

Gábor Szabó, PhD,  
Associate Professor\*

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## UNSUSTAINABLE DEVELOPMENT VERSUS THE HUMAN RIGHT TO SUBSISTENCE

”Judicial decrees may not change the heart, but they can restrain the heartless.”

Martin Luther King

*Summary:* The realization and the acceptance of the fact that most dangerous problems humanity has to face are global, and thus their prevention and mitigation is only possible through coordinated, trans-national efforts, it is still incomplete. The right to development as a human right is a new branch on the ever-growing tree called the human rights system. The development strategies should focus on basic human needs. The scarce resources play a major role in fostering the human rights abuses of today. If the programmes which distinguish human rights from the use of scarce resources prevail, the progress that has hitherto been achieved as regards human rights will be reversed. The Ogoni case can be considered precedent-establishing in the light of the tragic consequences of competition for scarce resources.

*Key words:* development, human rights, right to development, HDI, Ogoni-case

### 1. INTRODUCTION

A typical attempt in the decades following the Second World War by the main institutions of the international community was the declaration of certain principles which clearly tried to lift legal-moral commitments and responsibilities to a supranational, global level. Among the most important of these were the international legal documents based on the universality of human rights, the humanitarian law, and the international environmental law. The first set of rights was, and still is, subject to heavy debates, its universality being questioned by many. The successful protection of human rights was often subjugated to the bipolar world's logic of power, and our post-bipolar era, in spite of some slight developments, has failed to alter this dynamic.

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\* Gábor Szabó is Associate Professor of Department of Legal Philosophy and Social Theory, University of Pécs, Hungary, 48-as tér 1. He specializes in human rights, globalization, ethics.

Starting in the late '60s' of the last century, a growing number of theorists expressed concerns that an ecological crisis was occurring on a global level, and that the solution to this crisis required complex and effectively coordinated efforts. A new awareness of the global ecological crisis inevitably led to a critical reconsideration of the paradigms of human development. The diverse issues surrounding development certainly had an effect on the structures and principles that were intended to safeguard universal human rights.

The first efforts to safeguard universal human rights imposed requirements on individual states, and demanded that the individual's autonomy be protected from government coercion, and that every individual should have the right to participate in public affairs. Such claims had emerged gradually during the 20th century – their main ambition was to guarantee the basic conditions for self-realization and the safety of the individual. While the first set of legal norms sought to prevent infringements of an individual's rights, the second set contained new obligations that concerned solidarity toward others which was also made manifest in active participation. The latest set of legal norms related to universal human rights began to be formulated in the 1980's, and were concerned not only the human rights of individuals but also the collective rights of entire societies. One particular such human right, which will be focused on in this paper, is the right to development. This right, as detailed later, reinterprets efforts to codify universal human rights by emphasizing the coherence of the human rights system and prohibits the application of human rights that conflict with universal principles.

This essay will focus on two elements of this human rights system, and thereby demonstrate the immense contradictions within the current economical and development paradigms. The first is the right to subsistence, which is a collective term,<sup>1</sup> and the second is the human right to development. The aim of this essay is to prove that the current, universally prevailing economical- and development-paradigm fall short of meeting the basic requirements of human rights to subsistence and development, and are thus unsustainable both on the environmental and the social level.

## II. GLOBALIZATION AND HUMAN RIGHTS – CRUCIAL ISSUES

The multi-faceted, complex process termed globalization has had a significant impact on the understanding and realisation of human rights. I have elaborated my arguments in my book "Our Splitting World – The Risks of Globalization to Human Rights".<sup>2</sup> This paper would like to limit the arguments to the more crucial issues.

During the last three or four decades, globalization resulted in the unprecedented intensification of transborder flows (goods, capital, money, people, risks, ideas, fashions, information, consumer habits, and environmental damage). Hence it's originality, for we know of certain historical periods, when some of the aforementioned elements of transborder flows were significant, but history doesn't record any other era when all of these flows were significant.

<sup>1</sup> Henry SHUE, BASIC RIGHTS, SUBSISTENCE, AFFLUENCE AND U.S. FOREIGN POLICY pp. 22–29. (1980).

<sup>2</sup> Gábor SZABÓ, SZÉTSZAKADÓ VILÁGUNK: A GLOBALIZÁCIÓ EMBERI JOGI KOCKÁZATAI. (2010).

Globalization rapidly shaped the points of reference of 7 billion people along with a global set of relations. Human rights were asserted to be universal with the establishment of the UN. A series of protective mechanisms were established that proved most effective within the trans-Atlantic region. The delay between the effective international (global) protection of human rights and the scope and acceleration of transborder flows is glaring. In the realm of international law, human safety became a legal value (often limiting other human rights), and sustainable development became a priority.<sup>3</sup> However, the realisation and acceptance of the fact that the most dangerous problems humanity has to face are global, and thus their prevention and mitigation is only possible through coordinated, trans-national efforts, is still incomplete.

The 1980's can certainly be viewed as the beginning of a neo-conservative counter-revolution. While the "upheaval" of 1968 expressed solidarity with the "third world", criticized the military-industrial complex, and nurtured an immature, idealistic, hence contradictory notion of environmental protection, the neoconservative turn of the '80's was nothing more than the embrace of 19th century laissez-faire capitalism which was used to attack the modern welfare state. This same ideology denied responsibility for the underdevelopment of the third world based on some socio-Darwinist apologetics, in order to ensure a clear conscience for citizens of the over-consuming centre. Since the three main ideas of the neoconservative (neoliberal) canon: liberalization, privatization and deregulation, could not deliver neither sustainable economical results nor consolidated and democratic relations based on human rights either in the majority of the countries on the global south, or the countries in the former Soviet sphere of interest (including Hungary). Neoconservative and neoliberal ideologists tend more and more to see and present this not as the imperative consequence of unsustainable global dynamics, but as a result of cultural characteristics. (I use the terms neoconservative and neoliberal deliberately in turns. The two ideologies may differ in certain aspects, but in regards of the economic philosophy, views on development and underdevelopment of their representatives, they are essentially the same.)

This "explanation" severely damaged their faith in the universality of human rights. The background was (explicitly and implicitly alike) the propagation of the superiority of western civilisation, including the belief that the development programmes of western countries are superior – and this translated into cultural imperialism in the target states. These neoconservative – neoliberal development programmes often delivered undesired, unsustainable and unpleasant economic methods which satisfied exclusively the needs of a narrow elite but disregarded the desired and valued idea of human rights. The Eastern-European political changes provided a brand new terrain for experiments based on the aforementioned neoconservative principles, with sorrowful results: the disappointment caused by economical-political mistakes undermined the importance of human rights and the rule of law, and paved the way for populist, authoritarian, and even fundamentally far-right movements. A copious number of theorists have expressed the view that transformations based on neoliberal economical ideas should not be separated from the simultaneous defence of human rights, i.e. the transformation based on the "Washington-consensus", does not necessarily lead to better human rights conditions.<sup>4</sup>

A determining aspect of globalization is the "infocomm" revolution, offering better chances of intercultural dialogue and the mitigation of isolation. If however the global communications industry exists solely as the transmitter of a homogeneous, americanised culture, it can easily

3 Antal, ÁDÁM, BÖLCSELET, VALLÁS, ÁLLAMI EGYHÁZJOG, pp. 85–91. (2007).

4 See Joseph E. STIGLITZ, A GLOBALIZÁCIÓ ÉS VISSZÁSSÁGAI, pp. 25–38. (2003); László ANDOR, ELTÉVEDT ÉLLOVAS. Siker és kudarc a rendszerváltó gazdaságpolitikában, pp. 161–168. (2010).

displace the appearance of differing opinions, like those of immigrants or native peoples. Fair cooperation between local communities and global, transnational economic agents is, therefore, crucial in safeguarding sustainable development.

The central-peripheric relations took a positive course in China, India and Brazil. The three countries have different development arcs and human rights situations, but all three experienced economical success based on their ability to channel capital – created by questionable efforts. As regards changes in the quality of life in these three countries, the picture is not that bright, with the possible exception of Brazil. The majority of the periphery (Africa) has, however, moved further away from the centre in the last two decades, in spite of possessing a vast majority of resources necessary for the centre.

A significant number of the armed conflicts and gross human rights violations of our era are connected with the rising need to control over the scarce resources. Without a structural change, monocultural economies are like gamblers: if the global market price of the monocultural product is high, the result is prosperity and development opportunities, but if the price is dropping, collapse, failed states and human rights catastrophies can be expected.

The majority of third world countries do not profit from the global free market. Their own products have little chance to compete at their real market price, due to the protectionist policy of the central states, political power is a battleground of minor groups of elites in many of them, the comprador elite – after Wallenstein – interested in the export of resources and raw materials, and the devastating exploitation of the natural environment.<sup>5</sup> We will examine an example of such problems through the Ogoni-case later.

### III. SUBSISTENCE AND DEVELOPMENT AS HUMAN RIGHTS

The human right of subsistence can be interpreted in many ways, so I shall focus on introducing it's more important aspects. The right to subsistence means more than simply having the minimal conditions for survival. One interpretation regards the right to subsistence as the right to food and drinking water, shelter, clothing, basic healthcare, a habitable environment, sovereignty over natural resources, education and fair working conditions. Evidently, sovereignty over natural resources emerges on a community level, the right to a habitable environment both on community and individual level, while the other rights can be considered solely as the right of the individual. A view often expressed until recently in debates about the enforceability of human rights is that this set of rights depends exclusively on the economic capacity of the state. This argument was mainly used to relativise the right of subsistence, in most cases by agents interested in such relativisation (managers of multinational companies, politicians competing for imported natural resources).

It is not too difficult to see however, that the chances of individual and social subsistence within the scope of one country are deeply embedded in international, global casemaps.<sup>6</sup> The last three decades obviously brought to the majority of the world the triumph of modern market

5 Immanuel WALLERSTEIN, *THE MODERN WORLD-SYSTEM*. (1974) (1980).

6 See Wesley T. MILNER, *Economic Globalization and Rights. An Empirical Analysis*, in *GLOBALIZATION AND HUMAN RIGHTS* pp. 90–94. (Alison BRYSK ed. 2002).

principles over social and ecological concerns.<sup>7</sup> The free market without any correction helps the interests of the strong to prevail, not to mention the brutal fact that hypocritical decisions based on the "rules of the market" are established without the local communities' involvement, stripping them on occasion of the basic requirements of life. The development plans that prevail are those that serve market interests, and when applied often impacted adversely on the quality of life of populations in countries with vulnerable economies.

The right to development as a human right is a new branch on the ever-growing tree called the human rights system. It was first declared by a UN General Assembly resolution.

Although not in explicit terms, but from all the paradigms of development policy, the 41/128 (1986) resolution of the UN General Assembly in practice determines the method for securing basic human needs: "(...) Enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms, (...) Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development (...)"<sup>8</sup>

This citation clearly shows how the UN resolution distanced itself from the so-called human rights trade-offs, which assert that the "temporary" suspension of certain basic human rights is necessary to secure economic growth and stimulate inward investment. This antithesis is called the Li-thesis, after the former president of Singapore, a member of the "Four Asian Tigers", states who delivered a positive example.<sup>9</sup>

The connotations of the term "development" made the composers of the resolution cautious, because, as Tarrósy also notes, the colonialist western powers made "development" a term that legitimizes colonisation, binding the forced expansion of cultural patterns with the invasive conquest of territories, as opposed to the local traditions that were labeled "primitive".<sup>10</sup> The term had thus to be stripped of those negative connotations that still lived in the historical memory of the former colonies. Due to the lack of sufficient distance, we can't be sure whether this effort was successful or not.

Denis Goulet, an influential theorist on the ethics of development distinguishes four basic development strategies: (Goulet, 1995)

1. Motivation of economic growth "by any means". The ideology has anglo-saxon roots, can be considered dominant since the '80's, and aims to justify the current trends of globalization.
2. Economic growth in combination with significant state redistribution, aiming for equality and support for research and development. There are many variations of this, the idea itself comes from Scandinavia, where it has been flawlessly successful, but a few Asian and South American countries have experimented with this approach as well. It prioritizes social mobility, and seeks to shatter the privileges of economical elite groups (oligarchies), or feudal/tribal casts. The South American version also aims to lessen dependency on central countries, and is generally a feature of far-left political programmes.

7 See Gábor SCHEIRING, *A nemzetközi fejlesztéspolitika helyzete és feladatai*, in GLOBALIZÁCIÓ ÉS FEJLŐDÉS A FÉLPERIFÉRIÁN: VÁLSÁG ÉS ALTERNATÍVÁK. p. 29. (Boda-Scheiring eds.).

8 [www.un.org/documents/ga/res/41/a41r128.htm](http://www.un.org/documents/ga/res/41/a41r128.htm) (downloaded 11. 2. 2013).

9 See Amartya SEN, *A FEJLŐDÉS, MINT SZABADSÁG* (The Development as Freedom). pp. 36–37. (2003).

10 See István TARRÓSY, *Érzelmek geopolitikája*, in AZ ELKÖTELEZETT TANÍTÓ: TISZTELETKÖTET CSIZMADIA SÁNDOR 65. SZÜLETÉSNAPJÁRA. p. 146. (2012).

3. Development focusing on basic human needs. Can be considered as an "alter-global" development strategy, its main point being the fair social control of the consumption and distribution of resources, especially food and water, with the social support of basic public services such as healthcare or education. This enables poor countries and regions to show significant results in terms of quality of human development index (HDI). Notable examples are Kerala, (India), Sri Lanka, and even hard dictatorships with profound economic disadvantages, such as Eritrea in securing adequate food and access to water to people in the last decade, at least comparing with its neighbours.
4. The most radical alternative to mainstream development policies is development based on local traditions. Many variations are possible, the idea they have in common is that they are sceptical about the achievements of modernization, and prefer traditional methods of production, which often goes hand in hand with a policy of isolation. This programme is mainly employed by leaders of countries lacking mineral (oil) resources in the Islamic world.

Let's examine the contradiction between the development paradigm detailed under 1. (above) and the content of the 41/128 (1986) resolution of the UN General Assembly. The first article of the resolution declares that local communities have the right to sovereignty over the natural resources found on the territory they inhabit. The neoconservative/neoliberal development model that prioritizes economic growth finds it necessary however, in order to "completely utilize" the natural resources, that the local communities deliver the natural resources found on their territory to the influential participants of the global market, even below the market price.

Take as an example one of the basic natural resources: water. Local communities in Ethiopia, Mali, Sudan, Pakistan, and in numerous other countries, are victims of a water management policy that condemns them to total "desiccation". The recipe is the same in every case: Typically foreign companies (based in Saudi Arabia, China, the United Kingdom) buy huge acreages in the aforementioned countries, so they can grow food or cotton for export using local water supplies. In the last few years, companies from Saudi Arabia bought several million hectares of land in Ethiopia (the junta's compliance was easily purchased), to grow food exclusively for their own domestic consumption, watering the crops with the local, scarce water supply and thereby denying the local communities a basic condition of life. Analysing this situation strictly from the neo-conservative/neoliberal approach, we may state, that international investors paid for dry, useless land which they subsequently made fertile. The scale tips toward positive for Ethiopia too. The devil is in the details: the aim of the purchase was not the land itself but the water resources, which are even more scarce in Saudi Arabia than in Ethiopia.<sup>11</sup> Since one third of the African population is forced to exist on territories lacking accessible water, and this situation is becoming worse due to climate change, the medium-term consequences of land purchase methods described above could be catastrophic. The water policy of the Eritrean government in contrast forbids the privatisation of scarce water supplies and thereby reduces the likelihood of significant droughts.

A specific new term has adopted in the theory of development policy and human rights: "hydro-colonialism", signifying a new dependency imposed through the control of water supplies. The leading role of China and a handful of extremely rich Arab countries in this process is striking, which creates a difficult task for the movements that criticise globalisation exclusively on

<sup>11</sup> <http://www.grain.org/article/entires/4516-squeezing-africa-dry-behind-every-land-grab-is-a-water-grab>. (downloaded: 14. 6. 2012).

an anti-capitalist, anti-western basis. The Parliament of European capitalist states, the European Parliament, for example, endorsed a proposal during the sudden increasing of hydro-colonialism on the 25th of November 2010, that sought to impose a respect for human rights and the necessity of preserving social and environmental norms on all international trade agreements.

Summarising the contents of development paradigms, we can state the following.

1. The majority of decision-makers still view development solely as growth in the GDP *per capita*, which can be achieved by economic growth. This one index however does not tell anything about the scale of internal inequalities or quality of life. As the case of Kerala or Sri Lanka shows, prosperous quality of life-indexes can be achieved even with modest GDP-statistics.
2. Other opinions identify development with the sustainable usage of productive capacities (human resources, environment). It's main obstacle is the unequal, unfair transfer of resources, often augmented by protectionism and numerous forms of post-colonial dependency, that conserve or strengthen the oligarchization and/or caste-structure of the affected countries.
3. The approach detailed in 2. has been partially incorporated in the UNDP declaration on sustainable human development.

We need to examine the UNDP declaration in more detail, for this document tries to summarise the main components of sustainable human development.

1. Freedom from famine, suffering, and the deprivation of civil rights, which affirms the need for participation in community decision-making.
2. Cooperation. The basic need of every individual is to belong to someone, to be recognized, to be able to cooperate with others. This can only become part of human rights' regulations through a negative approach, meaning: those international agreements, which deprive individuals or communities of this ability, may not be supported.
3. Fairness. Education is necessary in order to expand human capacities and recognise possibilities. This had already been acknowledged in the 1966 International Covenant on Economic, Social and Cultural Rights as a human right.
4. Sustainability. Only a strategy taking the basic needs of future generations into consideration may be supported.
5. Security. Security of habitat, especially against threats, hazards, oppression, sickness, and immunity from forced and/or immediate desertion of the habitat.

This summary demonstrates a noticeably coherent approach, and also that the economic, social and cultural rights need to be coordinated with the newest generation of human rights. Regrettably, apart from the quoted declaration of the UN General Assembly, a comprehensive agreement on the security of habitat mentioned in 5. which is also applicable within the scope of human rights has not yet been created. Despite the fact that water and mineral resources, labeled scarce resources, are sources of conflicts that create drastic humanitarian, human rights and environmental problems.

#### IV. ECONOMIC GROWTH AND HUMAN DEVELOPMENT

The 1994 UNDP declaration is also significant as a shift from development concepts based on economic growth and GDP *per capita*-indicators. Numerous statistics support, for example, the fact that a significant indicator of human quality of life, life expectancy, does not always clearly correspond with the amount of GDP *per capita*. Let us examine two European countries prior to the 2008 crisis. With a yearly GDP *per capita* of 23.000 \$, the life expectancy in the UK is 75 years for males, and 81 years for female population, while in Greece, having a significantly lower yearly GDP *per capita* of 17.000 \$, the respective numbers are 77 and 83. These statistics depend on many complex factors of course, but they nevertheless tinge the assumption about the relationship between quality of life and the state of development. The officially acknowledged indicator of development became the HDI (human development index), listed through the acknowledgment of various points of view, as formulated by the UNDP.

Arguably, the financial-economic crisis that began in 2008 is a consequence of the neo-liberal emphasis on economic growth. Large masses of people were only able to purchase the results of accelerating production with unsecured loans, wage increases did not correspond to the scale of growth, the population of poor countries could not become solvent, and new markets could not emerge sufficiently rapidly. The examples of China and Brasilia show that growing living standards are followed by severe environmental degradation, and this cannot be cured by the free flow of capital. China, the greatest beneficiary of the mobility of capital also became the country that pollutes the atmosphere the most – the biggest CO<sub>2</sub> emitter.

If we make the basic needs of communities the focus of development, and do so according to the UNDP declaration, on the grounds of environmental sustainability, we can argue against Ibrahim Mayaki on multiple fronts, who, as the former leader of the NEPAD (New Partnership for Africa's Development, a pan-African organisation), sided with the paradigm of development that focuses on growth. As he stated, you can't put the cart before the horse, poverty can not be alleviated without economic growth.<sup>12</sup> If we view poverty, according to Sen, as the lack of possibilities, the picture is far from being that simple.<sup>13</sup>

More oil-exporting countries showed an impressive economic growth over the last decades (Chad, Sudan, Equatorial Guinea), without alleviating the desperate poverty of the majority of their population. According to the aforementioned, we can explain this by saying: economic growth is a necessary, but not sufficient premise for any development which focuses on addressing basic needs. Let us compare a few countries below, based on different aspects in connection with basic needs. The GDP *per capita* follows the name of the country (in brackets), the difference in the respective aspect stands at the end of the row as a multiplier, which can be used between the two percentages shown.<sup>14</sup>

<sup>12</sup> Ibrahim MAYAKI, NEW APPROACH NEEDED. IN NEPAD DIALOGUE. (March 2010).

<sup>13</sup> Sen, *supra* note 10, pp. 144–179.

<sup>14</sup> Source: [www.wikipedia.org/wiki/Országok\\_egy\\_fore\\_juto\\_GDP\\_szerinti\\_listaja](http://www.wikipedia.org/wiki/Országok_egy_fore_juto_GDP_szerinti_listaja) (2010). [www.seano.who.int](http://www.seano.who.int); [www.nationmaster.com](http://www.nationmaster.com).



	Country 1.	GDP/c (USD)	Rate	Country 2.	GDP/c (USD)	Rate	Multiplier
<b>Illiteracy</b>	Sri Lanka	2420	10%	Saudi-Arabia	13 500	38%	3.8x
<b>Clean water</b>	Kerala (India)	1300	96%	Indonesia	2980	88%	0.92x
<b>Safety (crime rate)</b>	Costa Rica	7940	50% compared to Mexico	Mexico	9200	100%	-2x
<b>Famine</b>	Eritrea	400	5%	Djibuti	1300	15%	3x

These statistics are, of course, connected with a variety of factors that require in-depth analysis, but they still comprise an adequate example of how different the strategies for sustainable human development can be, with one thing in common: securing food, water, shelter, security, and literacy serving as the absolute priorities. From the aspect of a theorist, it may be important to investigate how countries that followed different political ideologies could still arrive at similar development strategies. The marxist regime of Kerala, the "left-wing" harsh dictatorship in Eritrea, the christian-socialists of Costa Rica, and the unique traditionalist-buddhist government of Sri Lanka all stand on the same stage in one aspect: development has to be serve the fulfilment of the basic needs of the population.

We should note that the countries of the centre have been quite ambivalent towards these experiments. Eritrea is regarded as one of the countries with the least freedom and democracy by the international monitoring groups. The UN also authorized sanctions against the country, allegedly for supporting an Ethiopian rebellion, although Eritrea is the only state in the region, which – especially on the ground of it's fresh independency – makes meticulous efforts to stay neutral in one of the world's busiest wasp's nests; the horn of Africa. Eritrea neither yielded to American efforts to expand their military influence, nor to the global economic powers which craved its water-resources and potential for monocultural exports, and thus became a "pariah" which still seeks to secure the minimal requirements of life for the population, despite it's isolation, in contrast to neighbouring Ethiopia. Kerala is the "star" of the alter-globe theorists, putting in an incredible performance through the last three decades. While the whole of India became a "triumph" of globalisation without the majority of the population experiencing improvement in quality of life, Kerala's main quality of life indicators soar far above the Indian average. Costa Rica became the "Switzerland of Latin-America", being the country that managed to rope-walk between the regimes of far-right juntas and the adventurous centralisation efforts of rebellious guerillas, and transformed itself into a moderate, consolidated country open to international capital while also remaining committed to human-centric development. Sri Lanka was practically devastated by the tsunami in 2007. Exemplary cooperation between local and international humanitarian and development organisations occurred in the following years, and today Sri Lanka manifests relatively high quality of life statistics, compared to it's GDP *per capita*. These examples support the possibility that development which is environmentally sustainable and focuses on basic needs is a realistic option. The only question is, whether the domestic or outside casemaps are in favor of such strategies or not.

Why is a development model based exclusively on economic growth unsustainable? I would summarize the answer in the following five paragraphs:

1. Because it is based upon endless growth and emission, which is short-termist strategy considering the physical limits of resources.
2. Because scarce resources play a major role in fostering the human rights abuses of today, and the situation can only become worse. If the case of *human rights becomes separated from the neoliberal/neoconservative economic programmes*, there is a chance that the defence of human rights can be connected with the provision of basic needs to maximize development. If however the programmes which distinguish human rights from the use of scarce resources prevail, the progress that has hitherto been achieved as regards human rights will be reversed.
3. Because the current situation in which the world's richest 20% consume 83% of resources is ridiculous – the right to sovereignty over resources cannot be effective under these conditions.
4. Because 70% of the world's population is forced to give up their own resources, while gaining next to nothing in return.
5. Because consumer society is endlessly wasteful, and it's power and commercial hubs spread this model as a unique value throughout the world. The last time the masses questioned the values of consumer society was in 1968. Today, the younger generation not only has failed to revolt against these values but takes them for granted. On top of this, far-right movements have combined their obsession with ancient racial origins with consumables, relics, t-shirts and music. It is quite grotesque to observe the multiplication of companies in Hungary, for example, that derive a portion of their profits from various items emblazoned with supposedly ancient runic writing. These phenomena are perfect examples of the state described by Hardt and Negri: consumer society creates the same world, which it populates,<sup>15</sup> meaning it can create its own order based on his own logic without the consumer masses even noticing it. This is the way for multinational corporations to remain world brands while trampling human rights and severely polluting the environment to maintain their position in global markets without their consumers even being aware of this behaviour. The illustration and synthesis of the topic of this paper is the Ogoni-case, an environmental and humanitarian catastrophe that received no media coverage in our region.

## V. THE NEOLIBERAL/NEOCONSERVATIVE ECONOMIC PROGRAMMES' ECOLOGICAL BLINDNESS

Each of the environmental risks are in strong connection with social diseases. Just one of the very common examples: the scarcity of the wood supply made the tropical forests very vulnerable to the profit oriented global wood market, the countries on which territories have huge tropical forest mainly poor ones. These countries, or rather some of their landlords could benefit from deforestation, but in the long run it would destroy the productivity of the land, causing erosion, natural disasters, and contributing to the climate change. As we stated above in no. 2, the basic needs are included in the human rights framework, and the liveable environment is an essen-

<sup>15</sup> Michael HARDT; Antonio NEGRI, *EMPIRE*, (2002).

tial part of the basic human needs. Many of our contemporary human rights violations are related to the scarce resources, and environmental degradation.

Michael Zürn distinguishes the harms caused by the "over-consumption" and the harms caused by the poverty. These two factors are interconnected, and this fact is very important for environmental ethics. The harms caused by the over-consumption spread around the world, thus its influences affect not only whose consumption level is not sustainable (ozone-hole, greenhouse effect, the contamination of water, land, air). The vast masses of unrecyclable waste is the only local environmental burden which caused by the over-consumption. On the other hand the environmental harms caused by the poverty are the consequences of food shortages and economic defencelessness<sup>16</sup>. The forced urbanization, the mono-cultural agriculture, the animals and plants trafficking as raw materials, the delivery of scarce water supply for the industry (like Coca Cola in India) may cause serious local contamination, disappearing species, bloody struggles for the resources, desertation, dependency on import of food-products. At least the two-third of the world countries could be ranked among the poor countries. The environmental consequences of poverty are obviously much more local, than the harms caused by the over-consumption, but the medium term effects of the former are certainly extensive. Paradoxically the consumption of over-consumers considerably depends on the helplessness of the poor.

The basic goods of the environment has been counted in the theories in favor of the unlimited freedom of markets as freely accessible goods, and often goods with endlessly absorption capacity. Since the using of air, for example hardly could be regulated within territorial borders, the cost-benefit analysis has to face with serious problems. For the effectiveness of cost-benefit analysis the actors in the calculation should be very exact, they should be within a limited circle. The unwanted extern effects, as costs are uncertain also in both in time and in space. How can we involve into the cost-benefit calculation the interests of future generations?

In a free market to preserve the environment often leads to trade-offs. One of the most frequent trade off is the environmental values versus the freedom of property and enterprise. The businessmen want to make profit as soon as possible, as much as possible, if the rules let them to do, they obviously will. Let me remind you the tragedy in Bophal in 1986 (nineteen eighty six), in India, where a US company led chemical industry exploded because the lack of the effective environmental and safety law, and caused horrible human and environmental harm in the region. The globalized economy also lacks for the effective environmental law, so only some of the corporations, companies who have strength advantage in the market could afford to take into consideration the environmental protection aspects seriously. (Procter and Gamble)

The recent decades in the global business sphere has become popular the so called "green market". Some would think it's just another marketing strategy, which builds on the enhancing environmental sensibility and consciousness of the consumers. I also think, that this green business movement leads us astray if we want to handle the problem at its roots. Of course if you do good and it is paying also, it may be ethically blameless. But if we take a look at the environment as a whole, it's conditions hasn't been improved due to this strategy. Why?

The consumers' decisions are determined by their preferences. The clean, healthy environment could be a shelter, which we bought for a lot of money. But does our consumption, which is necessary for this clean, healthy, and comfortable environment leave untouched others' access to the resources, and other's chances for the clean, healthy and comfortable environment? "Do not cause to others such things, which you do not wish for yourself" – states the Golden Rule

<sup>16</sup> See Michael ZÜRN, "Globale Gefährdungen und Internationale Kooperation". In: DER BÜRGER IM STAAT, 1995, p. 45.

of ethics. Does the consumer know which product caused how much environmental harm during its production? Are the costs of environmental damages reflected in a certain product's price? Certainly no, and indeed it is almost impossible, because of the unforeseeable effects. So if we offer as a solution the "polluter pay" principle, we may ease the problem, but the involving the environmental risks into cost-benefit calculation remains unsolvable.

As citizens, we may be able to trade off our short term interests, and our long term interests. But if we would like to take into the consideration our long term interests, we would need correct information, sometimes expertise. If the trade off is between the comfort and a job versus the unforeseeable future, we can bet for the result. It is very hard, but essential work for the academic sphere and the civil society to explain to the ordinary citizen why the biodiversity is so important. In spite of that I still don't think that some kind of eco-dictatorship would be necessary for persuading the people. The fruitful interaction between the local, national and a global levels would be desirable on the basis of a well elaborated environmental law, and on the changes of minds. The environmental problems are so complex, the aim is distant, and there is several concepts of good life competing with each other. There's no other way, but the limiting of the market on global scale, support the local production, and get rid off the fixed idea of the economic growth, and the conception that good life means material well being. It is partially a question of law, but mostly ethical-philosophical one, if you like a new enlightenment, an ecological enlightenment.

As economic actors we have to face the issue of the person's moral integrity. Sometimes the *homo oeconomicus* clashes with the *homo ethicus*. The managers, businessmen, and the employees often decide for the sake of the success in such way, that these decisions could not be acceptable for them as private persons. So the moral integrity of the person is doubtful. If the social and economical background favours the egoism it is hard to be reconciled with the ecological ethics based on harmony with the other living beings, and the environment. Two examples: the manager of a paper plant decides to reduce radically the pollution caused by his factory. The competitors of course oust him from the market without legal obligation concerning them. Our manager is a moral hero, he did more as he ought to be done, but he fell, like Don Quijote. The second example is also about a businessman, who owns a factory. When he has been informed about the government's plans to make the pollution laws harder, he claims that he supports these plans as a private person, but will fight against them with all his influence as a businessman. We should conclude, that the actors in the economy play within the scope, that the law allows them, and the moral heroes in this hard game likely to be losers. But for the effectiveness of the law, there should be a new model of global economy, which is primarily based on the *sustainability*.

## VI. LOCAL RESISTENCE WITH TRAGIC END: THE Ogoni CASE

The Ogoni case can be considered as precedent of tragic consequences of the competition for scarce resources. In 1958, the British-Dutch based Shell Corporation discovered oil fields in Nigeria. In the following 43 years, Shell exploited oil in the Niger delta region to an estimated worth of €35 billion. During this time, the company inflicted an estimated €5.5 billion of environmental damage on the region. While the company made some investments – of €60 million – for social and environmental purposes to the damaged region, this sum cannot be considered

fair either compared to the scale of damages, nor compared to the immense profits pocketed by the company. The Nigerian state oil company was a majority shareholder in a consortium with the Shell Petroleum Development Corporation (SPDC) that exploited the resources in the area.

The oil rigs and oil pipelines were considerably outdated compared to the technical standards accepted in the company's parent states. The company started drilling in a territory inhabited by the Ogonis, a native tribe that largely based its living from traditional fishing and farming. Their lands were irrigated with the waters of the forks and oxbows of the Niger river. The land and water pollution caused by Shell made these sources of income unattainable. Quantities of fish declined considerably, the water became oil-polluted thus destroying the population's water supply. The regular failures in the pipelines made all this a real ecological catastrophe, the explosions and the presence of the oil rigs both resulted in severe air pollution. The scale of the pollution reached a yearly discharge of 12 tons of methane until the '70's and '80's, which resulted in acid rains. A disease called "short sickness" started to occur more significantly among the local population, with headaches, and nerve problems as symptoms. The lethality of the disease also became alarming. And last but not least, the gorgeous tropical landscape became an industrial wasteland instead of turning into a tourist paradise. Nobody has started to evaluate the potential profit to the local community that was lost as a result.

The presence of Shell boosted tremendously the GDP *per capita*, as well as the country's export balance, which was a positive effect in Nigeria, a country suffering from successive military dictatorships. At the same time Shell was in no need of significant local workforce, furthermore by degrading local environment, also made it impossible for much of the local community to sustain themselves. In 1990, at the start of the Ogoni resistance, the UNDP programme on sustainable human development, including paragraph 5. proclaiming the safety of habitat, and also prohibiting – although, as mentioned before, without any legal binding force – economic activity which threatening with forced abandoning the habitat, was not yet in effect. It would though be the key for sustainable development to be included among the list of human rights. Globalization requires a mobile, "flexible" workforce, but even the first generation of human rights granted the individual the right to choose and keep his/her habitat. The role Shell played in the improvement of Nigeria "raw" economic indicators is far outweighed by the damage done through this drastic disruption to the qualities of life of the Niger-delta and its inhabitants.

The first important protest of the Ogonis in 1990 was answered by the military regime which sent a special, rapid deployment police force, which killed 80 people, wounded 200 more, and demolished 495 dwellings. Prior to the protests the Ogoni people by "general acclaim" adopted the Ogoni Bill of Rights, which declared the follows:

- a) Political control of Ogoni affairs by Ogoni people.
- b) The right to the control and use of a fair proportion of OGONI economic resources for Ogoni development.
- c) Adequate and direct representation as of right in all Nigerian national institutions.
- d) The use and development of Ogoni Languages in Ogoni territory.
- e) The full development of Ogoni culture.
- f) The right to religious freedom.
- g) The right to protect the OGONI environment and ecology from further degradation.

We can see that a), b) and g) directly refers to the claim to control the economic development and environmental protection of the Ogoni land. We can consider the document as a claim for

ethnic-cultural autonomy, which later was altered in terms of environmental degradation, corporate accountability and abuses of Nigerian security forces, they were more attractive to international NGO-s.<sup>17</sup>

The poet Ken Saro-Wiwa became the leader of the resistance, organised the Movement for the Survival of the Ogoni People (MOSOP), and decided to take Gandhi's path and keep the struggle peaceful. In a few months, tens of thousands joined the movement, which used mainly non-violent methods, like barricading roads leading to Shell establishments, putting rigs under blockade, and slowing down the building of pipelines. Shell sold 90% of the energy yield abroad, and thus provided minimal assistance to help the country supply its energy needs. In 1993, at the peak of the Ogoni resistance, Niger came under the rule of the tyrant, Abacha, who earned \$3 billion during his 5 years of leadership, by undisclosed means. When, at the end of 1993, the resistance appeared as an organised force against Shell, the company backed down and suspended its activities in the region. As a response, Abacha launched a ruthless retaliation, resulting in the deaths of 2000 people, forcing 80 thousand in emigration. Can there be a connection between the company's maneuvers and Abacha's uncanny rise of earnings? The only thing known is Shell went into negotiations with the dictator about the protection of their establishments, and the arming of a special unit.

Ken Saro-Wiwa got arrested along with eight fellow resistance leaders, and was sentenced to death disregarding any kind of fair, just trial. The sentence was carried out on the 10th of November 1995. Events hasten up from here. The regime was unable to stop the news from spreading, human rights and environmental organisations achieved huge success in publicizing the executions. The thick walls of ignorance start to crumble after the news went global, Shell faced consumer boycotts across Western and Northern Europe, the United States and Canada, which resulted in a decline in share values, and the company had to book a noticeable market loss, even in their parent states. At the end of 1995, the board of directors becomes confused, at first claiming that a multinational company is not able to control how a government profiting from its activities spends the profit in question.<sup>18</sup>

In 1997 the UN Commission on HR appointed a Special Rapporteur on the situation of human rights in Nigeria, who however was not allowed to visit the country until after Abacha's death in 1998.<sup>19</sup>

After a lengthy trial, lasting from 1996, till 2009 in the State of New York, Shell has been found responsible in complicity in the executions of Wiwa and his followers. Numerous documents and statements used during the trial verify how Shell supported Abacha not just financially, but worked together with the regime to enable severe human rights violations. Abacha organised a campaign for the reinstatement of the company, those not signing the petition were carried away by armed forces, and often were raped or tortured. The board of the company knew about this but Abacha's campaign was permitted to continue. According to the court's sentence, the company is obligated to pay compensation to the families of the executed.

17 Bob CLIFFORD, "Globalization and the Social Construction of Human Rights Campaigns". In: Alison BRYSK (ed.), *GLOBALIZATION AND HUMAN RIGHTS*. pp. 133-147. (2002).

18 [http://www.shell.com/home/content/nigeria/about\\_shell/issues/ogoni/ogoni.html](http://www.shell.com/home/content/nigeria/about_shell/issues/ogoni/ogoni.html).

19 Koen DE FEYTER, *HUMAN RIGHTS, SOCIAL JUSTICE IN THE AGE OF MARKET*. p. 158. (2005).

Another sentence was delivered in Africa in 2001, after a more than six-year long procedure, carried out by the African Commission on Human and Peoples' Rights. The sentence finds the government of Nigeria guilty in violating the Ogonis' economic, social rights and right for development. In concrete, Nigeria violated people's right to dispose freely of their wealth and natural resources, and their right to inhabit a satisfactory environment favourable to their development.

The Commission stated; "The Government of Nigeria facilitated the deconstruction of the Ogoniland. Contrary to its Charter obligations and despite such internationally established principles, the Nigerian Government has given the green light to private actors, and the oil companies in particular, to devastatingly affect the well-being of the Ogonis. By any measure of standards, its practice falls short of the minimum conduct expected of governments, and therefore is in violation of Article 21 of the African Charter."<sup>20</sup> However, this trial did not find the company responsible.

According to the Nigerian constitution, the population of Nigeria as a whole enjoys the right to dispose freely of its natural wealth and resource, and the government has a duty to exercise this right in the population's interest. De Feyter emphasises that the ethnic groups that face the environmental and social consequences of the exploitation should also share in the rewards, at the very least to the extent required to satisfy their basic needs.<sup>21</sup>

Another committee for investigating human rights violations, an institution only allowed to file recommendations (without legal binding force), managed to obtain documents that clearly confirm weapons transactions in Nigeria made by Shell. The company states these weapons were only required to arm security services that were tasked with the protection of company infrastructure, and were in no way connected to the armed forces of the regime. Other sources used in the New York trial contradict this, but Shell still referred to the permanent sabotage actions against its rigs and pipelines.

Before the start of the Ogoni resistance, in 1970, a huge oil leak damaged the local environment. Leaks, explosions were regular, but this was the most severe. Shell did not want to start large scale infrastructural development in the region, but used outdated technology instead, and blamed the leaks on – alleged – sabotage by the locals. More trials are still proceeding in Port Harcourt since 1999, started by the aggrieved and certain civil organisations, against the company in regards to this leak.<sup>22</sup>

The main, and widely cited problem is a tension between the human rights obligations of the states and other non-state actors, like MNC-s. The non-state actors were viewed as objects, not subjects, of the international legal system. Historically, corporate activity has been perceived as part of the private sector, liable to "discipline" only by market forces. Hence, the human rights falling outside of notions of the market, imposing obligations for their protection and promotion exclusively on the state. "Tracing a unique nationality of a corporation (...) difficult, if not impossible."<sup>23</sup>

20 African Commission on Human and Peoples' Rights, Report re: Communication no. 155/96 (27 May 2002), par. 58.

21 De FEYTER, *supra* note 20, p. 161.

22 For more details: SZABÓ, G.: "Vállalati visszaélések, avagy az emberi jogok kiiktatása". In: VÁLLALATI KOMMUNIKÁCIÓ A 21.SZÁZAD ELEJÉN. Borgulya, Á.; Deák, Cs. (eds.), (2011) p. 113–119.

23 Eric W. ORTS, "The Legitimacy of Multinational Corporations", in: PROGRESSIVE CORPORATE LAW, Lawrence E. Mitchell ed. (1995), p. 247.

Three different approaches that have been developed to engage corporate attention to human rights.

1. The first is an attempt to regulate by international law corporate activities and actions either positively or negatively. This attempt is still seem to be at the stage of "ought to" than "is", in legal terms *lex ferenda*. The only body which has made significant step forward in that direction is of the International Labour Organization.<sup>24</sup>
2. Some of the multinationals itself have developed a voluntary-self regulation, with the intent to expand the number of involved. That kind of self-regulation is not legal, but ethical, hence lacking the legal binding force, e.g. through ethical codes, codes of conduct, mission-statements, or ethical investment pressure on the shareholders. The corporate-social responsibility movement links to this approach, as part of the economics and business ethics.<sup>25</sup>
3. According to many human rights and environmental law experts the first and second approaches are ineffective. They think that pressure must be put on the MNC-s by legislation and deployed litigation in local courts.<sup>26</sup> Moreover we also have to note, that consumer boycotts, labeling campaigns sometimes more succesful, than the first and second together.

There were, and there are several attempts to regulate by law the multinational corporations. The treaties negotiated under the ILO went the furthest.<sup>27</sup> But in more than forty treaties we hardly can find any references to the environment. The Report of the U. N. High Commissioner on Human Rights and Responsibilities of International Corporations and Related Business Enterprises with Regard to Human Rights (U.N. Doc. E/CN.4/2005/91(Feb. 15, 2005) raises the question; "What Are the Responsibilities of Business with Regard to Human Rights?" The answer of the report is the following;

- a) Principle One: Business should *support* and *respect* the protection of internationally proclaimed human rights.
- b) Principle Two: Business should *make sure they are not complicit* in human rights abuses.

Considering the Ogoni conflict, the Shell obviously violated the Principle Two, but may be responsible for violation of the first as well.

## V. CONCLUSION

The right to development and subsistence, as important parts of the values of human safety, can be embedded into the system of human rights. The interdependent society and world we live in screams for a farseeing and risk-alleviating politics. Symptomatic treatment of problems only leads to new, and more severe, problems. If the costs of catastrophe reparation are paid exclusively out of loans and subsidies to poor countries, the country struck by a disaster gets even more

<sup>24</sup> See e. g. Mzikenge Chriva DANWOOD, "The Long March to Binding Obligations of Transnational Corporations in International Human Rights Law". In: AFRICAN JOURNAL OF HUMAN RIGHTS 22. (2006).

<sup>25</sup> See e. g. Richard T. DE GEORGE, BUSINESS ETHICS (1990), pp. 399-420.

<sup>26</sup> See e. g.: Beth STEPHENS, "Corporate Liability: Enforcing Human Rights Through Domestic Litigation", in: HASTING INTERNATIONAL AND COMPARATIVE LAW REVIEW 401, (2001), p. 24.

<sup>27</sup> Donald K. ANTON; Dinah L. SHELTON, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS. (2011), p. 888.



indebted, becomes more unstable, economically risky, and endangers even the donor countries with refugees, epidemics, or terrorism. The need of a development model focusing on basic human needs, which this essay sought to express is remarkably well summarised by Peter Uvin. Subsistence and guaranteed rights to development are not acts of charity, a *quid-pro-quo* type of bargain, or merely an obligation set by international law. Actually, they are a necessary consequence of the need for us to become global citizens. Humanity is interconnected with labyrinthine threads, whether desired or not.<sup>28</sup> We may be happy about it, or regret it, but one thing is sure: global risks need global risk management and prevention, and development politics can play a key role in this. If development gets on a sustainable course both on the human and the environmental scale, the following, quite well known joke gets stripped of its tragic message:

Two planets meet. The first one asks: "How are you? You do not look quite good."

The second answered "I've got the *Homo sapiens*."

"You poor thing, that's a big problem, but don't worry", the other replied, "I used to have them as well. They won't last long."

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*Dr. sc. Gábor Szabó, izvanredni profesor,  
Katedra političkih znanosti i socijalne teorije,  
Sveučilište u Pečuhu, Republika Mađarska*

## **NEODRŽIV RAZVOJ NASUPROT LJUDSKOG PRAVA NA OPSTANAK**

### **Sažetak**

Nije dovoljno razumjeti i prihvatiti činjenicu da su najopasniji problemi s kojima se čovječanstvo mora suočiti oni globalni i da je stoga njihovo sprječavanje i smanjivanje moguće samo koordiniranim transnacionalnim naporima. Pravo na razvoj kao ljudsko pravo nova je grana u sustavu ljudskih prava. Strategije razvoja stoga treba usmjeriti prema osnovnim ljudskim potrebama. Glavnu ulogu u podupiranju zlorabe ljudskih prava imaju oni izvori kojih je malo, koji su ograničeni. Prevladaju li programi koji odvajaju ljudska prava od iskorištavanja ograničenih izvora, zaustavit će se napredovanje koje je dosad postignuto vezano uz ljudska prava. Slučaj Ogoni možemo smatrati presedanom u kontekstu tragičnih posljedica u utrci za ograničenim izvorima.

*Ključne riječi: razvoj, ljudska prava, pravo na razvoj, indeks ljudskog razvoja, slučaj Ogoni*

*Dr. Gábor Szabó, auserordentlicher Professor,  
Lehrstuhl für Politologie und Sozialtheorie,  
Universität Pécs (Ungarn)*

## **NICHT-NACHHALTIGE ENTWICKLUNG VERSUS MENSCHENRECHT AUF ENTWICKLUNG**

### **Zusammenfassung**

Verständnis und Akzeptierung der Tatsache, dass die meisten Gefahren, mit denen die Menschheit konfrontiert ist, global anwesend sind, sowie dass deren Vorbeugung und Milderung nur durch koordinierte transnationale Bemühungen möglich sind, sind noch immer nicht befriedigend. Das Recht auf Entwicklung stellt als Grundrecht einen neuen Zweig des immer mehr wachsenden Baums der Menschenrechte dar. Die Entwicklungsstrategien sollten auf die für die Existenz des Menschen grundlegenden Bedürfnisse fokussiert werden. Mangelnde Ressourcen spielen aber heute die wichtigste Rolle im Bereich der Missachtung der Menschenrechte. Im Falle, dass die Programme einen Unterschied zwischen den Grundrechten und der Nutzung der für die Existenz des Menschen notwendigen Ressourcen machen, wird der im Bereich der Menschenrechte erlangte Fortschritt einen umgekehrten Effekt haben. Der Fall Ogoni kann als Präzedenzfall im Sinne der tragischen Konsequenzen der Konkurrenz um knappe Ressourcen betrachtet werden.

*Schlagwörter: Entwicklung, die Menschenrechte, Recht auf Entwicklung, HDI, der Ogoni-Fall*