



The Right to Development, Small Island Developing States and the SAMOA Pathway

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Abstract

In 2015, the United Nations community reached agreements on updating the financing for development mechanisms, Agenda 2030 and an updated climate change regime. The SAMOA pathway is an important resource and an input to these efforts. For Small Island Developing States (SIDS) and their peoples, the right to development will require a genuine global partnership for development that surmounts the exposure and vulnerability of these countries to the vagaries and vicissitudes of international trade and financial markets and the inequities in global macroeconomic policy governance which unduly restrict their policy space. For the SIDS, the right to development will also entail a sea change in present performance trends in mitigation, adaptation, and the transfer of finance and technology. SIDS can take an active role in defining what the right to development means in terms of international economic governance.

We celebrate the 30th anniversary of the groundbreaking Declaration on the Right to Development (RTD) adopted by the United Nations General Assembly on 4 December 1986. In this declaration, (United Nations, 1986) the community of nations gathered in the United Nations agreed that 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.” (Art 1.1). In a ringing cadence, the next paragraph recognizes that “[T]he human right to development also implies the full realization of the right of peoples to self-determination, which includes. . . their inalienable right to full sovereignty over all their natural wealth and resources” (Art 1.2).

This policy brief considers the implications of the Declaration to the conditions prevailing in and prospects of Small Island Developing States (SIDS).

Last year, in 2015, the United Nations community was preoccupied with three main things: (1) reaching agreement on the post-2015 development agenda, (2) updating the mechanisms financing for development (FfD) and (3) establishing an effective climate change regime. These

agreements are in hand. The FfD Addis Ababa Action Agenda (AAAA) (United Nations, 2015a) was agreed in July 2015; the post-2015 development agenda was agreed in September 2015 (United Nations, 2015c). In December 2015, the Conference of the Parties to the UN Framework Convention on Climate Change arrived at the Paris Agreement and an accompanying decision (United Nations, 2015d).

In each of these three outcomes, the right for development was not only affirmed but incorporated the statement of the overall objective of each agreement. Paragraph 1 of AAAA states:

Our goal is to end poverty and hunger and to achieve sustainable development in its three dimensions through promoting inclusive economic growth, protecting the environment and promoting social inclusion. We commit to respecting all human rights, including the right to development.

In Agenda 2030, paragraph 10 affirms:

The new Agenda is guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.

and, in connection with peaceful societies, paragraph 35 declares:

The new Agenda recognizes 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 and on transparent, effective and accountable institutions.

One of the preamble paragraphs of the Paris Agreement confirms that:

Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to

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health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.

In each of these instances, the affirmation of the RTD is associated with a call to respect all human rights. The cutting edge of these affirmations is the view mostly held by developing countries that the right to development embodies within it the corresponding obligations on the part of developed countries which are critical for developing countries in meeting their human rights obligations. The RTD is a universal agreement, as is the Universal Declaration on Human Rights (UDHR), and there are differential responsibilities rooted in differential capabilities among states which the RTD helps to secure.

All three international agreements potentially have a profound impact on the right to development as it applies to SIDS. With these agreements in hand, it is timely to reflect what would be required of these processes, particularly their implementation, so that they would fulfill Article 10 on the Declaration on the Right to Development which demands that

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

The most telling word in this paragraph in the current conjuncture is “international.” While all three agreements carefully balance the responsibility of each state for its own development, these agreements take into account the international dimension of policy, of which Paragraph 10 of the RTD is a precedent.

The SAMOA Pathway

Small Island Developing States (SIDS) is not a category in RTD. The Third International Conference on Small Island Developing States (SIDS Conference), held on 1-4 September 2014, in Samoa, established the “SAMOA Pathway” (the acronym for the SIDS Accelerated Modalities of Action) in its outcome document (United Nations, 2014). This UN agreement provides forceful focus to the ways in which the global community can discharge its obligations under the right to development to this group of countries.

For the SIDS and their peoples, the right to development will require a genuine global partnership for development that addresses the exposure and vulnerability of these countries to the pitfalls and treacherous elements of international trade and financial markets and the inequities in global macroeconomic policy governance which unduly restrict their capacity to secure their right to development. For the SIDS, the right to development will also entail a sea change in present performance trends in mitigation, adaptation, and the transfer of finance and technology. In this regard, the core principles of the Declaration on the Right to Development are more than ever

necessary as it provides an essential and enabling environment for the full implementation of the SAMOA Pathway.

The South Centre’s (South Centre, 2014) contribution to the Appia conference in September 2014 offers four supporting arguments.

First, for many SIDS, growth is fragile and vulnerable, especially amidst rising debt burdens and continued economic, social and environmental challenges. SIDSs are exposed to hazardous features in the international economy over which they have little control or influence and whose controllers have little accountability to their situation. This exposure is greatly heightened by the challenge of adapting to extreme weather events, and the serial ‘stop-and-start’ economic cycles that are associated with adjusting to the severe losses and damages caused by these events.

Paragraph 23 of the SAMOA Pathway (“SAMOA”) catalogs the obstacles to development confronting SIDS:

We recognize that the ability of the small island developing States to sustain high levels of economic growth and job creation has been affected by the ongoing adverse impacts of the global economic crisis, declining foreign direct investment, trade imbalances, increased indebtedness, the lack of adequate transportation, energy and information and communications technology infrastructure networks, limited human and institutional capacity and the inability to integrate effectively into the global economy. The growth prospects of the small island developing States have also been hindered by other factors, including climate change, the impact of natural disasters, the high cost of imported energy and the degradation of coastal and marine ecosystems and sea-level rise.

SIDS have been particularly disadvantaged by the global economy’s mechanisms for external debt. This is indicated in paragraphs 28 and 29 of SAMOA:

28. Acknowledging the way in which debt servicing limits the fiscal space of highly indebted small island developing States, we support the consideration of traditional and innovative approaches to promote the debt sustainability of highly indebted small island developing States, including their continued eligibility for concessionary financing from international financial institutions, as appropriate, and the strengthening of domestic revenue mobilization.

29. We acknowledge the importance of addressing debt sustainability to ensure the smooth transition of those small island developing States that have graduated from least developed country status.

The declaration by the UN General Assembly in September 2015 (United Nations, 2015b) that the restructuring processes of government debts and debt guaranteed by governments would be guided by nine agreed principles responds to decades-old demands from developing countries for an international process that is fair, orderly, and non-arbitrary and that restores economic growth and the

borrowing capacity of debtors, as is common in national debt markets. Without these transformations, countries can find themselves in a public debt treadmill, in the long-term, a “God versus the bondholders” (*The Economist*, 2013) situation as in many Caribbean states, all of them with middle income status and tourism-dependent. Climate change is, of course, man-made and the divine intervention *The Economist* article refers to is acts by the international community, led by the IMF, to facilitate debt write-offs to move Caribbean states out of their vicious debt cycles.

The agreement principles over debt restructuring paves the way for work in the United Nations, a venue which the developed countries heavily resist, in moving toward a multilateral legal framework on sovereign debt restructuring. Developed countries boycotted this one-year effort, even though it was an official General Assembly process. The IMF and international organizations led by the developed countries, such as the European Commission, also chose not to participate in the discussion of the principles.

Second, climate change, as we are aware, poses grave existential challenge for SIDS and threatens to destroy much of the progress made in economic and social development, including poverty eradication, hunger, and environmental protection efforts. It represents a stolen diminution of these states’ right to full sovereignty over all their natural wealth and resources. The ending phrase recalls the RTD formulation of state sovereignty over natural resources in its territory.

Paragraphs 31 to 33 of SAMOA set out the roles and responsibilities of SIDS with respect to climate change:

31. We reaffirm that small island developing States remain a special case for sustainable development in view of their unique and particular vulnerabilities, and we acknowledge that climate change and sea-level rise continue to pose a significant risk to small island developing States and their efforts to achieve sustainable development and, for some, represent the gravest threat to their survival and viability.

32. We also reaffirm that climate change is one of the greatest challenges of our time, and we express profound alarm that emissions of greenhouse gases continue to rise globally. We are deeply concerned that all countries, particularly developing countries, are vulnerable to the adverse impacts of climate change and are already experiencing an increase in such impacts, including persistent drought and extreme weather events, sea-level rise, coastal erosion and ocean acidification, further threatening food security and efforts to eradicate poverty and achieve sustainable development. In this regard, we emphasize that adaptation to climate change represents an immediate and urgent global priority.

33. We acknowledge the leadership role of small island developing States in advocating for ambitious global efforts to address climate change, raising aware-

ness of the need for urgent and ambitious action to address climate change at the global level and making efforts to adapt to the intensifying impacts of climate change and to further develop and implement plans, policies, strategies and legislative frameworks with support where necessary.

SIDS insist on their situation as one of unique and particular vulnerabilities while accepting their leadership role “in advocating for ambitious global efforts to address climate change.”

In paragraph 36, SAMOA announces the SIDS position which subsequently plays a role in the negotiations on the Paris Agreement (United Nations, 2015d), on the global goal on temperature change:

36. We note with grave concern the significant gap between the aggregate effect of mitigation pledges by parties in terms of global annual emissions of greenhouse gases by 2020 and aggregate emission pathways consistent with having a likely chance of holding the increase in global average temperature below 2 degrees Celsius, or 1.5 degrees above pre-industrial levels.

Third, these continuing economic and social challenges in addition to emerging threats point to the critical importance of accelerated means of implementation (finance, technology development and transfer, capacity building, institutional support and data collection and management) for ensuring SIDS development. This issue of means of implementation was identified in the Mauritius Declaration as important for building resilience in SIDS. This call is strongly re-affirmed in the SAMOA Pathway:

102. We recognize that financing from all sources, domestic and international, public and private, the development and transfer of reliable, affordable, modern technology on mutually agreed terms, capacity-building assistance and enabling institutional and policy environments at all levels are critically important means of advancing sustainable development in small island developing States. As those States have unique and particular vulnerabilities that require dedicated attention, they will continue to make use of a wide range of available financing mechanisms to implement the Barbados Programme of Action, the Mauritius Strategy and the Samoa Pathway.

104. We urge all countries to fulfil their commitments to small island developing States, including through the provision of financial resources, to support the Barbados Programme of Action, the Mauritius Strategy and the Samoa Pathway. In this regard, the fulfilment of all official development assistance commitments to developing countries, including the commitments by many developed countries to achieve the target of 0.7 per cent of gross national income for official development assistance to developing countries by 2015, as well as the target of 0.15 to 0.20 per cent of gross national income for official development assistance to least developed countries, is crucial.

SIDS call for technology transfer for mitigation:

49. We urge the international community, including regional and international development banks, bilateral donors, the United Nations system, the International Renewable Energy Agency and other relevant stakeholders to continue to provide adequate support, including in the areas of capacity-building and technology transfer, on mutually agreed terms, for the development and implementation of national, regional and interregional energy policies, plans and strategies to address the special vulnerabilities of small island developing States.

Fourth, the global community must recognize, support and build on the concerted actions, strong leadership roles and contributions that SIDS have made to the global economy and on SIDS' own articulation of their development challenges, constraints and commitments and opportunities in moving forward.

SIDS have pledged to be carbon neutral through the use of renewable energy. This will require strong, consistent and sustainable financing and technology transfer actions on the part of the global community, led by developed countries.

Means of Implementation and Financing for Development

It would be fair to say that the outcome of the Third International Financing for Development Conference held in Addis Ababa on 13-16 July 2015, unmasks the state of multilateral development cooperation today. The most important outcomes of the conference, arrived at with great difficulty in the face of determined resistance on the part of developed countries, are two new processes: a proposed technology facilitation mechanism (TFM) and a follow up mechanism in the Economic and Social Council to monitor progress on financing for development (FfD) issues. These two, plus another process decision to set up a global infrastructure forum (AAAA, paragraph 14) and a call to reduce illicit financial flows in an outcome officially intended to revitalize the global partnership for development (as asserted in paragraphs 10 and 19), suggest that the most concrete promises that are possible today are only those that merely startup other intergovernmental processes. Whether the principles of the RTD can be tools in the new processes remains to be seen and would seriously depend on whether developing countries and SIDS are willing to wield RTD in the coming discussions.

The financing for development conference outcome did not feature new sources for financing for development. The developed countries took the negotiating position that the AAAA should constitute the main and sole means of implementation (MOI) to achieve the sustainable development goals (SDGs). Given this view, it would have been logical that new and additional financing would be a headline outcome to support the new sustainable development goals, which are universal and even more ambitious than the previous Millennium Development Goals, because these now include targets in indus-

trialization, employment, and economic growth and infrastructure development.

Developed countries fought, successfully, not to have additional financing commitments, even as the AAAA reaffirmed earlier official development assistance (ODA) targets measured as percentages to gross national income or as proportions of total ODA (paragraph 51). The overall ODA to GNI commitment has been met only by a small group of developed countries.

Even the small number of process outcomes of the AAAA proved almost impossible to introduce since developed countries sought to have the topics of these processes debated, decided, and executed in platforms which they dominate such as the International Monetary and Financial Committee (IMFC) in the International Monetary Fund, the Development Committee in the World Bank, and the Organisation for Economic Co-operation and Development (OECD).

If nothing else, the Addis conference highlighted the resolute position of developed countries not to cede their dominance over global economic policies and those of developing countries in the area of multilateral development cooperation. The last one-and-half days of negotiations in Addis revolved around the issue of whether the UN Committee of Experts on Cooperation in International Tax Matters would be upgraded to an intergovernmental body. The G77 and China stayed united in this demand but, in the crisis atmosphere as the clock ticked down, were forced to accept the adamant position of developed countries to have these matters decided in an intergovernmental manner only in the OECD.

The *de facto* choice in the AAAA to rely essentially on the OECD in the setting of international norms in tax cooperation was only one of a large number of initiatives in which involved the decision-making and operations of interventions in financing for development beyond accountability to the UN community.

The question that must be asked of this pattern is whether locating international decision-making in OECD and other institutions dominated by developed countries are in conformity with the components of RTD. RTD Article 3.3 insists that:

3. States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Article 3.3 makes it a duty of states to "co-operate with each other in ensuring development and eliminating obstacles to development." It also calls for promoting a new international economic order based on sovereign equality. Article 3.1 sets out the objective of international cooperation as:

1. States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

This article is worth highlighting because it assigns to states the primary responsibility for the creation of international conditions favorable to realization of the right to development.

The category of SIDS is mentioned throughout the AAAA as a 'type' of developing country: paragraph 8 (diverse needs of developing countries), 14 (infrastructure forum), 28 (international tax cooperation), 32 (health and non-communicable diseases), 34 (local governments and municipalities, 44-46 (foreign investment), 49 (investment in clean energy), 61 (Green Climate Fund), 65 (oceans and seas), 68 (support from international institutions), 72 (World Bank program on small island states in a paragraph initially about middle income countries), 76 (Global Environmental Facility), 77 (special funds, such as the global alliance for vaccines and immunization), 78 (conflict situations), 79 (market access in trade), 87 (regional economic integration), 93 (external debt), 102 (natural disasters and health epidemics), 114 (technology), 115 (capacity development), 120 (environmentally sound technologies), 121 (health and diseases), 126 (data).

Many of the elements from SAMOA, which considered all of these topics, found their way into the AAAA. However, the overall outcome is the same: there is a mention of the problem but there are no new commitments and no new or reformed mechanisms where SIDS have augmented voice in decisions.

Agenda 2030

Last 25 September, right after the session when Pope Francis of the Catholic Church addressed the General Assembly, the heads of UN member states adopted the document called "TRANSFORMING OUR WORLD: THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT" (United Nations, 2015c) to succeed the development agenda centered around the Millennium Development Goals (MDGs). (For convenience, we will use the shorthand "Agenda 2030" to refer to this document.)

Representatives of member states that participated in the negotiations that led to the outcome document uniformly supported the view that the overall aim of Agenda 2030 is no less than structural transformation needed to achieve sustainable development in all its three dimensions. These dimensions – social, environmental, and economic – had originally been agreed among UN member states in 1992 under Agenda 21. Agenda 21 has become Agenda 2030. For example, in the beginning Agenda 2030 says:

3. We resolve, between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women

and girls; and to ensure the lasting protection of the planet and its natural resources. We resolve also to create conditions for sustainable, inclusive and sustained economic growth, shared prosperity and decent work for all, taking into account different levels of national development and capacities.

5. This is an Agenda of unprecedented scope and significance. It is accepted by all countries and is applicable to all, taking into account different national realities, capacities and levels of development and respecting national policies and priorities. These are universal goals and targets which involve the entire world, developed and developing countries alike. They are integrated and indivisible and balance the three dimensions of sustainable development.

The agreed outcome document includes:

- a brief preamble noting that agenda plan of action for people, planet, prosperity, peace and partnership;
- a Declaration, including sections on Means of Implementation (MoI), Follow-up and review;
- the SDGs and their targets, with a small number of changes incorporated (such as replacing numerical X% placeholders with qualitative terms, e.g. 'substantially');
- a reference to the Addis Ababa Action Agenda in the MoI section, noting inter-linkages between the two processes.

One can say that while the MDGs were mainly about poverty and, in terms of interventions, mainly about official development assistance (ODA). The MDGs reconfigured ODA approaches to prioritize the social dimension of sustainable development.

If we take the agreed Agenda 2030 outcome at its word, one must recognize that under the final outcome the UN Development Agenda has changed drastically. By logic, the content of Agenda 2030 requires the rules have to change, particularly in the international economic system. Table 1 provides a list of the SDGs agreed (see next page).

In a sympathetic reading, the new UN development agenda can be associated with the following characteristics¹:

1. It incorporates intentions to treat the causes of lack of development and not just the symptoms as in the case of the MDGs

The key example is that by including items such as economic growth (SDG 8) and industrialization (SDG 9) as direct objectives, the SDGs can mobilize development cooperation and domestic policy toward overcoming underdevelopment.

2. The SDGs seek to address long-term causes, not just act on quick fixes

It is always possible to push some members of a population across a poverty line, measured usually by income/consumption per day per person. These gains can be lost overnight in a balance of payments crisis.

Table 1: SDGs in the Agenda 2030 for Sustainable Development

1. End poverty in all its forms everywhere
2. End hunger, achieve food security and adequate nutrition and promote sustainable agriculture
3. Attain healthy lives for all at all ages
4. Provide inclusive and equitable quality education and lifelong learning opportunities for all
5. Achieve gender equality and empower all women and girls everywhere
6. Ensure availability and sustainable management of water and sanitation for all
7. Ensure access to affordable, sustainable and modern energy for all
8. Promote sustained, inclusive, sustainable economic growth, full and productive employment and decent work for all
9. Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation
10. Reduce inequality within and among countries
11. Make cities and human settlements inclusive, safe, and sustainable
12. Promote sustainable consumption and production patterns
13. Combat climate change and its impacts
14. Conserve and sustainably use oceans, seas and their resources for sustainable development
15. Protect and promote sustainable use of terrestrial ecosystems, sustainably manage forests, and halt and reverse land degradation and biodiversity loss
16. Enable sustainable development by achieving peaceful and inclusive societies, promoting rule of law at all levels, providing justice for all and building effective and capable institutions nationally and internationally
17. Strengthen means of implementation and global partnership for sustainable development.

Developing countries have a lot of experience with balance of payments crises. Toward the end of 2015, after the agreement on Agenda 2030, many developing countries have begun to experience these kinds of difficulties as credit conditions tighten internationally after seven years in which credit was generous and many borrowed in global markets.

Without a diversified jobs and income base, countries are vulnerable to these kinds of crises. But such a diversified base is only possible if countries diversify their industries and job opportunities.

Developing countries instead of being dependent on aid, can raise resources themselves. ODA can provide a quick fix, but creating the ability to raise domestic resources is a long-term approach.

3. Agenda 2030 calls for universal responsibility

All countries are responsible, not just developing countries: every country must achieve the objective to eliminate poverty, in its own borders, including developed countries. Universality also makes the goals a venue to hold Northern countries accountable for the effects of their policies on developing countries.

There can potentially be profound implications of universality on the RTD. Under Agenda 2030, all countries, including developed countries must carry out sustainable development. As long as it is implied that sustainable development replaces development, RTD can be read as the right to *sustainable* development. In Agenda 2030, developed countries have also taken the obligation to eliminate poverty in all its forms within their territories and “everywhere” (Table 1).

Universal responsibility is particularly important because Agenda 2030 must address the question of climate change. Agenda 2030 imports the idea of sustainable consumption and production from Agenda 21. For example, a study has shown that in the case of the UK, in the production sector carbon emission has fallen significantly (UK, 2015). However, when the carbon content of the UK’s own consumption is included, then its contribution to global warming through its consumption has actually gone up. (By the way, the study finds that UK consumption is based more on imports from EU than from China.) Half of the UK’s carbon footprint comes from the consumption of imported goods which were produced in carbon-causing processes.

4. Agenda 2030 insists on an integrated, holistic view of development

This approach is consistent with the original intention behind the 1992 international agreement on the term “sustainable development.” Then, the political agreement was based around the analysis that poverty is an important driver of environmental degradation. For example poor people were burning forests for access to unpriced energy. The forests were getting depleted and watersheds were being destroyed as a result. While this logic tends to reduce the responsibility of international trade and large enterprises for deforestation, it makes poverty eradication essential to environmental sustainability.

Paragraph 9 of the Agenda 2030 reflects on the climate-related aspects of sustainable development:

9. We envisage a world in which every country enjoys sustained, inclusive and sustainable economic growth and decent work for all. A world in which consumption and production patterns and use of all natural resources – from air to land, from rivers, lakes and aquifers to oceans and seas – are sustainable. One in which democracy, good governance and the rule of law as well as an enabling environment at national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hun-

ger. One in which development and the application of technology are climate-sensitive, respect biodiversity and are resilient. One in which humanity lives in harmony with nature and in which wildlife and other living species are protected.

In Agenda 2030, one can make an example of SDG 6 (access to water) where the associated goals are the following:

6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

Can developing countries 'wantonly' install coal-fired plants to have access to the energy they need to meet SDG 6 and other goals?

A direct answer would be: It depends on a reading of the outcome from Paris in COP 21 on the climate change convention. The concrete outcomes of the legal text from the Paris Agreement are being subjected to interpretation, particularly with respect to whether they invalidate obligations in the framework convention. The Paris Agreement invariably attempts to weaken the differentiation between developed and developing countries in terms of responsibility for climate action, compared to the original UN Framework Convention on Climate Change (UNFCCC) of 1992. By itself, the weakening of the differentiation is disadvantageous to SIDS.

The 1992 legal framework provides in Article 4.7 of the UN framework convention on climate change that:

7. The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources and transfer of technology and will take fully into account that economic and social development and poverty eradication are the first and overriding priorities of the developing country Parties.

Developing countries can install the coal-fired plant unless developed country parties provide the financing and the technology for the incremental cost and new technology involved in a less polluting plant.

(The UNFCCC is not only about mitigation. It is also about Adaptation and Loss and Damage, not to mention the technology transfer commitments involved as in paragraph 4.7 above.)

Article 9.1 of the Paris Agreement (United Nations, 2015d) provides that:

1. Developed country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention.

While the Paris Agreement is silent on the formulation of the UNFCCC Article 4.7 that the "extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments under the Convention related to financial resources . . ." the text recognizes that the obligation is "in continuation of their existing obligation" (presumably, existing in December 2015).

5. Instead of only objectives as in the MDGs, SDGs also include instruments and the means of implementation

Some of the 17 goals are actually instruments, such as economic growth (SDG 8), infrastructure and industrial development (SDG 9), energy provision (SDG 7), and reducing inequality both within and among countries (SDG 10). In the MDGs, all means of implementation were crammed into MDG 8: the Global Partnership for Development.

Particularly notable is Agenda 2030's attention given to the role of **technology and finance**, with a potential to address the North-South divide. Paragraph 41 (United Nations, 2015c) states:

41. We recognize that each country has primary responsibility for its own economic and social development. The new Agenda deals with the means required for implementation of the Goals and targets. We recognize that these will include the mobilization of financial resources as well as capacity-building and the transfer of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed. Public finance, both domestic and international, will play a vital role in providing essential services and public goods and in catalyzing other sources of finance.

Among the SDGs themselves, agreement was reached on technological upgrading as a means of implementation. Associated Goal 2.a (United Nations, 2015c) calls for technological development in agriculture:

2.a Increase investment, including through enhanced international cooperation, in rural infrastructure, agricultural research and extension services, technology development and plant and livestock gene banks in order to enhance agricultural productive capacity in developing countries, in particular least developed countries

Associated Goal 5.b on gender equality calls for action to:

5.b Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women

Technologies in water efficiency, treatment of wastewater and recycling are means of implementation stated in Associated Goal 6.a:

6.a By 2030, expand international cooperation and capacity-building support to developing countries in water-

and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies

For energy provision (SDG 7), there are two associated technological means of implementation:

7.a By 2030, enhance international cooperation to facilitate access to clean energy research and technology, including renewable energy, energy efficiency and advanced and cleaner fossil-fuel technology, and promote investment in energy infrastructure and clean energy technology

7.b By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, and small island developing States

Paragraphs 47-50 of SAMOA (United Nations, 2014) set out the nature of the problem and suggested responses for the issue of sustainable energy in SIDS. For example, paragraph 47 indicates the UN community recognizes:

47. . . . that dependence on imported fossil fuels has been a major source of economic vulnerability and a key challenge for small island developing States for many decades and that sustainable energy, including enhanced accessibility to modern energy services, energy efficiency and use of economically viable and environmentally sound technology, plays a critical role in enabling the sustainable development of small island developing States.

The section calls for multiple actions, including technology transfer mentioned earlier in paragraph 49.

In SDG 9, infrastructure development and sustainable industrialization, the following three means of implementation dimensions are stated:

9.4 By 2030, upgrade infrastructure and retrofit industries to make them sustainable, with increased resource-use efficiency and greater adoption of clean and environmentally sound technologies and industrial processes, with all countries taking action in accordance with their respective capabilities

9.a Facilitate sustainable and resilient infrastructure development in developing countries through enhanced financial, technological and technical support to African countries, least developed countries, landlocked developing countries and small island developing States

9.b Support domestic technology development, research and innovation in developing countries, including by ensuring a conducive policy environment for, inter alia, industrial diversification and value addition to commodities

These intentions can be argued to respond to paragraph 27b, for example, of SAMOA (United Nations, 2014):

27. Taking into full account their national development priorities and individual country circumstances and

legislation, we call for support for the efforts of small island developing States to take the following actions:

(b) Enhancing the enabling environment at the national and regional levels to attract more public and private investment in building and maintaining appropriate infrastructure, including ports, roads, transportation, electricity and power generation and information and communications technology infrastructure, and also enhancing the development impact of the private sector and the financial services industry;

In SDG 12, sustainable consumption and production, Agenda 2030 identifies the following means of implementation:

12.a Support developing countries to strengthen their scientific and technological capacity to move towards more sustainable patterns of consumption and production

In SDG 14, on oceans, the technological means of implementation are formulated this way:

14.a Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries

SDG 17 deals directly with issues of implementation. For technology, the following associated goals are stated:

17.6 Enhance North-South, South-South and triangular regional and international cooperation on and access to science, technology and innovation and enhance knowledge sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level, and through a global technology facilitation mechanism

17.7 Promote the development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed

17.8 Fully operationalize the technology bank and science, technology and innovation capacity-building mechanism for least developed countries by 2017 and enhance the use of enabling technology, in particular information and communications technology

17.16 Enhance the global partnership for sustainable development, complemented by multi-stakeholder partnerships that mobilize and share knowledge, expertise, technology and financial resources, to support the achievement of the sustainable development goals in all countries, in particular developing countries

SIDS are working to protect the seas and oceans and to ensure the integrity of coastal areas, which are both critical lifelines and part of their cultural heritage and assurance of food security. SIDS will require strong partner-

ships and long term reliable support to deal with the issues of ocean acidification, illegal and unreported and unregulated (IUU) fishing and the degradation of oceans and seas (linked to pollution from international shipping).

In this context, SIDS successfully negotiated to have a top level sustainable development goal, SDG 14, on seas and the oceans in Agenda 2030:

14. Conserve and sustainably use oceans, seas and their resources for sustainable development

with many associated goals, including goal 14.6 (United Nations, 2015c):

14.6 By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

which calls for these disciplines on fisheries to be part of the World Trade Organization's negotiation mandate. At the same time, in regard to fisheries, one associated means of implementation recognizes the plight of small fishermen (United Nations, 2015c):

14.b Provide access for small-scale artisanal fishers to marine resources and markets

While it is a non-binding, political document, Agenda 2030 provides a rich ground for the identification of components and derived obligations from the right to development as these apply to SIDS.

The Paris Agreement

The Paris Agreement (United Nations, 2015d) was adopted in the evening of Saturday, 12 December, among the parties to the UN Framework Convention on Climate Change. Because it is a new legal instrument, it requires ratification by Parties to come into force, which will occur when at least 55 Parties to the Convention, accounting for at least an estimated 55 per cent of the total global greenhouse gas (GHG) emissions have deposited their instruments of ratification. The Agreement is expected to come into effect after 2020.

SIDS' participation in reaching agreement was critical, including in setting out the purpose of the Agreement, which proved extremely controversial. All three of the elements of the purposes of the Agreement, in Article 2 (United Nations, 2015d) recall many of the elements of SAMOA:

(a) Holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5 °C above pre-industrial levels, recognizing that

this would significantly reduce the risks and impacts of climate change;

(b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions development, in a manner that does not threaten food production;

(c) Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development.

SIDS sought to have a global 1.5 degrees Celsius goal, and had to settle for the formulation "well below" 2 degrees. Implicitly at stake was the RTD recognition of countries' inalienable right to full sovereignty over all their natural wealth and resources, which climate change trends as a result of actions of other states are expected to be cumulatively degrading.

There were other disappointments on the part of SIDS in the Paris Agreement. SIDS have a material interest in the establishment of an international mechanism to address loss and damage which is treated separately from adaptation. Instead, the Paris Agreement only refers to a "continuation of" the Warsaw International Mechanism for Loss and Damage, established in 2013, as one approach for facilitation and cooperation. There is, of course, a possibility of strengthening the mechanism to be decided later on by the Parties to the convention. A much larger, and very public, setback involved the non-recognition by industrialized states of liability and compensation for loss and damage, a facility which the United States offers to the Marshall Islands as expansion of US compensation for damages resulting from nuclear testing in the 1950s. Instead, there is an explicit text in the loss and damage section that the Agreement "does not involve or provide a basis for any liability or compensation" (United Nations, 2015d, paragraph 52). To the extent that a rights approach is thought to provide mechanisms for enforcement, this explicit element in the Paris Agreement is a non-conforming approach to the right to development.

Another SIDS disappointment concerns the technology transfer component of adaptation (purpose 2 above). As mentioned earlier, in SAMOA (United Nations, 2014), SIDS identify technology transfer as an indispensable element of their sustainable development. Instead, the Paris Agreement creates a "Parties to the Paris Agreement" body with a responsibility to address this technology transfer and capacity building. As explained above, the original framework convention (United Nations, 1992) set out an obligation on technology transfer for parties to the framework convention.

In the case of purpose 3 of the Paris Agreement, on financing, the 'historic' Paris Agreement provided that developed countries will continue to take the lead and report on a biennial basis on efforts to scale up efforts to provide financial resources to assist developing countries with respect to mitigation and adaptation. In the original framework convention (United Nations, 1992, Article 4.3),

the financing obligations of developed countries were qualified by the standards of “new and additional, predictable, adequate.” The qualifiers include the idea that countries’ political considerations should play no role in the provision of climate finance from developed countries, and must be sufficient to respond to needs for mitigation and adaptation. These qualifiers have disappeared in the Paris Agreement (Article 9).

The propositions on the right to development stand in sharp contrast to the outcomes of the Paris Agreement, despite its celebratory image in the popular press. Many voices, particularly from technically sophisticated observers have been raised questioning the significance of the Agreement. See, for example, Milman (2015). In this situation, SIDS are particularly disadvantaged because a failure to address climate change in a timely manner portends to the disappearance of the land areas of their countries. Being small in land area and economic activity and developing, SIDS are already severely handicapped in being able to influence any concerted international policy or action. Losing their land and capacity to develop their economies will exacerbate their unfavorable situation.

Challenges for the Future

The experience of international negotiations in 2015 suggest that the right to development will not disappear from the UN set of obligations as long as developed countries invoke human rights obligations and developing countries respond by insisting that human rights obligations include the right to development. Reaffirming the right to development only in this context can prove inutile, perfunctory and a distraction from the real issue of whether all countries are in conformity with Article 4.1 of the RTD:

States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

Working out the “steps” is thus the challenge for the future of RTD. In the discussion above, one can propose that the SAMOA pathway, the Addis Ababa Action Agenda, Agenda 2030, and the Paris Agreement can be mined for some of these steps, as reflected in elements of commission, omission, and backtracking in the wording of these agreements.

An effective global partnership for development grounded in the principles of equity and common but differentiated responsibility remains an essential core of multilateralism and international solidarity, responsibility and accountability. Of course “effective global partnership for development” is yet another term and that has also been the subject of international agreements. It can be argued that it is of central importance to the SIDS to work out the elements of an “effective global partnership for development” grounded firmly on the right to development.

Article 4.1 of RTD identifies States as the duty holders, “individually and collectively,” in formulating international development policies toward realizing the right to development. Article 2.3 of RTD embodies the domestic policy corollary of international development policies:

States have the right and the duty to formulate appropriate national development policies that aim 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.

According to RTD, states have a duty to their populations to formulate national development policies. Actions that deter states from formulating national development policies consent to an evasion of this duty. In the discharge of this duty, it must be recognized that the right enshrines State “policy space” (a term that arose subsequently in international thinking and continues to be an arena for conceptual conflict between developed and developing countries). With this assignment of duty holders, the right to development can be violated by policies of other States or by the nature of international rules which unduly restricts the right and duty to formulate (and attempt to realize) national development policies.

Much policy space is lost (and so diminishes the right to development) from imbalances in obligations and in rules in the international system. For example in the international system, only debtors bear the cost of debt crises, totally in contrast with domestic systems which require both debtors and creditors to bear the cost. This system, which is enforced through the IMF and, as mentioned earlier continues to threaten many Caribbean states, has been the cause of development reversals, permanent losses in employment, and forced losses of policy space through conditions imposed by creditors. These known problems are key elements in SAMOA, AAAA, and to a lesser extent in Agenda 2030.

In the future and based on the continuing global economic difficulties, an optimistic reading would suggest that there is territory to be won in defining what the right to development means in terms of international mechanisms and rules. As they were in Paris, albeit with serious disappointments, SIDS can actively take up this effort.

Endnote:

¹ I must acknowledge Amit Narang, Counsellor, Permanent Mission of India to the United Nations, New York, as the first formulator of most of these characteristics.

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