
DISPLACED BY DEVELOPMENT: ANALYSIS ON THE IMPLICATIONS OF THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES

Cristiane Derani

Post Doctor's Degree at École des Hautes Études en Sciences Sociales, Paris.
Doctorate studies (CNPq scholarship) at J. W. Goethe Universitaet, Frankfurt.
Doctor of Laws at the University of São Paulo.
Professor at the Federal University of the State of Santa Catarina (DIR/UFSC).
Email: cristiane.derani@ufsc.com.br

Ligia Ribeiro Vieira

Doctoral student in Law at the Federal University of Santa Catarina.
Master of Laws at the Federal University of Santa Catarina.
Email: ligiaribeirov@gmail.com

ABSTRACT

The forced displacement of people, so frequent nowadays, can be analyzed from different aspects, from its motivation to the responsibility that it generates. Changes to the environment through large development projects promote the emergence of what is understood as the “displaced by development”, a social cost that is undervalued comparing to the benefits of the economic gains. In order to analyze the reasons for that displacement, this paper aims at studying the principle of permanent sovereignty over natural resources as an important principle of International Law and it also aims at combining it to the evolution of the Right to Development, from an economic perspective to a humanistic rationality. Highlighting these principles brings up the discussion of the legal status of those who become vulnerable in face of the development process: the displaced ones. The paper concludes that making their rights a core element can help putting into practice the ethical precepts of the development process for it to be seen as an opportunity for the expansion of human freedom.

Keywords: Displaced persons; Permanent Sovereignty over Natural Resources; Development; Sustainable development; Responsibility.

DESLOCADOS DO DESENVOLVIMENTO: ANÁLISE SOBRE AS IMPLICAÇÕES DO PRINCÍPIO DA SOBERANIA PERMANENTE SOBRE OS RECURSOS NATURAIS

RESUMO

O deslocamento forçado de pessoas, tão frequente na atualidade, pode ser analisado por diferentes vertentes, desde sua motivação à responsabilidade que dele decorre. Alterações no meio ambiente por meio de grandes projetos desenvolvimentistas promovem o aparecimento do que se compreende por “deslocados do desenvolvimento”, um custo social pouco valorizado diante dos benefícios advindos do ganho econômico. Com o intuito de analisar as justificativas desse deslocamento, o trabalho pretende o estudo do princípio da soberania permanente sobre os recursos naturais como um importante princípio do Direito Internacional, bem como visa conjugá-lo à evolução do Direito ao Desenvolvimento, de uma faceta economicista para uma racionalidade humanista. Evidenciar estes princípios remete a necessidade de discutir a situação legal daqueles que se tornam vulneráveis frente ao processo de desenvolvimento: os deslocados. Conclui-se que colocar os seus direitos como centrais faz com que os preceitos éticos do desenvolvimento consigam ser postos em prática e que a perspectiva do processo seja vista como uma oportunidade para a expansão de liberdades humanas.

Palavras-chave: *Deslocados; Soberania Permanente sobre os Recursos Naturais; Desenvolvimento; Desenvolvimento Sustentável; Responsabilidade.*

INTRODUCTION

The forced displacement of people takes place due to several motivations. Factors that are considered “traditional” are the ones in international conventions that form the basis of the International Refugee Law: race, religion, nationality, social group or political opinions. However, the study of forced migrations has opened to thoughts on “new categories” of displaced people, the ones who are not yet legally recognized by the international community, but who equally need some protection.

Changes to the environment through development projects bring along some beneficial effects and some costs, among which the forced human displacement becomes a social cost. “People displaced by the development” would be the ones belonging to the category of people who experience the consequences of a process that had its genesis in the 1950’s and that lasts until the globalized present.

The analysis of displacement induced by the development passes by theoretical and ethical assumptions that try to come up with the justification for its occurrence. The process of development finds its bases on principles that were devoted by the International Law in the context of a post-colonial world: the principle of permanent sovereignty over natural resources and the principle of the self-determination of people.

The study of those principles carries with it the challenge of conjugating them right to development and the costs that development entails for the interests of the present and the future generations to be preserved. Thus, the study aims at understanding the legal situation of those who represent the social cost of that process, the displaced people.

1 THE PRINCIPLE OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES AS A PRINCIPLE OF INTERNATIONAL LAW

The international sovereignty over natural resources reflects, in general terms, the right that was granted to States and people to freely dispose of their natural resources. Such disposal ends up by reflecting on the appropriation of those resources in order to economically explore them.¹

¹ Along the years, the debate on sovereignty over the resources has gotten wider and deeper. It enlarged and also enlarged the reach of its application to natural wealth and to marine resources. It deepened, considering the increase of the number of rights related to the resources, including the ones that regard foreign investment. SCHRJVER, 2013.

The author Nico Schrijver considers that International Law principle is one of the most controversial ones in the present since its evolution after the Second World War. In that period referred to, the decolonization process was in evidence and, with it, the newly independent States tried to develop new principles and rules of International Law in order to assert themselves within the logic of the international relations and to promote their social and economic development (SCHRJVER, 1997, p. 01). Schrijver (1997, p. 08) points at the evolution of that principle:

The circle of subjects entitled to dispose of natural resources changed considerably over the years. Initially, during the 1950s, the right to permanent sovereignty was alternatively vested in “peoples and nations” and “underdeveloped countries” due to the fact that permanent sovereignty had taken roots in both the promotion of the economic development of “underdeveloped” countries and the self-determination of peoples. As the decolonization process progressed, the emphasis on ‘peoples’ and the connection with ‘self-determination’ diminished and gradually shifted to ‘developing countries’, while during the 1970s ‘all States’ became the primary subjects of the right to permanent sovereignty.

Thus, the principle of the permanent domain over natural resources was introduced into the UN’s debates to support the desire of the colonial people and the countries under development to obtain the right to enjoy the benefits of resource exploration (SCHRJVER, 1997, p. 01). That precept would work as a legal shield against the violation of the economic sovereignty of those States coming from property or contract rights, constantly claimed by exploring countries and foreign companies.

Attached to the economic component, an argument that was strongly present in the preparation of the principle was the right to the self-determination of people². Since the post-colonial period, the newly independent States found in the principle of self-determination a reason for its sovereignty to be respected and for their rights not to be outrageously violated by subjugation to another State. The self-determination of the

² Self-determination means that people have the right to decide their own fate in the international order. Self-determination is a fundamental principle in international law, a consequence of consuetudinary international law, but also recognized as a general principle of law and consecrated in several international treaties. For example, self-determination is protected by the Charter of the United Nations and by the International Covenant on Civil and Political Rights as a right of “all people”. The scope and the objective of the principle of self-determination progressed significantly in the 20th century. In the beginning of 1900, international support grew to fight for the right of all people to self-determination. That led to successful separatist movements during and after the First and the Second World War and launched the bases for decolonization in the 1960’s. LEGAL INFORMATION INSTITUTE.

people starts to be considered by the UN, in resolution n. 1514 dated 1960, a fundamental human right and disrespecting it represents an obstacle to the promotion of cooperation and world peace. (UN, 2015)

Under those influences, the bases of the principle of permanent sovereignty over natural resources started to be created. Although the main pillars are seen as traditional principles of International Law such as sovereignty³ and territorial jurisdiction, its origin is related to the Charter of the United Nations (SCHRJVER, 2013, p. 96). Even if the document fails to explicitly mention the principle, there are some general references to principles that connect to the bases of sovereignty over natural resources. The principle of non-intervention in internal matters⁴, sovereign equality between States⁵, the promotion of development, economic and social progress, in addition to respect for human rights and fundamental liberties⁶, all of them listed in the charter that created the United Nations, reflect the theoretical context behind the insurgent principle.

Its consecration at the International Law level came with the adoption of resolution 1803 by the UN's General Assembly called "permanent sovereignty over natural resources". The document arises from

3 Sovereignty is an idea of authority embodied in limited territorial organizations we refer to as 'states' or 'nations' and expressed in their different relationships and activities both at the national and the international level. In the beginning of the 21st century, there were almost two hundred of those organizations around the world and each one of them is responsible for the territory under its jurisdiction and the people living there. Sovereignty is at the center of the political arrangements and legal practices in the modern world. The idea was originated in the controversies, religious and political wars in Europe in the 16th and 17th centuries, and it has existed with no interruptions and spread all over the world since that time, and it is still progressing. Sovereignty is a fundamental idea of politics and law that can only be correctly understood as both an idea of supreme authority of the State and an idea of political and legal independence of States geographically separated. Those two faces of State sovereignty are not separate ideas. They represent different aspects of a general idea. Sovereignty is a constitutional idea of the rights and obligations of governments and citizens or subjects in particular states. It is also an international idea of several states regarding one another, each one occupying its own territory and keeping external relations and relations with the others, including the peaceful and cooperation relations, as well as disagreeing relations and periodical wars. JACKSON, 2007. p. x.

4 Charter of the United Nations. Art. 2, paragraph 7. "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII".

5 Charter of the United Nations. Art. 2, paragraph 1. "The Organization is based on the principle of the sovereign equality of all its Members".

6 Charter of the United Nations. Art. 55. "With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: **a.** higher standards of living, full employment, and conditions of economic and social progress and development; **b.** solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and **c.** universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

the effort of the General Assembly to promote the economic development of underdeveloped countries and to connect to the right to the self-determination of the people. The Assembly had previously requested to the Commission of Human Rights the preparation of recommendations on the international respect of the people for their self-determination, from which arises the recommendation for the creation of a specific commission to assess the right for the sovereignty of the people over their own resources. In 1958, the “Commission of the United Nations regarding the Sovereignty over Natural Resources” is created (KILANGI, 1962).

The work of that Commission, together with the efforts of the Economic and Social Council, brought the previously mentioned resolution to life and it acquires characteristics of a Declaration. The document is adopted in 1962 by the UN’s General Assembly with 8 articles that state that the right of peoples and nations to permanent sovereignty over their natural resources “shall be exercised in the interest of their national development and of the well-being of the people of the State concerned” (UNITED NATIONS, 1962). That Declaration marks a stage of the principle when the sovereignty over the resources is strictly connected to the issue of self-determination of the people for their colonial and economic independence.

With the progress of the decolonization process in the 1970’s, the focus of the principle goes from the self-determination to the countries under development, promoting the States to main subjects of the right to permanent sovereignty over natural resources (SCHRJVER, 1997, p. 08). The evolution of the principle over time brought not only the identification of rights, but also of rights due to that sovereignty that States enjoyed. The liabilities include respect for the right to development for all people, especially when striving for the protection of those who can be affected by the consequences of the economic exploitation of resources. Nico Schrijver (2013, p. 96) says:

Thus, and under the influence of the right to self-determination and the right to development, the focus of the principle of sovereignty over natural resources was gradually transferred from a principle that was essentially based on rights to one based on rights with a specific content.

The incorporation of those new values to the principle is going to be an important object of this paper, especially in what regards the legal implications that permeate the underlying liabilities to the right granted to the State to explore their own resources.

2 THE RIGHT TO DEVELOPMENT AS AN ASSUMPTION OF PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES: from economic growth to sustainable development

From the moment when the sovereign right to economically explore resources is given to decolonized States, the right to development is born as an assumption. However, to understand that right from its different aspects, it is also necessary to understand the evolution of the word *development* in its several phases and implications because, as Altvater (1995, p. 22) says “development does not take place in a timeless laboratory and regardless its location, but in a natural and social space and in historical times”.

The modern idea of development comes together with the rise of the United States as a super power in the period after the Second World War, a moment in which the country considers the real need to take up a position in the new configuration of the world economy. With the inauguration of President Truman, “a new era would start for the world – the era of development” (ESTEVA, 2000, p. 59). When considering that the industrial e scientific progress of the US would be available for the growth and progress of underdeveloped areas, the President gave to development a different meaning that could refer to the North American hegemony” (ESTEVA, 2000, p. 60), and “unveiled the desire of the West to resume the economy after a devastating war” (SACHS, 2000, p. 118).

Development, within that period, refers, thus, to a colonizer power. The industrial production mode becomes a necessary and unavoidable target that, as a consequence, starts to subjugate underdeveloped countries to suppliers of raw material for industrialization.⁷ Thus, development is tied to economic growth in its first aspect (especially from the 1950’s to the 1970’s).

Economic growth, besides allowing for the increase of per capita income in developed nations, was also considered as a solution for poverty⁸.

⁷ Especially during the Second World War, the Allied forces, and the US in particular, got aware of their dependence of raw material abroad and of the vulnerability of their supply lines. Those concerns were outlined in the Atlantic Charter dated 1941, in which the Allies defended the principle of equal access of all States to the world’s raw material. The Allies stated that they would make an effort, “with due respect for existing obligations, to promote the access to all States, large or small, winner or won, in equal conditions, to the world’s trade and raw material necessary for economic prosperity”. SCHRIJVER, 2010. p. 37.

⁸ For Latin American dependent theoreticians, “underdeveloped” or “poor” countries were in that situation thanks past pillage of the colonization process and the continuous raping of capitalist exploration,

The developmental thought considered that problems of underdevelopment were concentrated in the Southern area of the globe and that solutions would be found, mainly, in the Northern area (DALY, 2014). When taking that into account, growth would not face limits to serve as a “solver” of economic inequalities. The world was seen as an endless and inexhaustible source of natural resources that would provide for development.

However, development has growth faces limits. Those barriers have their theoretical bases change. Social inequality, environmental degradation and the improvement of people’s quality of life became a concern for the United Nations that was more active from the 1970’s on. That is when the path for the first big conference on environment and development is prepared and when the *limits for growth*, with Meadows’⁹ controversial book, are put at stake.

The year of 1972 marks the phase in which development and environment entwine. The United Nation’s Conference on Human Environment highlights the inclusion of the environmental subject in the international agenda pushed by the concern of the developed countries with the levels of pollution and acid rain, and with the perspectives of population growth, especially in peripheral countries, and their impact on the access to natural resources.¹⁰ The so called Stockholm Conference brings along the “proposal to change the postwar perception from an open global perspective where each nation may isolatedly make an effort to maximize economic growth” (SACHS, 2000, p. 118) and it is noticeable that pressures on the environment as a consequence of industrialization are common problems that require interdependent perception and cooperation.

However, the positions adopted inside the Conference were at the national and international level, to which those countries were submitted: underdevelopment was the creation of development. ESTEVA, 2000. p. 66.

9 The Book “The Limits to Growth” was ordered by a think tank called Club of Rome. Researchers who worked outside the Massachusetts Institute of Technology formed a team that included husband and wife Donella e Dennis Meadows. They built a computer model to track the economy and the environment worldwide. That innovative computer model was called World3. The task was very ambitious. The team located the industrialization, the population, food, use of resources and pollution. They modeled data until 1970 and then they developed a series of scenarios for 2100, depending on how the humanity would take severe measures on environmental issues and resources. If that failed to happen, the model forecasted “overshoot and collapse” – in the economy, environment and population - before 2070. THE GUARDIAN, 2014.

10 It was from the appointment of the Economic and Social Council of the United Nations, on June 1968, that the idea came up of organizing a meeting of countries to create ways to control air pollution and acid rain, two of the environmental issues that most concerned the populations of central countries. Sent to the UN’s General Assembly, the appointment was approved in December that year. During the same meeting, the year of 1972 was defined for the event. The conference that marked international environmentalism and that launched a new cycle of studies on international relations was born. RI-BEIRO, 2010. p. 73.

diverging. There were the ones who supported the zero growth thesis in the sense of holding the industrial, polluter economic growth that consumes finite natural resources. On the other hand, there was the thesis in favor of the development brought by the industry in which the so called “underdeveloped” countries would fit.¹¹ The “developmental” position concludes the clash of ideas with advantages and peripheral countries get the permission for development and for receiving external investment (RIBEIRO, 2010, p. 80).

Within that context, the Declaration on Human Environment was seen as the most important document that results from Stockholm, containing 26 principles that settle the bases of the International Environmental Law. In the developmental logic that prevails in the meeting, principle 21 is a highlight when it expresses the permanent sovereignty of States regarding the exploration of their resources but, at the same time, balances it by adding the obligation of those same countries not to cause damages to the environment of another country by means of activities under their jurisdiction. When consolidating that principle, the Declaration referred to requires environmental policies to increase and not to decrease the development potential of peripheral countries (SCHRIJVER, 2008, p. 44).

Although the bases of development connected to the environment in Stockholm, the concern with the consolidation of environmental conservation allied to the economy comes up with more strength in the Brundtland Report prepared by the World Commission on Environment and Development. The document was published in 1987 and received the significant title *Our Common Future*. With the proposal of analyzing the long term strategies to achieve development standards that took into account the environment and the cooperation means that could be set forth among under developed and developed countries, the report brings some meaning to what sustainable development would be. The understanding

¹¹ To criticize that thesis, the thoughts of Altvater are exposed: the capitalist industrialization model was visibly not industrially possible; the successful exceptions to that rule would invalidate it. The affluent capitalist society has an orderly side to the North and a disorganized and chaotic side to the South. It does not seem possible to spread all over the world a way of life and work that, first of all, is based on a high consumption of energy and material; that, secondly, has to dispose of efficient and intelligent energy and material transformation systems; and that, on third place, needs to carry out and organize on that basis an European-western life practice, with the correspondent ideological and thought models and regulatory political and social institutions. Industrial systems are not just technical artifacts that can be taken from a place to the other through technology transfer, or they would be the clear result of the procedure modes of the market's invisible hand, a consequence of the international trade developed according to the theorem of cost comparative advantages. ALTVATER, 1995.

of the expression was translated into the following terms: “sustainable development is the one that meets the needs of the present without compromising the possibility of future generations to meet their own needs” (WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, 1991, 46). Wagner Costa Ribeiro (2010, p. 108) comments:

That concept became a reference for several works and different interests. On the one hand, that are the ones who believe that the planet where we live is a unique system that suffers consequences at each change to its components; on the other hand are the ones who believe that the hegemonic model can be adjusted to sustainability. That is the debate: to maintain the conditions that allow for the reproduction of human life on the planet or maintain the system, looking for sustainability.

In order to take the discussion on development and environment ahead, the UN’s General Assembly calls, in the year of 1992, The United Nation’s Conference for the Environment and Development, also known as Rio 92, Eco 92 or Earth Summit.¹² The most important objective of that meeting was to set forth international agreements that would mediate the anthropic actions in the environment. On that purpose, the climate issue was approached, as well as the access and maintenance of biodiversity in the form of international conventions¹³ and the preparation of a declaration of principles, the Declaration of Rio, and of an action plan that aimed at minimizing environmental problems worldwide, the Agenda XXI (RIBEIRO, 2010, p. 108).

The Declaration of Rio similarly embodied itself as a declaration of principles. However, it added some precepts that failed to be addressed in the Conference of Stockholm. The focus goes on the principle of sustainable development (principles 3 e 4), that uses the same significance previously given by the Brundtland Report, but that is, for the first time, part of a highly relevant international instrument for International Environmental Law.

The facts presented hitherto evidence the understanding of the evolution of the concept of development. Abandoning the point of development as economic growth and going to sustainable development,

¹² From the perspective of the mobilization of leaderships, Rio 92 was a success: 178 State-nations took part in it and 114 were even represented by their respective Heads of State, among which we can highlight leaderships from central countries such as George Bush, François Mitterand and John Major, respectively the presidents of the United States and France and the Prime Minister of the UK at that time, and exponents of the periphery such as Fidel Castro. RIBEIRO, 2010. p. 108.

¹³ Framework Convention on Climate Change and Convention on Biological Diversity.

it is possible to understand that some assumptions are taken into account over time. The human being, subdued by the process of industrial economic growth, becomes the center of the development process when considering that “the purpose of development should not be the development of things, but the development of people” (COCOYOC DECLARATION, 1974), and quality of life should be taken into consideration in that logic. In order to reach basic human needs, it was necessary to also consider the conservation of an ecologically balanced environment as an assumption for the quality referred to.

That rationality of development gets more evident when it is promoted to a right in the 1980's. Its strategy starts to consider the respect for human rights and the incorporation of measures for those rights to be promoted and guaranteed. In addition to that, an assessment of most of the instruments and debates in which the United Nations promoted the subject indicated a consensus over some elements that should be part in the concept of development. They would be:

- (a) the realization of the potentialities of the human person in harmony with the community should be seen as the central purpose of development;
- (b) the human person should be regarded as the subject and not the object of the development process;
- (c) development requires the satisfaction of both material and non-material basic needs;
- (d) respect for human rights is fundamental to the development process;
- (e) the human person must be able to participate fully in shaping his/her own reality;
- (f) respect for the principles of equality and non-discrimination is essential; and
- (g) the achievement of a degree of individual and collective self-reliance must be an integral part of the process. (REPORT OF THE SECRETARY-GENERAL, 2013, p. 8).

Those assumptions become concrete in the Declaration on the Right to Development adopted by the UN's General Assembly in 1986. The document defines development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom” (UNITED NATIONS, 1986). When considering the individual not only as an active part and beneficiary in the process, but as the center point of development, the Declaration sees development as an inalienable human right in which all individuals

are able to participate, enjoy and have their fundamental freedoms fully realized (UNITED NATIONS, 1986).

Assert the right to development as a human right assumes the existence of a variety of interpretations on the inter relation between those two rights. An exercise of interpretation carried out from a more critical bias indicates that the right claimed as a human right would be a right to a particular development process. That process, which would have its nature centered around the concepts of equity and justice, with an eye on the fact that most of the population is in an economically vulnerable situation, lacking equitable conditions (SENGUPTA, 2013, p. 69). On the structure of the right to development, Sengupta (2013, p. 69) says:

The right to development requires that considerations of equity and justice should determine the whole structure of development. For example, poverty has to be reduced by empowering the poor and uplifting the poorest regions. The structure of production has to be adjusted to produce these outcomes through development policies.

Having the right to that process means creating the possibility of improving the well-being of the population as a whole. In that case, the concept of well-being would overcome the conventional notions of development as economic growth to be replaced by the creation of capacities that could take advantage of the opportunities from development. Thus, a proposition that favors the indicators of social and human development as a facilitator for the expansion of substantive human freedoms (SENGUPTA, 2013, p. 69).

Development as promotion of freedom, as advocates the economist Amartya Sen, requires the removal of the main sources of deprivation of liberty such as poverty, tyranny, the lack of economic opportunities, the negligence of public services and intolerance or excessive interference by oppressive States. For the author, “the freedoms are not only the main objectives of development, but also its most important means” (SEN, 2010, p. 25), from them the human right to development can be understood as a real right of the individual to participate in the process that involves him/her.

Within that context, it is important to highlight that in addition to the right, the process of development also encompasses obligations. Those obligations are mainly attributed to the States in face of its beneficiaries to

promote the human right to development. One may say that there are two aspects that involve those rights. The first one regards the principle of self-determination of people under the jurisdiction of a State: the state entity has to respect the right of people to freely exercise their economic, cultural and social development without discrimination due to race, religion or color. The second aspect is related to the international cooperation that the States should maintain with other States to promote the realization of the right to development (REPORT OF THE SECRETARY-GENERAL, 2013, p. 13).

However, less attention has been given regarding the obligations arising from the right to development as a right to permanent sovereignty over natural resources. The social cost of those processes is not always totally emphasized to the detriment of some economic gain. One of the costs to be analyzed below is related to those who are displaced due to the development process and how government duties are configured in that situation.

3 PEOPLE DISPLACED BY THE DEVELOPMENT: ethics and responsibility under discussion

The human right to development assumes the participation of individuals in its process as beneficiaries of its outcomes. The social, economic and cultural development of the population becomes a target within the logic of development that disregards only economic growth as an assumption. Then, what happens when that same development, in practice, excludes its beneficiaries from the participation in its process, displacing them due to large resource exploration projects?

The displacement of people by development projects may be visible when it takes place in the center of the main cities, as it may be considered “invisible” (the most concerning side in what regards the responsibilities related to that kind of displacement) when populations that live in the politically peripheral areas are displaced by the construction of dams, mines, channels. Displacing people implies in the deprivation of some of their most fundamental rights and, in a real scenario, what is seen are scattered individuals who are poorly compensated and often explored because of their vulnerability (PENZ; DRYDYK; BOSE, 2011, p. 1).

The analysis of that kind of displacement becomes more complex when seeing that it is not exactly similar to the forced displacement that

originates refugees.¹⁴ That is because it is not likely that those people would cross borders, and the subjective element of fearing persecution does not involve the motivation of development. Despite similarities, it is not completely easy to frame it as an internal displacement¹⁵, once not always can that displacement be configured as forced once resettlement of people may be voluntary and negotiated (PENZ; DRYDYK; BOSE, 2011, p. 3).

An example of that kind of displacement is a result of flooding caused by the construction of power plants. In China, the construction of the *Three Georges* plant displaced about 1.24 million people in the year of 2009 and the government offered assistance to relocate legal residents who lived in the area (BATES, 2002, p. 472). It is important to say that “the process of displacement in China is ruled by the policy of “development resettlement”, which aims at maintaining or improving the standard of living of resettled people” (STEIL; YUEFANG, 2002, p. 10).

Another category of displaced people from development projects encompasses indigenous populations that are forcedly displaced because their territories are taken to explore natural resources. The construction of highways that penetrate tropical forests, the extraction of wood and mining are some examples of activity that disturb and displace a variety of forest groups.

In that context, three broad perspectives can be used to try to justify the induction of the forced displacement due to development: public interest, self-determination and equity. In the first perspective, public interest is analyzed from the cost-benefit point of view. The aimed criterion is conquering net benefits for the population as a whole through those expansionist projects. The secondary negative effects such as the alleged

¹⁴ According to the Convention of the United Nations on the Statute of the Refugees, a refugee is any person who: as a consequence of the events that took place before January 01, 1951 and fearing persecution for race, religion, nationality, social group or political opinion reasons is away from his/her country of origin and who cannot or, due to that fear, does not want to get advantage of the protection of that country, or who, having no nationality is away from the country in which he/she has regular residence due to those events, cannot or, due to the fear referred to, does not want to go back to it. It is worth saying that the additional Protocol to the convention, released in 1967, removed the temporal factor from the definition of refugee. BRAZIL. Decree n. 50.215, dated January 28, 1961 enacts the Convention related to the Statute of Refugees concluded in Geneva on July 28, 1951. Brasília, January 28, 1961.

¹⁵ Internal displaced are people, or groups of people, who are forced or compelled to escape or abandon their homes or their regular places of residence, particularly as a consequence of, or aiming at avoiding, the effects of armed conflicts, situations of generalized violence, violations of human rights or human or *natural disasters* who have not crossed an internationally recognized border of a State. UNITED NATIONS. *Guiding Principles on Internal Displacement*. Available at: <www.unhcr.org>. Accessed on July 10, 2015.

displacement of people are seen as a cost. The main issue that has to be challenged is whether the benefits of the project exceed those expenses (PENZ, 2002, p. 4).

The second point, characterized by self-determination, passes by freedom and control issues. There are two points of view from which that precept can be analyzed: within its more libertarian form, which focuses on the self-determination of individuals, the displacement (of the owner) has an immoral face; inserted into a communal interpretation, the self-determination considers itself violated by the forced banishment of entire communities. Those factors may serve as a barrier against the unbridled adoption of development projects (PENZ, 2002, p. 5).

Thirdly, it is believed that the displacement referred to and due to the development can be justified for providing with the reduction of poverty and inequality. Egalitarianism may be achieved if displacement induced by development favors the least privileged and burdens those who are in a better situation. However, that equity may be violated when the most favored groups receive benefits, while those in state of poverty are harmed exactly because they are being displaced under no kind of compensation (PENZ, 2002, p. 5).

When analyzing those justifications for displacement, it is important to understand that there is some type of ethics behind the development process that has to be present. Otherwise, the justifications are going to be contaminated by unfairness and inequality. The policies and decision making that involve development should follow a standard that aims at minimizing the extension of displacement and mitigating harmful effects for those who suffer them. If they fail to behave so, they end up by violating the rights of individuals in face of the process.

Those rights may be translated by two assumptions. The *right to non-victimization*, in which all have the right to be free of net losses resulting from the displacement caused by development, including undue compensations that reduced life standards. In addition to the *right to the equitable distribution of benefits*, in which all the people displaced by the development projects have the right to equally share the benefits of the development that displaced them. Equity, in that case, gives priority to the reduction of the worst inequalities among victims (PENZ; DRYDYK; BOSE, 2011, p. 185).

Then, the presumed ethics looks for the participation of individuals by empowering them along the entire process. Empowering means the

capacity to mold life the best way possible through active decision making and means to defend income against any kind of resistance. Similarly, it is understood as the space opened for individuals to fight and guarantee their rights. People can be “unempowered” when they are compelled to something. Thus, a major criticism against displacement induced by development is that it ends up by weakening individuals in that sense of “power” and takes advantage of their vulnerability to displace them.

That scenario puts forward the responsibility that also has to be conjugated to the development process. Responsible development should involve two important aspects: responsibility in what regards the pursuit of suitable objectives of development; and the responsibility treating individuals potentially affected by the process (PENZ; DRYDYK; BOSE, 2011, p. 211).

Most of the times the responsibility is going to fall to the States, entities in charge of large development projects, even when foreign investors are involved. The difficulty is found in the invisibility that this kind of displacement causes before other motivations that aggregate more attention. There is little recognition of what those displaced people have borne and keep bearing. The lack of recognition comes together with a lack of protection and weakening of state obligations in front of the development process.

In the face of that context, it is important to emphasize an ethical approach regarding the development process, which should put social justice on a prominent level. The right to permanent sovereignty over natural resources, as well as the right to development cannot be seen as absolute when simply thought of from an economic bias. Placing ethical principles and the rights of displaced people in the center of the process provides a good responsible vision on fair development.

FINAL CONSIDERATIONS

Thinking about development has not always been thinking about social, cultural and economic progress. Having the right to development was an achievement of decolonized countries in the 1950’s that aimed at exploring their own natural resources after being released from foreign exploration. The conception at that time was of economic growth. Development existed once the notion of underdevelopment had been created. And within that context, the countries wished to increase their

GDPs.

O principle of permanent sovereignty over natural resources, consecrated in important documents, opens the door for the right to development to appear. Its characteristics change when it is linked to environmental conservation and the quality of life of individuals. Sustainable development and development as a human right claim for another rationality to settle down. Not the rationality of purely economic gains, but the one that would consider the evolution of the population in an equitable way.

However, development has its consequences. One of them appears as a social cost inside the process: the displaced people. Equity is not present when that cost is not borne by all, but mainly by an already vulnerable portion of the population. There are rights and responsibilities on development and, mainly, there is an ethical behavior that has to be present along the entire process.

In what regards displaced people, it is noticeable that placing their rights as central makes it possible to put the ethical precepts of development into practice. Thus, the right to development can be seen not only from an economic perspective but, mainly, as a factor to facilitate the expansion of human liberties.

REFERENCES

ALTVATER, Elmar. *O Preço da Riqueza*. São Paulo: Editora da Universidade Estadual Paulista, 1995.

BATES, Diane C. Environmental Refugees? Classifying Human Migrations Caused by Environmental Change. *Population and Environment*, vol. 23, nº 5, p. 465-447, 2002.

BRASIL. *Decreto n. 50.215*, de 28 de janeiro de 1961. Promulga a Convenção relativa ao Estatuto dos Refugiados, concluída em Genebra em 28 de julho de 1951. Brasília, 28 de janeiro de 1961.

COMISSÃO MUNDIAL SOBRE MEIO AMBIENTE E DESENVOLVIMENTO. *Nosso Futuro Comum*. Rio de Janeiro: Editora da Fundação Getúlio Vargas, 1991.

COCOYOC DECLARATION. Disponível em: <<http://helsinki.at/projekte/>>

cocoyoc/COCOYOC_DECLARATION_1974.pdf>. Acesso em: 02 jul. 2016.

DALY, Herman E. *Limits to Growth: the economics of sustainable development*. Boston: Beacon Press, 2014.

ESTEVA, Gustavo. Desenvolvimento. In: SACHS, Wolfgang. *Dicionário do Desenvolvimento: guia para o conhecimento como poder*. Rio de Janeiro: Vozes, 2000.

JACKSON, Robert. *Sovereignty: evolution of an idea*. Polity Press: Cambridge, 2007.

KILANGI, Adelardus. *Permanent Sovereignty over Natural Resources General Assembly resolution 1803 (XVII)*. Disponível em: <http://legal.un.org/avl/ha/ga_1803/ga_1803.html>. Acesso em: 15 jun. 2016.

LEGAL INFORMATION INSTITUTE. *Self Determination*. Disponível em: <https://www.law.cornell.edu/wex/self_determination_international_law>. Acesso em: 15 jun. 2016.

NAÇÕES UNIDAS. *Resolution 1803 (XVII)*. Permanent Sovereignty over Natural Resources. The General Assembly. Dez 1962. Disponível em: <<http://www.ohchr.org/Documents/ProfessionalInterest/resources.pdf>>. Acesso em: 15 jun. 2016.

ONU. *Declaration on the Granting of Independence to Colonial Countries and Peoples*. Disponível em: <<http://www.un.org/en/decolonization/declaration.shtml>>. Acesso em: 15 jun. 2016.

PENZ, Peter. Development, displacement and ethics. In: *Forced Migration Review*. Dilemmas of Development Induced Displacement. Issue 12. Janeiro de 2002. Disponível em: <<http://www.fmreview.org>>. Acesso em: 10 jul. 2016.

PENZ, Peter; DRYDYK, Jay; BOSE, Pablo S. *Displacement by Development: ethics, rights and responsibilities*. Cambridge: Cambridge University Press, 2011.

REPORT OF THE SECRETARY-GENERAL. The Emergency of the Right to Development. In: UNITED NATIONS. *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations*

Declaration on the Right to Development. New York, 2013.

RIBEIRO, Wagner Costa. *A Ordem Ambiental Internacional*. São Paulo: Contexto, 2010.

SACHS, Wolfgang. Meio Ambiente. In: SACHS, Wolfgang. *Dicionário do Desenvolvimento: guia para o conhecimento como poder*. Rio de Janeiro: Vozes, 2000.

SCHRJVER, Nico. *Sovereignty Over Natural Resources*. Cambridge: Cambridge University Press, 1997.

SCHRIJVER, Nico. *Development Without Destruction: the UN and global resource management*. Indiana: Indiana University Press, 2010.

SCHRIJVER, Nico. *The Evolution of Sustainable Development in International Law: inception, meaning and status*. Leiden: Martinus Nijhoff Publishers, 2008.

SCHRJVER, Nico. Self-determination of peoples and sovereignty over natural wealth and resources. In: UNITED NATIONS. *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*. New York, 2013. SEN, Amartya. *Development como Liberdade*. São Paulo: Companhia das Letras, 2010.

SENGUPTA, Arjun K. Conceptualizing the Right to Development for the Twenty-first Century. In: UNITED NATIONS. *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*. New York, 2013.

STEIL, Shawn; YUEFANG, Duan. Policies and Practice in Three Georges Resettlement: a field account. *Forced Migration Review*. Dilemmas of Development Induced Displacement. Issue 12. Janeiro de 2002. Disponível em: <<http://www.fmreview.org>>. Acesso em: 20 jul. 2016.

THE GUARDIAN. *Limits to Growth was right*. New research shows we're nearing collapse. 2014. Disponível em: <<http://www.theguardian.com/commentisfree/2014/sep/02/limits-to-growth-was-right-new-research-shows-were-nearing-collapse>>. Acesso em: 20 jul. 2016

UNITED NATIONS. *Declaration on the Right to Development*. 1986.

Disponível em: <<http://www.un.org/documents/ga/res/41/a41r128.htm>>.
Acesso em: 05 jul. 2016.

UNITED NATIONS. *Guiding Principles on Internal Displacement*.
Disponível em: <www.unhcr.org>. Acesso em: 10 jul. 2016.

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