



NEW HUMANITY

“The draft Declaration on the Right of Individuals and Peoples to International Solidarity within the existing International Law system”.

Good afternoon.

First of all, I would like to thank the work of all the persons that have organized this event and that have given me the opportunity to be here and to share with some reflections on this proposal, especially Mrs. Bandam, Mrs Rossi and New Humanity.

My intervention is founded on a premise and is structured around three reflexions related to the general context of the proposal, the organ and the content of the proposal.

The *basis* is that we deeply believe that, nowadays, International Society cannot exist without solidarity. In the Millennium Declaration, States considered certain fundamental values to be essential to international relations in the twenty-first century. Solidarity is among those values (at the same level as freedom, equality, tolerance...). It means that global challenges should be managed in a way that distributes the costs and burdens fairly in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most. So, mere cooperation among States and their peaceful coexistence are not enough

1. Accepting this basis, our *first reflection* is about the historical context in which the process of preparing this proposed draft Declaration takes place. It is related to the evolution of International Law, itself. International Law was, and mostly still is, created by States for States, to rule their peaceful coexistence and their cooperation. The issue of Human rights entered later.

That is why the statement in United Nations Charter and in Universal Declaration of Human Rights, that every human being is entitled to his own rights, legally enforceable in all States, even the State of his nationality or the State under whose jurisdiction he is, was a revolutionary innovation in international law. Furthermore, any person is a holder

of rights, by virtue of being a person and because of the equal dignity of every human being. The person cannot be any longer regarded as a mere object of international order.

A revolutionary innovation had to take place in a world of sovereign states, one that generates a dialectical tension between two principles of international order: sovereignty of the States, on the one hand, and international recognition and protection of human rights, whose normative development involved a change in the international order. This began to legally register the duty of solidarity between all States to ensure universal and effective protection of human rights in terms of Article 55 of the Charter.

Therefore, being sovereign, States have legal obligations on human rights towards the international community as a whole.

The vision of an interdependent, connected and supportive community is no longer a myth or a mere aspiration of some persons but begins to be an historical reality, or at least a potential order.

But in front of these advances, new challenges emerged.

Thus, if in the late twentieth century the disappearance of the East / West division offered a time of great hope, economic globalization entailed new challenges and a serious risk of a more unequal world.

While it is true that there are new opportunities for wealth redistribution, it is also true that there are perverse side effects that can imply the risk of enlarging differences between North and South, creating an unbridgeable gulf and a source of instability and insecurity in the twenty-first century international society.

The great challenge of globalization is to get it to be guided by the principle of solidarity, understood as the defense of all human rights for everyone and everywhere.

This is the context in which this proposal is presented to the Human Rights Council.

There is, however, another aspect to be considered.

The duty of solidarity is not only for sovereign states. The drafters of the Universal Declaration of Human Rights, with a huge vision, included that duty in the interpersonal plane, at a universal level in article 1. They intended to mean that dignity, freedom and

equality could not be fully realized without the duty of solidarity. “All human beings and should act towards one another in a spirit of brotherhood”.

This is truly the spirit that animates the work that the expert Ms. Dandan has presented.

2. General Assembly of United Nations. Human Rights Council.

The UN General Assembly decided in Resolution 60/251 that the Human Rights Council should make recommendations “for further development of international law in the field of human rights” (art 5c).

Under the special mechanism of public proceedings, the Council confirmed the mandate of successive independent experts on the human right to international solidarity.

On this point, we think it is important to approach, from the perspective of contemporary international law, the nature of the task entrusted to the Council and the mandate of the Expert.

The task entrusted to the Council is a clear sign that Human Rights International Law is the result of an historical process and is in continuous change. It involves a step by step formation of law where not only hard law is relevant but also soft law.

This proliferation of soft law instruments in the field of human rights reflects a greater universal awareness about them and the value of human dignity. But it also shows the difficulties in achieving consensus for new rules. In many cases it is the result of the difficulty of reaching consensus, in others it is the product of the long process to get a positive rule, which is only reached after several recommendatory instruments.

It is well known that the General Assembly does not have legislative powers, namely, it does not create per se mandatory legal rules for States.

However, some of its resolutions, under the form of Declaration, may produce some effects in the formation international law. They can, at least, have a prospective or programmatic value, that is soft law. Far from being without legal value they can boost the practice of States and inspire new policies on human rights that give effect to this right.

In this step by step formation of law where we are, the time has come for the principle of solidarity to be clearly recognized as a right.

In this regard, it is particularly important to seek the broadest possible consensus among States to support this project, as mentioned in the Expert's report, through the regional consultations provided by the Council in its resolution 23/12.

3. Comments on the content of the proposed draft Declaration

In order to contribute to the discussion, we finally offer some comments on certain articles of the proposal that we consider particularly relevant.

First, it is very important to strongly support the human right to international solidarity, mainly in the Charter (art.55) and in the Universal Declaration of Human rights, particularly in articles 1 and 28, as stated in the preamble of the proposal and in article 5 paragraph 1.

This article shows a fundamental fact that is slowly becoming aware in contemporary international society: the intrinsic unity of all human beings and all people in a common destiny. This unity has inspired others areas of international law such as international environmental law, and should inspire also international human rights law. This unity is the one that, in our opinion, is without a doubt, the basis of human right to international solidarity.

Allow me to use an example to illustrate what I am saying. In the book of Genesis, God asks Cain: where is your brother? I don't know, he answered. Am I my brother's guardian? And the answer of God, that the Bible does not explicitly say, because it is not necessary, is of course, who else, if not you?

By this, I mean that we are responsible for each other, and this a reality that nowadays emerges strongly on ethical, legal and factual planes.

Therefore we consider adequate the approach of the proposal: "the right to international solidarity shall be drawn from the freedoms and entitlements already codified in international human rights treaties...complemented by other responsibilities arising..." (art.5.3).

The right to international solidarity seems to be a right that unifies human rights and puts them in a new perspective, the perspective that requires the current context of humanity.

So, we consider that if the right to development is the vector of human rights, the right to solidarity should be the energy to move it.

Second, article 6 related to the right-holders of the right to international solidarity.

We do not see any problem with the recognition of individuals and peoples, including indigenous peoples and minorities, whose restricted international subjectivity is widely accepted in international law. What is new is the inclusion of other non-state actors, namely “civil society groups and organizations” as well as “those who are outside dominant paradigms”, which will require an additional justification.

All this is a consequence of the universal and comprehensive nature of this right that encompasses all human beings in their different forms of social and political organization. But it is also a manifestation of a change of the traditional view of human rights in the State-individual relations. The twenty-first Century seems to be the age of non-state actors.

However, article 7, which defines the content of the human right to international solidarity, refers exclusively to peoples and individuals.

In this context, we also underline the transnational dimension that is present in articles 6 and 7, recognizing that individuals and peoples relate beyond national borders, overcoming boundaries that have characterized, until now, the implementation of international law.

Thirdly, concerning the duty-bearers of article 8, we find the same situation: States and non-State actors. It is neither new that international law requires international responsibility to subjects other than States (individuals and non-state actors, for example in the compliance of rules of international humanitarian law).

So, it is right to refer, on one hand, to the obligations of States on human rights related to the exercise of the right to solidarity and, on the other hand, to the guidelines and codes of conduct that are required to non-state actors.

Finally, we also highly appreciate article 12, wherein the negative obligations of States on human rights are specified, although we feel a final clause is missing in order to limit them to those listed.

In conclusion, this proposal is on the right path, a path for further development of international law in the field of human rights. Although it evidently needs deeper efforts and further reflection in order to achieve among States and Civil Society a consensus that is as wide as possible.

Thank you for your attendance.

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