin, *supra* note 4, at 603–04.

104. Manzo, *supra* note 8, at 438.

105. Marks, *supra* note 28, at 54.

106. See U.N. DEV. PROGRAMME, INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE DEVELOPMENT (1998); U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT: HUMAN RIGHTS AND HUMAN DEVELOPMENT (2000).

in formulating lending policies.¹⁰⁷ In all these however, there remains an inclination toward the language of “rights-based approach” to aid, cooperation, and assistance rather than the language of the “right to development” and the international obligations it mandates.

This approach serves more to affirm the status quo than to reform it. Policies are decreed from above, “morally self-satisfying, and compatible with the *status quo* in the centers of power”.¹⁰⁸ Huge ranges of rich-country behaviors that undermine the full realization of the right to development remain immune to criticism. “Northern over-consumption, a history of colonialism, lopsided environmental degradation, protectionism, the dumping of arms in the Third World, the history of shoring up past dictators, the wisdom of structural adjustment, and globalization—all are off the discussion table.”¹⁰⁹ The inevitable conclusion is that there is a lot less in the emerging rights based approach to development than meets the eye. Much of it is about the quest for a moral high ground: draping oneself in the mantle of human rights to cover the fat belly of the development community, avoiding challenging the status quo too much, or questioning oneself, or the international system.¹¹⁰

This, in many ways, also mirrors the trend in Southern discourses of the right to development, which tend to privilege economic rights over civil and political rights and international responsibilities over domestic obligations. If the right to development has been co-opted by state structures in the South as a language for resisting a hegemonic international system while maintaining the domestic political status quo, Northern discourses have similarly been deployed as a language of power to maintain the international economic status quo while resisting Southern pressures for reform.

The state-centric agenda that dominates Northern discourses on the right to development ignores the realities of a globalizing world where international factors increasingly affect the capacity of states to achieve development. International actors can have enormous impact on the right to development—in their lending policies, employment practices, environmental impact, and support for corrupt regimes, or in their advocacy for policy changes. New systems or international rules relating to trade, invest-

107. WORLD BANK, *DEVELOPMENT AND HUMAN RIGHTS: THE ROLE OF THE WORLD BANK* 11 (1998).

108. Uvin, *supra* note 4, at 600–01.

109. *Id.* at 601.

110. There are important exceptions to this trend. Some development-oriented international NGOs have worked to draw attention to both national and international obstacles to development. For example, in the 1990s Oxfam launched a five year Basic Rights campaign that sought to highlight human rights in international development practice. The main targets of this campaign were International Financial Institutions such as the World Bank and the International Monetary Fund. See OXFAM INTERNATIONAL, *RIGHTS NOW: WORLD POVERTY AND THE OXFAM CAMPAIGN* 13–16 (1995).

ments, and intellectual property rights also adversely affect the achievement of human rights both domestically and internationally. The limitations of the state-centric approaches to human rights are well outlined in the UNDP's milestone report for 2000, *Human rights and Human Development*.¹¹¹ Development, it states, cannot be realized universally without stronger international action, especially to support disadvantaged people and countries, and to offset growing global inequalities and marginalization. This calls for a shift from "national to international and global accountabilities—and from the international obligations of states to the responsibilities of global actors."¹¹² It requires extending the state-centered model of accountability to the obligations of non-state actors—including corporations, international financial institutions, and multilateral organizations.¹¹³

This centrality of international obligations to realizing the right to development tends to be obscured in Northern discourses. While Northern states and the multilateral organizations that they control profess commitment to human rights in their development aims and demand the same of Southern states, they have been less forthright in extending the same rights-based reforms to their own actions and an inequitable global political economy within which they occupy privileged spaces. In the absence of such moves, the human rights focus in the development discourse amounts to little more than the projection of power.¹¹⁴

Many in the developing world have decried this missing link between the national and international dimensions of the right to development arising from a state-centric approach to the right to development preferred by powerful Northern actors. They reject the presumption that collective efforts toward the realization of the right to development have no corresponding obligations and duties at the international level.¹¹⁵ Instead, they stress the interlinkages between national and international obligations in implementing the right to development.¹¹⁶ Although it is important to focus on aspects of equality and non-discrimination in implementing the right to development at the national level, it is indeed questionable how this can be achieved without regard for the international dimensions of the issues involved.¹¹⁷ In spite of the polarizations and insular nature of official discourses in both

111. HUMAN DEVELOPMENT REPORT, *supra* note 106, at 9–10.

112. *Id.* at 13.

113. *Id.* at 1, 10.

114. Uvin, *supra* note 4, at 604.

115. Press Release, United Nations, Countries tell Commission on Human Rights That Greater Efforts Are Needed to Spur Development, HR/CN/1009, (26 Mar. 2003), available at <http://www.un.org/News/Press/docs/2003/hrcn1009.doc.htm>.

116. *Id.* at Comments by Mohammed-Saleh Dembri, representative of Algeria.

117. *Id.* at Comments by Abdulwahab Abdulsalam Attar, representative of Saudi Arabia.

North and South, the fulfillment of the right to development clearly requires international, regional, and national enabling environments.

VI. CONCLUSION

One of the Cold War legacies for human rights was the creation and intensification of the boundaries between civil and political rights on one hand, and economic, social, and cultural rights on the other. These boundaries reflect the East versus West polarization in international relations, which reduced human rights to a weapon of propaganda and political ideology in a bipolar struggle. "The West emphasized civil and political rights, pointing the finger at socialist countries for denying these rights. The socialist (and many developing) countries emphasized economic and social rights, criticizing the richest Western countries for failure to secure these rights for all its citizens."¹¹⁸

In a post-Cold War era where the world is no longer that sharply divided between East and West, much of the propagandist human rights language of the Cold War era has lost its relevance.¹¹⁹ More countries across the former East and West divide are now better disposed to affirming the interrelatedness, interdependence, and indivisibility of human rights. However, the co-option of human rights by both state and non-state authority structures for parochial ideological and propagandist purposes did not cease with the end of the Cold War. This article argues that the international discourses on the right to development have been underscored by similar manipulation of rights language to serve the political and economic agendas of states, ruling regimes, and other non-governmental authority structures. The ideological fault lines may be less rigid than they were during the Cold War, but the language of human rights continues to be appropriated and invoked in ways that sell it short.

In particular, the right to development has provided a means with which authority structures in both North and South have furthered their own interest through the legitimizing language of human rights. The contradictions arising therefrom partly explain why the status of the right to development has remained murky and the prospects of a binding treaty or mechanisms for enforcement remain dim. Southern discourses on the right to development give emphasis to demands for radical change in the international economic system while resisting calls for domestic reforms. The right to development has provided legal and ethical authority to the Third World's request for the

118. HUMAN DEVELOPMENT REPORT, *supra* note 106, at 3.

119. Sengupta, *supra* note 23 at 91.

international redistribution of resources. However, it has been less effective in drawing attention to redistributing resources *within* the states. If anything, the right to development has offered developing countries an effective means of maintaining the domestic status quo. Conversely, Northern discourses have similarly focused almost exclusively on the domestic obligations of states while overlooking calls for changes in the global economic structure that are crucial to realizing the right to development. A state-centric approach has become an effective means of deflecting attention from the obligations of the rich Northern states in realizing the right to development.

Despite the broad focus on North-South politics here, this article recognizes that the polemics on the right to development cannot be seen solely in terms of the divergent interest and agenda of key actors in the global North and South. There are other dimensions of the discourse that are not the focus of this article. Tensions have resonated in discourses about the right to development not only *between* the North and South, but also in discourses *within* these spheres. There is, after all, a “south” in the North a “north” in the South.

Furthermore, the structuralist and instrumentalist argument advanced here is not absolute. Admittedly, the right to development has been more than simply an instrument in the hands of Southern and Northern authority structures. The discourse on the right to development has brought about a significant substantive change in how we think about development, which has had real impact on the lives of many people around the world. The right to development approach has created a new paradigm in development thinking that places human rights firmly within national and international development. Inspired by the vision of the DRD, many states have put in place constitutional provisions and enforcement mechanisms for the right to development.¹²⁰ Thus, in spite of the formally non-binding status of the DRD and other related resolutions, the right to development has had a salutary effect in the normative relations between states. It provides a reference point for demands for more equitable distribution of wealth and resources within and between states. States have responded to its mandate in terms that do not necessarily indicate they perceive it as formally binding upon them, but which also make it at least plausible to suppose that they feel in practice bound or obliged to give effect to such a mandate.¹²¹

The analysis of the polemics and politics of power and resistance on right to development presented in this article offers important lessons on the uses

120. For example, the Ugandan Constitution of 1995 makes provisions for the right to development. For a discussion of these provisions see M. Mawa, *Human Rights and Development in Uganda: Reflections on the Constitutional Provisions of the Right to Development*, in *ETHICS, HUMAN RIGHTS AND DEVELOPMENT IN AFRICA: UGANDAN PHILISOPHICAL STUDIES*, III (A.T Dalfovo et al. eds., 2004).

121. Okafor, *supra* note 31, at 885.

and misuses of human rights language. Although the ethical and humanistic ideals at the core of the international human rights regime are increasingly gaining universal acceptance, they have not always been articulated or pursued by its adherents with universal objectivity. The promotion of human rights ideals has been frequently undermined by parochial ideological and political agendas. The legitimizing language of human rights has been used to pursue goals that have more to do with the international politics of power and resistance, as well as the interests of ruling regimes than with the welfare and empowerment of ordinary citizens.

Disagreement over meanings and priorities, differences over the nature and extent of entitlements and responsibilities, as well as narrow and distorted interpretations have all had undesirable impacts on the promotion of human rights. Therefore we need to seriously consider the morally troubling outcomes that arise when human rights are co-opted by authority structures in ways that serve more to enhance their power than to alleviate human suffering.¹²² As we celebrate the many progressive developments that have been brought about by the post Second World War human rights movement, we must also pay attention to how the misuse of human rights can undermine its claims to universalism, inalienability, and normative objectivity.

122. Columbia University Human Rights Seminar, *supra* note 12.