

The Path to a Right to International Solidarity

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The mandate of the Independent Expert on human rights and international solidarity was first established 11 years ago in 2005 by the UN Commission on Human Rights, now known as the UN Human Rights Council. Since then, the work on a draft declaration on the right to international solidarity has been progressing – the final draft to be presented in June 2017. In the following, the current Independent Expert on human rights and international solidarity explains the genesis of the draft declaration, its understanding of international solidarity, key issues for its final revision as well as a the path for the right to international solidarity to become effective.

The mandate of the Independent Expert on human rights and international solidarity

The Independent Expert's primary mandate as contained in relevant Commission and Council resolutions, was "...to prepare a draft declaration on the right of peoples and individuals to international solidarity; develop guidelines, standards, norms and principles with a view to promoting and protecting that right by addressing, inter alia, existing and emerging obstacles to its realization".

In keeping with that mandate, and in my present capacity as the Independent Expert on human rights and international solidarity, I presented a proposed draft declaration on the right to international solidar-

ity to the Human Rights Council in June 2014. It then requested me to convene regional consultations in order to obtain wide input on the proposed draft declaration from States, international organizations and civil society at the regional level, with a view to guiding the revision of the document. A final draft declaration will be presented to the Council in June 2017 during its 35th session.

What is the meaning of international solidarity?

Nowadays the word solidarity is more frequently used, loosely uttered in all kinds of contexts and settings, to denote shared feelings, sympathy and oneness. This is not to say that this is wrong or inappropriate. But my view of solidarity has been predicated not on the basis of sameness but rather on the basis of difference. While sameness or homogeneity implies solidarity among actors as a given, it is sometimes mistaken to mean unity in uniformity. True solidarity acquires more meaning when differences are willingly set aside and instead, a common ground is sought as the starting point from which to work forward. It is the transformation of the "otherness" of difference into the vibrant diversity that can bring together rather than divide peoples and nations.

The framework for international solidarity derives from three general sources, the Charter of the United Nations; the Universal Declaration of Human Rights

along with the international human rights treaties; and the multitude of commitments relating to human rights and development that have been adopted by States in UN conferences and summits, along with the resolutions adopted by the UN General Assembly.

The preamble of the proposed draft declaration on the right to international solidarity emphasizes that international solidarity is a fundamental concept of mutually reinforcing relations among persons, groups and nations; an essential binding element that underpins global partnerships, a key approach to poverty eradication and an indispensable component of the efforts to realize all human rights, including the right to development, as well as the Sustainable Development Goals.

Article 1 of the draft declaration defines international solidarity as “the convergence of interests, purposes and actions between and among peoples, individuals, States and their international organizations in order to preserve the order and ensure the very survival of international society and to achieve common goals which require international cooperation and collective action, based on the international normative system of duties which they implement and practise to foster peace and security, development and human rights”. This definition was proposed to me by the Advisory Committee of the Human Rights Council. As it stands, paragraph 1 is an overly dense and long sentence that badly needs improvement.

Paragraph 2 likewise needs to be made more concise: “International solidarity shall be made evident in the collective actions of States that have a positive impact on the exercise and enjoyment of human rights by peoples and individuals within and outside of their respective territories, notably in the ratification of the United Nations international human rights treaties and international labour standards and the adoption of commitments and decisions agreed upon voluntarily between and among States at the regional international levels.”

The intention of this second paragraph is to highlight that the first and foremost attribute of international solidarity is its inherent link with human rights. The definitions as they stand may be tentative but nonetheless, they serve to explicitly predicate that collective purposes and actions of international solidarity must be directed towards fostering the three pillars of the United Nations—peace and security, development and human rights.

The core features of international solidarity are defined in article 3: preventive solidarity and international cooperation. Preventive solidarity is the substantive component of international solidarity re-

lating to the human rights standards and obligations that must inform collective initiatives. International cooperation is the operational component, the delivery system through which the initiatives of preventive solidarity can be implemented through partnerships. As such, in the context of the proposed draft declaration, international solidarity is achieved only through the confluence of these elements.

Pros and cons of a right to international solidarity

After numerous consultations with the Human Rights Council Member States and other stakeholders it became clear to me that the mandate of human rights and international solidarity came into existence as a political strategy, formulated even in the absence of an understanding of what the mandate would be all about. The divide between developed and developing countries determines which States support or oppose my mandate. If one were to use as basis the voting pattern on resolutions relevant to the mandate of human rights and international solidarity, it is easily apparent that developing countries support the mandate while developed countries do not.

Ever since I submitted the proposed draft declaration in June 2014, the once blurred and gray areas of reasons for supporting the mandate have become more distinct and concrete, most especially since it is now known as the declaration on the right to international solidarity rather than the “right of peoples and individuals”. This change in title arose from the regional consultations and will be formalized once I submit the final draft to the Council in June 2017. What is the reason behind the change? To make it possible for the declaration to include States as both rights-holders and duty-bearers of the right to international solidarity, if or when States find it necessary. Those States supporting the declaration look upon it as an enabling instrument to level the playing field towards friendlier, more equitable and just international relations in the political, economic, and cultural fields between developed and developing countries.

Those States that do not support the proposed draft declaration claim that while they can fully concur with international solidarity as a principle, they believe that it does not have the requirements of a human right.

Four key issues still to be solved

The discussions among the participants of the five regional consultations generated a wealth of diverse views on topics that included the understanding of a

right to international solidarity, the perceived links between international solidarity and international cooperation, the role of international solidarity in addressing issues such as development, poverty and inequality, including gender inequality, at the national level and particularly in implementing the new SDGs.

There were a number of concerns that were repeatedly raised and discussed during the regional consultations. Four key issues are of particular significance to the eventual revision of the proposed draft declaration into its final form:

a) Deriving the right to international solidarity from the sources of international law

The obligations of States—the primary duty-bearers—spelled out in the proposed draft declaration, are already existing obligations under the various international human rights treaties. The value of the proposed draft declaration is that it articulates how these existing obligations are to be applied or implemented in accordance with the specific provisions of human rights treaties as contained in the respective general comments and general recommendations of the treaty bodies. In addition, the proposed draft declaration also spells out the duties of non-state actors who work with groups of individuals and communities.

b) The nature of the right to international solidarity

The right to international solidarity is a right to demand the application of international solidarity making it possible for everyone to derive its benefits. I forward the position that the right to international solidarity is a claimable right. My long experience in treaty body work has convinced me that indeed our understanding of a right is “always imperfect and incomplete” and that the claimability of a right ultimately hinges on whether it can be validly claimed against others. For a right to be claimable, it must have identifiable rights-holders and duty-bearers, spelling out what demands are generated by a right and who is bound by them.

The proposed draft declaration in article 6 identifies who the rights holders are, and it includes individuals and peoples such as indigenous peoples and minorities as well as civil society groups and organizations. It also includes those who are outside dominant paradigms such as local and grass-roots communities, transnational networks, diaspora communities and virtual communities on the world-wide web. Article 7 enumerates their rights, individually or in association with others, within or beyond their territories and national boundaries, as provided for in existing international human rights instruments.

Similarly, article 8 identifies the duty-holders as primarily the States and the non-state actors that work with peoples. It lays out the broad terms of their obligations and duties, such as that States should adhere to their obligations in accordance with the international human rights treaties they have ratified, and that non-state actors should abide by their ethical responsibilities and their codes of conduct. Articles 9 to 12 enumerate the more specific legal obligations of States.

c) International solidarity and the extraterritorial obligations of States

The 2011 Maastricht Principles on extraterritorial obligations of States in the area of economic, social and cultural rights bear significantly on the proposed draft declaration on the right to international solidarity. During the regional consultations, the recommendation arose a number of times that aside from economic, social and cultural rights, the proposed draft declaration should also cover the obligations of States in relation to civil and political rights. Examples were discussed to illustrate the observable extraterritorial impacts on civil and political rights including in armed conflict, territorial occupation and other military actions, migration policies, sanctions and coercive measures, drone strikes and the operation of extraterritorial detention and interrogation facilities for combatants, migrants and refugees. The obligations of States apply where their actions and control over a territory rationalizes their responsibility towards affected individuals and groups even beyond their jurisdiction. The application of extraterritorial obligations of States in the two areas of rights will also set the context for considering climate and environmental issues in the proposed draft declaration.

d) Non-state actors and their role in international solidarity

The term “non-state actors” is generally understood as referring to any entity that is not a State and often includes civil society, religious groups, and corporations but can also refer to armed groups and terrorist groups. The wording of the proposed draft declaration employs a modifier to identify who these non-state actors are: those “working with peoples and individuals”, assigning to them certain duties and responsibilities that are in conformity with international human rights standards. Conceptually, human rights obligations are unlimited in their addressees and there is nothing in human rights law that precludes the imposition of legal obligations on actors other than States who are not the only entities capable of infringing upon human rights. Thus, the proposed draft declaration should provide more

emphasis on the obligations of the private sector actors especially in the case of businesses whether operating nationally or internationally.

Conclusion

There was a time when the International Covenant on Economic, Social and Cultural Rights was cynically considered to be mere moral aspirations, vaguely worded for the most part with no indication how these rights would be enforced. In due course, the Committee on Economic, Social and Cultural Rights—the treaty body mandated to monitor the compliance of States parties with Covenant obligations—began its work on General Comments that interpret the provisions of the Covenant based on the report of States, UN agencies and other stakeholders. These interpretations of the Covenant generated the norms and standards relevant to Covenant provisions.

Such standards and norms did not previously exist when the Covenant first came into force many decades ago. Through those earlier years, it had been the States themselves that decided how they should implement the Covenant rights. They passed legislation and created the institutions necessary to enforce relevant legislation. They also put together policies, plans and administrative measures to implement the Covenant provisions.

This reinforces the notion that human rights can only come into existence as enforceable claims through the continuous work and effort by legal and political institutions as well as human rights mechanisms and most importantly, through the experience and practice of States themselves.

I came away from the five regional consultations with an even firmer conviction regarding the feasibility and enforceability of the right to international soli-

arity. The experiences narrated during the regional consultations by national and regional actors are evidence that although it will take a while to surmount some obstacles, the right to international solidarity can be effectively implemented in culturally diverse ways that do not in any way diminish the standards contained in the proposed draft declaration.

This only goes to show that our full understanding of human rights cannot pre-exist the right itself. Human rights are a work in progress, and come into full light and existence as enforceable claims through continuous development of its aspects made possible by the hands-on work being done on the ground by local actors themselves.

Should the right to international solidarity be understood as a claimable right or as a principle with moral force? I argue that international solidarity is both a principle and a right. Principles derived from reason and values may, in due course, turn into standard operating procedures through State practice and, ultimately, into norms of international law. I reaffirm that the principle of international solidarity does meet the requirements of a legal standard and can thus become a right but only if and when the community of States decides it to be so.

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