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**Research Report**

## The international discourse on the right to development and the need to reinvigorate its implementation

Research Paper, No. 149

**Provided in Cooperation with:**

South Centre, Geneva

*Suggested Citation:* Li, Yuefen; Terán, Daniel Uribe; Danish (2022) : The international discourse on the right to development and the need to reinvigorate its implementation, Research Paper, No. 149, South Centre, Geneva

This Version is available at:

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149

Research  
Paper

8 March 2022

# THE INTERNATIONAL DISCOURSE ON THE RIGHT TO DEVELOPMENT AND THE NEED TO REINVIGORATE ITS IMPLEMENTATION

Yuefen Li, Daniel Uribe and Danish



 **SOUTH  
CENTRE**





# RESEARCH PAPER

149

## THE INTERNATIONAL DISCOURSE ON THE RIGHT TO DEVELOPMENT AND THE NEED TO REINVIGORATE ITS IMPLEMENTATION<sup>1</sup>

Yuefen Li, Daniel Uribe and Danish<sup>2</sup>

**SOUTH CENTRE**

**8 MARCH 2022**

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<sup>1</sup> This paper has been prepared at the request of the Non-Aligned Movement (NAM) in commemoration of the 35<sup>th</sup> anniversary of the United Nations Declaration on the Right to Development.

<sup>2</sup> Yuefen Li is Senior Adviser on South-South Cooperation and Development Finance, Daniel Uribe is Lead Programme Officer and Danish is Programme Officer of the Sustainable Development and Climate Change Programme (SDCC), of the South Centre. The authors wish to thank Feng Jinfeng for her valuable research assistance.



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## ABSTRACT

The world is currently at an ebb for realizing the Right to Development (RtD). Weakening of multilateralism, de-globalization, the scars left by the COVID-19 pandemic, misinterpretation and dilution of the RtD, and inertia to reform international governance are among the multitude of reasons for this phenomenon. However, the need for a better, more inclusive and greener recovery, and the efforts necessary to attain the 2030 Agenda, have provided the international community an opportunity to reinvigorate the realization of the RtD. These efforts have shown the great relevance of RtD to promote a people-centred and fairer development process and the need for an international enabling environment in order to promote the kind of development we want.

This paper reviews the history of international discourse on RtD including major milestones, main divisive issues between the global South and the North, the evolution of voting patterns on intergovernmental outcomes, existing legal and political issues currently being discussed, the various mechanisms on the RtD, and recommendations on the way forward to revitalize the implementation of RtD at the 35<sup>th</sup> anniversary of the Declaration on Right to Development.

*Le monde se trouve actuellement dans une situation difficile concernant la mise en œuvre du droit au développement, qui s'explique par une multitude de raisons, parmi lesquelles l'affaiblissement du multilatéralisme, la démondialisation, les plaies laissées par la pandémie de COVID-19, la mauvaise interprétation qui est faite de ce droit et les tentatives visant à l'affaiblir, ainsi que l'incapacité à réformer la gouvernance internationale. Toutefois, la nécessité d'une reprise plus forte, plus inclusive et respectueuse de l'environnement, et les enjeux liés à la réalisation des objectifs fixés dans le programme de développement durable à l'horizon 2030, ont conduit la communauté internationale à imprimer un nouvel élan. Les efforts déployés ont montré la grande pertinence du droit au développement pour promouvoir un processus de développement plus équitable et axé sur l'être humain, ainsi que la nécessité d'un environnement international favorable afin de promouvoir le type de développement que nous souhaitons.*

*Le présent document passe en revue l'évolution du discours international sur le droit au développement, y compris les principales étapes qui ont conduit à son adoption, les principaux sujets de discorde entre le Sud et le Nord, l'évolution des votes sur les textes issus des processus intergouvernementaux, les questions juridiques et politiques actuellement en discussion, les différents mécanismes qui l'accompagnent, et les recommandations sur la voie à suivre pour renforcer sa mise en œuvre à l'occasion du 35<sup>e</sup> anniversaire de la Déclaration sur le droit au développement.*

*El mundo no está atravesando actualmente su mejor momento en lo que respecta a la realización del derecho al desarrollo. El debilitamiento del multilateralismo, la desglobalización, las cicatrices que ha dejado la pandemia de COVID-19, las malinterpretaciones y la dilución del derecho al desarrollo, y la inercia de reformar la gobernanza internacional figuran entre las múltiples razones de este fenómeno. Sin embargo, la necesidad de una recuperación que sea mejor, más inclusiva y más ecológica, y los esfuerzos necesarios para conseguir la Agenda 2030 han brindado a la comunidad internacional la oportunidad de estimular la realización del derecho al desarrollo. Estos esfuerzos han demostrado la gran relevancia que tiene el derecho al desarrollo para promover un proceso de desarrollo más justo y centrado en las personas, y la necesidad de un entorno internacional propicio a fin de fomentar la clase de desarrollo que queremos.*



*En este documento se examina la historia del discurso internacional sobre el derecho al desarrollo, que incluye los grandes hitos, las principales cuestiones divisivas entre el Sur Global y el Norte Global, la evolución de los patrones de votación en los resultados intergubernamentales, las cuestiones jurídicas y políticas que se están debatiendo actualmente, los diversos mecanismos en materia de derecho al desarrollo y recomendaciones sobre la manera de avanzar para revitalizar la realización del derecho al desarrollo en el 35.º aniversario de la Declaración sobre el Derecho al Desarrollo.*

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ANNEX



## I. INTRODUCTION

The United Nations Declaration on the Right to Development (DRtD) recently marked the 35<sup>th</sup> anniversary of its adoption on 4 December 1986, on the basis of a proposal from the Non-Aligned Movement (NAM). It establishes “development” as a human right, including both individual and collective rights. Yet, its concept of “development” is much broader than the traditional model of economic development measured by gross domestic product (GDP) growth.<sup>3</sup> Instead, development is framed as a process with economic, social, cultural and political dimensions and with individuals and peoples both participating in and contributing to this process and also enjoying fair distribution of the benefits of development.<sup>4</sup>

For the realization of this right, the Declaration clearly indicates in Articles 3.3, 4 and 10 that States have the primary responsibility but also that the international community has the shared responsibility for its realization. The implication is that there are gaps, imbalances and inequities in the international order that constitute obstacles to development that need to be addressed. This reflects the debate prior to the adoption of DRtD about the New International Economic Order, which highlighted that the global markets for commodities, services, capital, technology and labour were characterized by structural inequalities in favour of developed countries. In addition, the concentration of economic and political power in the most industrialized countries shaped the international division of labour, international trade and financial framework and decisively influenced the functioning of the Bretton Woods institutions.

The pattern of countries at the centre of the international economic order benefitting at the expense of the periphery countries was a well-recognized phenomenon in those days. The Declaration of 1986 therefore recognizes that development requires a favourable economic environment at the international level (Article 10) and this has remained the basis for the right to development (RtD).

Since 1966, the RtD has gone through an evolution, from being a new concept to being well acknowledged and then being routinely included in the United Nations resolutions and outcomes of other international conferences and fora. However, controversies, highly politicalized international discourse, misinterpretations and even distortions about RtD have been persistent since the adoption of the Declaration until now. Its unanimous reaffirmation at the 1993 Vienna World Conference on Human Rights marked the start of its actual implementation even though the progress in the realization of development as a human right has been slow and uneven. The RtD has been debated and subjected to misconceptions and politicizing for decades. Even though efforts have been made in realizing the RtD, its objectives are far from being achieved.

The COVID-19 pandemic, which has entered its third year as of date, has led to a massive reversal in the effective realization of RtD. The economic, social and human cost of the pandemic has been significant. However, the suffering of the pandemic has not been equally shared. The poor and the vulnerable have suffered the most, while poverty, hunger, and inequality between and within countries have increased. There are wide disparities in recovery prospects across countries, with uneven distribution of vaccines and lifesaving drugs worsening the situation.

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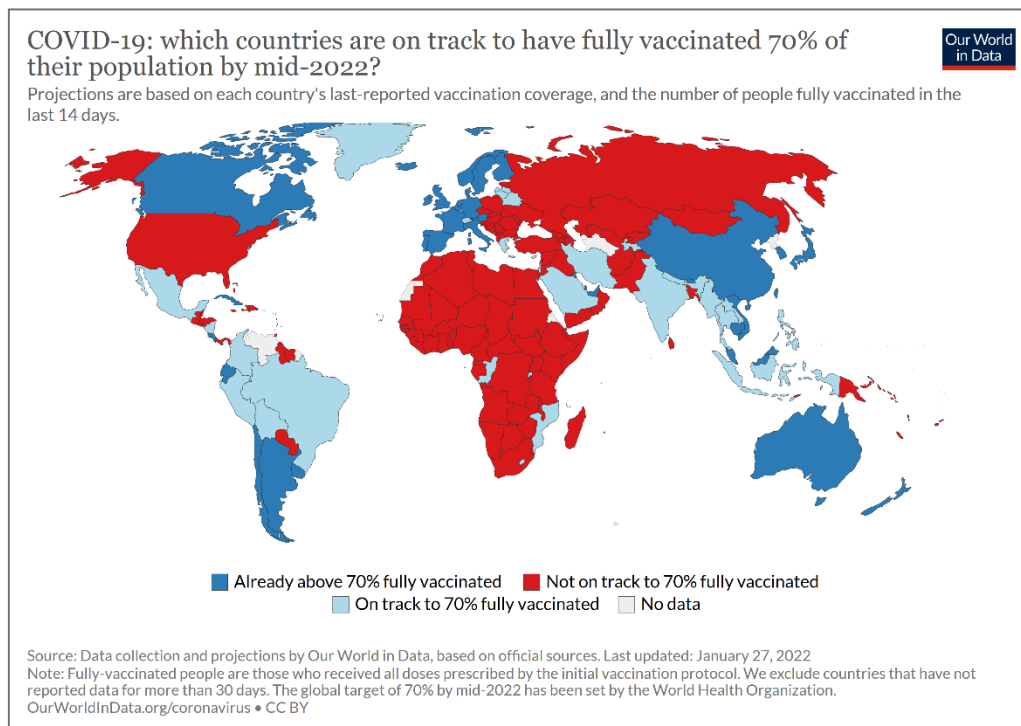
<sup>3</sup> Nico Schrijver, “A new Convention on the human right to development: Putting the cart before the horse?”, *Netherlands Quarterly of Human Rights*, vol. 38, No. 2 (2020).

<sup>4</sup> United Nations, General Assembly, Declaration on the Right to Development, 4 December 1986, A/41/128, Article 2.

While the GDP per capita of the developed economies is projected to almost fully recover by 2023 relative to pre-pandemic projections, a full economic recovery (measured in terms of GDP per capita) will remain elusive for developing countries in the near term.<sup>5</sup> Many developing countries have been confronted with a decline in trade, drastically shrunken fiscal space and an unprecedented level of public debt with 60% of low-income countries being in debt distress or at high risks of debt distress.

As of now, only 4 percent of the population of low-income countries are fully vaccinated versus 70 percent in high-income countries<sup>6</sup> (see Figure 1). While people in many developed countries are having the third or fourth dose of vaccine, many in the poorest countries are still waiting for their first dose.

Figure 1



The COVID-19 pandemic made evident deep divergences and structural problems in international governance and has shown that it is crucial to implement and fully realize the RtD. The pandemic has proved, in effect, that the right to development is still far from being well implemented and that the progress made in the past 35 years since the adoption of the Declaration on RtD has not lived up to expectations. The fiscal support divide, monetary stimulus divide, vaccine divide and digital divide are becoming more acute between developed and developing countries and also within countries. The rising levels of inequality globally has highlighted that the benefit of economic development has not been equitably enjoyed across and within countries.<sup>7</sup>

This paper is divided into 6 sections. Following the introduction, Section II reviews how RtD developed from a new concept to being well-recognized and highlights important milestones in this process. Section III examines the North-South divide on the Right to Development. It

<sup>5</sup> United Nations, Department of Economic and Social Affairs, *World Economic Situation and Prospects 2022*.

<sup>6</sup> Gita Gopinath, "A Disrupted Global Recovery", IMF Blog, 25 January 2022. Available from <https://blogs.imf.org/2022/01/25/a-disrupted-global-recovery>.

<sup>7</sup> United Nations, "Rising inequality affecting more than two-thirds of the globe, but it's not inevitable: new UN report", *UN News*, 21 January 2020. Available from <https://news.un.org/en/story/2020/01/1055681>.

lists a number of important misinterpretations and misconstrued concepts of the RtD and how the original intention for promoting an enabling international environment for development has been diluted or ignored. Section IV reviews the context and discussions surrounding the main legal and political issues being raised on the implementation of the RtD. Section V gives an account of various United Nations mechanisms on this right, followed by Section VI on conclusions and recommendations.

## II. RIGHT TO DEVELOPMENT IS WELL RECOGNIZED AND UNIVERSALLY ENDORSED

When the United Nations (UN) General Assembly (GA) adopted the Declaration on the Right to Development on 4 December 1986, it was a clear endorsement of the right to development as “an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized”<sup>8</sup>.

The RtD is essentially grounded on the UN Charter<sup>9</sup> and the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols)<sup>10</sup>.

Early practice at the UN considered ‘development’ as constituting ‘economic development’ and ‘social development’ while emphasizing their interrelatedness. For instance, in 1952 the UN General Assembly had expressed the view that “action to promote social development and technical assistance in social matters should go hand in hand with action to promote economic development and technical assistance in economic matters”<sup>11</sup>.

Similarly, the UN Economic and Social Council (ECOSOC) laid down the following principle on the matter of assistance to governments: “The inter-related character of economic and social factors and the benefits to social progress resulting from a balanced expansion of world economy require that economic development and social development go hand-in-hand with a view to improving standards of living;...”<sup>12</sup>

Significantly, subsequent UN resolutions brought together economic and social development and asserted their interaction with human rights. For instance, by 1957, the UN General Assembly expressed the view “that a balanced and integrated economic and social development would contribute towards the promotion and maintenance of peace and security, social progress and better standards of living, and the observance of and respect for human rights and fundamental freedoms.”<sup>13</sup>

As Subedi notes, “The momentum to articulate and promote the right to development of States gathered pace within the United Nations in the 1950s and 1960s in the context of both the right of self-determination and the developmental needs of States without outside interference. Resolutions 1710 and 1715 (XVI), adopted by the General Assembly in the early 1960s, proclaimed the first United Nations Development Decade. The 1962 United Nations General Assembly resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources required sovereignty to be exercised in the interest of a State’s ‘national development and of the well-being of the people of the State’”<sup>14</sup>.

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<sup>8</sup> Article 1 of the DRtD.

<sup>9</sup> United Nations Charter, Article 55.

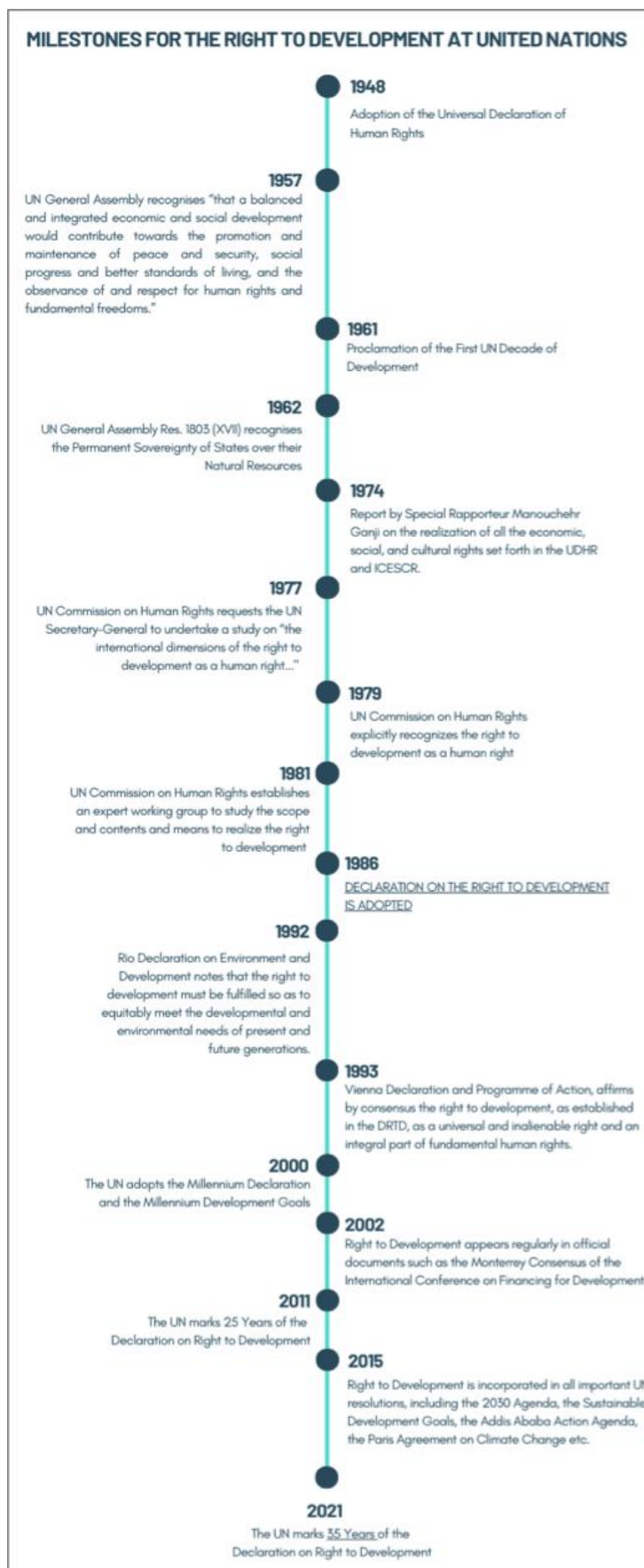
<sup>10</sup> See <https://www.ohchr.org/documents/publications/compilation1.1en.pdf>.

<sup>11</sup> UNGA Resolution 535 (VI) of 2 February 1952, ‘Development and concentration of the efforts of the United Nations and the specialized agencies in the social field’. As included in the Article 55, UN Repertory of Practice (1945–1954), volume 3, Paras. 112-113. Available from [http://legal.un.org/docs/?path=../repertory/art55/english/rep\\_orig\\_vol3\\_art55.pdf&lang=EFS](http://legal.un.org/docs/?path=../repertory/art55/english/rep_orig_vol3_art55.pdf&lang=EFS).

<sup>12</sup> ECOSOC Resolution 496 (XVI) of 31 July 1953, in Article 55, UN Repertory of Practice (1945–1954), volume 3, Paras. 112-113. Available from [http://legal.un.org/docs/?path=../repertory/art55/english/rep\\_orig\\_vol3\\_art55.pdf&lang=EFS](http://legal.un.org/docs/?path=../repertory/art55/english/rep_orig_vol3_art55.pdf&lang=EFS).

<sup>13</sup> UNGA Resolution 1161 (XII) of 26 November 1957

<sup>14</sup> Surya P. Subedi, “Declaration on the Right to Development”, UN Audiovisual Library of International Law (United Nations, 2021). Available from [https://legal.un.org/avl/pdf/ha/drd/drd\\_e.pdf](https://legal.un.org/avl/pdf/ha/drd/drd_e.pdf).





The connection between development and human rights was considered in the mid-1960s by the UN Commission on Human Rights (CHR), with a view to “addressing obstacles to the enjoyment of economic and social rights in developing countries”<sup>15</sup>. In 1970, the Commission “appointed Iranian diplomat Manouchehr Ganji to the post of Special Rapporteur to prepare a comprehensive report on the realization of all the economic, social, and cultural rights set forth in the UDHR and ICESCR, with a special emphasis on the role of the Commission in that respect”<sup>16</sup>.

The revised version of the study undertaken by Ganji was presented at the Commission’s 30<sup>th</sup> session in 1974. The discussions on this matter were taking place with the backdrop of the adoption of the New International Economic Order<sup>17</sup> and the Charter of Economic Rights and Duties of States<sup>18</sup> in 1974 which gave a strong boost to the formulation of the concept of the right to development.

Thus, the UN Commission on Human Rights requested the UN Secretary-General (SG) to undertake a study on “the international dimensions of the right to development as a human right in relation with other human rights based on international cooperation, including the right to peace, taking into account the requirements of the New International Economic Order and fundamental human needs.”<sup>19</sup>

Following this, the Commission on Human Rights in its thirty-fifth session explicitly recognized the right to development as a human right (via res. 4 (XXXV) and res. 5 (XXXV)) of 2 March 1979. This was reiterated by Economic and Social Council decisions 1979/29 and 1979/30 of 10 May 1979 and further recognized by UN GA resolution 34/46 of 23 November 1979, which noted these outcomes, “in which the Commission reiterated that the right to development is a human right and that equality of opportunity for development is as much a prerogative of nations as of individuals within nations”<sup>20</sup>.

Subsequently, by its resolution 36 (XXXVII) of 11 March 1981, the Commission on Human Rights established a working group of 15 governmental experts to study the scope and contents of the right to development and the most effective means to ensure its realization.

The right to development was given its first legal recognition in the 1981 African Charter on Human and Peoples’ Rights (“Banjul Charter”). In its Article 22 it states that, “All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind”. This was also reflected in the UN GA res. 36/133 of 14 December 1981, which declared that “the right to development is an inalienable human right”<sup>21</sup>.

Subsequent studies by the UN Secretary-General on the regional and national dimensions of the right to development as a human right in 1980-81, as well as the reports of the Working Group of Governmental Experts on the Right to Development, generated significant momentum on this issue. This led to the adoption of the landmark 1986 Declaration on the Right to Development with a large majority of States voting in its favour.

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<sup>15</sup> Daniel J. Whelan, Mihir Kanade and Shyami Puvimanasinghe, “The Right to Development: Origins, History and Institutional Development”, Chapter 1, E-Learning Module on “Operationalizing the Right to Development in Implementing the Sustainable Development Goals”, Right to Development Section of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the University for Peace (UPEACE),

<sup>16</sup> Ibid.

<sup>17</sup> GA res. 3201 (S-VI)

<sup>18</sup> GA res. 3281 (XXIX)

<sup>19</sup> Resolution 4 (XXXIII) of 21 February 1977. Available from [https://undocs.org/pdf?symbol=en/E/5927\(SUPP\)](https://undocs.org/pdf?symbol=en/E/5927(SUPP)), p. 74.

<sup>20</sup> UN GA Res. 34/46

<sup>21</sup> See <https://undocs.org/en/A/RES/36/133>, para. 8.

In explaining the reasons for its vote in favour of the Declaration, Norway emphasised that “[t]he draft declaration on the right to development contains positive elements relating to the role of the individual in the development process. It also affirms that comprehensive development cannot be conceived without full observance of civil and political rights as well as economic, social and cultural rights”<sup>22</sup>. Colombia also explained its vote in favour stating that “[a]doption of the Declaration on the Right to Development is one of the major achievements of the current session of the General Assembly and is a tribute by the United Nations to an issue which is of such importance to the international community: the principle of respect for human rights”<sup>23</sup>.

Following the adoption of the Declaration, a ‘Global Consultation on the Right to Development as a Human Right’ was organized in January 1990<sup>24</sup>. The conclusions of the consultation touched upon aspects of the content of the right to development as a human right; human rights and development strategy; obstacles to the implementation of the right to development as a human right; and the criteria which might be used to measure progress.

Suggestions made during the consultation included that the UN should elaborate and adopt a binding comprehensive convention on the right of peoples and every human being to development that should envisage the creation of a corresponding mechanism to evaluate the levels of development of States and to monitor the realization of agreed upon obligations.

Parallel discussions were also taking place in the context of the conservation and protection of the environment, with the concept of ‘sustainable development’ introduced in the 1987 report of the World Commission on Environment and Development, titled “Our Common Future”. This was followed by the Rio Declaration on Environment and Development of 1992, which was unanimously adopted by the members of the United Nations. Principle 3 of the Rio Declaration notes that the right to development must be fulfilled so as to equitably meet the developmental and environmental needs of present and future generations.

The World Conference on Human Rights in 1993 culminated in the Vienna Declaration and Programme of Action<sup>25</sup>, which for the first time affirmed *by consensus* the right to development, as established in the DRtD, as a universal and inalienable right and an integral part of fundamental human rights. It also called upon the international community to “promote an effective international cooperation for the realization of the right to development and the elimination of obstacles to development”, while recognizing that “lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level”.

The right to development and the DRtD were also referenced in the 1994 Cairo Programme of Action of the International Conference on Population and Development, in the 1995 Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development, and in the 1995 Beijing Declaration and Platform for Action among others<sup>26</sup>.

The UN adopted the Millennium Declaration of 2000 which specifically included a commitment by the Heads of States and governments to “making the right to development a

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<sup>22</sup> Provisional verbatim record of the 97<sup>th</sup> meeting, held at Headquarters, New York, on Thursday, 4 December 1986 : General Assembly, 41st session, p. 56. Available from <https://digitallibrary.un.org/record/77693?ln=en>.

<sup>23</sup> *Ibid.*, p. 62.

<sup>24</sup> As requested in CHR Res. 1989/45.

<sup>25</sup> See <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

<sup>26</sup> E/CN.4/1996/24, para. 300. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/364/36/PDF/N9536436.pdf?OpenElement>.

reality for everyone and to freeing the entire human race from want.” The elaboration of the 8 Millennium Development Goals was also seen as an important step in this regard.

Furthermore, references to the RtD have been included, *inter alia*, in the 2002 Monterrey Consensus of the International Conference on Financing for Development; in Article 37 of the 2004 Arab Charter on Human Rights; in Article 23 of the 2007 UN Declaration on the Rights of Indigenous Peoples. The 2011 Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020 particularly emphasised that, “Equity at all levels is indispensable for the pursuit of long-term prosperity and the realization of all the internationally recognized human rights, including the right to development by all”.

In the past few years, the RtD has been explicitly included in key internationally agreed policy documents such as the Addis Ababa Action Agenda; the Sendai Framework for Disaster Risk Reduction 2015-2030; the Paris Agreement on Climate Change; and the 2030 Agenda for Sustainable Development. The latter, which set out the Sustainable Development Goals (SDGs), specifically recognises “the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels...”<sup>27</sup>.

The SDGs and the RtD are deeply interconnected. According to the Special Rapporteur on the Right to Development Saad Alfaragi, the SDGs “provide an opportunity to galvanize global and local action and resources to implement universal goals and targets that could contribute substantially to the promotion and implementation of the right to development”<sup>28</sup>. Further, the Expert Mechanism on RtD has noted in its recent thematic study that “the right to development must not, however, be reduced to the 2030 Agenda, as the SDGs, adopted only in 2015, are time-bound and are likely to evolve as newer challenges face humanity and the planet. The right to development should, therefore, not be interpreted as being dependent on the Goals for its very existence or relevance. Its normative framework transcends any single global development agenda, including the 2030 Agenda, and applies to numerous other aspects of development as a common concern of humanity”<sup>29</sup>.

### ***The Non -Aligned Movement and the Right to Development***

The Non-Aligned Movement has been an active proponent of the elements underlying the RtD and of this right since its inception. In the very first NAM Summit Outcome in Belgrade in 1961, the participants reaffirmed their conviction that:

“(a) All nations have the right of unity, self-determination, and independence by virtue of which right they can determine their political status and freely pursue their economic, social and cultural development without intimidation or hindrance. (b) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law (...)”<sup>30</sup>.

These concepts were further developed in subsequent NAM Declarations. For instance, the NAM Declaration of 1970 in Lusaka states that

“(d) the essential purpose of development is to provide equal opportunity for a better life to everyone; the aim should therefore be to accelerate significantly the growth of

<sup>27</sup> A/RES/70/1, para. 35. Available from <https://undocs.org/A/RES/70/1>.

<sup>28</sup> A/HRC/36/49, para. 14. Available from <https://undocs.org/en/A/HRC/36/49>.

<sup>29</sup> A/HRC/48/63, para. 22. Available from <https://undocs.org/A/HRC/48/63>.

<sup>30</sup> See [http://cns.miis.edu/nam/documents/Official\\_Document/1st\\_Summit\\_FD\\_Belgrade\\_Declaration\\_1961.pdf](http://cns.miis.edu/nam/documents/Official_Document/1st_Summit_FD_Belgrade_Declaration_1961.pdf).

gross product per head so that it is possible to secure for everyone a minimum standard of life consistent with human dignity.”<sup>31</sup>

The expression ‘right to development’ can also be found in the address by Fidel Castro at the inaugural session of the sixth NAM conference held in Havana in 1979, where he called on those present to “... close ranks in demanding respect for our right to development, to life and to the future”<sup>32</sup>.

Mirroring progress at the UN, the NAM declarations also began to explicitly include a reference to the right to development. The NAM Declaration made in New Delhi in 1983 stated that, “The Heads of State or Government confirmed the importance of the right to development as a human right and the fact that equality of opportunity for development is as much a prerogative of nations as of individuals composing them.”<sup>33</sup>

Following this, the 1986 NAM Declaration at Harare specifically brought attention to the discussions on the right to development taking place at the UN and instructed to “carry out consultations with a view to promoting the adoption, by the non-aligned countries, of a declaration on the right to development during the forty-first session of the United Nations General Assembly”<sup>34</sup>.

After the adoption of the DRtD, NAM has been actively considering the question of the effective implementation of the right to development, including through a legally binding instrument. In this context, a report by the Human Rights Council (HRC) Advisory Committee has noted that, “The Summit Conference of Heads of State or Government of Non-Aligned Countries (NAM Summit), has repeatedly called for work to be done towards a Convention on the Right to Development. At the twelfth NAM Summit, held in Durban, South Africa, in 1998, States urged that consideration be given to the preparation of a Convention on the Right to Development as one of the important steps towards the effective implementation of that right”.<sup>35</sup>

Further, “[a]t the thirteenth NAM Summit, held in Kuala Lumpur in 2003, States resolved that the Working Group on the Right to Development should continue to give priority to the operationalization of that important right, including the elaboration of a Convention on the Right to Development. Subsequent NAM summits have repeated such a call.”<sup>36</sup> Finally, the most recent 18<sup>th</sup> NAM summit outcome document from Baku in 2019 has also urged the “UN human rights machinery to ensure the operationalization of the right to development as a priority, including through the elaboration of a Convention on the Right to Development...”<sup>37</sup>

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<sup>31</sup> See [http://cns.miis.edu/nam/documents/Official\\_Document/3rd\\_Summit\\_FD\\_Lusaka\\_Declaration\\_1970.pdf](http://cns.miis.edu/nam/documents/Official_Document/3rd_Summit_FD_Lusaka_Declaration_1970.pdf).

<sup>32</sup> See [http://cns.miis.edu/nam/documents/Official\\_Document/6th\\_Summit\\_FD\\_Havana\\_Declaration\\_1979\\_Whole.pdf](http://cns.miis.edu/nam/documents/Official_Document/6th_Summit_FD_Havana_Declaration_1979_Whole.pdf), p. 246.

<sup>33</sup> See [http://cns.miis.edu/nam/documents/Official\\_Document/7th\\_Summit\\_FD\\_New\\_Delhi\\_Declaration\\_1983\\_Whole.pdf](http://cns.miis.edu/nam/documents/Official_Document/7th_Summit_FD_New_Delhi_Declaration_1983_Whole.pdf), p. 14.

<sup>34</sup> See [http://cns.miis.edu/nam/documents/Official\\_Document/8th\\_Summit\\_FD\\_Harare\\_Declaration\\_1986\\_Whole.pdf](http://cns.miis.edu/nam/documents/Official_Document/8th_Summit_FD_Harare_Declaration_1986_Whole.pdf), paras. 276-277, p. 123.

<sup>35</sup> A/HRC/45/40, para. 12.

<sup>36</sup> A/HRC/45/40, para. 14.

<sup>37</sup> Final Document, 18th Summit of Heads of State and Government of the Non-Aligned Movement, Baku, 25-26 October 2019, NAM 2019/CoB/Doc.1, para. 980.15, p. 216. Available from [https://undir.org/sites/default/files/2020-10/2019\\_NAM%20Summit%20final%20doc.pdf](https://undir.org/sites/default/files/2020-10/2019_NAM%20Summit%20final%20doc.pdf).

### III. THE NORTH-SOUTH DIVIDE ON THE RIGHT TO DEVELOPMENT

As shown above, in the past four decades, the RtD has received strong support such as through the unanimous adoption of the Vienna Declaration and Programme of Action and the 2030 Agenda. Sometimes however, it has also been the subject of controversy. The discussions on the RtD have appeared to be divisive and politicized, permeated with misinterpretations, confusion of concepts and occasional ungrounded accusations. There have also been objections to the recognition of the RtD as a human right.<sup>38</sup> These controversies have often but not always shown a dividing line between most developed Northern countries and developing Southern countries<sup>39</sup>, particularly on how the full realization of the RtD can be achieved.

This North-South divide has manifested itself from the beginning of the formulation of the RtD as a new human right. The country voting positions of the DRtD in 1986, when it was adopted by the United Nations General Assembly, clearly showed this divide. There was a recorded vote of 146 in favour of the Declaration, including almost all developing countries; one country voted against (the United States of America), and 8 countries abstained (Denmark, Finland, the Federal Republic of Germany, Iceland, Israel, Japan, Sweden and the United Kingdom).<sup>40</sup>

The main issues which divide the developed from the developing countries with regard to RtD include the following:

#### **1. Right to Development is not just for claiming more Official Development Assistance**

Many developed countries have feared that the RtD would be mainly used to request donor countries to provide more official development assistance (ODA). There is also the misinterpretation that RtD is meant to create legal rights and obligations that can be claimed by ODA recipient countries against providers of ODA.<sup>41</sup>

The global development process faces many obstacles which are of a largely transnational character. Economic obstacles include continuing patterns of domination and dependency in some areas including technology, financial services, trade and financial relations, among others. Indeed, developing countries have been facing massive financial gaps to cover their development needs. However, comparing with the real need of financial resources, ODA, though important to some vulnerable states, is only a drop in the ocean. The commitment by donor countries to provide ODA has its own historical background and the obligation of international cooperation by developed donor countries is not charity or altruism. The RtD has much broader objectives and cannot be reduced to an instrument to support the demand for increased ODA to developing States.

With the assumption that developing countries' main objective in implementing the RtD is to request for more ODA, the United States of America as well as other donor countries have

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<sup>38</sup> Nico Schrijver, "A new Convention on the human right to development: Putting the cart before the horse?", *Netherlands Quarterly of Human Rights*, vol. 38, No. 2 (2020), p. 89.

<sup>39</sup> Anja Lindroos, *The Right to Development* (University of Helsinki Forum Iuris Publications, 1999); Bård A. Andreassen and Stephen P. Marks, eds., *Development as a Human Right* (Harvard University Press, 2006); Isabella Bunn, *The Right to Development and International Economic Law: Legal and Moral Dimensions* (Hart Publishing, 2012).

<sup>40</sup> Declaration on the Right to Development : resolution / adopted by the United Nations General Assembly in 1986, available at the United Nations Digital Library: <https://digitallibrary.un.org/record/280782?ln=en>.

<sup>41</sup> Laure-Helene Piron, "The Right to Development A Review of the Current State of the Debate for the Department for International Development", Overseas Development Institute, April 2002. Available from <https://cdn.odi.org/media/documents/2317.pdf>.

stressed that States must implement their human rights obligations regardless of the availability of development and other financial assistance<sup>42</sup>. This statement suggests that the developing countries have linked RtD with ODA directly. The fear about this linkage has become even more prominent when there was a proposal for a legally binding instrument for RtD.

This misinterpretation of the RtD has distorted the original objectives of the RtD and overshadowed its emphasis on an inclusive and empowering development process and wider scope of development which goes beyond GDP growth. As a result, it has also given rise to much resistance from the developed countries and scholars against the RtD and led them to ignore its real purpose and value. Most importantly, it has undermined the important and legitimate request under the RtD for an enabling international environment for promoting development. Therefore, this misinterpretation of RtD to equate it with a request to increase ODA must be refuted and redressed.

## **2. The essential role of an enabling international environment for development**

Economic development is a complex process. Some economic historians have explored the industrialization process of developed countries and pointed out how they protected their infant industries<sup>43</sup> and had less costly and much more flexible access to technology and markets. Development in any country requires many conditions and is influenced by a multiplicity of factors which are both national and international in nature. It is therefore impossible to consider development without regard for the international context in which it takes place. As a United Nations report aptly noted, “While, ultimately, it is for the developing countries themselves to do their utmost to accelerate their economic and social progress, their efforts will be frustrated if the necessary international policies are not adopted to create an environment conducive to supplementing and strengthening these efforts.”<sup>44</sup> This is especially true in a hyper-globalized world, characterized by footloose capital, complex webs of international production chains, and strict intellectual property rights enforcement.

It is well known, as noted above, that the RtD originated from the heated debate about the New International Economic Order. However, from the very start, there has been the tendency from major developed countries to avoid talking about the enabling international environment.

Developing countries are of the view that the under-development and slow catching-up process with developed countries is, due to an important part, to unjust structures of the global economy in trade, investment, intellectual property and international financial systems. This international order should be reformed to assist developing countries to overcome their disadvantages and obstacles to development. Thus, Article 3.3 of DRtD mentions about “eliminating obstacles to development” and “promoting a new international economic order”.

It is obvious that one of the key objectives of the RtD is to address structural problems and imbalances in the international system which have undermined or impeded sustainable development in developing countries. The lack of voice and equitable participation of developing countries in international decision and policy making in trade, financial issues, transfer of technology, labour mobility etc. is therefore a concern for addressing imbalances and impediments in these areas. There has been much frustration that issues of great concern and importance to developing countries at the international level have not been given due or sufficient attention, including issues like protectionist barriers imposed by

<sup>42</sup> The right to development, 2019. Available from <https://undocs.org/en/A/C.3/74/L.40/Rev.1>.

<sup>43</sup> Ha-Joon Chang, *Kicking Away the Ladder* (Anthem Press, 2002).

<sup>44</sup> *Towards Accelerated Development: Proposals for the Second United Nations Development Decade, Report of the Committee for Development Planning* (United Nations publication, Sales No. E.70.II.A.2), p. 22.

developed countries, use of Trade-Related Aspects of Intellectual Property Rights (TRIPS), the International Monetary Fund (IMF) quota system, equitable sharing of environmental burdens, unsustainable external debt burden etc.

As the international environment has not facilitated development and instead created many barriers to the economic development of Southern countries, there is the need for introducing far-reaching changes to the unjust international economic order which favours the countries at its core, to the disadvantage of those in the periphery<sup>45</sup>. The NAM countries take the position in this regard “that developing countries continue to face difficulties in participating in the globalization process, and that many risk being marginalized and effectively excluded from its benefits.”<sup>46</sup>

However, on the part of developed countries, much political will would be required to overcome the inertia and resistance to reform the prevailing order which has been in their favour<sup>47</sup>. Nevertheless, in a globalized world, to preserve the *status quo* and have many countries suffering from underdevelopment would not be in the interest of the developed countries either.

### **3. The balance between national and international responsibilities**

Given the reluctance of the mature economies to recognize the need for an enabling international environment to promote development, there is the tendency to downplay the responsibility of the international community, overemphasise national responsibilities and neglect the basic notion of international cooperation for the purposes of creating such an enabling environment.

While States have the primary responsibility for realising the right to development at the national level, the international community, and especially the developed mature economies, have the shared responsibility to provide an enabling environment including appropriate international pro-development policies and the provision of “effective international co-operation” as spelt out in Articles 3, 4, and 7 of the DRtD.

As a matter of fact, duty holders of the RtD are not only the States but also the international community which carries the responsibility to create a conducive international environment for promoting economic development and remove constraints for development at the international level. So the RtD has a very important international dimension, which has been clearly spelt out in the DRtD.

The right balance between national and international responsibilities is essential. It is important to point out that international conditions favourable to the realization of the right to development largely rest with the decisions of major developed countries which utilize their political and economic power to decide policy making at key international financial institutions (IFIs), while their domestic policies have significant spillover effects on the economic, financial and political situation of developing countries. In recognition of this reality, the United Nations General Assembly has affirmed the “primary responsibility of States to create national and international conditions favourable to the realization of the right to development, as well as their commitment to cooperate with one another to that end”<sup>48</sup>. States would clearly be failing in their human rights obligations if they create international conditions unfavourable to the realization of the RtD through, for example, the conditions they impose in

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<sup>45</sup> Nico Schrijver, “A new Convention on the human right to development: Putting the cart before the horse?”, *Netherlands Quarterly of Human Rights*, vol. 38, No. 2 (2020), p. 85.

<sup>46</sup> G.A. Res. 56/150, U.N. GAOR, 56th Sess., Supp. No. 49, at 341, U.N. Doc. A/56/150 (2001).

<sup>47</sup> Nico Schrijver, “A new Convention on the human right to development: Putting the cart before the horse?”, *Netherlands Quarterly of Human Rights*, vol. 38, No. 2 (2020).

<sup>48</sup> United Nations, General Assembly, The right to development, 18 December 2019, A/RES/74/152.

trade and investment agreements, the lending policies they support at the IMF or World Bank, or through World Trade Organization (WTO) rules.<sup>49</sup>

Downplaying the importance of the international obligation to create an enabling international environment and over emphasizing national responsibilities would further marginalize developing countries. Notably, the 2021 United Nations General Assembly resolution, jointly proposed by China and the Non-Aligned Movement, stressed that the responsibility for managing worldwide economic and social issues and threats to international peace and security must be shared by the nations and should be exercised multilaterally.<sup>50</sup>

#### **4. Relationship between civil and political rights and economic, social and cultural rights and the Right to Development**

There is the tendency by developed countries to give primacy to civil and political rights as part of governance, while trying to sideline RtD as it carries the notion of interdependence and equality of a cluster of rights in development. Furthermore, several Western countries as well as some scholars suspect developing countries of using their inability to ensure decent living standards for their citizens as an excuse for not respecting their civil and political rights.<sup>51</sup> For example, Yash Ghai suggests that “the Right to Development is at best an empty shell, if not – and worse – a smoke screen for avoiding the real things”.<sup>52</sup>

There is also the misinterpretation that the South intends to put economic, social and cultural (ESC) rights above the civil and political rights. Therefore, the misconstrued concept is that RtD is an intrigue for not implementing other human rights. Such misinterpretation implies that the fulfilment of human rights should be sequential, with civil and political rights first and ESC rights second, while the RtD should be scrapped. According to a U.S. delegate speaking at the Commission on Human Rights, the RtD is invoked as a pretext for developing countries to violate civil and political rights.<sup>53</sup>

However, the RtD recognises that compliance with and protection of both civil and political rights and economic, social and cultural rights are essential for development. The Vienna Conference reaffirmed the RtD, as established in the DRtD, as a universal and inalienable right and an integral part of fundamental human rights. Therefore, there is no hierarchy among different rights and their implementation and realization is not sequential. All human rights are universal, indivisible, interdependent and interrelated.

#### **5. The 2030 Agenda and the Right to Development**

The 2030 Agenda for Sustainable Development outlines a transformative vision for economic, social and environmental development and has been informed by the RtD and its elements as established in the DRtD. One of the important functions of the Agenda is to serve as a framework for international development cooperation until 2030.

The SDGs have a tangible link with the RtD and sustainable development. The key elements of the DRtD are reaffirmed and enunciated throughout the 2030 Agenda which was adopted in 2015 and could be taken as a child of the RtD. However, some countries have the view

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<sup>49</sup> Former High Commissioner commemorating 30<sup>th</sup> Anniversary of the Declaration on RtD.

<sup>50</sup> A/HRC/RES/48/10. Available from <https://digitallibrary.un.org/record/3945633?ln=en>.

<sup>51</sup> Nico Schrijver, “A new Convention on the human right to development: Putting the cart before the horse?”, *Netherlands Quarterly of Human Rights*, vol. 38, No. 2 (2020).

<sup>52</sup> Ghai also observed: “If it achieves any significance, the right to development will divert attention from the pressing issues of human rights and freedom, obfuscate the true nature of human rights, and provide increasing resources and support for the state manipulation [...] of civil society and social groups”. Yash Ghai, “Whose Human Right to Development?” (Commonwealth Secretariat, 1989), p. 1, pp. 5–6.

<sup>53</sup> United States Government, Statement at the U.N. Commission on Human Rights in 2003.



that advocating the implementation of RtD “created confusion and undermined efforts to implement the 2030 Agenda.”<sup>54</sup> There is also the view that, “Given that the 2030 Agenda constituted the follow-up to the Declaration on the Right to Development, Member States should focus their efforts on achieving the Sustainable Development Goals”<sup>55</sup>. These statements could be interpreted as suggesting that by focusing on SDGs, there will be no need to realize the RtD.

Such a view is in itself confusing. The RtD is a permanent human right underpinning development processes while the 2030 Agenda is time bound. It is obvious that the RtD extends beyond the SDGs. The nature of the SDGs and how they have been developed in the 2030 Agenda clearly shows a time-bound expectation for its implementation. This temporary nature differs from the operationalization of the RtD, as the latter is supposed to endure even after the time horizon set out in the 2030 Agenda. Additionally, the RtD addresses gaps, failures, structural problems and the root causes of the current international asymmetries and inequalities. Therefore, the 2030 Agenda can be seen as providing renewed opportunities to operationalize the RtD instead of being a reason to put RtD on hold.

However, the adoption of the 2030 Agenda and the SDGs has created a major opportunity for promoting the implementation of national policies and a mechanism that improve the well-being of all peoples and communities, including through the effective implementation of the RtD as “central to the implementation of the 2030 Agenda for Sustainable Development”, hence paying “particular attention to the right to development in the context of the elaboration of [their] national policies in line with the 2030 Agenda.”<sup>56</sup>

Given the strong commitment of the DRtD and the SDGs on the promotion and protection of human rights, the implementation of both instruments is not mutually exclusive. Rather, they are mutually reinforcing as their common goals are built on the objective of realizing the human rights of all. The current human rights and development agenda, thus, strongly reflects the linkages between the economic, social, and environmental pillars of sustainable development and the protection and promotion of human rights. The Special Rapporteur on the Right to Development has highlighted in this connection that the DRtD, the 2030 Agenda and the 2015 Paris Agreement should not be considered as aspirational objectives, but as essential elements of public policy making towards building a better and resilient future for all.<sup>57</sup> Operationalizing the RtD is indeed indispensable in implementing the SDGs. National and international efforts to implement the SDGs can be an important vehicle for the realisation of the right to development.

Similarly, Zeid Ra’ad Al Hussein, the former UN High Commissioner for Human Rights, has clearly said that “... *the right to development extends even beyond the massive global agenda of the Sustainable Development Goals. It offers a framework in which to address gaps and failures in responsibility, accountability and regulation in both national and global governance. At the international level, the right to development addresses multiple challenges which originate in our failure to adequately regulate globalization.*”<sup>58</sup>

<sup>54</sup> Draft resolution A/C.3/75/L.29: The right to development, 2020 (Mexico statement). Available from <https://digitallibrary.un.org/record/3907390?ln=en>.

<sup>55</sup> Draft resolution A/C.3/75/L.29: The right to development, 2020 (Switzerland statement).

<sup>56</sup> Statement by the Permanent Mission of the Republic of Azerbaijan on behalf of the Non-Aligned Movement, Second Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development Geneva, 3 December 2019.

<sup>57</sup> See: Saad Alfarargi, United Nations Special Rapporteur on the right to development, “Climate Action and the Right to Development: a Participatory Approach”, Policy Brief (October 2021). Available from [https://www.ohchr.org/Documents/Issues/Development/SR/Policy\\_Brief\\_RTDClimate\\_Action.pdf](https://www.ohchr.org/Documents/Issues/Development/SR/Policy_Brief_RTDClimate_Action.pdf) (accessed 2 February 2022).

<sup>58</sup> Opening Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights at the Panel discussion on the promotion and protection of the right to development: Commemoration of the 30th anniversary of the Declaration on the Right to Development, Human Rights Council 32<sup>nd</sup> Session, Geneva, 15

## 6. Voting positions and the North-South divide

The views on RtD show the apparent North-South divide even though there are nuances in country positions at times.

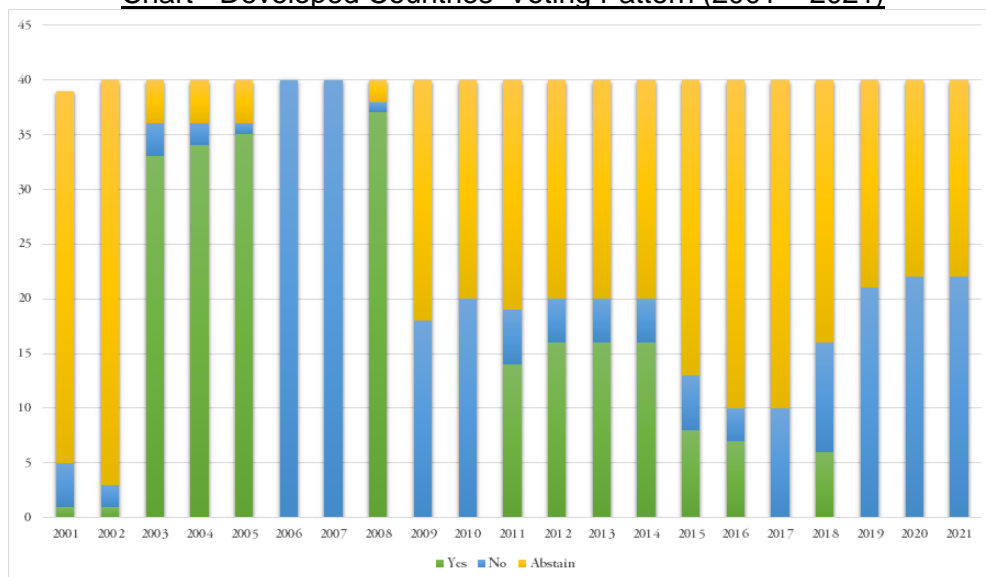
The United States is a strong opponent to the RtD and has voted against intergovernmental resolutions on RtD almost consistently. There were two notable occasions when the United States joined a consensus on the RtD. One was the World Conference on Human Rights in Vienna, when the Vienna Declaration and Programme of Action was adopted. The other time was when the mechanism of the Open Ended Intergovernmental Working Group (OEIGWG) and the position of the Independent Expert were created in 1998. On their side, Japan, Denmark, and Australia normally cast negative votes in relation to the RtD.

The European Union has usually been more nuanced. Some countries of the EU would vote positively for the resolutions when they do not see any red lights. If there are some minor points they do not like, then they tend to abstain. However, in recent years, their attitude has turned to be more negative. Consequently, their voting positions are mostly either to object or abstain.

From developing countries, a group of like-minded countries is normally the sponsor of and supporter for resolutions on RtD. So do most of other developing countries who vote in their favour.

A discouraging trend is that in recent years, more developed countries have voted against or abstained when voting on intergovernmental resolutions on RtD (see chart below). The reasons to explain this trend need to be further examined. However, plausible reasons could be that insufficient efforts have been devoted to remove some misconceptions and misinterpretations; a lack of coordinated actions among stakeholders that may influence voting options; and possibly certain actions might have led to controversies and weakened the support to RtD.

Chart - Developed Countries' Voting Pattern (2001 – 2021)



Source: By authors, based on voting data included in Annex (For detailed country by country voting positions, for both developed and developing countries, see Annex.)

#### IV. MAIN LEGAL AND POLITICAL ISSUES BEING RAISED IN RELATION TO THE RIGHT TO DEVELOPMENT

The adoption of the DRtD marked the most important milestone for the recognition of this right in international law. But the RtD continues to be the subject of legal and political debate in multiple fora. These debates have permeated the evolution of the understanding of the right to development.<sup>59</sup>

At the outset, the UN General Assembly has called for the mainstreaming of the RtD in all “activities aimed at strengthening the global partnership for development among Member States, development agencies and the international development, financial and trade institutions.”<sup>60</sup> The UN General Assembly has also mandated the Office of the High Commissioner for Human Rights to promote a “balanced and sustainable development for all people and of **ensuring realization of the right to development**”<sup>61</sup> (emphasis added) including through enhancing “support from relevant bodies of the United Nations system for this purpose.”<sup>62</sup>

Although the RtD has also faced several criticisms, the fact that major multilateral outcomes have been informed by and reflect it is a manifestation of the important role it has for the international community.<sup>63</sup>

The linkages between development and human rights have been considered by several organs of the United Nations since the 1970s.<sup>64</sup> These efforts can be traced back to the UN Declaration on Social Progress and Development<sup>65</sup> which recognized the existent linkages between the civil and political rights, and economic, social and cultural rights. The Declaration acknowledged that social progress and development “are the common concerns of the international community, which shall supplement, by concerted international action, national efforts to raise the living standards of peoples.”<sup>66</sup>

This Declaration was a response to the need to jointly pursue the objectives established in the Universal Declaration of Human Rights with those introduced in the core international human rights treaties. Under the item on the “Realization of Economic, Social and Cultural Rights contained in the Universal Declaration of Human Rights and in the Covenant of Economic, Social and Cultural Rights, and the study of ‘Special Problems Relating to Human Rights in Developing Countries’”, the UN Human Rights Commission adopted several resolutions and commissioned reports on connections between the implementation of human rights and the development processes of developing countries, in particular the fight for eradicating poverty and moving beyond traditional models of development. The realization of

<sup>59</sup> Bonny Ibhawoh, “The Right to Development: The Politics and Polemics of Power and Resistance”, *Human Rights Quarterly*, vol. 33, No. 1 (2011), p. 77.

<sup>60</sup> See: United Nations, General Assembly, The Right to Development (UNGA Res 75/182), UN Doc. A/RES/75/182 (16 December 2020). Available from <https://undocs.org/en/A/RES/75/182> (accessed 2 December 2021).

<sup>61</sup> United Nations, General Assembly, High Commissioner for the promotion and protection of all human rights (UNGA Res 48/141), UN Doc. A/RES/48/141 (7 January 1994). Available from <https://undocs.org/en/A/RES/48/141>.

<sup>62</sup> Ibid. (emphasis added).

<sup>63</sup> See: Yuefen Li, Daniel Uribe and Danish, “Challenges and Opportunities for Implementing the Declaration of the Right to Development,” Policy Brief, No. 74 (Geneva, South Centre, 2020). Available from <https://www.southcentre.int/wp-content/uploads/2020/04/PB-74.pdf>.

<sup>64</sup> Stephen Marks, “The Human Right to Development: Between Rhetoric and Reality”, *Harvard Human Rights Journal*, vol. 17 (2004), p. 138. Available from [https://cdn1.sph.harvard.edu/wp-content/uploads/sites/580/2012/10/spm\\_the\\_human\\_right\\_development.pdf](https://cdn1.sph.harvard.edu/wp-content/uploads/sites/580/2012/10/spm_the_human_right_development.pdf).

<sup>65</sup> Proclaimed by the UN General Assembly Resolution 2542 (XXIV) of 11 December 1969, available at <https://www.ohchr.org/en/professionalinterest/pages/progressanddevelopment.aspx>.

<sup>66</sup> See: Ibid., Article 9.

economic, social, and cultural rights became a fruitful means for “redirecting and reinvigorating UN human rights activity (...) to the extent that the developing countries were able to incorporate human rights concerns into their increasingly intense efforts at achieving development assistance.”<sup>67</sup>

As part of these discussions, the RtD was conceived as a bridge between economic growth and human rights,<sup>68</sup> and as means to achieve the common objective of peace through international solidarity. In 1978, the Human Rights Commission requested the UNSG to prepare a study on:

"The international dimensions of ***the right to development as a human right*** in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs."<sup>69</sup> (emphasis added)

The study was presented a year after and it not only identified the essential characteristic of the RtD as a human right,<sup>70</sup> but also considered the specific issues arising from the implementation of the RtD in line with its international dimensions. The study recognized that the international responsibility of all nations to endorse the concept that “international development strategies should be aimed at *meeting the fundamental human needs of the poorest people*.”<sup>71</sup> The study went as far as recognizing that Resolution 4 (XXXIII) adopted by the Human Rights Commission already made a direct reference to the RtD, which is primarily based on Article 55 and 56 of the Charter of the United Nations. (See Box 1.)

### Box 1 - Charter of the United Nations and the Right to Development

#### Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

1. ***higher standards of living, full employment, and conditions of economic and social progress and development;***
2. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
3. ***universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.*** (emphasis added)

<sup>67</sup> Jack Donnelly, “Recent trends in UN human rights activity: description and polemic”, *International Organization*, volume 35, Issue 4 (1981), p. 638.

<sup>68</sup> See: Kéba Mbaye, « *Le droit au développement comme un droit de l’homme* », *Revue des droits de l’homme*, tome 2-3 (1972).

<sup>69</sup> Report on the Thirty-Third Session of the Commission on Human Rights, United Nations Economic and Social Council Official Records: Sixty-Second Session, Supplement 6, UN Doc. E/5927 E/CN.4/1257 (1977), Chapter I, pp. 74-75. Available from [https://undocs.org/pdf?symbol=en/E/5927\(SUPP\)](https://undocs.org/pdf?symbol=en/E/5927(SUPP)).

<sup>70</sup> UN Secretary-General, The international dimensions of the right to development as a human right in relation with other human rights based on international co-operation, including the right to peace, taking into account the requirements of the New International Economic Order and the fundamental human needs: report of the Secretary-General, UN Doc. E\_CN.4\_1334-EN (1979). Available from <https://digitallibrary.un.org/record/6652?ln=en>.

<sup>71</sup> *Ibid.*, p. 23 (emphasis added).

## Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Although the recognition of the RtD by Resolution 4 (XXXIII) and by the UNSG study was criticized,<sup>72</sup> it served as an important step towards the adoption of the DRtD in 1986 which described the RtD as follows:

### Article 1

1. The right to development is an **inalienable human right** by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
2. **The human right to development** also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources. (emphasis added)

The adoption of the DRtD marked the formal recognition of the right to development as a human right. Nevertheless, the extent and scope of the right to development was still subject of disagreement. For certain developed States, the RtD only perpetuated the discussions between the 'bindingness' of economic, social and cultural rights, and individual freedoms based on 'democratic principles.'<sup>73</sup> According to this position, the only means to foster the individuals' right to development is through civil and political rights, and economic liberties. This could result in creating an illusion of the RtD as prompting a conflict between civil and political rights, and ESC rights:

"Of course, when we speak of development, in the Human Rights Commission, the **key issue** before us is the **relationship to be established between cultural, political, and economic rights**. The views of my delegation are shaped not only by our own history, but also by observation of other experiments in other nations. **We cannot accept the view that before civil and political rights can be fully accorded to a people, an ideal economic order must first be established.**"<sup>74</sup> (emphasis added)

This relationship between civil and political rights and ESC rights was perceived by States as a contentious issue for the fulfilment of human rights, including the need to increase efforts towards building consensus on the linkages between human rights and development. In preparation for the World Conference on Human Rights, the UN General Assembly decided to establish a Preparatory Committee and to:

"(...) examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights, recognizing the

<sup>72</sup> See: Jack Donnelly, "In Search of the Unicorn: The Jurisprudence and Politics of the Right to Development", *California Western Law Journal*, vol.15, No. 3 (1985).

<sup>73</sup> See: Stephen Marks, "The Human Right to Development: Between Rhetoric and Reality," *Harvard Human Rights Journal*, vol. 17 (2004).

<sup>74</sup> See: Michael Novak and Richard Schifter, "Speeches by the U.S. Delegation before the United Nations Commission on Human Rights", *World Affairs*, vol. 143, No. 3 (1980-1981), p. 242.

importance of creating the conditions whereby everyone may enjoy these rights (...).<sup>75</sup>

The Preparatory Committee for the World Conference decided to examine the linkages between development and the enjoyment of political and civil rights, and ESC rights, including the RtD as an integral part of fundamental human rights and as a response to the controversy on the primacy of civil and political rights, and ESC rights. The outcome of the World Conference was the already mentioned Vienna Declaration and Programme of Action<sup>76</sup>, which reaffirmed the RtD as “a universal and inalienable right and an integral part of fundamental human rights.”<sup>77</sup> The Vienna Declaration and Programme of Action was unanimously adopted, thus settling the RtD as a human right of its own. Nevertheless, concerns surrounding the means of implementation on the RtD seem to persist, particularly with respect to the conceptual framework for its implementation. (See Box 2.)

### **Box 2 - Some concerns surrounding the implementation of the RtD**

#### **(United States Representative, 1998 – UN Human Rights Commission):**

(...) While we all hope to be able to reach consensus on this issue, the numerous and, at many times, contradictory opinions expressed in the last Working Group indicates that we still need more time to discuss the Right to Development to find common ground on which we can all agree.

#### **(United Kingdom Representative, 2013 – UN Human Rights Council):**

(...) The right to development should evolve consensually, without politicization, and on the basis of respect for civil, political, economic and cultural rights.

#### **(European Union Observer, 2016 – UN Third Committee):**

(...) fully committed to a rights-based approach to development, and that it was not in favour of the elaboration of an international legal standard of a binding nature, as that was not the appropriate mechanism for realizing the right to development. The 2030 Agenda for Sustainable Development had marked a paradigm shift towards a balanced model for sustainable development that recognized the need to build peaceful, just and inclusive societies based on good governance and transparent institutions.

## **1. The individual and collective nature of the Right to Development**

The DRtD recognizes that the right applies to “every human person and all peoples”. It also recognizes that the “human person is the central subject of development and should be active participant and beneficiary of the right to development.” Although the text of the DRtD recognizes the individual and collective nature of the RtD, several countries have considered that its collective nature relates to the third generation of human rights, i.e. those considered as solidarity rights, which include the “right to development, the right to a healthy and ecological balanced environment, the right to peace and the right to ownership of the common heritage of mankind.”<sup>78</sup>

<sup>75</sup> UN, General Assembly, World Conference on Human Rights, UNGA Res 45/155 (1990). Available from <https://undocs.org/A/RES/45/155>.

<sup>76</sup> See <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>.

<sup>77</sup> Ibid.

<sup>78</sup> Isabella Bunn, *The Right to Development and International Economic Law: Legal and Moral Dimensions* (Hart Publishing, 2012).

Similarly, solidarity rights have been conceived as conduits for the attainment of other internationally agreed goals and objectives. The Independent Expert on human rights and international solidarity has argued that international solidarity is a “broader and indispensable component of the **efforts to realize the right to development** and rights-based approaches to development, **the full enjoyment of economic, social and cultural rights** and the Millennium Development Goals”<sup>79</sup> (emphasis added). International solidarity could be conceived as an indispensable element of the right to development, both as a fundamental principle for its implementation, and as reflection of its collective nature, as its fulfilment requires international action and cooperation.

This collective nature has also been subject of debate at the UN System. For several States, the right to development could constitute a pathway towards focusing only on the State as the subject of this right, considering that the term ‘collectivity’ is referring only to States. The United States’ approach to the Right to Development, as presented in the Second Session of the Working Group of Governmental Experts on the Right to Development, considered the relationship between individual and collective rights in the right to development, but at the same time expressed their concern that the term ‘collectivity’ seems to be narrowly referring to the State:

“In the great majority of cases, the terms ‘collectivity’ refer to the State. Now the reasons for this are not hard to determine. Most of this discussion has taken place in the context of the United Nations system, which is an organization of States, and within the intellectual framework of international law, which has its primary focus on the relations between States [...] and thus naturally think of States as the major if not only agents of development.”<sup>80</sup>

Other delegations considered that human rights have a twofold dimension, referring to their individual and collective nature.<sup>81</sup> The twofold dimension of the RtD also permeates the interactions not only between individuals, but also States, and promotes the principle of international solidarity as a cornerstone of the implementation of the RtD. The collective nature of the right to development could be understood as the duty of the Members of the United Nations to “take joint and separate action in co-operation with the Organization for the achievement of certain purposes, including the attainment of ‘higher standards of living full employment, and conditions of economic and social progress and development’.”<sup>82</sup>

## **2. The implementation and fulfilment of the Right to Development**

The implementation and fulfilment of the right to development could serve its purpose of strengthening the international cooperation necessary for responding to several of the challenges the world is currently facing. Based on general principles stemming from the Declaration on the Right to Development, the practical implementation and fulfilment of the RtD must consider the human person as the central subject of development, emphasizing on the need to abide by internal human rights law and principles. The Special Rapporteur on the Right to Development has considered that:

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<sup>79</sup> Rudi Muhammad Rizki, Report of the independent expert on human rights and international solidarity, United Nations Human Rights Council, UN Doc. A/HRC/15/32 (2010). Available from <https://undocs.org/A/HRC/15/32>.

<sup>80</sup> Peter L. Berger, General United States approach: Contribution to the Working Group of Governmental Experts on the Right to Development, 1981.

<sup>81</sup> See: France position, UN Res. 41/133 (1986).

<sup>82</sup> See: Kéba Mbaye, Working Paper Submitted by Senegal, Working Group of Governmental Experts on the Right to Development, Second Session, Commission on Human Rights, UN Doc. E/CN.4/AC.34/WP.15 (1981), para. 4. Available from [https://legal.un.org/avl/pdf/ha/drd/E\\_CN.4\\_AC.34\\_WP.15\\_E.pdf](https://legal.un.org/avl/pdf/ha/drd/E_CN.4_AC.34_WP.15_E.pdf).

“(…) implementation of the right to development involves adherence to international human rights principles, including those related to non-discrimination and fundamental freedoms, and to internationally agreed frameworks on climate change, financing for development and sustainable development. In addition, just as the Declaration on the Right to Development recognizes that the human person is the central subject of development”.<sup>83</sup>

Similarly, the Expert Mechanism study on the Right to Development has highlighted that the duty of international cooperation not only permeates throughout the implementation of the DRtD, but it also stresses the importance of international solidarity among States as means to achieve the objectives set out in the Declaration.<sup>84</sup> For the Non-Aligned Movement, the right to development constitutes an inalienable and intrinsic right,

“with a distinct and independent nature by which all human rights can be fully realized. Hence, we acknowledge that we may not reduce the right to development by trying to define it through secondary aspects of development such as poverty reduction, hunger eradication, food security, inclusive education, and adequate housing. We are of the firm belief that the distinct nature of the right to development is not a negligible reality and should be substantially addressed.”<sup>85</sup>

Following this approach allows the understanding of the RtD as a comprehensive, cross-cutting, and multidisciplinary human right, and its importance as a pillar for supporting public decision making for promoting the achievement of development for all peoples and persons. The operationalization of the right to development also serves as a political platform for articulating actions at the international, regional, and domestic level, as it provides an important basis for combating the multifaceted issues currently challenging governments around the world.

The full implementation of the RtD would require changes in the current existing economic, social, cultural, legal, fiscal and political systems, as well as governance structures. Therefore, it will require an incremental process towards building public policies and international cooperation efforts.<sup>86</sup> The need to “develop new and innovate ways to meet the challenges of debt relief, promote investment, and unleash the creative potential of all economies”<sup>87</sup> should be linked to the work done by the various mechanisms on the Right to Development under the Human Rights Council including the Working Group on the Right to Development, the Special Rapporteur on the Right to Development and the Expert Mechanism on the Right to Development, as their efforts have also constituted global progress towards the implementation of the RtD.

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<sup>83</sup> See: Human Rights Council, Report of the Special Rapporteur on the right to development, UN. Doc. A/HRC/42/38 (2019). Available from <https://undocs.org/A/HRC/42/38>.

<sup>84</sup> Expert Mechanism on the Right to Development, Realization of the right to development in achieving the Sustainable Development Goals, Thematic Study (2021), UN Doc. A/HRC/EMRTD/3/CRP.1. Available from [https://www.ohchr.org/Documents/Issues/Development/EMD/Session3/A\\_HRC\\_EMRTD\\_3\\_CRP.1.pdf](https://www.ohchr.org/Documents/Issues/Development/EMD/Session3/A_HRC_EMRTD_3_CRP.1.pdf).

<sup>85</sup> Statement of Iran on behalf of the Non-Aligned Movement during the 30<sup>th</sup> Anniversary of the Declaration on the Right to Development. Available from <https://www.southcentre.int/question/statement-iran-on-behalf-of-nam/>.

<sup>86</sup> See: Yuefen Li, Daniel Uribe and Danish, “Challenges and Opportunities for Implementing the Declaration of the Right to Development,” Policy Brief, No. 74 (Geneva, South Centre, 2020). Available from <https://www.southcentre.int/wp-content/uploads/2020/04/PB-74.pdf>.

<sup>87</sup> See: Statement by H.E. Abdulla Shahid, Minister of Foreign Affairs of Maldives during the Biennial Panel on the Right to Development: Strengthening International Cooperation and Solidarity in the Fight against the COVID-19 Pandemic. Available from <https://www.ungeneva.org/en/news-media/meeting-summary/2020/09/human-rights-council-holds-biennial-panel-right-development-and>.



## V. VARIOUS MECHANISMS ON THE RIGHT TO DEVELOPMENT - A VERY BRIEF REVIEW<sup>88</sup>

### 1. *Open-ended Intergovernmental Working Group on the Right to Development (1998 – present)*

The Open-Ended Intergovernmental Working Group (OEIGWG) was considered by the Commission on Human Rights in its resolution 1998/72, and then endorsed by the Economic and Social Council<sup>89</sup>. The impetus for this mechanism came from a recommendation for “a follow-up mechanism be established to ensure promotion and implementation of the Declaration on the Right to Development”<sup>90</sup>.

In general, the mandate of the OEIGWG covers reviewing progress at the national and international levels in the promotion and implementation of the right to development; providing recommendations and analyse obstacles to the full enjoyment of the right to development; and to review reports and information submitted by various stakeholders on the relationship between their activities and the right to development.<sup>91</sup>

The mandate of the Working Group has been amended by the Human Rights Council in its various resolutions. For instance, in HRC res. 4/4, the OEIGWG was mandated to consider, revise and endorse the criteria and operational sub-criteria for the elaboration of standards for the implementation of the right to development. These could then “evolve into a basis for consideration of an international legal standard of a binding nature, through a collaborative process of engagement”<sup>92</sup>.

While it was first considered that the OEIGWG would be established initially for a period of three years; the HRC by its resolution 9/3 decided to renew the mandate of the OEIGWG until it had completed the tasks entrusted to it by the Council. Similarly, the most recent UN General Assembly resolution on The Right to Development “supports the realization of the mandate of the Working Group on the Right to Development, and recognizes the need for renewed efforts with a view to overcoming the existing political impasse within the Working Group and to fulfil at the earliest its mandate...”<sup>93</sup>;

The current work of the OEIGWG is guided by resolution 39/9 on the Right to Development, adopted by the Human Rights Council on 27 September 2018 which mandated that:

“(e) That the Working Group at its twentieth session shall commence the discussion to elaborate a draft legally binding instrument on the right to development through a collaborative process of engagement, including on the content and scope of the future instrument;

(f) That the Chair-Rapporteur of the Working Group shall prepare a draft legally binding instrument on the basis of the discussions held during the twentieth session of the Working Group and the resource material from previous Working Group sessions to serve as a basis for substantive negotiations on a draft legally binding instrument, commencing at its twenty-first session”<sup>94</sup>.

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<sup>88</sup> See <https://www.ohchr.org/EN/Issues/Development/Pages/Mechanisms.aspx>.

<sup>89</sup> In its decision E/DEC/1998/269.

<sup>90</sup> Made by the Intergovernmental Group of Experts (E/CN.4/1998/29).

<sup>91</sup> See <https://www.ohchr.org/EN/Issues/Development/Pages/AboutDWG.aspx>.

<sup>92</sup> See <https://undocs.org/A/HRC/42/35>, para. 3.

<sup>93</sup> Resolution 75/182 on the right to development, adopted by the General Assembly on 16 December 2020, OP.

<sup>94</sup> Available from <https://undocs.org/en/A/RES/75/182>.

<sup>94</sup> A/HRC/RES/39/9, para. 17.

This was also emphasised in HRC Res. 42/23, mandating: “(e) That the Chair-Rapporteur of the Working Group, at its twenty-first session, will present a draft legally binding instrument on the basis of the discussions held during the twentieth session of the Working Group and the resource material from its previous sessions, for substantive negotiations on the draft legally binding instrument prepared”<sup>95</sup>.

The draft convention on the right to development and its commentaries were released in January 2020.<sup>96</sup> The draft convention contains a preamble and 36 articles, arranged in five parts. These cover *inter alia* the object and purpose of the draft convention, definitions and general principles; obligations of the duty holders, including a duty to cooperate; institutional matters; and an implementation mechanism.

The various normative, theoretical and practical aspects of a legally binding instrument on the right to development, including through a convention has been well considered<sup>97</sup>, including in the commentaries<sup>98</sup>. There are many distinct and differing views on the content and scope, type and structure, institutional arrangements and compliance procedures of the draft legally binding instrument currently being discussed. A HRC Advisory Committee report<sup>99</sup> has also highlighted that the added value of the legally binding instrument would “derive from the fact that it would provide a comprehensive legal framework and approach to policies and programmes covering all stakeholders and encompassing all human rights – civil, political, economic, social and cultural – while integrating aspects of both human rights and development theory and practice”<sup>100</sup>.

In the 21<sup>st</sup> session of the OEIGWG, the Chair-Rapporteur introduced the text of the draft Convention on the Right to Development. During the session, the Working Group continued reviewing progress made in the implementation of the right to development as it considered States’ contributions and commenced on the elaboration of a draft convention.<sup>101</sup> The session featured presentations by the members of the drafting group of experts on the different articles of the draft legally binding instrument, followed by an interactive dialogue with States, international organizations and civil society stakeholders.<sup>102</sup>

A wide variety of views were expressed by the participants in the session, particularly on the draft Convention. For instance, Azerbaijan speaking on behalf of the NAM said that, “A legally binding instrument could make development a reality for all, ensuring that the operationalization of the right to development became a priority in achieving the Sustainable Development Goals.”<sup>103</sup> Several statements also expressed the need for continuing work towards effective realization of the right to development, with one developing country stressing that “with the challenge of the pandemic persisting and exacerbating existing inequalities, the Working Group remained a valid platform for leading a comprehensive

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<sup>95</sup> A/HRC/RES/42/23, para. 20 (e).

<sup>96</sup> Draft Convention on the Right to Development, 17 January 2020, A/HRC/WG.2/21/2. Available from <https://undocs.org/A/HRC/WG.2/21/2>.

<sup>97</sup> Stephen P. Marks, Beate Rudolf, Koen De Feyter and Nicolaas Schrijver, “The role of international law”, in OHCHR, *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, HR/PUB/12/4 (2013).

<sup>98</sup> Draft Convention on the Right to Development with commentaries, 20 January 2020, A/HRC/WG.2/21/2/Add.1. Available from <https://undocs.org/A/HRC/WG.2/21/2/Add.1>.

<sup>99</sup> The importance of a legally binding instrument on the right to development (A/HRC/45/40).

<sup>100</sup> A/HRC/45/40, para. 64.

<sup>101</sup> Report of the Working Group on the Right to Development on its twenty-first session (Geneva, 17–21 May 2021), 30 June 2021, A/HRC/48/64, para. 8.

<sup>102</sup> South Centre, “Elaboration of a new draft Convention on the Right to Development kicks off at the UN”, *South News*, 8 June 2021. Available from <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=93f7d5dd82>.

<sup>103</sup> A/HRC/48/64, para. 10.

discussion on the implementation of the right to development”<sup>104</sup>. On the other hand, the EU, while reiterating their support for the right to development, said that “it was not in favour of elaborating an international legal standard of a binding nature on the right to development, as the European Union did not believe that that was an appropriate or efficient mechanism for realizing sustainable development”<sup>105</sup>.

In its most recent 22<sup>nd</sup> session, held from 22 – 26 November 2021, the OEIGWG continued its consideration of the draft Convention.<sup>106</sup> While almost all delegations recognized the importance of the right to development and its full implementation, there were concerns expressed by some participants on the lack of consensus around the draft Convention. The States also engaged in textual discussions, with a view of having a revised draft to be submitted by the Chair-Rapporteur for the consideration of the OEIGWG at its next session in May 2022. This revised draft will take into account the comments and textual suggestions received in the previous sessions, as well as during the intersessional period.

## **2. The Special Rapporteur on the Right to Development**<sup>107</sup>

In 2016, the UN Human Rights Council established the mandate of the Special Rapporteur (SR) on the right to development<sup>108</sup>. Mr. Saad Alfarargi was appointed as the Special Rapporteur and took up his functions on 1 May 2017. The mandate was extended in 2019.

The Special Rapporteur has the mandate to contribute to the promotion, protection and fulfilment of the right to development in the context of the coherent and integrated implementation of the 2030 Agenda for Sustainable Development and other internationally agreed outcomes of 2015, including the Sendai Framework for Disaster Risk Reduction, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the Paris Agreement on climate change, and to this effect engage with Member States and other stakeholders and participate in relevant international meetings and conferences. He is also mandated to engage and support efforts to mainstream the right to development among various United Nations bodies, development agencies, international development, financial and trade institutions, and to submit proposals aimed at strengthening the revitalized global partnership for sustainable development from the perspective of the right to development, including through submitting reports, studies and proposals. The Special Rapporteur also contributes to the work of the OEIGWG with a view to supporting the accomplishment of its overall mandate. The reports of the Special Rapporteur are presented to the UN General Assembly and the Human Rights Council.

Till date, the Special Rapporteur has issued eight thematic reports which focus on several important issues and their intersection with the right to development. In his first report<sup>109</sup>, he outlined his preliminary views concerning the background and context of the mandate and highlighted challenges for its implementation. His subsequent reports have focused on the link between South-South cooperation, sustainable development and the right to development<sup>110</sup>; on inequality and the right to development<sup>111</sup>.

In September 2017, the Human Rights Council adopted Resolution 36/9, which mandated the Special Rapporteur to convene regional consultations on the practical implementation of

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<sup>104</sup> A/HRC/48/64, para. 18.

<sup>105</sup> A/HRC/48/64, para. 11.

<sup>106</sup> See <https://www.ohchr.org/EN/Issues/Development/Pages/22ndSession.aspx>.

<sup>107</sup> See <https://www.ohchr.org/EN/Issues/Development/SRDevelopment/Pages/SRDevelopmentIndex.aspx>.

<sup>108</sup> HRC Resolution 33/14 of 29 September 2016

<sup>109</sup> Report of the Special Rapporteur on the right to development, A/HRC/36/49, 2 August 2017. Available from <https://undocs.org/A/HRC/36/49>.

<sup>110</sup> South-South cooperation: report, A/73/271, 30 July 2018. Available from <https://undocs.org/A/73/271>.

<sup>111</sup> Inequality and the right to development: report, A/HRC/39/51, 20 July 2018. Available from <https://undocs.org/A/HRC/39/51>.

the right to development. In light of this mandate, the SR convened a series of regional consultations throughout 2018/2019, which gathered representatives of UN Member States, United Nations agencies, intergovernmental organizations, civil society as well as the private sector. The consultations process resulted in the ‘Guidelines and recommendations on the practical implementation of the right to development’<sup>112</sup>, which the Special Rapporteur presented to the Council in 2019 and which provided “practical examples, key principles and recommendations for fulfilling the right to development”. More recent reports by the Special Rapporteur have focused on the issue of disaster risk reduction<sup>113</sup>; financing for development at the national<sup>114</sup> and international level<sup>115</sup>; and climate action at the national<sup>116</sup> and international<sup>117</sup> level from a right to development perspective.

### **3. The Expert Mechanism on the Right to Development<sup>118</sup>**

The Expert Mechanism on the Right to Development (EMRTD) was established by the Human Rights Council in 2019 under resolution 42/23 as a subsidiary body of the Council. The Expert Mechanism is composed of five independent experts from different regional groups, selected for a three-year period, and who may be re-elected for one additional period. The GA resolution 74/152 also recognised its function to “provide the Council with thematic expertise on the right to development in searching for, identifying and sharing best practices with Member States and to promote the implementation of the right to development worldwide”<sup>119</sup>. The EMRTD also coordinates with the Special Rapporteur and the OEIGWG, as all their mandates are viewed as being complementary to each other, have different focus and make distinctive contributions<sup>120</sup>.

Since commencing its work in May 2020, the EMRTD has “agreed on two overarching objectives that would guide [their] work, namely the need: to mainstream, reinvigorate and operationalize the right to development; and to enhance the ability of grass-roots organizations to advance the right to development”<sup>121</sup>. To this purpose, the EMRTD has identified five themes for studies, including:

1. Operationalizing the right to development in achieving the Sustainable Development Goals;
2. Racism, racial discrimination and the right to development;
3. Inequalities and the right to development;
4. The right to development in international investment law; and
5. Non-State actors and the duty to cooperate.

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<sup>112</sup> Guidelines and recommendations on the practical implementation of the right to development, A/HRC/42/38, 2 July 2019. Available from <https://undocs.org/A/HRC/42/38>.

<sup>113</sup> Report of the Special Rapporteur on the right to development, A/74/163, 15 July 2019. Available from <https://undocs.org/A/74/163>.

<sup>114</sup> A/HRC/45/15, 8 July 2020. Available from <https://undocs.org/A/HRC/45/15>.

<sup>115</sup> A/75/167, 16 July 2020. Available from <https://undocs.org/A/75/167>.

<sup>116</sup> A/HRC/48/56, 2 July 2021. Available from <https://undocs.org/A/HRC/48/56>.

<sup>117</sup> A/76/154, 15 July 2021. Available from <https://undocs.org/A/76/154>.

<sup>118</sup> See <https://www.ohchr.org/EN/Issues/Development/EMD/Pages/Expert-Mechanism-on-the-Right-to-Development.aspx>.

<sup>119</sup> The right to development, Resolution adopted by the General Assembly on 18 December 2019, Res. 74/152, para. 11.

<sup>120</sup> Concluding remarks by Mr. Armando De Negri Filho, Vice-Chair of the Expert Mechanism on the Right to Development, at its fourth session, 3-5 November 2021. Available from <https://www.ohchr.org/Documents/Issues/Development/EMD/Session4/Concluding-remarks-Vice-Chair.pdf>.

<sup>121</sup> Statement by Mr. Koen De Feyter, Vice-Chair of the Expert Mechanism on the Right to Development to the Seventy-sixth session of the General Assembly Item 71 (a-d): Promotion and protection of human rights, New York, 14 October 2021. Available from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27673&LangID=E>.

The first thematic study was presented to the UN General Assembly in July 2021<sup>122</sup>, and the next one will be presented to the Human Rights Council at its fifty-first session. In its most recent Fourth Session, held from 3-5 November 2021, the EMRTD considered field studies on the duty to cooperate, as well as the thematic studies under preparation. It also discussed a proposal<sup>123</sup> on having commentaries to the Declaration on the Right to Development, and decided to “develop commentaries on article 1 as part of the activities around the celebration of the 35<sup>th</sup> anniversary of the Declaration progressing to the whole articles throughout 2022 and 2023”<sup>124</sup>.

Figure 2 – Current Mechanisms on the Right to Development



Source: By authors

Aside from these three mechanisms currently in place, there have also been several mechanisms over the previous years which have considered the right to development as part of their mandates. This has included:

**The High-level task force on the implementation of the right to development (2004-2010)**<sup>125</sup> which was tasked with providing the necessary expertise and support to the OEIGWG<sup>126</sup>. Its work was undertaken *inter alia* in the context of implementation of the Millennium Development Goals in relation to the right to development; particularly MDG 8 on a global partnership for development, which led to development of criteria for evaluation of global partnerships for improving their effectiveness in support of the realization of the right to development. This was later expanded and submitted to the OEIGWG as the 'Right to development criteria and operational sub-criteria'.<sup>127</sup>

<sup>122</sup> Operationalizing the right to development in achieving the Sustainable Development Goals - Thematic study by the Expert Mechanism on the Right to Development, 6 July 2021, A/HRC/48/63. Available from <https://undocs.org/A/HRC/48/63>.

<sup>123</sup> See <https://www.ohchr.org/Documents/Issues/Development/EMD/Session4/EMRDT-Draft-Commentaries-REV2.pdf>.

<sup>124</sup> Statement by Mr. Koen De Feyter, *supra*.

<sup>125</sup> Established by the Commission on Human Rights, in its resolution 2004/7, and the Economic and Social Council, by its decision 2004/249, at the recommendation and within the framework of the Intergovernmental Working Group on the Right to Development.

<sup>126</sup> See <https://www.ohchr.org/EN/Issues/Development/Pages/HighLevelTaskForce.aspx>.

<sup>127</sup> Report of the high-level task force on the implementation of the right to development on its sixth session, A/HRC/15/WG.2/TF/2/Add.2, 8 March 2010. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/118/37/PDF/G1011837.pdf?OpenElement>.

**The Independent Expert of the Commission on Human Rights on the right to development, Dr. Arjun Sengupta (1998-2003)** was appointed by the Commission on Human Rights through Res. 1998/72 with a mandate to present to the OEIGWG a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion. The Independent Expert also undertook several missions to countries as well as international institutions such as the Organisation for Economic Co-operation and Development (OECD), World Bank etc. and produced six reports.

**The Intergovernmental Group of Experts on the Right to Development (1996-1997)**, which was set up to elaborate a strategy as well as concrete and practical measures for the implementation and promotion of the right to development<sup>128</sup>.

**The Open-ended Working Group of Governmental Experts on the Right to Development (1993-1995)** which was composed of 15 experts<sup>129</sup> with the two part mandate to “identify obstacles to the implementation and realization of the Declaration on the Right to Development and to recommend ways and means towards the realization of the right to development”<sup>130</sup>.

**The Working Group of Governmental Experts on the Right to Development (1981-1989)**<sup>131</sup> was set up to, *inter alia*, study the scope and contents of the right to development and the most effective means to ensure its realization in all countries. The work of this Working Group was instrumental in first, preparing the draft Declaration on the Right to Development; and later, to identify proposals aimed at further enhancement and implementation of the Declaration<sup>132</sup>.

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<sup>128</sup> E/CN.4/1997/22, 21 January 1997, para. 2.

<sup>129</sup> Commission on Human Rights, in its resolution 1993/22; and E/CN.4/1994/21, para. 10. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/858/38/PDF/G9385838.pdf?OpenElement>.

<sup>130</sup> E/CN.4/1994/21, para. 20. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/858/38/PDF/G9385838.pdf?OpenElement>.

<sup>131</sup> Decision 1981/149 of 8 May 1981 of the Economic and Social Council, which took note of Commission on Human Rights resolution 36 (XXXVII) of 11 March 1981 to set up this working group.

<sup>132</sup> See <https://www.ohchr.org/EN/Issues/Development/Pages/Documents.aspx>.

## VI. CONCLUSIONS

The world is at an ebb for realizing the Right to Development. Weakening of multilateralism, de-globalization, the scars left by the COVID-19 pandemic, misinterpretation and dilution of the RtD, and inertia to reform the international governance are among the multitude of reasons for this decline. However, the 2030 Agenda and the determination to recover from the pandemic better, more inclusively and greener have provided the international community an opportunity to reinvigorate the realization of the RtD, as both have shown the great relevance of RtD to promote a people-centred and fairer development process and the need for an international enabling environment in order to promote the kind of development we want.

As the 35<sup>th</sup> anniversary of the Declaration on the Right to Development is being commemorated, the NAM and the international community could make it widely and loudly known the need to reinvigorate the implementation of the RtD. The following policy recommendations to revitalize the RtD could be considered:

- With the global pandemic and with great divergence on many fronts and levels, including the widening divide between developed and developing countries, the growing income gap within and among countries, the vaccine divide, the digital divide, the fiscal space divide, the financial support divide, it would be of great importance to analyse and identify the obstacles and challenges for realizing the RtD, for the recovery from the pandemic, and for the implementation of the 2030 Agenda. These endeavours in many cases face similar obstacles, involve the same group of people(s) and also often require similar policy responses. The Secretary-General of the United Nations recently highlighted that human rights are permeated in the 2030 Agenda for Sustainable Development. The 17 SDGs are underpinned by economic, civil, cultural, political and social rights, as well as the right to development.<sup>133</sup> Therefore, the implementation of the 2030 Agenda and RtD as well as recovery from the pandemic could be bundled together as they can reinforce each other. Meanwhile, international policies and programmes should be designed with the RtD in mind, so that inclusive and sustainable solutions could be promoted.
- The United Nations, its specialized agencies, funds and programs, the IFIs, the WTO and other international organizations should mainstream the right to development in their policies and operational activities, thus policies and strategies of the international financial and multilateral trading system would be underpinned by the RtD. Some important multilateral institutions have seldom sat at intergovernmental debates on RtD. Now it is the time for them to join as stakeholders. The acceptance, operationalization and implementation of RtD at the international level would contribute to the creation of an enabling international environment, guide the reform of the international governance system and create greater convergence among countries and international institutions.
- National policies should make the right to development a priority. At the time when countries are designing recovery policies, it is the right moment to highlight the importance of RtD. It is also important to request governments to encourage people to participate in and benefit equally in the recovery process while observing the cluster of human rights instead of being marginalized. Experiences and lessons in this aspect should be learnt and shared across countries.

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<sup>133</sup> Secretary-General's Call to Action for Human Rights (United Nations, 2020). Available from <https://www.un.org/en/content/action-for-human-rights/index.shtml>.

- The COVID-19 pandemic has shown clearly the importance of an enabling international environment conducive for economic development and recovery from the pandemic in particular. The reform of the international financial and trade systems are urgently called for to make them take into due consideration the interests of the developing countries and adopt appropriate policies and strategies.
- The Office of the High Commissioner for Human Rights has a special responsibility for the RtD and for mainstreaming human rights across the UN system. It would be important if the High Commissioner could lead the process in mobilizing support for revitalizing RtD.
- Misinterpretations and distortions of the RtD should be analysed and refuted. Not to do so would allow wrong concepts to take root and mislead people, institutions and governments. Civil society, think tanks, academia should be invited to contribute to the elaboration of the RtD. To develop a knowledge base of the concept of RtD as well as empirical experiences of its actual and potential applications would also benefit the mainstreaming efforts.



## ANNEX

### Developed Countries' Voting on UNGA Annual Resolution on the Right to Development (2001 – 2021)

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	
ANDORRA	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	A	A	A	A	A
AUSTRALIA	A	N	A	A	A	N	N	Y	N	N	A	A	A	A	A	A	A	A	A	A	A	A
AUSTRIA	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	A	N	N	N	N
BELGIUM	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	N	N	N	N
CANADA	A	A	A	A	A	N	N	A	N	N	N	N	N	N	N	A	A	A	A	A	A	A
CROATIA	Y	Y	Y	Y	Y	N	N	Y	A	A	A	A	A	A	A	A	A	A	A	N	N	N
CYPRUS	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	Y	A	Y	A	A	A	A
CZECH REPUBLIC	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	N	N	N	N	N	N
DENMARK	N	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	N	N	N	N	N	N
ESTONIA	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	N	N	N	N
FINLAND	A	A	Y	Y	Y	N	N	Y	A	A	A	A	A	A	A	A	N	N	N	N	N	N
FRANCE	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	N	N	N	N	N	N
GERMANY	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	N	N	N	N	N	N
GREECE	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	Y	A	Y	A	A	A	A
HUNGARY	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	N	N	N	N
ICELAND	A	A	Y	Y	Y	N	N	Y	A	A	A	A	A	A	A	A	A	A	A	A	A	A
IRELAND	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	Y	A	A	A	A
ISRAEL	N	A	N	N	A	N	N	A	N	N	N	N	N	N	N	N	N	N	N	N	N	N
ITALY	A	A	Y	Y	Y	N	N	Y	A	A	A	Y	Y	Y	Y	Y	A	A	A	A	A	A
JAPAN	N	A	A	A	A	N	N	Y	A	N	A	A	A	A	N	A	A	A	N	N	N	N
LATVIA	A	A	Y	Y	Y	N	N	Y	A	N	A	A	A	A	A	A	A	A	N	N	N	N
LIECHTENSTEIN	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	Y	A	A	A	A	A	A
LITHUANIA	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	N	N	N	N
LUXEMBOURG	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	Y	A	Y	A	A	A	A
MALTA	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	A	A	A	A	A	A	A
MONACO	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	Y	A	A	A	A
NETHERLANDS	A	A	Y	Y	Y	N	N	Y	N	N	N	A	A	A	A	A	N	N	N	N	N	N
NEW ZEALAND	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	A	N	N	N
NORWAY	A	A	Y	Y	Y	N	N	Y	A	A	A	A	A	A	A	A	A	A	A	A	A	A
POLAND	A	A	Y	Y	Y	N	N	Y	N	N	A	A	A	A	A	A	A	A	N	N	N	N
PORTUGAL	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	Y	Y	A	Y	A	A	A	A
REPUBLIC OF KOREA	A	A	Y	Y	Y	N	N	Y	A	N	A	A	A	A	A	A	A	A	A	A	A	A
SAN MARINO	A	A	Y	Y	Y	N	N	Y	A	A	A	Y	Y	Y	Y	Y	A	A	A	A	A	A
SLOVAKIA	A	A	Y	Y	Y	N	N	Y	N	A	A	A	A	A	A	A	A	A	N	N	N	N
SLOVENIA	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	A	A	A	A	A
SPAIN	A	A	Y	Y	Y	N	N	Y	A	A	Y	Y	Y	Y	A	A	A	A	N	A	A	A
SWEDEN	A	A	A	A	Y	N	N	Y	N	N	A	A	A	A	A	A	N	N	N	N	N	N
SWITZERLAND		A	Y	Y	Y	N	N	Y	N	N	Y	Y	Y	Y	A	A	A	A	N	N	N	N
UNITED KINGDOM	A	A	Y	Y	Y	N	N	Y	N	N	N	N	N	N	N	N	N	N	N	N	N	N
UNITED STATES	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N

NOTE : "Y" (YES=vote for the resolution) are in green ; "N" (vote against) in red ; "A" (abstention) in yellow ; "N/A" means not existing ; "Non" means not voting.

Source: By authors. Voting data taken from "Declaration on the Right to Development: resolution / adopted by the United Nations General Assembly" from 2001 to 2021. Available from the United Nations Digital Library: <https://digitallibrary.un.org/?ln=en>.







Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
UGANDA	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
UNITED ARAB EMIRATES	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
UNITED REPUBLIC OF TANZANIA	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
URUGUAY	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	A	A
VANUATU	Y	Y	Non	Y	Y	Y	Y	Y	A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
VENEZUELA (BOLIVARIAN REPUBLIC OF)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
VIET NAM	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
YEMEN	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
ZAMBIA	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
ZIMBABWE	Non	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

**Developing Countries Not Members of NAM or G77 & China**

MEXICO	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	A	A	A
PALAU	Non	N	N	Non	A	N	N	N	N	N	N	Y	Y	N	N	A	Non	A	Y	Y	Non	
TUVALU	Non	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Non	Non	

**NOTE :** "Y" (YES=vote for the resolution) ; "N" (vote against) in red; "A" (abstention) in yellow ; "N/A" means not existing ; "Non" means not voting.

Source: By authors. Voting data taken from "Declaration on the Right to Development: resolution / adopted by the United Nations General Assembly" from 2001 to 2021. Available from the United Nations Digital Library: <https://digitallibrary.un.org/?ln=en>.

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ISSN 1819-6926