



The Declaration on the Right to Development and Implementation

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The Right to Development (RTD) is a notable, but a controversial third generation human right. It was formally pronounced in a 1986 Declaration passed by the UN General Assembly. The Declaration proclaims that the RTD has both international and national dimensions. Academic controversies surround the concept of the RTD: its status as a human right, the legal position of the right-holders and the duty-bearers, the mechanism of its implementation and a juridical definition of the word 'development'. The main principle underlying the international dimension of the RTD is the duty of cooperation or solidarity. Developing countries want to mainstream the RTD in the current international economic rules and policies. Developed countries are reluctant to concede this demand, arguing that they have no legal obligation to provide assistance to developing countries for their economic development. The RTD is thus a major contentious issue of the international political economy of development. The article focuses on the deliberations of the various Working Groups established by the Commission on Human Rights, to clarify the scope and content of the RTD, identify obstacles to and suggest recommendations for the implementation of the RTD at the national and international levels. It is argued that the Development Compact model, proposed by the UN Independent Expert on the RTD, has failed to bring forth a consensus between developing and developed countries. The article concludes that the Declaration may be feasibly implemented through existing international development frameworks provided the international community is actively and meaningfully committed to strengthen international development cooperation.

Introduction

The Right to Development (RTD) was proclaimed in a 1986 General Assembly Declaration (Res. 128/41) passed by a recorded vote of 146 in favour, 1 against (US), with 8 abstentions (mostly developed countries). Among those who favoured the Declaration include some developed countries: Australia, Canada, France, Netherlands and New Zealand. Since the adoption of the Declaration, efforts for the realisation of the RTD are underway. During the past two decades, there have been considerable efforts in the UN to bring about a policy shift in the development practice. In 1992, the General Assembly (Res. 47/181) requested the Secretary-General, Boutros-Ghali, to prepare an agenda for development. The report submitted by the Secretary-General (Boutros-Ghali, 1995:1), plainly established the fact that the UN has initiated 'a process of re-examination and redefinition of development.'

Against this background, the 1990s witnessed major changes in the human rights and development linkage. This linkage has found expression in the rights-based approach to development, which is increasingly gaining currency as a major policy goal. The main source of this linkage lies in the concept of the RTD that recognises development as a comprehensive economic, social, cultural and political process in which all human rights and fundamental freedoms can be fully realised. Between 1992 and 2001, a series of major international conferences and events were held: environment, human rights, population, social development, women, the 50th anniversary of the Universal Declaration of

Human Rights (UDHR) and racism.¹ All these conferences explicitly made references to the RTD. As compared to the 1980s, during which the RTD was entangled in ideological rivalry, the changes in the 1990s, opened many possibilities for implementing the RTD (Alston, 1991:216).

The Commission on Human Rights (Commission) established several Working Groups (WGs)², the last one being an open-ended WG in order to pave the way for the implementation of the RTD. These WGs have made suggestions for the realisation of the RTD at the national and international levels. While there is a growing literature on academic issues surrounding the concept of the RTD (e.g. Abi-Saab, 1980:159; Alston, 1985:510; Donnelly, 1985:473; Lindroos, 1999; Marks, 2004:137), the issue of implementation of the RTD as discussed by the WGs on the RTD, have received little attention in the research-based analysis. This article focuses on the deliberations of the WGs and examines the work of the Independent Expert (IE) and the Task Force, submitted to the current open-ended WG. The IE and the High Level Task Force were appointed by the Commission in 1998 and 2004 respectively.

The issue of implementation is necessary because firstly, as a General Assembly resolution, the Declaration has no binding value under international law. Secondly, given the controversial position of the RTD, there is a need to resolve the issue of justiciability. The debate over the RTD inside the WGs is politically charged between developing and developed countries. While the contribution of the reports of the IE and the Task Force cannot be undermined, they have not been successful in de-politicising the debate in the WG. The article

is divided in three parts. Part one presents briefly the origin and evolution of the RTD. The second part examines earlier efforts, such as the Global Consultation (1989) and the two WGs (1993 and 1996) for the realisation of the RTD. Part three analyses the current work on the realisation of the RTD. It focuses on the Development Compact model suggested by the IE and the reports of the High Level Task Force. The article concludes that existing international development frameworks appear to be more helpful in the implementation of the Declaration than the development compact model. However, developing countries as well as the international community need to be actively and meaningfully committed to strengthen international development cooperation.

Origin and Evolution of the RTD

The RTD was first pronounced by Keba M'Baye (1972), a Senegalese Jurist on the occasion of an international conference on human rights. The roots of the RTD, however, can be traced back to the decolonisation era of the 1960s, when numerous former colonies emerged as independent states on the international scene as members of the UN. Given their economic dependency on developed countries, the newly independent developing countries wanted a restructuring of the global economic system through a New International Economic Order (NIEO). In the 1970s, the NIEO remained a serious bone of contention between developing and developed countries. Developing countries, through their numerical majority in the General Assembly, successfully managed to pass a Declaration on the establishment of the NIEO (Res. 3201-(S-VI)) and the Charter

of Economic Rights and Duties of States (3281 (XXIX)). Developing countries tried to supplement the agenda of the NIEO by the RTD. The Commission passed two resolutions (Res. 4/1977 and 5/1979) calling the RTD as a human right. On the request of the Commission, the Secretary-General conducted two studies on the RTD as a human right. In 1979, the General Assembly (Res. 34/46) emphasised that the RTD is 'a human right and that equality of opportunity is as much a prerogative of nations as of individual within nations.'

The US has been highly critical of the RTD. The US argues that: first, development comes about not as a matter of legal claim or right but because of economic liberties. Second, economic, social and cultural rights could be realised progressively. Third, the Commission has no jurisdiction over trade and financial matters. Fourth, there should be no 'regulation of State behaviour conform to the RTD or any elements thereof' (Marks, 2004:137). At the academic level, the controversy over the RTD is due to different approaches to the concept of rights and obligations, particularly in the area of human rights. One group, the legal positivists, who take a strictly legal view of human rights, argue that human rights are specific and entail clear obligation on the part of the duty-holders, hence justiciable (Donnelly, 1985:473). This school of thought sees only civil and political rights as human rights. Another group, which take a behavioural approach, believes that justiciability is not necessary for all human rights (Alston, 1985:510; Alston, 1988:3; Abi-Saab, 1980:159). This group favours a much wider scope of obligations as it takes an integrated view of all human rights, including the RTD. The next section analyses the text of the Declaration.

Textual analysis of the Declaration

(A) Unity of human rights

The most striking feature of the Declaration is that it proclaims the unity of all human rights. In article 6, the Declaration says: 'all human rights and fundamental freedoms are indivisible and interdependent.' The article also emphasises that both the first and second generation human rights should be treated at par with each other and their implementation, promotion and protection considered on urgent basis. The unity and interdependence of human rights are pursued since 1957 in various General Assembly resolutions. Reference may be made to the 1969 Declaration on Social Progress and Development (Res. 2542 (XXIV)), which stressed the need for social progress and development to raise the standard of living within the realm of human rights. It was after three years of this declaration that M'baye announced the RTD in 1972. Since then the RTD was pursued more vigorously as after five years, the Commission recognised the RTD as a human right. Thus the RTD phenomenon not only provided an effective forum of discussion on this issue, but also paved the way for integration of human rights with development at the policy level. This change is a significant contribution of the Declaration and the subsequent follow up of the issue in the various WGs on the RTD and global conferences on human rights, most particularly the Vienna Conference, 1993, at which a consensus between developed and developing emerged on the RTD as human right.

During the drafting of the Declaration, developed countries opposed the notion of indivisibility and interdependence of human rights. Although the fact remains that the RTD as a legal concept is still opposed by those countries. The integration of human rights in their development assistance policies (and also of some multilateral donor agencies) clearly explains that they see economic, social and cultural rights no less important than civil and political rights.³ The indivisibility and interdependence of human rights as set out by the Declaration has created a wide scope for human rights lawyers at the domestic level as well as at the international level. While taking all human rights in their totality, an effective role of lawyers can greatly facilitate the process of development through accountability and transparency of the institutions (Ginther, 1992a:55).

(B) Participation

Another important feature of the Declaration is the principle of participation.

The Declaration builds up a comprehensive concept of participation:

1. Every human person and all peoples have a right of participation in the process of development (art. 1(1)).
2. Participation must be active, free and meaningful not only in the process, but also in the outcome of development policies (art. 2(3)).
3. The Declaration shows a special concern for a participatory role of women in the process of development (art.8).

4. Finally, the Declaration requires the states to encourage popular participation in development and in the full realisation of all human rights (art. 8(2)).

The importance of participation has emerged as a result of the failure of development policies in developing countries, in the past. This failure is mainly attributed to the central role of the state's institutions in the implementation of development strategies. In other words, the fruits of development strategies could not effectively and meaningfully trickle down from top to the bottom, i.e. the common people as the beneficiaries, being marginalised and excluded. An important reason for this failure is the absence of accountability of the state's institutions. The right of participation emphasises the involvement of the beneficiaries at all stages—formation, implementation, monitoring and evaluation—of development policies. The principle methodology of this bottom-up approach is the reformation of state's institutions with a view to make them more accountable and their performance more transparent in the process and the outcomes of development. Thus the right of participation breaks the traditional monopoly of the state institutions over the political and economic power to ensure empowerment of the people at large.

However, it is important to note that participation does not aim at rendering the state altogether irrelevant. Being a cardinal principle of good governance, participation requires the state institutions to take on board the people and/or their civil society organisations in the decision-making process vis-à-vis

development policies. The right of participation is increasingly gaining attention in the national and international development policies aimed at a rights-based approach. At the national level, the state must discharge its duty of formulating appropriate national policies in such a manner that ensures genuine participation of the entire population and all individuals. The Declaration requires the state to create an enabling environment for encouraging popular participation in development. Thus the implementation of the Declaration demands that a sustainable democratic constitutional order will lead to the rule of law (Ginther, 1992a:55; 1992b:35). The Declaration suggests that participation at the international level is possible through effective international co-operation.

(C) International Co-operation

The basic tenet of the collective dimension of the RTD (i.e. as a right of the state) is solidarity, which means international co-operation among states can facilitate participation of developing countries in international economic system. Article 3(2) connects the realisation of collective RTD with the duty of co-operation among states. The article makes a reference to the General Assembly resolution on friendly relations (Res. 2625 XXV). The resolution outlines seven principles of friendly relations and co-operation among them, the relevant one here is the duty of states to co-operate with each other in accordance with the UN Charter.

The area of co-operation includes the promotion of economic stability and progress and the universal observance of, and respect for human rights and

fundamental freedoms of all. Article 3(3) provides that such a duty of co-operation should aim at ensuring development and eliminating obstacles to development. The article explains that co-operation shall promote a NIEO. Emphasising continuous efforts for the promotion of development in developing countries, article 4(2) says that 'effective international co-operation is essential' to allow and facilitate a participatory role of developing countries in international economic policies. Bedjaoui (1991:1177) argues that since the international legal order is essentially of an inter-state character, therefore, the RTD would be meaningful in international law only when the RTD of the state is given preponderance over the RTD of the individual. Bedjaoui even believes that confining the RTD to a claim of the individual against her state, would be dangerous. He argues that even if the state wants to realise the RTD of the individual, the current international conditions are not favourable for it (ibid).

(D) The Concept of Development

What is meant by 'development' in the context of the RTD? Arguably, in the present context it could be highlighted with reference to two aspects: economic growth and human development. Economic growth means measurement of national income and output in terms of GNP. Human development is not confined to the rise or the fall of the GNP. It aims at 'expanding the choices people have to lead that they live...and it is thus about much more than economic growth, which is only a means—if a very important one—of enlarging people's choices' (UNDP: website). Bedjaoui (1991:73) would see it as 'the development of all men and the

whole man.’ Thus human development identifies human person as the central subject of development. By linking it with human rights, the RTD adopts a more holistic approach to such a concept of human development. The Declaration defines development ‘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’ (preamble, para 2).

The IE on the RTD in his report has endorsed Sen’s (1999) view on development. According to Sen (1999:3), development is ‘a process of expanding the *real freedom* that people enjoy.’ Sen (1999:19) argues that freedom is necessary for development for two reasons: growth is basically evaluated to find out whether it has enhanced freedoms (*‘evaluative reason’*) and development can be achieved if people have meaningful freedom in economic, social and political spheres of life (*‘effective reason’*). Sen further argues that public policy based on adequate development *process* including economic, social and political institutions enhance capabilities. Public participation in this *process*, on the other hand, should also ‘effectively influence the direction of such public policy’ (ibid).

The Declaration does not suggest a specific model of economic development. Any model of development people may choose, however, should aim at the realisation of the RTD for every individual and all people. The Declaration

suggests that a development policy must be based on the principle of participation and a fair distribution of the benefits resulting therefrom (art. 2(3)). A fair distribution of benefits shall provide equality of opportunity for every one, including women, to basic resources, education, health services, food, housing, employment and help realise human rights for all (art.8). In order to enable the state to create such conditions, the Declaration suggests that the international community has a duty to co-operate among themselves. Orford (2001:127) argues that this concept of development envisioned by the Declaration shows its adaptability to attend to different models of development, which different states have adopted. Alston (1991:216) notes that being 'open ended and indeterminate', the Declaration shows dynamism to adjust with the changing circumstances. Some (Ghai, 1989:3) have argued that the Declaration provides an ethical foundation for human dignity-based development.

Weaknesses of the Declaration

(A) Ambiguous Declaration

The language of the Declaration is vague, imprecise and unclear in some respects. First, it is not clear whether the individual is the subject or the beneficiary of the RTD (Lindroos, 1999:30). 'The individual as a subject' and as a 'beneficiary' create sufficient jurisprudential confusion and vagueness, hence significantly reflect on the problems involved in the justiciability of the RTD. Moreover, the state is not specifically mentioned as a subject of the RTD (Kenig-

Witkowska, 1988:381). The Declaration merely provides that the state has the right and duty to formulate development policies (art. 2(3)).

Second, while the principle of co-operation is one of the main features of the RTD, the language of the Declaration does not couch it in precise terms. A close reading of the Declaration would show that the words used are neither mandatory nor consistent. For example, article 3(2) says that ‘the realisation of the [RTD] *requires full respect* of the principles of international law concerning friendly relations and co-operation...’ With respect to the formulation of international development policies for the realisation of the RTD, article 4(1) says, ‘States have the *duty to take steps*, individually and collectively’. Article 4(2) says that effective international cooperation is essential for supporting developing countries to achieve development. The language of this article is compromising because it avoids identifying the duty-holder (i.e. developed countries) if at all there is a duty. Moreover, it does not explicitly speak about the mandatory nature of development aid provided by developed countries to developing countries. Similarly, the words ‘should co-operate’ are used in article 6(1), for promotion of all human rights without any distinction. The word ‘duty’ is used in articles 3(3) and 4(1). The former says that the states have *the duty to co-operate* with each other in ensuring development and eliminating obstacles to development. The latter says, ‘The states have *the duty to take steps*, individually and collectively, to formulate international development policies with a view to facilitating the full realisation of the [RTD]’. The advocates of the RTD usually refer to articles 55 and 56 of the UN charter as having a general recognition in

international law, but some commentators (Turk, 1988:341) are of the view that 'the formulation of this principle remains rather abstract and permits a relatively wide margin of discretion regarding its practical interpretation and application.'

Third, article 6 requires states to cooperate for observance of all universal human rights, to eliminate obstacles to development resulting from failure to observe civil and political and economic, social and cultural rights, and that human rights are indivisible, interdependent. This, arguably, means a synthesis of all human rights as such, it weakens the individuality of the RTD. As Uvin (2004:43) puts it, 'affirming that all people have the RTD, and that...development consists of and is realised through the realisation of every existing right category of human rights, adds nothing to our knowledge. It adds only verbiage.' Fourth, there is a reference to obstacles to development in some articles (art. 3(3) and 6(3)). It is not clear which kind of obstacles impede development. It is left for the state at the national level and for the states at the international level to decide about the obstacles. This vagueness sufficiently affects the content and scope of the RTD both at the national and international levels.

(B) A Compromise Document

Developed countries strongly opposed the collective dimension of the RTD. There was no consensus in the WG, Commission and the General Assembly. Developing countries wanted to move quickly towards a declaration, whereas developed countries wanted to continue with the debate. In order to break the stalemate, a compromise draft was submitted. Kiwanuka (1988:257) argues that

'if more time had been given to the [WG], the distance between the main opposing groups would have been narrowed.' Kiwanuka maintains that the US changed her overall opposition to one of a compromising posture when she submitted her own draft proposal to the WG, which recognised the RTD as 'the human right of every person, individually or entities established pursuant to the right of association' (ibid). In the wake of some discussion, the proposal was also amended to include 'people', which was omitted in the first draft. The draft further narrowed the controversy when it recognised that 'equality of opportunity is a prerogative both of nations and individuals who make up the nations.' Although six developed countries abstained from voting and only the US voted against the Declaration, this position emerged as a consequence of extensive negotiations and compromise.

(C) Reference to the NIEO

The RTD debate was initiated in early 1970s, a time when the NIEO movement was at its peak (Brandt Commission, 1980). The collective dimension of the RTD is based on the agenda pursued by developing countries under the NIEO movement. The controversy over the collective dimension of the RTD, therefore, assumed a worse confounded posture. The Declaration's (preamble para. 15, art. 3(3)) vague references to the NIEO are due to a compromise between the developed and developing countries because the former was opposed to a direct and explicit reference to the NIEO resolutions. During the drafting process, Pakistan proposed an amendment in the draft declaration, which reflected the

main principles of the NIEO movement. The proposal was rejected for the reason that it was likely to jeopardise the compromise arrived at the draft declaration. However, the amendment was adopted by the General Assembly as a separate resolution no. 41/133, which was opposed by a large number of developed countries including those who favoured the Declaration.

(D) Women's Rights

The Declaration spells out a women's RTD: 'effective measures should be undertaken to ensure that women have an active role in the development process' (art. 8). It also emphasises that states should co-operate to promote all human rights without any distinction as to race, sex, language or religion (art. 6(1)). Other articles make more implicit references to women's role by using words such as 'every human person', 'all people' and 'entire population'. The gender dimensions of the RTD have attracted criticism from feminist lawyers and can be analysed from two perspectives: a feminist critique and the cultural critique. One such feminist critique is carried out by Charlesworth (1999:190). Her first argument is that article 5 of the Declaration does not include discrimination against women as one of the examples of massive and flagrant violation of human rights. Her second argument, relating to women's role in a model of development, appears to be more general. Charlesworth is of the view that any model of development that is based on the RTD must address women's role effectively and meaningfully because economic inequality constitutes the crux of the RTD. Her argument is directed to developing countries only (using the

word 'Third World'). It seems difficult to carve out the real role of women in a human rights-based development programme where human rights face a cultural critique.

Regarding cultural critique, it can be argued that the Declaration, by referring to human rights, pre-supposes the universality of the current international human rights regimes. In reality this is not so. In fact, there is a complex debate over the cultural origin and evolution of the contemporary human rights. Suffice it here to say that in developing countries, the current human rights are seen as the tool of Western imperialism and cultural invasion of many non-Western values (Freeman, 1998:25; Martin, 2005:827). The problem of cultural relativism can pose potential problems for the implementation of the Declaration through international co-operation at the international level.

This section argued that the RTD was raised by developing countries as their claim for distributional equity in the international political economy of development. Despite growing differences between developing and developed countries, the former successfully pushed the RTD in the UN, which resulted in the form of a General Assembly Declaration. A textual analysis of the Declaration shows that political altercations and jurisprudential controversies did play their role in the drafting process of the Declaration. The main contribution of the Declaration, however, is that it categorically proclaims the indivisibility of human rights and a human rights and development linkage. The real challenge that emerged immediately after the adoption of the Declaration was its implementation. The WG, while continuing its work, considered the realisation of

the RTD. The US strongly objected to the issue of the realisation on the ground that the RTD lacked a clear definition and consensus. The WG though continued its work, but ultimately failed. The next section briefly examines the deliberations of a Global Consultation and the two WGs.

Realisation of the RTD

In 1989, the Global Consultation was organised by the Secretary-General (Commission Res. 1989/45). The Consultation was to involve experts from a wide spectrum, having relevant experience in the human rights and development issues, at the national level. The experts were also to include, at the international level, representatives of the UN specialised agencies, regional inter-governmental organisations and interested non-governmental organisations (NGOs), active in the human rights and development work (E/CN.4/1990/9/Rev.1). The aim of the consultation was to 'focus on the fundamental problems posed by the implementation of the [Declaration], the criteria which might be used to identify progress, and mechanisms for evaluating and stimulating such progress.' The participants of the Consultation observed that development strategies should be determined by the peoples concerned about them and should be adapted to their particular conditions and needs. The Consultation remained centred on how to integrate human rights in the UN operational activities (Barsh, 1991:322).

The Consultation outlined basic elements of national development policies for the realisation of the RTD. The crucial role of participation was accentuated. It

was discussed that weak constitution and excessive bureaucratisation leads to the social exclusion of the poor. It also deliberated upon implementation of the RTD in specific perspectives, such as women, indigenous peoples and the extremely poor. At the international level, the Consultation, inter alia, suggested that the UN bodies and specialised agencies should incorporate the RTD in their mandates and appoint a high level committee of Independent Experts with a mandate to make recommendations for the realisation of the RTD.

The consultation scored two important successes (Barsh, 1991:336). First, the link between human rights and development was 'considerably strengthened'. The UNDP's first human development report stressed the link between human freedom and human development. The fourth UN Decade of Development also emphasised that development should enhance the participation of all men and women in economic and political life and protect cultural identities. Second, a visible change was witnessed in the position of developed countries (ibid.). During the General Assembly sixty-eighth session (1990) that considered the report of the Consultation, the RTD resolution was adopted without vote as the US finally decided not to participate in the vote and explained that the report has some 'positive elements.' Germany observed that the consultation was 'a step in the right direction' (ibid).

The Working Groups

The Commission (Res. 1993/22) established one WG in 1993 for a period of three years and another WG (Res. 1996/15) in 1996 for a period of two years.

The purpose of both the groups was the implementation of the RTD. No substantial difference could be found in the work of the two groups. The 1993 WG (reports: 1994/21; 1995/11; 1996/10) observed that the main obstacles at the international level include the negative effects of globalisation, heavy debt-burden, financial conditionalities and decreasing aid flows, have marginalised many developing countries; the inability of the international community, to set rules of institutions for co-operation in the international economic institutions. The 1996 WG (report: 1997/22) recommended a dialogue of all parties, preferably in the ECOSOC; continued coordination between the High Commissioner for Human Rights and the International Financial Institutions (IFIs) so that the latter could mainstream the RTD in their policies. Further suggestions included equitable distribution of global economic gains, with increased participation of developing countries and increase in foreign aid by developed countries (i.e. 0.7 percent GDP). Similarly, the views of the two groups regarding the implementation of the RTD at the national level were also more or less the same. Both urged the states to respect and protect human rights and fundamental freedoms and introduce legal and constitutional changes for this purpose. They also stressed the promotion of good governance, accountability, participatory democracy, sustainable development and the rule of law.

The representatives of various UN agencies, treaty-monitoring bodies, and international organisations appeared before the 1993 WG and submitted their statements regarding mainstreaming of the RTD in development policies. Among them, of significant importance is the statement of the representative from the

Economic Commission for Europe. According to the statement, 'international co-operation for the implementation of the RTD could have three objectives: specify the content of the right; evaluate progress realised and define the conditions for its joint implementation by the actors of development.' The first session of the 1996 group was attended by the ILO and the IMF and observers from the member states of the Commission were some of the key opponents of the RTD, such as Germany, Japan, the UK and the US. The WG was informed that a consultation of the High Commissioner for Human Rights has taken place with the World Bank and many aspects of co-operation have been discussed.

The two WGs made no significant contribution towards the implementation of the RTD. The political rivalry between developing and developed countries continued. The dialogue in these forums, particularly in the Global Consultation, was, however, not altogether fruitless. The issue of human rights and development linkage received more serious consideration. Some Western countries also softened their tone on the RTD. Even in the two WGs, the representatives of the international development community, e.g., the observer of the IMF participated in the deliberations. Thus these forums did provide an opportunity to both the supporters and the opponents of the RTD to express their respective contentions and understand each others' views. It was this continuity of the dialogue that paved the way for further efforts towards the implementation. The next section analyses those efforts and focuses on the reports of the IE and the Task Force.

The current status of implementation: the IE and the Task Force

The Commission by its resolution 1998/72 established an open ended WG, with the mandate to monitor and review progress made in the promotion and implementation of the RTD at the national and international levels and provide recommendations thereon. The mandate also included advice to the Office of the High Commissioner for Human Rights with regard to the implementation of the RTD and suggestions for possible programmes of technical assistance to those countries, which were interested in the promotion and implementation of the RTD. The Commission also appointed an IE with a mandate 'to present to the WG at each of its sessions a study on the current state of progress in the implementation of the [RTD] as a basis for a focused discussion, taking into account, *inter alia*, the deliberations and suggestions of the [WG].' So far (i.e. till February, 2006) the WG has held seven sessions. The IE has submitted six reports, which have been discussed in the sessions of the WG.

Development Compact

The IE has proposed a Development Compact for the implementation of the RTD. His first report argues that the RTD could be implemented through a step-by-step approach to ensure economic growth and respect for human rights at international and national levels (IE First Report, para 67). The proposed Development Compact model is based on an arrangement between developing countries and the international community, including the UN system, bilateral donors and the IFIs, to the effect that the latter will provide required assistance to

the former for implementation of their programmes of adjustment and reform (ibid, para 65). The IE has suggested a step-by-step mechanism to reach an agreement for such a Development Compact (IE Fourth Report). First, the implementation of the RTD would require cooperation for few rights (e.g. the rights to food, education and health) as a high priority objective without ignoring or violating other rights.

Second, an organisation (e.g. Development Assistance Committee (DAC) of the OECD) could be requested to coordinate activities of negotiations for a development programme. Third, developing countries wish to implement the RTD, should request the DAC for a Development Compact. The development programme proposed by such countries, shall cover all aspects of the RTD, i.e. integration of human rights with development. Fourth, a support group of the DAC comprising the IFIs, the UN specialised bodies and major donor countries 'will scrutinise, review and approve the targets and policies of the programme, examine the obligation specified and identify the respective responsibilities of its members in fulfilling those obligations.'

Fifth, developing countries should bring their national laws in line with international human rights instruments. The proposed development programme shall be designed in consultation with civil society. The national human rights commissions and authorities can monitor the implementation of the programme and can adjudicate upon complaints concerning violation of human rights. Sixth, the programme should clearly chalk out different steps, which shall clearly specify reciprocal duties and obligations of the developed and developing

countries (i.e. mutuality of obligations) involved in the exercise. Seventh, a burden sharing approach should be taken regarding debt, financial restructuring, investment and international trade and financial rules. Eighth, the Development Compact would also require setting up a financial facility called the Fund for Financing Development Compacts, to which the members of the DAC shall contribute in the form of 'callable commitments', for which a mechanism may be established with the help of the support group. The IE has also proposed that the rights to food, primary health care and primary education may be considered by a Development Compact, as the minimum indicators of the RTD (IE First Report, para 69).

At the national level, it suggested that the above rights should be justiciable and the individual should be able to claim them from the state in the same manner as other civil and political rights (IE First report). Moreover, poverty eradication policies of state shall be guided by a rights-based approach to development, having elements of participation, transparency, accountability and non-discrimination with a view to enhance capabilities (IE Third report). The IE has stressed that the development programme shall not ignore the importance of economic growth in terms of GDP. However, the realisation of some rights shall not violate other rights (IE Fourth report). As duty-holders of the RTD, human persons, states and international community should have an agreement on the realisation of the RTD and they should 'work together according to a programme and some binding procedures' to respect the agreement; one procedure suggested is the promulgation of the laws (at the national level) that would make

the RTD as a legal right (IE Second report). The study also observes that at the international level, a different procedure or programme can be agreed upon by the duty-holders.

The IE has also carried out country-specific studies, which were of significance to the Development Compact. In this respect, he has analysed the New Partnership for Africa's Development (NEPAD) with the Development Compact. The IE argues that the NEPAD policy framework is very similar to the approach spelt out in the development compact. He further observes that the African Peer Review Mechanism (APRM) as operational institution of the NEPAD enjoys close similarity with the 'mechanism for ensuring the assessment of the 'mutuality of the obligations' between the developing countries and the international community.' However, a major difference is that the NEPAD does not specifically announce linkage with human rights. Moreover, the IE has also compared other UN and IFIs sponsored international development frameworks (CDF, PRSP, and CCA-UNDAF) to the Development Compact. The IE has found these development initiatives consistent with the Development Compact. However, these initiatives do not specifically recognise the link between human rights and development. The IE has also carried out a preliminary study of the impacts of globalisation on the RTD (IE Sixth report). He has argued that the RTD has the potential to inform globalisation to work in a just and equitable manner. In this respect, his argument is that developing countries need to be effectively integrated in the world economy.

Debate in the Working Group

The IE presented the idea of the Development Compact during various sessions of the WG. The IE submitted that though the idea of a Development Compact was not new, but the previous ideas lacked a human rights approach to development (WG: First session). It was also stressed that instead of a new Development Compact, existing development partnerships should be strengthened (WG: Fourth session). The IE also clarified that the monitoring mechanism in the proposed Development Compact would not lead to conditionality for development assistance. In other words, the monitoring body shall not affect participation of developing countries in the decision-making process of a Development Compact (WG: Third session). The IE further suggested that the monitoring mechanism could be made possible through the existing national human rights commissions (WG: Second session).

Delegates also debated over certain other issues such as the mandate, the resources and the necessary expertise and the role of the donor agencies in the monitoring bodies to deal with violation of the RTD. While collaborating with the IE over the international dimension of the RTD, the WG observed: 'There was no State [RTD]. However, there was an obligation to take multilateral actions to ensure the formulation of development policies that were conducive to the enjoyment of the [RTD]' (WG: Second session). Delegates commented on the concept of 'mutuality of obligations' in the proposed Development Compact model and sought clarifications as to its effect on the country ownership of development policies. Some delegates also observed that the 'mutuality of

obligation' should ensure a redress mechanism in case of non-fulfilment of international obligation. It was widely argued that instead of resorting to a Development Compact, existing development frameworks should be strengthened (WG: First session).

A Critical Appraisal of Development Compact

As noted above, the IE is of the view that existing development initiatives share some norms with his proposed Development Compact, but they do not recognise the centrality of human rights and the principles of a rights-based approach. These missing links could be added to the existing development frameworks. One commentator argues that the existing approaches have resulted from 'national and international negotiations, and have taken time to become effective' (Piron, 2004:46). Thus the case for adding an RTD dimension to the existing development frameworks appears to be stronger than the proposed Development Compact. This author believes that there are two problems in adding human rights to the existing development frameworks. First, an international consensus, particularly the willingness of the developed countries, would be very much important to make the existing development approaches consistent with the RTD-Development Compact. It may be pointed out that there is a growing debate about linking human rights to the PRSPs framework. Second, developed countries do not make human rights an objective, rather the eradication of poverty is the main target of their development policies (Piron, 2004:46).

The role of the support group in the proposed Development Compact can prove problematic in the sense that it can adversely affect the country ownership of a RTD-based development programme. Country ownership is one of the key principles of the existing development initiatives such as CDF, PRSP and others. The proposed Development Compact stresses international cooperation as the main tool of realisation of the RTD. However, developing countries claim that they are not satisfied with the global financial and trade institutions. The aid policies of developed countries are still guided by their political interests and historical relations. The Development Compact model does not envisage how the individual, not a party to an agreement for a Development Compact, can make a claim at the international level (Piron, 2004: 57). It is unlikely that the DAC members would be willing to participate in a RTD-Development Compact with those developing countries (if they wish to pursue a RTD-Development Compact), which are seen as posing challenges to the political hegemony of the developed countries. Thus the approach of IE appears to be too simplistic because it does not propose how such cooperation can be practically materialised in a world where political and economic interests are sharply divided.

The proposal of the IE could also be problematic at the national level because with the exception of a few African countries, most of the developing countries, despite having voted in favour of the Declaration, have not, so far, expressly incorporated the RTD in their constitutions as well as development policies. No doubt, developing countries are actively pursuing the RTD at the international

level, demanding of the developed countries an international cooperation for the RTD, but these countries are not making any commitments regarding the national dimension of the RTD. The Development Compact model is of a voluntary nature (WG: Third session). No developing country has shown its willingness to opt for the realisation of the RTD at the national level through a Development Compact. Secondly, the approach of the IE does not take into consideration the values and beliefs system. It is true that a country has to design a RTD-based development policy of its own, keeping in view its social and economic needs. However, the approach of the IE does not recognise the importance of specific values and beliefs system of the people of a country, willing to go for a Development Compact model (Sfeir-Younas, 2004:46). As noted above, it is far from clear that international co-operation, especially from developed countries, for such a development plan would be really possible. Indeed this area is one of considerable tension in the contemporary global environment where development is seen by some as modernisation and westernisation. The issue of cultural relativism in human rights also creates problem in the realisation of human rights. The proposed RTD-Development Compact model is, therefore, more economic than cultural.

The High-level Task Force

The High-level Task Force was established by the Commission resolution 2004/49 on the recommendation of the WG. The mandate of the Task Force was to consider three issues for analysis and recommendation of the WG: obstacles

and challenges to the implementation of the Millennium Development Goals [MDGs] in relation to the [RTD]; social impact assessment in the areas of trade and development at the national and international levels; and, best practices in the implementation of the [RTD]. The Task Force held its first meeting in December, 2004 (2005/WG.18/2) and its second meeting in November, 2005 (2005/WG.18/TF/3). Among the state members of the Commission, who participated in the meetings as observers, were also some key opponents. Experts from international organisations also participated in both the meetings, which were, therefore, held in public.

The second meeting of the Task Force concentrated on the relevance of the MDG No. 8 (i.e. global partnership for development) to the implementation of the RTD. It was also emphasised that states should not put aside their human rights obligations under international instruments when negotiating in other forums, such as those relating to international finance and trade. The value added of the RTD with the global partnership for development was seen in three ways: human rights and the RTD should be explicitly incorporated in the existing partnership for development and their corresponding accountability mechanism; monitoring the implementation of the MDGs through the existing human rights instruments; 'the need to translate abstract human rights principles into practical policy recommendations that could be used by practitioners on the ground.' The Task Force concluded that global partnerships are part of the implementation of the RTD. It also concluded that human rights experts and representatives of the

multilateral trade, development and IFIs can continue to collaborate with each other in order to make practical suggestions for the implementation of the RTD.

The first report of the Task Force was debated upon in the sixth session of the WG. It was generally appreciated. The active participation of the IFIs in the deliberations of the Task Force received appreciation. The conclusion and recommendations of the Task Force are worth appreciation in the sense that they clearly link the MDGs to human rights, including the RTD. The Task Force recommended that the MDGs should be clearly and rigorously mapped to the policy makers and development practitioners against the provisions of the relevant international human rights instruments, which can facilitate implementation of the MDGs (Alston, 2005:755). The Task Force constituted a platform for discussion between experts from human rights and development discourse in order to 'strengthen the global partnership for development by bridging diverse perspectives' (Salomon, 2005:409).

The first meeting of the Task Force was significant for two reasons. First, the World Bank and the IMF remained consistently engaged with the Task Force (Salomon, 2006). Such an engagement was significant because of the enormous influence these organisation have on the implementation of the RTD at the national and international levels. Second, the Task Force agreed that various principles of the Declaration provided guidelines to international development and financial institutions. Those principles are: the unity of all human rights; a holistic view of human rights and development; development as a comprehensive process, which includes poverty reduction; empowerment of people; human

person as the central subject of development; and the role and responsibilities of the state and the international community in the implementation of RTD.

However, the first meeting of the Task Force failed to agree on the rights-based approach as a sufficient mechanism for the implementation of the RTD. Some experts thought this approach is sufficient, but others believed that the RTD 'embraced and exceeded a rights-based approach' (2005/WG.18/2). According to the rights-based approach, the human rights norms and values spelt out down in all international human rights instruments shall form the basis of all development policies and the guidelines for the institutions implementing such policies. This approach considers human rights as legal claims and the individual as right-holders of such claim and the state as the duty-bearer.

Some commentators (Hamm, 2001:1005) argue that 'the [RTD] cannot function as a substitute for a human rights approach to development because of its vagueness, lack of obligation laid down in an international treaty, and lack of consensus.' In contrast, the advocates of the RTD (Osmani, 2005:110), however, argue that the rights-based approach is not sufficient in itself because it relies on the realisation of individual rights. The RTD approach takes note of complementarities of right, trade-offs and international cooperation as a human rights obligation (ibid). However, in the conclusions, the WG recognised the multifaceted nature of the RTD and agreed that a rights-based approach contributes to the realisation of the RTD. Three countries, viz., Australia, Canada and the US did not support the conclusions and recommendations of the Task Force. These countries dissociated themselves from the consensus. Japan

joined the consensus, but expressed reservations over the issues of trade and debt relief.

During the seventh session of the WG, the report of the second meeting of the Task Force was severely criticised by developing countries for its emphasis on the national dimension of the RTD. Delegates from developing countries observed that the report of the Task Force focussed excessively on national rather than international responsibilities of States. Malaysia, in a general statement made on behalf of the Non-Alignment Movement (NAM) and China, 'noted with concern the absence of tangible progress in the Operationalisation of the [RTD]...since the adoption of the Declaration...in 1986.' The Group of African States also joined hands with the NAM and China and expressed its concern over the focus on the national dimension of the RTD in the report of the Task Force. Developed countries, on the other hand, reiterated that the states have the primary responsibility for the respect of all human rights, including the RTD.

Conclusion

The implementation of the Declaration is the subject of an ongoing debate. The reports of the IE, particularly his idea of a Development Compact and of the Task Force have been debated in the WG at length. In the light of the debates, some positive elements could be noted here. The active participation of the IMF, the World Bank, the WTO and other international agencies could be seen as beneficial towards their willingness to mainstream the RTD in their policies. The

proposed model of Development Compact is open ended and the reports of the IE show that other models may be adopted or the existing development frameworks could be attuned to the principles of a RTD-based approach. In this respect, the statement of the representative of the IMF that a PRSP could be linked to human rights, if a country so wishes, is very much significant. The appointment of the IE and the Task Force itself indicates the de-politicisation of the debate. However, the debate over their reports still remained entrenched in political rivalries between developing and developed countries. This means that a real consensus is still lacking.⁴ Neither the proposal of a Development Compact is recognised nor the recommendations of the Task Force, are agreed upon by all members of the WG.

The idea of integrating human rights into existing development initiatives, such as the PRSPs seems viable for the reasons: firstly, such initiatives have already become effective after negotiations between countries and the IFIs. Secondly, it will put the responsibility squarely on the shoulders of developing countries in the manner as enunciated in the Declaration, which provides that the primary responsibility of the RTD lies with the state. Consequently, developing countries will be obliged to make and fulfil their political commitment, which is otherwise missing. Thirdly, in addition to state's responsibility, the international community still could not be absolved of its obligation of co-operation. International cooperation—the main bone of contention in the entire RTD debate—also requires a political commitment on the part of the international community, particularly developed countries, which is also missing. The main reason that

these political altercations will continue is that the international community, particularly developed nations, still does not appear to accept the notion of international co-operation as a legal obligation.

¹ These conferences were: environment and development (Rio de Janeiro, Brazil, 1992), Human Rights (Vienna, Austria, 1993), population and development (Cairo, Egypt, 1994), social development (Copenhagen, Denmark, 1995), women (Beijing, China, 1995) and celebration of 50th anniversary of UDHR (1998), World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001).

² The first Working Group was established in 1981; it proposed a draft declaration. The second Working Group was established in 1993, for a period of three years. Another Working Group called an Inter-governmental Group of Experts was established in 1996 for a period of two years. The current open ended Working Group was created in 1998.

³ Australia, Denmark, Germany, Norway, Sweden and the UK pursue human rights-based development assistance programmes. UNDP also follows a similar approach.

⁴ In her comments on the conclusions adopted by the OEWG at its third session, the US appreciated the efforts of the Working Group, but observed: 'The US has fundamental differences with the text's conclusions and recommendations and therefore must dissociate itself with the same. We note that there is still no consensus on the precise meaning of the [RTD].'

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