LEGAL DIMENSIONS
OF THE RIGHT TO DEVELOPMENT
AS A HUMAN RIGHT: SOME
CONCEPTUAL ASPECTS

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I. The 1986 U.N. Declaration

In 1977 the U.N. Commission on Human Rights recommended to
ECOSOC a request to the U.N. Secretary-General to undertake a study, in
connection with debates initiated in UNESCO, of the international dimen­
sions of the right to development as a human right. On the basis of the
Secretary-General’s study of 1979, the Commission on Human Rights
adopted a resolution in that year stating that the right to development was
a human right and “as much a prerogative of nations as of individuals
within nations.” Two years later, in 1981, ECOSOC approved the Com­
mission’s decision to establish a Working Group of 15 governmental ex­
erts to dwell upon the matter; from 1982 to 1985, the Working Group
embarked on the elaboration of a draft Declaration on the Right to Devel­
opment, considering its “individual” and “collective” aspects. In 1985 the
matter was referred to the U.N. General Assembly, where for two years it
was the object of dense negotiations. In 1986, the III Committee of the Gen­
eral Assembly adopted the Declaration by 133 votes in favour, one against,
and 9 abstentions, the U.N. Declaration on the Right to Development was
The U.N. Declaration on the Right to Development enshrines that the right to development is such a right which is inherent in the human person and is essential for the full enjoyment of all human rights and fundamental freedoms. (Article 1(1)).

The Declaration addresses itself especially to States, urging them to take all necessary measures for the realization of the right to development (Article 3(3)).

The Declaration recognizes the right to development as an individual right and a collective right (Article 4(1)). It also holds that all human rights, whether civil, political, economic, social, cultural, or related to development, are interdependent and interrelated (Article 4(2)).

The Declaration emphasizes that the right to development is a complex right that encompasses a wide range of human rights and fundamental freedoms. It recognizes that the right to development is a right to a life with dignity and to a standard of living that affords the possibility of the realization of all other human rights (Article 5).

The Declaration further states that the realization of the right to development requires the full cooperation of all States, international organizations, and others, including non-governmental organizations, with a view to achieving the highest attainable standard of living for all (Article 6).

The Declaration also recognizes that the right to development is a right to a life with dignity and to a standard of living that affords the possibility of the realization of all other human rights (Article 7).

The Declaration further states that the realization of the right to development requires the full cooperation of all States, international organizations, and others, including non-governmental organizations, with a view to achieving the highest attainable standard of living for all (Article 8).

In conclusion, the right to development is a complex right that encompasses a wide range of human rights and fundamental freedoms. It recognizes that the right to development is a right to a life with dignity and to a standard of living that affords the possibility of the realization of all other human rights (Article 9).


II. Subjects, Legal Basis and Contents of the Right

The 1986 Declaration clarified to some extent the key questions of the subjects, legal basis and contents of the right to development, much discussed in the preparatory work of the Declaration and in expert writing in the years which preceded it. As to the subjects, it is noteworthy that the Declaration, as pointed out, proclaims the right to development as an inalienable human right, by virtue of which every human person and all peoples are entitled to enjoy economic, social, cultural and political development. The active subjects or beneficiaries of the right to development are thus the human beings and peoples. In addition, like what happens in contemporary formulation of other rights pertaining to human collectivities, or to the human person in society, or “l’homme ou peuple situé”, distinct sets of obligations may be distinguished: in the present context, the responsibilities ascribed by the Declaration to States, individually and collectively, and, as counterpart of the human right to development, the responsibilities incumbent also upon human beings, individually and collectively (communities, associations, groups). The passive subjects of the right to development are thus those who bear such responsibilities, with emphasis on the obligations attributed by the Charter to States, individually and collectively (the collectivity of States).

Possibly the major significance of the Declaration on the Right to Development lies in its recognition or assertion of the right to development as an “inalienable human right”. The emerged formulation and acknowledgement of this right of the human person and of peoples was intuitively forecasted or anticipated by a few authors some years ago. But even nowadays, in the first years following the Declaration, some precision is required as to the legal basis and contents of the right to development. The Declaration contains elements which are already embodied, mutatis mutandis, both in human rights instruments proper (such as, e.g., the 1948


It is important to keep in mind the distinction between the "international law of development" ("droit international du développement"), and the "right to development" ("droit au développement") as a human right as proclaimed in the 1986 Declaration. The former, with its various components (right to economic self-determination, permanent sovereignty over natural wealth and resources, principle of non-reciprocity and preferential treatment for developing countries and of participatory equality of developing countries in international economic relations and in the benefits from science and technology), emerges as an objective international normative system regulating the relations among juridically equal but economically unequal States and aiming at the transformation of major inequalities, on the basis of international cooperation (U.N. Charter, Articles 55-56) and consideration of equity, so as to redress the economic imbalances among States and to give all States—particularly the developing countries—equal opportunities to attain development. The latter, as proclaimed by the 1986 Declaration, and inspired in turn, as a human right, appears on a subjective human right, embodying a demand of the human person and of peoples which ought to be respected.

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Three years after the adoption of the U.N. Declaration on the Right to Development, its significance has been acknowledged by some countries, in their comments and views on the implementation and further enhancement of the Declaration, forwarded to the U.N. Secretary-General and considered by the U.N. Commission on Human Rights in its 1989 session. According to some of those comments and views, the primary significance of the Declaration is reflected in the fact of its giving the right to development the status of an "inalienable human right" (Jamaica), its stressing the "all-embracing global" nature of the problem of development in our days linked to the observance of human rights (USSR), its awareness of the need of a "comprehensive realization" of all human rights (Yugoslavia), and its recognition of the interdependence of all human rights (Brazil and India)7. Furthermore, the right to development focusses on the interaction between human rights and development issues8, at last brought together.

III. Obstacles

The U.N. Declaration on the Right to Development itself was attentive to the obstacles to be overcome in order to provide equality of opportunity for development. The Declaration refers to the elimination of those obstacles in Articles 5 and 6 (3) and two consideranda of the preamble, and identifies them as being: massive and flagrant violations of rights of human beings and peoples (ensuing from situations such as those resulting from apartheid, all forms of racism and racial discrimination; foreign domination and occupation, aggression, foreign interference and threats against national unity and sovereignty and territorial integrity), threats of war and refusal to recognize the fundamental right of peoples to self-determination.

In addition, the [U.N.] open-ended Working Group of Governmental Experts on the Right to Development, originally established in 1981 by the U.N. Commission on Human Rights, recently considered (1989) as further obstacles to be surmounted for the realization of the right to development the following: the arms race and the threat of nuclear holocaust, poverty and destitution, illiteracy, economic imbalances in international relations,

the documentation of the environment and the ecological balance, ideological and religious (minorities, explicit) forms of violence, and natural disasters. 

On the other hand, it also considered, as before, which men from the past and the documentation of knowledge and cultural value through images and culture.

IV. Implementation

In the next question, that of its implementation or translation. The same can be properly considered within the limits of international human rights law. By and large, human rights which have been expressed in many pamphlets of global and regional human rights documents should be functions which play a different role in the often cited human beings and to anchor the meaning of the fundamental rights and freedoms. In this way, democracy all some of discrimination, in the context ethics conditions of fairness.

Human rights range universally even though, which can be exemplified in the following. Physical Integrity (right to life, right not to be ill-treated, liberty and freedom of movement) in terms which include their roles (e.g. right to liberty, right to health and to respect for personal integrity, right to equality recognition, right to property, right to education, right to freedom of speech, right to privacy, right to cultural expression), adult human rights. Right to development, right to development's dimensions of the right to development and related rights, right to development's dimensions of the right to development

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normative-judicial model, suitable to the implementation of individual rights, appears inadequate to the implementation of, e.g., rights pertaining to human collectivities, the protection of which may require the mobilization of public funds and resources. The basic shortcoming of the judicial control model is that it treats all rights in a rather undifferentiated way, starting from the assumption that they are all susceptible of being vindicated by the same method.\(^{12}\)

In practice it does not happen so; rights pertaining to human collectivities seem to call for a distinct approach to the means and the institutional arrangements for their implementation or vindication. As it has pertinentlly been pointed out, sometimes legislative measures may prove sufficient, but other times one may have to make “a concerted effort to cross cultural, socio-economic and other barriers in order to inform potential victims of their rights”\(^{13}\). Violations of those rights may affect so many individuals that individual litigation may prove unsuitable or unjustified, and it may happen that national rules of *locus standi* end up by denying standing.\(^{14}\) In this broader dimension, it is clearer that the “justiciability” of a right cannot be erected as a *conditio sine qua non* of its existence and recognition as such; there are rights which cannot properly be vindicated today before a tribunal by their active subjects (“titulaires”).\(^{15}\) This point needs further reflection and considerable rethinking of international human rights law, given the emergence of rights pertaining to human collectivities.

In any way, it can also be argued that, having been brought to the realm of international human rights law, the right to development, when raised in concrete cases, may well count on the operation of the means of implementation proper to the international protection of human rights (basically, the petitioning, the reporting and the fact-finding systems). To this effect a range of possible courses of action may be contemplated in the future. These might be pursued, first, at the initiative of the human beings concerned, individually and collectively (communities, associations, groups), as active subjects of the right to development. Secondly, the possibility is not to be discarded of the initiative of States acting on behalf of peoples, to protect them: clear indications to this effect can be found in, e.g., two applications instituting proceedings before the International Court of

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Justice, namely, that of New Zealand (against France) in the Nuclear Test case (1973-1974) and that of Neaur (against Australia) in the Phosphate Lands case (1989 onwards).

However, having raised this possibility, it seems that it is in particular on the methods of human rights protection proper that the right to development is more likely to insist on for its implementation or a human right. The 1986 Declaration, in this respect, actually adds, in its potential, to relevant instruments of the United Nations and its special agencies in the present domain. Anyway, the implementation of the right to development as a human right, given the "individual" and "collective" dimensions of the right at issue and its comprehensive nature, may prove to be a complex and multi-faceted one.

V. Relation to Other Human Rights

Moreover, we need be guarded against the pitfalls of an inadequate compartmentalization of human rights, first because it hardly reflects the reality of their actual implementation, and secondly because it may pave the way to reactivation of undue restrictions to the exercise of certain rights. Let us concentrate on these two points. As to the first one, it may be recalled that the proposed dichotomy between individual and social rights, which found expression in the "legislative" phase of elaboration of the two U.N. Covenants on Human Rights having in mind their respective means of implementation, did not resist the onslaught of time, as the U.N. Covenant on Civil and Political Rights also foresee the possibility of a "progressive realization" of certain rights and the U.N. Covenant on Economic, Social and Cultural Rights questioned provisions susceptible of application in the short run. Contrary to the old assumptions, it was soon realized that there were civil and political rights that required "positive action" on the part of the State (e.g., the right to judicial assistance and the guarantee of a measure of freedom (e.g. right to strike and trade union freedom) in this respect, already from the early 1960s onwards the E.O.D. drew attention to the fact that certain rights, of an economic and social character.

16 A. A. Carazo Triayde, A. Gómez de la, Intervención Internacional de las Naciones Unidas en la protección de los derechos humanos (tomo I), UN Human Rights Office, 1970, pp. 43 and 93.
(e.g., right not to be subjected to forced labour, freedom of association for trade union purposes, freedom from discrimination in relation to employment and occupation) were most closely related to civil liberties and even more akin to these latter than to other economic and social rights. Other examples could be recalled, e.g., the fundamental right to life and physical integrity of the human person presupposes the existence not only of penal provisions to punish any act contrary to that right but also institutional means and arrangements to be secured by the State; and the right to a fair and public hearing presupposes the existence of an independent and adequate structure of the Judiciary; and the guarantee of freedom of opinion and expression may demand from the State initiatives and acts to safeguard the freedom of the press and the communications media; and so forth. In sum, even the most “classical” rights may require the intervention of the State in order to secure their observance.

The proposed classification of individual, social and peoples’ rights is to be properly approached on the understanding that one category of rights cannot prescind from the existence of the others. By the same token, the rights of certain categories of protected persons, regarded as belonging to particularly vulnerable groups and standing in need of special protection—such as, e.g., rights of workers, of refugees, of women, of the child, of the elderly, of disabled persons—are to be properly approached on the understanding that they are complementary to those enshrined in general human rights treaties. Whether one has in mind the protection of certain rights vis-à-vis the State (fundamental freedoms) and/or the guarantee of other rights by the State itself, the implementation of instruments turned to rights which may appear distinct as to the protected persons or as to the kind of protection sought is to be properly taken as complementary to that of general treaties on human rights protection (e.g., the two U.N. Covenants on Human Rights and the three regional—European, American and African—Conventions).

In the line of the more lucid thinking in international human rights law, it is a merit of the 1986 U.N. Declaration on the Right to Development that it provides guidelines for approaching the relation of the right to de-

17 Cf. ibid., pp. 13-14.
In the particular significant passage (Articles 4(2), 9(3) and preceding), the Declaration stresses that all human rights are indivisible and interdependent and that, in order to promote development, equal and urgent attention should be given to the implementation of civil, political, economic, social and cultural rights and the observance of certain human rights cannot, thus justify the denial of others. Hence, all the aspects of the right to development are indivisible and interdependent and each of them is to be considered in the context of that right as a whole. The Declaration in this way achieves the advancement, by the celebrated U.N. General Assembly resolution 32/138 of 1977, of the theme of the indivisibility and interdependence of all human rights advanced by the 1968 Proclamation of Tehran, the roots of which may be traced back to the 1948 Universal Declaration and the previous work on the advancement by the U.N. Commission on Human Rights.

The globalist perspective pursued by the United Nations was prompted by the fundamental changes undergone by so-called contemporary international society (over all, globalization, capacity of massive destruction, population growth, environmental conditions, energy consumption). The globalist conception, externalized by U.N. GA resolution 32/138 of 1977 and others (39/145, 41/133, 42/114, 43/230) and by the Declaration on the Right to Development, has quantified to focus on the promotion and protection of the rights pertaining to human collectivities and on the priority search of solutions to generalized group and flagrant violations of human rights.

The 1986 Declaration can only come to no injury other human rights previously formulated. May it be recalled that the globalist approach, which emanated from the United Nations, was such to have repercussions and pave the way for different initiatives, seen at regional level. As known, in the African continent, the Declaration of the 1986 Africa Charter on Human and People's Rights opted for the unequivocal in the single Cyproden of 4 catalogue of civil and political (Articles 3-18), economic, social and cultural (Articles 19-31), and property (Article 32) rights, with a mechanism of implementation common to them all (Article 40-39 and 42). In the European continent, the Council of Europe explicitly opted for the adoption, in 1997, of the First Protocol of the European Charter, expanding the list of rights protected under this latter. And in the Americas, certainly, the OAS also distinctly opted for the adoption, in 1988, of the Additional Protocol in the American Convention on Human Rights Relating to Economic, Social, and Cultural Rights.
Social and Cultural Rights, incorporating certain economic, social and cultural rights to the inter-American system of human rights protection. There could hardly be any pretense of a supposed antagonism of solutions at global (United Nations) and regional levels, the multiple instruments of protection being complementary to each other, given their overriding identity of purpose.

We are led to consideration of the second point, namely, that of undue restrictions to the exercise of human rights. It is jurisprudence constante of international supervisory organs that permissible restrictions to the exercise of guaranteed rights are to be restrictively interpreted; furthermore, there can hardly be room for implied limitations (limitations implicites). The right to development, as propounded by the 1986 Declaration, comes, in the context of development initiatives, to re-inforce existing rights and the interdependence and indivisibility of civil, political, economic, social and cultural rights; the globalist approach (supra) discloses the complementarity between so-called “individual” and “collective” rights and preserves the indivisibility of rights with predominantly individualist as well as collectivist orientations or inclinations. In the same line of thinking, the requirements of material development could not be invoked to justify restrictions to the exercise of guaranteed human rights; this is so given the interaction between human rights and development (cf. U.N. GA resolution 37/199) and the Declaration’s warning that all aspects of the right to development are also indivisible and interdependent and to be taken into account in the context of the whole.

The right to development, with its comprehensive nature, is commonly said to have at a time an “individual” and “collective” (social) dimension; to distinguish plainly, however, between so-called “individual” and “collective” rights may amount to reducing the substratum of those rights to the means of their exercise. All those rights in a way have a social dimension, in that —whether exercised by individuals or groups— they are related in varying degrees to the community, and solidarity is not the exclu-

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21 A. A. Cançado Trindade, op. cit. supra n. 16, pp. 9-10, 12 and 29.
23 Ph. Alston, op. cit. supra n. 8, pp. 107-109.
24 A. Eide, op. cit. supra n. 11, pp. 402 and 410.
give up the idea of any category of rights. An assimilated or fragmented view of human rights, not realizing their interrelatedness, can easily be misleading. For example, the assertion that the right to a clean environment means greater assurance and social rights that a right to food, shelter, and so on (interacting rights) for the right to development, and the may well bring about very different results in practice.

This is the necessary consequence of the complementary nature of all human rights. Specifically, a denial of the right to development is bound to increase economic, social and cultural rights. The need, in recent years, more conducive to the implementation of economic, social and cultural rights, is to establish principles at global and regional levels, as well as to recognize the indivisibility of human rights. The coexistence of these rights, if not properly understood, in the human right to development, could only be a hindrance to the right to development, which, in turn, could only be understood in the context of the indivisibility and indivisibility of human rights.

The practical outlook of human rights (social, cultural, and economic) is not only to be understood as the theory of “generations” of rights, human rights, in which one way they are classified, defined or spoken in, as analogous to the other, distinctively from what the underdeveloped and the underdeveloped nature of the analogies of “generational righting” of rights, from the point of view of economic, social and cultural rights.

The principle of the evolution of human rights law in this domain, does not apply historically. Development in the human rights law is not always seen in the way that it has been seen in the development of human rights law. This, while on an internal level it would be seen in the priority of moral rights to the political rights. The same does not occur on a regional level, where the principle of the priority of the economic, social and cultural rights, and the right to development, did not occur on an international level, and only on a regional level, where the principle of the priority of moral rights to the political rights. The same does not occur on a national level, where the priority of political rights to the economic, social and cultural rights, which are more specific and not necessarily affecting, is not always seen in the same way.


conventional conventions devoted to civil and political rights. It is important, in this domain, even in our days, to reduce or bridge the gap which seems to persist between the constitutionalist and internationalist outlooks of the matter.28

Parallel to the evolution of international human rights law as a whole, developments also occur with regard to, and within, the proposed categories of rights themselves. Sometimes, this takes place by normative action, other times by the process of interpretation. A couple of examples can be here briefly recalled, such as, e.g., the apparently narrowing scope of the right to property, or else the growing attention to the need of realization of the principle of non-discrimination as reflected in various human rights instruments incorporating it, or else new proposed treatment of a given category of rights.

As to this last point, it should not pass unnoticed, e.g. that recently, in the closing stages of the preparatory work of the Additional Protocol to the American Convention on Human Rights Relating to Economic, Social and Cultural Rights, while its draftsmen were presumably endeavouring to overcome the classical and outdated dichotomy between, on the one hand, civil and political rights, and, on the other hand, economic, social and cultural rights, they saw it fit, however, to introduce, *within the ambit of these latter*, a new dichotomy, namely: that between, on the one hand, the social rights of "progressive realization" (most of the rights enshrined in the Protocol), and, on the other hand, the social rights which could be "immediately demanded" (right of association and trade union freedom, Article 8 (1) (a), and right to education, Article 13), susceptible of implementation by the same methods provided for by the American Convention for civil and political rights29. This shows how difficult and risky it is to attempt to generalize on constituent rights under whichever classification.

Two concluding remarks remain to be made. First, the right to development—like the right to a clean environment—discloses with clarity the *intertemporal dimension*30 in the international protection of human rights.


30 For a comprehensive study, from the perspective of international environmental law, cf. E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patri-
perhaps not sufficiently explored up to date. This dimension encompasses both the “dynamic” interpretation of human rights treaties and instruments and their actual application in the case of (e.g., the gradual crystallization of the notion of “potential” victims).

Secondly, and last but not least, the recent progress in the search for a more effective implementation of economic, social, and cultural rights and in the formulation of the right to development leaves witness of the immeasurable advances achieved in recent years, at doctrinal level, by the conception of the indivisibility of rights. The acknowledgement of those advances, however, cannot make abstraction of endeavours of identification, at the normative level, of a nucleus of non-derogable rights of universal acceptance (e.g., rights to life, not to be subjected to torture or slavery, not to be condoned by retroactive application of penalties).

This reassuring consolidation of a hardcore of fundamental non-derogable rights, as a definitive achievement of civilization, has not taken place pari passu to developments at the procedural level, where the absence of a “hierarchy” between the distinct mechanisms of protection seems to continue to prevail. Those mechanisms have in practice reinforced each other, revealing or sharing an essentially complementary nature, as evidenced, e.g., by the incidence here of the test of the priority of the most favourable provision to the alleged victims.

In this framework of diversity of the means of protection, there seems to be no logical or juridical impossibility to keep on advancing, contemporarily, in the search, at the substantive level, of an expanded universal nucleus of non-derogable rights, and, at the procedural level, e.g., of an increasingly more effective implementation of social rights, in the light of the recognition of the indivisibility of human rights. While such an expansion of the hardcore of fundamental rights cannot for the time being be achieved, a current attitude has emerged in focusing attention on the developing and improvement of guarantees with regard to all human rights (both non-derogable and derogable).

However, the consolidation of the possible expansion of the nucleus of non-derogable rights appears acutely as a commendable step for the near future, keeping in mind the distortions and abuses perpetrated by the chronic and pathological prolongation of states of exception (declared constitutive of an intergenerational equity, Tokyo/Dobbs Ferry N.Y., U.N.U./Transnational Publs., 1989, pp. 1-385).

1 A. A. Cançado Trindade, op. cit. supra n. 19, pp. 243-299.

and non-declared—and suspension of rights in the recent history of various countries, with the consequent reiterated, systematic and large-scale violations of human rights therein. Moreover, taking the proposed categories of rights as forming an indissoluble whole and considering that the observance of certain social rights and of the right to development has a direct bearing upon the exercise of even certain classical rights of freedom (civil and political), nothing would impede, epistemologically, that in the future some of the former (e.g., right to work, right to education) and the right to development would or could also come to integrate that “expanded” hardcore of non-derogable rights.