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Respect for the Individual's Human Rights and
the Realization of the Right to Development

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I

One of basic misgivings which have been accompanying the discussions on the right to development could be put in the form of the following question: is this new concept meant to strengthen the efforts for the realization of human rights or does it, in fact serve the attempts to diminish importance of human rights by making them contingent upon the objectives of development?

The answers to the above questions vary - some commentators are suspicious about the actual meaning and value of the right to development, while others may see it as a concept which expresses the apparent complexity of the realization of human rights in the social/societal context (which is often disregarded by lawyers who dominate much of the human rights discourse and who, as a rule, prefer "clear" legal notions). Let us add here that this dimension of human rights problem has been recognized already in the Universal Declaration of Human Rights which states, in its Article 28, that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."

Without dwelling, in this paper, on the question of the legal nature and meaning of this "entitlement" one can immediately recognize that full realization of human rights set forth in the UDHR necessitates an appropriate social and international order, i. e. an order to which the individual is entitled by virtue of the quoted provision of the UDHR. It can be therefore assumed that while the mere recognition and respect of individual's human rights can be demanded without any pre-condition, the full realization of these rights requires an appropriate social and international order. This does not mean, of course, that the existence of individual's human rights may be made contingent upon the social and international order, while their full realization depends, realistically speaking, precisely on such order(s).

II

The debate on the right to development which started in the beginning of seventies and became active - in the UN - in the first half of past decade relates to problems referred to above. It raised a number of difficult questions some of which will be discussed during the present Global Consultations. It is not my duty or aspiration to refer to the totality of these questions. I shall concentrate on the question on what is the role of respect for individual's human rights for the realization of the right to development. In this context I shall proceed from the assumption made above, namely, that respect for human rights (in contrast to

full realization of these rights) is demanded without any pre-conditions. Moreover, the principal meaning of the right to development is in its support to understanding development as a comprehensive social process leading to full realization of human rights while requiring that in this process individual's human rights are respected. Respect for individual's human rights is therefore one of the constitutive elements of the concept of the right to development.

This interpretation can be derived from the text of the Declaration on the Right to Development, adopted by the General Assembly (res. 41/128) on 4 December, 1986. Thus in the second preambular paragraph it is recognized that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of entire population and of all individuals on the basis of their active, free and meaningful participation in development and in fair distribution of benefits resulting therefrom." (emphasis added).

In the tenth preambular paragraph concern is expressed "at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights...". In the same paragraph the General Assembly reiterated that all human rights and fundamental freedoms are indivisible and interdependent and emphasized that "...accordingly, the promotion of, respect for and enjoyment of

certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms."

This approach is further elaborated and made more specific in the operative part of the Declaration. A particular emphasis is made, in Article 2 of the Declaration on the idea of centrality of human person in development. The human person should be the active participant and beneficiary of the right to development.

It is interesting that the duty of states "...to encourage the observance and realization of human rights" is referred to in the context of the Declaration's provisions relating to international co-operation and to a new international economic order (Article 3). Specific references to the need that states co-operate for strengthening universal respect for and observance of human rights and fundamental freedoms - and to the need that they take steps to eliminate obstacles to development resulting from failure to observe human rights - are made in Article 6 of the Declaration.

The above references show that the Declaration on the Right to Development expressed the idea of linking the process of development to individual's human rights and made clear that respect for human rights is a constitutive element of the right to development. This understanding is therefore not only a matter of theoretical interpretation of the concept of the right to development but also an expression of agreement reached among

the majority of UN member states. One may therefore conclude that the idea of linking development as a process to the paradigm of human rights has thus gained international legitimacy and wide support. The actual value of this support, however, has to be considered in the light of the actual attitudes of states and other major actors in the development processes. Let us now look into this issue taking into account some of the recent changes of attitudes in the international community.

III

It appears that one of important phenomena constituting a part of current developments can be properly described with the word de-ideologization. In many parts of the world the questions of development are now perceived differently than in the recent past and the role of ideological elements is diminishing. This is particularly apparent in most of the countries of socialist orientation which are speedily abolishing most of ideological precepts of the "real socialism" and where radically new solutions are being sought. Many of these solutions relate directly to the issue of linking development with the paradigm of human rights. Thus it is increasingly recognized that the role of state in "providing" development should be changed and given a more realistic place. Consequently, limits to the state power should become stricter and abuses of justice and of individual human rights should be forestalled. It is recognized that respect for individual's human rights and the actual enjoyment of these

rights are necessary ingredients for development in the future. Finally, it is also recognized that the interpretation of human rights itself should change: the ideology of supremacy of economic social and cultural rights (and the idea that civil and political rights depend on prior realization of economic, social and cultural rights) is now giving way to a more balanced approach.

In short, the ideological interpretation of socialism characterized by disregard for individual's human rights and by the ideological interpretations of these rights has come to its end. It is obvious that this rapid change involves a number of new risks, including those based on the illusion that rediscovery of civil and political rights and a sincere effort for the realization of these rights in itself guarantees a bright future of a society. Mature and properly balanced programs of change and of real improvement of enjoyment of human rights are yet to emerge and the processes leading to such results are likely to be conflictual in nature.

The phenomenon of diminishing the ideological element characterizes also much of current thinking and action in the realm of international development policies. Concepts like permanent sovereignty over a country's natural wealth and resources; preferential, non-reciprocal treatment of developing countries; official development assistance and the like - all of them being economically, legally, politically and morally justified - seem to be perceived nowadays in a more realistic

way than in the recent past.

The actual value of these (and other) basic concepts of international development discourse is being sought. It is important that in this search development be perceived as a comprehensive economic, social, cultural and political process aiming at the constant improvement of the well-being of entire population and of all individuals . The concepts referred to in the preceding paragraph should not be considered as the sole content of development which - as the Declaration on the Right to Development suggests - has to be measured by a variety of criteria, including those expressed in terms of human rights. In short, respect for human rights should become one of the essential criteria for assessment of the actual success of national and international development policies.

However, if the human rights criteria are to be accepted as the necessary components in the assessment of development they have to be freed of ideological interpretations. This is important particularly since the past decades have shown that objective human rights criteria are often in practice used in an ideologized form. Thus the concept of genuine and periodic elections, indeed a precious part of the body of internationally recognized human rights, has been - in practice - interpreted in a variety of ways which were often motivated by ideological affiliation or political need rather than by any kind of objective standard.

Another and perhaps the most fundamental aspect of ideological interpretation of human rights is expressed in the underestimation of economic, social and cultural rights qua human rights (in opposition to another ideological interpretation, to which I referred above, namely that these rights constitute a pre-condition for the realization of civil and political rights). This underestimation is expressed in different ways including the absence of serious effort, at the international level, to develop appropriate mechanisms for assessment of progress in the realization of these rights. However, this attitude also started to change, most significantly by establishment of the Committee on Economic, Social and Cultural Rights which can be understood as a serious step towards a real improvement of international action in this field and as a serious departure from the practice of ideological quarrel over economic social and cultural rights.

The phenomena referred to in preceding paragraphs are relevant to the interpretation of the content of the right to development and show (each of them in its own way) the importance of respect for and enjoyment of individual's human rights. One of the conclusions which can be drawn from this is that the process of measurement of achievement in the realization of the right to development should include utilization of precise and objective criteria of achievement in the field of individual's civil, political, economic, social and cultural rights. Without this the idea of the right to development might lose its potential and may remain an idle concept.

IV

At the level of practical activities to be suggested at present one might think of a variety of options. None of them is entirely new, yet they may be approached in the most comprehensive and systematic manner in the framework of the debate on the realization of the right to development.

The first among these ideas relates to the need to ensure compatibility of the UN activities with the Declaration on the Right to Development. In particular all operational programmes should contain project guidelines compatible with the Declaration and should involve human rights impact statements of all proposed projects. Assessment of human rights impacts should become a standard part of the approval of every proposed project. Moreover, assessment of human rights impacts should become a standard element in the process of evaluation of the realization of projects.

It seems necessary that this processes are conducted in a way which would enable the effective and meaningful participation of NGOs, particularly those with the relevant grass-roots experience.

Strengthening of co-operation of UNRISD, UNITAR and other appropriate bodies with the Centre for Human Rights would be necessary in providing technical advice and guidance.

The criteria for assessment of realization of human rights should be further developed. While in the area of civil and political rights these criteria seem to be relatively clear (although they too would have to be developed further, and made more specific, taking into account different historical and social contexts of different societies), definite improvement is needed in the field of economic, social and cultural rights. It is necessary that appropriate system of indicators for assessment of progress in the realization of these rights is developed and agreed to by the states. The first step in the development of such system would be to collect information about different methods currently used in different parts of the UN system and a discussion on which of existing indicators could be the most appropriate in this framework. Some activities in this respect have already started in the Committee on Economic, Social and Cultural Rights and in the Sub-Commission on Prevention of Discrimination and Protection of Minorities and should be pursued vigorously. It could be added that the creation of a system of internationally agreed indicators for assessment of progress in the realization of economic, social and cultural rights would also be necessary for development of a meaningful practice of human rights impact statements discussed in the preceding paragraphs.

A final thought in the context of discussion on the practical measures to be taken at the international level for the realization of the right to development should be devoted to the need for strengthening of international system for promotion,

protection and implementation of human rights in general. In view of the changes discussed in part III of this paper such evolution seems to be one of the obvious needs of present -day international community. Certain aspects of this evolution are discussed above in a non - exhaustive way, while others could be mentioned by way of example: The need to develop efficient system of response to emergency situations involving gross violations of human rights, strenghtening of the role of the Secretary-General to exercise humanitarian "good offices" in human rights cases, mesures for further strenghtening of the participation of NGOs, development of operative approaches to deal with situations involving the problems of minorities indigenous peoples and other vulnerable groups etc.

A general conclusion which could be made on the basis of the content of this paper is that there is a genuine need to strenghten the role of the UN in matters of human rights in general and human rights activities should be put at the center of the UN's work.

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