



International Solidarity in International Human Rights Law

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Abbreviations

NIEO	New International Economic Order
OHCHR	Office of the High Commissioner for Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ESC Committee	European Economic and Social Committee
WHO	World Health Organization
UDHR	Universal Declaration of Human Rights
EUCFR	Charter of Fundamental Rights of the European Union
CRPD	Convention on the Rights of Persons with Disabilities

Introduction

Defined by the United Nations Office of the High Commissioner for Human Rights, the budding concept of international solidarity is, “the expression of a spirit of unity among individuals, people, States, and international organizations” (OHCHR 2017). The larger description stipulates that this concept may be applied to numerous planes of policy and development, as it is pervasive and universally applicable. The common threads worth acknowledging, however, include open-minded recognition of a wide range of shortcomings and needs, as well as the uniform right to participate in achievement of shared goals. Compounding this is the most recent Human Rights Council Resolution 44/11, which emphasizes that, as opposed to a strictly conditional clause that may only be invoked under specific circumstances, international solidarity is a “broader concept and principle that includes sustainability in international relations” (OHCHR 2021). Indeed, history provides several examples of diplomatic political actions and initiatives that exemplify international solidarity as it pertains to international law. The Geneva Conventions of 1949 and their associated protocols, for example, codify internationally recognized rules of engagement surrounding armed conflict. The four titular documents provide legal protections for: wounded and sick soldiers on land during war; wounded, sick, and shipwrecked military personnel at sea during war; prisoners of war; and civilians, including in occupied territory (International Committee Of The Red Cross 2010). With 194 total signatories, the conventions are universally applicable and legally binding to all United Nations member states (International Committee Of The Red Cross 2010). Similarly, the World Conference on Disaster Risk Reduction series typifies solidarity vis-à-vis sustainability by bringing together non-governmental organizations, multinational corporations, government and state officials, and other members of civil society in a heady bout of Track 1.5 diplomacy. These conferences aim to mitigate the effects of natural disasters and improve the international preparedness infrastructure by: building upon relevant existing frameworks; encouraging involvement and participation from all international actors; fostering a global culture of safety and cooperation; and emboldening State preparedness to protect their populations and territories when disaster strikes (Report Of The World Conference On Disaster Reduction 2005).

While international solidarity influences a fairly consistent undercurrent of international legal responses, in the forms of customary norms and conventions alike, the fact remains that there is no consistent, universally applicable principle for solidarity in international law. This is certainly not to imply that authorities avoid the possibility, or ignore the potentiality for the benefits associated with creating one. In the most recent independent expert report on human rights and international solidarity, many participants conceded that more sufficient legal backing for international solidarity would aid in prevention of natural disasters as well as assuaging their negative consequences. The author reported that, “Several respondents felt that there should be a greater focus on ex ante disaster prevention, risk reduction, emergency preparedness and improved and sustainable rehabilitation” (Muhammad Rizki 2010 p. 6). In the same report, almost all respondents agree that, “The development of international law recognizing people as subjects of the law, with a clear-cut role for people in global responses to disasters, should be the goal.” Almost all respondents and contributors to the compilation of the report agreed that a legal framework for human rights and solidarity is a beneficial venture. While some posited fortification of international solidarity as it is defined in international law, while others suggested legally binding obligations codified in a convention or treaty may be the best route (OHCHR 2021). Badanova (2019) adds that, “Solidarity is cited in the international law doctrine but often denied a self-standing legal meaning and normative force in international relations” (105).

The current mandate-holder, Mr. Obiora Chinedu Okafor, enumerates several policy areas for further development of solidarity-related plans and objectives, including: global migration; refugees; climate change; the threat of populism; extraterritorial human rights obligations; civil society, taxation and economic security; technology; and cities and local governments (OHCHR 2021). Recently, with the onset of the global COVID-19 pandemic - the ensuing drudgery of vaccination development, discovery, production, and distribution - Okafor published numerous writings calling for the international community to join efforts to redistribute excess vaccines concentrated in the Global North to aid nations still in dire need of doses. He contends that vaccination efforts, even in their infancy, already displayed signs of global elitism and privileged access. “The world currently faces a sharp and highly problematic vaccine divide in which the much richer Global North states, which host a very small percentage of the global population, have so far cornered the vast majority of available COVID-19 vaccines, leaving the bulk of the world’s population [90 percent] with almost no access to these medicines” (Okafor 2021).

This piece argues in support of the budding principle of international solidarity gaining some legal traction in international human rights law, on the grounds that such legislation could support more inclusive, resilient solutions to the COVID-19 pandemic.

Third generation rights as an argument for establishing legal tools to reinforce solidarity as a legal obligation

The onset of COVID-19 has developmentally convulsed the entire international community. It serves to both materialize new developmental roadblocks and exacerbate existing social, economic, political, and public health hurdles. The world has concocted a patchwork of coping mechanisms in response to a health crisis which, prior to 2020, was unprecedented in the modern era. Several states have concentrated their international cooperative efforts in the health field; both to develop new vaccines on a time crunch, and to mitigate the ongoing damage sustained by communities worldwide. This work intends to analyze the possible importance of the principle of solidarity as a constitutive element of this order in defining new development policies following the pandemic.

2.1. Historical introduction

It was the Czech-French jurist ¹Karel Vašák, one of the drafters of the Universal Declaration of Human Rights, who in 1979 coined the expression, "human rights of the third generation". With the term, Vašák expounded upon existing, yet still budding, principles surrounding human rights, which were slowly gaining legal precedent. The first generation of rights, namely including civil and political freedoms, made their debut in the national and bourgeois revolutions of the nineteenth century, and were later adopted by the American and French declarations of rights. The second generation of rights corresponds to the development of the welfare state and popular democracies. With the relative affirmation of economic, social and cultural rights, these rights were aimed at promoting the principle of substantial equality among citizens. Both generations received acclaim and recognition when they were enumerated in the Universal Declaration of 1948. A foundational text, which unifies the two international pacts adopted by the UN General Assembly in 1966, and which entered into force internationally in 1976.

¹ [International Human Rights Law in a Global Context. https://www.corteidh.or.cr/tablas/r28067.pdf](https://www.corteidh.or.cr/tablas/r28067.pdf). (pg.41)

The third generation of rights concerns a certain number of instances that the international community - through the UN - does not consider adequately guarded by the other instruments on human rights. The listing of third generation rights is not univocal, but they certainly include the right to a healthy environment, development and peace. Why this multiplication? The development of international human rights law not only knows three generations but also presents specifications (rights of women, children, persons with disabilities, migrants, etc.) and segmentations (racial discrimination, torture, genocide) which make systematic reconstruction difficult. The tendency to produce new norms, and therefore new rights, has often been harshly criticized. However, the political and legal framework of the international community offers no recourse in international law, normative development does not take place according to an identifiable political-rational program. ²From the point of view of sources that recognize third generation human rights, it can be observed in the first place that they are only partially accepted in international treaties. Among the legally binding sources on the subject, the African Charter of Human and Peoples' Rights is particularly significant. It enshrines rights to peace and environment. The Protocol to the African Charter, adopted in Maputo in 2003 and entered into force in 2005, recognizes the right of women to peace, the environment and sustainable development.

The Arab Charter of Human Rights also has specific provisions on third generation rights. Article 37 recognizes a fundamental value to the right to development, while Article 38 includes the right to an adequate standard of living for oneself and one's family. Finally, the European Charter of Human Rights contains, in Article 17, a commitment by the union to respect and improve the environment as part of the pursuit of sustainable development. The international treaty that perhaps most clearly acknowledges the link between human rights and sustainable development is the ³Aarhus Convention, signed in 1998 within the framework of the United Nations Commission for Europe.

2.2. The right to a healthy environment

The question of the protection of the environment is an element of central importance in the present international community. Before the pandemic, there had been numerous efforts that foreshadowed an effective change of peace by states to finally take into account

² ["The Evolution of Human Rights." *Manual for Human Rights Education with Young People*.
<https://www.coe.int/en/web/compass/the-evolution-of-human-rights>.](https://www.coe.int/en/web/compass/the-evolution-of-human-rights)

³ [Convention on Access to Information, Public ... - UNECE. <https://unece.org/DAM/env/pp/documents/cep43e.pdf>](https://unece.org/DAM/env/pp/documents/cep43e.pdf)

the application and improvement, more effectively, of international environmental standards. While the global spread of COVID-19 has led to a contraction of economic efforts, as well as international cooperation through the conduct of new international negotiations on the environmental issue, at the same time has surprisingly seen states increase their national contribution in terms of reducing global emissions for most of the players in the international community. In this perspective, the cardinal principle of international environmental law regarding common but differentiated responsibilities, consecrated by the ⁴Kyoto Protocol of 1997, seems to have expressed a logic of solidarity within the international community in which each State has understood that the pandemic is closely related to the environment. Several authorities suggest that the excessive use of the natural environment directly created the conditions which enabled the pandemic, therefore the strengthening of the environment and the commitment of the States to start an investment path towards the so-called ⁵"Green Recovery" seems to represent the only valid alternative. To live in a healthier, more just, and consequently more supportive society. The correlation between environment and solidarity is not accidental, since the logic of solidarity presupposes collective action. It initially considers the action of the State decisive for assuming new international obligations in environmental matters, while also requiring territorial enhancement. Through the definition of new forms of governance, it is possible to find an effective response to the implementation of the international norms adopted by the States. This should take place with the more general objective of rethinking the development paradigms that led to the spread of COVID-19, to imagine a post-pandemic society that makes solidarity the founding element for international cooperation.

2.3. Making solidarity applicable in international law

The concept of solidarity is not often associated with being part of international law. The existing legal framework is largely predicated on the principle of reciprocity, which - in theory, at least - dictates how international relations are conducted. According to this principle, reciprocity represents a normative element which constitutes the necessary

⁴[Unfccc.int. https://unfccc.int/kyoto_protocol.](https://unfccc.int/kyoto_protocol)

⁵[Coronavirus: Tracking How the World's 'Green Recovery' Plans Aim to Cut Emissions." Carbon Brief, 11 Oct. 2021, https://www.carbonbrief.org/coronavirus-tracking-how-the-worlds-green-recovery-plans-aim-to-cut-emissions.](https://www.carbonbrief.org/coronavirus-tracking-how-the-worlds-green-recovery-plans-aim-to-cut-emissions)

consequence of the individualistic relations between equal members of the international community. The relations between sovereign and independent entities give rise to legal relations between states in strictly "contractual" terms, configuring an evident parallelism between the rights and duties of international subjects. In this logic - clearly ascribable to the *do ut des* - the existence of an obligation, it would lapse if the other party did not respect the same obligation or a corresponding obligation. Therefore, the principle of reciprocity seems to consecrate the character of international relations as the basis of international law.

Precluding the possible establishment of any form of international relationship that is not based on this. However, on a more careful analysis of the international legal order, it is possible to identify the occurrence of a particularly innovative principle, namely the principle of solidarity. The very definition of this principle raises innumerable interpretative divergences, since the indeterminacy in the purpose and application of the principle of solidarity raises questions about the binding nature of this principle in international law.

The first connotation of the principle of solidarity in the international legal order is found in two resolutions of the United Nations General Assembly: 56/151 of 19 December 2001, and 57/213 of 18 December 2002, entitled "Promotion of a democratic and equitable international order". The two documents state that solidarity is, ⁶"a fundamental value, by virtue of which global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice and ensures that those who suffer or [who] benefit the least receive help from those who benefit the most". This definition contained in a resolution of the General Assembly of the United Nations - therefore without binding effect - called for the establishment of a New International Economic Order (NIEO), which should have taken into consideration a collective path of economic development aimed at bridging the economic gap between developing and industrialized countries. Particular attention should be paid to the qualification of solidarity as a "fundamental value" of the international order, capable of directing international cooperation to face global challenges by sharing the resources and benefits deriving from collective actions that take into account the principles of equity and social justice. ⁷Macdonald argues that "solidarity is foremost a principle of cooperation which identifies as the goal of joint and separate state action an outcome that benefits all states or at least does not gravely interfere with the interests of other

⁶ ["Secretary-General's Report on 'Our Common Agenda.'" United Nations, United Nations, https://www.un.org/en/content/common-agenda-report/.](https://www.un.org/en/content/common-agenda-report/)

⁷ [Pace International Law Review - DigitalCommons@Pace, https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1289&context=pilr.](https://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1289&context=pilr)

states", and therefore considering solidarity as "a principle of international law, [which] creates a context for meaningful cooperation that goes beyond the concept of a global welfare state; on the legal plane it reflects and reinforces the broader idea of a world community of interdependent states".

Furthermore, it could also be argued that an implicit reference to the principle of solidarity in the Charter of the United Nations itself could be considered, when Article 55 provides for the commitment of the members, both individually and jointly with the United Nations,⁸ "[to] promote higher standards of living, full employment, and conditions of economic and social progress and development; [...] solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and [...] universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".

Understood in this way, solidarity would seem to imply a form of cooperation between states that goes far beyond the mutual obligations between the subjects of that order, in this case considering the element of mutual assistance as a fundamental prerogative of international law. Relations between States would therefore not end with the evaluation of whether the obligation towards the counterparty was fulfilled, but would determine an attitude based on the principle of good faith aimed at strengthening friendly relations between States and validating that attitude of peace and collective well-being that international law intends to guarantee. In this sense, the principle of solidarity in international law is having an impact on the structure of the law, 'reflecting' the transformation of the international system from a network of bilateral commitments into a value-based global legal order.

In conclusion, it can be said that, although the principle of solidarity does not represent a legal principle from which concrete rights and obligations derive, it has a particularly broad scope, in particular as regards the interpretation of numerous areas of international law (from the environment to the economy, from international humanitarian law to the protection of human rights) capable of determining new norms of progressive development that contain in essence the normative content of the principle of solidarity. The plausibility of solidarity in international law would therefore not derive exclusively from the strengthening of a constitutive paradigm inherent in international cooperation on which this system is already

⁸ ["International Law, Codification, Legal Affairs, Legal, Committee, Terrorism, Charter, Criminal Accountability, Administration of Justice, Jurisdictional Immunities, Cloning, Safety of United Nations and Associated Personnel, Ad Hoc, Diplomatic Conferences, Reports of International Arbitral Awards, Summaries of International Court of Justice Judgments and Advisory Opinions, Legislative Series, Juridical Yearbook, Repertory of Practice of United Nations Organs, Books." United Nations, United Nations, https://legal.un.org/reperatory/art55.shtml](https://legal.un.org/reperatory/art55.shtml)

based, which considers mutual assistance and friendly relations as a physiological element of this normative corpus since its inception. Of international law in the seventeenth century, but it could also be considered a moral value that permeates the totality of the international order and which, although devoid of legally binding norms, directs the work of the international community towards social justice, peace and cooperation between states. Furthermore, the principle of solidarity is significantly broadening its fields of application in new areas of international law, such as international development cooperation, the protection of minorities and the right to a healthy environment for future generations, which necessarily imply a solidarity approach in the field of international relations.

The Right to Health reinforced through International Solidarity

3.1. Third generation rights as a catalyst for making the right to health an obligation under international law

The right to health is a stand-alone right in international human rights law and is generally regarded as one of the economic, social and cultural rights. It is, therefore, an essential part of third generation rights explained above and is understood in unison with the right to a healthy environment (Xiong, 1994, 15). The right to health has been accepted as a treaty norm in the International Covenant on Economic, Social and Cultural Rights (ICESCR) by 156 members of the United Nations. It outlines the legal provisions and obligations, such as the allocation of resources for the fulfillment of the right, as well as drafts the correct formulation of the right in international law. Apart from the right to health being recognized in the Universal Declaration of Human Right (UDHR) and ICESCR at the United Nations level, the right to health has been recognized as one of fundamental human rights at the regional level, as in the Charter of Fundamental Rights of the European Union 2000 (EUCFR), the African Charter on Human and People's Rights, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. Under international human rights law, the right to health includes two parts, healthcare and preconditions of health. Xiong explains that this entails not only the right to medicine, but also covers the preconditions a state must guarantee to protect the health of its citizens (Xiong, 1994, 24).

As stated previously, the formulation of the right to health adopted in international law is the right to ‘the highest attainable standard of health’. This right has appeared in several legally binding documents. It is present under the WHO Constitution, under article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 24(1) of the Convention on the Rights of the Child (CRC) and article 25 of the Convention on the Rights of Persons with Disabilities (CRPD). The WHO Constitution states that, “governments have a responsibility for the health of their peoples, which can be fulfilled only by the provision of adequate health and social measures” (WHO Constitution, 1). The use of the word “adequate” is meant to highlight that there is a significant difference in terms of available resources to guarantee the right to health between developed and developing countries (Tobin, 2012, 123-125). The right to health is not to be interpreted in isolation from other interests that are also the subject of rights in international law, such as education and housing which all demand the allocation of resources by states to secure their implementation. According to Tobin, the drafting history of the ICESCR lessens any immediate concern in regard to the term “obligation to recognize the right to health” by creating a nexus between the general obligation of states with respect to all economic and social rights (ESR) (Tobin 2012, 134). This means that by agreeing to uphold ESR, states agree to uphold the right to health, for as long as they can guarantee the appropriate level of resources to be allocated to the realization of the right to health relative to other human rights. This, in turn, maintains all legal obligations associated with the right to health in the international arena. As previously stated, article 12(2)(c) of the ICESCR requires states to take steps to prevent, treat, and control epidemic, endemic, occupational, and other diseases. It also lists examples of the various measures required to realize these obligations, and provides that states must take steps to combat disease using the application of readily available medical research and technology. Under international law, such measures fall under the primary responsibility of the state, which is obliged to secure the realization of the right to health for the individuals under its Jurisprudence. This, however, cannot be achieved in the absence of international cooperation (Ooms et al, 2019, 101). The international obligation for cooperation arises by virtue of article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that state parties, “undertake to take steps, individually and through international assistance and cooperation, especially economic and technical’ to progressively realize all economic and social rights including the right to health”. The international obligation to cooperate includes the implementation of measures to respect, protect and fulfill the right to health. Article 22 of the UN Charter provides that

“Everyone ... is entitled to realization, through national effort and international cooperation ... of the economic, social and cultural rights indispensable for his (sic) dignity and free development of his (sic) personality” and article 28 states that “[e]veryone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized”. The international obligation to cooperate, in light of the right to health, includes a maturing of international law which seeks to meet the needs of a community that extends beyond national borders (Tobin 2012, 328). As previously remarked, there is a stark difference between the availability of resources needed to ensure the right to health between industrialized and emerging economies. In that regard, the international obligation to protect the right to health is also applicable in the context of developing countries. Tobin states that, “states are under an international obligation to take all reasonable measures to protect the right to health in other states”... including developing and emerging economies (Tobin 2012, 369). Tobin’s statement is reinforced through article 12 of the ICESCR covenant that obliges states to ensure, “prevention, treatment and control of epidemic, endemic, occupational and other diseases”. In light of the pandemic, this article and the corresponding other legal agreements would make it an obligation under international law for developed states to assist developing and emerging economies in their fight against Covid-19.

Nevertheless, despite the regulations at hand and international obligation to respect, protect and fulfill the right to health, the implementation and realization of this right has encountered several constraints. The idea of economic and social rights, including the right to health, is difficult to realize for developing countries as they lack the resources needed to respect, protect and fulfill this right for their citizens. The effective enjoyment of civil and political rights is not without cost and requires the allocation of significant resources. The obligation of international cooperation, anticipates that developed states will assist developing states in securing the effective enjoyment of the right to health. However, at present, there are no mechanisms or tools under international law which determine the extent to which developed countries can allocate resources to realize the right to health for developing countries. While scholars, such as Xiong or Ooms and Hammonds may argue that the non-fulfillment of the right to health presents a failure on the side of states to take the necessary steps to ensure the realization of the right to health, they do not necessarily present alternative means on how this could be done.

3.2. International Solidarity as a legal tool to ensure the Right to Health

International cooperation lies at the core of international solidarity. As highlighted in Section 1 and 2 of this paper, international solidarity intends to create an enabling environment for: “Preventing and removing the causes of asymmetries and inequities between and within States, and the structural obstacles that generate and perpetuate poverty and inequality”; “engendering trust and mutual respect between States and non-State actors to foster peace and security, development and human rights; and lastly, “promoting a social and international order in which all human rights and fundamental freedoms can be fully realized” (Independent Expert on Human Rights and International Solidarity). According to the independent Expert on human rights and international solidarity, the measures taken to combat the pandemic have had far more destructive consequences for the poor in low-income countries compared to the poor in developed economies. Not only are the resources available to ensure the right to health in developing countries far lower than in developed countries, the implementation of force majeure measures in light of Covid-19 has also resulted in drastic loss of employment and an indefinite reduction of salaries and employment benefits. Thus sharpening the divide even further.

The negative economic consequences of the measures implemented to prevent further medical emergencies, in light of the pandemic, has directly impacted the ability of developing countries to ensure the right to adequate health for their citizens. Not only are developing countries at a higher risk of not being able to allocate enough resources for fulfilling the right to health, they are also at a higher risk of not issuing resources to uphold other economic and social rights. Seeing as the right to health is one of the rights most directly impacted since the start of the pandemic, it is paramount that the international community upholds its obligation under international law and cooperates with developing and emerging economies to lift some of their burden. A way to uphold this international obligation to cooperate can be through the use of international solidarity.

Policy Recommendations

Through our literature review and comparative analysis of legal texts, we have identified several main recommendations for implementing international solidarity as a legal obligation under international human rights law.

- ❖ **The establishment of a framework convention on international solidarity** as a legally binding agreement between a wide range of participants with no additional substantive commitments. Such a framework has the potential to initiate powerful

dynamic processes which can lead to the internalization of norms within domestic legal provisions. A framework convention on international solidarity has the potential to broaden international legal obligations under the international cooperation obligation and may result in increased cooperation between developed and developing countries.

- ❖ **To fulfill the international obligation for cooperation, the establishment of bilateral or plurilateral agreements**, is a deciding factor in the maintenance and insurance of the right to health. A dynamic bilateral (plurilateral) agreement established within countries sharing a deep commitment to the issue of solidarity is instrumental for the development of the scope for cooperation in the area of human rights. The agreement is to be highly legalized and instrumentalized between partner countries willing to implement stronger monitoring and enforcement mechanisms to ensure adequate implementation of international solidarity.
- ❖ **The creation of treaty monitoring committees ensuring the implementation of international solidarity in bilateral (plurilateral) agreements** is meant to monitor and report on the various legally-binding human rights instruments.

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