Fukuda-Parr, Sakiko, and Rachael Wyant. "Human Rights, Economic Governance, and International Cooperative Action." *Global Governance and Rules for the Post-2015 Era: Addressing Emerging Issues in the Global Environment*. By , edited by José Antonio AlonsoJosé Antonio Ocampo. London: Bloomsbury Academic, 2015. 321–346. *Bloomsbury Collections*. Web. 26 Apr. 2023. <<http://dx.doi.org/10.5040/9781472580740.ch-009>>.

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Human Rights, Economic Governance, and International Cooperative Action

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1. Introduction

The need to end poverty remains a fundamental political objective for the international community, requiring cooperation among countries. While other chapters of this volume focus on particular policy areas of international rules and collective action, this chapter takes the reverse approach and focuses on the poverty—conceptualized in the human centered and capability perspective as multidimensional deprivation in well-being—to identify relevant global policies. In particular, the purpose of the chapter is to identify the nature of international cooperation that is required from the normative perspective of human rights.

The chapter uses international human rights norms as an evaluative framework for assessing the design of global economic policies and institutions; are global governance arrangements adequate to promote the well-being of people and end poverty as defined by the norms of international human rights? In adopting these arrangements, are governments compliant with their obligations to take appropriate measures to fulfill human rights?

There is widespread agreement that the international objectives of development and poverty reduction must be consistent with human rights norms and principles. This principle is reflected for example in the Millennium Declaration and the Outcome document of the Open Working Group on the Sustainable Development Goals (UN Open Working Group on the Sustainable Development Goals, 2014). It has been an important issue in the on-going debates on the post-2015 development agenda¹ as the MDGs were criticized

for some inconsistencies with human rights norms (e.g., Office of the High Commissioner for Human Rights [OHCHR] 2008).

International human rights provide an overarching normative framework that sets out principles and standards that states have committed to by signing and ratifying treaties. This framework spells out not only the rights of individuals but also the obligations of states parties to ensure the full realization of human rights for all people within their national borders. Human rights are the minimum conditions necessary for individuals to live with the dignity and freedom, and while all categories of rights are important aspects of poverty reduction, economic and social rights are particularly central to key poverty objectives. These rights—to education, employment, food, health, housing, an adequate standard of living, and social security—and corresponding state duties—are elaborated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations, 1966) and related legal documents.

Human rights differ from development aspirations in that they incur correlative obligations, notably of states. As articulated in General Comment 3 of the Committee on Economic, Social, and Cultural Rights (Committee on Economic, Social, and Cultural Rights, 1990), these duties include three-fold responsibilities: to respect rights of individuals; to protect rights from being infringed upon by third parties; and to fulfill rights by taking proactive action to promote their realization. These measures are not limited to legal provisions but include a wide range of public policy tools including trade rules, macroeconomic policies, regulation of private investments, international economic agreements, and many other interventions (Balakrishnan and Elson, 2011).

This framework has important implications for the design of all public policies and the criteria by which they should be assessed, including policies that governments adopt as members of the international community in setting or agreeing to global economic governance rules and institutions. It introduces a particular set of objectives and criteria for evaluation, which are primarily concerned with a policy's contribution to the realization of human rights, with particular emphasis on the principles of equality and nondiscrimination, participation, and social justice. Used in assessing policies and institutions, these criteria differ from those that are conventionally used in the field of global governance. They would focus on the well-being of the individual as the unit of analysis rather than the economic health of a national or global economy. They would be particularly concerned with the distributional

consequences of policy, and special attention would be given to the poorest and the most marginalized. Balakrishnan and Elson explain

In the latter, policy is judged in terms of a utilitarian framework, in which the best policies are judged to be those that are likely to maximize utility. This is operationalized in terms of maximizing the level and rate of growth of the country's gross national product (GNP) . . . But the goal of economic growth cannot be substituted for the goal of realizing human rights. Human rights obligations prescribe priority to human rights, not economic growth, which must be seen as a potential means for realizing human rights, not an end in itself. (Balakrishnan and Elson, 2011, p. 12)

Heterodox economic frameworks, such as Keynesian and Structural approaches, emphasize objectives such as full employment and transforming economy's productive capacity, but they are not fully concerned with the well-being of the individual. Human rights criteria overlap considerably with the policy priorities of human development and capabilities approach (Fukuda-Parr, 2011).

The framework also differs in terms of institutions. States have treaty obligations to fulfill human rights under the International Covenant on Economic, Social, and Cultural Rights and other instruments by implementing appropriate public policies, and these legal instruments define the norms and principles of rights and duties in specific terms that the capabilities approach does not. So states are accountable to the international community and to the people within their borders for these commitments.

Do these human rights obligations apply beyond domestic policies to global policies and institutions? While states have duties to implement policies to realize rights, it may be argued that these duties are not relevant to global governance because state obligations are limited to individuals within their borders. The international human rights system is centered around the responsibility of states to people within their borders. While recognizing this principle, we argue that fulfilling rights requires international cooperation to address obstacles that states cannot resolve on their own. Furthermore, there are ethical and moral reasons why governments need to cooperate, and states have long recognized the importance of international cooperation since the Universal Declaration of Human Rights in 1948.

The chapter starts by explaining empirically why international cooperative action is required for ending poverty and improving well-being, illustrated by the case of hunger and malnutrition. We then consider the human rights

implications of these empirical trends; that states have an obligation to take a range of measures to address international constraints to the realization of human rights and be accountable to the international community and to their people for doing so. We then explore further the human rights norms regarding state obligations for international cooperation and “extra-territorial obligations” (ETOs), and the ways in which these principles have been applied in recent years.

2. The need for international cooperative action to assure human well-being

Through processes of globalization, states and their citizens do not operate in a bubble; they exist in a rapidly integrating political and economic global order. The need for international cooperation arises because there are many urgent challenges and obstacles to reducing poverty and ensuring human well-being that cannot be addressed by national governments on their own. This constraint on national governments is often due to one of the four reasons: problems require a domestic policy response but the country faces resource constraints; policy response requires addressing problems that originate in actions beyond national borders, or in short, global “bads” that travel across boundaries; problems require reforms of international rules; and investments in global technologies are needed.

In this section we illustrate these situations with the obstacles to ending hunger and malnutrition and realizing the right to food that currently affect an estimated one in eight people, and one in four children under five. Hunger and malnutrition are concentrated in South Asia and Sub-Saharan Africa, and among the rural population and small-scale farmers (IFPRI, 2013). Hunger and malnutrition result from individuals and households having lost the means to acquire food. Sen refers to these means as “entitlements” and identifies three categories of accessing food: wage exchange; own production; and social transfers (Sen, 1990). National governments can deploy a range of policies to reduce hunger and malnutrition by strengthening the “entitlements” such as by strengthening incomes or reducing food prices; own production by strengthening productivity of the food insecure; and social transfers by strengthening social protection measures. Many of these measures can be implemented as domestic policies but there are several situations that require international cooperation.

2.1. Domestic resource constraints

First, some countries face severe resource constraints in implementing the necessary policy measures: in particular, low income and least developed countries are unable to finance high priority development investments from domestic savings and borrowing. For example, there is widespread consensus that investing in support systems for small-scale farmers such as transport and storage infrastructure, and research in pro-poor sustainable crop and livestock technologies, particularly in Sub-Saharan Africa, is one of the top priorities in the agenda for combating global hunger (see for example von Braun, 2014; IFPRI, 2013). Many countries with high levels of hunger and malnutrition (though not all countries, notably India, which is home to about a third of the world's hungry) lack the financial and technical capacity to implement these programs and will require international cooperation.

Historically, resource transfer through aid, debt relief, and other mechanisms has been the primary form of cooperation for development and has often defined the political and economic relationship between resource poor and resource rich countries. Though there are controversies about the volume of aid that is required, the principle of cooperation has been widely accepted since the 1950s. More recently, since the 1990s and particularly since the launch of the Millennium Development Goals (MDGs) in 2001, development aid has increasingly been directed at poverty reduction and social investments, particularly in health. Moreover, a global initiative to encourage all countries to develop social protection floors has gained momentum (see Social Protection Floor Advisory Group, 2011; de Schutter and Sepulveda, 2012).

2.2. Global bads travel across boundaries

Second, several of the most important challenges for poverty reduction are global in nature. Actions taken by actors in one country have repercussions on the well-being of people across borders. Some have severe consequences on people's lives, increase poverty in poor countries and inequality between countries, and pose major obstacles to reducing poverty, inequality, and the realization of human rights.

For example, carbon emissions in one country contribute to global warming and have wide-ranging consequences on people everywhere, both positive and negative. Climate change is one of the major threats to food security in the years ahead (Von Braun, 2013). Climate change is likely to drive shifts in production

potential throughout the world, shifting productivity, production, and prices. While the shifts will be both positive and negative as well as location specific, studies consistently point to overwhelmingly negative consequences for farmers in the most vulnerable environments (IFPRI, 2009). Rising temperatures, changing precipitation patterns, and extreme weather events will increase the likelihood of crop failures, reduce yields, and encourage pests and weeds. Scenario studies by IFPRI predict major yield and production losses for wheat, rice, and maize in the most food insecure regions: South Asia and Sub-Saharan Africa (IFPRI, 2009). Assuming no adaptive investments, child malnutrition could increase by 20 percent by 2050, erasing the gains made in previous decades (IFPRI, 2009).

2.3. Reforms required in international economic rules

Third, the design of existing international policies and rules, or gaps in them, can be a major constraint to national efforts to reduce poverty and promote pro-poor development.

International rules on trade, investment, and movement of people have distributive effects. Certain rules can have negative consequences for some countries and groups of people within countries. International cooperation is needed to create and design rules compatible with poverty reduction and human rights priorities.

One of the major challenges for strengthening food security for countries with high levels of hunger and malnutrition is the WTO Agreement on Agriculture (AoA). National governments can pursue a range of public policies to fulfill the right to food—public procurement from small-scale farmers using administered prices, subsidized prices for consumers, holding food stocks to facilitate public distribution and for regulating price fluctuations. But many such measures are potentially inconsistent with these trade rules. Originating in the global food environment of low prices and excess production of the 1970s and 1980s, and responding to the needs of countries in Europe and North America, the AoA was not designed to address hunger and malnutrition objectives. As a result, many of the provisions are not consistent with these objectives and constrain implementation of necessary domestic action (de Schutter, 2011) (FAO, 2003) (ICTSD, 2009). The AoA refers to national support measures for agriculture in several categories, and sets minimum allowable levels of “trade distorting” measures, evaluated by a complex set of criteria. Many of the support measures fall into a “gray zone” and countries face uncertainty as to the trade consequences of adopting them; “States are less likely to initiate

creative policies without strong assurances and confidence that new policies will not negatively affect third parties' commercial interests and leave them exposed to potential litigation" (de Schutter, 2011, p. 3). Poor countries are particularly averse to taking such risks given their lack of technical capacity and bargaining power in international disputes negotiations. This presents a major issue for many countries with a large sector of small-scale family producers who are food insecure and that compete in the same global markets; the case of West Africa cotton farmers who compete against US and EU farmers is a well-publicized case in point.

Developing countries, where hunger and malnutrition are widespread and an urgent priority, have long pressed for revisions in these rules to permit the use of measures including stockholding, and a variety of other means to combat poverty, including land reform and rural development programs. The issue came to a head in the Bali ministerial conference in March 2014 when India, together with a group of developing countries, pushed for an agreement on public stockholding and procurement at administered prices, a major component of their ambitious food security policy.

Overall, the Agreement on Agriculture leaves much broader policy scope for developed countries than for developing countries. The level of support to agriculture in developed countries remains very high (Demeke et al., 2012) using a wide range of government subsidies, such as income support that are not considered trade distorting and permitted. Agreement on Agriculture was designed in the context of the 1980s and 1990s to address OECD agricultural policies intended to support incomes and provide insurance against the natural risks of agriculture, and when developing countries were being encouraged to liberalize the sector to stimulate production. Food security in poor countries and of poor households within them was not the major concern.

Apart from the overall negative effect of these measures on developing country producers, the more important issue is the disregard of human rights principles in these agreements. The international community is pursuing free trade at the expense of hunger and malnutrition. A second important point is the inequity in these global trade rules that are pitched against developing country farmers—where income support to EU and US farmers do not face the same restrictions as subsidies to consumers in India. They accommodate the measures that were established in developed countries to suppress production in an era of depressed prices and abundant production. They need to be changed to meet the needs of the twenty-first century in which the challenges are high prices and potential

new pressures on production from climate change, polluting technology, and competition for fuel (de Schutter, 2011).

Sometimes, it is the absence of international regulation that poses an obstacle to ending hunger and malnutrition. Food prices and household incomes are important determinants of hunger and malnutrition; typically food accounts for over half of household expenditures for lowest income quintiles in poor countries (von Braun, 2014). Both food prices and household incomes are vulnerable to instability in global markets. The 2007/8 crises in food and finance were not single events but heralded a new era of increasing volatility and rising prices in world food markets, interrelated with fuel and financial markets (von Braun, 2013). While the 1970s, 1980s, and 1990s were characterized by abundant production and low international food prices, the current context is marked by rising and volatile world market prices and constraints to production. Prices rose dramatically for major staple crops—rice, maize, and wheat—which more than doubled. After a short decline, prices started to climb again (HLPE, 2011).

Though domestic prices do not always mirror international price trends and levels, the 2007/8 price hikes led to a sharp rise in food prices in most developing countries (HLPE, 2011). World market price increases threaten food security for poor households; as von Braun illustrates “the most relevant price for the poor is the price of grain . . . the price increase (in 2011) implies that a kilo for wheat in many developing countries costs about \$0.30 instead of \$0.15—a critical difference for a person who lives on \$1 a day” (von Braun, 2013, p. 163). Foods represent a substantial portion of expenditures of a poor household in poor countries; for countries in Asia and Africa with data, it was generally over 50 percent in the early 2000s prior to the 2007 crisis (e.g., 76% in Kenya, 75% in Pakistan in 2005, 63% in the Philippines) compared with a range of 10–25 percent in Western Europe (e.g., for 2003, 24% in France, 18% in the United States, 11% in the Netherlands) (FAO, 2014).

In 2011, maize prices were higher by 105 percent, and wheat by 102 percent compared with the previous year. Such price hikes have devastating consequences for food security of net purchasers and have pushed millions into poverty (Agarwal, 2011; von Braun, 2014). Price increases erode exchange entitlements—the means that households have to access food in exchange for wages or other incomes. Households adjust to such fall in wage/exchange entitlements in a variety of ways including shifting to less costly and less diverse diets, deficient in the essential nutrients that are particularly important for women in, and for young children. Studies of eleven countries with data available found that in eight of them malnutrition increased or improvements slowed during 2007/10

(von Braun, 2013). Women also bear the brunt of coping, often reducing their own consumption in favor of other members, but also spending more time on preparation and processing of food, adding to their unpaid household work (Quisumbing, Meinzen-Dick, and Bassett, 2008). FAO estimates some 173 million were added to the number of undernourished people in this period (HLPE, 2011, p. 11). It is argued that higher prices would improve producer incomes and stimulate production. Yet as already noted, when farmers lack the necessary inputs and resources, they are less able to respond to the incentives.

Inadequate regulation of international financial system is another gap in international rules that lies at the source of hunger and malnutrition. The global financial crisis of 2008 started with events in one country and quickly spread around the world. Though the consequences varied greatly from one country to another, no country was unaffected, and in many, increased poverty, weakening household access to food. While national governments can deploy measures to protect their people from the effects of these financial crises—such as through the adoption of counter-cyclical economic policy measures, and robust social protection policies, international cooperative action is needed to fill gaps in international prudential financial regulation, financing of counter-cyclical measures, and reform of the international monetary system.

2.4. Global technologies

Fourth, technological innovation has been one of the major drivers of human progress—whether it is vaccines for childhood diseases that cut child mortality, or the printing press of earlier centuries and the internet of the twentieth century that radically expanded communications, or improved crop varieties that has driven increases in food production. Yet the benefits of these advances are not evenly distributed and may well not reach deprived populations who may also be negatively affected. Market incentives for investment in innovation—centered on tight intellectual property protection under the TRIPS agreement—favor technologies that yield high financial returns, not social returns. This has led to underinvestment in technologies central to improving the lives of the poorest people, such as medicines for malaria and other tropical diseases, clean energy for areas out of reach of electrical grids, and technology for sustainable food crop production in marginal environments. There has been a historic underinvestment in improved crop varieties and sustainable technologies for food crops and small-scale producers in Sub-Saharan Africa. This no doubt underlies that the stagnation in food crop yields in Africa have

barely improved since the 1960s while they have at least more than doubled in other regions of the world.

These are just some examples to illustrate the limitations of domestic action in promoting human development and fulfilling core economic and social rights, not just hunger and malnutrition. Examples of similar obstacles requiring international cooperative action abound—from the lack of international taxation coordination leading to drained resources for financing social investments in LDCs, to consequences of the rules of intellectual property that constrain access to life-saving drugs, to the under-regulation and impunity of corporations creating environmental havoc.

3. Implications for human rights and state accountability

The examples in the previous section illustrate the need for international cooperative action for ending hunger and malnutrition, and the importance of global economic rules and institutions in realizing the right to food. Evaluated according to human rights principles, poor development outcomes such as widespread hunger and malnutrition, “signif(y) an unacceptable level of deprivation of well-being” (Sengupta, 2002, p. 885). They are failures of national economic policies and failures of states to fulfill the right to food for which the states in question should be held to account by the international community as well as by their people.

Within the terms of rights, addressing systemic hunger and malnutrition in developing countries obliges all countries not only to increase aid but to take a wide range of policy measure to progressively realize the right to food. The right to food demands a holistic solution to addressing hunger and malnutrition—it includes access to and control over means of production, access to appropriate resources, technology, and markets. Realizing the full right to food requires legislative and administrative action, not just short-term distribution fixes or food aid.

A rights framework also allows those that are hungry or suffering from malnutrition to place legal claims on their duty bearers, the state, facilitates their participation in decision-making, and also acknowledges the complicity of other states and the international economic structures and policies in impeding the domestic ability to progressively realize the right to food. Particularly pertinent in the context of development policy and financing, they provide an important shift away from the charitable approach to development and previous

conceptions of the welfare state. “The real potential in human rights lies in its ability to change the way people perceive themselves vis-à-vis the government and other actors . . . Rights make it clear that violations are neither inevitable nor natural, but arise from deliberate decisions and policies” (Uvin, 2004, p. 130).

What are the implications for accountability of states? First we consider implications for state responsibility to the human rights of people within their borders (State A and Population A). As explained, international human rights law articulates three types of state obligations in realizing rights: to respect, protect, and fulfill. The latter two are positive obligations requiring states to take proactive steps to ensure the full enjoyment of rights by taking “all appropriate means” (art. 2, United Nations, 1966). In its General Comment 3, the Committee on Economic, Social and Cultural Rights explains that what is appropriate depends on the circumstances and includes a wide range of public policy measures (Committee on Economic, Social and Cultural Rights, 1990). In the case of the right to food, these measures are not limited to distribution of food, but facilitating access so all can acquire food; General Comment 11 on the right to adequate food states: “The obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide . . . The obligation to fulfil (facilitate) means the State must proactively engage in activities intended to strengthen people’s access to and utilization of resources and means to ensure their livelihood, including food security. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, states have the obligation to fulfil (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters” (UN Committee on Economic, Social and Cultural Rights 1999, para 15). The General Comment goes on to explain that the “means” that the State must deploy include a wide range of policy instruments, in a coherent national strategy that “should address critical issues and measures in regard to all aspects of the food system, including the production, processing, distribution, marketing and consumption of safe food, as well as parallel measures in the fields of health, education, employment and social security” (UN Committee on Economic, Social and Cultural Rights 1999, para 25). In this context, engaging in international cooperative action must surely be an element of a coherent strategy.

Thus states have an obligation to enter into international cooperation to seek additional resources, tackle global bads, negotiate international rules, and invest in global technologies. These human rights objectives, however may diverge from their priorities such as national economic growth or structural transformation,

which might be achieved at a cost to human rights. For example, a country may find that measures to reduce carbon emissions and combat climate change that threatens the right to food for subsistence farmers might interfere with industrialization. They may compromise on reforms of the AoA in WTO trade negotiations in the interest of obtaining other concessions such as on market access. Yet governments are accountable for taking proactive measures to fulfill rights in compliance with their human rights commitments. Overall obligations for international action include (Green and Randolph, 2011): maintaining a stable economic and financial environment and reducing risks of international economic and financial crises; reducing volatility of commodity prices, especially food prices; developing a nondiscriminatory international trading system; ensuring access to technology; ensuring environmental sustainability; promoting access to financial and human resources; and implementing equitable approaches to sharing the benefits and burdens of development such as environmental burdens and shocks.

But by definition, international cooperative action requires action of multiple states. What are the implications for other states (State B) toward those people within the borders of State A—or extraterritorial obligations (ETO)? Moreover, what is the obligation of other nonstate actors who play a major role in global economic governance, such as multilateral financial institutions and corporations?

These questions are explored further in the following section.

4. Extraterritorial obligations in international human rights law

Historically, the principle of national responsibility for the well-being of poor people has been a basic consensus among states. Sovereign states are duty bearers under international law and the international community has held them accountable for domestic social spending and regulatory and incentivizing policy-making that progressively realizes basic human rights. The principle that ending poverty, and development, are *primarily* a responsibility of individual states for their own citizens is firmly entrenched in international human rights law, and repeatedly recognized in international development agendas, including the Millennium Declaration.

But there is an important role for the international community and the commitment to global solidarity articulated in the Millennium Declaration,

which commit states to the well-being and the realization of human rights of all people across the world; the realization of human rights everywhere. Thus at the dawn of the twenty-first century, world leaders once again committed to international cooperation for the creation of a global order that is conducive to reduction of poverty and an increase in human well-being. The 2000 Millennium Declaration states that,

In addition to our separate responsibilities to our individual societies, we have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level. As leaders, we have a duty to all the world's people, especially the most vulnerable . . . global challenges must be managed in a way that distributes costs and burdens fairly in accordance with basic principles of equity and social justice . . . (United Nations, 2000)

This role is articulated as obligations of international cooperation in the 1948 Universal Declaration of Human Rights, and are reiterated in several other legal documents but have been slow to develop further as standards that can be applied to constrain behavior of states and other actors whose actions have major global repercussions on peoples' lives such as international financial organizations and corporations. However there has been increasing activism by scholars and advocates on these issues with the advance of globalization and initiatives have been taken. Below we track the evolution of norms regarding ETOs.

4.1. International human rights treaties

The longest running norm of international cooperation and ETOs with regard to human rights fulfillment comes from Article 22 and Article 28 of the *Universal Declaration of Human Rights* (1948), which stipulate that "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and *international co-operation* . . ." and "Everyone is entitled to a *social and international order* in which the rights and freedoms set forth in this Declaration can be fully realized" (UN General Assembly, 1948) (emphasis ours) respectively.

Following the UDHR, the ICESCR Article 2(1) begins by outlining the duties that states have, namely that they should take steps to advance economic, social, and cultural rights *with the assistance of international assistance and cooperation*:

Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving

progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. (United Nations, 1966)

With regard specifically to the right to an adequate standard of living, Article 11(1) of the Covenant states that, “States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the *essential importance of international co-operation* based on free consent” (United Nations, 1966) (emphasis ours). The Committee on Economic, Social, and Cultural Rights’ General Comment 3, paragraph 13 specifies in particular that international assistance and cooperation should be of both an economic and technical nature. The Committee also specifies that “the phrase ‘to the maximum of its available resources’ [in Article 2 (1) of the ICESCR] was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the international community through international cooperation and assistance” (Committee on Economic, Social and Cultural Rights, 1990, para. 13). General Comment 2 on Article 22 of the CESCR references international agencies directly by outlining both negative and positive duties to which they should be held accountable.²

The Convention of the Rights of the Child, adopted in 1990, also mentions the fulfillment of economic, social, and cultural rights through the “framework of international co-operation” (UN General Assembly, 1989, art. 4) (CRC, art. 4). General Comment 16 of the CRC on State obligations regarding the impact of the business sector on children’s rights goes further to say that it is not only through international cooperation, but also membership in international organizations that rights should be fulfilled. Articles 47 and 48 of this comment place obligations not only on ratifying states who are accepting loans from organizations such as the World Bank or IMF, but also states that participate in the development of development policies and programs, to ensure that they uphold the principles and rights outlined in the CRC (Committee on the Rights of the Child, 2013, arts. 47 and 48).

While these norms make states parties accountable, efforts have also been made to clarify the obligations of non-State actors such as international financial institutions (IFIs) and multinational corporations whose power and actions are central aspects of the global order. For example, the 1997 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, drawn up by the International Commission of Jurists, a committee of thirty experts and later acknowledged by the UN, that elaborate on the nature of State obligations for economic, social,

and cultural rights includes commentary on international organizations. Issued in the context of controversies over structural adjustment programs supported by the IFM and the World Bank, it urges member states of these organizations to “use their influence” to “correct” policies that violate economic, social, and cultural rights (International Commission of Jurists (ICJ) 1997).

4.2. Right to Development

The Right to Development was first adopted by the General Assembly in 1986 through the *Declaration on the Right to Development*, was later reaffirmed in the 1993 Vienna Declaration and Programme of Action, which specifically notes that “While development facilitates the enjoyment of human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights” (UN General Assembly, 1993, art. 1).

While the Right to Development has been criticized for lack of coherence and clarity, and subjected to much controversy (see for example Uvin, 2004; Ghai, 2006; Donnelly, 1985), it introduces three important principles regarding obligations for international cooperation aimed at development and poverty reduction (Fukuda-Parr, 2012). First, the principle of collective obligation—the Right to Development is normatively different than other rights; while human rights frameworks speak of duty holders and rights bearers, they were traditionally thought of as primarily a relationship between individuals and their states, creating a space for individuals to formally claim rights and hold governments accountable. The Right to Development, however, includes the concept of collective obligation, which creates a relationship among states to act jointly, and states having a responsibility for the development and well-being of peoples in other territories. RTD specifically recognizes that actions of a state have consequences on well-being outside of its borders.

Second, linking human rights to development—the Right to Development explicitly links human rights fulfillment to development, and defines development in those terms. It states unambiguously: “development is 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” (UN, 1986, Preamble). According to the report of the Independent Expert on RTD Arjun Sengupta (1999–2004), RTD asserts a view of development as “Human Development”³ which is (i) a “human centered” process; (ii) a comprehensive

process including economic, social, cultural, civil, and political dimensions; (iii) a process involving participation of people; and (iv) a process involving equal opportunities and social justice (Sengupta, 2002).

The Declaration asserts that the principles found across all human rights mechanisms such as nondiscrimination, access to information, participation, and means of effective complaint and remedy, should be addressed in all policies and programs at both the national and international levels. These principles seek to create an environment in which “the benefits stemming from trade, economic growth, scientific advancement, etc., do not accrue purely in proportion to the political or economic bargaining power of particular parties or groups” (Green, 2011, p. 19). The Declaration explicitly requires governments to “formulate appropriate national development policies that aim at the constant well being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom” (UN General Assembly, 1986, art. 2.3).

Third, extraterritorial obligations—the 1986 Declaration recognizes the structure and operations of the international economic system as essential determinants of development, imposing obligations on states to act individually and collectively for: (i) “the creation of international conditions favourable to the realization of RTD” (art. 3.1); (ii) “ensuring development and eliminating obstacles to development” (art. 3.3); and (iii) to “formulate international development policies” (art. 4.1). According to Salomon, “The Declaration gave legal expression to the notion that the ability of states to develop and to fulfil their human rights obligations domestically are constrained by the actions and structural arrangements of the international community” (Salomon, 2007, p. 99). She goes on to explain that the Declaration takes forward the 1947 UN Charter whose purpose is to put in place international cooperation to solve international economic and social problems, and the Universal Declaration on Human Rights that articulates a “universal entitlement to a human rights-based international order” (Salomon, 2007, p. 100). Ideas about the right to development were discussed as far back as the late 1940s and are included in article 28 of the Universal Declaration on Human Rights that states “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized” (UN General Assembly, 1948).

In these ways, the Right to Development takes an important step in bridging the gap between economic policy and human rights, and seeks to evaluate how economic governance processes affect daily life and the well-being of those in developing countries. Thus, it is concerned with not only individual

choices and policies that potentially provide for or violate human rights, but it is also very much focused on global economic governance structures as a whole (Green, 2011, p. 11). Article 3.3 in particular references the need for “the creation of national and international conditions favourable to the realization of the right to development” (UN General Assembly, 1986, art. 3.3). Article 4.1 more specifically calls for the needs for states to commit to international development policies that allow for the full realization of development and related rights (UN General Assembly, 1986, art. 4.1), and Article 4.2 calls in the need for cooperation, stating 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” (UN, 1986, art. 4.2).

4.3. Corporations

A significant area of effort has been to develop an accountability framework for multinational corporations. Advocated since the 1960s, the several initiatives were launched to develop norms for private sector conduct including a commission on transnational corporations created in the 1970s and the elaboration of “Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights” in 2003. These initiatives were politically divisive and controversial, opposed particularly by the United States and other Western powers. In 2005, the Secretary General appointed a Special Representative for Business and Human Rights which led to the preparation and adoption of Guiding Principles on Business and Human Rights adopted in 2011. In an important new development the Human Rights Council took this further in June 2014 by adopting a resolution to set up a committee to elaborate an “international legally binding instrument.”

4.4. The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Culture Rights

Issued in September 2011, the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* constitutes a major new development in clarifying the nature of state obligations outside of national borders. An initiative of human rights scholars and practitioners—the ETO Consortium—concerned with “the gaps in human rights in the context of globalization” including lack of accountability of corporations and of

international financial institutions, inadequate application of human rights in trade rules, and the lack of implementation of duties of international cooperation (ETO Consortium, 2011, p. 5), has gone to great lengths to specify obligations to respect, protect, and fulfill economic, social, and cultural rights, applicable extraterritorially (ETO Consortium, 2011, para. 4).

With regard to state obligations to respect rights, the principles emphasize that states must refrain from “indirect interference” ((ETO Consortium, 2011, para. 21), which includes “[impairing] the ability of another State or international organisation to comply with that State’s or that international organisation’s obligations as regards economic, social and cultural rights.” With regard to state obligations to protect rights, the principles specify the need to regulate nonstate actors, including individuals, organizations, and corporations, so as to ensure that they do not impede or prevent the fulfillment of economic, social, and cultural rights ((ETO Consortium, 2011, para. 24). And with regard to the obligation to fulfill, paragraph 29, the “Obligation to create an international enabling environment” specifies that states should “create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation” (ETO Consortium, 2011, para. 29).

Paragraph 29, part b specifically uses the language of “contributing to the fulfilment” of rights extraterritorially, which suggests that it obligates states to positive action, not merely avoiding the direct violation of rights. Salomon notes this, as she points out that international financial institutions should not indirectly cause developing countries to violate human rights, but that these institutions are also accountable to their own policies and programs as international actors with positive duties to provide and protect human rights (Salomon, 2006, p. 7). The *Maastricht Principles* emphasize the positive obligations to fulfill through the provision of aid, support to social policies and social protection, and appropriate macroeconomic policies.

5. Application of human rights norms in global governance

While states have made commitments to human rights principle, the practice of economic policy formulation barely refers to them. Human rights and economic policy have evolved as two separate fields that do not interact. International economic policy negotiations and debates have not referred to human rights

principles while the human rights community has historically not addressed issues of economic policy. However, this has been changing and since the 1990s human rights advocates, scholars and institutions have not only developed norms but engaged in advocacy on economic policy issues, and human rights advocacy on international economic policy has begun to expand.

5.1. UN human rights mechanisms

Starting in the early 1990s, a number of initiatives have been taken within UN human rights mechanisms to address economic policies, particularly the negative human rights consequences of neoliberal policy regimes and globalization including structural adjustment programs, multilateral trade agreements, and corporate investments. The Committee on Economic, Social and Cultural Rights, and several UN Special Rapporteurs with mandates on health, extreme poverty, food, debt, and other areas have issued reports on issues of international economic governance and elaborated on the application of human rights standards to those issues.

A major focus of the critique has been domestic social sector spending and the role of international financial institutions, especially under Structural Adjustment Programmes (SAPs) of the 1980s and 1990s, continuing into the post-2008 austerity policies. The Committee on Economic, Social and Cultural Rights specifically mentions, in its General Comment 2 on international cooperation, its concern with the “the adverse impact” of the debt crisis, SAPs, and austerity measures on the enjoyment of economic, social, and cultural rights, and urges states and international organizations to make special efforts to ensure that the programs are designed with the objective to protect human rights of the vulnerable—or promote “adjustment with a human face” or “the human dimension of development” (Committee on Economic, Social and Cultural Rights, 1990, para. 9). General Comment 2 is then used extensively throughout other general comments, including General Comment 12 on the Right to Food, which calls on the IMF and the World Bank to “pay greater attention to the protection of the right to food in their lending policies and credit agreements and in international measures to deal with the debt crisis” (Committee on Economic, Social and Cultural Rights, 1999, para. 41). General Comment 18 and 11 reiterate that structural adjustment programs should not impact the right to work or negatively affect the right to work for any marginalized groups, including women, and that there is a historical tendency for structural adjustment programs to interfere with states’ ability to provide

primary education, respectively (Committee on Economic, Social and Cultural Rights, 1999). UN Special Rapporteurs to the UN Human Rights Council have also been outspoken about these economic policy trends. Magdalena Sepúlveda, the Special Rapporteur on Extreme Poverty (2008–14), highlights the human rights consequences of public spending cuts by many governments following the 2008 recession, that disproportionately affect women (Sepúlveda, 2013).

In addition to such domestic policy issues, many have taken up issues related to rules of international economic governance and made recommendations for creating a more enabling international economic environment for rights fulfillment. For example, Paul Hunt as the UN Special Rapporteur on the Human Right to Health (2002–8) highlighted the effects of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) agreement on developing states' ability to ensure access to medicine. He notes that the TRIPS-plus standards are detrimental to their ability to purchase and deliver adequate supplies of medicine, and recommends that no developed nation pressure developing nations into these agreements. While the flexibilities clauses were intended to allow manufacturing rights to some patents, most developing countries do not have the capacity to manufacture pharmaceuticals. He also highlights that TRIPS prevents invaluable research on diseases predominantly found in developing countries (Hunt, 2004, p. 12). Preventing competitors after medicines have been patented also impedes access for low-income populations.

Olivier de Schutter, the Special Rapporteur on the Right to Food (2008–14) began his mandate by addressing the global food price crisis, and took up related aspects of the global food system including speculation, trade, corporate value chains, and investment in land or “land grabs.” In his final end of mandate report, he argues “local- level and national-level policies should benefit from an enabling international environment, in which policies that affect the ability of countries to guarantee the right to food—in the areas of trade, food aid, foreign debt alleviation, and development cooperation—are re-aligned with the imperative of achieving food security and ensuring adequate nutrition . . . this requires deepening the cooperation between States” (de Schutter, 2014, pp. 19–20).

They also use the authority of the UN Special Rapporteurs to apply pressure for reforms in global institutions and to change the behavior of powerful global actors, particularly rich country governments, international financial institutions, and multinational corporations. These approaches defend the interests of the poor and marginalized populations, and help support the positions of less powerful states in trade negotiations.

5.2. Trade linkage

Another set of initiatives to apply human rights in global economic policy is to link trade with human rights conditionality—the “social clause” in bilateral and multilateral trade agreements. Advocates of the “social clause” argue for inclusion of respect of labor and environmental standards in trade agreements as a condition for trade. This strategy has been used in bilateral and multilateral trade agreements, for example by the United States in the NAFTA, targeting mostly developing countries. It has also been proposed as a unilateral measure, such as that Harkins Bill proposed in 1992 in the United States which sought to ban imports using child labor. Opponents to these strategies argue that these are protectionist measures in disguise, and that in practice are crude measures that would have little effect on advancing the enjoyment of human rights. Indeed, they could have perverse consequences; children taken out of producing carpets, soccer balls and other goods would likely be driven to worse form of employment such as prostitution.

The social clause differs in concept and purpose from international cooperation and ETOs for the fulfillment of human rights. It does not aim to develop international cooperative action for fulfillment of human rights, nor to design global economic rules that are consistent with human rights principles. It involves State A using economic power to pressure State B, purportedly in defence of the rights of people of State B. It sees lack of will of developing country governments as the source of human rights violations, not globalization. It does not consider development to be a part of a process of progressive realization of rights. They are used in a very different political context; by powerful countries against developing countries. The controversies have followed a North-South divide, where developing countries argue that these are a form of protectionism in the guise of promoting human rights.

5.3. Humanitarian intervention

Another initiative to use of human rights standards in global interactions is humanitarian intervention such as the Responsibility to Protect (R2P). Like the social clause, this approach differs significantly in concept and motivation. Here it is often the international community that intervenes with armed force in cases of serious human rights violations and the intervention is aimed specifically to curb these violations. It often depends on a “threshold” being reached, at a point where there have been enough violations by a State to warrant outside

intervention. As with the social clause, the doctrine of Responsibility to Protect⁴ (R2P) focuses on failures of states to comply with negative obligations and proposes as justification for intervention, as its name suggests, an intervention is only “protection” and does not attend to the obligations to “fulfill.” Humanitarian intervention veers from language of cooperation and assistance, and uses the language of victims and perpetrators, of helpers and those being helped, rather than duty bearers and rights holders. States that have political and military power use intervention to hold other states—often developing or failing states—accountable, purportedly protecting citizens from their own governments.

A core difference between ETOs to fulfill rights and humanitarian intervention is that the latter has been consistently judged viable based on the intention of the intervention, rather than measured based on its lasting impact on human rights, giving it a moral, not legal, grounding (Howland, 2008, p. 395). Conversely, the Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights specifies that when states act extraterritorially, their responsibilities are two-fold: they must both take action as well as achieve results toward fulfilling the right (International Commission of Jurists, 1997, para. 15). Intervention is often considered a positive duty to protect, not a negative duty to respect or to refrain from violating extraterritorial rights. It frequently considers right to life and security as divisible from other rights that may be violated in the process of humanitarian intervention, as is evident from recent cases of armed intervention where armed force and the aftermath have significantly impeded the target state’s ability to respect, protect, and fulfill basic human rights.

6. Conclusions: The potential of human rights norms to advance international cooperative action

This chapter has argued that international economic policies and institutions are particularly important for the realization of human rights and ending poverty. It has documented the principles elaborated and commitments made since 1948 by states to implement such measures through international cooperation. Yet the current structures of global governance do not bring these human rights principles into processes for designing and negotiating international economic policies. The structure and practice of human rights accountability remains state centric, and procedures such as the Universal Period Review and the reporting to the Committee on Economic, Social, and Cultural Rights focus scrutiny state conduct in terms of domestic responsibilities, not international consequences.

International economic negotiations on the other hand, are framed in the logic of pursuing economic growth, free trade, and capital as priority objectives, and are not subjected to the normative priorities of human rights.

Human rights scholars and activists have increasingly engaged with the negative human consequences of globalization and are pushing forward the potential of human rights principle to humanize the global market economy. Scholars such as Margot Salomon argue that the contemporary function of human rights is to check the excesses of the global market that impinge on the well-being of people. She states, “Human rights considerations are important not solely because of their instrumental value in increasing the likelihood of better economic outcomes but because, properly considered, they should shape the processes and outcomes of economic decisions in order to render them consistent with international human rights standards” (Salomon, 2006, p. 14). It is not enough for these economic governance institutions to give greater consideration to human rights through their programs; rather, existing human rights mechanisms, specifically extraterritorial obligations, could hold them to higher standards of accountability for both respecting and fulfilling rights (Salomon, 2007, p. 23).

Moving forward, increasing civil society engagement to hold states accountable for their positions in international negotiations—on trade, environment, migration, financial stability, commodity price regulation, and other critical issues—would be an important next step to realizing the potential of human rights system in humanizing globalization.

Notes

- 1 See for example UN Task Team Report (UN Task Team on the Post 2015 Development Agenda, 2012) that identifies human rights, equality, and sustainability as three fundamental principles.
- 2 Article 22: “In negative terms this means that the international agencies should scrupulously avoid involvement in projects which, for example, involve the use of forced labour in contravention of international standards, or promote or reinforce discrimination against individuals or groups contrary to the provisions of the Covenant, or involve large-scale evictions or displacement of persons without the provision of all appropriate protection and compensation. In positive terms, it means that, wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights” (CESCR).

- 3 A major part of the work of Sengupta as independent expert focused on elaborating the development as human development. See particularly Sengupta 2000 IE; 2002 HRQ).
- 4 Responsibility to protect is a reaction to the controversial need for international intervention before, during, and after mass atrocity situations. The term arose in discussions by the International Commission on Intervention and State Sovereignty in 2001 and was later officially recognized at the UN World Summit in 2005, although it has yet to be ratified by the Security Council (Evans, 2008).

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