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General United States approach: Contribution by
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25 November 1981

1. Since the phrase "right to development" first surfaced in the early 1970s, it has become the topic of a by-now sizable body of literature, much of it juridical in character. For this very reason it is useful to step back and look at this process of conceptualization as a whole. It then becomes clear that what is involved here is a confluence of two separate concerns within the international community - the concern for development and the concern for human rights. This confluence presents a positive challenge; it also causes misgivings. We believe it is useful to comment first on the positive aspects of the matter, aspects which the United States is willing, in principle, to affirm.
2. There is an underlying concern to see development as a human whole rather than as an abstract economic mechanism, and also to see development as a moral imperative for States and for the international community. Both aspects of this concern are to be strongly affirmed. In the 1950s there was a strong tendency to understand development in purely economic terms, frequently to understand it as virtually a synonym of economic growth. This tendency was justly criticized as mechanistic and simplistic; in Latin America the apt term "desarrollismo" ("developmentalism") was coined to designate this one-sided view of development. In affirming this view, it is by no means necessary to denigrate the importance of economic growth: It is the engine, the condition sine qua non, of development; it is not, by itself, the full content of

development. Rather, development in the full sense only takes place when the dynamism of economic growth is harnessed to much wider human purposes, such as the enjoyment of political freedom, the protection and enhancement of cultural traditions, and (very importantly) the accession of an ever-expanding portion of the human race to a decent standard of material life. It is possible, indeed necessary, to affirm that development in this more ample human meaning is a moral imperative. In an age when mankind has at its disposal unprecedented and vast powers, the fruits of modern technology to be used in improving the conditions of human life on this planet, continued inaction in the face of degrading misery is indeed morally intolerable. Therefore, the promotion of development must be high on the agenda of States and of the international community.

More specifically, the conceptual linkage of development and human rights in the phrase "right to development" has positive aspects to be affirmed. It underlines the aforementioned understanding of development as affecting real human beings seeking dignity and a decent life for themselves and their children. Put simply, this conceptual linkage induces us to turn our attention from the antiseptic figures and charts of the economists to the human realities that underlie these statistics. In the unfolding discussion of the concept "right to development" there has been the reiterated statement, in various documents by representatives of different countries, that under no circumstances must the furtherance of development be used as an excuse for violating the human rights of individuals or groups or as an excuse for postponing the legal protection of these rights. The United States has been and is in vigorous agreement with this view.

3. The misgivings that have arisen (and not only on the part of the United States) from this process of conceptualization have been both juridical and non-juridical. Most attention in United Nations fora has been given to the juridical ones; these are well-known, and it may not be necessary to reiterate them here at length. There is the underlying objection to a view of the United Nations as a quasi-legislative entity - which, of course, except for a narrow area of competence accorded the Security Council, it is not, either in the intention of the Charter or in international law. There is the objection, strongly stated by the United States on several occasions, to language that implies new legal obligations on the part of States even if it does not explicitly name them as such. (This point was very lucidly brought into focus in a recent book by the French alternate expert in the Working Group, Mr. Alain Pellet (Le Droit International du Développement, 1978), who describes the subtle change from statements making "recommendations" to statements specifying "obligations".) At the last session, Mr. V. Remashandran, the distinguished expert from India, very ably summarized some of the key juridical problems: If, as has been frequently stated, the "right to development" includes both individual and collective rights, how are the former to be

enforced? How is the "right to development" to be formulated in such a way as to preclude all sorts of possible interventions in the internal affairs of States? And, Mr. Ramachandran finally asked, how is the "right to development" to be understood in relation to the often-made claim of reparations or compensation allegedly owed by some States (usually described as former colonial powers) to others (their former colonies) because of alleged past misdeeds which have hindered their development?

These as well as other juridical misgivings are formidable. They are doubly so because of the vague, sometimes sponge-like quality of the language by which the "right to development" has been described thus far. Under this rubric have come to be assembled miscellaneous desiderata, most of them unobjectionable in themselves but in the aggregate presenting us with an alleged "right" that lacks firm definition and, for this reason, has the potential of being used or misused for an exceedingly bewildering variety of political purposes.

The United States will have the greatest difficulty with language which does not clearly avoid these juridical pitfalls.

4. There are also non-juridical misgivings, however. Since these have not been as frequently stated in international fora, it may be useful to spell them out here in somewhat greater detail:

(i) Implied in much of the discussion on the "right to development" is what can be called a view of economic relations as a zero-sum game: In an economic relationship, the gain of one is the loss of the other; more specifically, the wealth of one is based on the poverty of another. This view, of course, is directly applied to the relation of developed and developing countries: The wealth of the former is supposedly based on the poverty of the latter, be it as a result of past exploitation through colonialism and imperialism, and/or as a consequence of the contemporary "unjust" international economic order characterized in large part by the "neocolonialism" practiced through transnational corporations. Leaving aside the moral and juridical claims that are frequently deduced from this view ("reparations", "compensation", and the like), it is a view that seriously distorts the realities of history and of the contemporary world. To be sure, there are indeed economic relations in which some gain at the expense of others. To be sure, there have been relations between States and peoples that can properly be described as exploitative. But to view economic relations in general, and specifically the past and present relations between the developed and developing parts of the world, in this manner is very one-sided, runs counter to the empirical evidence, and is in the long-run self-defeating.

The fact that this view has by now become part of a well-articulated ideology which has obvious attractiveness to many people in the developing countries, does not change its shaky empirical foundations. In the actual historical record, as it is available to us, the relations between States and peoples in the different parts of the world have been much more complex. It is not demonstrable that the wealth of some countries is causally based on the poverty of others, either in the past or now. As far as the United States is concerned, we are certainly not prepared to accept the view that the economic successes of our society are based on the exploitation of other societies, be it in the past or present. Consequently, we are not prepared to accept either a moral or a juridical claim for restitution for these alleged wrongs.

We would also argue, however, that such a view is self-defeating for its proponents. For one thing, any ideology which runs counter to the empirical evidence ends up by losing credibility even to those who may find it in their short-run interest. Also, and more importantly this view concentrates attention on historical and external obstacles to development, at the expense of the present and often very internal obstacles that ought to be removed. Even if it is stipulated that the "right to development" can be violated by the action of States with regard to other States and peoples, the "right to development" can also be violated by a miscellany of internal agencies - such as the establishment of economically inefficient or politically corrupt regimes, by religious or cultural values that directly or indirectly impede economic productivity, by the oppression of people to the point where they cease to be economically active, or by the persecution of economically successful minorities. Any notion of the "right to development" which neglects such internal factors, and which simplistically ascribes all the ills of underdevelopment to the past or present misdeeds of what is by now an almost liturgical catalogue of external villains, does not serve the real interests of those in need of development. No list of "obstacles" to the right to development can be considered acceptable if limited solely to "external" factors.

(ii) Closely related to this view of economic relations in general, and of the relations between developed and developing countries in particular, is the notion that development is something that can be somehow wrested from others: "You are withholding this good thing from me; I will compel you to give it to me". If one holds this notion, then one may find it plausible that development can be brought about by legal or political fiat. But, except in very rare cases, this is not how development has generally come about. Development, both in the narrower economic sense and in the more ample human sense that is affirmed above, comes about as a result of individual and group effort - by the entrepreneur who is willing to take a risk, by the farm family investing enormous energy and patience in the improvement of their condition, sometimes by entire groups of people migrating from one place to another in search of a better life. (Of course, a government must have established an appropriate legal, political and economic environment within which such efforts can be rewarded).

Again, let it be stipulated that there are situations in which opportunities are denied by some people to others, either within societies or between societies. But development as such can never be given, it is always attained. One unfortunate implication of the language used to talk about the "right to development" is that it tends to obscure this elementary fact. This too is self-defeating. It is also ironic. Much of the thinking that has come out of developing countries in recent times has emphasized self-reliance, freedom from dependency and the capacity of the poor to take control over their own destiny. The language that makes development a good to be wrested from, and thus finally to be granted by, external societies and States stands in a strange contradiction to these aspirations toward autonomy and independence.

(iii) As already mentioned, the literature about the "right to development" insists that the latter pertains both to individuals and to collectivities; as also mentioned above, there are also reassuring statements in the literature affirming that collective development projects must not be used as an excuse to violate the rights of individuals. That is all to the good. But there is also in the literature a very narrow notion of the nature of the collectivities relevant to development: In the great majority of cases, the terms "collectivity" refer to the State. Now, the reasons for this are not hard to determine. Most of this discussion has taken place in the context of the United Nations system, which is an organization of States, and within the intellectual framework of international law, which has its primary focus on the relations between States. Also, a sizable number of member States of the United Nations adhere to one or another form of socialism, in theory or in practice or in both, and thus naturally think of States as the major if not only agents of development. Nevertheless, this usage must be challenged.

First, we believe that the empirical record indicates the superiority of free market economies over State-managed economies in the attainment of development goals; the over-emphasis on States and State actions tends to obscure this. But, second, even under socialist systems, particularly in developing countries, collectivities other than the State are crucial for development: Even if a system does not permit private enterprise by individuals, the economic efforts of families, villages, various traditional groupings (such as the groupings of kinship, tribe or ethnicity) and more modern forms of association (co-operatives and the like) are the true carriers of development. In sociological parlance, all such collectivities have been subsumed under the category of "mediating structures" - that is, collectivities that stand between and thus mediate between the individuals and the macro-structures of the modern States. These "mediating structures" are essential to development under any system, be it a market or a command economy; language which obscures their role ipso facto obscures the real dynamics of development; by the same token, and very importantly, if one talks about collective rights in the area of development, one must also bear these collectivities in mind.

Another aspect of this is important: It is precisely these collective entities which, in many developing societies, embody the values of cultural tradition; if, as has been repeatedly said, development must respect such values, then the rights of the communities that are the bearers of these values must be accorded respect and indeed participation in the development process; it can also be argued, on the hand of impressive empirical evidence, that development strategies that run roughshod over traditional values and the communities embodying them are likely to fail.

This list of non-judicial misgivings about the "right to development" as hitherto discussed which could easily be expanded, has made clear that the reservations of the United States regarding this concept are not only based on what Mr. Ramachandran aptly called "legal fears". We believe it to be our responsibility, as well as an expression of our respect for the members of the Working Group, to put forth our misgivings very frankly. We continue to be open to the viewpoints and arguments of others, and we continue to entertain the hope that consensus might be achieved on the important concerns under discussion in the Working Group.
