

ABSTRACT

The right to development is a human right appeared incessantly in the declarations and resolutions of United Nations since 1986. Though it is not yet incorporated explicitly in any universal international treaties, it is included in several regional treaties and domestic constitutions. It is not surprising if the right to development is deemed as one of the most controversial rights, based on its disputed and vaguely formed content. The thesis analyses the scope of the right and relevant obligations of different entities. The right to development emphasizes the inviolability, interdependence and indivisibility of all human rights, defines development as a process of improved enjoyment of different rights, addresses international injustice, and embraces interests of international community toward solidarity. Individuals and peoples are entitled to the right to development, while not only states, but also international organizations as subject of international law, and NGOs and multilateral corporations undertake differentiated responsibilities to fulfill this right.

The implementation of the right to development, domestically and internationally, is hardly satisfactory. Developing countries and developed countries hold their own and differed opinions on the right to development, which constitutes a main political hindrance to the realization of this right. The absence of binding laws and dynamic and constructive theoretical discussions is another reason. National conditions, such as continued discrimination against women, indigenous peoples and minorities, lack of effective rule of law, democracy and good governance, internal conflicts and violence, etc., and international conditions, such as perils of globalization, unfair international structure and trade rules and practices, inadequate international cooperation, etc., are the obstacles at both national and international level. International development programs usually touch certain aspects of the right to development, but fail to explicitly accept its principles as guidance. The Working Group on the Right to Development in the UN Human Rights Council coordinates the only formal and concentrated efforts on promoting the implementation of this right. It has changed its approaches to facilitate the implementation of this right during the past three decades. In recent years, it increasingly enhances its cooperation and dialogues with main international economic and development organizations in this aspect. However, its observation on the impact of international trade regime as established by the WTO for the realization of the right to development is superficial and lacks creative and useful suggestions. Its interaction with the WTO is also relatively disappointing.

Recognizing that the international trade regime takes an important role in facilitating the realization of the right to development, the thesis tries to consider the relationship between the WTO and this right and the possible means to consider it in the framework of the WTO. Setting in the background of the broad discussion of the linkage issue of the WTO and human rights, a conventional approach to deal with external concern and the WTO, namely, the interpretative approach is evaluated.

However, because of the nature of interpretation and the reserved attitudes of some countries to the right to development, it could be estimated that this approach is of limited function. And hence the thesis analyzes the interaction between the right to development and the WTO in another way—adopting the approach of constructivism and acknowledging the constitutional role of theoretical debate. While refuting the seldom-challenged and single-minded goal of trade liberalization of the WTO, the trade regime, as established after the World War II, was essentially constructed according to the “embedded liberalism”. The international trade system, as part of the whole international economic order, is determined by a “fusion of power and legitimate social purpose” and is a contingent compromise based on the division of preserving domestic stability and pursuing liberalization separately at national and international level. However, the ability to provide social protection and preserve domestic stability of national states is to a large extent eroded because of economic globalization. A new compromise is needed, which could take current political priority into consideration. Embedded liberalism’s emphasis on constructivism, which talks about ideational and normative factors and collective intentionality, inspired the observation on the constitutionalism of the WTO emerged in recent years, which is forming part of the process of generating and reforming the constitutive ideas underlying the WTO. However, the constitutionalism in the WTO is still very much in its primitive phase and therefore is subject to the deficit of upholding certain values while neglecting the others, such as those embodied in the right to development, which might be needy for the current WTO plagued by critics. The deficit is also quite natural considering the function of constitutionalisation in closing down the debate in favor of certain values. However, as the postnational constitutionalism uncovers the truth that a richer and diverse normative discussion is more productive, and constructivism’s emphasis on ideational factors, the right to development is suggested to be constitutionalised, taking into consideration its novel nature.

Key Words: The Right to Development; the WTO; Embedded Liberalism; Constructivism; WTO constitutionalism.