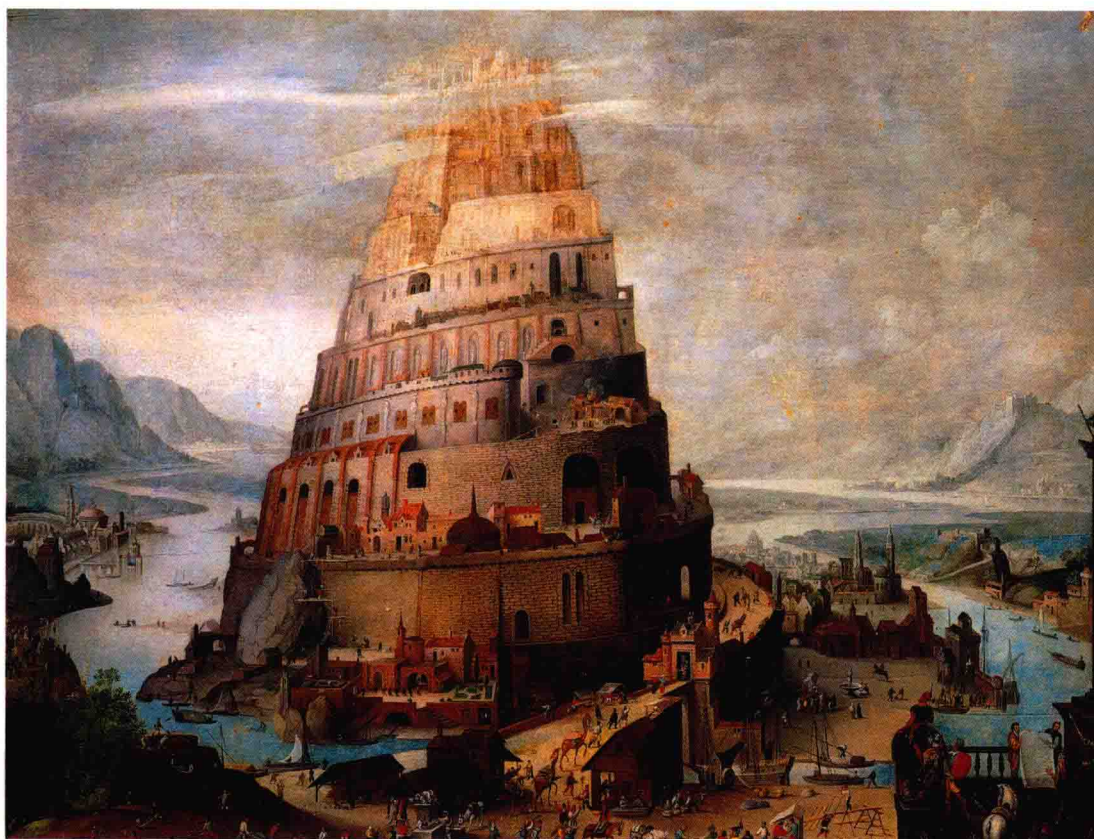


HUMAN RIGHTS AND DEVELOPMENT IN INTERNATIONAL LAW

Tahmina Karimova



HUMAN RIGHTS AND INTERNATIONAL LAW

ROUTLEDGE

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Tahmina Karimova

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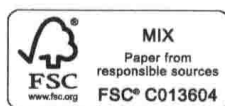
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Human Rights and Development in International Law

This book addresses the legal issues raised by the interaction between human rights and development in contemporary international law. In particular, it charts the parameters of international law that states have to take into account in order to protect human rights in the process of development. In doing so, it departs from traditional analyses, where human rights are mainly considered as a political dimension of development. Rather, the book suggests focusing on human rights as a system of international norms establishing minimum standards of protection of individuals and minimum standards applicable in all circumstances on what is essential for a dignified existence.

The various dimensions covered in the book include: the discourse on human rights and development interrelationship, particularly *opinio juris* and the practice of states on the question; the notion of international assistance and cooperation in human rights law, under legal regimes such as international humanitarian law, and emerging rules in the area of protection of persons in the event of disasters; the extraterritorial scope of economic, social and cultural rights treaties; and legal principles on the respect for human rights in externally designed and planned development activities. Analysis of these topics sheds light on the question of whether international law as it stands today addresses most of the issues concerning the protection of human rights in the development process.

Tahmina Karimova is a public international law lawyer. She has advised states, UN specialised agencies and programmes (ILO, UNDP, UNWomen), international organizations and NGOs on matters of international law, development and human rights. She holds a diploma of jurist from the Tajik State National University, an LLM from the University of Essex and a PhD in International Law from the University of Geneva and IHEID.

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Professor Surya P. Subedi, O.B.E. is Professor of International Law, University of Leeds, member of the Institut de Droit International and former UN Special Rapporteur for human rights in Cambodia.

To my grandfather Karim

Table of abbreviations

AAA	Accra Agenda for Action
AAAA	Addis Ababa Action Agenda
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AComHPR	African Commission on Human and Peoples' Rights
ACP	States African, Caribbean and Pacific States Parties to the Lomé Convention
AOPP	Action-Oriented Policy Paper on Human Rights
API	Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, 8 June 1977
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of all Forms of Racial Discrimination
CERDS	1974 Charter of Economic Rights and Duties of States
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CUP	Cambridge University Press
DAC (OECD)	Development Assistance Committee
DD II/III/IV	Development Decades II-IV (of the UN)
DRD	Declaration on the Right to Development
EBRD	European Bank for Reconstruction and Development
EC	European Community
ECHR	European Convention on Human Rights
EComHR	European Commission of Human Rights
ECOSOC	Economic and Social Council (of the UN)
ECtHR	European Court of Human Rights
EEC	European Economic Community
ESC rights	Economic, social and cultural rights
ETOs	Extraterritorial Obligations
EU	European Union

FAO	Food and Agriculture Organization
GA	General Assembly (of the UN)
GNI	Gross National Income
GNP	Gross National Product
HIPC	Highly Indebted Poor Countries
HLTF	High-Level Task Force on the Implementation of the Right to Development
HRBA	Human Rights Based Approaches
HRC	United Nations Human Rights Council
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IBRD	International Bank for Reconstruction and Development
(World Bank)	
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICRC Study	Henckaerts and Doswald-Beck (eds), <i>Customary International Humanitarian Law</i> , Cambridge: CUP, 2005
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDA	International Development Association
IDI	Institut de Droit International
IDL	International Development Law
IFIs	International Financial Institutions
IHL	International Humanitarian Law
ILA	International Law Association
ILC	International Law Commission
ILO	International Labour Organization
IMF	International Monetary Fund
MDG	Millennium Development Goals
MDRI	Multilateral Debt Relief Initiative
NAM	Non-Aligned Movement
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
NIEO	New International Economic Order
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
OHCHR	Office of High Commissioner for Human Rights
OP-ICESCR	Optional Protocol to International Covenant on Economic, Social and Cultural Rights
OUP	Oxford University Press

OWG	Open Working Group
PCD	Policy Coherence for Development
PCIJ	Permanent Court of International Justice
PRs	Poverty Reduction Strategies
Recueil des Cours	Recueil des Cours de l'Académie de Droit International de la Haye
RtD	Right to Development
SAP	Structural Adjustment Program
SDGs	Sustainable Development Goals
SSC	South–South Cooperation
SUNFED	Special United Nations Fund for Economic Development
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNESCO	UN Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
USA	United States of America (also given as US)
VCLT	Vienna Convention on the Law of Treaties
WB	World Bank
WHO	World Health Organization
WW II	World War II

Foreword

At the end of the month of September 2015, the General Assembly of the United Nations adopted the 2030 Agenda for Sustainable Development.¹ There are several ways to look at the significance of this document which finds no precedent back to the year 2000 with the adoption of the Millennium Declaration.

One may consider the document adopted in 2015 as illustrating in a most dramatic way the tremendous number of economic, social and ecological challenges to which all the peoples of the Earth as parts of humanity are faced for the decades to come. But one should not limit oneself to this dramatic dimension. While some of the eight goals of the Millennium Goals have virtually been already achieved, one should take this document as a serious demonstration of the determination of the UN Member States to enhance their cooperation in favour of an economic development that at the same time is respectful of the global environment and of human dignity.

Eradication of poverty is presented in the Agenda as ‘the greatest global challenge and indispensable requirement for sustainable development’, and the major contribution of this document is probably to provide a renewed roadmap to the international community for the next 15 years, pointing at the same time to the interlinkages and to the integrated nature of the different components of a development which cannot be sustainable if it is not also based on the respect for the fundamental civil, political and socio-economic rights.

The 2030 Agenda manifests the ambition of the international community to provide itself with a legal framework integrating what appears in the history of the United Nations as having remained for too long as distinct preoccupations and initially perceived as belonging to different fields of international law: human rights law, the international law of economic development and the protection of the global environment. Still, this integrative process is to be considered as a much demanding task which cannot be achieved otherwise than by increasing in a critical way the level of cooperation between several components of the international community, starting with States and their governments.

1 Transforming Our World: the 2030 Agenda for Sustainable Development, UN doc. A/70/L.1.

But the question remains as to how to integrate human rights and particularly in their legal dimension in this development framework? This is precisely the purpose of the book written by Tahmina Karimova. As the result of long years of systematic research, this impressive work discusses the human rights and development interface; it comes to the conclusion that so far human rights have had a limited impact on the development praxis as international legal norms even if development overlaps with many provisions of the treaties protecting, in particular, the economic, social and cultural rights.

How to change this situation? In order to try and answer this question, Ms Karimova reconsiders legal issues raised by the interaction between human rights and development in contemporary international law focusing on the nature and scope of states' obligations regarding international assistance and cooperation as provided by human rights treaties. Her approach consists in juxtaposing the legally binding human rights obligations with the instrumentalist approach, whereby respect for human rights are represented as merely options rather than strictly binding legal obligations. The author demonstrates, however, how international law progressively evolved in this respect from demands for structural changes at the international level that emphasized the role of affirmative action towards a focus placed, more recently, on how to realize development policies and practices without interfering with the enjoyment of human rights.

No doubt, the UN Charter creates legally binding obligations on states to cooperate for human rights. But at the same time, the present normative evolution points to the necessity of enlarging the concept of development which should be interpreted as including the requirement that development policies and practices respect human rights; an approach of which we have earlier noticed that it is, and rightly so, the one retained by the 2030 Agenda. Overall, Ms Karimova is able to put together closely interlinked development and human rights elements into a new image, structured by international assistance and cooperation. This special focus is a new one; it leads to a much better understanding of the interrelationship of the legal and political bases of development processes.

The reading of this book is probably the best way to address the question of whether and in which respect the 2030 Agenda for Sustainable Development points to the correct direction for transforming the world, which, indeed, needs it.

Pierre-Marie Dupuy

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Hudson Medal

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T.K.

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