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978-1-107-04715-0 - Redefining Human Rights in the Struggle for Peace and Development

Terrence E. Paupp

Excerpt

[More information](#)

Introduction

This book is dedicated to examining the greatest undiagnosed problem in international law: the failure of the nations of the Global North to accommodate, respect, and incorporate the legitimate claims of the nations of the Global South through a principled and comprehensive adherence to the legal mandates contained in the human rights to peace and development. From a historical viewpoint, it has been well established that the content of Western-dominated human rights discourse has traditionally been characterized by an overemphasis on civil and political rights, often to the exclusion of socioeconomic rights and the human right to peace. In part, this capture of the human rights discourse can be largely attributed to the inordinate dominance of the evolution of the human rights discourse by Western scholars who have – as a class – remained ideologically opposed to engaging in a reconception of the global order in some form other than that of capitalist domination by a transnational capitalist class (of which they have been the beneficiaries and proponents). Hence, in failing to even consider the claims of other human rights scholars, social movements, and changes in power relations in the world – as between the Global North and Global South – there has remained a lingering adherence to Eurocentric models, values and experiences in the dominant legal discourse of the West.

What this means is that there has been a tendency, throughout the Global North, to essentially dismiss, negate, and/or actively submerge a comprehensive reassessment of the substantive claims embodied in the human rights to development and peace. This tendency to resist a consideration of these rights and of the need to advance a global dialogue on them reflects a perceived fear of having to move beyond old fallback positions for maintaining the status quo, such as the argument that there exists a legitimate trade-off between development and human rights among policy makers, and/or a continuing adherence to the idea that all that is required is another appeal to the “basic needs” approach to adequately address the full scope of human rights claims and obligations.

In both instances, whether it is a continuing adherence to the alleged validity of a compromise of principles through trade-offs or, in the alternative, engaging in efforts to advance socioeconomic rights by only addressing a basic needs agenda, the stage

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[More information](#)

has been set for the arguments presented in this book. In the ensuing chapters, I argue for a “human rights–based approach” to development and, simultaneously, international accountability for dealing directly with the pressing issues of hegemonic military interventions, global poverty, climate change, unfair and unbalanced trade regimes, and the unregulated and unrestrained profit-driven focus of the corporate bottom line. In advancing these proposals for employing and institutionalizing a human rights–based approach, I present a cohesive legal, political, cultural, social, and economic approach to *making rights real*, which integrates civil and political rights with socioeconomic and cultural rights. The need for such an undertaking is evident from the historical record. This is because:

Modern human rights and development discourses were born almost simultaneously after the Second World War. Despite this temporal co-incidence, there is no apparent substantive thread that ran through them until recently. Traditional conceptions of human rights meant only civil and political rights, despite the acceptance of economic, social, and cultural rights and the concept of duties in the Universal Declaration of human rights. Development, on the other hand, meant primarily economic growth to which human-rights concerns were marginal, if not irrelevant. Lawyers remained the high priests of human-rights discourse, while economists ruled the development field. These divisions were manifested in the UN system, where different institutions were established to deal with human rights and development, with almost no mechanisms for coordination (Rajagopal 2003, 216).

In view of this history, one of the primary purposes of this book is to suggest how the evolution of international law principles and practices can be conjoined with an evolving human rights discourse so that some objective mechanisms for coordination between human rights and development policies can begin to be implemented. With this objective in mind, I have outlined a series of investigations into a variety of issues that traverse this hitherto unexplored terrain. In so doing, the book engages the reader to contemplate the relationship between the struggles of indigenous peoples in conjunction with concerns about intergenerational and cross-cultural ecological justice. Also, I present arguments and evidence that demonstrate the need for creating a new global institutional order that mandates and enforces the accountability of states vis-à-vis national human rights institutions (NHRIs) and, in so doing, provides a vision for how to proceed with the task of establishing a cohesive human rights–based international law framework that can centralize human rights concerns under the rubric of an emerging global constitutional order.

Hence, the primary purpose of this book is to offer concrete paths for the achievement of alternative priorities to those that currently govern the economic, political, and social arrangements of trade and investment, peace and war, as well as the lingering dichotomy between the ideology of markets and a dogmatic adherence to untrammelled growth *versus* advancing forms of genuine human security and human welfare. What makes this book different from others on the subject is that

Cambridge University Press

978-1-107-04715-0 - Redefining Human Rights in the Struggle for Peace and Development

Terrence E. Paupp

Excerpt

[More information](#)*Introduction*

3

it takes the hindrance of structural injustices seriously and, in so doing, does not seek to stake out compromise positions with the masters of the status quo, the vested interests, and the convenient methods employed by a transnational capitalist class used to engage in patterns of obfuscation, which deny human rights and their realization. Therefore, the book's focus is not to ameliorate the abuses of current order by taking a "reformist position" with regard to addressing the structural problems and policies of the International Monetary Fund (IMF), the World Bank, or the World Trade Organization (WTO), but to argue for their replacement and/or alteration under a global human rights regime that makes their functions accountable to the larger human interest of all peoples. In short, this book's agenda is to transcend, rather than remain captive to, the neoliberal ideology/model that has been imposed by the Global North through its corporations, financial practices, and the current hegemony of its leading nation-state and alliance structure.

By extrapolation, the proposed changes to the dominant discourse on development also have ramifications for the articulation of the human right to peace. Insofar as the historical violation of national sovereignty by colonial and imperial empires of the Global North has been replaced by a new set of policies and programs that have transformed older forms and practices of intervention by unleashing unaccountable global institutions on the Global South – such as corporations, banks, and an unregulated financial sector – there are now new blockages to making rights real. In the global environment of the twenty-first century, these forces are still seeking to control the fate of entire populations by "structural adjustment programs" imposed by the IMF, World Bank, and WTO. Further, the rules of international trade are largely stacked against the less-developed countries of the Global South. This reality is further complicated by a continuing emphasis on promoting "free market democracy," often done completely irrespective of ethnic cleavages and problems of equitable distribution, all of which has created a climate of violence in many Third World states that has led to genocide and/or exploding ethnic tensions and conflicts (Chua 2000, 287–379; Chua 2003, 163–175). Market reforms imposed on Africa, Asia, and Latin America by the IMF and World Bank have pushed through privatization programs, foreign investment, and trade liberalization by conditioning desperately needed loans on these kinds of market reforms (Chua 2003, 20–21). This set of practices, which emanate from the most dominant financial institutions of the Global North, bring into serious question the idea of development itself – as well as the question of who defines it and to what end. As Amy Chua has noted:

Apart from the issues of feasibility there is also the question of the proper objective of development. Cultures obviously change over time, and cultural generalizations are always suspect. Still, in any effort to engineer social change "*from above*," there is "a certain danger of treating culture purely as an obstacle." Even assuming that it is possible to transform every developing-world villager into a consumer entrepreneur, it

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Terrence E. Paupp

Excerpt

[More information](#)

is hardly obvious that this ought to be the goal of development (Chua 2000, 344) (*italics added*).

Throughout this book, I reject the entire notion of development “from above,” which has been a fundamental principle of neoliberal dogma and foundational for both the IMF and World Bank’s efforts to advance free market democracy under the rubric of its neoliberal model. Instead, I have taken the rubric of making rights real as what should be the central purpose of any developmental program, policy, or enterprise that purports to advance the dignity, freedom, and welfare of the person. To that end, through the course of this book, I advocate a developmental path that employs a human rights–based approach and rejects the neoliberal paradigm entirely. This is because the neoliberal model conveniently ignores the real causes of poverty while it continues to debase the human rights to peace and development as depicted and endorsed in the Universal Declaration of Human Rights (UDHR), the Vienna Convention, the Algiers Declaration of the Rights of Peoples, and South Africa’s Freedom Charter.

In an earlier book, *Achieving Inclusionary Governance*, I engaged in such a critique of the neoliberal paradigm and have reiterated my criticism of these policies in this book because it is evident that “[n]eoliberal ideology is incompatible with the project of inclusionary and humane governance because it confines the role of the new multilateralism to the civil and political domain, thereby avoiding accountability to socioeconomic claims related to human rights, equity, and justice concerns” (Paupp 2000, 449). Many other scholars specializing in this subject matter, Fredrik Soderbaum among them, share my views on this. Commenting on the impact of these policies within the context of regional governance throughout Africa, Soderbaum asserts: “Neoliberal regional governance reinforces a process of neoliberal globalization, which *lacks ethical content* and contains a drastically reduced role for public interests since this governance depends on global market demands and on access to international capital *and does not focus on poverty reduction and public goods*” (Soderbaum 2004, 432) (*italics added*).

Within this matrix of power relations, both the environment and the lives of the peoples who reside within these states have been compromised or even lost. In short, the quest for profit through aggrandizement of natural resources has had the net effect of bringing about situations where powerful international actors have purposefully and intentionally violated the “do no harm” principle, which is a core obligation of international environmental law. Originating in 1941 in the *Trail Smelter* case and restated in the *Nuclear Weapons* case and the Stockholm and Rio Declarations, many scholars view the do no harm principle as firmly established in international customary law and see it connected to the requirement that states give effect to their treaty obligations “in good faith.” Hence, the do no harm principle frequently forms an important part of the legal context in which ad hoc solutions and institutional arrangements are negotiated and implemented in the international arena.

Cambridge University Press

978-1-107-04715-0 - Redefining Human Rights in the Struggle for Peace and Development

Terrence E. Paupp

Excerpt

[More information](#)*Introduction*

5

What are the implications for the human rights to peace and development? It has been argued that:

There is a human rights corollary to this environmental law principle. It is argued by some that as a general principle of international law within the meaning of Article 38(1)(c) of the Statute of the International Court of Justice (ICJ), and arguably as a norm of customary international law, States owe a “duty of due diligence” to ensure that their own policies, actions, or possible neglect do not impede the realization of human rights elsewhere. This could arguably be viewed as an aspect of the obligation to “respect” the human rights commitments undertaken by other subjects of international law, an iteration of the “do no harm” ethic commonplace in humanitarian law and practice (McInerney-Lankford, Darrow, and Rajamani 2011, 46) (*italics added*).

In this regard, the comprehensive nature of the task to engage in advancing efforts for making rights real transcends the scope of even these major obligations, because – as argued throughout this book – the mandatory nature of the human rights to development and peace needs to be so absolutely centralized in international law, national constitutions, treaties, and customary law and practice that even the most powerful institutions and states must ultimately recognize their final, complete, and universal authority. To state the obvious, the reason why human rights have not advanced as far as the dictates of corporations, the IMF and World Bank, and the WTO is because “[t]he international financial regime is much stronger than the international human rights regimes because it has the ability to enforce its rules” (Abouharb and Cingranelli 2007, 56). Recognizing this reality, the main purpose of this book is to provide a countervailing force to this set of power relations by outlining what is currently in place to enforce human rights mandates but, as of yet, have not been implemented – or only partially.

Further, even beyond enforcement mechanisms for human rights and the need to articulate more fully the substantive claims of the human rights to peace and development, there remains an ethical and moral component to the analysis and any viable solution. That is because, as Charles Lindblom has recognized, the capitalist market system cannot be relied on to promote, protect, or give substantive expression to the realization of human rights claims. In this regard, Lindblom notes: “That the market system pushes participants toward materialism is usually a clumsy way to say either that it pushes them toward the pursuit of money or toward acquiring those performances and things that money can buy. That is an allegation that cannot be dismissed. It suggests an excessively commercial and therefore corrupt culture” (Lindblom 2001, 198). Given the scope and nature of this predicament, it is evident that the challenge of making rights real is one that must confront and address the need for a new definition of development and human rights that restores the person and human dignity to a place of centrality, rather than being confined to the periphery of a world dominated by the corporate, banking, and financial sectors.

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Terrence E. Paupp

Excerpt

[More information](#)

The task of this book is to explain the predicament and then to provide a global strategy for moving human rights from the periphery of power into the center of decision making through expanding the avenues of participation and inclusion, recognizing the power of human solidarity, and engaging in the practice of a discourse and dialogue about rights both within and between cultures. In failing to undertake that assignment, humanity will be left stranded in a world wherein, according to Richard J. Barnet:

Corporate managers feel little responsibility for maintaining employment or local prosperity and, increasingly, there will be no political authority capable of imposing such responsibility. The result will be to accelerate the process of lopsided development. An international technological elite and to a lesser degree anyone of use to them will prosper, and the useless (*as defined by the criteria of the corporations*) will starve. Even if a massive global welfare program to prevent famine were possible . . . the waste of human potential would be monumental. Human beings cannot develop within a framework that gives opportunity only to the privileged few who know how to be “*efficient*,” according to someone else’s criteria (Barnet 1973, 238) (*italics added*).

To establish a countervailing force to these pressures, it will be necessary to identify the value of pluralism in the global human community. This is where a broader conception of human rights comes into view as a countervailing force to the logic of the market, the ideology of corporate managers, and the entire thrust of the neoliberal agenda. By making the human rights to peace and development the central components of the international human rights regime, it becomes essential to value and protect both human diversity and pluralism over the narrow and delimiting confinements of a capitalist managerial/financial class that consistently seeks to reduce the world and the human experience to the bondage of its own narrow definition of what is “efficient,” of “value,” and “productive,” as well as “profitable.” The alternative to this vision is to recognize a different reality, one that acknowledges the fact that:

There remains an urgent need to adopt a broader view of human rights, which incorporates diverse concepts and moral experiences. It will be easier to find some harmony around the globe under a particular human rights rubric once the existence of pluralism has been recognized, understood, and accepted. The hope is that greater cross-cultural understanding will shed light on a common core of universally acceptable rights (Ibhawoh 2004, 39).

However, hurdles of the advancement of the human rights to development and peace remain. They are evident in an unfair and stilted trade regime, which often reflects the purposes of a system designed to promote the interests of the Global North to the detriment of the Global South through foreign direct investment (FDI) dollars and the practice of undemocratic land grabs, such as in Africa and Latin America, irrespective of human rights mandates and protections (Barry 1995;

Aaronson and Zimmerman 2008; Kantai, Katerere, and Serumaga 2012, 20–26). In so doing, these policies threaten the rights of peasant farmers, indigenous peoples, labor unions, workers, and social movements. In the case of Africa, demand for African farmland has been increasing since the early 2000s. The objective causes for an expanding demand can be traced to the fact that global food prices have trebled as a consequence of harvest failures and the growth of biofuel production, which has displaced food crops. Reinforcing these pressures have been the effects of the credit crunch of 2008. The financial crisis of 2008 prompted Wall Street investment banks, such as Goldman Sachs, to shift risk from the sagging subprime markets into commodities exchanges. At the same time, Middle Eastern countries such as Saudi Arabia and Qatar went in search of cheap farmland in Indonesia, Pakistan, the Philippines, and Africa to grow food for their own domestic markets. This drive for farmland has created five land “flashpoints” in Africa, which include South Sudan, Tanzania, Zimbabwe, Sierra Leone, and Morocco.

Within this matrix of agricultural lands, none is as accessible as the Guinea Savannah Belt, which constitutes an expanse of grasslands half the size of the United States. It is an expanse of land that runs through West Africa to Sudan, then south through Kenya and Ethiopia to Zambia and Mozambique. The World Bank calls this area “the world’s last large reserves of underused land” (Kantai, Katerere, and Serumaga 2012, 23–24). What these conditions expose is the fact that African land has been the last factor of production to finally be “marketized.” After years of interference by the IMF and World Bank and their having been engaged in imposing structural adjustment programs on these African states, it naturally followed that agriculture would be liberalized. However, liberalization would require more state intervention and management. In this atmosphere, foreign companies in search of high profits rushed in to seize land that was farmed or used by local communities, thereby engaging in displacing farmers, threatening both their livelihoods and food security (Kantai, Katerere, and Serumaga 2012, 26).

Similar trends were taking place in Mexico with a liberalized land market. In the case of Mexico, it was decided by the ruling neoliberal elites that the Mexican constitution itself needed to be changed so that Mexico would finally be able to attract more foreign investment. In this political atmosphere, it was soon concluded that the relationship between the state and the social sector needed a major overhaul. In late 1991, President Salinas proceeded to amend the hollowed Article 27 of the constitution to make Mexico’s farm sector more compatible with the preferences of the international market. In this regard:

[A]t issue with the changes to Article 27 is the more fundamental concern about the character of land and natural resources. By terminating land distribution and opening up the ejido sector to land transfers, the government has made land more of a commodity and less of a national resource to be used for socially productive purposes. By favoring the individual over the social or communal, and

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Terrence E. Paupp

Excerpt

[More information](#)

financial over moral consideration, the state released itself from its responsibility to promote the common good (Barry 1995, 127).

In other words, human rights were made expendable, social progress was sacrificed to the dictates of the neoliberal paradigm, and Article 27 of the Mexican constitution was excised by foreign investors and Wall Street pressures, with the support of the Washington power structure and the Clinton administration (Greider 1995, 40–41, 74; Hart 2002, 432–458).

These trends and events are only the most recent examples of World Bank and IMF policies that were evident in the early 1990s. In his book *Mortgaging the Earth: The World Bank, Environmental Impoverishment, and the Crisis of Development*, Bruce Rich exposed the adjustment policies promoted by the World Bank and the IMF as having the effect of bringing about reductions in education, health, and environmental protection expenditures, as well as reductions in real wages for working populations already on the edge of poverty (Rich 1994, 186). What has been happening in Africa has also been taking place for decades in many other countries around the globe – a neoliberal global process – driven by foreign investors, in combination with the draconian policies of the World Bank and the IMF. As a result of these approaches, “[r]eductions in agricultural extension services in several countries pushed more small-scale farmers into unsustainable practices, such as depleting lands they owned or expanding into tropical forests and other marginal areas. Increased social disparities and poverty precipitated by adjustment were a major cause of environmental degradation in themselves” (Rich 1994, 187).

Human rights laws and protections were effectively ignored and displaced by the policies of the World Bank, IMF, foreign investors, and Wall Street financiers. The “right to political participation,” as enunciated in the International Bill of Human Rights, states that everyone has a right to take part in the government of their country, directly or through freely chosen representatives. The will of the people, it declares, shall be the basis of the authority of government. However, various country governments, within both the Global North and the Global South, acting in concert and collusion with the World Bank, the WTO, and the IMF, all too often have denied their peoples this basic human right. This has been the consequence of governments caving in to the pressures of globalization – three of which are predominant:

1. Globalization entails a universal shift toward economic liberalization rather than a selective liberalization. This has placed the Global South at a particular disadvantage.
2. The governments of the Global North have acted in collusion and compliance with international financial institutions (IFIs), thereby creating an interface between the state and the IFIs, which excludes the majority of peoples in both the Global North and Global South from being able to participate in decision making, the creation of economic policies, and the achievement of their demands for greater democratic accountability and transparency. This

situation has allowed a process of structural injustice to continue unabated and to mature into new forms of power relations that have been effective in blocking the implementation of the human rights to peace and development.

3. The dynamic and ever-changing nature of the search for expanding profits – under the current phase of capitalism and its transnational capitalist class – has had the effect of creating a firewall around elite decision-making processes in the halls of government, as well as within corporate and financial boardrooms.

Again, the net consequence of this set of realities has been the creation of a hostile environment for those involved in the task of making rights real. The collusion of national governments with the World Bank, IMF, and WTO has often resulted in purposeful renunciation of human rights duties, obligations, and mandates. In this regard, we discover that an attack on the international human rights legal regime is being accompanied by the efforts of transnational capitalist class interests to deny the realization of the human rights to peace and development because of the limitations these rights would place on the neoliberal model and agenda of privatization, deregulation, and liberalization. As Neil Thomas astutely argues, “What we are witnessing in the world today is the systematic destruction of barriers to international business through the liberalization of trade, investment and finance, with appalling consequences for the global environment, poverty and human rights” (Thomas 2007, 73). In coming to terms with this set of power relations, it has now become vital to recognize that “governments, far from being helpless casualties, are in fact its chief architects.” Therefore, it is now increasingly evident that “[i]nternational cooperation has increasingly been directed toward the deregulation of trade, investment and finance in the name of ‘*competition*’” (Thomas 2007, 74) (*italics added*). Hence, I argue that *if* neoliberalism and its version of globalization are to be reversed, *then* it will require the implementation of the mandates, claims, duties, and obligations that are integral to the human rights to both peace and development. I have reached this conclusion because the international legal framework has been degraded by these policies and the complicity of the WTO in advancing this neoliberal agenda. It is demonstrably evident when we recognize one overriding global reality:

The WTO’s failure to eliminate developed-world protectionism against underdeveloped countries is a clear case of injustice. Multilateral reduction of protectionist policies that do not allow provision for less-developed countries to protect vulnerable producers and infant industries are also unjust, if the harms that result are not compensated. At the level of policy, the failure of the WTO to subsidize the participation of under-developed countries casts serious doubts on its procedural fairness; and if the WTO does not allow for policies to protect the environment, workers, and public health, its practices will be further at fault (Moellendorf 2005, 154).

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Excerpt

[More information](#)

This situation continues on a global basis – unabated. The failure of the global legal order to mitigate these injustices is staggering, overwhelming, and shocking – especially when one considers the fact that the United Nations International Bill of Rights (which includes the UDHR and its subsequent covenants), demonstrate a strong, devoted, and persistent international commitment to fulfilling human rights obligations. Under the International Labor Organization’s *Declaration on Fundamental Principles and Rights at Work* (1998), all members of the ILO, even if they have not ratified the convention in question, are obligated to respect, to promote, and to realize the principles concerning the fundamental rights that are the subject of those very conventions, namely: (1) freedom of association and the effective recognition of the rights to collective bargaining; (2) the elimination of all forms of forced or compulsory labor; (3) the effective abolition of child labor; and (4) the elimination of discrimination in employment and occupation. However, despite these legal advances and protections for human rights, what is lacking is the definition and implementation of the human right to development as an overarching rubric of law and practice – which would demand adherence by even the WTO, World Bank, and IMF. In advancing the realization of the human rights to development and peace, I discuss the emerging global constitutional order – an order that centralizes these rights and exercises an enforcement capability that would mandate a human rights–based approach (HRBA) to realizing both the human rights to peace and development.

In short, throughout this book, I explain how these different types of neoliberal policies often result in a shrinking political space for making rights real. Genuine human freedom under these conditions becomes more constrained by neoliberal policies designed to facilitate the collaboration of investors from the Global North with their counterparts in the Global South (both state and financial elites) to effectively disrupt, contravene, and virtually destroy the sovereignty and integrity of the peoples of the Global South through the imposition of the neoliberal economic model. These policies and programs have all too often resulted in new forms of violence, conflicts, and wars – erupting in response to this profit-driven matrix of interests. The actualization and achievement of the human rights to peace and development, therefore, ought to be predicated on a new institutional and policy approach, as well as an alternative normative foundation. The need to articulate such an alternative should be obvious now, given the historical record. In the absence of a human rights–based approach to development, it appears likely that the neoliberal dogma will simply continue to block the realization of both broad-based development and the advancement of peace. An objective assessment of these trends demonstrates that the realization of the human rights to peace and humane development have been sacrificed for most nations of the Global South. Only China, India, and regional organizations such as the Association of Southeast Asian Nations (ASEAN) have achieved escape velocity from the continuing constraints of neoliberal enslavement (Amsden 2007, 149–163).