

PART ONE

**Situating the right  
to development**

*historical context*

# Introduction

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The idea of the right to development and the formal acknowledgment that it is an internationally recognized human right pre-date the adoption of the Declaration on the Right to Development in 1986. The purpose of the first part of this book is to provide the context for the emergence of the right as an international human right and to recall the substantive understandings that prevailed at the inception and early formulation of the right and demonstrate the relevance of these understandings today.

The first formal reference to the right—in a sense its “birth certificate”—may be found in resolution 4 (XXXIII), adopted without a vote by the Commission on Human Rights on 21 February 1977. In the debate leading up to the adoption of the resolution “several representatives stressed that ... assistance for the economic and social development of developing countries was a moral and legal obligation of the international community, in particular of the industrialized countries”.<sup>1</sup> That was the germ that grew into a more complex and far-reaching concept of the right to development. The resolution itself called for the Secretary-General, in cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other specialized agencies, to study “the international dimensions of the right to development”; the recommendation was endorsed by the Economic and Social Council. That study<sup>2</sup> was prepared

in 1978 by a junior United Nations staff member from Australia, Philip Alston, who has since become a very prominent professor of human rights, member and Chair of the Committee on Economic, Social and Cultural Rights, Special Rapporteur on extrajudicial, summary or arbitrary executions, as well as a prolific author on the right to development.<sup>3</sup>

The study of some 160 pages anticipated by over three decades virtually all the issues that remain salient in the debate today. It laid the groundwork for the Declaration, which was adopted eight years later. The extracts from that study that appear in chapter 1 under the title “The emergence of the right to development” are particularly illustrative of the concerns that continue to confront the international community: ethical aspects, legal norms, subjects and beneficiaries, duties, participation as a central feature, and the dynamic character of the right to development. The study also covered the relationship between the right to development and other rights, including the right to peace, and the New International Economic Order, as well as specific issues of disarmament, self-determination, development assistance and transnational corporations, which are not reproduced in the chapter. It is particularly valuable to reread the study more than three decades later in order to understand how the right to development emerged from the prevailing political climate and to recall that, from the start, the

<sup>1</sup> “Commission on Human Rights: report on the thirty-third session” (E/5927-E/CN.4/1257), para. 40.

<sup>2</sup> “The international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirement of the New International Economic Order and the fundamental human needs: report of the Secretary-General” (E.CN.4/1334).

<sup>3</sup> See, for example, Philip Alston, “Making space for new human rights: the case of the right to development”, *Harvard Human Rights Yearbook*, vol. 1 (1988), pp. 3-40; Philip Alston, “Revitalising United Nations work on human rights and development”, *Melbourne University Law Review*, vol. 18 (1991), pp. 216-257; Philip Alston, “The shortcomings of a ‘Garfield the cat’ approach to the right to development”, *California Western International Law Journal*, vol. 15 (1985), pp. 510-523.

United Nations Secretariat, with considerable input from UNESCO, as acknowledged by Alston, brought careful analysis to enrich the understanding of this right. Among many core ideas, the study identified the biggest challenge the international community continues to face today, namely, how to translate the concept of this right “into a notion capable of providing practical guidance and inspiration, based on international human rights standards, in the context of development activities”.

Equally essential to understanding the context in which the right to development emerged is the normative basis of the Declaration in the light of major international statements of principles since 1945. For this purpose, we draw on the work of another United Nations staff member at the time, Tamara Kunanayakam (currently Chairperson-Rapporteur of the intergovernmental open-ended Working Group on the Right to Development), who summarized 36 United Nations documents from 1944 in the form of a background paper entitled “Annotations to the Declaration on the Right to Development and related United Nations system instruments, resolutions and reports” (HR/RD/1990/CONF.1).

That document forms the basis of chapter 2, entitled “The Declaration on the Right to Development in the context of United Nations standard-setting”, which is selective in extracting summaries of 25 of the 36 documents examined in her 1990 paper, to give a sense of the solid normative heritage on which the Declaration built. However, it is more than a compilation: it draws conclusions that remain relevant to formulating approaches to addressing the challenges faced by humanity in the second decade of the twenty-first century. The chapter provides a trajectory of how various principles historically evolved throughout the standard-setting exercise at the United Nations and resulted in and shaped the Declaration on the Right to Development. It shows how the debate on the right to development was significantly influenced by two major interrelated and interdependent processes: (1) the emergence of newly independent States seeking equal status in their relations with their former colonial masters as a powerful factor in international affairs; and (2) the evident failure of an alien growth-centred profit-oriented development model, based on an unequal international division of labour, to eliminate inequalities, achieve social well-being, and to consolidate political independence through economic independence.

The author argues that the Declaration on the Right to Development retains its relevance and legal

validity. The global reality that fuelled the evolution of the principles reflected in the Declaration and the aspirations of its principal architects, the developing countries, have not fundamentally changed. Moreover, its normative character is clearly linked to aspects that render it legally binding. Its legal sources are broad ranging, extending from positive law to “soft” law, many aspects of the right having become part of customary law. While the controversy over its legal validity may continue, the author points out that “the principles at the core of the right to development remain current and, in multiple ways, continue to inspire the actions of numerous States and social organisations.” She concludes that the Declaration is a pertinent and valid framework for the development of a society based on equality and social justice, and will continue to inspire present and future generations.

Chapter 3, entitled “The challenge of implementing the right to development in the 1990s”, summarizes the outcome of the major event for which the “Annotations” paper in chapter 2 was written, namely, the Global Consultation on the Right to Development as a Human Right, held in Geneva in 1990. This was a significant event for the quality of preparation, diversity and level of the participants, and for the boldness of the conclusion and recommendations. Forty-eight papers were presented by leading authorities from universities and institutions across the world, and senior representatives of numerous United Nations bodies, specialized agencies and international organizations, as well as non-governmental organizations (NGOs), addressed forthrightly the problems posed in implementing the Declaration. A thorough and nuanced final report of the meeting (E/CN.4/1990/9/Rev.1) detailed the depth of the presentations and discussion. The extracts from that report presented in this chapter explore the critical issues of the right to development for the 1990s, including apartheid, women’s rights, the rights of indigenous peoples and extreme poverty. The selections from the report also include proposals to improve the implementation of the right to development through national development policies, participation, empowerment of intermediary groups, changes in the concept of the welfare State, legal assistance, and global markets. Its conclusions are also significant, stressing the need for criteria for measuring progress and recommending specific actions by States, international institutions and NGOs. For example, the recommendations anticipated by 15 years the creation of the high-level task force on the implementation of the right to development by proposing that a “high-level committee of experts” formulate “criteria for the

assessment of progress in the realization of the right to development". That task was finally completed in 2010 and is reflected in chapters 28-30.

Chapter 4, the final chapter in this section, sets out the context for the definition of the right to development in the years since 2004. This chapter, entitled "Conceptualizing the right to development for the twenty-first century," is based on the writings of Arjun Sengupta, former Independent Expert on the right to development (1999-2004) and later holder of a similar mandate on extreme poverty before becoming Chair of the intergovernmental Working Group on the Right to Development. Sengupta, a well-known economist with a career that included the International Monetary Fund (IMF) and representing India in Brussels, provided important insights in extracting from the abstract language of the Declaration practical tools for development economists to consider. His reports and scholarly writing, on which this chapter is based, addressed both

the theoretical and practical dimensions of the right to development. In the theoretical section of this chapter, he reviews the elements of the definition of the right as well as the controversies surrounding the concept, such as justiciability, monitoring, collective versus individual rights, resource constraints and interdependence of rights. In the section on practice, he addresses the economic context of globalization and growth, before proposing ways in which national policies and international cooperation can contribute to implementing the right to development. Among his specific proposals is that of development compacts (described as a "mechanism ... to work out the burden-sharing arrangements among the industrial countries") and elements for a programme to implement the right to development. His demise in 2010 was a great loss to both the scholarly and diplomatic communities; his wisdom, reflected in this chapter, will continue to guide efforts to move the right to development from political commitment to development practice.