

Rights to Development

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Is there a right to development?

In a word the answer is Yes. In December 1986, the UN adopted by 146 votes to 1 “a right to development.” But it remains highly controversial.

I will come back to the Right to Development later, but before doing so, I have to introduce some complexities. The Professor of Divinity at Harvard being interviewed by Stephen Fry on BBC on Sunday commented that the United States was a country which didn’t like complexities. They wanted yes-no answers. This doesn’t work for the Rights to Development. And of all places, the UNA is a group where some complexities should be discussed.

So to explore the complexities, we must deal with at least two questions. What is meant by development and what is meant by human rights? To both, I will stick to views as presented within the UN. I will draw on some of the material dug up by the UN Intellectual History Project – including by the most useful volume by Roger Norman and Sarah Zaidi, *Human Rights at the UN: the Political History of Universal Justice*.¹ Throughout I want to maintain a practical, operational tone – and I will end my presentation with conclusions for action.

First, what is meant by development? We might simplify our complexities, by noting three main meanings:

1. **Economic advance** – often measured by growth of national production or income – GNP. DFID emphasizes economic growth as a crucial condition for other forms of advance, the World Bank and the IMF also treat growth as central. Growth plus change was emphasised by the UN over the 1960s but from the 1970s, basic needs, employment, redistribution and other elements have been emphasized by the UN as equally important as economic growth, if not more. A balanced conclusion today, in my opinion, is that the **structure of growth** is as important as the rate of economic growth.
2. **Economic advance with special attention to the social sectors** – explicitly to include expansion of education, health, reductions in

¹ Roger Norman and Sarah Zaidi, *Human Rights at the UN: the Political History of Universal Justice* (Bloomington, Indiana University Press) 2008. Further details can be found on the UN Intellectual History website: www.unhistory.org

malnutrition, social protection etc. Since the 1960s, this perspective has been strong in the UN, especially in parts of the UN like UNESCO, WHO, ILO and FAO and the UN funds like UNICEF, UNFPA and IFAD. Since the formal adoption of the MDGs as part of the Millennium Summit Declaration in 2000, the international community as a whole emphasises this approach – economic growth plus the MDG goals to be achieved by 2015. UNDP has the role of coordinating the work of the UN system globally and at country level, with the UN Resident Coordinator responsible and with the World Bank and the IMF and the donors active in each particular country more or less committed to join with the government and the UN in this effort.

3. **Human Development** is the third main meaning of development – putting people at the centre of development, broadening their choices and strengthening their capabilities to live long, healthy and fulfilled lives. This view of human development has been promoted by UNDP since 1990 in its series of global Human Development Reports – and in the more than 600 NHDRs which have been prepared at country level. They have received extraordinary coverage and publicity, in part because of media promotion but also because of its deep intellectual roots, provided by the Nobel laureate Amartya Sen and the distinguished Pakistan economist, Mahbub ul Haq, who jointly founded the Human Development Report.

The link between the human development and human rights is that from the beginning, **the HDR has made human rights a core component of human development.** Thus human development includes the fulfilment of human rights as well as inclusive democracy.

For development as economic growth or as growth plus the social sectors or as the fulfilment of the MDGs, it is often argued that democracy and human rights are important **means** to ensure the meeting of these other goals. For human development, democracy and human rights are **not only means** to the economic end – but **ends in themselves, essential components of human development.**

Human Development involves another element, now often called the rights-based approach to development. This means giving attention to human rights in the **ways that goals are pursued**, not only the pursuit of the human rights goals themselves. It means, for instance, providing opportunities for people to participate in the decisions which affect them or ensuring equality of treatment for minority groups or for women or children. This is a big difference from the other approaches to development.

All this of course has a direct bearing on our question: Is there a right to development? The question can only be answered by specifying what one means by development. By the strongest meaning of development – the human development definition – the answer is not only yes, but the very definitions of human rights of individuals are included in the meaning of human development and reinforce the social and political imperative of moving towards it.

This brings us to our second question:

How have human rights evolved within the UN – and when were the links with development first emphasised?

The UN has been concerned with human rights from the start. Beginning with the Charter, I would identify five landmarks in the evolution of the UN's concerns with Human Rights. ²

The first landmark: Human rights in the Charter: The much quoted preamble of the Charter, **We the Peoples of the UN** determined to save succeeding generations from the scourge of war ...goes on immediately to reaffirm faith in human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. Article one goes on (in para 3) to refer to international cooperation in ...promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. Later the Charter places responsibility within ECOSOC for making recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all. Promoting human rights was also one of the basic objectives of the Trusteeship System and Council.

The second landmark: the Universal Declaration of Human Rights This came three years after the Charter, in 1948. Conventional history lauds the Universal Declaration as a milestone of global cooperation and achievement. In our UN history we identify it as one of the UN's fundamental, founding ideas –peace, sovereign independence, economic development and human rights for all, the boldest idea of the four.

² Here, I draw directly on the Normand and Zaidi volume to summarize the advances within the UN in defining and promoting human rights since 1945. (Normand and Zaidi in their book go back much further – to Tom Paine's Rights of Man in 1791 and to the important work of the League of Nations.)

The Universal Declaration spells out the rights of all individuals to a range of political freedoms and also to employment – and to rest and leisure –to health and education, free at least at elementary level, and to social security and cultural life. All these imply a lot about to development. Article 28 states specifically “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

At first glance all this looks impressive – especially for the time. But there was a big catch, as Normand and Zaidi and others like Canon Nurser in his book on the role of the churches brings out. The language on human rights in the Charter was inserted over the last few months of drafting to win public support and as a PR exercise. The US, the UK and the Soviet Union, the major powers of the time all signed the elements of human rights with their fingers crossed under the table or behind their backs. The same was true of the Universal Declaration – acceptable and accepted by these three major powers on the strict interpretation that it was to be a Declaration, not for immediate implementation.

Cynics however should pause before they leap to despair and pessimism. Enter the 3rd UN. Our UN history has shown that many matters agreed by governments in hypocrisy within the UN, have later led to serious implementation, sometime the result of staff members keeping an issue alive, but more often because non-government groups have mobilized to demand governments take action for serious implementation. Human rights is one such area. Pressures to increase development aid towards the 0.7% target is another. The Jubilee Campaign for debt relief is a further clear and major example.

Such mobilization has been effective in many areas of UN action – so much so that in our UN history we now refer to 3 UNs: the 1st UN of governments; the 2nd UN, of UN staff members; and the 3rd UN, of non-government groups, commissions and consultants and others working on the fringes of the UN. Typically the governments are cautious, UN staff members try hard and often creatively, but without power to overrule governments. But then the 3rd UN mobilizes and time and again real change follows, not always and often after some delay but frequently it happens. I see this as the positive lesson of human progress.

For human rights this has been the case over most of the UN's life. Initially, human rights had hardly been mentioned in the Dumbarton Oaks drafts and there was no serious intention to include human rights in the charter. But then the Christian ecumenical movement

the American Jewish Committee and many others all mobilized with the result that the drafters, especially the US, responded.

The power of the 3rd UN was also important for the third and fourth landmarks: CEDAW (the Convention for the Elimination of All forms of Discrimination against Women) in 1979 and the Convention on the Rights of the Child(CRC) in 1989.

The mobilization process for women began in International Women's Year (IWY) in 1975, before and at the First World Conference on Women in Mexico, which called for the drafting of CEDAW. The mobilization was not only focused on UN headquarters but in most countries round the world, when delegates returned from the conference and pressed for national action. This happened also after Copenhagen, Nairobi and Beijing – with women and some men delegates inspired to mobilize and press their own governments for action for women and gender equality.

A similar process with different groups occurred to press for a Convention on the Rights of the Child during the 1980s and then for ratification, after the adoption of the CRC in 1989 and the holding of the World Summit for Children in 1990. The result was that the Convention of the Rights of the Child became the most rapidly and comprehensively ratified of all UN human rights conventions – with all but two countries now having ratified.

The fifth landmark: the establishment of the Office of the UN High Commissioner for Human Rights. This was agreed in 1993 at the UN conference on Human Rights held in Vienna, after a similar mobilizing process had taken place. Under public pressure, States agreed to establish the Office of the UN High Commissioner for Human Rights – a proposal first put forward by Rene Cassin nearly 50 years earlier. At last, the UN had a High Commissioner who could coordinate human rights activities and programmes throughout the system.

The Conference also agreed some substantive elements about human rights and development – linking them to other core UN principles on the grounds that “democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.”

The recognition of the links between development and human rights can thus be seen throughout the life of the UN, not without controversy, not without hypocrisy but under public pressure as a

significant if slow advance. The recognition is there to build on and take further.

This brings me thirdly and finally to my last issue: What exactly is the Right to Development and wherein lies the controversy?

The Right to Development in its formal and specific sense was agreed in 1986. It is still the most controversial of all the human rights items on the global agenda. What created the controversy is that it attempted to deal with the international conditions required for poorer countries to develop and thereby to meet the needs and the human rights of their citizens. This goes back to article 28 of the Universal Declaration, which I had quoted earlier: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

But in place of this most carefully worded sentence, skilfully avoiding all the pitfalls of saying who is responsible for action, the Right to Development tried to take on in legal language issues of North South relations which ten years earlier had been debated without result within the UN under the call for a New International Economic Order. Once adjustments to the oil price increases of 1973/4 had taken place, economic debate on NIEO was closed down by the developed countries, much to the frustration of developing countries. The Right to Development was in part a continuation of these issues with a focus on rights and in a different UN forum.

The starting point was in 1972. A proposal for a right to development was put forward by a highly qualified and distinguished Third World jurist Keba Mbaye, at the time President of the Senegalese Supreme Court, a member of the UN Commission on Human Rights and a judge of the International Court of Justice. His proposal brought together a number of controversial ideas:

- the link between civil and political and economic, social and cultural rights;
- the right of states to economic self-determination;
- the right of individuals to participate in national economic decision-making;
- the duty of states to cooperate in fostering local and international development;
- and the obligation of wealthy countries to transfer resources and technology to poorer states.

Normand and Zaidi set these issues in more colourful language. “Developing countries had long pressed for a legal duty of former

colonial powers to make compensation for centuries of pillaging and depredation through reparations, favourable terms of trade, direct aid, and other redistributive measures aimed at rectifying economic disparities in the global economic system.”

No wonder it was controversial! And no wonder the debate dragged on for many years. Western states argued that a right to development of this sort simply did not exist: They were willing to accept a moral commitment to development but not a legal obligation to transfer resources. They also argued that such an approach would confuse and undermine the existing human rights system which was focused on individual rights. And they argued that developing countries were using the right to development as an attempt to divert attention from national corruption and mismanagement and justify their own subordination of civil and political rights in their moves to centralized planning.

To find a way forward, a Working Group of Government Experts was set up, which met from 1981 to 1986. But the working group was seeking to bridge fundamentally opposing views on the basic legitimacy of the prevailing international economic order. On the one side was a supportive majority of UN members. But on the other was the most powerful and wealthy states of the world, led by the conservative United States government with Ronald Reagan as President. Moreover, one should add, the developed countries had little of today’s sense of world financial and economic crisis to engender more flexible thinking. (Many developing countries were suffering the debt crisis of the early 1980s but this didn’t count!).

In the end, when it became clear that absolutely no progress was possible without major compromise, a series of modifications was agreed that weakened the legal status of the right and removed all obligatory clauses requiring implementation. As Normand and Zaidi comment, the right was turned to a declaration and the “time-honoured trick” was used to incorporate broad language as a cover for contradictory interpretations and ongoing disagreements.

Even so, 8 countries abstained –including the UK, Germany and Japan as well as Sweden, Denmark and Finland. The US was the one country which voted against. The US delegate expressed the country’s fundamental rejection of any collective rights: “The view that states have the right to development is unacceptable. States are merely instruments to created by citizens to protect their rights. It has already been pointed out that, in the matter of development, individuals have rights whereas states have obligations. Development therefore implies a limitation on the rights of states.”

Though some lawyers still object to the concept of collective rights, developing countries at the time argued that this view is hardly convincing. Certain collective rights are already recognized in the UN Charter, such as the right to self-determination, sovereign equality and territorial integrity. The right to development has a dual nature that includes both collective and individual dimensions.

Though the Right to Development formally exists, its practical impact must be judged as a failure, at least in the two decades which have followed its adoption. But like the NIEO, the issues which underlie it have not gone away. Global inequalities have soared. Instabilities within the system affect us all – and, under emphasized so far, generally hit the poorest people and poorest countries hardest. Some 40 countries, many of the least developed, are still poorer today than they were in the mid 1980s. These issues must be put on the global agenda during the years ahead and some solutions found.

Conclusions:

I will confine myself to five conclusions, focusing on action:

1. The links between human rights and development have been recognized over the whole of the UN's life. They have more recently been brought more closely together, most clearly but by no means only in the concept of Human Development.
2. National and international action to fulfil human rights needs to be kept high on development agendas, nationally and internationally. The MDGs are already an important recognition of these priorities though by themselves not enough.
3. Operationally, rights-based approaches to development need to be pursued more widely at country level. This means ensuring that the concerns of human rights are made part of the way goals are pursued, nationally and internationally. It also means providing opportunities for people to participate in all the key decisions which affect them.
4. The Right to Development, for all its weaknesses, is a reminder that the injustices and weaknesses of the global economic system still need attention – to incorporate principles of human rights and not only of economic efficiency in the global economic system and to offset extremes of inequality in relations between richer and poorer countries.
5. Finally, all of us need to recognize the power and importance and achievements of the 3rd UN, especially as a strong force for human rights. All of us are or can be part of the 3rd UN. We need to use this influence and live up to the vision of making the UN stronger and more effective for human rights, human development and peace.