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The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

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RIGHT TO DEVELOPMENT: KEY CONCEPTS AND OUTLOOK

Ani Simonyan¹

One of the most highly debated aspects of contemporary International law doctrine is the concept of Right to Development. The Right to Development is an important but highly controversial, third-generation human right. It was first articulated in the 1970s and formally pronounced in 1986 in the Declaration on the Right to Development passed by the United Nations General Assembly (146 votes in favour, 1 against (USA) with 8 abstentions (Denmark, Finland, Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom)). Article 1 of the Declaration on the Right to Development defines:²

The right to development is an inalienable human right by which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The Declaration proclaims that the Right to Development has both international and national dimensions.³ The Right to Development emerged in the post-colonial era of the 1960s, and in the context of the developing countries demand reforms in the international economic rules and policies. Developing countries

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² UNGA Res A/41/128 adopted at the 97th plenary meeting, 4th December 1986.

³ UNGA Res A/41/128 Article 3 says: 'States have the prime responsibility for the creation of national and international development policies.'

attributed the causes of their economic under-development to the developed countries, most of which were the former colonial powers. For these historical and political reasons, the developed countries of the North were opposed to the concept of the Right to Development from the very beginning.¹

Since the Declaration on the Right to Development was adopted in 1986, international lawyers have expressed concern about a variety of theoretical and technical aspects of the Right to Development. While not challenging the concept or drawing into doubt its value and validity as a human right, these concerns around such questions as what is the exact substance of the Right to Development, who are the beneficiaries of the Right to Development, and finally how can it be implemented within and by the human rights program. Some legal observations were made on the substance and contents of the Right to Development. A distinction was made, on the one hand, between the interdependence and interrelationship of all human rights, including the Right to Development, and consequent demand for respect for human rights in the development process and, on the other hand, the separate contents of the Right to Development. It was said to be necessary, about the latter category, not to confuse a human right with the status and rules of international economic order which was an area traditionally assigned to inter-State relations, even though that order might favor one group over another.

Nevertheless, it was pointed out that the international community had an obligation to intervene and correct obstacles to the Right to Development to the degree that they could be clearly and specifically identified. Additional obstacles mentioned included massive and flagrant violations of human rights and threats of war and of continued damage to the environment.²

In this context, the study of the international dimension of the

¹ The Right to Development in international law: the case of Pakistan, Routledge research in human rights law, Khurshid Iqbal, 2012, page 2

² The realization of the Right to Development, Global Consultation on the Right to Development, as a human right, United Nations, NY 1991, page 24.

Right to Development is very necessary, because, firstly the Right to Development emerged as a realm of international law. However, the legal position and nature of the Right to development in international law is highly controversial as the Declaration being a resolution of the General Assembly, does not enjoy a legally binding effect.¹ Moreover, secondly, the international dimension of the Right to Development faces significant challenges, such as its collective dimension as a human right and lack of consensus between developing and developed countries in the UN working group over its implementation. The critics of the Right to Development concept argues that collective right cannot be a human right because for a human right one needs to be a human being.² Thirdly, the declaration of the Right to Development emphasizes the duty of international cooperation:

States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, by their active, free and meaningful participation in development and in the fair distribution of the benefits resulting from that place.

States must take steps, individually and collectively, to formulate international development policies to facilitating the full realization of the right to development.³

Relating to the beneficiaries of the Right to development, objections were raised to States as beneficiaries because a State could not by definition be the subject of a human person as the central subject of development. Further difficulties of a legal nature were brought up in connection with the identification of the contents of individual's right to development. Apart from the realization of

¹ The Right to Development in international law: the case of Pakistan, Routledge research in human rights law, Khurshid Iqbal, 2012, page 4

² In search of a unicorn: Jurisprudence and politics of the Right to Development, California Western International Law Journal 15, 1985, page 473-509, Jack Donnelly

³ UNGA Res A/41/128 Article 2 (3), 4 (1)

individual rights in the civil, cultural, economic, political and social fields which are integral to the Right to Development, the exact substance of an implementable individual right to development could not, it was said, be easily discerned.¹

Another key point of the concept of the Right to Development is who the duty holders are under the right?

There are a variety of duty holders under the declaration of the Right to Development. The primary focus of the Declaration is upon the duties of States, at both national and international levels. However, there is also an important individual dimension.²

Article 2 (2) refers that all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should, therefore, promote and protect an appropriate political, social and economic order for development.

It is worth recalling that other human rights documents integral to an understanding of the Declaration of the Right to Development, such as the Universal Declaration and the preambles of both human rights covenants, also place duties on individuals.³

However, as Article 3 (1) affirms that states have the primary responsibility for the creation of national and international conditions favorable to the realization of the right to development. Within a given national jurisdiction, the fundamental responsibility for development lies with each national government, which includes:

Article 2 (3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all

¹ The realization of the Right to Development, Global Consultation on the Right to Development, as a human right, United Nations, NY 1991, page 24.

² The Right to Development and International Economic Law, Isabella D Bunn, Oxford and Portland, Oregon, 2012, page 111.

³ Universal Declaration of Human Rights and the Human Rights Covenants.

individuals, by their active, free and meaningful participation in development and in the fair distribution of the benefits resulting from that place.

Article 5 States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Article 6 (3) States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.

Article 8 (1) States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to essential resources, education, health services, food, housing, employment and the fair distribution of income.

Article 8 (2) States should encourage popular participation in all spheres as an important factor in the development and in the full realization of all human rights.

Article 10 Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption, and implementation of policy, legislative and other measures at the national and international levels.

Several of the obligations mentioned in Declaration also specifies collective obligations of the States. As like:

Article 7 All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that

of the developing countries.

Also, the Declaration underlines the importance of duties of other entities, such as intergovernmental and non- governmental organizations, as well as transnational corporations.

Another key point of the Right to Development is the question of enforcement of the right. Dr. Felix Kichmeier focused on what full implementation of the Right to Development may entail. So, he said the biggest fear of developed countries that it could be seen as a right to everything and therefore allow states or individuals from any state to sue rich nations for the fulfillment of what is perceived to be necessary for the enjoyment of the right to development for this state or individual.¹

The Declaration of the Right to Development as many other human rights relevant documents and declarations provides no explicit enforcement mechanism. There is some discussion within the UN system to reformulate the declaration; if a treaty structure is agreed upon, compliance may be enhanced through procedures such as those founding the core international human rights conventions. Given the importance of the economic dimension of the right to development, of particular interest world the ICESCR, the Committee on Economic, Social and Cultural Rights and Optional Protocol.²

It bears mention that within the UN and outside it, substantial efforts are being made towards the progressive implementation of economic, cultural, social rights and development of potential enforcement mechanism.³

It is important to mention that some international lawyers refer to the theory that the Declaration is a kind of recommendation and as

¹ Felix Kichmeier, *The Right to Development: Where do we stand? Dialogue on Globalization*, Paper number 23, July 2006, page 12.

² *The Right to Development and International Economic Law*, Isabella D Bunn, Oxford and Portland, Oregon, 2012, page 122.

³ *Economic, Social and Cultural rights in action 2007*, Mashood Baderin and Robert McCorquodale, [www. Escr-net.org](http://www.Escr-net.org).

such has no legal value, hardly could be enforced. This view shared Kelsen¹, Higgins². Some others (Judge Klaestad) insist that recommendations have the moral force and could not be ignored.³

The third view is that recommendations have legal value for some reasons most. Notably, it has a huge role in formulating customary international law.⁴

However, it must be appreciated that the recognition of the declaration of the Right to Development may arise different approaches regarding its enforcement. The solution can be in analyzing the concept of the Right to development within the framework of General Principles of Law, Opinion Juris, State Practice, Soft Law, Erga Omnes and finally New Sources of International law.

Another key point of the Right to Development is the realization of it. The ways, directions, and principles of realization of the Right to Development can figure out the efficiency of the concept.

The ways, directions and integrity fields which can be involved to development process are usually being chosen by each State referring on its national development policy and program. However, usually, the principles for the realization of the Right to Development are mostly the same for all States.

Respect for Human Rights. It is the basic principle for the realization of the Right to Development, recognized by the States as a fundamental. The principle of the respect to human rights undergirds in several different ways. The right to development itself deemed an inalienable human right, and secondly, the type of economic, social, cultural and political developments it envisages is one in which all

¹ Hans Kelsen, *The Law of United Nations*, London, Steven and Sons Limited, 1950, page 198

² Roslyn Higgins, *The Development of International law through the Political Organs of the United Nations*, Oxford University press, 1963, page 5

³ Voting procedure on questions relating to reports and petitions concerning territory of South-West Africa, I.C.J WL 1955, page 67.

⁴ Blane Sloan, *The binding force on the recommendations on UN*, 1948, page 33

human rights and fundamental freedoms can be fully realized.¹ Also, all human beings have a responsibility for development, individually and collectively, taking into account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfillment of the human being, and they should, therefore, promote and protect an appropriate political, social and economic order for development.

Undoubtedly all states have the right to play the leading role in the process of their development, but it follows that they also have a corresponding duty to respect these rights in others and avoid any action of violations and non-friendly acts.

The next important principle is the equality of opportunities. The declaration affirms that the human being is the primary subject and beneficiary of the right to development and it also applies to collective dimensions. Mohammed Bedjaoui asserts that States cannot be equally sovereign unless they are equally developed, the right to development concerns an equal right of individuals and peoples to development; it in no way assures a right to equitable development.²

Equality of opportunities poses practical legal problems, not least concerning addressing the causes and consequences of various disparities. Such problems take on a more profound complexity when the principle is applied to relations between nations.³

At least not less important for the realization of the right to development is differential treatment of developing countries.

The declaration of the right to development provides no overall differentiations among states based on the level of development. All states are subjects of the right and duty holders under it, but there are

¹ UNGA Res A/41/128 Article 1 (1),

² Bedjaoui, Comments on obligations *erga omnes*, page 103.

³ The Right to Development and International Economic Law, Isabella D Bunn, Oxford and Portland, Oregon, 2012, page 182

several provisions that emphasize the special status of developing countries. Every country has preferable aspects of the development, has special spheres of economic and social issues which can be mentioned urgently. The role of international organizations, non - governmental organizations is to figure out more specific areas for development.

Tring to conclude and summarize this article it is important to mention that the right to developments the right of individuals, groups, and peoples to participate in, contribute to, and enjoy continuous economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. This includes the right to effective participation in all aspects of development and all stages of decision-making process, the right to equal opportunity and access to resources and the right to fair distribution of the benefits of development, the right to respect for civil, political and cultural rights, right to an international environment in which all these rights can be fully realized. The United Nations should take the lead in the implementation of the declaration of the right to development, setting up mechanisms for ensuring the compatibility of all United Nations activities and programs with the declaration.