

# Recent Trends in Right to Development: International Law Perspectives

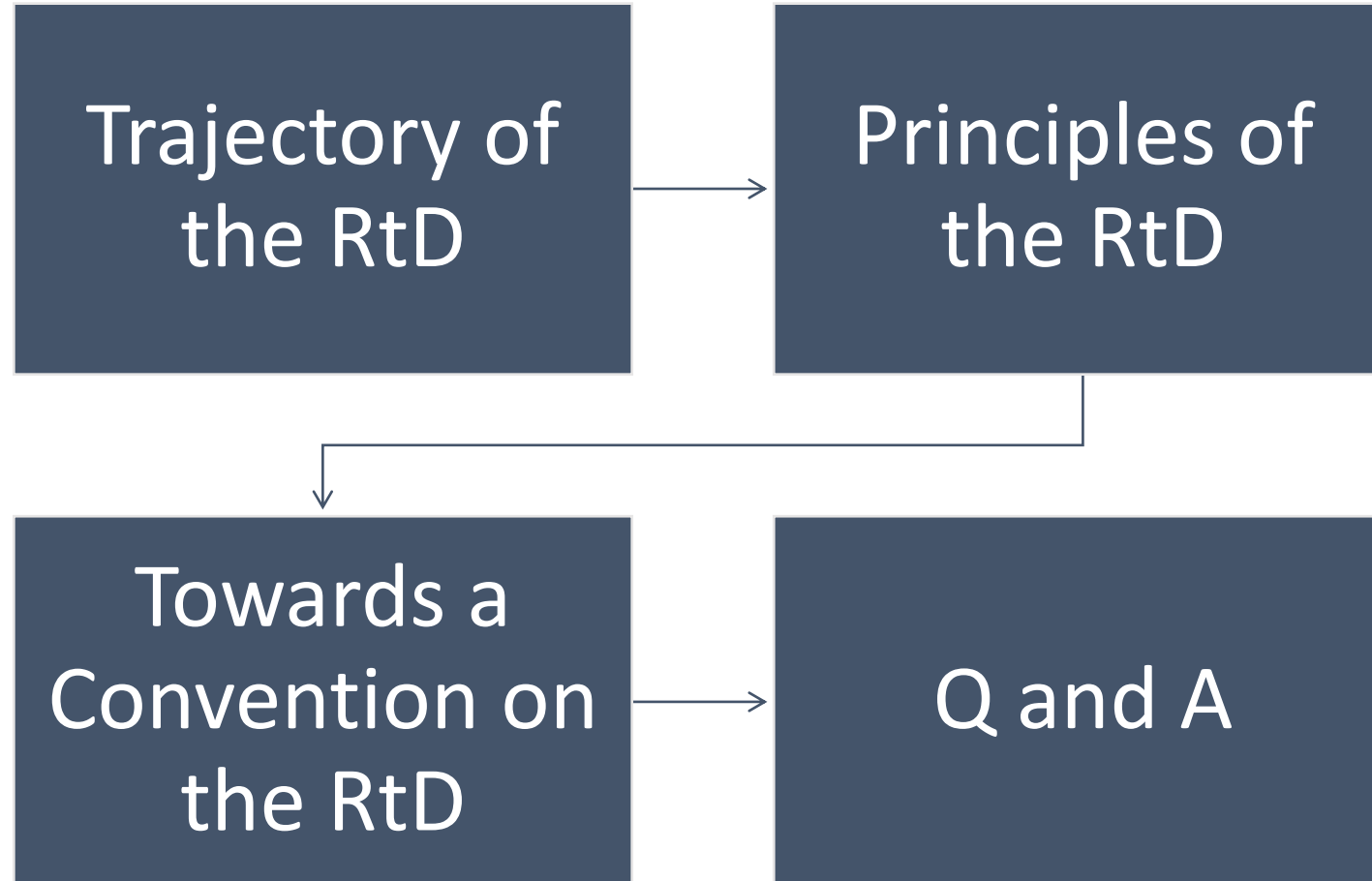
Dr Mihir Kanade

Head, Department of International Law, UPEACE

Chair, Drafting Committee for the Legally Binding Instrument on the Right to Development

Independent Expert, UNHRC's Expert Mechanism on the Right to Development

# Agenda



# Trajectory of the Right to Development (RtD)



## Emergence of the RtD: 1960s and 70s

- Disillusionment of the recently decolonized countries with the international economic regime
- The unsuccessful 'reformist agenda' with focus on economic institutions
- The shift to a 'restructuring agenda' with focus on changing the economic order itself

# The Mid-1970s

## 1974 Declaration on the Establishment of a New International Economic Order (NIEO)

- 1. The developing countries, which constitute 70 per cent of the world's population, account for only 30 per cent of the world's income. It has proved impossible to achieve an even and balanced development of the international community under the existing international economic order. The gap between the developed and the developing countries continues to widen in a system which was established at a time when most of the developing countries did not even exist as independent States and which perpetuates inequality.
- 3. International co-operation for development is the shared goal and common duty of all countries.
- 4(1). Ensuring that one of the main aims of the reformed international monetary system shall be the promotion of the development of the developing countries and the adequate flow of real resources to them

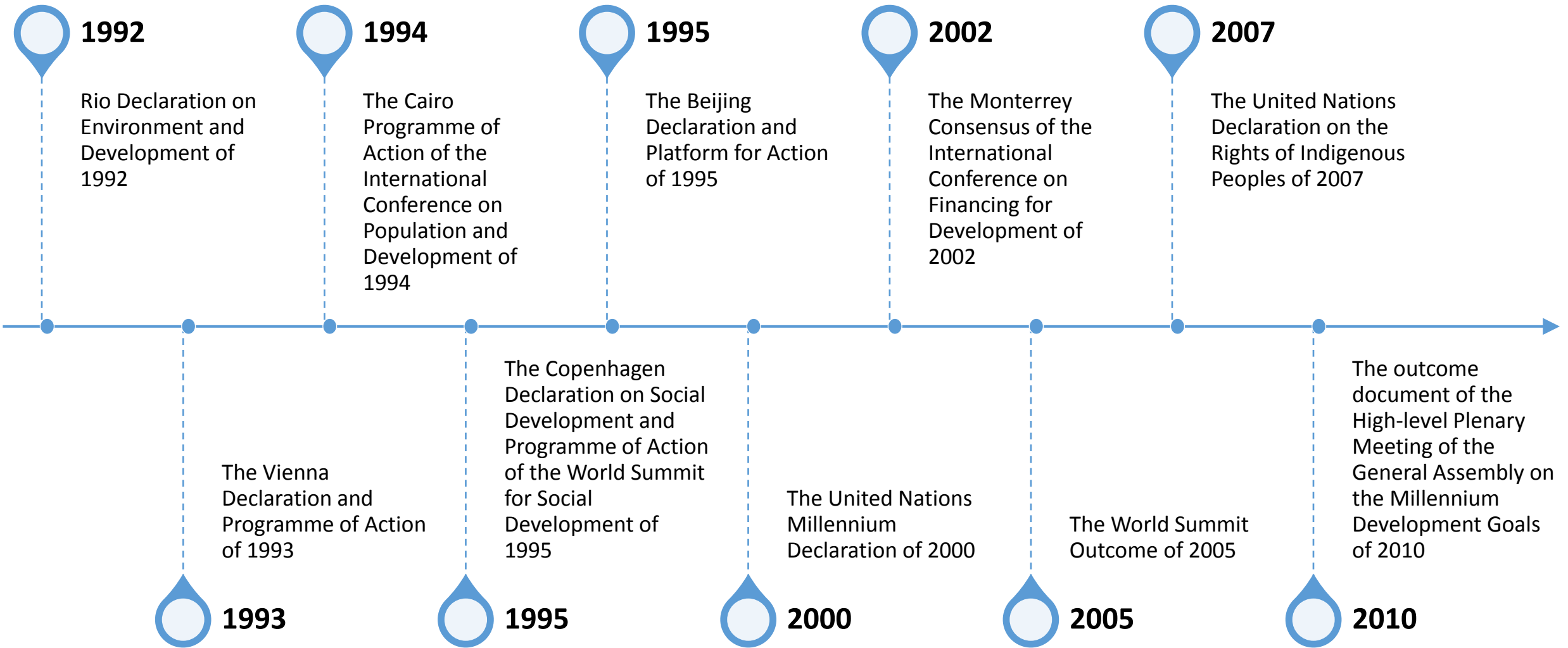
# The Late 1970s and Early 1980s

- 1977 Resolution of the UN Commission on Human Rights
  - Recognized Right to Development as a human right for the first time
  - Requested the Secretary General to authorize a study of the subject
- 1981 Working Group of Government Experts on the Right to Development.
- 1981 African Charter on Human and People's Rights (Banjul Charter)
  - Article 22
    1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
    2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development

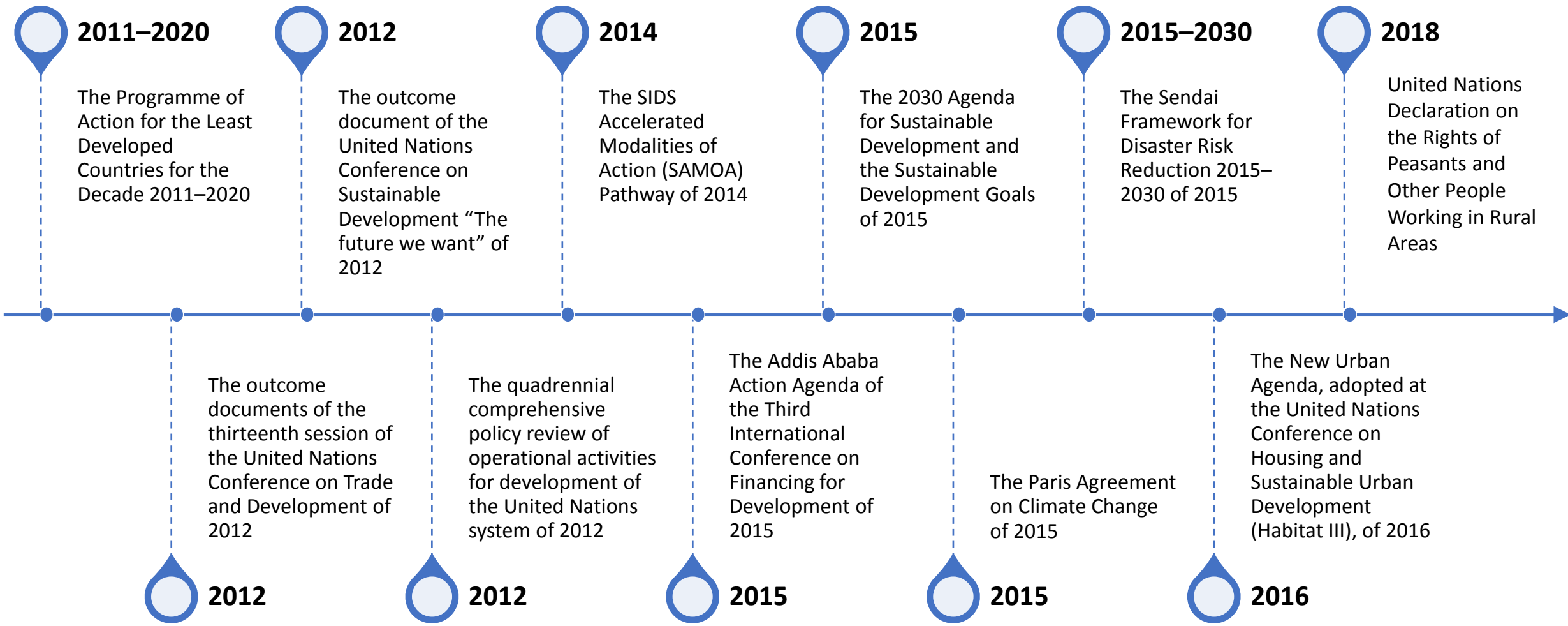


## Adoption of the 1986 UN Declaration on the Right to Development

- 146 countries voted in favour
- 8 countries abstained: Denmark, Finland, Germany, Iceland, Israel, Japan, Sweden and the United Kingdom
- 1 country opposed: US
- However, the RtD is reaffirmed thereafter unanimously in a series of Declarations and Resolutions







# Other Important UNGA Resolutions

- Resolution 48/141 of 7 January 1994: established the Office of the United Nations High Commissioner for Human Rights, with a mandate to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for that purpose,
- Resolution 52/136 of 12 December 1997: affirmed that the inclusion of the Declaration on the Right to Development in the International Bill of Human Rights would be an appropriate means of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights,
- Resolution 60/251 of 15 March 2006: established the Human Rights Council, with a view to enhancing the promotion and protection of all human rights, including the right to development,

# Regional Instruments Affirming the RtD

- African Charter on Human and Peoples' Rights of 1981
- Inter-American Democratic Charter of 2001
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights
- American Declaration on the Rights of Indigenous Peoples of 2016
- Arab Charter on Human Rights of 2004
- Human Rights Declaration of the Association of Southeast Asian Nations of 2012
- Abu Dhabi Declaration on the Right to Development of 2016, adopted by the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation,

# The RtD and Sustainable Development

- “The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations”
  - Principle 3, 1992 Rio Declaration on Environment and Development;
  - Article 11, 1993 Vienna Declaration and Programme of Action.

# The RtD and the 2030 Agenda

- The 2030 Agenda is “informed by” the DRTD (Para 10)
- The 2030 Agenda “reaffirms” the RtD, by reaffirming “the outcomes of all major UN conferences and summits which have laid a solid foundation for sustainable development” (Para 11)
- The 2030 Agenda specifically reaffirms all the principles of the Rio Declaration (Para 12)
- The 2030 Agenda is “grounded” in the RtD, by explicitly acknowledging that it is grounded in the Millennium Declaration, amongst instruments (Para 10).

# 2030 Agenda and the RtD

- The adoption of the 2030 Agenda and the push towards operationalization of the RtD
- Appointment of Special Rapporteur on the RtD
- Establishment of a Biennial High-Level Panel at the Human Rights Council
- Establishment of the Expert Mechanism on the RtD as a subsidiary body of the HRC
- Elaboration of a legally binding instrument on the RtD

# Draft Convention on the Right to Development

- HRC resolution 39/9 of 27 September 2018: deciding that the Inter-Governmental Working Group on the Right to Development should commence the discussion to elaborate a draft legally binding instrument on the RtD through a collaborative process of engagement, including on the content and scope of the future instrument.
- Drafting committee of experts appointed
- Draft Convention and commentaries presented to the Inter-Governmental Working Group for negotiations which commenced in May 2021.

# Principles of the Right to Development (RtD)



# Description of Development in the DRTD

*Recognizing* that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom

# Key Features of the RtD

1. The RtD is an inalienable self-standing human right. Development, and sustainable development, are thus not mere privileges enjoyed by human beings, nor are they just subjects of charity or generosity.
2. The RtD denotes the entitlement of the right-holders to three things - to participate in, contribute to, and enjoy economic, social, cultural and political development
3. The RtD also implies the full realization of the right of peoples to self-determination

# Key Features of the RtD

4. The RtD requires focusing not only on outcomes which are sought to be achieved as a result of a development plan (the “what” question), but also on the process by which those outcomes are achieved (the “how” question). Both the processes and outcomes of development must be consistent with and based on all other human rights. This means that given the very nature of development as a human right, it cannot be realized when there are violations of other human rights.

# Key Features of the RtD

5. Human beings are individually (all human persons) and collectively (all peoples) the right-holders of the RtD against their States as well as other States. Every State is entitled, as an agent of all persons and peoples subject to its jurisdiction, to demand respect for their RtD by other States and international organizations.

# Key Features of the RtD

6. The DRTD entails duties on all States to respect, protect and fulfil the RtD across the following three levels:

(i) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction;

(ii) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and

(iii) States acting collectively in global and regional partnerships.

# Key Features of the RtD

7. The RtD imposes an obligation on States, individually and collectively, to eliminate existing obstacles to its realization, refrain from making policies that are adverse to its realisation, and to positively create conditions favourable to its realisation.

8. Most importantly, the RtD imposes a duty on States with respect to international cooperation to realize the RtD (the duty to cooperate)

# Towards a Treaty on the Right to Development (RtD)

# Procedure for Zero Draft

- Appointment of Drafting Group by OHCHR at the request of Chair-Rapporteur of the Inter-governmental Working Group on RtD
- Questionnaire to all States, IGOs, NHRIs, CSOs etc.
- Elaboration of a first draft by me, along with commentaries
- Drafting Group met for three days at the UN, New York office
- Modified version along with updated commentaries shared with 10 external experts for comments
- Final version of zero draft submitted



# Basic Structure of the Draft Convention

- Preamble (key aspects: common concern of humankind; obstacles)
- Object and Purpose
- General Principles (key aspects: HRBA = RtD; Contribution of Development to HRs; Self-Determined development; right to regulate; Sustainability)
- Definition of RtD; relation with Self-determination; relation with general duty of everyone to respect human rights)
- Obligations of States – Respect, Protect, Fulfil and the Duty to Cooperate (within or outside territories, individually or jointly)

# Basic Structure of the Draft Convention

- **Obligations of International Organizations**
  - Without prejudice to the general duty contained in article 7, States Parties agree that international organizations also have the obligation to refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach that State's or that other international organization's obligations that they may have with regard to the right to development.
- **UCMs**
- **Specific and Remedial Measures**
- **Equality of men and women**
- **Impact Assessments and Data Collection**

# Basic Structure of the Draft Convention

- Peace and Security
- Sustainable Development
- Harmonious Interpretation
  - 1. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention. *To that end, the United Nations and its specialized agencies are under an obligation to promote the right to development.*
- Conference of States Parties and Implementation Mechanism
- Parties can include IOs

# Political Positions of Key Actors

- US and Japan
- EU, Switzerland, UK, and Mexico
- BRICS
- The UCM Club: Cuba, Venezuela, Syria and Iran
- GRULAC and Asia-Pacific
- African block
- NGOs

# What's Next?

- Process for Revisions
- And a few predictions!