



General Assembly

Distr.
GENERAL

A/HRC/9/10
15 August 2008

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Ninth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

Human rights and international solidarity

Note by the United Nations High Commissioner for Human Rights

The High Commissioner for Human Rights has the honour to submit to the Human Rights Council the report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki, appointed pursuant to resolution 2005/55 of the Commission on Human Rights, whose mandate was renewed pursuant to Human Rights Council resolution 7/5.*

* The present report was submitted later than the indicated deadline in order to incorporate the latest available information on the subject matter.

Summary

The present report is submitted in accordance with Human Rights Council resolution 6/3, which requested the independent expert on human rights and international solidarity to continue his work on the preparation of a draft declaration on the right of peoples and individuals to international solidarity and to submit a report on the implementation of that resolution at its ninth session. The present report is divided into two sections. In the first section, the independent expert continues to focus on international cooperation, and in the second, outlines steps that will be taken to prepare a draft declaration on the right of peoples and individuals to international solidarity.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 5	4
I. INTERNATIONAL COOPERATION	6 - 24	5
II. PRELIMINARY STEPS TOWARDS DEVELOPMENT AND PREPARATION OF A DRAFT DECLARATION ON THE RIGHT OF PEOPLES AND INDIVIDUALS TO INTERNATIONAL SOLIDARITY	25 - 26	10
III. CONCLUDING REMARKS	27 - 33	11
Annex		
Draft questionnaire to be distributed to States, international organizations and non-governmental organizations		13

Introduction

1. The independent expert, in his first report, explored his mandate pursuant to resolution 2005/55 of the Commission on Human Rights. In the second report (A/HRC/4/8), he identified key areas of focus in international solidarity, namely, international cooperation; global responses to natural disasters, agricultural pests and diseases, and third generation rights. Practical examples were provided of specific considerations and priority areas that should be taken note of in dealing with these concerns.
2. International solidarity by its nature covers a broad range of areas of cooperation and assistance. This does pose a challenge in identifying specific areas of focus in the independent expert's work. In accordance with his mandate, in the present report, the independent expert considers it important to establish the legal framework of international cooperation in human rights conventions and treaties and how the obligation of international cooperation has evolved in human rights instruments. This will be the first in a series of reports to deepen study on the key areas of focus in the mandate, with a view to developing a framework to analyse international solidarity, establishing the main elements and elaborating on the content of the right of peoples and individuals to international solidarity.
3. In its resolution 6/3, the Human Rights Council urged the international community to consider urgently concrete measures to promote and consolidate international assistance to developing countries in their endeavours for development and for the promotion of conditions that make possible the full realization of all human rights.
4. In his second report, the independent expert defined international solidarity as the union of interests or purpose among the countries of the world and social cohesion between them, based upon the dependence of States and other international actors on each other, in order to preserve the order and very survival of international society, and in order to achieve collective goals which require international cooperation and joint action. In this definition, the key words include "union of interests or purpose", interdependence and international cooperation, and joint action. The independent expert maintained that the definition should not be restricted to the action of States and has emphasized that the term "global solidarity" is broader as it does encompass the relationship of solidarity between States and other actors, such as international organizations, and civil society.
5. In the present report, the independent expert will also highlight the preliminary steps that will be taken towards preparing a draft declaration on the right of peoples and individuals to international solidarity. Human Rights Council resolution 6/3 also took into account the urgent need to further develop guidelines, standards, norms and principles with a view to promoting and protecting the right of peoples and individuals to international solidarity. Human Rights Council resolution 7/5 reiterated that the Independent Expert seek views and contributions from Governments, United Nations agencies, other relevant international organizations and non-governmental organizations in the discharge of his mandate.

I. INTERNATIONAL COOPERATION

6. International solidarity and international cooperation are based on the foundation of shared responsibility. In the broadest sense, solidarity is a communion of responsibilities and interest between individuals, groups and States, connected by the ideal of fraternity and the notion of cooperation. The relationship between international solidarity and international cooperation is an integral one, with international cooperation as a core vehicle by which collective goals and the union of interests are achieved.

7. The purpose of the study of international assistance and cooperation in this report is to emphasize that such cooperation must be oriented, as a matter of priority, toward the realization of all human rights, in particular economic, social and cultural rights, and internationally agreed goals such as the Millennium Development Goals, and must respond swiftly and effectively to grave situations such as natural disasters.

International cooperation and collective obligations in international human rights instruments

8. The essence of international cooperation can be found in the purposes contained in the United Nations Charter. Article 1.1 states “To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” An entire chapter of the Charter (Chap. IX) is devoted to international economic and social cooperation. Articles 55 and 56 establish international legal obligations in relation to international cooperation and assistance.

9. International cooperation and assistance is also firmly established within international human rights instruments. The Universal Declaration of Human Rights, in article 28, states that “everyone 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 Covenant on Economic, Social and Cultural Rights contains explicit references to international assistance and cooperation for the realization of the rights guaranteed therein: article 2 draws attention to the obligation of all States parties to take steps “individually and through international assistance and cooperation, especially economic and technical”, towards the full realization of the rights recognized in the Covenant. Article 11.2 emphasizes as well the obligation to take steps, individually and through international cooperation, to ensure the right to be free from hunger. The importance of collective obligations was reaffirmed by the Committee on Economic, Social and Cultural Rights in its general comment No. 3 on the nature and scope of international legal obligations. Similar obligations have been laid out for other rights as well.¹

¹ CESCR general comment No. 11, article 14, Plans of action for primary education (E/C.12/1999/4, para. 9), CESCR general comment No. 13, article 13, Right to education (E/C.12/1999/10, para. 56), CESCR general comment No. 14, article 12, The right to the highest attainable standard of health (E/C.12/2000/4, para. 45), CESCR general comment No. 15, The right to water (E/C.12/2002/11, para. 38), CESCR general comment No. 17, The right of everyone to benefit from the protection of the moral and material interests resulting from any

10. In its general comments and concluding observations, the Committee has emphasized the need for international cooperation. As an illustration, general comment No. 14 on the human right to adequate health emphasizes individual and joint obligations of Government relating to the control of disease, and the physical and economic accessibility and affordability of essential medicines. It also stipulates that the United Nations specialized agencies, the World Bank, regional development banks, the International Monetary Fund (IMF), and the World Trade Organization (WTO) should cooperate effectively with States parties in this respect.

11. Collective obligations are also central to the interpreting of the nature and scope of international legal obligations under article 4 of Convention on the Rights of the Child (CRC), which deals with international cooperation. The general comments of the Committee on the Rights of the Child affirm that parties take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation. The Committee further emphasized that “international cooperation” entails international development and financial cooperation, including international cooperation to support States in fulfilling their obligations under the Convention, and to ensure that international organizations including the World Bank, IMF and the WTO give primary consideration to the full implementation of the Convention.²

12. International cooperation is also a core theme in the Declaration on the Right to Development adopted in 1986. Articles 3 and 4 stipulate that States have a duty to cooperate with each other in ensuring development and eliminating obstacles to development and recognize the obligation of States to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development. The former independent expert on the right to development, in his reports, has pointed out the primary responsibilities of States to ensure the right to development, but also stated that it cannot be achieved without other members of the international community, including other States and international organizations, what he refers to as “contingent obligations”. He included in these “contingent obligations”, eliminating “obstacles” and cooperating in trade, debt, finance, technology transfer, and development assistance. He augmented this reasoning by suggesting the idea of “development compacts”, where cooperation may be required to achieve the complete realization of a human right. The Millennium Development Goals could be viewed as a form of a development compact, where Governments and international organizations have coalesced behind the realization of these goals by 2015. Millennium Development Goal 8 makes explicit mention of a “global partnership for development”, covering targets regarding aid, debt, trade and transfer of technologies. The seven Millennium Development Goals and their targets can only be achieved pursuing international cooperation implicit in the concept of a “global partnership for development”.

scientific, literary or artistic production of which he or she is the author (E/C.12/GC/17, para. 38), CESCR general comment No. 18, The right to work (E/C.12/GC/18, para. 29).

² CRC/GC/2003/5, paras 1-12, 60-4.

13. The Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child have required all States parties to report on all obstacles to the achievement of rights, and the identification of specific obstacles that can impede their full achievement has been an important element of the Committees' analytical and fact-finding framework. In its consideration of reports of States parties, the Committees have highlighted the importance of specific obstacles - including resource constraints, significant foreign debt, economic transition, and structural adjustment that can restrict progress in achieving the full realization of economic, social and cultural rights.

14. Recent international human rights conventions such as the Convention on the Rights of Persons with Disabilities include a stand-alone article on international cooperation which shows the evolution of the obligation in human rights instruments and underscores its importance. References to international cooperation can be found in articles 2 and of the Disability Convention, the latter provision emphasizing inclusion of and accessibility to persons with disabilities.

International cooperation: potential application of the “tripartite typology” of respect, protect and fulfil

15. In the present report, the independent expert would like to explore the potential application of the “tripartite typology” of respect, protect and fulfil to the area of international cooperation. Given the broad mandate of international solidarity, it is also crucial to identify and differentiate the responsibilities that can be assigned to States, international organizations and non-State actors in reference to international assistance and cooperation; however this will not be studied in depth in this report.

16. In response to the classification of civil and political rights as merely entailing negative obligations and economic, social and cultural rights as entailing positive obligations, typologies of rights were elaborated that countered this binary proposition. The Draft Articles on State Responsibility elaborated by the International Law Commission (ILC) clearly establish that international obligations can be breached by both acts of *omission* and acts of *commission*.³ There is by now a significant body of authoritative standards that clearly establish that all human rights - civil, political, economic, social, and cultural - can give rise to both negative and positive obligations. The three essential aspects of international obligation in relation to all human rights are the obligations to respect, protect and fulfil.

17. The obligation to respect concerns a lack of interference with the enjoyment of all human rights, including the freedom from forced evictions and the right to satisfy basic needs. The obligation to protect implies that States are under a positive obligation to ensure the protection of individuals from violations by third parties. The obligation to fulfil means that States are under a positive obligation to take measures effectively to secure the full realization of human rights.

³ *Draft articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its Fifty-third Session, A/56/10.*

This can be achieved by taking legislative, budgetary, administrative and other measures to promote the achievement of human rights, including facilitating opportunities for the achievement of human rights and by direct provision when rights are denied.

18. This typology of rights has had a major influence on the evolution of thinking on economic, social and cultural rights. It has been adopted in a number of general comments, including by the Committee on Economic, Social and Cultural Rights in its general comments No. 12 on the human right to adequate food, No. 14 on the human right to the highest attainable standard of health and No. 15 on the human right to water.⁴

19. The typology of respect, protect and fulfil is a useful framework to interpret provisions on international assistance and cooperation. As an illustration, while asserting that the primary obligation to realize the right to food rests with national Governments, the former Special Rapporteur on the right to food noted that Governments also have “extranational obligations” to respect, protect and facilitate the right to food. The duty to respect extends to actions that have a negative impact on the right to food for people in other countries.⁵ There is also a duty for States to abstain from any policy that impinges on the protection of at least the core content of the economic, social and cultural rights of the affected peoples of another State. This can be seen in general comment No. 8 of the Committee on Economic, Social and Cultural Rights on the relationship between economic sanctions and respect for economic, social and cultural rights.

20. The responsibilities of States can be viewed as extending to responsibility for the organizations of which they are members, including their participation in international and regional organizations.⁶ These responsibilities can include the obligation to respect and protect. States must abstain from participating in decisions of international financial institutions that may obstruct or hinder the realization of economic, social and cultural rights. In concrete terms, the duty to protect requires developed States to avoid involvement in any international assistance

⁴ This has also been included in the South African constitution, section 7.2.

⁵ See Smita Narula, “The Right to Food: Holding Global Actors Accountable under International Law”, *Center for Human Rights and Global Justice Working Paper*, No. 7, 2006, NYU School of Law.

⁶ Sigrun I. Skogly, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation*, Antwerp: Intersentia, 2006; for an analysis of the various obligations linked with the typologies of respect, protect and fulfil, see Magdalena Sepulveda, “Obligations of ‘International Assistance and Cooperation’ in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights” (2006) *Netherlands Quarterly of Human Rights* p. 271.

and cooperation programme which may have a negative effect on the enjoyment of economic, social and cultural rights.⁷ On the obligation to fulfil, the precise content at the international level is yet to be worked out but could include facilitating, providing and promoting rights.⁸

Nature and scope of the obligation of international cooperation

21. The nature of the responsibilities that arise out of international cooperation will also be preliminarily explored in this report, namely, the range of actions that fall broadly within the category of international cooperation in human rights instruments. The obligations related to international assistance and cooperation are complementary to the primary responsibility of States to meet their national human rights obligations. International cooperation rests on the premise that developing countries may not possess the necessary resources for the full realization of rights set forth in human rights covenants and conventions. There is a shared responsibility for development met by States' national obligations and the obligations of international cooperation, facilitating global implementation.

22. International cooperation is most often conflated with international development assistance, as mainly reflected in the volume of development assistance. The divergent interpretations of international cooperation range from judicial, administrative and technical cooperation, to cooperation for development. While international cooperation includes development cooperation, it is a much broader term. The issue of international cooperation featured prominently in the discussions and negotiations on the Convention on the Rights of Persons with Disabilities. It was emphasized by delegates from developed and developing States that international cooperation was not a synonym for development assistance and the transfer of resources from North to South. Many substantive dimensions of international cooperation were evoked, ranging from the transfer of resources and technical assistance and cooperation, to policy advice, and the international sharing and exchange of experience, expertise and good practice to assist in effective implementation, networking and workshops, development of technologies. These various elements of international cooperation can be found in article 32 of the Convention.

23. Even in the context of development cooperation, in broader human rights terms, international cooperation should also ideally cover the obligation to respect and to protect, namely the obligation respectively to abstain from interference with economic, social and cultural rights in other countries, and to prevent third parties under a State's control from interfering with these rights.⁹ It should however be noted that various committees under human

⁷ Sepulveda, 2006, 284.

⁸ Sepulveda, 2006.

⁹ Wouter Vandenhoele, "Economic, Social and Cultural Rights in the CRC: Is there a Legal Obligation to Cooperate Internationally for Development?", forthcoming publication in *International Journal of Children's Rights*.

rights instruments, such as the Committee on Economic, Social and Economic Rights and the Committee on the Rights of the Child, have also made specific recommendations on development cooperation, urging Governments to meet internationally agreed targets, including the United Nations target for international development assistance of 0.7 per cent of gross domestic product (GDP).

24. In terms of international solidarity and the areas of focus in the independent expert's mandate, more attention will be given to international cooperation to achieve the Millennium Development Goals and respond to natural disasters. There is an emphasis within that context on the mobilization of resources and the need to ensure that countries which are authentically committed to achieving the Goals and have done all within their power to do so will be provided with the additional resources necessary to enable them to meet the Millennium Development Goals.¹⁰ At some point, the reiteration of commitments to achieve the Millennium Development Goals in documents such as the Millennium Declaration, the Johannesburg World Summit on Sustainable Development and the Monterrey Consensus, will start to provide a strong argument that such obligation has crystallized into customary law.¹¹ In response to natural disasters, the obligation of international cooperation is cemented in human rights law. The Committee on Economic, Social and Cultural Rights stated that States and international organizations have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency.¹² In disaster relief and emergency assistance, priority is to be given to Covenant rights.¹³ The independent expert will in future work concentrate on the global response to natural disasters, specifically international cooperation in the light of natural disasters and the promotion and protection of human rights.

II. PRELIMINARY STEPS TOWARDS DEVELOPMENT AND PREPARATION OF A DRAFT DECLARATION ON THE RIGHT OF PEOPLES AND INDIVIDUALS TO INTERNATIONAL SOLIDARITY

25. The independent expert has been mandated with the task of preparing a draft declaration on the right of peoples and individuals to international solidarity. Human Rights Council resolution 6/3 also took into account the urgent need to further develop guidelines, standards, norms and principles with a view to promoting and protecting the right of peoples and individuals to international solidarity.

¹⁰ Philip Alston, *A Human Rights Perspective on the Millennium Development Goals*, Paper prepared as a contribution to the work of the Millennium Project Task Force on Poverty and Economic Development, 2003.

¹¹ Alston, 2003.

¹² ICESCR Committee, 2000, para. 40; 1999, para. 38.

¹³ ICESCR Committee, 2002, para. 34.

26. The process towards a draft declaration or even the further development of guidelines, standards, norms and principles require elaboration of a rigorous conceptual framework for human rights and international solidarity, on the basis of extensive deliberations and inputs. As requested in relevant Human Rights Council resolutions, the independent expert intends to seek views and contributions from Governments, United Nations agencies, other relevant international organizations and non-governmental organizations in the discharge of his mandate through a draft questionnaire to solicit their input on the content, scope and nature of obligations for the promotion and protection of the rights of peoples and individuals to international solidarity (see Annex). The received input will be analysed with the purpose of planning incremental steps towards the further development of guidelines and standards and a draft declaration.

III. CONCLUDING REMARKS

27. International solidarity by its nature covers a broad range of areas of cooperation and assistance. This does pose a challenge in identifying specific areas of focus in the independent expert's work. In accordance with his broad mandate, in this report, the independent expert considered it important to establish the legal framework of international cooperation in human rights conventions and treaties and how the obligation of international cooperation has evolved in human rights instruments.

28. International solidarity and international cooperation are based on the foundation of shared responsibility. In the broadest sense, solidarity is a communion of responsibilities and interest between individuals, groups and States, connected to the ideal of fraternity and the notions of cooperation. The relationship between international solidarity and international cooperation is an integral one, with international cooperation as a core vehicle by which collective goals and the union of interests are achieved.

29. International cooperation is well established in international law, in human rights instruments, including covenants and conventions and is also a core theme in the Declaration on the Right to Development adopted in 1986. Millennium Development Goal 8 makes explicit mention of a "global partnership for development", covering targets on aid, debt, trade and transfer of technologies. The seven other Millennium Development Goals and their targets can only be achieved through the pursuance of international cooperation implicit in the concept of a "global partnership for development".

30. The typology of respect, protect and fulfil delineate essential aspects of international obligations in relation to all human rights and is a useful framework to interpret provisions on international assistance and cooperation.

31. The obligations related to international assistance and cooperation are complementary to the primary responsibility of States to meet their national human rights obligations. There is a shared responsibility for development met by States' national obligations and the obligations of international cooperation, facilitating global implementation.

32. International cooperation, while conflated with international development assistance is a broader term and can range from transfer of resources to technical assistance and cooperation, to policy advice, international sharing and exchange of experience, expertise and good practice to assist in effective implementation, networking and workshops, development of technologies, as elaborated in article 32 of the Convention on the Rights of Persons with Disabilities.

33. To conclude, international assistance and cooperation must be oriented, as a matter of priority, to the realization of all human rights, in particular economic, social and cultural rights, internationally agreed goals such as the Millennium Development Goals and must respond swiftly and effectively to grave situations such as natural disasters, which will be further explored in the future.

Annex

**DRAFT QUESTIONNAIRE TO BE DISTRIBUTED TO
STATES, INTERNATIONAL ORGANIZATIONS AND
NON-GOVERNMENTAL ORGANIZATIONS**

Purpose: To identify the basic parameters of the principle of international solidarity and human rights

1. According to the independent expert, the principle of international solidarity is defined as the union of interests or purposes among countries, and social cohesion between them, based upon the dependence of States and other international actors on each other, in order to preserve the order and very survival of international society, and in order to achieve collective goals, which require international cooperation and joint action. Recalling that the principle of international solidarity is essential in responding to current global challenges, what is your position regarding international solidarity as a principle in human rights law?
2. According to General Assembly resolution 55/2, solidarity is recognized as a fundamental value to be essential to international relations. With regard to the principles of international solidarity and the right to development, and human rights-based approaches, what is your opinion on international solidarity as one of the approaches to eradicate poverty?
3. The independent expert endorses three major areas of focus, namely, international cooperation; global responses to natural disaster, agricultural pests and diseases; and third generation rights. In your opinion, are those main areas sufficiently representative of today's challenges/issues?
4. Global responses to natural disaster require further elaboration in international law. International solidarity is closely interconnected with humanitarian assistance, including global responses to natural disaster. Having said that, how do you perceive global responses to natural disaster within international solidarity and a human rights-based approach?
5. Recalling the establishment of third generation rights, and recalling solidarity rights as third generation rights, comprising inter alia, the right to economic and social development, the right to participate in and the benefit from the "common heritage of mankind", the right to peace, the right to a healthy and sustainable environment, the right to humanitarian assistance and disaster relief, and the right to communication:
 - (a) Do you observe third generation rights in particular solidarity rights as an established, emerging, or *lex lata* human rights law?
 - (b) In your opinion, is there any particular right that should be established under solidarity rights other than those rights above mentioned?
6. The Millennium Development Goals could be considered as collective goals. How can international cooperation be strengthened in order to achieve them?

7. The right of development is one of the third generation rights which has been enshrined in several international instruments. The Declaration on the Right to Development recognized in 1986 the right to development as an inalienable human right. How do you perceive the right to development by means of international cooperation as the right of developing countries to reduce the gap existing between them and the developed countries?
8. Regarding question number 7, do you acknowledge the very existence of people's right to development?
9. International solidarity itself is not a new notion, having been introduced by developing countries in the course of the 1970s. Correspondingly, international solidarity has been echoed in several international instruments (i.e. resolution 55/2). Having said that, what is your opinion on whether there are duties to realize international solidarity?

Recalling that the independent expert on human rights and international solidarity is in charge of preparing a draft declaration on the right of peoples to international solidarity, in case you have any suggestions, comments or advice, please do feel encouraged to do so in addition to responses to the questions above.
