



Dialogue on
Globalization

OCCASIONAL PAPERS

GENEVA

N° 23 / July 2006

Felix Kirchmeier

The Right to Development – where do we stand?

State of the debate
on the Right to Development

Dialogue on Globalization

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Dialogue on Globalization is co-ordinated by the head office of the Friedrich-Ebert-Stiftung in Berlin and by the FES offices in New York and Geneva. The programme intensively draws on the international network of the Friedrich-Ebert-Stiftung – a German non-profit institution committed to the principles of social democracy – with offices, programmes and partners in more than 100 countries.

This Occasional Paper is published by the Geneva office of the Friedrich-Ebert-Stiftung.

July 2006

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ISSN 1614-0079

ISBN 3-89892-528-5

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Preface

The Cold War brought about a political climate of mistrust that led to the establishment of two separate human rights covenants – with individual civil liberties being promoted by the West and participatory rights by the East. The “Right to Development” is seen by its advocates as a bridge between these two sets of rights. It is a right that through its participatory nature guarantees the enjoyment of individual civil liberties. If a given state were too weak to grant the enjoyment of human rights to its citizens, the international community would have to take steps to enable the state to do so. This dualistic nature of the “Right to Development” – a right within the state and between states – is on the other hand the biggest obstacle to its acceptance by the international community, which fears that it may be interpreted as meaning a “right to development assistance.” This is why a lot of clarifying work still remains to be done.

The “Right to Development” has encountered great interest in the human rights community. At the same time, the Millennium Development Goals are a top priority on the international agenda. Still, many development practitioners have failed to establish the connection between the two in an adequate form. For many of them “the Right to Development” seems to be an unfinished idea of a right which no one can define in terms of its concrete ramifications. A new turn has been brought to the debate by the linkage between the “Right to Development” and the Millennium Development Goals which is currently becoming manifest in the discussion on the practical application of the “Right to Development.”

The unease about the “Right to Development” stems from the new approach which this right shares with other so-called third-generation rights. These rights, like the Right to Peace or the Right to Environment, are group or solidarity rights, a fact which sets them apart from the traditional and widely accepted human rights of the individual human person.

Here, for the first time, it is possible for a group of people to figure as rights-holders, with the duty-bearer no longer only the nation state they belong to. The obligations contained in these rights invoke the responsibility of the international community as a whole.

The possibility for such a generation of human rights to develop was given by the international situation after the end of the Cold War. With the growing political weight of the developing countries and the importance assigned to the role of the UN in this new world order, the environment for the creation of a new set of rights was more conducive than it has ever been since the creation of the Universal Declaration on Human Rights in 1948.

In his paper, Felix Kirchmeier lays out the history of the “Right to Development” and portrays the work done by the Commission on Human rights on the issue. He comes to the conclusion that the “Right to Development” provides a new possibility to tie development strategies back to a human rights-based approach to development. According to his paper, the theoretical debate is well advanced, although the step needed for practical implementation still remains an obstacle to be tackled. It is due to political differences that the possible potential surplus value here has still not been tapped to its fullest extent.

Dr. Erfried Adam
Director, Geneva Office
Friedrich-Ebert-Stiftung

1 Executive Summary

Politically sketchy as it might be, the debate about the Right to Development is moving forward.

The idea of development as a human right was introduced into the international debate in the 1950s and 1960s by the developing countries of the South which were gaining weight in international fora after their independence.

In 1986, it was adopted in the Declaration on the Right to Development, though still with opposition. Consensus was reached in 1993 when at the World Conference on Human Rights, 171 member States unanimously adopted the Vienna Declaration and Programme of Action, which included the Right to Development and made reference to the interdependence and indivisibility of all human rights.

By definition, “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.”

So far, debate has been mostly about reaching a narrower definition of the Right to Development. The current debate at the UN identifies indicators for fulfilment to confront theory with realities.

This all-comprising but not very concise definition has led to anxieties in industrially developed countries that the Right to Development could be seen as a “right to everything.” The duty-bearers identified by the Declaration on the Right to Development are at the same time the nation state and the international community. So the debate has been mostly about reaching a narrower and more exact definition of this right and the duties it invokes.

So far, the Right to Development has not transcended the state of soft law. As international commitments by governments do not necessarily translate into legally binding rights, the Right to Development itself is not a legally binding instrument. Yet, it draws its legal foundation from binding human rights covenants. Those covenants – namely the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights – have been constituted as international law by a large number of countries.

The current debate at the United Nations is propelled most notably by the Working Group on the Right to Development (which is chaired by Ambassador Ibrahim Salama/Egypt), and its High-Level Task Force. At these fora, measurable indicators for fulfillment are identified to confront theory with realities. Through this process, so the intention, the Right to Development should become “a reality for everyone.” So far, the Working Group has set up a list of criteria to be employed for the evaluation for existing development partnerships.

Those partnerships are also being linked to the aims formulated by the Millennium Development Goals, goal eight in particular, which calls for a “global partnership for development.” From a human rights perspective, the layout of this partnership should be based on the Right to Development.

Meanwhile, the different perceptions by regional groups of the content of this right keep the debate very complex. Therefore the most urgent step in promoting the Right to Development will be to apply the criteria identified by the Working Group to actual partnerships and to obtain practical examples of the usage and possible application of the right.

Hopefully the transition from the UN Commission on Human Rights to the Human Rights Council will not cause a gap in this ongoing but fragile process. A renewal of the mandate of the Working Group will be needed to carry on with the tasks that lie ahead.

2. Development of the UN Human Rights System

Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.

(Eleanor Roosevelt, Chairperson of the Commission on Human Rights and “mother” of the Universal Declaration on Human Rights)¹

2.1. Historical background

The Political Situation

Articles on human rights protection were formulated only with some reluctance. More than other policy areas, the issue shows the tension between the principles of state sovereignty and supranational governance.

Human rights are, and always have been, a topic of controversy in international politics. When the allied nations, the founders of the United Nations Organization (UN), met to develop a charter for the new organization, articles on human rights protection were formulated only with some reluctance. More than other policy areas, the issue of human rights protection shows the tension between the principles of state sovereignty and supranational governance. In particular, the reluctance of the USSR and Great Britain to cede to the UN any competences that could violate state sovereignty led to the present wording of human rights articles.²

Nevertheless, the promotion of human rights is specified as a main goal of the UN. The Preamble of the Charter states that “We the people of the United Nations [are] determined [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [...]”. This means that every member state commits itself to fundamental human rights and the principle of equality. Article 1 of the Charter also sets out “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” as a purpose of the UN. Article 55c links the promotion of human rights to international peace and well-being and can be seen as a mandate for standard-setting in the field of human rights. Article 60 places responsibility for the promotion of human rights with the General Assembly (GA) and, under the latter’s authority,

¹ <http://www.udhr.org/index.htm>.

² Gareis / Varwick, Die Vereinten Nationen, Leske + Budrich, Opladen, 2003, 178.

with the Economic and Social Council (ECOSOC). Article 68 calls on ECOSOC to form functional commissions, which it did in 1946, with the Commission on Human Rights. Article 13 is of special importance, as it mandates the GA to conduct studies into human rights situations and make recommendations thereupon. Although this article does not provide for any form of sanctions against states that ignore those recommendations, it for the first time assigns the right to deal with human rights violations to an international agency.

The Right to Development was not part of the Bill of Human Rights³ as defined in the first years of the United Nations. It occurs neither in the Universal Declaration on Human Rights nor in the Covenant on Civil and Political Rights nor in the Covenant on Economical, Social and Cultural Rights. The reason for this, as well as for why the issue came up in the late 1970s, lies in the development of the global political situation. The Universal Declaration on Human Rights was born right after World War II, declared in a unified spirit, and it represented a common conception of what were the rights of every human being that had to be defended globally. However, the following major documents were no longer able to profit from this spirit of unity. Thus two separate covenants came into being, one promoted by the West, the other by the East and some developing countries. The Cold War had become a decisive factor in international politics, affecting human rights in the same way as other political fields. Although the two covenants were elaborated in the same year, 1966,⁴ in politics and academia the use of the terms “first” and “second” generation became common to distinguish between the two covenants. While trying to use a certain amount of common language in the preambles and parts I and II of both covenants, they ultimately aim at different fields. If the human rights obligations of a state are divided into the duties to respect, protect and fulfill, then the first-generation rights invoke the duty to respect and protect, while the second-generation rights invoke the duty to protect and fulfill. Both covenants identify the individual human person as the right-holder.

First-generation rights invoke the duty to respect and protect, while second-generation rights invoke the duty to protect and fulfill.

The Universal Declaration on Human Rights

The first and most important document compiled by the Commission on Human Rights was the Universal Declaration on Human Rights (UDHR). Adopted by the GA in 1948, with 48 states in favor and 8 abstentions,⁵ this document is not legally binding due to its nature as a GA resolution.

The succeeding covenants are different. They form part of international law for the signatory states.

The Covenant on Civil and Political Rights (CCPR)

The rights contained in this covenant came to be known as the human rights of the first generation. They were promoted by the capitalist states of the West and not endorsed by the communist East. They cover the classical civil liberties and

³ The term “Bill of Human Rights” does not refer to one single document, but denotes the sum of the three most important international documents on human rights: The Universal Declaration on Human Rights, The Covenant on Civil and Political Rights, The Covenant on Economic, Social and Cultural Rights.

⁴ Although adopted in 1966, the covenants did not enter into effect until 1976, when the necessary number of ratifications was reached.

⁵ Of 56 member states, 8 abstained in the vote on the resolution on the UDHR: South Africa, Saudi Arabia, and the USSR and other Soviet states.

provide a summary of rules to protect the citizen from violations by the state as well as by private actors. Among those rights are the right to life, liberty and security and equality of persons, the right to freedom of thought, conscience and religion, and the right to freedom of association and assembly.

The first covenant covers classical civil liberties, whereas the second covenant promotes participatory rights.

The Covenant on Economic, Social and Cultural Rights (CESCR)

The communist states, in alliance with developing countries, promoted another aspect of human rights, which may be described as participatory rights. Those rights came to be known as human rights of the second generation. Here again, the West was not yet ready to agree.

The rights of this covenant invoke the state's duty to protect and fulfill. The rights to work, education, social security, an adequate standard of living, and the highest attainable standard of health, require state action: laws and regulations have to be passed to ensure that these rights are respected. Where the state is in a position to do so (as employer or representation of society), it has also the duty to ensure the fulfillment of the obligations arising from those rights.

2.2. Evolution of the Right to Development

The idea of a right to development had already developed in the 1950s and 1960s in the wake of the sharp increase of developing countries in the UN due to the process of decolonization. Certainly, an important role was played by Raul Prebisch, then director of CEPAL,⁶ who introduced the argument of the structural disadvantage of developing countries into international discussion. It took two more decades for the text of a declaration to be adopted. Even then the resolution did not pass the vote without opposition. The US voted against the Declaration. This has to be seen in the context of the Cold War and the US' general opposition to any propositions made by potentially communist states.

It was not until the fall of communism and the end of the Cold War that the newly founded global community was able to embrace as indivisible and interdependent all human rights laid down in those separate covenants. It is this new spirit of unity and strong optimism towards the role the United Nations that became pervasive in international politics and promoted the idea of a Right to Development.

Optimism was predominant at the 1993 World Conference on Human Rights, when the Vienna Declaration and Programme of Action, was unanimously adopted.

This new optimism was predominant at the 1993 World Conference on Human Rights, when 171 member states unanimously adopted the Vienna Declaration and Programme of Action, again giving meaning to Eleanor Roosevelt's statement from the inception of the Commission on Human Rights: "The destiny of human rights is in the hands of all our citizens in all our communities."

⁶ Economic Commission for Latin America and the Caribbean, established by ECOSOC resolution 106(VI) of 25 February 1948.

3. What is the Right to Development?

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.

(Article 1, Declaration on the Right to Development)

This first article of the Declaration contains three principles which the other articles and paragraphs of the Declaration elaborate. Arjun Sengupta,⁷ former independent expert on the Right to Development (RtD), describes them as follows: “(a) there is an inalienable human right that is called the right to development; (b) there is a particular process of economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized; and (c) the right to development is a human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy that particular process of development.”⁸

When the Declaration on the RtD was proclaimed in 1986, it was not by consensus. As the attitude towards the RtD changed over the years, consensus was first reached at the 1993 Vienna World Conference on Human Rights, where RtD was described as an “integral part of fundamental human rights.”⁹ Human rights were reaffirmed to be interdependent, indivisible, and mutually reinforcing. Since then references to the RtD are found in all major UN documents, including the Millennium Declaration, which states, “We are committed to make the right to development a reality for everyone and to freeing the human race from want.”¹⁰

Twenty years have passed since the adoption of the Declaration on the RtD in General Assembly Resolution 41/128. And the proclamation was preceded by a long scholarly debate as well. Also, for quite some time progress on the implementation of the RtD had been very slow due to the highly politicized nature of the issue; but in recent years the development has gained a certain momentum.

The Declaration on the Right to Development was proclaimed in 1986. Nowadays, references to the RtD can be found in all major UN documents, including the Millennium Declaration.

7 Prof. Arjun Sengupta (India) has had a long career in international affairs and diplomacy. He is Adjunct Professor of Development and Human Rights in the Faculty of Public Health, Harvard University, FXB Center, Harvard School of Public Health, Boston, and Chairman of the National Commission on Enterprises in the Unorganized and Informal Sector, Government of India. He served as an independent expert on the RtD from 1999-2004 and has published widely on the topic.

8 A/55/306. (The symbols given in the footnotes refer to the official UN document number of the source quoted.)

9 Vienna Declaration para. 10: “The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.” (A/CONF.157/23)

10 A/RES/55/2, para. 11.

In a rights-based approach to development, the Right to Development aims at the development of individual persons and peoples on a national and international level. This dualistic nature led to persistent problems of exaggerated politicization.

Economic, social, cultural, and political development of the human person as a single member of an entire people is embedded to a broader national and international context. In a rights-based approach to development, the RtD is intended to be an instrument to ensure that the development of individual persons and peoples is enabled and promoted nationally and internationally.

This dualistic nature led to persistent problems of exaggerated politicization. The human person is identified as the beneficiary of the RtD, as of all human rights. Nevertheless, the right can also be invoked by an entire people – which in the current international order usually means by states. The obligations are in this case not imposed on one individual state, i.e. as regards its internal structures, but on the international community, which is obliged “to promote fair development policies and effective international cooperation.”¹²

These two sides of the RtD have been used in politics not in regard to their intended complementary nature, but rather in attempts to negate one application of the RtD by stressing the other. While developing countries called on developed countries to alter both their international policies and the international economic order, developed countries stressed the need for developing countries to change their internal structures in order to fulfill the RtD for their citizens. The fear that RtD might be perceived as a “right to development assistance” or a “right to everything”¹³ made developed countries very reluctant to engage in any discussions on the topic.

11 The first report of the then independent expert on the Right to Development, A. Sengupta elaborates on this development. (E/CN.4/1999/WG.18/2).

12 <http://www.ohchr.org/english/issues/development/right/index.htm>.

13 Nuscheler, Das Recht auf Entwicklung, Deutsche Gesellschaft für die Vereinten Nationen, Heft 67, Bonn, 1996:11.

4. Legal Status of the Right to Development

We will spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty, to which more than a billion of them are currently subjected. We are committed to making the right to development a reality for everyone and to freeing the entire human race from want.

(Millennium Declaration, para. 11)¹⁴

4.1. Is the Right to Development a legally enforceable right?

International commitments by governments do not necessarily translate into a legally binding rights. The RtD itself is not (yet) a legally binding instrument, but draws its legal foundation from binding human rights covenants. From a legal point of view, the RtD can be described as “soft law.” This term denotes a group of human rights which have been generally accepted by the world community and reaffirmed in declarations and resolutions by the leaders of many states. Nevertheless, they have not reached the status of law in those countries. At the same time, those rights are for the most part group rights, a fact which sets them apart from traditional human rights – civil, political, economic, social, and cultural – which are predominantly seen as individual rights. At most, they may form part of customary law if their application so suggests. Among those rights are the right to peace, the right to a clean environment, and the right to development. These rights do not invoke not primarily the duties of one given state but rather the responsibility of the international community, as the issues they relate to are too global to be covered by national efforts and legislation.

The Right to Development can be described as “soft law” – generally accepted, but not legally binding.

The legal foundation for the RtD therefore has to be sought in other (legally binding) documents. Examining the content of the RtD, we find that the Bill of Human Rights can be taken as a foundation. The Universal Declaration of Human Rights and the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights all have legally binding status for those states that are parties to the covenants.¹⁵

The exercise and enjoyment of the RtD presupposes the existence of and compliance with rights contained in the Declaration and the two covenants: the right to self-determination, education, work, life, health, food, housing, liberty, and security of the person, etc. The RtD calls for an environment conducive to the realization of all these rights. The responsibility therefore lies first with the state. This means

¹⁴ A/Res/55/2. The Millennium Declaration was adopted unanimously at the UN Millennium Summit, then the largest gathering of heads of state in history.

¹⁵ 152 states are parties to the Covenant on Economic, Social and Cultural Rights, (66 signatories); 155 states are parties to the Covenant on Civil and Political Rights (67 signatories).

that a politically and socially just and reliable system has to be established, granting those fundamental rights to everyone. Wherever the creation of this environment lies beyond the possibilities of a given nation state, the duty of the international community becomes relevant. This may be in cases where a nation state is too weak (or unwilling) to fulfill its duties, or where the power to do so is beyond its reach. Developing countries claim that the international economic and political order constitutes an obstacle to the enjoyment of the RtD for their citizens. They therefore see a need for action in the international dimension of the RtD. In their view, they are able to provide the necessary basis for the enjoyment of the RtD only if the international order becomes more conducive to the economic development of developing countries in general.

4.2. What are the duties of states concerning human rights?

Speaking of the duties established by the RtD, it is important to give an idea of the relationship between right-holders and duty-bearers in the framework of human rights in general. If the human being as an individual is seen as the right-holder, there has to be a duty-bearer as well. In general – as in the case of civil, political, economic, social, and cultural rights, this duty-bearer is the nation state of which the right-holders are part.

The duties of the state are threefold: First, there is the obligation to abstain from undertaking actions that could violate human rights. This negative duty obliges states not to violate human rights. Second, there is the duty to protect. Human rights can be violated not only by the state but also by private actors. In that case it is one of the state's core responsibilities to protect its citizens against acts that violate their human rights. Third, there is the duty to fulfill. This duty, mostly associated with economic, social, and cultural rights, implies that the state, by means of legislation, must create a framework that enables the realization of those human rights.

4.3. What might a full implementation of the Right to Development entail?

Developed countries are anxious that RtD could be seen as a “right to everything” – allowing states or individuals to sue rich nations for fulfillment.

A question that makes any agreement on the RtD very difficult is what a full implementation of the RtD would really mean for peoples and countries. The biggest fear of developed countries is that it could be seen as a “right to everything” and therefore allow states or individuals from any state to sue rich nations for the fulfillment of what is perceived to be necessary for the enjoyment of the RtD for this state or individual.

If the RtD is to be seen as a right of peoples (as groups of individual right-holders), states, and their governments in their capacity as representatives of the people, could figure as right-holders. States are also duty-bearers at the international level. They are required to control the internal distribution of resources and ensure

good domestic governance, while rich states would also have the obligation to help poor states as far as their means allow them to do so. They would have the duty to promote, protect, and fulfill internationally, means the obligation to:

- 1) Promote: abstain from action that could violate a poor nation's RtD: the system of international trade, with its imbalances, would have to be overhauled. The main area where developing countries may arguably see their RtD violated is the system of international trade. Their pushes at the WTO for fair market access are in line with what should be perceived as their RtD.
- 2) Protect: the international community may have to protect citizens from their own corrupt states, which would contradict the principle of state sovereignty. It would also have to prevent TNCs from violating the RtD of developing countries, which would call for a lot of new legislation on TNCs.
- 3) Fulfill: developed states would have to fund activities and programs that are out of the financial reach of the countries and peoples concerned, in order to provide realistic chances for development/promote an international environment that is truly conducive to development.

Even this brief overview clearly shows that without further interpretation and agreement on the scope and legal content of the RtD, no legally binding agreement can be reached and no monitoring or enforcement mechanism can be put in place.

Without further interpretation and agreement on the scope and legal content of the RtD, no legally binding agreement can be reached.

4.4. Country positions on the Right to Development

Different countries or groups of countries promote different views on the RtD. The perceptions of what the RtD could mean or what its realization would require could not be more diverse. The following paragraphs reflect some of the most prominent positions:

Germany

Germany supports and agrees to the concept of the Right to Development. However, it emphasizes the fact that the RtD does not necessarily focus on international cooperation, stressing instead that the primary duty to create an enabling environment lies with the developing states themselves. The RtD is not viewed as entailing any specific legal obligation of individual states vis-à-vis any other particular state. Germany fully endorses the concept that the RtD means "growth with equity." From Germany's point of view, the RtD and a rights-based approach to development attach importance to both development outcomes and processes of development. Germany states that coordinating trade, development, and human rights policies could contribute to a coherent approach adequate to optimizing the realization of human rights, including development, and thus also the Right to Development.

Germany fully endorses the concept that the RtD means "growth with equity – without acknowledging the principle as a binding right.

In its “Development policy action plan on human rights 2004–2007,”¹⁶ the German Federal Ministry for Economic Cooperation and Development (BMZ) laid out its policy approach towards mainstreaming human rights in development cooperation. The title of the paper, “Every person has a right to development,” underlines the individual character of the RtD as seen by Germany. Among the measures named in the paper is the effort to implement the Millennium Development Goals (MDGs) and to realize human rights. Yet, the theoretically obvious link between human rights and the MDGs, provided through the RtD, is not established. Here, as in other European positions, the reluctance to refer to a right that is understood differently by different stakeholders may have been the key factor. The German policy follows RtD principles without acknowledging them as such.

United States

The US is willing to “talk about an individual’s right to development,” but not a “nation’s right to development. Consequently, they reject the elaboration of legally binding instruments on the RtD.

The US position shows some ambiguity. While the US has accepted the RtD in key documents, administration officials reject any responsibilities that could arise from an application of the RtD and generally vote against resolutions that would advance the RtD. While President Bush called for implementation of the Monterrey Consensus and the creation of a “genuine partnership between developed and developing countries to replace the donor-client relationship,”¹⁸ representatives of the US in international fora continued to object to resolutions on the RtD. The main objection to such resolutions was that the US understands the term RtD “to mean that each individual should enjoy the right to develop his or her intellectual or other capabilities to the maximum extent possible through the exercise of the full range of civil and political rights.”¹⁹ The US is willing to “talk about an individual’s right to development,” but not a “nation’s right to development, [...], for the simple reason that nations do not have human rights.”²⁰ The US also rejects, consequently, the elaboration of a legally binding instrument on the RtD.

United Kingdom / European Union (EU)

While an action taken may be grounded in and be in line with the demands of the RtD, the EU donor countries prefer to keep their commitments on a voluntary basis.

During the time of its EU presidency, the UK strongly promoted a new approach to development cooperation. The basic ideas are laid down in its paper “Rethinking Conditionality.”²¹ According to the UK submission to the 2005 meeting of the High Level Task Force on the RtD, the UK’s “understanding of what makes aid effective is changing.” An overriding principle of its new approach in development cooperation is therefore to move away from classic notions of conditionality to a broader understanding of partnership, which involves leaving decisions about the development processes largely up to partner countries. The UK is “committed to supporting partner governments to fulfill their human rights obligations, and will agree with governments how to assess progress in this area.”²²

16 BMZ Concepts, Development policy action plan on human rights, 2004–2007, Every person has a right to development, <http://www.bmz.de/en/service/infothek/fach/konzepte/konzept128engl.pdf>.

17 The US endorsed the RtD in the Vienna Declaration and the Monterrey Consensus.

18 <http://fpc.state.gov/fpc/53102.htm>.

19 Explanation of Vote on Right to Development, 61st Commission on Human Rights, Statement delivered by Joel Danies, US Delegation to the 61st Commission on Human Rights, April 12, 2005: <http://www.state.gov/p/io/44595.htm>.

20 Statement by Lino J. Piedra, Public Member of the U.S. Delegation, March 22, 2005: <http://www.humanrights-usa.net/2005/0322Item7.htm>.

21 DFID, Partnerships for poverty reduction: rethinking conditionality, A UK policy paper, March 2005. <http://www.ohchr.org/english/issues/development/docs/conditionality.pdf>.

22 E/CN.4/2005/WG.18/TF/CRP.3

This approach fits well in the context of the RtD, but it is not guided by the principle of this right. In this respect the UK provides a vivid example of the European position. While an action taken may be grounded in, and in line with, the demands of the RtD, the donor countries prefer to keep their commitments on a voluntary basis, seeking to avoid the perception that their approach is based on the RtD. In abiding by this practice they are seeking to protect themselves against possible further demands by developing countries.

African Union (AU) and Non Aligned Movement (NAM)

In the 1981 African (Banjul) Charter on Human and Peoples' Rights, the RtD appears as a right of peoples, not individuals.²³ As such a right, it is also incorporated into several national constitutions. The members of the AU committed themselves in the Banjul Charter, which dates to a time prior to the Declaration on the Right to Development, to an understanding of the RtD that is not shared by many developed states.

As voiced in the discussion on the RtD, the AU and NAM see a discrepancy between official commitments to the RtD and its absence in cooperation policies. Many fundamental RtD principles could be found in development partnership agreements, but the AU regrets the absence of a clear RtD-based approach.²⁴ It agrees that national action and international cooperation must reinforce each other and calls on donors to operationalize the Monterrey Consensus and come to a mutual understanding on partnerships that would set out principles of good governance and good donorship. In their view, the current discussion focuses too narrowly on the national dimension of the RtD and neglects the international aspect.

The AU regrets the absence of a clear RtD-based approach. It agrees that national action and international cooperation must reinforce each other, but calls on donors to operationalize the Monterrey Consensus.

²³ Banjul Charter, Art. 22, http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf.

²⁴ As an example, the Cotonou partnership is seen as a further step towards the realization of the RtD, but the RtD does not appear among its objectives.

5. The Millennium Development Goals

We will have time to reach the Millennium Development Goals – world-wide and in most, or even all, individual countries – but only if we break with business as usual.

We cannot win overnight. Success will require sustained action across the entire decade between now and the deadline. It takes time to train the teachers, nurses and engineers; to build the roads, schools and hospitals; to grow the small and large businesses able to create the jobs and income needed. So we must start now. And we must more than double global development assistance over the next few years. Nothing less will help to achieve the Goals.

(Kofi A. Annan, United Nations Secretary-General)²⁵

Millennium Development Goal 8, calling for the a “global partnership for development,” has gained renewed interest for the RtD.

With the elaboration of the Millennium Development Goals (MDGs), especially Goal 8, which aims at developing a “global partnership for development,” the RtD has come into the focus of renewed interest.

The MDGs are those goals for development that were named in the Millennium Declaration.²⁶ The goals were then later compiled and made easily identifiable by the UN Secretary-General, as they had been scattered throughout the document. He released a list with eight main goals, split up into 18 targets with 48 indicators, to evaluate progress made.²⁷ The importance of the MDGs lies in the fact that they provide quantifiable targets that are to be reached within a certain timeframe – by 2015.

The eight goals with their respective targets are:

- 1) Eradicate extreme poverty and hunger:
 - Reduce by half the proportion of people living on less than a dollar a day.
 - Reduce by half the proportion of people who suffer from hunger.
- 2) Achieve universal primary education:
 - Ensure that all boys and girls complete a full course of primary schooling.
- 3) Promote gender equality and empower women:
 - Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.
- 4) Reduce child mortality:
 - Reduce by two thirds the mortality rate among children under five.
- 5) Improve maternal health:
 - Reduce by three quarters the maternal mortality ratio.
- 6) Combat HIV/AIDS, malaria and other diseases:
 - Halt and begin to reverse the spread of HIV/AIDS.
 - Halt and begin to reverse the incidence of malaria and other major diseases.

²⁵ <http://www.un.org/millenniumgoals/index.html>.

²⁶ A/RES/55/2.

²⁷ For a listing of the goals, targets, and indicators, see: <http://www.un.org/millenniumgoals/>.

- 7) Ensure environmental sustainability:
- Integrate the principles of sustainable development into country policies and programs; reverse loss of environmental resources.
 - Reduce by half the proportion of people without sustainable access to safe drinking water.
 - Achieve significant improvement in lives of at least 100 million slum dwellers, by 2020.
- 8) Develop a global partnership for development:
- Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory, includes a commitment to good governance, development, and poverty reduction – nationally and internationally.
 - Address the least developed countries' special needs. This includes tariff- and quota-free access for their exports; enhanced debt relief for heavily indebted poor countries; cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction.
 - Address the special needs of landlocked and small island developing states.
 - Deal comprehensively with developing countries' debt problems through national and international measures to make debt sustainable in the long term.
 - In cooperation with the developing countries, develop decent and productive work for youth.
 - In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.
 - In cooperation with the private sector, make available the benefits of new technologies – especially information and communications technologies.

Goal 8 stands out in this compilation; it, most importantly, provides a basis for the achievement of the other seven goals. Only with the help of a global partnership will it be possible for many developing countries to reach the goals. The achievement of the targets within the given timeframe often lies beyond the capacities of the least developed countries (LDCs) in particular.

The RtD is perceived as a great opportunity for developing countries to push for a global trade system that is more in their favor as well as for the realization of the financial commitments made by developed countries.²⁸ So it is not surprising that recent debates on the RtD have focused on the application of this right in the context of the MDGs whose overall aim is to better the economic and social situation of developing countries.

Progress toward the MDGs can only be achieved through international cooperation. For this reason a legal grounding of this cooperation could prove very fruitful. It has to be noted at this point that the RtD is not the only (semi-)legal basis for the MDGs. The links between the MDGs and human rights standards have been compiled by the Special Rapporteur on Health in one of his reports.²⁹

The RtD is perceived as a great opportunity for developing countries to push for a global trade system that is more in their favor as well as for the realization of the financial commitments made by developed countries.

²⁸ Developed countries have repeated in several international documents their pledge to spend 0.7% of their GNP as official development assistance (ODA). This pledge has only been fulfilled by very few nations. Some (including the US) even argue that they have never officially had committed to the figure of 0.7% GNP, although they supported various international documents, including the Monterrey Consensus (A/CONF.198/11) that state that aim.

²⁹ A/59/422.

6. Current developments in the debate on the Right to Development

The process on the right to development is moving slowly from generalities to specifics, from vagueness to clarity, from claims to proposals, and in one word from the conceptual to the operational. I have been following the right to development process during the past ten years, and the Task Force experience in my view represents the highest quality of debate we have ever had.

(Ambassador Ibrahim Salama, Egypt, Chairperson of the Open-ended Working Group on the Right to Development)³⁰

After the unanimous reaffirmation by world leaders at the 1993 Vienna World Conference, the application and interpretation of the RtD has occupied the Sub-Commission as well as Working Groups and an Independent Expert of the Commission on Human Rights.

The RtD has been dealt with in various ways within the framework of the United Nations. After the adoption of the Declaration by the General Assembly and its unanimous reaffirmation by world leaders at the 1993 Vienna World Conference, the application and interpretation of the RtD has occupied the Sub-Commission as well as Working Groups and an Independent Expert of the Commission on Human Rights.

6.1. Tasks entrusted to the Sub-Commission

In April 2003, the Commission requested that the Sub-Commission prepare a concept document by 2005, establishing options for the implementation of the RtD and their feasibility – inter alia, an international legal standard of a binding nature (following a proposition by NAM), guidelines on the implementation of the RtD, and principles for development partnerships (following a proposal by the EU). A draft document was prepared by the Sub-Commission in 2005, in which the EU and the Latin American countries (GRULAC) welcomed the emphasis on participation and the impact of development efforts on poor peasants' well-being. The Sub-Commission decided to continue its work on the topic.

6.2. The first Working Group (1996–98) and the Independent Expert (1998–2004)

Political differences made the work of the first Working Group more than difficult and resulted in low productivity within this body. The Independent Expert provided a broad-based background to the topic in his reports. While these reports were widely appreciated, they too were unable to advance the debate substantially. They were meant to provide a basis of discussion for the second Working Group that was established in 1998, but met for the first time in 2000.

³⁰ Opening Statement at the 6th session of the Working Group, 14 February 2005. (<http://www.unhchr.ch/hurricane/hurricane.nsf/0/76110E5458E83287C1256FAA0030E5A1?opendocument>)

6.3. The second (and most recent) Working Group (2000-present)

The mandate of this second Working Group was established by the Commission on Human Rights in Resolution 1998/72. This resolution defines the mandate as follows:

The Working Group is supposed to “(I) monitor and review progress made in the promotion and implementation of the right to development as elaborated in the Declaration on the Right to Development, at the national and international levels, providing recommendations thereon and further analysing obstacles to its full enjoyment, focusing each year on specific commitments in the Declaration; (II) review reports and any other information submitted by States, United Nations agencies, other relevant international organizations and non-governmental organizations on the relationship between their activities and the right to development; and (III) present for the consideration of the Commission on Human Rights a sessional report on its deliberations, including, inter alia, advice to the Office of the High Commissioner for Human Rights with regard to the implementation of the right to development, and suggesting possible programmes of technical assistance at the request of interested countries with the aim of promoting the implementation of the right to development.”³¹

The same resolution called on the Chairman of the Commission to appoint an Independent Expert “with a mandate to present to the working group at each of its sessions a study on the current state of progress in the implementation of the right to development as a basis for a focused discussion, taking into account, inter alia, the deliberations and suggestions of the working group.”³²

When the mandate of the Independent Expert ended, the Working Group (WG) decided to establish a high-level task force (HLTF) that was to meet before the WG and report on further possibilities of advancing the RtD. The HLTF brings together human rights experts from academia and politics and representatives from international development and financial institutions. As the meetings are held in public, states and NGOs have the opportunity to participate in the deliberations.

6.4. The High Level Task Force

The HLTF³³ was created by the Commission on Human Rights in 2004 as a subsidiary body to the WG.³⁴ Its mandate was restricted to one year (along with the WG), to be reviewed thereafter.

31 CHR Res. 1998/72, para. 10a.

32 CHR Res. 1998/72, para. 10b.

33 The high-level task force is made up of the following members:

1st meeting: Silvio Baro Herrera (Cuba); Ellen Sirleaf-Johnson (Liberia), Chairperson; Stephen P. Marks (United States of America); Sabine von Schorlemer (Germany); Arjun Sengupta (India). Representatives of the following trade, development and financial institutions, and organizations participated as experts: UNDP, UNICEF, UNCTAD, IMF, World Bank, and WTO. In addition, the following experts contributed to the task force: A.K. Shiva Kumar, Robert Howse and Margot Salomon.

2nd meeting: Stephen Marks (United States of America); Sabine von Schorlemer (Germany); Leonardo Garnier Rímolo (Costa Rica); and Habib Ouane (Mali). Representatives of the following trade, development and financial institutions and organizations participated as experts: UNDP, UNCTAD, IMF, World Bank and WTO. In addition, the following experts contributed to the task force: Fateh Azzam, Sakiko Fukuda-Parr and Margot Salomon.

34 CHR Res. 2004/7, para. 9.

The first meeting of the High Level Task Force

The first meeting of the HLTF was held from 13–17 December 2004. As requested by the WG, it considered the following three topics “reflecting both national and international perspectives:

- (a) Obstacles and challenges to the implementation of the Millennium Development Goals in relation to the right to development;
- (b) Social impact assessments in the areas of trade and development at the national and international levels; and
- (c) Best practices in the implementation of the right to development.”

The HLTF decided to consider the third topic within the scope of the other two in order to facilitate the discussion.”

Questions concerning the first topic included how human rights or a human-rights-based approach to development and the efforts to achieve the Millennium Development Goals (MDGs) affected each other. How could the RtD promote the achievement of the MDGs and how could the international commitment to the MDGs strengthen the RtD? The main focus of these deliberations was on MDG 8 “Develop a global partnership for development.”

For a discussion on the second issue, including the human rights aspect in social impact assessments, the HLTF identified the following questions:³⁵

- (a) How can human rights, including the Right to Development, contribute to evolving an integrated framework for the social impact assessment of policies?
- (b) How can an integrated assessment of trade policies contribute to the formulation, implementation, and regulation of the international trade regime that is conducive to the realization of human rights, including the Right to Development?
- (c) What is the role of social impact assessments in identifying complementary policy measures that could be necessary to mitigate the adverse consequences of trade and development policies on the Right to Development?
- (d) How do such measures relate to the implementation of the Right to Development?
- (e) How can the use of appropriate methodologies to undertake social impact assessment of policy measures, taking into account the Right to Development concerns, be encouraged at the national and the international levels?

In its conclusions, the HLTF pointed out, inter alia, that there was “a need to make available to policy makers and development practitioners a clear and rigorous mapping of the Millennium Development Goals against the provisions of the relevant international human rights instruments” to enable them to benefit from one another. Hence, the RtD have to be integrated into social impact assessments.³⁶

³⁵ E/CN.4/2005/WG.18/2, para. 21.

³⁶ Such a task was undertaken by Paul Hunt, UN Special Rapporteur on the Right to Health, in the form of a non-exhaustive list linking MDGs and human rights provisions. See footnote 27.

The second meeting of the High Level Task Force

The second meeting of the HLTF was held in Geneva from 14 to 18 November 2005. The HLTF was mandated “to examine Millennium Development Goal 8, on global partnership for development, and suggest criteria for its periodic evaluation with the aim of improving the effectiveness of global partnerships with regard to the realization of the right to development.” The aim of this exercise was to use the RtD in a practical application. The MDGs have received considerable support in the political debate and on the ground. Tying them into a human-rights-based approach would, it was noted, help in reaching them and would be, at the same time, a step toward the often-called-for mainstreaming of the RtD.

Development partnerships were seen as one practical way to realize the RtD. Reviewing existing partnerships could provide a notion of best practices and lead to criteria for evaluating other partnerships, whether they already exist or were just about to take shape.

The meeting of the HLTF benefited from the cooperative spirit among the country delegations as well as the broad participation of international trade, development, and financial agencies.³⁸

The task force first considered “the evolution of and recent developments with regard to global partnerships.” It then discussed “criteria for the evaluation of goal 8, and how these could be enhanced from the perspective of the right to development.”³⁹ The discussions and the resulting conclusions aimed at translating abstract human rights principles into practical policy recommendations that could be used by practitioners on the ground. In that spirit, the HLTF pointed out that earlier recommendations by the WG and the HLTF itself on “general aspirations” toward the RtD were still valid, but that this meeting’s recommendations would focus on “identifying specific steps to be taken.”⁴⁰

As its principal recommendation, the task force proposed that the WG undertake a periodic review of global partnerships, taking into account a set of selected criteria. It identified the following criteria for evaluating global partnerships as described by MDG 8:

- (a) The extent to which the partnership reflects human rights standards and a rights-based approach to development;
- (b) The extent to which the partnership respects the right of each state to determine its own development policies, in accordance with its obligation to ensure that the policies are aimed at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free, and meaningful participation in development and in the fair distribution of the benefits resulting therefrom, as required by article 2 (3) of the Declaration on the Right to Development;

37 E/CN.4/2005/25, para. 54 (i).

38 Apart from country delegations, the following agencies/organizations participated in and contributed substantively to the meeting: UNDP, UNCTAD, IMF, World Bank, WTO, International Organization of la Francophonie, NEPAD, OECD and UNECA. As the focus of the meeting was more on the regional level, the ILO was not involved, although its approach to “decent work” would also fit well in the context of the MDGs.

39 E/CN.4/2005/WG.18/TF/3, para. 16.

40 E/CN.4/2005/WG.18/TF/3, para. 80.

The MDGs have received considerable support in the political debate and on the ground. Tying them into a human-rights-based approach would help in reaching them and would, at the same time, be a step toward the often-called-for mainstreaming of the RtD.

- (c) The extent to which partner countries have incorporated human rights into their national development strategies and receive support from international donors and other development actors for these efforts to attain positive development outcomes;
- (d) The extent to which the partnership values and promotes good governance and the rule of law;
- (e) The extent to which the partnership incorporates a gender perspective and values and promotes gender equality and the rights of women;
- (f) The extent to which the partnership applies to itself and promotes the principles of accountability, transparency, non-discrimination, participation, equity, and good governance;
- (g) The extent to which the priorities set by the partnership are sensitive to the concerns and needs of the most vulnerable and marginalized segments of the population;
- (h) The extent to which the partnership recognizes mutual and reciprocal responsibilities between the partners, based on a realistic assessment of their respective capacities and mandates;
- (i) The extent to which the partnership includes institutionalized mechanisms of mutual accountability and review, such as the African Peer Review Mechanism;
- (j) The extent to which the partnership ensures that adequate information is available to the general public for the purpose of public scrutiny of its working methods and outcomes;
- (k) The extent to which the partnership provides for the meaningful participation of the affected populations in processes of elaborating, implementing and evaluating of related policies, programs, and projects;
- (l) The extent to which, in applying the preceding criteria, indicators and benchmarks are identified to assess progress in meeting them, and, in particular, whether the indicators used are reflective of human rights concerns, disaggregated as appropriate, updated periodically, and presented impartially and in a timely fashion;
- (m) The extent to which the partnership contributes to a development process that is sustainable, with a view to ensuring equal and continually increasing opportunities for all – now and in the future.

The WG subsequently endorsed most of the recommendations of the HLTF. At its 7th session, the country delegations worked closely together, reaching across regional boundaries. The very positive atmosphere of the session, with constructive participation by a large number of states and institutions, was probably due to the strong commitment of the Chair of the WG, Ambassador Ibrahim Salama, who succeeded in merging a great number of positions into one common document. The work of the Office of the High Commissioner for Human Rights (OHCHR) was mentioned positively by many national delegations as well.

Plans for the third meeting of the High Level Task Force

The WG recommended to the Commission to renew the mandate of the HLTF for a further year⁴¹. Among the options discussed for the further work of the WG, it decided to maintain the focus on MDG 8 and have the “task force apply the criteria identified to a number of partnerships, and report back to the Working Group.”⁴² This decision mandates the HLTF to undertake a number of practical studies, which it intends to do in the course of this year. With this decision, the WG has proceeded in its efforts to arrive at a practical application of the RtD instead of getting bogged down in theoretical discussions about the right’s nature and scope.

Before these studies can be carried out, a resolution from the new Human Rights Council is needed, mandating the WG to continue in its work for a further year. On the political and substantial side, there is consensus to continue the WG. However, formal rules and procedures for the renewal of the UN human rights organ might cause some severe problems. As the transition from Commission to Council had been quite abrupt, with the Commission not deciding on any substantial matters any more, the danger of a gap in the process becomes evident. If the Council does not decide on an omnibus resolution⁴³ or deal with the mandate of the WG directly, work will be stalled for one year, solely for to procedural matters.

With this decision, the Working Group has proceeded in its efforts to arrive at a practical application of the RtD instead of getting bogged down in theoretical discussions about the right’s nature and scope.

41 Now, with the reform of the UN human rights system, this recommendation will be brought forward to the new Human Rights Council, which has been requested to take over all Special Procedures of the Commission and review the mandates within its first working year.

42 E/CN.4/2006/26, para. 25.

43 As the Human Rights Council will meet in its first session only for two weeks (June 19-39), it is very unlikely that all the pending issues and reports of Special Procedures will be dealt with. Therefore the proposition of an “omnibus resolution” to extend the mandate of all Special Procedures for one further year is supported by many delegations.

7 Conclusion

It is now important that all sides recognize the importance of both the national and the international level of the RtD's scope and embrace both as complementary, not contradictory.

The ongoing work within the frame of the United Nations is giving rise to a common understanding of the Right to Development. One major example of progress is the constructive working spirit that dominates the debate as well as the inclusive approach in which the debate is being conducted. The fact that delegations from different regional groups, development organizations, and international financial institutions are engaged in a fruitful discussion gives hope for further positive development.

As in the overall debate surrounding human rights issues, misuse and instrumentalization of the human rights system for political purposes not linked to human rights constitutes a great danger. Avoiding this misuse of the human rights system is one of the most important tasks involved in advancing the issue. In a larger context, this has been shown by the recent reform of the entire UN human rights system, with the Commission on Human Rights, which had been criticized for its political double standards, being replaced by the new Human Rights Council.

As far as the Right to Development and its advancement are concerned, it is now important that all sides recognize the importance of both the national and the international level of its scope and embrace both as complementary, not contradictory. The human person is definitely still at the center of the Right to Development, and only the duties involved transcend national borders. Only when a state is not in the position to fulfill this right for its citizens, or when the international environment is hostile to this fulfillment, can the international community be called upon to act.

In relation to the Millennium Development Goals, the approach taken by the Working Group in using the Right to Development provides concrete steps towards the use of this right as an evaluation tool. These steps have served to appreciably advance the application of the Right to Development at the theoretical level. Nevertheless, the realities on the ground are still far from conducive for a realization and implementation of the Right to Development. Much "mainstreaming"⁴⁴ will still be needed before the Right to Development can be applied by practitioners. This becomes evident when we review the literature and working reports of many institutions like the ILO, UNDP, and UNCTAD, where the link to the Right to Development and a human-rights-based approach to development is often not established in a such way as to bring about a mutual reinforcement of development programs and the right itself. For practitioners, a clear cut Right to Development would provide reliable guidelines for the shaping of concrete projects.

⁴⁴ Mainstreaming, in the sense that the idea of this right would be incorporated and serve as a guideline for all practical projects of development cooperation

The same has to be said about national development strategies. As noted in the paragraph on country positions, many such programs may be said to be perfectly in line with the Right to Development and to promote its case while obtaining a “para-legal” foundation of their own. However, the donor countries are hesitating to commit to a right whose content and interpretation are still under discussion.

This again shows why the debate at the United Nations is so important. Some may have criticized it for being overly theoretical and lacking examples on the ground. However, first, the debate is advancing towards criteria for application. Second, this theoretical debate has to be conducted and needs to come to conclusions that are acceptable for all parties involved, because this will be the only way to convince reluctant parties to give a real chance to the application of the Right to Development on the ground. And it is only this application that can enable the Right to Development to serve the purpose it was formulated for: to change the lives of people and become a reality for everyone, “freeing the entire human race from want.”

Abbreviations and acronyms:

AU	African Union
BMZ	Bundesministerium für Zusammenarbeit (German Federal Ministry for Economic Cooperation and Development)
CCPR	Covenant on Civil and Political Rights
CESCR	Covenant on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
ECOSOC	Economic and Social Council
EU	European Union
GA	General Assembly
GNP	Gross National Product
GRULAC	Group of Latin American and Caribbean States
HLTF	High Level Task Force
ILO	International Labour Organization
IMF	International Monetary Fund
LDCs	Least Developed Countries
MDGs	Millennium Development Goals
NAM	Non Aligned Movement
NEPAD	New Partnership for Africa's Development
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation for Development
OHCHR	Office of the High Commissioner for Human Rights
RtD	Right to Development
TNCs	Transnational Corporations
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNICEF	United Nations Children's Fund
WG	Working Group
WTO	World Trade Organization

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On the author:

Felix Kirchmeier works as a consultant at the Geneva Office of the Friedrich-Ebert-Stiftung Ebert. He holds a master's degree in political science from the University of Freiburg (Germany). As an intern with the UN Office of the High Commissioner for Human Rights, he supported the meetings of the High-Level Task Force and the Open-ended Working Group on the Right to Development in 2005 and 2006.

For further information on Dialogue on Globalization, please contact:

Friedrich-Ebert-Stiftung Berlin
Hiroshimastrasse 17
D-10785 Berlin
Tel.: ++49-30-26-935-914
Fax: ++49-30-26-935-959
Roswitha.Kiewitt@fes.de
www.fes.de
www.fes.de/globalization

Friedrich-Ebert-Stiftung
Geneva Office
Chemin du Point-du-Jour 6 bis
CH-1202, Geneva
Tel.: ++41-22-733-3450
Fax: ++41-22-733-3545
fes.geneva@econophone.ch
www.fes-geneva.org

Friedrich-Ebert-Stiftung
New York Office
823 United Nations Plaza, Suite 711
New York, N.Y. 10017
Tel.: ++1-212-687-0208
Fax: ++1-212-687-0261
fesny@fesny.org
www.fesny.org