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THE FUNCTIONS OF THE RIGHT TO DEVELOPMENT:
A RIGHT TO SELF-REALIZATION

Alain Pellet

In some respect, lawyers are like stylish beautiful ladies: they follow the latest modes and there can be no doubt that the concept of the "right to development" is "in fashion".

The concept of a "right to development" which as recently as a decade ago had yet to become current,¹ is now one of the ideas most debated among international lawyers.² After an uncertain start the doctrine has been quickly consolidated; in the words of Philip Alston it has acquired an "almost impeccable pedigree".³

After a hesitant launching in 1966 by the Senegalese representative at the U.N. General Assembly and after a well-known religious period (marked by the Algiers Cardinal Duval's speech in 1969), a reference to the concept of the right to development has become obligatory in political speeches during North-South meetings.⁴ The accelerating process of consolidation has been remarkable. Already the right to development has been the subject of dozens of papers, studies or reports,⁵ of at least one academic dissertation⁶ and of some important international conferences.

Generally speaking, studies on the right to development have a three-fold purpose:

- (i) they try to establish the juridical existence, (or non-existence) of the right - its positivity;
- (ii) they aim at classifying the right to development in well-established classifications;
- (iii) they seek to define its content; (the answer to this last question conditions to a large extent the answers to the other two questions).

But, as a rule, instead of giving a general definition of the whole expression "Right to Development", these studies put the emphasis on the word "Development" and neglect the terms "Right to". Development is:

- a multidimensional notion,
- an evolving or shifting concept,
- and an unsettled, or relative idea, varying according to the different societies to which it applies.

Therefore, as there is little hope of an agreed definition of development, at least in juridical terms, it appears that it could be less presumptuous, at least for a lawyer, not to try to define the word "development" but rather the concept of the right to development as a whole. The modest purpose of this short study is, therefore, to essay a tentative definition of the latter through the functions it performs or could perform.

The right to development seems to mark (and render concrete) the conjunction of concepts already in existence; it is a "crossroads right". But the right to development is also the starting point of new juridical and, very likely, political developments. From this vantage point it may be viewed as a "foundation right".

"A CROSSROADS RIGHT"

Many authors who have studied the right to development assert that it is a synthesis of already existing rights. Whilst this might be true there exists considerable ambiguity in the use of the term "synthesis". On the other hand, there can be no doubt at all that the right to development marks the intersection between two important juridical "highways": Human Rights on the one hand and the International Law of Development on the other.

Is the Right to Development a "Synthesis" of already existing rights?

Many writers seem to share the view that the right to development is made up of pre-existing rights. From this standpoint the right seems to be merely a bundle of numerous human rights plus the juridical rules devised to advance the interests of the peripheral countries, familiarly known as the international law of development. For example, Madame Rojas defines the content of the right to development by re-ordering a great many existing rights under the following headings:

- (1) those fulfilling basic needs and economic and social rights.
- (2) those fulfilling non-material needs and civil and political rights. An example of the former would be the sharing of incomes and resources and of the latter self-determination.⁷

In large part, the Working Group of Governmental Experts on the Right to Development, which was appointed in 1981 by the U.N. Commission on Human Rights, first adopted this kind of approach, as is evident from a reading of the very provisional draft declaration annexed to the report

of the Working Group at its fifth session.⁸ This text, however, reflects a more sophisticated categorisation of rights.⁹

If the concept of the right to development is nothing but an accumulation of already existing rights, it is not very convincing and one can wonder whether it is really worthwhile spending so much time in discussing such a poor and disappointing idea. One would be forced to concur with two eminent pioneer writers, Judge Keba M'Baye and Professor Jean Rivero, who, for completely different reasons, were of the opinion that it was totally useless and futile to proclaim the right to development in a new formal instrument.¹⁰ In the same spirit, a French author, Professor Jean-Jaques Israel, writes in a recent study "Sous couvert de créer un nouveau droit, (on crée) en réalité un risque de dévaloriser ceux qui existent et sont pleinement reconnus".¹¹

But a "synthesis" is not necessarily a mere addition and it is significant that several authors who define the right to development as a synthesis insist that synthesis implies an aggregation of rights.

The right to development takes its roots in the different rights which contribute to development and its autonomy is gaining recognition. Thus Theo Van Boven correctly sees the right to development as a whole range of existing human rights which are informed and given an extra dimension by the emergence of a growing international consensus on a variety of development objectives.¹² As Philip Alston put it: "A synthetic approach helps to emphasize the dynamism of existing rights."¹³

The right to development is the outcome of a mixing of two different juridical streams - human rights on the one hand, and the international law of development on the other; the right therefore marks the confluence of these two streams.

A Confluence Point

It has often been remarked that the international approach to human rights on one hand and development objectives on the other has been separate but parallel for some considerable time. It is true that in the U.N. Charter both problems are closely related. Both Article 1(3) and the very important Article 55 link international co-operation in the economic, social and cultural fields and the implementation of human rights. Other international texts take the same approach, for example Article 22 and 28 of the Universal Declaration on Human Rights, paragraph 3 of the Preamble to the Human Rights Covenants of 1966 and paragraphs 12 and 13 of the Teheran Declaration of 1968. Nevertheless, for a long time; this proximity was purely formal and had few practical consequences. The U.N. Human Rights machinery has grown up in a way largely independent of the "development machine". The gap between the

two concepts may be traced in part to the ultra-specialization of scholars who deal exclusively with human rights issues.¹⁴

A second point may be stressed in this respect: generally speaking, when the relationship between the two notions was recognised, it was regarded as "one-way only". Development was sometimes seen as a pre-requisite for the respect of human rights but it was much rarer for human rights to be regarded as a condition or an element in development. It is noticeable that the few texts which mentioned the relationship between these two fields, human rights and development, were mainly human rights texts, whereas the great texts on development do not pay any attention to human rights problems. The reason, no doubt, was that the development texts emanated from the third world and that third world countries were suspicious of "western-oriented" human rights doctrines.

However, this situation has now changed. The reason cannot be explored here,¹⁵ but the evolution parallels that of the "ideology of development" in the U.N. Initially, development was seen as a purely quantitative notion, as is well illustrated by the Rostow's famous theory of the "take-off". An early recognition of the inadequacy of this theory may be found in the proclamation of the concept of "integrated economic and social development" in the Declaration on Social Progress and Development.¹⁶ But one must wait right until the end of the 1970's to see the emergence of a truly new approach which Clarence Dias termed "human development", so as to include human rights in development and development in human rights.¹⁷

This process has been made possible by a conjunction of various factors, among which the changes in the composition of the U.N. Commission on Human Rights must not be underestimated. It has been made easier by the elaboration of the doctrines of the New International Economic Order which is founded upon ideas of justice and equity.

The right to development has been asserted in U.N. fora in a logical sequence: firstly by the Commission on Human Rights, with the adoption of the resolution 4 (XXXIII) in February 1977; secondly, by the Economic and Social Council three months later; finally in 1979, by the General Assembly's resolution 34/46 which underlined that "the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations". Such important texts adopted recently in the development field are undoubtedly much more "human rights oriented" than their predecessors. The comparison between the first and the second U.N. Development Strategies is very enlightening from this point of view. Thus, the right to development provides a bridge between two fundamental elements of global ideology by emphasising the human purpose of development: to paraphrase Jean-Paul Sartre's famous formula, "development is humanism". As Dupuy has put it, the concept of a New International Economic Order "cannot be validly defined unless its foundation rests on three pillars of justice: peace, without which

development is impossible, development, without which human rights are illusory, and human rights, without which peace is violence."¹⁸

There is an inherent danger in an approach which emphasises the interdependence of all human rights,¹⁹ - a tendency to place too much emphasis on the fact that development and the achievement of a New International Economic Order are pre-requisites for a real implementation of human rights while overlooking the idea that respect for human rights is an integral part of development. Such a tendency could lead to the creation of a hierarchy of human rights, wrongly placing economic and social rights in a "higher" category than civil and political rights.

A careful reading of some of the recent resolutions of the U.N. General Assembly, such as Resolution 32/130 adopted in 1977, shows that misgivings at such a tendency may have some justification. However, at its thirty-seventh session, the General Assembly seems to have "adjusted its range-finder": resolution 37/199 emphasises that "the U.N. should give attention not only to the human rights aspects of development but also to the developmental aspects of human rights" and resolution 37/200, which, unfortunately, was opposed by socialist states and a number of developing countries, recognizes that "the realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development". Thus the value of the concept of the right to development lies in its position at the confluence of two streams of equal strength - human rights and development.

"A FOUNDATION RIGHT"

The right to development is not only a "crossroad right", it is also a "foundation right", from a twofold perspective. On the one hand, it provides a retrospective explanation of a number of pre-existing rights, and, on the other hand, it bears the promise of new and probably rich extensions of rights.

A Retrospective Explanation

International life and international law do not always grow according to harmonious and logical plans and logical concepts often only crystallise after the emergence of the various elements they embody or from which they arise. As in Le bourgeois gentilhomme by Molière, where M. Jourdain speaks prose without being aware of it, similarly jurists apply a large number of rules of law without knowing - or trying to discover - the general principle which explains and justifies them.

This is true of the right to development: a great many rules of law

cannot be understood if the right to development does not exist, but those rules have been formulated before the recognition of the still incompletely articulated "mother" concept of the right to development. How could one explain the right to health, or to decent conditions of living, or the right of states and peoples to take part in world trade, or even the right of developing countries to receive international aid, without referring to the concept of the right to development, as belonging to individuals as well as to collectivities?

It thus appears that two nice juridical problems are quite irrelevant, namely

- (i) Is the right to development an individual or a collective right?
- (ii) Is it a positive juridical principle or a de lege ferenda rule?

As to the first question, it is enough to say that the right to development does indeed constitute the foundation of individual rights as well as of collective rights and these derived rights can belong as much to human beings alone as to human being in groups, to human collectivities like states, peoples or certain states and certain peoples.²⁰

The second question does not seem any more relevant. Some writers assert that the right to development is not yet a legal principle or is, at least, "ineffective".²¹ One cannot share these doubts; if one can accept the idea that the right to development is the foundation of many other unquestioned rights, this is the very proof that it is a positive juridical principle. This does not however mean that all possible consequences have been drawn from that status.

A Starting Point

It is clear that, as of now, neither all the regulations necessary to make the principle workable have been enacted, nor that all the logical consequences of the recognition of the concept of the right to development have been pursued. As Judge Roberto Ago said during the colloquium held in The Hague in 1979, English is more precise than French, as it makes a distinction between "law" and "right", while both ideas are designated by the French word "droit".²² As far as the right to development is concerned, one may consider that the unintentional ambiguity in the French usage conforms better with the uncertainty of the present state of law.

For the present, the right to development is a part of positive international law. It may be doubtful or, at least it is debatable,

whether the right can be regarded as a positive "right". To transpose it in the French juridical language, it seems that the right to development is, here and now, a "droit objectif", while it is not as well established that it is a "droit subjectif".

Put another way its holders can only call for the enforcement of those particular consequential obligations that have been already accepted by individual states and by the international community. These precise obligations are much more often obligations to adopt a certain behaviour ("obligations de comportement") than obligations to reach a definite result ("obligations de resultat").²³

Going from the law to the right, that is from duties as to conduct to obligations to produce results, could prove one of the main areas for future work in this field, and a task which the Working Group of the Commission on Human Rights could most usefully perform. But this deepening and materialization of the idea is possible only if it is further recognized that the right to development is an autonomous concept and not only the mere aggregation of already existing rights.²⁴

In this respect one must agree with those authors, like Karel de Vey Mestdagh who underline the "instrumental" nature of the right to development.²⁵ To give another instance, Professor Rivero's views, although cautiously expressed are quite acceptable when he defines the right to development as "l'ensemble des moyens qui permettront de rendre effectifs les droit économiques et sociaux pour la masse des hommes qui en sont douloureusement privés".²⁶ Yet, this is not enough: the scope of the right to development is not limited to economic and social rights. In a more comprehensive way, it appears as the right which belongs to every human being and to every human collectivity namely that the conditions should be created whereby each may endeavour to enjoy economic, social and cultural rights, as well as civil and political rights. As much is stated in the resolution 36 (XXXVII) of the U.N. Commission on Human Rights. It is a right to the concretisation of proclaimed rights or, to put it in a nutshell, it is a right to the means of self-realisation.

It may look paradoxical to proclaim in an abstract manner a right whose main function is to insure the concrete implementation of other rights. It is by no means certain that such a proclamation will change, by itself, the actual state of things. Nevertheless, the solemn adoption of a right to development by a significant number of members of the U.N. from all parts of the world will be very valuable.

The proclamation of the right will

- (i) guide theoretical deliberations towards an holistic discussion, giving thereby full meaning to the idea that a "synthesis" is not the mere addition of its composing elements;

- (ii) confirm the inter-relationship between human rights and development, on an equal and balanced basis;
- (iii) reinforce pre-existing rights by making their foundation obvious;
- (iv) encourage new negotiations to draw logical and practical consequences from the newly declared right.

FOOTNOTES

1. Although some writers were forerunners in this respect; e.g. Keba M'Baye, "Le droit au développement comme un droit de l'homme", (1972), *Human Rights Rev.*, 503-534; Juan Antonio CARRILLO SALCEDO, "El Derecho al Desarrollo como Derecho de la persona humana" (1972), *Rev. Esp. Der.* 11, 119-125.
2. See among others: Jean-Robert Henry, Mutations du droit international du développement - la France et l'Afrique, thèse Nice 1977, 87-94; The International Dimensions of the Right to Development as a Human Right in Relation with Other Rights Based on International Co-operation, Including the Right to Peace, Taking Into Account the Requirements of the New International Economic Order and the Fundamental Human Needs, Report of the Secretary General, Commission on Human Rights, 2 Jan. 1979, E/CN.4/1334: The Hague Colloquium (Oct. 1979), ed., René-Jean Dupuy, The Right to Development at the International Level, Sijthoff and Noordhoff, 1980, XII-466: The International Commission of Jurists Conference held in The Hague (Apr. 1981), Development, Human Rights and the Rule of Law, Pergamon Press, Oxford, 1981, VI-237; Karel De Vey Mestdagh, "The Right to Development" (1981), *N.I.L.R.*, No. 1, 30-53; Jean Jacques Israel, "Le droit au développement", *R.G.D.I.P.* (1983), 5-41; see also the literature quoted below and by Alain Pellet, "Notes sur quelques aspects juridiques du droit au développement", in Colloque d'Aix-en-Provence (Oct. 1982), ed. Maurice Flory, Les source du droit international du développement, to be published in 1984, Eds. du C.N.R.S., Paris.
3. Philip Alston, "Development and the Rule of Law: Prevention versus Cure as a Human Rights Strategy", in Development, Human Rights and the Rule of Law, *op. cit.*, 100.
4. For an instance of this, see the French Prime Minister, Pierre Mauroy's speech during the 37th session of the U.N. General Assembly: "Le plain épanouissement de tous les droits de l'homme suppose que soit réalisé un équilibre économique qui dépend lui-même d'une certaine conception du développement. C'est dans cet esprit, qu'au sein des Nations unies, la France participe activement a l'élaboration d'un projet de déclaration sur le droit au développement", 30 Sept. 1982 (Le Monde 2 Oct. 1982).
5. See footnote 2.
6. N. Rojas, Le droit au développement comme droit de l'homme, thèse, Genève 1982, to be published in 1984.
7. Ibid.

8. E/CN.4/1983/11, 9 Dec. 1982. This compilation of the proposals made by the experts is divided into three parts: 1) Principles and Objectives; 2) Means; 3) General Provisions. The first part is indicative of the trend to collating or conflating pre-existing rights.
9. The Groups seems to have given up this approach; the new draft Declaration attached to the Report on the sixth session is much more "synthetic" (E/CN.4/AC.39/1982/L.2/Rev. 1).
10. Keba M'Baye, "Le droit au developpement", The Right to Development at the International Level, *op. cit.*, 88; Jean Rivero, "Sur le "droit au developpement"", report to a U.N.E.S.C.O. meeting, 1978, 55-78/CONF. 630, Supp. 2.
11. *op. cit.* at footnote 2, 37. ("On account of creating a new right, the risk is to de-stabilize existing and fully recognized rights").
12. Report of the Seminar on the Effects of the Existing Unjust International Economic Order on the Economies of Developing Countries and the Obstacle that this Represents for the Implementation of Human Rights and Fundamental Freedoms, 30 June - 11 July 1980, ST/HR/SER.A/8, 41.
13. *op. cit.* at footnote 2, 104.
14. Although the phrase is not used, one could speak of these specialists as "human-rightists", a more detailed description of whom would be of great interests from a sociological perspective.
15. See Philip Alston, *op. cit.* at footnote 3, 63-98.
16. General Assembly Resolution 2543 (XXIV).
17. Realising the Right to Development: the Importance of Legal Resources, Development, Human Rights and the Rule of Law, *op. cit.*, 187.
18. Rene-Jean Dupuy, concluding remarks to The Hague Colloquium, *op. cit.* at footnote 2, 382.
19. See G. A. Resolution 32/130: "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights."
20. For a further elaboration of this idea, see Alain Pellet, *op. cit.* at footnote 2.

21. See Mario Bettati, "Les transcriptions juridiques et institutionnelles du droit au développement", in R. J. Dupuy, op. cit., 278. Philip Alston seems to share this view in a large part, see "The Right to Development at the International Level", ibid., 104, and op. cit. at footnote 3, 106 et. seq.
22. Op. cit., 248.
23. See Hector Gros-Espiell, "El Derecho al Desarrollo Como un Derecho de la Persona Humana", Report to the U.N.E.S.C.O. Symposium held in Caracas (July-Aug. 1978), 5-6; also Jean Combacau, "Obligations de résultat et obligations de comportement - Quelques questions et pas de réponses", Mels. Reuter., 181-204.
24. See supra No. 5-7.
25. "The Right to Development: From Evolving Principle to "Legal" Right - In Search of its Substance", in Development, Human Rights and the Law, op. cit., 166.
26. Op. cit. at footnote 10. ("The set of means which will permit effective realization of the economic and social rights of the masses who are painfully deprived").