



Luncheon Meeting on the Right to Development Geneva, 11 January 2008

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Members of Delegations and the UN high-level task force on the implementation of the Right to Development (HLTF) met at this luncheon to discuss possible legal options for the promotion of the Right to Development. The meeting was intended to share views on the deliberations of an international group of academics who met on this topic the weekend before at an expert meeting, organized jointly by the Friedrich-Ebert-Stiftung and the Program on Human Rights in Development (HRID) of Harvard University.

Although universally accepted in theory¹, the Right to Development (RtD) remains highly disputed in international politics. Different perceptions of its content and the current move of the group of States joined in the “Non-Aligned-Movement”, decided upon at their Summit meeting in Havana/Cuba, to strive to change its status from a Declaration to an international Convention on the one hand and the reluctance to this concept by many States in the “Western Group” on the other hand lately add sharpness to the continuing debate.

An expert meeting² on legal perspectives involved in implementing the RtD, organized in the beginning of the year by FES and HRID, tackled this issue and produced interesting outcomes: on an academic basis, possibilities of legal formats for the RtD and their usefulness or sequencing were discussed. The political debate around international and national obligations contained in the RtD and the possible need of an international convention on this human right constituted the background for the expert meeting. Given this political background, the presentation of the outcomes of the expert meeting proved to be of interest to numerous delegations, members and non-members of the Human Rights Council, who were invited by FES Geneva to a luncheon meeting at this occasion. The presence of the president of the Council, Ambassador Costea (Romania), underlined the importance of this topic in the current human rights debate.

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¹ At the World Conference on Human Rights in Vienna 1993, 171 Heads of State unanimously adopted the Vienna Declaration and PoA, explicitly recognizing the RtD.

² See Conclusions of the Expert Meeting, Chateau de Bossey, 4-6 January 2008 and related publications.

At the luncheon meeting, Professor Stephen Marks, Chair HLTF and co-convener of the expert meeting, presented the deliberations on examples and legal options dealt with during the academic exercise. A publication by FES Geneva³, written on the occasion of the expert meeting and dealing with the practical side of applying the RTD, was made available and its meaning for the process was discussed shortly. Some delegations pointed out the importance of such practical examples for the facilitating theoretical progress.

Professor Nico Schrijver a member of the HLTF who also participated in the previous expert meeting, presented a list of legal options for the RtD, stating clearly their implications, advantages and shortcomings. He suggested that the option of a convention should be seen in the context of a range of alternative approaches for meeting the intention of paragraph 2 (d) of Human Rights Council Resolution 4/4.

This range of options included: (1) consolidating, updating and enhancing the status of the 1986 Declaration; (2) revising the Declaration for adoption on the occasion of the 25th anniversary of the UN Declaration in 2011; (3) preparing new instruments in the form of Guidelines or Recommendations, based on a review of best practices, for implementing the Declaration; (4) enhancing the institutional status of the right to development within the UN system, for example, by upgrading the Working Group to a standing Commission, establishing a Fund, and mainstreaming the right to development into the Universal Periodic Review of the Human Rights Council; (5) concluding Development Compacts between developed and developing countries or multi stakeholders agreements involving international organizations, enterprises, commercial banks and civil society organizations; (6) mainstreaming the Declaration into regional and interregional agreements, such as treaties concluded in the context of regional associations (AU, EU, ASEAN, NAFTA, Mercosur) and interregional agreements, such as the EU-ACP Partnership Agreement; and (7) finally drafting a new human rights treaty on the right to development, either a specific right to development treaty or a general framework treaty, to be followed up by one or more specific protocols or a set of guidelines for implementation. Whether this list had to be seen

as one of mutually exclusive options or rather as a road map, he left to the diplomats.

This list was welcomed by all participants and may prove to be of crucial importance for finding consensus at the Working Group on the RTD which is to be held in late February 2008. By pointing out all the options in an open manner without prejudging the way to pursue, the usual restrictions of political rhetoric could be overcome.

The focus on this list, as voiced by the delegations present, varied most in view of the sequencing and speed in which to pursue the aims laid out by the list. The delegations of Germany and Slovenia (on behalf of the EU) underlined that field testing the criteria, as done by the FES publication mentioned above, was the right way to go. Only through this kind of practical application, the refinement of the criteria would be possible. This refinement would, in turn, be a prerequisite for the criteria to become the basis of a legally stronger document. While Cuba repeated their call to move as soon as possible into the drafting process for a Convention, other NAM members expressed their view of Professor Schrijver's list as a road map, which could be followed in careful steps, academically sound and empirically well-grounded. The representative of Kenya reminded of the fact that a long time had elapsed since the adoption of the Declaration on RtD in 1986 and stressed the need to see positive actions and a development in the process.

Ambassador Costea (in his capacity of President of the Human Rights Council) took up another point mentioned in Professor Schrijver's deliberations: The possibility to include reporting on the RtD in the State reports in the Universal Periodic Review (UPR). He recalled that the RtD found entry into the African Peer Review Mechanism, which often had been looked at as an example during the discussions on the modalities for the UPR. He remarked that reporting on the RtD could not be provided by in the secretariat's part of the UPR report, because this part was restricted to information gained from the reports of the treaty bodies and special procedures. Nevertheless, he said it was up to the States themselves, to include references to the RtD in their UPR reports. The Ambassadors of Brazil and the Philippines took up this idea, stating that while it may be too late to include reporting on the RtD in the first UPR round, the issue would be taken into consideration for future reports.

³ Kirchmeier/Lüke/Kalla: Towards the Implementation of the Right to Development, FES and GTZ, Geneva and Eschborn, 12/07.

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