

ANI SIMONYAN

PhD Student in International law Chair of
European and International Law Yerevan
State University

THE RECOGNITION OF THE RIGHT TO DEVELOPMENT IN UN DOCUMENTS

The right to development as one of the most highly debated concept of contemporary international law has been evolved through the activity of the bodies and discussions of the United Nations. The United Nations have played a fundamental role in bringing human rights to the fore of international and national policy and practice. By adhering to the United Nations Charter, states parties recognized that human rights are a subject of international, and not just domestic, concern. As a result, since the Second World War, an international human rights framework has been developed, providing the United Nations with the legal authority to codify human rights, to create mechanisms to clarify the nature of states obligations and to monitor their fulfillment¹.

Indirect references to elements of the right to development can already be found in the Charter of the United Nations which was adopted in 1945². The pledge for international co-operation in relation to economic and social development and human rights, contained in Articles 1(3), 55 and 56, relates to the component of international co-operation of the right to development. Moreover, the 1948 Universal Declaration of Human Rights contains several indirect references to the right to development occur:

Article 28 of the Universal Declaration of Human Rights provides that "everyone is entitled to a social and international order in which all human rights can be fully realized". This Article is sometimes referred to as the "ultimate premise" of the right to development³.

Multitude number of United Nations Resolutions related to human rights implicitly or explicitly has elements of development⁴. The most significant United Nations Resolutions regarding the right to development are the UN General Assembly Resolution 1707 (XVI) of 19 December 1961, International Trade as the Primary Instrument for Economic Development, UN General Assembly Resolution 2542 (XXIV) of 11 December 1969, Declaration on Social Progress and Development, the UN General Assembly Resolution 3281 (XXIX) of 14 December 1974, Charter of Economic Rights and Duties of States, the UN General Assembly Resolution 3362 (S-VII) of 16 September 1975, Development and International Economic Co-operation, the UN General Assembly Resolution 3384 (XXX) of 10 November 1975, Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for Benefit of Mankind, the UN General Assembly Resolution 41/128 of 4 December 1986, Declaration on the Right to Development, The Vienna Declaration

A/CONF 157/23 of 25 June 1993, the UN General Assembly Resolution A/55/2 of 8 September, Millennium Declaration, the UN International Conference on Financing for Development, Outcome of the International Conference on Financing for Development (Monterrey Consensus), 2002, the UN Doc. A/CONF/198/3, etc⁵. In spite of the growing number of Resolutions and their importance in international law the question of their scope and effects remain largely disputed⁶. The normative character of the United Nations Resolutions on the Right to Development is an issue mainly debated between the North and the South. Within the framework of this Article the main emphasis will be placed on particular Resolutions adopted by the United Nations General Assembly. The Resolutions chosen possess two advantages. They have been adopted by the United Nations General Assembly and second the chosen Resolutions are directly addressed straight to the right to development⁷.

The 1948 Universal Declaration of Human Rights has an additional status in the concept of the right to development. Despite of its non-binding nature, it has gained wide acceptance and political commitment to implement the rights contained therein. The Universal Declaration of Human Rights links human rights and development in several articles. Mainly, the Universal Declaration of Human Rights reaffirms the obligation of respect for human rights as an essential prerequisite for the free and full development of human personality (The Universal Declaration of Human Rights, Articles 22, 26, 29). However the Universal Declaration of Human Rights does not recognize the right to development as such, rather it merely recognizes the dependence of a realization of human rights on global order⁸.

Basically, the historical significant instrument of the right to development is considered the United Nations General Assembly Resolution 41/128 of 4 December 1986, the Declaration on the Right to Development. The adoption of this Act preceded by 9 sessions of the working group on the right to development and extensive negotiations at the General Assembly level and, however, it was highly criticized. The objections were expressed in the Assembly vote on the Declaration on the Right to Development: 146 in favour, 1 against (USA) and 8 abstentions (Japan, France, UK, Denmark, Israel, Finland, Iceland and Sweden)⁹. Disagreeable point of this Act was unambiguous expressions and obligations, such as "economic, social and cultural development" without actually defining them:

States have the duty to co-operate with each

other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfill their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights¹⁰.

Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of the developing countries, effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development¹¹.

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 countries¹².

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 basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

This review demonstrates that the Declaration on the Right to Development has some important elements for the right to development but it does not establish clear rights and duties. The Declaration on the Right to Development connects the right to development to some other issues and global instrument such as peoples' right of self-determination, cultural rights, etc. It does not also clarify whether or not the right to development is a collective or an individual right. Since 1986 the United Nations General Assembly has adopted several other Resolutions, such as the Vienna Declaration in 1993¹³.

It was not until the Second World Conference on Human Rights in Vienna in 1993 that the indivisibility, the interdependence and interrelatedness of all human rights were declared with the support of the international community as a whole.

The Vienna Declaration furthermore recognized the right to development, as established in the Declaration, as a universal, an inalienable right and an integral part of fundamental human rights.

In addition, the Vienna Declaration emphasized that democracy, development and human rights are interdependent and mutually reinforcing, and that the international community should support the strengthening and promoting of democracy, development and human rights and fundamental freedoms in the entire world¹⁴.

The Vienna Declaration furthermore recognized the human person as the central subject of development, and that lack of development may not be invoked to justify the abridgement of internationally recognized human rights. It called upon States to co-

operate with each other in ensuring development and eliminating obstacles to development. In addition, the international community should promote an effective international co-operation for the realization of the right to development and the elimination of obstacles to development¹⁵.

Also, the Vienna Declaration emphasized the importance of national development policies and equitable economic relations and an enabling economic environment at the international level, as well as the importance of debt relief.

The next important document regarding the right to development was adopted by the General Assembly in 2000 and was called the Millennium Declaration as provides for the basis of the Millennium Development Goals. This Declaration is of high importance for international co-operation for development. It proclaims the collective responsibility of States to uphold the principles of human dignity, equality and equity at the global levels and the shared duty to the entire world's people in that regard¹⁶. The Declaration furthermore reiterates the commitment to the purposes and principles of the UN Charter, and distinguishes several fundamental values of the international community: freedom, equality, solidarity, tolerance, respect for nature, and shared responsibility.

In addition, the Declaration proclaims the commitment to make the right to development a reality for everyone and to freeing the entire human race from need. According to the Declaration, this requires good governance at the national and the international level, transparency in financial, monetary and trading systems, an open, equitable and rule-based, predictable and non-discriminatory multilateral trading and financial system, and debt relief, amongst others¹⁷.

Furthermore, the Declaration reconfirms the commitment to democracy and the rule of law, as well as to respect and uphold the Universal Declaration of Human Rights and the full promotion and protection of all civil and political rights, as well as economic, social and cultural rights. In this regard, it stresses the importance of a more inclusive political process and participation by all citizens in all countries¹⁸.

The next legal document regarding the right to development is the Monterrey Consensus, adopted at the United Nations Conference on Financing for Development in Monterrey, Mexico, in March 2002. It is aimed at financing the Millennium objectives. The Consensus includes several elements which are considered important for the realization of the right to development.

The Consensus fully recognizes the interwoven global economic system and the fact that the primary responsibility of States is therefore necessarily to be complemented with an enabling international economic environment¹⁹.

In addition, the importance of good governance, including democratic institutions, transparency and anti-corruption at the national level are recognized as essential for sustainable development, as well as the importance of basic economic and social infrastructure, as well as social services and social security programs²⁰.

External finance is recognized as a complementary measure to these national efforts.

The Consensus furthermore includes new forms of co-operation between the developing and the developed States in terms of partnerships among donors and recipients, based on ownership of the development process and effective participation on the side of the developing countries. Finally, the Consensus includes the need to broaden and strengthen the participation of the developing countries in international economic decision-making and norm-setting.

In order to achieve this, the relationship between the UN and the WTO should be improved, amongst others.

In addition, commitments are made in relation to staying engaged and to continuing to build bridges between development, finance and trade organizations. From a right to development perspective, it is interesting to note that human rights are not mentioned in this regard²¹.

Reviewing the main UN Resolutions relating to

the right to development we can make a conclusion that they brought out many legal issues upon which no agreement exists. The UN Resolutions of the right to development made a strong dispute between the North and the South regarding the normative significance of those documents. From the viewpoint of the developing countries, the UN General Assembly Resolutions have high juridical ranking and legislative power. The developing countries insist that a new economic order needs to be established and the southern countries should be equal in participating in economic and other spheres of development.

Meanwhile, the developed countries continue to defend contradicting views, values and approaches. They articulate that the UN General Assembly Resolutions are not legally binding but mere recommendations.

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¹ St'u Laure-Helene Piron The right to development. A review of the Current State of the Debate for the Department for International Development. April 2002 page 7.

² St'u Art 1, 55, 56 United Nations Charter.

³ St'u Art 28 The Universal Declaration of Human Rights.

⁴ St'u Anna Gouwenberg, The Legal Implementation of the Right to Development: A Study of the Grotius Centre for International Legal Studies Leiden University. Grotius Centre for International Legal Studies, 2009. page 14.

⁵ St'u www.un.org (Date 20 November 2011).

⁶ St'u Schachter (The United Nations) 1997 page 3-4 and Castaneda (Legal effects of UN resolutions) 1969 page 1.

⁷ St'u Anna Gouwenberg, The Legal Implementation of the Right to Development: A Study of the Grotius Centre for International Legal Studies Leiden University. Grotius Centre for International Legal Studies, 2009. page 16.

⁸ St'u Anna Gouwenberg, The Legal Implementation of the Right to Development: A Study of the Grotius Centre for International Legal Studies Leiden University. Grotius Centre for International Legal Studies, 2009. page 17.

⁹ St'u www.un.org (Date 21 november 2011).

- ¹⁰ St'u Art 3 (3) United Nations General Assembly resolution 41/128 of 4 December 1986.
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- ²⁰ St'u Monterrey Consensus, paras 11-16.
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Ամփոփում

Չարգացման իրավունքի ճանաչումը ՄԱԿ-ի փաստաթղթերում

Չարգացման իրավունքի հայեցակարգը ժամանակակից միջազգային իրավունքի առավել վիճելի հիմնահարցերից է: Չարգացման իրավունքի հիմնախնդիրների՝ միջազգային քաղաքականության և պրակտիկայի համատեքստում քննարկման հարցում ՄԱԿ-ը ունի առանցքային դերակատարություն:

Սույն գիտական հոդվածի շրջանակներում վերլուծության են ենթարկվել և ուսումնասիրվել ՄԱԿ-ի այն հիմնական փաստաթղթերը, որոնք վերաբերում են Չարգացման իրավունքին:

Վերհանվել են Չարգացող և Չարգացած պետությունների հակասությունները՝ Չարգացման իրավունքի նորմատիվային բովանդակության վերաբերյալ:

Резюме

Признание права на развитие в документах ООН

Концепция права на развитие является одной из наиболее дискутируемых в области современного международного права. Ключевую роль в выдвигении права на развитие на передний план международной политики и практики сыграла ООН.

В работе подробно рассмотрены и проанализированы основные документы Генеральной Ассамблеи ООН, касающиеся права на развитие.

Выявлены существующие противоречия между развитыми и развивающимися странами в отношении нормативного содержания права на развитие.