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**RIGHT TO DEVELOPMENT - THEN AND NOW**

**Key-note Speech by Dr. Danilo Türk**

**Brainstorming: Taking Stock on Right to Development**

**Brussels, 8 July 2015**

Distinguished Participants,

I feel honored to be invited to a discussion on the right to development - a subject that belongs to the most hotly discussed subjects of human rights. I hope that our meetings today and tomorrow will contribute constructive and useful ideas. This is necessary, because the right to development is likely to remain among the central questions of global discussion on human rights and an indispensable aspect of the idea of universality of human rights.

Today, we need to put the subject of our discussion in its proper temporal perspective. I presume that this is a task the organizer of our meeting had in mind when inviting me to participate. As you know, I worked as a Vice-Chairman of the initial Working Group of Experts in the years 1981 to 1986 and participated quite considerably in the drafting of the Declaration on the Right to Development, adopted by the UN General Assembly on 4 December 1986 in its resolution 41/128.

So, let me start with a temporal perspective, and with something fundamental: The foundation for the right to development was laid down in the Universal Declaration of Human Rights.

On 10 December 1948, in one of the stellar moments of history, the international community proclaimed the Universal Declaration of Human Rights, the “Magna Carta Libertatum” of modern era. Its authors were optimistic and ambitious. They understood that in order for the Declaration to be universal, it must be comprehensive. Therefore, they didn’t limit its scope to the classical civil liberties and political rights, but added such rights as the right to work, the right to an adequate standard of living, the right to education and the right to participate in the cultural life of the community. And, in addition, they included, as Article 28 of the Universal Declaration, the following provision:

*“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”*

This provision is only seldom quoted in the human rights discussions. It is perceived by some commentators as either too utopian or too abstract - or both. However, other commentators maintain, and I tend to agree with them, that this provision is a necessary signpost towards social change and an international order necessary for the *full realization* of human rights. Human rights require both social and international environment favorable to their realization.

The division of opinion on the importance of Article 28 of the UDHR comes directly from the different basic interpretations of human rights.

My own opinion is, briefly, the following:

**First**, human rights are universal. However, the practical priorities in their realization depend, to a very large extent, on the circumstances in which they are realized. Therefore, lifting large populations from extreme poverty is a legitimate human rights priority. However, it cannot be invoked as a legitimate reason for massive violations of certain human rights.

**Second**, human rights are for those who need them - the oppressed, the downtrodden, the discriminated, victims of human rights violations. In other words, human rights are for those whose development potential is being obstructed or denied.

And **third**, human rights are not above politics - they are very much part of politics. All achievements in the field of human rights came into being as a result of political struggle - the freedom of expression, freedom of assembly and association, the right to decent working conditions, the right to the highest attainable standard of physical and mental health, the rights of persons belonging to minorities - including, in our era, the LGBTs. The same applies to the right of peoples to freely pursue their economic, social and cultural development as an indispensable part of their right to self-determination. So, it is natural that human rights discourse is often a highly political one.

One of the obstacles to a productive human rights discourse and <sup>to</sup> effective use of human rights for common good lies in the misconception that human rights are a form of a "secular religion" consisting of a defined number of prescriptions or dogmas. This misconception is <sup>obviously</sup> usually *not explicitly stated*. However, it is real and often expressed in sermonizing about human rights in international debates. Very often this practice is linked to a selection of human rights and to critique of selected states.

All this was on the mind of scholars who initiated the debate on the right to development about forty years ago. It is not surprising that the leading role belonged to African scholars such as Keba M'Baye of Senegal, who did much of the basic conceptual work prior to the more systematic work in the UN framework. Of all the regions of the world, Africa needed a comprehensive approach to human rights the most. This was formally expressed in the Banjul Charter of Human and Peoples' Rights adopted in 1981. Its Article 22 refers to the right to development.

Soon after the UN Working Group on the Right to Development was created and started its discussions. The group consisted of a diverse and interesting set of people. It initially included Professor Peter Berger, a prominent American professor of sociology - a great authority on the sociology of religion and the role of social groups in the context of development. Another prominent person was V. Ramachandran, development Commissioner of the state of Kerala, India - a person of great experience with development issues. Professor Paul de Waart, from Amsterdam, was our main authority on human rights law. The group also included a number of experienced diplomats who were among the key players in the General Assembly's Third Committee and in the Commission on Human Rights. It was chaired by Ambassador Alioune Sene, a seasoned diplomat from Senegal. I participated in the group as Vice Chairman, and, being then a young scholar, also helped as an activist drafter of provisions aiming at inclusion in a declaration to be eventually adopted by the General Assembly. The discussions were really interesting and conducted in a generally constructive atmosphere, notwithstanding the cold war tensions that dominated the first half of the 1980s. The text of the Declaration on the Right to Development adopted in 1986 reflects that constructive spirit.

However, consensus in the group was not possible. The familiar divisions regarding the relative importance of civil and political rights on the one hand and economic, social and cultural rights on the other were very strong. The main conceptual difficulty however, was how to express the collective dimension of the right to development. The Soviet experts - remember, this was still the time when Soviet Union was a very powerful international player - insisted that the right to development doesn't belong only to peoples, but also to states. Obviously this could not and was not accepted.

At the political level the main battle developed around the references to the New International Economic Order, the flagship project of the G77 and Non-Aligned at the time. It was not possible to find an agreement on this highly controversial subject. I should mention, in passing, that the Declaration on the Right to development (GA resolution 41/128) refers, in its penultimate preambular paragraph and in its operative Article 3 to "a new international economic order" - without a definitive article "the" and without capital letters. This was a necessary drafting requirement at the time - now long time past.

Given this kind of difficulties in the Working Group a number of states represented in the Commission on Human Rights decided in 1985 to submit to the General Assembly the text of the Declaration I had prepared that year to facilitate the discussion on how to proceed further. It was felt that the text was sufficiently ripe for decision. As you know, the Declaration was adopted the following year, at the 41<sup>st</sup> session of the General Assembly.

When reading it again, now almost thirty years after its adoption, the Declaration on the Right to Development gives an impression of an honest and relevant human rights instrument.

Why honest? There are three reasons.

**First**, it defines development in terms of human rights: The human person is declared the central subject of development and the active participant and beneficiary of the right to development. The idea of centrality of the human person in development is further emphasized by the entitlement of “every human person and all peoples” to participate in, contribute to and enjoy the results of development.

**Second**, it connects human rights and development through the concept of the full realization of all human rights and fundamental freedoms. The notion of full realization of human rights comes from the Universal Declaration. Declaring the full realization of human rights (as opposed to mere proclamation or legal recognition) and defining it as the objective of development represents a step forward, a logical and necessary step at the time when development has become a major feature of our time.

**Third**, the role of states is defined in terms of their responsibilities to their citizens for the formulation and implementation of development policies that aim at improvement of the well being of the entire population. States have “the primary responsibility” for creating of conditions favorable to the realization of the right to development. In other words, sovereignty of states, although not explicitly referred to, is described as their responsibility for well being and for the full realization of human rights. The declaration on the Right to Development is an early harbinger of the gradual shifting of emphasis in the interpretation of state sovereignty - from sovereignty as a right of state to responsibility of state towards its people. The later articulation of the concept of the Responsibility to Protect (R2P) expresses the same philosophy.

Why relevant?

Most of the text of the Declaration describes the means for the realization of the Right to Development and the full realization of human rights. It speaks about such human rights priorities as elimination of massive and flagrant violations of human rights (Article 5), the indivisibility and interdependence of human rights, (Article 6) and strengthening popular participation in decision making on development (Article 8) etc. In addition it refers to the duty of states to cooperate with each other in ensuring development and eliminating the obstacles to development (Article 3) and a number of obligations of states to conduct their international cooperation in a manner conducive to development. Again, the responsibilities of states are in the forefront.

The Declaration on the Right to Development was commented upon with vigor - sometimes in defense and often with critique. In the UN it has obtained broad support. Speaking at the opening of the World Conference on Human Rights in Vienna (on 14 June 1993) the Secretary General of the UN, Boutros Boutros-Ghali quoted the Declaration on the Right to Development extensively and then concluded: "I think that this approach to the concept of universality is the right one and that it is this course that we should follow".

The Conference agreed. In the paragraph 10 of the Vienna Declaration and Program of Action

*"The World Conference on Human Rights reaffirms the right to development as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights".*

This authoritative statement of the contemporary, global human rights platform, adopted by consensus, represents an invitation to further elaboration of concrete tasks necessary for its implementation.

What should be some of the priority tasks today?

In the past two decades the right to development has become a standard feature of many international documents. It is here to stay and will continue to be both an invitation to discussion on policy priorities and an opportunity for political controversy. However, the general political and economic context today is different from the one at the time of the adoption of the Declaration on the Right to Development or the Vienna Conference on Human Rights.

On the positive side one should notice that the series of UN Conferences on the major development issues in the 1990s has clarified the key issues of global development and the main policy priorities. The Millennium Development Goals have defined the immediate priorities. And there has been significant progress in the real world - uneven, yes, but progress still.

The sustainable development goals to be adopted in September this year have gone even further - towards a comprehensive framework for policy making both at national and international level.

And much has been done at the expert level - the evolution of indicators, the sophistication of the work of the Committee on Economic, Social and Cultural Rights, etc.

However, all the progress has to be assessed against the background of the rising vulnerability of development in the real world.



Financial crises are not yet history and they may affect human rights in a variety of adverse ways. The situation in the Euro zone and the volatility at the Chinese stock markets remind us that a new wave of financial and economic crises is a real possibility. In a long term perspective the threat of global warming represents a real challenge to the entire future of the mankind. All these questions have to be taken into consideration when thinking about the future of the human right to development.

How should the European Union approach the discussion on the right to development?

The working paper prepared by my friend Professor Zdzislaw Kedzia offers an excellent analysis of the problems at hand and suggestions for the future. I largely agree with his analysis. He will surely tell us more in his ~~own~~ remarks. My own suggestions are as follows:

**First**, I expect that our discussions today and tomorrow will generate ideas that will help the EU to increase coherence of EU positions and strengthen its role in the discussions on the right to development. The EU needs its own discussion, free of prejudice and ideology. Our meetings today and tomorrow offer an excellent opportunity. They should help in building an approach that will increase the level of unity within the EU and strengthen the Union's role with regard to the right to development and, indirectly, with regard to the global human rights agenda generally.

**Second**, the EU should engage in the discussion on the right to development rather than distancing itself from that discussion. This engagement should be genuine and should be expressed in substantive initiatives. For example: The

opposition to a binding treaty on the right to development is not sufficient as a policy position. It should be accompanied by real and meaningful alternatives.

**Third**, the EU should be focused and persistent. The EU approach could draw inspiration from the sustainable development goals. For example Goal, 10 (Reduce inequality) calls for an analysis of the effects of the growing income disparities and for a sophisticated discussion on social sustainability of development. Goal 16 (Promote peaceful and inclusive societies) provides a platform for specific proposals to strengthen the participatory mechanisms within states and improve the quality and effectiveness of the rule of law. States have the primary responsibility for the right to development and this often implies the need for strengthening and reform of the relevant state structures.

**Fourth**, EU should not oppose discussions on the necessary improvements in the architecture of global governance. The questions of reforms within states are a legitimate subject of human rights discussions and they ought to be complemented by discussions on the strengthening and reform of international institutions. While the main discussions on reforms of international institutions will have to take place elsewhere, the framework of the right to development could be useful as a testing ground for new ideas.

Distinguished participants,

This meeting is convened with an aim for “brainstorming”. So let us think courageously and “out of the box”. Let us hear your ideas and let us chart the way forward.

I thank you for your attention.