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THE PRINCIPLES OF INTERNATIONAL DEVELOPMENT LAW

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ABSTRACT

This article has as its central objective the analysis of the fundamental principles for the construction of International Development Law. The principles of sovereign equality, duality of norms and assistance are covered with normative force together with this area of International Law, recognized as such principally because of United Nations Resolutions and the Declaration about the Right to Development of 1986. After presenting the historical-evolutionary character of International Development Law the principles mentioned, considering their importance in the affirmation of development as a right and as an International Law of Development are presented in an individualized way.

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INTRODUCTION

Once international relations go beyond diplomatic questions, directly affecting individuals and groups in social, cultural and economic aspects, the idea of determining a world order aimed at international cooperation was established after the Second World War, which is shown by the initiative of the United Nations in the coordination of specific programs for fomenting economic cooperation as well as the Decades of the United Nations for Development. International Development Law (IDL) arose out of this perspective, or rather, it identifies a branch of International Public Law (IPL) associated with the New World Economic Order (NWEO), as well as structuring the principles and legal norms of international character around the right to develop, recognized and guaranteed in the international sphere as a fundamental human right. Thus, from the initiative of the United Nations, a series of resolutions in this direction were passed until the Declaration on the Right to Develop was arrived at in 1986. In this way, the objective of this article is to mark out the principles on which IDL is based as well as its historic evolution, characterizing it as a ramification of International Law but endowed with an identity of its own. So, in the beginning the text is concerned with the historic context that determines the necessity to affirm IDL, to then be able to go on to determine the principles which give it its base, those being the principle of sovereign equality, duality of norms and the principle of assistance.

International Development Law in historical perspective: In an effort to build an international order aimed at the promotion of global welfare and cooperation between countries, the idea for a fundamental order for the promotion of development was arrived at. It arose in 1965, after a meeting in Nice about the adaptation of the United Nations to the current world. We attribute to André Philip the identification of a branch of IPL with the idea of reducing economic and social inequality generating a set of legal rules oriented towards a specific finality: the promotion of social and economic development (MELLO, 1993). This ramification of ID would be "International Development Law", composed of a set of legal norms which could be availed of as much in the realm of IL as they could rules for interpretation with the

finality of reducing the levels of development between the states in the international sphere (PERRONE-MOISÉS, 1998). Celso Mello (1993) doesn't delimit autonomy for IDL, but observes that the same could be taken as a branch of IPL or even as a method of investigation. The difficulty in defining IDL is a direct result of conceptual imprecision of its object, development. It is interesting to consider that this difficulty was present at a time when the idea of development was associated directly with economic growth and economic questions in general, which can be verified with an analysis of the Resolutions of the General Assembly of the United Nations which deal with the issue in the decades of the 60s and 70s when it wasn't all that common to connect development with questions of a social nature. As such, one can note a change in the paradigm in IL which causes the concern to the states and to international society to cease to be only related to security and sovereignty; moderrn IL, where the cause of promotion or development is inserted, is not a set of norms for imposing negative restrictions on sovereign independent states but rather a set of norms for determining the positive obligations of the states in the understanding that they are creating a more cooperative international order. This evolutionary path was called "International Cooperation Law" by Wolfgang Friedmann, determining a fundamental theoretical alteration in the evolution of the international judicial order, which culminates in the recognition of the right to develop. The title "International Cooperation Law" is used by Friedmann as an inaugural conceptual term for determining "International Development Law", which was definitively adopted.

The evolution of the international order from the identification made by Wolfgang Friedmann (1971) happens in the following way: the traditional sphere of international legal relations is recognized, represented by classical International Law in which one highlights actions of negative character (non-intervention, absolute sovereignty, immediate recognition of the principle of self-determination of peoples), that represent peaceful living between States. Such principles guarantee this coexistence exactly because they don't give space for questions related to the social-economic structures of states. But this sphere shows itself to be inefficient when we realize the growing interdependence and the accentuated inequality, principally from the 60s, with the increase in the number of independent countries and consequently of the opposing interests. It is in this scenario where the need arises for norms which establish the positive actions of the states in the direction of perpetuating peaceful coexistence, no longer through abstention but by means of concrete actions with multilateral reach. The most recently independent countries begin to take part in the international forums for decision making, have a place in the United Nations and in other organization and in this way take their questions, problems and necessities into the realm of public awareness. Many of the guarantees established in the developed states weren't even recognized by the non-developed countries; recognition of essential human needs (freedom, well-being) as universal interests and the absence of international regulation of these interests made IL return to the positive norms for cooperation. So, IDL comes about from the resistance of the non-developed countries to the current international rules, markedly influenced and dictated by the developed countries, until then the only participants in the national order, in an effective manner. To Explain: once the non-developed countries ascend in international society after a long and hard process of decolonization accentuated after the Second World War, until then the international legal order was determined by the independent states who were developed and had a voice with the international organizations. The legal order which forms IDL is generated from the Charter of the United Nations, articles 55 and 56, which deal with cooperation, in a general manner, as a form of solving social and economic problems. It is given that the charter could be understood as sufficient to determine to the member states the obligation to cooperate in promoting development, the Commission of International Law of the United Nations established a cooperative imperative as a constitutive fundamental element of IDL from the Commission of International Law of the Organization of the United Nations Annual in 1971, second part. Highlighted in this document is the obligation that all states have to cooperate, not only to maintain international peace and security as a central determination of the United Nations but also to cooperate for the promotion of economic stability and progress as well as to reduce inequality. It determines cooperation for the promotion of development to be an obligation for all members of the UN, it is possible to question the binding nature of this obligation: such tasks are really the positive actions which characterize IDL. Within these actions we might highlight, for example, the determination of the Clause of the Most Favored Nation and the amplitude of the principle on non-discrimination, principles essential to international commerce (GARCIA-AMADOR, 1987). It is right that one branch of Law cannot exist alone. It is necessary that principles related to it are identified with the finality of awarding it some sort of scientific autonomy, not to mention legal and didactic autonomy. In this sense, the principles which founded IDL are recognized, they are not exclusive to it, they are certainly pertinent and they are sufficient to sustain its existence.

The principle of sovereign equality: The idea of equality between nations is consubstantiated from the Peace of Westphalia, in these treaties, formal differences between states were not taken into consideration. The sovereign equality is the essential principle for traditional IL: it has its origin in the 17th century with the end of The Thirty Years War in Europe and the establishment of the Westphalia Order. It is with the Peace Treaties of Westphalia that we see formed the first dictates of a Public Law in Europe recognizing sovereignty and equality as principles that are fundamental to international relations. Since then this sovereign equality has been determined as a fundamental element in international relations, present in the Charter of the United Nations, in the Charter of Economic Rights and Duties of the States, in the Declaration Relative to the Principles of International Law Referring to Friendly Relations and of Cooperation among States conforming with the Charter of the United Nations (A/RES/25/2625), as well as a large number of treaties, conventions, resolutions and other instruments of the international legal order. Sovereign equality is, therefore, the most important base for the whole normative body of IL and only recently began to be questioned. This principle was rationalized by classic internationalists, such as, Puffendorf, Grotius and Vattel. For this end, "what is permitted for one nation is also permitted for all the others and what is not permitted for one is also not permitted for the others" (VATTEL, 2004). Considering that the Westphalia Order establishes the priority of equality between sovereign states, the logical derivation of interpretation of the principle in the light of traditional understanding of IL would be to consider all states as equals in their legal obligations to the international order, without considering economic, social, cultural or

political differences. Along general lines, it can be affirmed that sovereign equality is so essential for the guarantee of stability of international relations that whatever differences in treatment between states can be seen as reflections of undesired influence in a society in which states should be organized horizontally.

Francisco Rezek (2018) understands that politics perpetuates one of the most important Principles of this normative order, being that of non-intervention, which walks hand in hand with the principle of sovereign equality. While in the internal order the relations between the state and the individuals happen out of subordination, in the international legal order the relationship between subjects of IL comes out of actions of coordination always regulated by the intention not to intervene and the recognition of other states as equals. The principle of subordination, however, does not echo in the international order mainly due to the principle of sovereign equality. An essential determiner of the international system, equality among states was initially admitted as judicial/legal equality, with formal character, once it is easily recognized that it is a to be guaranteed in international society, the determination of material equality, or rather the equality of economic, social and cultural conditions. The Declaration on the Principles of International Law Concerning Friendly Relation and Cooperation between States In Conformity with the United Nations (A/RES/25/2625) determines that the states are equal in rights and obligations despite any differences of a social nature. But, it is exactly the inequality of this order that impedes it from reaching absolute equality, even formal legal equality is affected because of accentuated material differences. Celso Mello affirms that not having equal opportunities for states means the competition is not fair because the initial conditions are not identical. We can run many questions through this theme of inequality and the possibilities for suppressing same. One of the difficulties confronted by the non-developed countries in their attempts to get over this can be external policy: not having technical people with the ability to formulate political directives and external actions capable of considering the situation of the state as trumps in negotiation, the negotiators often lose the chance to use, in the area of external relations be they bilateral or multilateral (especially with international organizations) determinations, principles and mitigating factors in situations which actually favor them (MELLO, 1993). Milan Bujalic (1993) confirms this understanding, clarifying that even the arguments of the non-developed countries in conferences related to Elemental questions of IL are negatively affected because of the deficit of participation that these countries have.

The intention is not to disqualify the negotiators or representatives of the non-developed countries; but it is undeniable that often their representative teams (when they have them) in organizations or international meetings have deficiencies in number or unaware of the nuances of the normative apparatus which forms IL in its most varied ramifications. Sovereign equality is invoked by the weaker states when there is a possibility of interference of a stronger state in an internal question, at the same time that inequality is revindicated so these can protect themselves mainly in international relations of an economic nature. The condition is only apparent, once the principle of sovereign equality doesn't exclude the possibility of establishing compensatory inequalities, which have, in the same way that equality has, a defensive role, promoting a revision and questioning of the formalism of the principles of IL. The building of a compensating inequality is interesting for those who defend privileges for the developing countries, but its good advice to highlight that this same inequality should only be used when it reduces the differences of existing facts and not to serve as an escape valve for commitments already taken on in a conscious and sovereign way; only like this can it be established while avoiding injustice.

The principle of duality of norms: The principle of duality of norms is directly related to that of sovereign equality. Even though the classic IL theory persists in understanding that it is absolute equality of states, there is a space for exceptions, which is in the case of questions related to the promotion of development, which should become a common rule, arriving at the traditionalist essence of the international legal order. In this form the unity of a body of rules which in a uniform way directs relationships between states should be substituted for another, of parallel and differentiated rules in the case of the consignee, but identical in degree of demands made: there are rules which regulate the exclusive relations between developed states, others which regulate relations between developed states and non-developed states and still others which regulates dealing between non-developed states (SILVA, 1996). The influence of the non-developed nations in the creation and valuing of this principle has been conspicuous since the pretensions shown in the formulation of the NWEO, a movement whish had amongst its objectives the determination of an economic order that was capable of promoting change in the traditional IL concepts. This principle is justified because of the material inequality between countries and also because of the need to modify the set of rules of classic IL, instituting compensatory differentiation which ends up transforming the theoretical base of the General System of Preferences of the multilateral commerce system. We still see traces of the principle of duality of norms in the dispositions of arts. 18 and 19 of the Charter of Economic Rights and Duties of States (A/RES/29/3281) and in part IV of GATT, when instituting the principle of non-reciprocity in commercial relations between non-developed and developed countries, maintaining reciprocity only when the relationship is between two developed countries.

While the foundation of the principle of assistance is the predictability of cooperative actions coming from the Carter of the United Nations, represented for example by the Declaration of Paris under the ambit of OECD, the duality of norms is founded in a compensating inequality, made concrete through the principal of non-reciprocity and the special and differentiated treatment for non-developed countries in Part IV of GATT. The principle of duality of norms serves as a reference for a new interpretation of the principle of sovereign equality, which is no longer perceived in an absolute manner; an example of this new flexibility is the right to veto extended to those states who hold permanent seats on the United Nations Security Council (Britain, France, Russia, the United States and e China). Considering that the vote of these states has greater weight that the vote of all of the other members of the organization, we can see a violation of the principle of equality (BULL, 2002). Celso Mello (1993) confirms the real interpretation that IL has reserved this principle: there is no reason to disconsider the possibility if recognizing differentiated legal *status* to the states because of their different capacities. If the traditional concept of equality between nations is bent over to submit to the international

legal order in identical conditions, modern understanding establishes that, once differentiated or variable, these conditions there is no reason to establish specific conditions for submission to this order. The non-developed countries are exactly those which get greater advantages because of compensatory inequality when it doesn't violate the international legal order. The revindication is in the sense of recognizing in the inequality the chance to intensify normative dispositions which have as their objective the promotion of development. The recognition of this duality of norms is also the recognition of more active participation of the non-developed countries in the creation of modern IL, which opens space to add up, to the existing rules, exceptions which attend to their interests. It is considered that the duality of norms affirms itself not only as duplicity of norms but also of the content of identical norms which flexibilized in the presence of the need for promotion of development, attend to the interests of the non-developed countries (BEDJAOUI, 1979). If the traditional model of production of norms of IL and of its ramifications (International Economic Law, International Development Law, International Commercial Law) still hold sway over the majority of the developed countries, it is imperious to bring up the possibility of attenuations and exceptions, determined if not by direct participation in its formulation then at least by moral and political pressure of the non-developed countries and the organizations whose task it is to promote development, which makes possible a duality of content of norms (identical norms, with differentiated applications) beyond the normative duality (different norms).

The principle of equality as dealt with by IDL doesn't have the same meaning as the formal principle of equality traced by classic IL. Equality as a guiding principle of IDL is unfolded under the intention of the non-developed countries to participate to an identical degree in the international decision making forums and to defend that there should be a system of unequal norms, basing itself on a duality of rules (SILVA, 1996). This normative evolution given by IDL provokes a new concept of equality, consubstantiated by equal opportunities for each state, which supposes that the international community promotes the adequate mean for reaching this end; this deals with a relativisation of the principle of equality based on positive discrimination, made concrete in the privileges' extended in favor of the non-developed countries, attributing to them something beyond what is extended to developed countries. The initiatives foreseen in the arts. 14 and 18 of the Charter of Economic Rights and Duties of States are examples of this perspective. Taking it that the international concern with the questions referring to development come principally from the decolonization movement in the 1960s, it is convenient to highlight that the old colonies, when becoming independent, acquired a new legal status, evolving from inequality and dependence towards equality and independence, coming to demand different conditions of existence as soon as they came to make part of international society. Paradoxically, it is this formal equality primarily achieved at a legal level which enabled the newly independent states and about to Begin developing to demand an inequality of treatment which allowed them to progress economically and socially in the society in which they had just entered into.

The principle of assistance: For a long time the idea of cooperation between states was restricted to legal and political plans, expressed exclusively through diplomatic relations, without there being, on the part of the states any initiative to take on positive duties in relation to social or economic aspects themselves differentiated in international society. Maria Manuela Silva (1996) highlights the evolution of the international normative order in the sense of promoting the establishment of "duties to be done" destined to the states with the aim of intensifying the idea of effective cooperation; such duties become concrete through recognition of the principle of assistance. What the author understand by assistance is "every operation which intends to concede to a country which is developing an advantage which it could not have acquired by way of commercial transactions, founded on the balance of economic interests[...]" (SILVA, 1996). The operations comprise of a series of actions in function of a determined object: they can be technical, when there is a transfer of knowledge from the developed country to the less developed one, or financial, when there is a direct transfer of monetary resources. Another definition which may be attributed to the principle of assistance is that of the Development Assistance Committee of the OECD which considers assistance as international aid between states, including as well as the transfer of financial resources technical cooperation also (OECD, 2006, p. 50). This principle is also established in the UN charter (arts. 55 and 56), in A/RES/60/1515 of the UN General Assembly and also in article 11 in the Pact of Economic, Social and Cultural Rights. The principle of assistance is relevant for understanding of what IDL came to be once international treaties became concrete emphasizing the necessity for cooperation between states with a view towards the promotion of development. It is the case, for example, of the Declaration of Paris on the Efficiency of Assistance to Development, in 2005, initiative of the OECD which made concrete the principle of assistance and delimited responsibilities and commitments much beyond good intentions of the declarations themselves. There is a fundamental reason for making the Declaration of Paris and the principle of assistance more than just indications of goodwill. The first is to realize that the Declaration supersedes previous agreements about the promotion of development since we depend on a high level of participation between donors and receivers of assistance (technical or financial) for development: ministries and representatives from 91 countries took part, 7 governmental organizations that integrate the *Paris High-Level Forum*, 26 private organizations linked to projects for the promotion of development as well as representatives from civil society and the business sector (OECD, 2006). Going beyond the rhetoric of treaties that determine moral duties, the OECD established, through the Declaration of Paris, 56 commitments of united partnerships in groups of specifically objective action, foreseen in arts. 14, 15, 16, 32 and 43 to 46 of the Declaration, which makes this declaration a significant example of putting ideas on the promotion of development into effect

It is interesting to realize that the principle of assistance does not signify absolutely what is to be only from the financial point of view. That is not how it is confirmed before the concrete initiatives of the Declaration of Paris, in truth, the Declaration presents models of partnerships which have as their objective the improvement of transparency and greater responsibility in the use of resources destined for the promotion of development, and in this way the actions coming from that get closer to the idea of assistance established by John Rawls. According to Rawls' thinking, in societies where there is a need for material, technical, human and organizational resources to build and maintain fair institutions

are societies under pressure and should receive technical and financial help, not only to reduce economic inequality but mainly to build efficient institutions, attributing still this duty of assistance the objective of enabling governments bring human rights into play. Rawls (2004) distances in an explicit way the pretense of the duty of distribution of wealth between societies which could be associated with the principle of assistance and reinforces the understanding that a society can maintain efficient institutions without great financial help and rejects the Idea that countries don't develop because they don't have natural resources or because they are in a situation of "structural dependence", or even because they suffered injustice under the structure of capitalism which condemned them to a non-developmental condition permanently. Even though financial help is a crucial element in the process of promotion of development, the assistance once understood as a simple transfer of resources to governments of countries that are poor doesn't always translate into greater development because if the internal institutions are weak nothing impedes the money being diverted because of corruption or used for dysfunctional objectives like buying of arms. The principle of assistance, considered a duty by Rawls (2004), becomes concrete when the AID enables burdened societies to enable and manage its businesses in a rational way although the helped society remains relatively poor. The assistance should be given in such a way that the well ordered society, which offers the help, wants to promote the main objective of assistance, liberty and equality for societies that were less well off. Moreover, the assistance can be with conditions related to determined commitments assumed by the societies who get the assistance. Rawls (2004) expressly recommends a system of conditionalities in concession for international help for development. In relation to the Paris Declaration, it is highlighted that there is a prevision for management oriented for results and mutual responsibility, which obligates the receivers of assistance to consider the commitments as binding. Therefore, the objective of the duty of assistance as a principle of IDL is not to realize distributive justice, lessening the distance that separates less well-off societies from the affluent societies but rather to return to them the condition of people, meaning, of collective moral agents, enabling them to act politically upon themselves and decide their own future.

Conclusion

IDL is a type of law with a strong programmatic content, projected for the future and organized through changes in international society. There is, considered in the formulation of its ideas, an advanced normatization, in contrast to the normative body of classic IL. The techniques of consulting and negotiating through which the normative content of IDL is organized are the differentiated treatment which is extended to non-developed countries and are examples of this modernity. There is flexibility in the international norms that deal with the promotion of development, the opposite of the normative rigor of classic IL. There is a flexibilization of norms that exists around the promotion of development results from the principles of duality of norms and a rereading of the principle of equality. The non-developed countries, lulled by the blessings of recently achieved independence in the 1960s, as much promote the rethinking of IL through discussion around the possibility of building an IDL as they also formulate proposals directed at the establishment, by way of joint initiative with the UN and NWEO, a scenario in which the determinations of an also new legal order are revealed. Also as a consideration of IDL, is to be well advised in highlighting that the right to development is not effectively the same thing but there is a complementary nature between the terms. While the first is in the realm of IPL which deals with making effective the right to development, this in turn is not the exclusive theme of IL, since it transcends the most varied areas of law, like International Economic Law and the International Law of Human Rights. The right of development can therefore be seen as a "norm of reference" in IL as a whole. It is exactly this norm of reference which serves as a base for the creation of IDL. In considering that the right to develop is clearly recognized in the international legal order and a fundamental human right, there is no reason to not also recognize IDL, since there are specific studies that relate this process of interaction between the legal order and development (the movement "Law and Development"). In this way, the creation and recognition of IDL, with this having to be one more area of Law apt to outline in an efficient way the inequalities and determine horizontal negotiations together with the society of states.

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