



UNESCO Official Partner

Rome:
Headquarters,

Via Valle della Noce 16,
00046, Grottaferrata
(Rome), Italy – EU
Ph. +39.06.94.31.56.35,
Fax +39.06.941.09.72
[info@new-
humanity.org](mailto:info@new-humanity.org)

New York:
UN Headquarters,

PO Box 11791,
New Brunswick, N.J.,
08854 USA
Ph. +732.699.93.47
[new-york@new-
humanity.org](mailto:new-york@new-humanity.org)

Geneva:
Palais des Nations,

23, ch. des Palettes,
1212 Genève,
Switzerland
Ph. +41.22.79.46.444
Fax +41.22.794.64.47
[geneva@new-
humanity.org](mailto:geneva@new-humanity.org)

Paris:
UNESCO,

Parc d'Army
91680 Bruyères le
Chatel
Ph. +33.1.64.90.20.55
[paris@new-
humanity.org](mailto:paris@new-humanity.org)

www.new-humanity.org

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“Parallel event of the Independent Expert on Human Rights and International Solidarity and Civil Society Organizations to gather input on the proposed draft declaration on the Right to International Solidarity”

Prof. M. E. Salamanca Aguado (University of Valladolid)

International Solidarity and Extraterritorial Human Rights Obligations

1. Premises

Let me to start my intervention establishing some premises.

1.1. Foundation of the principle of international solidarity

The principle of solidarity is a direct demand of human fraternity (SRS 38-40). The law of human solidarity is dictated and imposed both by our common origin and by the equality in rational nature of all men and women, whatever nation they belong to. International solidarity is a requirement of the moral order¹ and it is present in article 1 of the Universal Declaration of Human Rights. The development of this principle in legal terms depends on the political will of member States of international community.

¹ *Catechism of the Catholic Church*, para. 1939 and 1941.

1.2. Core elements of the principle of international solidarity

Taking into account that there is no a definition of the notion of solidarity in international law, I will try to identify some core elements of the principle of international solidarity for the purpose of my contribution:

- 1) *Common bond*: Firstly, international solidarity presupposes a common bond between members of the international community, formed on the basis of shared values;
- 2) *Common goal*: Secondly, international solidarity means the duty to provide help to one another in order to advance common goals; in that sense, solidarity goes beyond reciprocity in its traditional meaning.
- 3) *Joint action*: Thirdly, international solidarity implies a joint action of all members of the international community, including States, international organizations and other non-States actors. And, also it is possible to add the intergenerational dimension that includes solidarity with future generations. In that sense, it refers to “unity of all human beings” (humanity).
- 4) *Shared accountability*: Finally, and consequently, international solidarity means shared accountability to safeguard the common good of the international community.

1.3. Function of international solidarity in international law

According to some contemporary scholars, the principle of solidarity can play a dual role in international law: responding to dangers or events (*negative solidarity*) and creating joint rights and obligations (*positive solidarity*). In various branches of international law it has reached different stages of development². It is particularly relevant in regulating concerns common to the international community, for example: common areas, environment, protection of human rights, economic development, social justice or the preservation of

² K. Wellens, “Revisiting Solidarity as a (Re- Emerging Constitutional Principle: Some Further Reflections”, in R. Wolfrum and Ch. Koiima (eds.), *Solidarity: A Structural Principle of International Law*, Springer, 201, p. 5.

international peace and security. All such concerns can only be successfully managed by the *common action* of all members of the international community³.

For example, professor Wolfrum has considered that the principle of international solidarity “reflects the transformation of the international system from a network of bilateral commitments into a value-based global order”⁴. “The introduction of the principle of solidarity as a structural principle of international law – explains- reorients international law from a set of rules for preserving the present state of existing international relations, into a regime for fulfilling a certain mission, namely the promotion of international social justice among States”. And he concludes, that “the changes international law is undergoing, or has undergone in recent years, are due to the transformation of international relations from a system governed by the coexistence of States... into a system following the law of cooperation, and then, in a third stage, into a legal system based upon common values”⁵. This third stage corresponds to international solidarity.

1.4. International solidarity, universality of human rights and extraterritoriality dimension

In the field of international human rights law, the principle of solidarity is inseparable from the idea of universality of human rights.

Article 1 (3) of the United Nations Charter provides that “the purposes of the United Nations are, *inter alia*, to achieve international cooperation ... in *promoting and encouraging respect for human rights and for fundamental freedoms for all*”. According to article 56 “all members pledge themselves to take *joint and separate action*, in cooperation with the Organization for the achievement of this purpose. The specific obligations stemming from these articles have been the topic of continuing debate among scholars. A commentator holds that article 55 (c) contains corresponding *substantive obligations* in respect to human rights, and it can thus be held that in terms of human rights, articles 55 and 56 in conjunction establish *obligations to take action* to promote respect for human rights⁶. According to this interpretation, there is a firm obligation for states to act individually as well as collectively (jointly) to promote respect for human rights. This “joint action” has a clear extraterritorial element to it: only one of the states acting jointly may at any given time address the promotion of respect for human rights

3 R. Wolfrum, “Solidarity”, *The Handbook of International Human Rights Law*, p. 403.

4 R. Wolfrum, p. 401.

5 *Ibid.*

6 B. Simma, *The Charter of the United Nations. A Commentary*, Oxford University Press, p. 943.

domestically, all the other states involved in the joint action will logically be addressing human rights respect in another state⁷. The universality of protection of human rights is something States have accepted and agreed to, long ago, and the very nature of human rights implies that states are obligated to respect and protect rights for everyone⁸.

Since the beginning of the human rights movement (1945), it has been recognized that the effective realization of individual rights constitutes a community interest requiring international solidarity⁹. Article 1 of the International Law Institute 1989 resolution on the “Protection of Human Rights and Principle of Non-Intervention in Internal Affairs of States”, states that, the states’ obligations to protect human rights “implies a duty of solidarity among all States to ensure as rapidly as possible the effective protection of human rights throughout the world”¹⁰.

There is, however, another aspect to be considered. The duty of solidarity is not only required from sovereign states. The drafters of the Universal Declaration of Human Rights included the *duty to solidarity* 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 for all without the duty of solidarity.

1.5. Positive and negative human rights obligations

Traditionally, it is understood that civil and political rights could be observed through non-interference on the part of the state, thus representing an application of negative obligations only, while economic, social and cultural rights were held to require provisions from the state, thus representing positive obligations¹¹. However, it is now recognised that every group of rights are followed both by negative and positive obligations. Nowadays, it is commonly accepted that like civil and political rights, economic, social and cultural rights impose three

7 S. I. Skogly, *Beyond National Borders: States’ Human Rights Obligations in International Cooperation*, Intersentia, 2006, p. 76.

8 M. Sheinin, “Extraterritorial effect of the International Covenant on Civil and Political Rights “ in F. Coomans and M. T. Kamminga, Antwerp, Intersentia, *Extraterritorial Effect of Human Rights Treaties*, pp. 78-79.

9 A. G. Koroma, “Solidarity: Evidence of an Emerging International Legal Principle”, in H. P. Hestermeyer and others (eds.), *Coexistence, Cooperation and Solidarity: Liber Amicorum Rudger Wolfrum*, Martinus Nijhoff, 2012, 108.

10 Institut de Droit International, “The Protection of Human Rights and the Principle of Non-intervention in Internal Affairs of States” (1989) 63 *Annuaire* 338, art. 1.

11 Eide, A., “Realization of Social and Economic Rights and the Minimum Threshold Approach”, *HRLJ*, No. 1-2, 1989, at 10.

different types of obligations on States: the obligations to respect, to protect and to fulfil (The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights”).

2. Extraterritorial application of human rights obligations

The extraterritorial application of State’s human rights obligations has emerged as pressing issue in international human rights law. And, it is destined to remain so given that States are increasingly asserting their power abroad in ways that affect the rights of individuals beyond national borders. It has arisen in connection with State’s policies and conduct in the context of immigration, trade, development, participation in international organizations, national security outside of any armed conflict, peacekeeping and peace enforcement operations, foreign intelligence and so on¹².

I will refer now, to the extraterritorial application of the three types of human rights obligations¹³.

2.1. Obligation to respect

For all human rights, there is a basic obligation not to interfere in the individual’s enjoyment of human rights. The important question in the current context would be to determine what this might imply in terms of obligations in foreign affairs or international assistance and cooperation. It would imply that a state’s action should not impair human rights already enjoyed by individuals in other states. Thus, any state’s activity that interferes or deprives people in other states of their human rights will represent violation of the obligation to respect.

2.2. Obligation to protect

The obligation to protect implies a duty upon the state to regulate the activities of third parties to protect against violations of human rights as a result of these actors’ conduct. Extraterritorial obligation in this sphere would imply to protect individuals abroad from human rights violations that could be attribute to actions committed by third parties over which the state has jurisdiction.

12 See B. V. Schaack, “The United States’ Position on the Extraterritorial Application of Human Rights Obligations: Now is the Time for Change”, 90 Int’l L. Stud. 20 (2014), at 20-21.

13 See S. I. Skogly, *Beyond National Borders: State’s Human Rights Obligations in International Cooperation*, Intersentia, 2006, pp. 57-71.

2.3. Obligation to fulfil

The obligation to fulfil requires the state to take the measures necessary to ensure for each person within its jurisdiction opportunities to obtain satisfaction of those needs, recognised in the human rights instruments, which cannot be secured by personal efforts. In terms of extraterritorial obligations, this type of obligation may imply that states' extraterritorial activities are required to positively improve the human rights situations of individuals in third states. This approach would imply that states would have positive obligation to promote human rights in other states.

3. Final remarks

I conclude my intervention with some final remarks.

3.1. From a theoretical point of view, the traditional approach to human rights obligations as being confined to state's actions within their own territory and related to their own citizens and residents is no longer sufficient. It is impossible to achieve universal respect for human rights without addressing universal obligations, including the extraterritorial perspective.

3.2. In practice, human rights instruments contain different formulations for their scope of application, and different treaty bodies or tribunals interpret them; but it can be said that is emerging a consensus in the sense that "States owe human rights obligations to all individuals within the authority, power, and control of their agents or instrumentalities, and can be found responsible whenever they cause harm to such individuals. In terms of which rights and obligations apply extraterritorially, according to human rights bodies, it depends on the nature of the right, and the degree of control the State exercises over territory, individuals, or transaction in question"¹⁴.

Thank you for your attendance.

¹⁴ *Ibid.* At 22.