

The Millennium Development Goals and Human Rights at 2010 – An Account of the Millennium Summit Outcome

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Abstract

In September 2010, the heads of State and government of over 140 countries gathered at the United Nations Millennium Summit in New York, to review progress made towards the Millennium Development Goals (MDGs). Adopted in 2000, the 8 concrete and time-bound MDGs that have become the shared development agenda of the international community are reminiscent of economic and social rights, but contain no explicit reference to human rights. With five years to go to the MDGs target date of 2015, the Millennium Summit adopted the Outcome Document “Keeping the Promise”, that serves here as a test case to assess the current state of the debate over human rights and development. Although human rights rhetoric has increasingly entered into the development discourse, its influence on development practice remains limited, and human rights come second on an agenda increasingly dominated by the aid effectiveness concept and its vocabulary.

A. Introduction

The Millennium Development Goals (MDGs) represent a global action plan to combat poverty and, in the words of UN Secretary-General Ban Ki-moon, “the most important collective promise ever made to the world's most vulnerable people”.¹ With five years to go to the MDGs target date of 2015, world leaders gathered from 20 to 22 September at the United Nations Millennium Summit in New York, taking stock of progress towards the MDGs since they were agreed in 2000. At the high-level plenary meeting of the General Assembly, the heads of State and government of almost 140 countries adopted a 32-pages long Outcome Document with the title “Keeping the promise: United to Achieve the Millennium Development Goals”, reinvigorating their commitment to reach the concrete and time-bound targets of the MDGs.²

¹ UN Secretary-General Ban Ki-moon's speech to the European Forum on The International Financial Crisis and the Millennium Development Goals, in Alpbach, 4 September, UN Doc SG/SM/13087 DEV/2808, 7 September 2010.

² Keeping the Promise: United to Achieve the Millennium Development Goals, GA Res. A/65/L.1, 17, September 2010, adopted by consensus on 22 September 2010.

Although the uneven track record and the huge gaps remaining in achieving the MDGs call for deeds rather than words to keep the promise, the focus of this article lies on the Outcome Document. Inspired by Philip Alston's suggestion in 2005, the Outcome Document is used as a "lens through which to assess the current state of the ongoing debate over human rights and development". In comparison to the Millennium Declaration of 2000, the basis of the MDGs, and the World Summit Outcome of 2005, a record of the first stock taking, the document yields an interesting picture of the shifting trends in international development policy over the last decade.³ Since 2000, human rights rhetoric has increasingly entered into the development discourse as a whole and the MDGs in particular. The influence of human rights on development practice, however, remains limited. Human rights come second on an agenda increasingly dominated by the aid effectiveness concept and its vocabulary.⁴

B. The Millennium Development Goals – A Development and Human Rights Agenda?

I. Source and Substance of a Collective Promise

The Millennium Development Goals are based on the Millennium Declaration adopted by heads of State and government at a high-level plenary meeting of the General Assembly in September 2000 in New York.⁵ The Millennium Declaration, building upon a decade of major United Nations conferences and summits, contains a wide range of commitments of Member States to promote peace, human rights, democracy, and

³ United Nations Millennium Declaration, GA Res. 55/2, 18 September 2000; 2005 World Summit Outcome, GA Res. 60/1, 24 October 2005.

⁴ Philip Alston in 2005, referring to the MDG initiative as a whole; P. Alston, 'Ships Passing in the Night: The Current State of the Human Rights and Development Debate seen through the Lens of the Millennium Development Goals', 27 *Human Rights Quarterly* (2005) 3, 755, 757.

⁵ For an account of the antecedents of the MDGs' adoption, see D. Hulme, 'The Making of the Millennium Development Goals: Human Development Meets Results-based Management in an Imperfect World', *Brooks World Poverty Institute (BWPI) Working Paper* 16, December 2007, 3-12, available at <http://www.bwpi.manchester.ac.uk/resources/Working-Papers/bwpi-wp-1607.pdf> (last visited 21 November 2010).

environmental sustainability.⁶ Most importantly, Member States pledge to form a new global partnership for development, setting out time-bound and quantifiable goals and targets for combating poverty in its many dimensions.

On the basis of Chapter III, "Development" of the Millennium Declaration, the UN Secretariat, in consultations with the International Monetary Fund (IMF), the World Bank and the Organization for Economic Co-operation and Development (OECD), subsequently elaborated 8 concise goals, 18 targets and 48 indicators.⁷ In brief, these 8 Millennium Development Goals endeavor to (1) half poverty and hunger; (2) achieve universal primary education; (3) promote gender equality; (4) reduce child mortality; (5) improve maternal health; (6) combat HIV/AIDS, malaria, and other diseases; and (7) establish a global partnership of industrialized and developing countries in order to facilitate the implementation of MDGs No. 1 to 7.

The MDGs managed to place development firmly on the agenda of the international community, and at the same time emerged as the international community's shared development agenda. By setting out a comprehensive vision for development, they initiated a decade of development activism that brought unprecedented attention to the fight against poverty as a responsibility of both developing and developed countries. By setting out concrete, quantifiable goals, they have become a common framework and yardstick for such diverse actors as UN agencies, the World Bank, philanthropic foundations, and grass-roots NGOs. In the words of the Overseas Development Institute, a London-based development think tank, the MDGs represent "the most determined effort in history to galvanize international action around a common set of development targets. Their success or failure will have immense consequences, not only for the world's poor, but also for the credibility of collective action by the international community"⁸.

Raising such high expectations, with their universal pretensions and with their ambitious targets, the MDGs are bound to attract criticism from

⁶ G. Pleuger, 'United Nations Millennium Declaration', in R. Wolfrum (ed.), *The Max Planck Encyclopedia of Public International Law* (2008), paras 1-5 (last visited 21 November 2010).

⁷ See Road Map Towards the Implementation of the United Nations Millennium Declaration, Report of the Secretary-General, UN Doc A/56/326, 6 September 2001, Annex.

⁸ 'Achieving the MDGs: The Fundamentals', *Overseas Development Institute (ODI) Briefing Paper* 43, September 2008, available at <http://www.odi.org.uk/resources/download/1933.pdf> (last visited 21 November 2010).

many sides. They have been accused at times of being unrealistic or under-ambitious, and of drawing attention, time, and resources away from other initiatives.⁹ From an economic perspective, they have been criticized for setting global targets for such diverse countries as India and Mauretania, suggesting a one-size-fits-all prioritization and paying undue regard to the different starting points, capacities, and needs of individual countries.¹⁰ As Todd Moss from the Center for Global Development, a Washington-based research institution, captures pointedly, the MDGs are highly successful in fundraising, but otherwise inappropriate as national goals and wrong to claim collective accountability, because “when everyone is responsible then no one is”¹¹.

The question of accountability leads over to the question of legal status. Do the MDGs create obligations under international law? The MDGs build upon the Millennium Declaration that was adopted in the form of a General Assembly resolution. As such, it has only a recommendatory, not a legally binding character.¹² This remains valid despite the solemn adoption of the Declaration by consensus.

⁹ For an overview of the major criticisms brought against the MDGs, see, for example: ‘Beyond the Millennium Development Goals’, *OECD Insights* (24 September 2010), available at <http://oecdinsights.org/2010/09/24/beyond-the-millennium-development-goals/> (last visited 21 November 2010).

¹⁰ Most prominently, D. Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* (2006).

¹¹ T. Moss, ‘Are the MDGs Useful for Africa?’, *The Huffington Post* (5 August 2010), available at http://www.huffingtonpost.com/todd-moss/are-the-mdgs-useful-for-a_b_672429.html (last visited 21 November 2010); also: T. Moss, ‘What Next for the Millennium Development Goals?’, 1 *Global Policy* (May 2010) 2, 218-220; according to Amnesty International, the central problem with the Goals that do not advocate a rights-based approach is indeed a lack of accountability, enhanced by the failure to take into account the human rights obligations of States and to include human rights benchmarks in MDG progress monitoring, available at <http://www.amnestyusa.org/demand-dignity/fight-poverty-with-human-rights/millennium-developmentgoals/page.do?id=1041190> (last visited 21 November 2010).

¹² Under Art. 25 UN Charter, only the Security Council can take decisions which are binding on all Member States. In general, resolutions of the General Assembly are not binding on UN Member States but serve as recommendations, I. Brownlie, *Principles of Public International Law* (2003), 14 and A. Boyle & C. Chinkin, *The Making of International Law* (2006), 116, acknowledging, however, that General Assembly Resolutions can play an important role in the development of international law.

Some authors argue, however, that the Goals have since developed into customary international law, becoming binding on all states.¹³ Such argumentation is usually built around two strands. First, states have repeated and gradually concretized their commitment to the MDGs on many occasions, often key international summits, including the UN Conference on Financing for Development in Monterrey and the World Summit on Sustainable Development in Johannesburg in 2002; the World Summit in New York and the Group of Eight Summit in Gleneagles (UK) in 2005; and most recently, the Millennium Summit 2010 in New York.¹⁴ The Goals have also entered the strategies and policy documents of many bilateral and multilateral donors, for example the German Federal Ministry for Economic Cooperation and Development (BMZ)¹⁵ or the European Union.¹⁶ Second, there is a clear overlap between many of the MDGs and (particularly economic and social) human rights and human rights principles. Thus, the MDGs must be placed within the context of obligations to promote human rights previously entered into by Member States and reaffirmed in the Millennium Declaration and on subsequent occasions.¹⁷

¹³ G. Nankani *et al.*, ‘Human Rights and Poverty Reduction Strategies’, in P. Alston & M. Robinson (eds), *Human Rights and Development. Towards Mutual Reinforcement* (2005), 496-497; cautiously also Alston, *supra* note 5, 774.

¹⁴ GA Draft Outcome of the International Conference on Financing for Development: Monterrey Consensus, UN Doc A/AC.257/L.13, 30 January 2002; The Johannesburg Declaration on Sustainable Development, adopted at the 17th plenary meeting of the World Summit on Sustainable Development, UN Doc A/CONF.199/L.6/Rev.2, 4 September 2002.

¹⁵ For example, Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, BMZ Konzept 172: *Förderung von Good Governance in der deutschen Entwicklungspolitik*, Bonn (2009); Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, BMZ Konzept 155: *Entwicklungspolitische Aktionsplan für Menschenrechte 2008 – 2010*, Bonn (2008).

¹⁶ Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: ‘The European Consensus’ of 24 February 2006, 46/01 OJ 2006 C 46; see also: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions: ‘A twelve-point EU action plan in support of the Millennium Development Goals’, Brussels, 21 April 2010, COM(2010)159 final.

¹⁷ M. Robinson, ‘What Rights Can Add to Good Development Practice’, in Alston & Robinson, *supra* note 14, 41; Alston, *supra* note 4, 774: “the MDGs have been affirmed, reiterated,, and restated in ways and forms and with greater frequency and

Clearly, to the extent that they overlap, the respective MDGs have a normative dimension by repeating or concretizing existing obligations, rather than producing new ones. This, however, only applies to the areas of overlap and narrow core of the rights. The concrete targets and timelines attached to the MDGs in a Secretary General Report (and it is those that set them apart from previous initiatives) create only political and moral, but no legal commitments. The continuous reiterations of the MDGs must be interpreted in line with this trajectory and do not qualify as *opinio iuris*.

II. Human Rights, Development and the MDGs

Unlike the Millennium Declaration which reaffirms the commitment to human rights and democracy, the MDGs themselves do not refer to human rights explicitly, are not expressed in a rights-language, and do not advocate a rights-based approach to development.¹⁸ In particular, while some economic and social rights can still be read into the MDGs, civil and political rights fall clearly off the radar.

Accordingly, the most dominant reaction of the human rights community to the MDGs has been criticism, which comes across as more or less constructive and engaging depending on whether the emphasis is on the communalities or differences of the human rights and MDGs agendas.¹⁹

Some human rights advocates reject the very concept of the MDGs for prescribing a selection of confined, quantifiable targets from the top-down while omitting or even undermining existing human rights obligations.²⁰

insistence than economic and social rights have ever been”; on the relationship between MDGs and Human Rights, see below, Part B.II.

¹⁸ Amnesty International, ‘Combating Exclusion: Why Human Rights are Essential for the MDGs’, 7 *SUR – International Journal of Human Rights* (2010) 12, 55, 55: “The MDGs – while covering areas where States have clear obligations under international human rights law such as food, education and health - are largely silent on human rights.”

¹⁹ See, for example, M. Robinson, *supra* note 18, 40-41; Alston, *supra* note 4, 764-765; G. Schmidt-Traub, ‘The Millennium Development Goals and Human rights-based Approaches: Moving Towards a Shared Approach’, 13 *The International Journal of Human Rights* (February 2009) 1, 72, 77; Amnesty International, *supra* note 19, 57-62.

²⁰ Alston, *supra* note 5, 762-764; for example, M.E. Salomon states “at best the MDGs might be understood as a feeble complement to the international economic regime, at worst as a vehicle for advancing the will and preferences of influential states and their industries.” M.E. Salomon, ‘Poverty, Privilege and International Law: The Millennium Development Goals and the Guise of Humanitarianism’, 51 *German Yearbook of International Law* (2008), 39, 47-48.

These “essentialist critiques” of the MDGs are implicit in Thomas Pogge’s question: Why aim at halving poverty if this means leaving at least half of today’s poor in a state of deprivation?²¹

The more common reaction on parts of human rights activists is to laud the MDG initiative for bringing about an unprecedented focusing of efforts to promote human development and the human dignity of those living in abject poverty - an objective shared with the human rights agenda - while criticizing parts of the MDGs concept or approach. For example, it is argued that a human rights perspective entails a more holistic understanding of poverty and its structural causes than suggested by the MDGs.²² An approach to development that is grounded in the indivisibility and interdependence of human rights requires empowering the individual (rights-holder); respecting the principles of non-discrimination, participation, and accountability; and all the while remaining within the normative framework of international human rights law.²³

Although the liaison between human rights and development was not stipulated in the concept and phrasing of the Goals, the debate between the development and human rights communities has taken on over the last decade. The debate has moved forward on a conceptual level, through the work of the High Level Task Force on the Right to Development,²⁴ and on a

²¹ T. Pogge, *The First UN Millennium Development Goal: A Cause for Celebration?*, Evening Address at the University of Oslo Global Justice Symposium (2003), available at <http://www.etikk.no/globaljustice/> (last visited 21 November 2010).

²² On the distinct approaches to poverty contained in the human rights movement and the MDGs, see P. Nelson, ‘Human Rights, the Millennium Development Goals, and the Future of Development Cooperation’, 35 *World Development* (2007) 12, 2041-2055.

²³ There are differing conceptions of a rights-based approach to development. The elements reflected here are based on M. Darrow & A. Tomas, ‘Power, Capture, and Conflict. A Call for Human Rights Accountability in Development Cooperation’, 27 *Human Rights Quarterly* (2005) 2, 471, 482-492; for the UN, the central reference is “The Human Rights-based Approach to Development Cooperation: Towards a Common Understanding among UN Agencies”. Report of the Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform (Stamford, USA, 5-7 May 2003); for an overview of donor approaches, see L.-H. Piron & T. O’Neil, ‘Integrating Human Rights into Development. A Synthesis of Donor Approaches and Experiences’, *ODI Report* (2005) prepared for the OECD DAC Network on Governance (GOVNET).

²⁴ The High Level Task Force establishes a link between development and human rights with view to the MDG implementation process. UN Commission on Human Rights, Report of the High-Level Task Force on the Implementation of the Right to Development (Geneva, 13–17 December 2004), UN Doc E/CN4./2005/WG.18.2. In

more operational level, through the adoption by an increasing number of bilateral and multilateral donors of a more or less vigorous human rights-based approach to development.²⁵ In 2003, the Human Development Report recognizes that each of the MDGs “can be directly linked to economic, social and cultural rights”, that national development strategies must respect human rights, and that without sound governance, including in terms of human rights, no country will succeed in its development efforts.²⁶ The 2005 World Summit Outcome refers repeatedly to the role of human rights and, unlike the Millennium Declaration, establishes a direct link between human rights and development cooperation.²⁷

However, despite the rhetoric of human rights and development having entered into the overall development agenda, it holds true that “the acknowledgment of the importance of human rights has yet to have a systematic impact upon practice on the ground”²⁸. Rights-based approaches to development often remain too abstract, conceptual, and unsuitable overall to inform the day-to-day decisions that development practitioners need to make; evaluations substantiating the value-additions of a human-rights based approach to development for beneficiaries are still largely pending.²⁹ Within the UN system, the bodies dealing with development and human rights “are not only separate from each other but they also lack any real mechanisms enabling them to coordinate their respective activities”³⁰. And

the HLTF, UN human rights experts pursue a critical dialogue with representatives of the World Bank, IMF, WTO and other organizations with a view to working out common analyses and recommendations for a human rights based approach to development in the framework of the global compact.” Pleuger, *supra* note 7, 18.

²⁵ See the references in *supra* note 24.

²⁶ United Nations Development Programme, *Human Development Report 2003. Millennium Development Goals: A Compact among Nations to End Poverty* (2003), 28, 15 and 16 respectively.

²⁷ World Summit Outcome, *supra* note 4, paras 9, 12, 62, 68 and particularly 24 *lit. b*: “To reaffirm that good governance is essential for sustainable development; [...] respect for human rights, including the right to development, [...] are also essential”. The term “human rights” appeared only once in the Monterrey Consensus, the final text adopted at the 2002 International Conference on Financing for Development, but 6 times in the Johannesburg Plan of Implementation, adopted by the 2002 World Summit on Sustainable Development, *supra* note 15.

²⁸ Alston, *supra* note 5, 826.

²⁹ See, for example, Schmidt-Traub, *supra* note 20, 71; Alston, *supra* note 5, 802 and 807.

³⁰ E. Dominguez Redondo, ‘The Millennium Development Goals and the Human Rights Based Approach: Reflecting on Structural Chasms with the United Nations System’, 13 *The International Journal of Human Rights* (February 2009) 1, 29, 31.

while the current MDG accountability framework, consisting of voluntary monitoring and reporting at the national level, and UN reports on regional and global progress, is considered insufficient, the existing human rights monitoring and accountability mechanisms have not been used widely to provide redress.³¹

These gaps are to blame on both the human rights and development community. Few human rights organizations have articulated effective strategies in the defense and promotion of economic and social rights,³² and a persistent skepticism towards the MDGs stands in the way of a more practical engagement with the initiative.³³ Ten years after the adoption of the MDGs and despite surging human rights rhetoric in development, the human rights regime still, for the most part, has to “content itself with playing a limited role in directing the course of the development agenda”³⁴.

C. The 2010 Millennium Summit Outcome – “Keeping the Promise”

I. Stock Taking at the Millennium Summit

The Millennium Summit 2010 was mandated by the General Assembly to review progress and gaps, take account of lessons learned and best practices, and elaborate concrete strategies for action to achieve the

³¹ Amnesty International, *supra* note 19, 60; C. Doyle, ‘Millennium Development Goals and Human Rights: In Common Cause or Uneasy Partners?’, 13 *The International Journal of Human Rights* (February 2009) 1, 5, 6; M. S. Carmona: ‘The Obligations of International Assistance and Cooperation under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights Based Approach to Millennium Development Goal 8’, 13 *The International Journal of Human Rights* (February 2009) 1, 86, 87.

³² F. Azzam, ‘Reflections on Human Rights Approaches to Implementing the MDGs’, 2 *SUR – International Journal on Human Rights* (2005) 2, 22, 24.

³³ On the need to harness the complementarity of human rights and the MDGs, see, for example, Alston, *supra* note 5, 827; S. Carmona, *supra* note 32, 35; Doyle, *supra* note 32, 6.

³⁴ Doyle, *supra* note 32, 6. It is exemplary that the human rights discourse at the World Bank has been abating, after a brief upsurge under the Presidency of James D. Wolfensohn. See, G. Sarfaty, ‘Why Culture Matters in International Institutions. The Marginality of Human Rights at the World Bank’, 103 *American Journal of International Law* (2009) 4, 647-683.

MDGs until 2015.³⁵ Based on this mandate and following the launch of the UN Secretary-General's report "Keeping the Promise" in March 2010,³⁶ diplomats negotiated a draft outcome document in the run-up to the Summit in September.³⁷ The months leading to the Summit also saw the publication of the Millennium Development Goals Report 2010, which contains the latest data on progress on all goals globally and regionally, and the MDG Gap Task Force Report 2010 on implementation gaps in the commitments made under MDG 8.³⁸

The picture that emerged from these reports is mixed: while progress has been made on some goals and in some regions, it remains too slow and uneven. The number of poor has fallen from 1.8 billion in 1990 to 1.4 billion in 2005, but this is largely due to the economic growth of China and Eastern Asia; in the backdrop of the global economic crisis, the number of people in extreme poverty is projected to increase by 64 million by the end of 2010, according to a World Bank study.³⁹ Major strides have been made on getting children into school, though they are not sufficient to reach MDG 2 by 2015; in some regions, gender parity in educational enrolment remains elusive, and progress on gender equality is overall sluggish.⁴⁰ Advances have been made on some health-related Goals, such as reducing child mortality and increasing the coverage of antiretroviral therapy and malaria

³⁵ GA Resolution on the Organization of the High-level Plenary Meeting of the sixty-fifth session of the General Assembly, GA Res. 64/184, 5 February 2010, para. 3.

³⁶ Keeping the Promise: A Forward-looking Review to Promote an Agreed Action Agenda to Achieve the Millennium Development Goals by 2015, Report of the Secretary-General, UN Doc A/64/665, 12 February 2010.

³⁷ During the negotiations, it is reported that developing countries did not act as a uniform group with homogenous interests, nor were the newly industrializing or emerging donors interested in taking the lead – instead, the debate was dominated by those countries that used the platform to criticize existing power relations in the international system, see S. Weinlich, 'Warum ein Konsens in den Millenniumszielen so schwierig ist', *Zeit Online* (20 September 2010), available at <http://www.zeit.de/politik/ausland/2010-09/UN-Entwicklungsziele-Konsens?page=1> (last visited 21 November 2010).

³⁸ United Nations, The Millennium Development Goals Report 2010 (2010); and focusing on MDG 8, see UN MDG Gap Task Force Report 2010, The Global Partnership for Development at a Critical Juncture (2010). The UN Gap Task Force brings together more than 20 UN agencies, the IMF, World Bank, WTO and OECD.

³⁹ MDG Report 2010, *supra* note 39, 15; The International Bank for Reconstruction and Development / The World Bank, *Global Economic Prospects. Crisis, Finance, and Growth* (2010) Foreword, available at <http://siteresources.worldbank.org/INTGEP2010/Resources/GEP2010-Full-Report.pdf>.

⁴⁰ MDG Report 2010, *supra* note 39, 16, 20-21.

control, yet maternal mortality rates remain far off the reduction rates foreseen in MDG 5.⁴¹ The world is on track to meet the drinking water target - of halving the proportion of population without access to safe drinking water, whereas sanitation facilities are lacking for half of the population of developing countries.⁴² Finally, while Official Development Assistance (ODA) flows are still on the rise, only five donor countries have reached the UN target of 0.7% of gross national income for aid.⁴³ At the current pace, many of the MDG targets are likely to be missed in most regions – and it is expected that the international community will not be able to keep the promise it made in 2000.⁴⁴

Against this background, the Millennium Summit faced three key challenges: it had to rally state support around the MDG initiative at a time when the global financial crisis and the global food crisis had diminished resources for the fight against poverty, while increasing the number and needs of the poor. Second, it had to sell the MDGs as a formula to success, even as the very uneven track record and the major gaps remaining gave little reason for optimism in the prior to the Summit. Third, it had to generate consensus between the industrialized and the developing world, in two trenches that have characterized international development politics since the earliest day.

Nevertheless, heads of State and government reached agreement on the Outcome Document “Keeping the Promise – United to Achieve the Millennium Development Goals”, a title that connotes its main message: that the MDGs can still be reached until 2015, but only through a partnership effort. The document then proceeds in four parts: starting with the reiteration of common values and commitments, it reviews successes and remaining gaps and importantly, takes note of lessons learned and best

⁴¹ *Id.*, 26 (child mortality), 30 (maternal health), 40 (HIV/AIDS, malaria).

⁴² *Id.*, 58-61.

⁴³ *Id.*, 66-67; Official Development Assistance (ODA) is a definition introduced by the OECD in 1969, and is today a generally recognized category to determine which financial flows to developing countries constitute official development aid. For more information, see the OECD webpage, available at <http://www.oecd.org/dac/stats/> (last visited 21 November 2010).

⁴⁴ MDG Report 2010, *supra* note 39, 4-5; This is no reason to go as far as K. Anderson, however, calling the MDGs “development zombies” that do not warrant a global review: K. Anderson, ‘Millennium Development Goals’, *Opinio Juris* (20 September 2010), available at <http://opiniojuris.org/2010/09/20/millennium-development-goals/> (last visited 21 November 2010).

practices.⁴⁵ This is followed by an “agenda for action” that is rather an aggregation of vague political and economic concepts, repetitive reiterations, and few concrete suggestions for each of the 8 MDGs.⁴⁶ The document concludes with mandating the General Assembly to continue review, and the Secretary General to report annually on progress made in the implementation of the MDGs.⁴⁷

II. Key Themes in the Outcome Document

The Outcome Document reflects and responds to the three challenges described above – an ill-tempered donor-community at times of crises, a bleak-looking track record in implementing the MDGs, and a well-known dichotomy of industrialized and developing countries. The text recognizes the impact of the “multiple and interrelated crises”, including the global economic and financial crisis and the food crisis, to acknowledge new restraints and new vulnerabilities.⁴⁸ It oscillates diplomatically between the recognition of what has been reached, and the concern over what is still missing: between “progress [...] despite setbacks”, “challenges and opportunities”.⁴⁹ And it responds to the dichotomy by making “partnership” the centerpiece of the document, with the word appearing no less than 19 times in the text.⁵⁰

A “global partnership for development” primarily demands mutual efforts and mutual responsibilities of both partners, and is thus a viable concept to overcome the blame game between developing and developed countries.⁵¹ The Outcome Document strikes a noticeable balance between national and international responsibilities for achieving the MDGs, a

⁴⁵ On lessons learned and best practices, see *Keeping the Promise*, *supra* note 3, para. 23.

⁴⁶ *Id.*, paras 36-79.

⁴⁷ *Id.*, paras 79-81.

⁴⁸ The word “crisis”/“crises” appears 8 times in the text, *id.*, paras 5, 6, 22, 33, 70 *lit. n* and 78 *lit. q*.

⁴⁹ *Id.*, e.g. paras 5, 6, 19, 20 and 22.

⁵⁰ *Id.*, paras 5, 7, 9, 21, 24, 30, 38, 44, 50, 56, 70 *lit. l*, 76 *lit. d*, 77 *lit. i*, 78 *lit. a, d, s* (not including “public-private partnerships”). It appears once in the Millennium Declaration, *supra* note 4, para 20 and ten times in the Chapter on Development in the World Summit Outcome 2005, *supra* note 4.

⁵¹ Critical is M.E. Salomon: “While rhetorically MDG 8 concerns developing ‘a global partnership’, the weight of the responsibility for giving effect to the partnership is understood to rest with developed countries and it is those countries that report against it.”, Salomon, *supra* note 21, 56.

balance alternating between “indispensable” national ownership and global partnership,⁵² “primary responsibility” and “shared responsibility”,⁵³ calls for more transparent and accountable national *and* international governance.⁵⁴ In this sense, the formula for achieving the MDGs implicit in the document suggests an optimistic interplay of “intensified collective action” and “enhanced global partnership”, together with nationally owned development strategies and more aid effectiveness.⁵⁵

Aid effectiveness, the new buzzword of the development community, is another major theme in the Outcome Document. Since the OECD Development Assistance Committee (DAC) endorsed the Paris Declaration on Aid Effectiveness in 2004, the principles of ownership, alignment, harmonization, managing for results, and mutual accountability have become the central reform agenda agreed by donor and recipient states to improve the effectiveness and quality of aid.⁵⁶ The Paris principles are thus not originally a vocabulary of the United Nations system, but have since started entering the development discourse even within the United Nations.⁵⁷ Compared to the 2005 World Summit Outcome, where the then

⁵² See Keeping the Promise, *supra* note 3, para. 10.

⁵³ *Id.*, paras 10, 36.

⁵⁴ *Id.*, paras 10, 23 *lit. n.*, 52, 70 *lit. o.*

⁵⁵ *Id.*, para. 9: “We are convinced that the Millennium Development Goals can be achieved [...] with renewed commitment, effective implementation and intensified collective action by all Member States and other relevant stakeholders at both the domestic and international levels, using national development strategies and appropriate policies and approaches that have proved to be effective, with strengthened institutions at all levels, increased mobilization of resources for development, increased effectiveness of development cooperation and an enhanced global partnership for development.” See also para. 23, which enumerates lessons learned and successful policies, where national ownership on the one hand and more transparent and accountable international development cooperation on the other hand feature prominently.

⁵⁶ OECD DAC, Paris Declaration on Aid Effectiveness (2 March 2005) and Accra Agenda for Action, adopted by the 3rd High Level Forum on Aid Effectiveness in Accra (September 2008) available at <http://www.oecd.org/dataoecd/58/16/41202012.pdf> (last visited 22 November 2010).

⁵⁷ See, for example, United Nations Development Programme, *Joint Evaluation of the UNDG Contribution to the Paris Declaration on Aid Effectiveness* (2008), available online <http://www.undp.org/evaluation/thematic/pd.html> (last visited 24 November 2010); World Summit Outcome 2005, *supra* note 4, para. 23 *lit. c.*; or Economic and Social Council, Press Release (29 June 2010), ECOSOC/6432: Coherence, aid effectiveness among key topics as Economic and Social Council launches second Development cooperation forum, available at

new aid effectiveness vocabulary hardly appeared, in the 2010 Outcome, national ownership, results-based management, donor harmonization and alignment with national priorities are repeatedly evoked and infused into the strategies to achieve the MDGs.⁵⁸ They are greeted by major donor countries, which accentuated the same principles in their speeches at the Summit.⁵⁹

If aid effectiveness is a new theme, good governance and the rule of law, two concepts that have played a dominant role in the development discourse over the last two decades, feature less prominently. Compared to the Millennium Declaration and the 2005 World Summit, where the MDGs are embedded in a document that makes a strong call for participatory and rule-based (development) policy-making, reference to good governance and the rule of law is less explicit in the 2010 Outcome.⁶⁰ This is not to say, however, that the concepts have been abandoned – rather, they resound in more precise policy suggestions and best practices that advance the “full participation of all segments of society”, the fight against corruption, or transparent and accountable governance.⁶¹

<http://www.un.org/News/Press/docs/2010/ecosoc6432.doc.htm> (last visited 22 November 2010). Further, most UN agencies have adopted a results-based management approach which they follow more or less rigorously, for example UNDP, UNHCR, UNICEF, UNESCO, FAO and WFP.

⁵⁸ Keeping the Promise, *supra* note 3, on the concepts of aid effectiveness (paras 9, 64, and health-related in para; 73 *lit.* d, j and k); ownership (paras 10, 23 *lit.* a, 36, 58, 64); results-based management (paras 59, 64, 78 *lit.* f); harmonization (paras 64, 73 *lit.* m); alignment (paras 64, 73 *lit.* b, m); and accountability (paras 23 *lit.* o, 59, 72 *lit.* g, 73 *lit.* a, 78 *lit.* c, f). Note, however, what comes across as a disclaimer in para. 64: “We also bear in mind that there is no one-size-fits-all formula that will guarantee effective assistance and that the specific situation of each country needs to be fully considered.”

⁵⁹ For example, Barack Obama presented the new U.S. Global Development Policy, resting on enhanced ownership (or: national leadership), mutual accountability, and performance-based lending, Remarks by the President at the Millennium Development Goals Summit in New York, New York (22 September 2010), available at <http://www.whitehouse.gov/the-press-office/2010/09/22/remarks-president-millennium-development-goals-summit-new-york-new-york> (last visited 21 November 2010); also: Speech of the Federal Chancellor Angela Merkel at the United Nations General Assembly (21 September 2010), available at http://www.bundeskanzlerin.de/nn_683608/Content/DE/Rede/2010/09/2010-09-21-bk-un-millennium-rede.html (last visited 21 November 2010).

⁶⁰ The words “good governance” (paras 11, 77 *lit.* d), “rule of law” (paras 3, 11) and “democratic” (paras 3, 78 *lit.* f) appear twice each in Keeping the Promise, *supra* note 3.

⁶¹ *Id.*, para. 23 *lit.* l, para. 36; para. 18: “we acknowledge the role of national parliaments in furthering the achievement of the Millennium Development Goals by 2015.”

Partnership, aid effectiveness, good governance – now what is the role of human rights in the Outcome Document of the 2010 Millennium Summit? In the text, the conceptual link between individual MDGs and economic and social rights is made as clear as never before.⁶² Beyond the general assertion of “respect for all human rights, including the right to development” in the first part,⁶³ the document’s agenda for action contains a reaffirmation of the right to food under MDG 1,⁶⁴ a commitment to achieve MDG 2 through realizing the right to education,⁶⁵ several affirmations of women’s and children’s rights,⁶⁶ and a pledge to take steps to realize the right to health.⁶⁷

Yet many of the demands voiced by the human rights community prior to the Summit were not taken up.⁶⁸ There is no explicit endorsement of a rights-based approach to development, although the recognition “that the respect for and promotion and protection of human rights is an integral part of effective work towards achieving the Millennium Development Goals” comes fairly close.⁶⁹ While the need for (mutual) accountability is stressed throughout the document, accountability remains a vague concept and is not associated with human rights accountability and the mechanisms to safeguard it.⁷⁰

In sum, it seems that the trend observed above continues, that human rights are given credit in development rhetoric and gain recognition as a

⁶² The link was also made in the Millennium Development Goals Report 2010, where Secretary-General Ban-Ki Moon recognizes that the “Goals represent human needs and basic rights that every individual around the world should be able to enjoy”, Foreword, 3; S. Zaidi, ‘Millennium Development Goal 6 and the Right to Health: Conflictual or Complementary?’, 7 *SUR International Journal on Human Rights* (2010) 12, 123, 124.

⁶³ Keeping the Promise, *supra* note 3, para. 3. Further: paras 12, 13, 23 *lit.* j.

⁶⁴ *Id.*, para. 70 *lit.* u.

⁶⁵ *Id.*, para. 71 *lit.* a.

⁶⁶ *Id.*, paras 72 *lit.* a, g, k, 73 *lit.* i.

⁶⁷ *Id.*, para. 75 *lit.* a.

⁶⁸ See, for example, Amnesty International, *supra* note 12; International Alert, ‘Replacing the MDGs with a Better Framework’, Submission to the International Development Committee Inquiry: The 2010 Millennium Development Goals Review Summit: Looking ahead to after the MDG deadline of 2015, (7 October 2010).

⁶⁹ Keeping the Promise, *supra* note 3, para. 53.

⁷⁰ Other terms, too, such as participation and non-discrimination, could be made less “open-ended, contingent, and too often subjective” if “rooted in identified standards”, Alston, *supra* note 5, 760.

moral framework for development efforts, while their impact on the operational development agenda remains limited.

D. Human Rights, Development and the MDGs – Revisited

Certainly, the world today is a different one than it was in 2000, when heads of State and government first committed to the time-bound targets of the MDGs. The last decade has brought new challenges (economic and food crises, climate change) and has seen the rise of new actors (emerging donors), new interests (security-development nexus), and new concepts (aid effectiveness) in development cooperation.

Against this background, it is remarkable that States reaffirmed their common resolve and responsibility to achieve the MDGs in the Outcome Document, and that human rights rhetoric has taken such a strong hold therein. Meanwhile, it is a separate question whether the lofty promises and human rights language in the Outcome Document must be deemed significant or irrelevant in the light of the many gaps in the implementation of the Goals; the answer is likely to depend on how the contribution of the MDG initiative to the cause of development cooperation in general is estimated.⁷¹

In conclusion and turning from material goals to procedures, it seems that development policy even within the United Nations system is currently following the Paris-path towards aid effectiveness. Although the concepts of effectiveness, results-orientation and the consequential strategy of performance-based allocation cause suspicion on parts of the human rights community, it cannot be neglected that there are substantial common grounds between the two.⁷² If the ownership principle is understood not to

⁷¹ The only substantial commitment consisted in the launch of a Global Strategy for Women's and Children's Health, a global effort to accelerate progress on MDGs 4 and 5, bolstered by over \$40 billion in resources; for more information see <http://www.un.org/sg/globalstrategy.shtml> (last visited 21 November 2010).

⁷² See the paper authored by GOVNET (the OECD's Governance and Development Section), 'Human Rights and Aid Effectiveness' (2007); more action-oriented: 'Human Rights and Aid Effectiveness: Key Actions to Improve Inter-Linkages' (2008); further OECD publications on the topic available at http://www.oecd.org/document/29/0,3343,en_2649_34565_43490845_1_1_1_1,00.html (last visited 21 November 2010); and also M. Foresti *et al.*, 'Aid Effectiveness and Human Rights: Strengthening the Implementation of the Paris Declaration', Overseas

stop at the nation State level, for example, but to include an individual dimension, it has an undeniable link to the right to development and participatory rights. Similarly, accountability is stressed in both the human rights and aid effectiveness agenda.

Given that “[p]overty eradication” is rarely presented “through the lenses [...] of international regulation”, human rights have already made huge strides in establishing themselves as a normative framework for development activities.⁷³ To be more influential on development practice, maybe the human rights community could engage in a more constructive dialogue with the aid effectiveness agenda, so that reservation on both sides does not again stand in the way of harnessing complementarities for a common cause.

Development Institute, October 2006, available at <http://www.odi.org.uk/resources/download/1538.pdf> (last visited 21 November 2010).

⁷³ C. Chinkin, ‘The United Nations Decade for the Elimination of Poverty: What Role for International Law?’, 54 *Current Legal Problems* (2001), 553, 554.